

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

In the matter of:)	
)	
Paxson Battle Creek License, Inc.)	
v.)	CSR-5953-M
Bloomington Communications, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: November 19, 2002

Released: November 22, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Paxson Battle Creek License, Inc., licensee of television broadcast station WZPX, Bloomington, Michigan ("WZPX"), filed the above-captioned complaint against Bloomington Communications, Inc. ("BCI"), for its failure to carry WZPX on its cable system serving Bloomington, Cheshire, Lee and Van Buren, Michigan. No opposition to this complaint has been received. For the reasons discussed, we grant the complaint.

II. DISCUSSION

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 and 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.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.²

3. In support of its petition, WZPX states that it formally requested carriage on BCI's cable system by letter dated May 23, 2002.³ Despite the fact that BCI was required by Section 76.61(a)(2) of the Commission's rules to respond to this request within thirty days, WZPX states that it received no

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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)(2) of the Commission's rules requires that a commercial television station's market be defined by Nielsen Media Research's DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

³Complaint at Exhibit 2.

response.⁴ WZPX filed the instant complaint within sixty days of BCI's failure to respond, as required by Section 76.61(a)(5) of the Commission's rules.⁵ WZPX argues that it meets the definition of a "local commercial television station" because it is located within the same television market as BCI's cable system, delivers an adequate signal to the cable system's principal headend, and its carriage would not increase BCI's copyright liability.⁶ WZPX states that if it should be found that it does not deliver an adequate off-air signal to BCI's headend, it will purchase and install any additional equipment necessary to ensure the delivery of a good quality signal.

4. We grant WZPX's complaint. We find that the unopposed representations made by WZPX demonstrate that it is a local full-power commercial television station qualified for carriage on BCI's system. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage.⁷ BCI and WZPX are both located in the Grand Rapids-Kalamazoo-Battle Creek, Michigan DMA. BCI did not file an opposition challenging any of the assertions contained in WZPX's must carry complaint. Consequently, we order BCI to carry WZPX's signal.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the complaint filed by Paxson Battle Creek License, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended.⁸ Bloomingdale Communications, Inc. **IS ORDERED** to commence carriage of WZPX on its cable system serving the communities of Bloomingdale, Cheshire, Lee and Van Buren, Michigan, within sixty (60) days from the release date of this order.

6. **IT IS FURTHER ORDERED** that WZPX shall notify BCI in writing of its channel position election within thirty (30) days of the release date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.⁹

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATION COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

⁴*Id.* at 2; *see* 47 C.F.R. § 76.61(a)(2).

⁵47 C.F.R. § 76.61(a)(5).

⁶Complaint at 3; *see* 47 C.F.R. §§ 76.55(c) and 76.60.

⁷*See Must Carry Order*, 8 FCC Rcd at 2990.

⁸47 U.S.C. § 534.

⁹47 C.F.R. §§ 76.57 and 76.64(f).

¹⁰47 C.F.R. § 0.283.