

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

In the Matter of:)	
)	
Shawnee Broadcasting, Inc.)	CSR-6333-M
v.)	CSR-6334-M
Cable One, Inc.)	CSR-6335-M
)	
Requests for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: September 20, 2004

Released: September 22, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Shawnee Broadcasting, Inc., licensee of television broadcast station KQOK (Ch. 30), Shawnee, Oklahoma (“KQOK”), filed the above-captioned complaints against Cable One, Inc. (“Cable One”) for its failure to carry KQOK on its Ponca City, Tankawa, Sulphur, and Mangum, Oklahoma cable systems. Cable One filed a consolidated opposition to these complaints to which KQOK filed a consolidated reply. For the reasons discussed below, we grant the complaints.

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

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

3. In support of its complaints, KQOK states that, by letter dated March 16, 2004, it formally requested carriage on Cable One's systems.³ KQOK states that Cable One denied carriage on March 24, 2004, alleging that KQOK did not provide a signal of sufficient quality to the cable systems' principal headends.⁴ KQOK argues that it is a qualified local commercial television station licensed to Shawnee, Oklahoma, which is located in the Oklahoma City DMA as are the communities served by Cable One.⁵ As a result, KQOK states that its carriage will not cause increased copyright liability for Cable One.⁶ Further, KQOK asserts that, if it does not provide a good quality signal, it will provide, at its own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to Cable One's principal headends.⁷

4. In a consolidated opposition, Cable One argues that, as demonstrated by signal strength tests conducted on June 7-8, 2004, KQOK delivers a signal that is far below the Commission's signal strength criteria.⁸ Cable One states that, although KQOK made no claim in its complaints that it currently delivers a good quality signal or ever delivered a good signal in the past, it has never attempted to work with Cable One to resolve its technical problems or attempt to improve its signal.⁹ Cable One maintains that if KQOK had done so, it would have worked with the station without the need to burden the Commission. As a result, Cable One asserts that KQOK's complaints are unwarranted and should be dismissed because Cable One did not refuse to carry a signal that was currently eligible for carriage.¹⁰

5. KQOK's consolidated reply states that it does not dispute Cable One's findings that it does not currently deliver a good quality signal to the cable system's principal headends.¹¹ However, KQOK notes that Cable One raised no objection to KQOK's pledge to be responsible for the costs of delivering a good quality signal and, therefore, the Commission should issue an order requiring Cable One to carry KQOK once it delivers the requisite signal.¹² Moreover, despite Cable One's claims, KQOK asserts that it contacted Cable One by both e-mail and voice mail the same day it received Cable One's signal strength test results.¹³ KQOK states that it was Cable One who failed to respond to KQOK to discuss its signal delivery methods. As a result, KQOK states that it filed its complains in order to preserve its must carry rights.¹⁴

6. We agree with KQOK and will grant its complaints. We find that the representations made by KQOK demonstrate that it is a local commercial television station qualified for carriage on

³Petitions at Exhibit I.

⁴*Id.* at Exhibit II.

⁵*Id.* at 1.

⁶*Id.* at 3.

⁷*Id.*

⁸Opposition at 2 and Exhibit A.

⁹*Id.* at 2.

¹⁰*Id.* at 3.

¹¹Reply at 2.

¹²*Id.*

¹³*Id.* at Exhibit I.

¹⁴*Id.* at 3.

Cable One's systems. 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.¹⁵ Although KQOK does not dispute that the signal strength tests submitted by Cable One indicate that KQOK does not currently deliver a good quality signal to Cable One's principal headends, KQOK has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.¹⁶ KQOK has made this commitment and by doing so is eligible for mandatory carriage by Cable One on the subject cable systems when it provides a signal which meets the Commission's signal strength criteria.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Shawnee Broadcasting, Inc. **ARE GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534. Cable One, Inc. **IS ORDERED** to commence carriage of KQOK on its Ponca City, Tankawa, Sulphur and Mangum, Oklahoma cable systems sixty (60) days from the date on which KQOK delivers a good quality signal to the cable systems' principal headends.

8. **IT IS FURTHER ORDERED** that KQOK shall notify Cable One of its channel position elections thirty (30) days from the date it delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁷

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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Deputy Chief, Policy Division
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¹⁵See *Must Carry Order*, 8 FCC Rcd at 2990.

¹⁶47 C.F.R. §76.55(c)(3).

¹⁷47 C.F.R. §§ 76.57 and 76.64(f).

¹⁸47 C.F.R. § 0.283.