

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

DA 95-2468

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| In re: |) | |
| |) | |
| |) | |
| Complaint of Costa De Oro Television, Inc. |) | CSR-4604-M |
| against United Cable Television of East San Fernando |) | |
| Valley, Inc. |) | |
| |) | |
| |) | |
| Request for Signal Carriage |) | |

MEMORANDUM OPINION AND ORDER

Adopted: December 12, 1995

Released: January 19, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Costa De Oro Television, Inc., permittee of Station KSTV (Channel 57), Ventura, California, has filed a "Complaint," along with a later supplement and a motion for leave to file it, pursuant to §614(d) of the Communications Act of 1934, as amended, and §§76.7 and 76.61 of the Commission's Rules, requesting carriage of its signal by United Cable Television of East San Fernando Valley Ltd. ("United"), operator of cable television systems located in the San Fernando Valley area of Los Angeles, California. United has filed an opposition to this "Complaint," after which KSTV filed a reply to it along with a second supplement and a motion for leave to file it.¹

PARTIES' ARGUMENTS

2. According to KSTV, because its community of license, Ventura, California, is in the

¹ Recognizing that Commission rules do not contemplate the filing of supplements, KSTV asks the Commission to accept them, because they will afford a more complete record upon which to base a decision, and because they address issues which the station could not have done previously.

Los Angeles, California "area of dominant influence" (or "ADI"), it is entitled to mandatory carriage on United's system, pursuant to §76.56(b) of the Commission's Rules. In support of this claim, KSTV submits letters from Arbitron which it says confirm its belief that it was included in the Los Angeles ADI, when the 1991-1992 *Television ADI Market Guide* was published, although the letters also mention that KSTV chose to be included in the Santa Barbara-Santa Maria-San Luis Obispo ADI for "reporting purposes." KSTV denies that it ever made such a choice and states that United has 77 activated channels, and that the system is required to devote up to one-third of them to the transmission of commercial local broadcast stations, pursuant to §76.56(b)(2), which it has not yet done. KSTV adds that it is a Spanish language station, and that it advised United that it planned to seek mandatory carriage by letter dated December 6, 1994. Thereafter, United's General Manager, Kurt Taylor, informed the station that it likely would commence carriage of the station on Channel 23 about November 1, 1995. However, by letter dated September 22, 1995, KSTV was informed that United would not carry it, so the station filed this complaint within sixty days, pursuant to §76.7(c)(4)(iii) of the Commission's Rules. According to Mr. Walter F. Ulloa, President of Costa De Or Television, Inc., the station has already spent \$2,950.00 for a high quality receive antenna to improve its signal, and lack of carriage by United would have "disastrous consequences" to KSTV. In its supplement, KSTV states that economic circumstances forced it to switch from an independent Spanish language format to an independent English language format as of November 1, 1995, but that if it is granted mandatory carriage on cable systems in the Los Angeles area, it should be able to reach enough homes to enable it to revert to Spanish programming.²

3. United also notes that KSTV no longer has a Spanish language format and contends that there is no inconsistency between the station's physical location in Ventura County, which is in the Los Angeles, California ADI, and its assignment for other purposes to the Santa Barbara-Santa Maria-San Luis Obispo, California ADI. Citing the Commission's prior decision concerning this very issue in *Complaints of Costa De Or Television, Inc.*,³ United adds that this "Complaint " merely constitutes an abuse of Commission processes.

4. KSTV argues in reply that it did not abuse Commission processes because it had to file this complaint to preserve its carriage rights in the event that it eventually prevails on an earlier case that is presently on review with the Commission.⁴ KSTV adds that it ". . . has never chosen to serve the Santa Barbara ADI/DMA. It has always chosen to serve the Los Angeles ADI/DMA and its large Spanish speaking market." According to KSTV, Arbitron can find no

² With its supplement, KSTV also submitted eight letters deploring the format change, including several from local educators, such as the Instructional Dean of Ventura College, Dr. Jaime Casillas.

³ 10 FCC Rcd 9468, 9472 (1995).

⁴ *Ibid.*

records in its files that KSTV ever requested being treated as a station in the Santa Barbara ADI,⁵ and therefore any assignment to that ADI by Arbitron was erroneous and cannot justify any Commission action on that basis.

DISCUSSION

5. Initially, we note that we will accept KSTV's supplements for the reasons given by the station. However, §76.55(e) of the Commission's Rules clearly specifies that the market of a commercial television broadcast station, such as KSTV, is the ADI assigned by Arbitron's 1991-1992 *Television ADI Market Guide*, whether or not this is the same market that the station itself would choose if asked, and a commercial station is entitled to request mandatory carriage on any cable system operating either in its assigned ADI or in its home county, pursuant to §§76.56(b) and 76.55(e)(3) of the Commission's Rules. As the Commission explained when it adopted these rules: ". . . ADI designations will be set for a three-year period designed to coincide with the three-year election time frame for the must-carry/retransmission consent election. We believe that this procedure will allow us to take into account changing markets while at the same time providing stability for the affected parties."⁶ We have also indicated before that: ". . . parties are entitled to rely on the 1991-1992 *Television ADI Market Guide* for determining a station's television market for signal carriage purposes."⁷ KSTV is located for must-carry purposes in the Santa Barbara-Santa Maria-San Luis Obispo, California ADI, and it has carriage rights in that ADI, as well as in its home county, Ventura, California.⁸ Accordingly, KSTV is not entitled to mandatory carriage on United's system serving the East San Fernando Valley in the Los Angeles, California ADI, pursuant either to §76.55(a)(3) or to §76.56(b) of the Rules.⁹

ORDERING CLAUSES

⁵ In support of this assertion, KSTV submits a "Declaration" signed by Arbitron's Manager of Radio Database Quality, James Alvey, that the company has not retained any of the files requested by KSTV ". . . due to the fact that Arbitron shut down its television service as of October of 1993"

⁶ See, *Report and Order* in MM Dockets No. 92-259, 90-4, and 92-295, 8 FCC Rcd 2965, 2975 (1993).

⁷ We note that Arbitron assigned KSTV to the same ADI in its 1992-1993 *Television ADI Market Guide* as it did in its 1991-1992 *Guide*.

⁸ In situations such as this where a station's home county is located outside its assigned ADI, the Commission has specifically recognized the station's carriage rights in both places. *Report and Order*, 8 FCC Rcd at 2975.

⁹ See, *Complaints of Costa De Or Television, supra, recon. pending.*

6. Accordingly, IT IS ORDERED, That the "Complaint" (CSR-4604-M) filed October 16, 1995, by Costa De Oro Television, Inc., licensee of Station KSTV (Channel 57), Ventura, California, IS DISMISSED in accordance with §614(d)(3) of the Communications Act of 1934, as amended (47 U. S. C. §534) and 47 CFR §76.61(b) (2).

7. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau