

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Paxson Oklahoma License, Inc.)	
)	CSR-5632-M
v.)	
)	
Cox Communications, Inc.)	
)	
Must Carry Complaint)	

MEMORANDUM OPINION AND ORDER

Adopted: April 2, 2001

Released: April 3, 2001

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

I. INTRODUCTION

1. Paxson Oklahoma License, Inc. ("Paxson"), licensee of commercial television station KOPX-TV (Channel 62), Oklahoma City, Oklahoma, ("KOPX-TV") filed a must carry complaint with the Commission, pursuant to Sections 76.7 and 76.61 of the Commission's rules, against Cox Communications ("Cox").¹ Paxson alleges that Cox has failed to carry the signal of KOPX-TV without material degradation on a basic service tier channel uniformly available to all Cox subscribers on its systems serving Edmond, Oklahoma and communities in Logan, Canadian, and Cleveland Counties, Oklahoma (the "cable communities"), as required under the Commission's rules.² Cox filed an opposition to the complaint. Paxson filed a reply.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order")*, commercial television broadcast stations are entitled to assert mandatory carriage rights, including certain mandatory channel position rights, on cable systems located within the station's market.³ A station's market for this purpose is its "designated

¹ 47 C.F.R. §§ 76.7 and 76.61.

² See Petition at Exhibit 1 (listing communities served by Cox systems).

³ 8 FCC Rcd 2965, 2976-2977 (1993).

market area,” or DMA, as defined by Nielsen Media Research.⁴ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. With respect to the channel number on which stations asserting must carry rights are to be carried, Section 614(b)(6) of the Act and Section 76.57 of the Commission’s rules provide commercial television stations with three channel positioning options.⁵ The station may elect to be carried on: (1) the channel number on which the station is broadcast over-the-air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992.⁶ The Act and the rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁷

III. DISCUSSION

4. In support of its complaint, Paxson asserts that Cox has failed to comply with the Bureau’s previous channel placement order.⁸ Specifically, Paxson argues that Cox has failed to carry KOPX-TV on Channel 62 without material degradation, on a basic service tier at a channel position uniformly viewable by its subscribers.⁹ By letter dated September 15, 2000, Paxson informed Cox that carriage of KOPX-TV on channel 62 did not conform to the Commission’s must carry requirements. Paxson requested that Cox relocate KOPX-TV to another channel position on Cox’s basic tier in close proximity to the other broadcast stations being carried by Cox and available to all of Cox’s basic cable subscribers.¹⁰ In response, by letter dated September 24, 2000, Cox informed Paxson that it had taken steps to remove traps and scrambling that might prevent reception of Channel 62 without use of a converter box.¹¹ Cox also stated that the initial repositioning of KOPX-TV to cable Channel 62 was accomplished in strict compliance with the must carry rules. Paxson subsequently conducted a telephone survey, the results of which allegedly reveal that some of KOPX-TV viewers experience either poor reception or no reception on Cox’s Channel 62.¹² Paxson maintains that whatever steps were undertaken by Cox to improve reception were wholly inadequate. Thereafter, Paxson filed the instant petition and asks that Cox be ordered to move KOPX-TV to a mutually agreeable basic service tier channel uniformly viewable by

⁴ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs.

⁵ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

⁶ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(a).

⁷ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(c).

⁸ *See Paxson Oklahoma License, Inc. v. Cox Communications, Inc.*, 15 FCC Rcd 17374 (2000) (Paxson filed a channel positioning complaint against Cox asking that the Commission require Cox to carry station KOPK-TV on its over-the-air channel position, or on a mutually agreeable channel throughout its cable systems serving the communities. The Bureau concluded that Cox was required to carry KOPX-TV on Channel 62, the Station’s over-the-air position, or on a channel position agreeable to both parties.).

⁹ *See Adell Broadcasting Corporation*, 12 FCC Rcd 15169 (1997); Petition at 3, *citing* 47 C.F.R. § 76.62(b).

¹⁰ Petition at Exhibit 3.

¹¹ *Id.* at Exhibit 4.

¹² *Id.* at 2; Exhibit 2.

