

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

In the matter of:)	
)	
Paxson Houston License, Inc.)	
v.)	CSR-5948-M
Cable Management Associates)	
)	
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 Houston License, Inc., licensee of television broadcast station KPXB (Ch. 49), Conroe, Texas ("KPXB"), filed the above-captioned complaint against Cable Management Associates ("CMA") for its failure to carry KPXB on its cable systems serving Sealy, Hempstead and Bellville, Texas and surrounding environs. 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 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, KPXB states that it formally requested carriage on CMA's cable system by letter dated May 24, 2002.³ Despite the fact that CMA was required by Section 76.61(a)(2) of the Commission's rules to respond to this request within thirty days, KPXB 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 KPXB filed the instant complaint within sixty days of CMA's failure to respond, as required by Section 76.61(a)(5) of the Commission's rules.⁵ KPXB argues that it meets the definition of a "local commercial television station" because it is located within the same television market as CMA's cable systems, delivers an adequate signal to the cable systems' principal headends, and its carriage would not increase CMA's copyright liability.⁶ KPXB states that if it should be found that it does not deliver an adequate off-air signal to CMA's headend, it will purchase and install any additional equipment necessary to ensure the delivery of a good quality signal. We note that in a letter CMA sent to KPXB, a copy of which was forwarded to the Commission, CMA advised KPXB that signal strength tests performed on KPXB's signal indicated poor signal quality.⁷ CMA stated it would agree to carry KPXB provided the station purchased the equipment necessary to improve its signal.⁸ Although CMA did not include copies of its signal strength tests for review, KPXB did not oppose the findings.

4. We grant KPXB's complaint. We find that the unopposed representations made by KPXB demonstrate that it is a local full-power commercial television station qualified for carriage on CMA'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.⁹ CMA and KPXB are both located in the Houston, Texas DMA. CMA did not file an opposition challenging any of the assertions contained in KPXB's must carry complaint. Consequently, we order CMA to carry KPXB's signal.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the complaint filed by Paxson Houston License, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended.¹⁰ Cable Management Associates **IS ORDERED** to commence carriage of KPXB on its cable systems serving the communities Sealy, Hempstead and Bellville, Texas and surrounding environs sixty (60) days from the date that KPXB provides a good quality signal the systems' principal headends.

6. **IT IS FURTHER ORDERED** that KPXB shall notify CMA in writing of its channel position election within thirty (30) days of the date it provides a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹¹

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹²

FEDERAL COMMUNICATION COMMISSION

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.

⁷Letter from CMA to KPXB at 1.

⁸*Id.*

⁹*See Must Carry Order*, 8 FCC Rcd at 2990.

¹⁰47 U.S.C. § 534.

¹¹47 C.F.R. §§ 76.57 and 76.64(f).

¹²47 C.F.R. § 0.283.

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