

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

In the Matter of:)	
)	
Paxson Chicago License, Inc.)	
)	
v.)	
)	
21 st Century TV Cable, Inc.	)	5593-M
)	
Wedgewood Communications	)	5594-M
)	
TV Cable of Rensselaer	)	5595-M
)	
AT&T Broadband	)	5596-M
)	
Ameritech New Media	)	5603-M
)	
Mediacom Communications Corporation	)	5604-M
)	
Charter Communications, Inc.	)	5605-M
)	
Optel Cable, Inc.	)	5625-M
)	
Mediacom	)	5626-M
)	
Grand Ridge Cable Co.	)	5627-M
)	
Western Cable Communications	)	5628-M
)	
Kraus Electronic Systems	)	5629-M
)	
Consumer Cable of America	)	5630-M

Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: January 18, 2001

Released: January 23, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Paxson Chicago License, Inc. ("Paxson"), is the licensee of television station WCPX, Chicago, Illinois. WCPX broadcasts an NTSC analog television service on channel 38 and a digital television service on channel 46. The digital transmission on channel 46 includes six separate multiplexed

programming streams: (1) the primary Central Time feed of PAXTV; (2) PAXTV east coast feed; (3) PAXTV west coast feed; (4) The Worship Network; (5) The Praise Network; and (6) The TLN Network. Paxson has filed 13 must carry complaints against cable operators (“operators”) in and around Chicago, Illinois. The cable systems involved in this proceeding generally already carry the WCPX, channel 38, analog service. Paxson requests that the Commission order each of the cable operators involved to replace the existing WCPX analog service with a downconverted analog version of the digital primary Central Time feed of PAXTV received from channel 46 and place the remaining five channel 46 programming streams on the digital portion of the cable systems for access by subscribers that have digital set top boxes. Several of the operators have filed oppositions in response to the complaints, to which Paxson has filed replies. We consolidate these complaints because they are essentially identical to each other.¹

II. PLEADINGS

2. In its complaints, Paxson asserts that WCPX-DT, as its digital signal, is entitled to carriage because: (1) the complaints were timely filed; (2) its city of license and the subject cable communities are located within the Chicago television market, and (3) it is capable of delivering an adequate signal to the cable operators’ principal headends.² Paxson also argues that the Act requires cable carriage of all television broadcast signals, including digital signals. Paxson states that it is not seeking dual carriage of both its analog signal (channel 38) and its digital signal (channel 46); rather, it is seeking carriage of its digital signal on channel 46 in replacement of its analog signal on channel 38 so that the digital signal is available to all cable subscribers on the same basis and on the same channel currently occupied by the analog signal. In addition, Paxson is seeking mandatory carriage of five additional digital programming services, broadcast along with the main television service, on the digital portion of the cable systems for subscribers who have digital set top boxes.³ According to Paxson, the additional programming streams should be carried using the digital program system information protocol (“PSIP”) and appear in sequence with the WCPX-DT primary digital signal on the digital set-top box. Paxson states that it will, if necessary, provide specialized receiving equipment to the cable operator so that a good quality signal is received.⁴

3. In opposition, the affected cable systems provide a multitude of reasons why the Commission should dismiss Paxson’s complaints. AT&T, for example, argues that the complaint is defective because the Commission has not yet issued digital must carry rules and it is inappropriate to resolve issues of general applicability to the cable industry in an adjudicatory proceeding.⁵ 21st Century

¹Paxson has served several chambers of commerce in the Chicago area with a copy of its complaint. Insofar as the broadcaster was attempting to provide notice, we note that the proper local governmental body to receive service is the local franchising authority, not the many chambers of commerce in the market.

²Paxson also argues that carriage of its digital television signal will not expose the cable operator to any increased copyright liability. *See, e.g., Paxson Chicago License, Inc. v. AT&T Corp.*, CSR 5596-M (filed Sept. 11, 2000).

³We note that in its carriage request letters to local cable operators, Paxson has stated that partial compliance with its request would be “unacceptable” and “would be violative of the 1992 Cable Act.” *See, e.g., Letter to Morgan McChesney, AT&T-Chicago, from Lowell W. Paxson, Chairman, Paxson Chicago License, Inc. (June 5, 2000) attached as Exhibit 2 to Paxson’s digital must carry complaint against AT&T Broadband, noted above.*

⁴On this point, Paxson notes that it expects cable subscribers will receive a picture of comparable quality to that provided for any other type of signal. *Id.*

⁵*See AT&T Opposition at 6-13.* AT&T notes that key digital carriage issues involving, *inter alia*, tier
(continued...)

argues that because cable operators, like itself, are carrying Paxson's analog signal in full compliance with all applicable statutory and regulatory requirements, carriage of the digital signal is unnecessary and the complaints must be dismissed.⁶ Regarding the legality of Paxson's request, AT&T argues that there is no statutory right for mandatory carriage of a digital signal downconverted to an analog form.⁷ AT&T also argues Paxson is not entitled to carriage of its digital multicast programming services because a cable operator is only required to carry a single video service under the Act, and such a service during the transition would be the station's analog signal.⁸ Charter notes that it is impossible for it to comply with Paxson's carriage request because its systems do not offer digital tiers of service or the digital set-top boxes that are a necessary prerequisite underlying the licensee's demand.⁹ Mediacom, a small cable operator in the Chicago DMA, argues that a requirement to carry Paxson's six multiplexed programming streams would negatively impact the economic viability of its systems and impose substantial per customer costs.¹⁰