Cox's subscribers in the cable communities, and to carry the signal on that channel without material degradation.¹³

5. In opposition, Cox requests that Paxson's complaint be summarily dismissed as both unsubstantiated and an abuse of process. Cox takes issue with Paxson's use of a subscriber survey as proof of the claim asserted.¹⁴ Cox asserts that the survey results are a poor substitute for a detailed list of disgruntled subscribers with specific reception problems; that Paxson's reliance on survey results without providing the underlying survey text is misplaced; and that Paxson relies on selective survey results without providing expert testimony attesting to the propriety of the survey methodology and statistical significance of the results.¹⁵ Additionally, Cox maintains that Paxson made no effort to work cooperatively to remedy the alleged technical problems although Cox responded promptly to Paxson's initial expression of technical concerns. Moreover, Cox states that its engineering staff has been unable to identify any technical problem with KOPX-TV's carriage and has not received any calls from dissatisfied subscribers regarding poor reception or no reception of KOPX-TV.¹⁶ Finally, Cox argues that there is no evidence in the record supporting Paxson's claim that cable Channel 62 is categorically unable to satisfy Cox's must carry obligations.¹⁷ Nevertheless, Cox states that it is prepared to remedy any specific and substantiated technical problems regarding channel reception.¹⁸

6. In reply, Paxson reiterates its argument that Cox has failed to deliver KOPX-TV on Channel 62 to all subscribers in the cable community in a manner that is uniformly viewable and without material degradation.¹⁹ Paxson asserts that Cox's decision to argue Paxson's failure to provide "statistically significant" evidence of carriage problems rather than argue that it has met its duty to provide service that is uniformly viewable and without material degradation is without merit.²⁰

7. We deny Paxson's petition. As an initial matter, it is not disputed that Cox's cable systems serving the Oklahoma City, Oklahoma DMA currently carry KOPX-TV on Channel 62.²¹ Therefore, Paxson's petition for mandatory carriage mischaracterizes the relief sought. Rather, Paxson's petition seeks to address alleged channel reception and/or technical deficiencies with respect to Cox's carriage of KOPX-TV.²² In any case, Paxson fails to offer any empirical evidence to support its claim that Cox has failed to carry KOPX-TV on Channel 62 without material degradation, on a basic service tier at a channel

¹³ *Id.* at 5.

¹⁴ Opposition at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at Exhibit B.

¹⁹ Reply at 2.

²⁰ *Id.* at 4.

²¹ Petition at Exhibit 3 (Letter from Petra Redchuk, Associate General Counsel, Paxson Communications, to Steven J. Horvitz, Esq., Cole Raywid & Braverman, L.L.P., counsel for Cox Cable, dated September 15, 2000).

²² Paxson commissioned a telephone survey of Cox subscribers in the cable communities and submitted the alleged survey findings in the form of sworn declaration of its Associate General Counsel concluding that Cox failed to carry KOPX-TV on Channel 62 without material degradation, on a basic service tier at a channel position uniformly viewable by its subscribers.

position uniformly viewable by its subscribers. Moreover, Paxson failed to introduce the study itself into evidence, which makes it impossible for us to judge its efficacy. Nevertheless, Cox has indicated its willingness to work with KOPX-TV and Paxson to remedy any specific technical deficiencies, to the extent they exist.²³ This is consistent with the approach we have taken in the past with respect to this issue. Cable operators are required to make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation of the broadcast television signals.²⁴ Cable operators are further encouraged to work with broadcasters to resolve problems affecting the quality of a particular signal prior to its reception at the cable headend.²⁵ The record indicates that Cox is willing to work with KOPX-TV and Paxson to remedy any specific and substantiated technical problems. We expect the parties to work together to correct any alleged problems subscribers may have viewing KOPX-TV. Accordingly, we deny Paxson's petition.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended [47 U.S.C. § 534(d)(3)], that the complaint (CSR-5632-M) filed by Paxson Oklahoma License, Inc. against Cox Communications, Inc., **IS DENIED**.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

²³ Opposition at 4.

²⁴ *Must Carry Order*, at 2990-2991 (1993) (If signal degradation occurs between the cable system's principal headend and the subscriber's terminal, it is the sole responsibility of the cable operator to ensure that it is operating in full compliance with the Commission's technical standards.).

²⁵ *Id.* at 2990 (If the problem stems from an unsatisfactory quality local television signal received at the cable system's principal headend, the cable operator is not required to bear the burden of improving the signal; however, we expect the cable operator to cooperate with the television station to resolve the problem.).

²⁶ 47 C.F.R. § 0.321.