

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

In the Matter of:	)	
	)	
Shawnee Broadcasting, Inc.	)	CSR-6345-M
v.	)	
Cebridge Connections	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 21, 2004**

**Released: October 25, 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 complaint against Cebridge Connections (“Cebridge”) for its failure to carry KQOK on its cable systems serving Anadarko, Purcell, Weatherford, Kingfisher and Woodward, Oklahoma.<sup>1</sup> Cebridge filed an opposition to these complaints to which KQOK filed a reply. Subsequently, Cebridge filed a surreply. An opposition to this surreply was filed by KQOK and Cebridge replied. For the reasons discussed below, 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.<sup>2</sup> A

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<sup>1</sup>According to Cebridge, its Weatherford system also serves the community of Hydro, Oklahoma; its Woodward system also serves the community of Mooreland, Oklahoma; and its Purcell system also serves the communities of Lexington, Blanchard, Maysville, Noble, Wayne, McClain County, and the unincorporated areas of Cleveland County, Oklahoma. In a surreply, Cebridge stated that because it had entered into an agreement to sell its Kingfisher system to Pioneer Long Distance, Inc., KQOK’s complaint with regard to this system was moot. However, in an opposition to the surreply KQOK disputes this. The Kingfisher system will be included as part of our decision.

<sup>2</sup>8 FCC Rcd 2965, 2976-2977 (1993).

station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>3</sup>

3. In support of its complaint, KQOK states that, by letter dated March 16, 2004, it formally requested carriage on Cebridge's systems on its over-the-air channel.<sup>4</sup> KQOK states that Cebridge failed to respond to this request and such failure is considered a denial pursuant to Section 76.61(a)(5)(ii) of the Commission's rules.<sup>5</sup> 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 Cebridge.<sup>6</sup> As a result, KQOK states that its carriage will not cause increased copyright liability for Cebridge.<sup>7</sup> 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 signal to Cebridge's principal headends.<sup>8</sup>

4. In opposition, Cebridge argues that, as demonstrated by signal strength tests conducted on June 9-16, 2004, KQOK delivers a signal that is far below the Commission's signal strength criteria.<sup>9</sup> Cebridge 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 Cebridge to resolve its technical problems or attempt to improve its signal prior to filing its complaint.<sup>10</sup> Cebridge maintains that if KQOK had done so, it would have worked with the station without the need to burden the Commission. As a result, Cebridge asserts that KQOK's complaint was unwarranted and should be dismissed because Cebridge did not refuse to carry a signal that was currently eligible for carriage.<sup>11</sup>

5. In reply, KQOK states that, because Cebridge did not respond to its carriage requests and only raised the signal quality issue in its opposition, KQOK did not have the opportunity to test its signal at Cebridge's headends.<sup>12</sup> It therefore filed its complaint in order to preserve its must carry rights. KQOK states that it has subsequently attempted to work with Cebridge to arrange carriage, but to no avail.<sup>13</sup> In any event, KQOK argues that because it has pledged to be responsible for the costs of

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<sup>3</sup>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 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).

<sup>4</sup>Petition at Exhibit I.

<sup>5</sup>*Id.* at 2; *see also* 47 C.F.R. § 76.61(a)(5)(ii).

<sup>6</sup>Petition at 3.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>Opposition at 2 and Exhibit A.

<sup>10</sup>*Id.* at 2-3.

<sup>11</sup>*Id.* at 4.

<sup>12</sup>Reply at 2.

<sup>13</sup>*Id.*

delivering a good quality signal, the Commission should issue an order requiring Cebridge to carry KQOK once it delivers the requisite signal.<sup>14</sup>

6. In a surreply, Cebridge notes that, although in discussions with KQOK the station indicated that it would deliver its signal to the systems' headends via satellite, it has not clarified how this would be accomplished.<sup>15</sup> Based on the limited information gleaned from KQOK, however, Cebridge states that it appears that KQOK intends to transmit the network feed that delivers the programming to KQOK and other affiliated stations, as opposed to actually uplinking KQOK's off-air signal.<sup>16</sup> Cebridge argues that such a proposal would not qualify KQOK for carriage pursuant to the must carry requirements.<sup>17</sup> In addition, there is apparently an offer to purchase KQOK from Shawnee Broadcasting and an application to re-assign the station's license to Oklahoma Land Company LLC was granted by the Commission on August 10, 2004.<sup>18</sup> Cebridge states that if the sale has actually taken place, KQOK's failure to notify the Commission would violate Section 76.6 of the Commission's rules.<sup>19</sup> Moreover, Cebridge states that, given the uncertainty in ownership, it would be unfair to require carriage of KQOK at this time.<sup>20</sup>