4. With regard to the procedural issues raised by the cable operators, Paxson states that the Commission should act on its complaints, despite the pending digital broadcast signal carriage proceeding, because the Act requires the carriage of digital television signals.¹¹ As for the carriage of its digital signal in an analog mode, Paxson responds that such a request is a reasonable and practicable solution for all cable subscribers to access its programming during the digital transition.¹² In response to the operators' arguments against the carriage of multiple digital programming streams, Paxson asserts that the Act requires that the "entirety" of WCPX-DT's program schedule, including free, over-the-air, multicast signals, must be carried.¹³ Paxson also states that allowing cable operators to carry its signal in an analog format would obviate the need for cable operators to invest in expensive equipment or to upgrade facilities

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placement, signal quality levels, and material degradation, which were raised for comment in the digital broadcast signal carriage NPRM, must be resolved before digital must carry complaints can be filed. *Id.* at 12. *See also*, 21st Century Cable TV of Chicago, Inc. ("21st Century") Opposition in CSR 5593-M at 4. ("The issues raised in the Complaint have not yet been resolved in the DTV proceedings.")

⁶*Id.* at 5.

⁷AT&T Opposition at 18.

⁸*Id.* at 20. AT&T also argues that requiring cable operators to carry Paxson's primary digital service on an existing analog channel as well as five additional multicast video services on a digital tier, would be unconstitutional under the First Amendment and inconsistent with the Supreme Court's decisions in the *Turner* cases. *Id.* at 20-28. Ameritech New Media ("Ameritech") additionally argues that the mandatory carriage of digital television signals amounts to a taking of property without just compensation in violation of the Fifth Amendment. *See Ameritech Opposition in CSR 5603-M at 13-14.* With regard to AT&T's First Amendment claim, Paxson argues that unless the one-third capacity limit is exceeded, its carriage request is constitutionally permitted. *See, e.g., Paxson's Reply to AT&T Opposition at 11.* As for Ameritech's Fifth Amendment claim, Paxson argues that the mandatory carriage of a digital television signal does not physically invade the real property of a cable operator. *See, e.g., Paxson's Reply to Ameritech's Opposition at 13.*

⁹*See Opposition of Charter Communications in CSR 5605-M at 5.*

¹⁰*See Opposition of Mediacom Communications Corp. in CSR 5604-M at 5.* Mediacom states that it would have to rapidly upgrade its physical plant, at substantial costs, to meet Paxson's carriage demands.

¹¹Paxson's Reply to AT&T Opposition at 2.

¹²*Id.* at 7.

¹³*Id.* at 8.

in order to comply with the carriage request.¹⁴

III. DISCUSSION

5. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.¹⁵ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.¹⁶ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

6. With respect to "advanced" or digital television signals, Section 614(b)(4)(b) of the Act requires that:

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

7. The Commission's *Digital Television Broadcast Signal Carriage Report and Order and Further Notice of Proposed Rule Making*,¹⁷ resolves a number of technical and legal matters related to the cable carriage of digital television signals. The *Report and Order* clarified that a television station broadcasting only digitally can immediately assert its right to carriage on a cable system. The *Report and Order*, however, did not conclude that a television broadcast station may assert a right to carriage for both its analog and digital signals if it continues to broadcast in both formats during the transition period to digital television. The Commission found that it had insufficient evidence to conclude that such a requirement was mandated by the statute or otherwise required as a matter of policy and sought additional information to assist in resolving this question. Accordingly, in the proceeding mandated by Section 614(b)(4)(b), rules mandating carriage of both the analog and digital services of television stations were not adopted.

8. We find Paxson's requests to be inconsistent with the Commission's *Report and Order* in CS Docket 98-120, and therefore dismiss the instant complaints. Paxson, in this situation, continues to broadcast in both an analog format and a digital format. The Commission has stated that television stations

¹⁴Paxson's Reply to Mediacom's Opposition at 10.

¹⁵*Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 1976-2977 (1993).

¹⁶Section 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).

¹⁷See *Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22 (adopted, Jan. 18, 2001). The Commission had sought comment on these issues in its *Notice of Proposed Rule Making in CS Docket 98-120*, 13 FCC Rcd 15092 (1998).

that broadcast only in a digital format may immediately assert their digital cable carriage rights. However, those television stations that broadcast in both analog and digital modes, like Paxson, cannot assert digital carriage rights under Section 614 or Section 615 until the resolution of the matter in the pending proceeding in CS Docket 98-120.¹⁸ In this instance, although Paxson has requested its digital signal to be substituted for its analog signal, it still holds 12 MHz of spectrum and has given no indication that it intends to return its analog spectrum. In view of our action herein, we need not address the other issues raised by the parties.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the complaints filed by Paxson Chicago License, Inc. **ARE DISMISSED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534).

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁸*Id.* Paxson, has by its actions, adopted the either/or proposal for digital must carry during the transition period that was raised in the NPRM.

¹⁹47 C.F.R. §0.321.