

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

In the Matter of:
Paxson Scranton License, Inc.
v.
Shen-Heights TV Associates, Inc.
Request for Mandatory Carriage of
Television Station WQPX-TV,
Scranton, Pennsylvania
CSR-5860-M

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2002

Released: July 3, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Paxson Scranton License, Inc. ("Paxson"), licensee of television broadcast station WQPX-TV, Scranton, Pennsylvania ("WQPX" or the "Station") filed the above-captioned must carry complaint against Shen-Heights TV Associates, Inc. ("Shen-Heights"), for failing to carry WQPX on its cable television system serving Shenandoah Heights, Pennsylvania and surrounding environs (the "cable community"). Shen-Heights filed an opposition to which Paxson replied. For the reasons discussed below, we grant the complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Federal Communications Commission ("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 on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 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) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

III. DISCUSSION

3. In support of its complaint, Paxson states that its television station, WQPX, is licensed to Scranton, Pennsylvania, which is in the Wilkes Barre-Scranton, Pennsylvania DMA. It states further that Shen-Heights operates a cable television system in Shenandoah Heights, Pennsylvania, and surrounding communities (including East Union, Shenandoah, West Mahanoy, and Union, Pennsylvania), which are also in the Wilkes Barre-Scranton DMA. Paxson contends that because WQPX is located within the same DMA as the Shen-Heights' cable system, WQPX is entitled to mandatory carriage on that cable system. Paxson asserts that it formally requested that Shen-Heights commence carriage of WQPX's signal on its cable system.³ In its opposition, Shen-Heights maintains that WQPX was not entitled to must-carry status on the cable system because it did not provide a good quality signal to the cable system's headend.⁴ In support of this allegation, Shen-Heights submitted valid signal strength tests, and Paxson has not disputed the results of these tests. According to Paxson, it is committed to do whatever is necessary to provide Shen-Heights with a good quality signal in accordance with the Commission's rules.⁵ Paxson requests that the Commission order Shen-Heights to commence carriage of its television station WQPX on its cable system serving the cable community once it delivers a good quality signal to the cable system.⁶

4. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") provides that a cable operator is not required to carry a local commercial broadcast station that does not deliver a good quality signal to the principal headend of a cable system.⁷ Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. With respect to the standard to be used to determine what constitutes a good quality signal at a cable system's headend, the 1992 Cable Act adopted a standard for VHF and UHF commercial stations.⁸ For VHF commercial television station signals, the standard is -49 dBm; for UHF commercial television station signals, the standard is -45 dBm.⁹ WQPX is a UHF commercial station.

5. In this instance, Shen-Heights' signal quality tests indicate that WQPX failed to meet this standard.¹⁰ Paxson has not disputed the results of these tests. However, Paxson has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide Shen-Heights with a good quality signal. The Commission recognizes must-carry status if a television station provides any necessary equipment and bears the costs associated with delivering a good quality signal to a cable system.¹¹ Thus, we find that WQPX is entitled to mandatory carriage on the cable system at issue if Paxson fulfills its commitment to provide the cable system with a signal of good

³ Complaint at 2 and Exhibit 2.

⁴ Opposition at 1-2.

⁵ Complaint at 5-6 and Exhibit 4.

⁶ Complaint at 6-7; Reply at 5.

⁷ 47 U.S.C. § 534(h)(1)(B)(iii).

⁸ *Id.*

⁹ *Id.* See also 47 C.F.R. § 76.55(c)(3).

¹⁰ Opposition at 1 and Exhibit 1.

¹¹ See *Must Carry Order*, 8 FCC Rcd at 2991. See, e.g., *WMPF, Inc.*, 11 FCC Rcd 17264 (1996); *KSLS, Inc.*, 11 FCC Rcd 12718 (1996). See also 47 U.S.C. § 534(h)(1)(B)(iii).

quality.¹²

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Paxson Scranton License, Inc, licensee of television broadcast station WQPX, Scranton, Pennsylvania against Shen-Heights TV Associates, Inc. **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that Shen-Heights **SHALL COMMENCE CARRIAGE** of the WQPX signal on its cable system serving Shenandoah Heights, Pennsylvania and surrounding environs within sixty (60) days from the date that that WQPX provides a good quality signal to Shen-Heights' cable system headend.

8. **IT IS FURTHER ORDERED**, pursuant to Sections 76.56 and 76.57 of the Commissions rules (47 C.F.R. §§ 76.56 and 76.57), that WQPX shall notify Shen-Heights in writing of its carriage and channel position elections within thirty days of the date it delivers a good quality signal.

9. This action is taken pursuant to authority delegated by Section 0.283 if the Commission's rules (47 C.F.R. § 0.283).

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

¹² Paxson also suggests that Shen-Heights be sanctioned for lack of cooperation. We decline to do so in this situation.