7. In opposition, KQOK asserts that the signal that will be delivered to Cebridge's systems will be its complete over-the-air signal.<sup>21</sup> It argues that the use of a satellite for signal delivery is accepted by the Commission.<sup>22</sup> Moreover, KQOK maintains that the proposed sale of KQOK does not affect the station's qualifications for carriage on Cebridge's systems.<sup>23</sup> KQOK states that there is no guarantee that the sale will actually take place and, even if it does, there is no regulation that the proposed sale of a station would destroy that station's must carry rights.<sup>24</sup>

8. In reply, Cebridge continues to maintain that the satellite delivery of KQOK's signal is not the typical satellite delivery of a good quality signal and that, in actuality, KQOK wants Cebridge to carry the transmission of the station's network programmer, Equity Broadcasting.<sup>25</sup> Further, Cebridge disagrees that the possible sale of KQOK is irrelevant and maintains that the Commission should make such a determination.<sup>26</sup> Cebridge asserts that it would be unfair to require it to carry KQOK for a short period of time only to have to discontinue carriage when a new licensee takes over.

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<sup>14</sup>*Id.* at 3.

<sup>15</sup>Surreply at 3 and Exhibit B.

<sup>16</sup>*Id.* at 3-4 and Exhibits C and D.

<sup>17</sup>*Id.* at 4, citing 47 U.S.C. § 534(b)(3)(A).

<sup>18</sup>*Id.* at Exhibit F.

<sup>19</sup>*Id.* at 5; *see also* 47 C.F.R. § 76.6.

<sup>20</sup>Surreply at 5.

<sup>21</sup>Opposition to surreply at 3.

<sup>22</sup>*Id.*, citing *Rancho Palos Verdes Broadcasters, Inc.*, 18 FCC Rcd 9424 (2003).

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>Reply of Cebridge at 3-4.

<sup>26</sup>*Id.* at 5.

9. We agree with KQOK and will grant its complaint. We find that the representations made by KQOK demonstrate that it is a local commercial television station qualified for carriage on Cebridge'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.<sup>27</sup> A review of the five signal strength tests of KQOK's signal provided by Cebridge indicate that only one test, for the Woodward system, was conducted employing sound engineering practices and demonstrates that KQOK does not currently deliver a good quality signal to the principal headend of that system. In any event, KQOK has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Sections 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.<sup>28</sup> KQOK has made this commitment and by doing so is eligible for mandatory carriage by Cebridge on the Woodward cable system when it provides a signal which meets the Commission's signal strength criteria. For the four remaining systems – Kingfisher, Purcell, Weatherford and Anadarko – Cebridge either did not provide calibration dates for the spectrum analyzers used or the date provided exceeded one year. As a result, we cannot conclude that KQOK fails to provide a good quality signal to these systems.

10. Further, we do not have sufficient information to make a determination with regard to Cebridge's allegations that KQOK's proposed satellite delivery will not provide the station's over-the-air signal. As noted by KQOK, satellite delivery of a must carry signal is only one method by which a station may choose to deliver its signal and KQOK is within its rights to do so. While KQOK has contradicted Cebridge's claim, we conditionally grant KQOK's complaint with the proviso that delivery of a good quality signal requires the retransmission of KQOK's full, over-the-air broadcast signal. Substitution of KQOK's network satellite feed in lieu of KQOK's full, over-the-air broadcast signal is not acceptable. Finally, the potential sale of KQOK will not effect the station's must carry rights and any action taken herein will accrue to the station's new owners.

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition filed by Shawnee Broadcasting, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534 to the extent indicated herein. Cebridge Connections **IS ORDERED** to commence carriage of KQOK on its Woodward cable system sixty (60) days from the date on which KQOK delivers a good quality signal to the cable system's principal headend.

12. **IT IS FURTHER ORDERED** that Cebridge shall commence carriage of KQOK on its Kingfisher, Pucell, Weatherford and Anadarko cable systems sixty (60) days from the release date of this Order.

13. **IT IS FURTHER ORDERED** that KQOK shall notify Cebridge of its channel position elections thirty (30) days from the release date of this Order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>29</sup>

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<sup>27</sup>See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>28</sup>47 C.F.R. §76.55(c)(3).

<sup>29</sup>47 C.F.R. §§ 76.57 and 76.64(f).

14. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>30</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
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<sup>30</sup>47 C.F.R. § 0.283.