

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

In re)	
)	
Complaint of KSLS, Inc.)	
Licensee of Station KSCI(TV),)	CSR-4738-M
San Bernardino, CA)	
)	
vs.)	
)	
Continental Cablevision, Inc.)	
)	
Request for Carriage)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 1996

Released: October 4, 1996

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

INTRODUCTION

1. On May 14, 1996, KSLS, Inc., licensee of KSCI(TV), San Bernardino, California ("KSCI") filed a complaint against Continental Cablevision, Inc. ("Continental") for failure to carry its signal pursuant to Section 614 of the Communications Act of 1934, as amended,¹ and Sections 76.7 and 76.61(a) of the Commission's rules.² The complaint was opposed by Joseph W. Aidlin *et al.* and "comments" were filed by Continental. KSCI filed a joint reply with respect to both the opposition and the comments.

SUMMARY OF THE PLEADINGS

2. KSCI states that by letter dated February 26, 1996, it made a formal request for carriage on Continental's cable system serving Valencia and Newhall, California. By letter dated March 22, 1996, KSCI states that Continental refused carriage claiming that the station does not deliver a sufficient off-air signal to the Valencia/Newhall headend. KSCI contends, however, that

¹ 47 U.S.C. §534.

² 47 C.F.R. §§76.7 & 76.61(a).

during several conversations with Continental personnel, both before and after KSCI's request, KSCI advised Continental that it was willing to deliver its signal via microwave and pay any associated costs as required under the Commission's rules. According to KSCI, Continental is aware that signal quality is not an obstacle to carriage of the station and, therefore, KSCI considers Continental's March 22 letter to be unresponsive.

3. In opposition, Joseph W. Aidlen *et al.* ("landowners and lessors") state that they are the owners of the land in the Valencia/Newhall area which Continental occupies as a successor lessee under a lease dated April 1, 1989. According to the landowners and lessors, KSCI has neither negotiated with nor obtained their consent regarding use of their land, nor made any provision for payment of the considerations required to be paid under the lease in question for any alteration of the use of their land. Furthermore, the landowners and lessors state that KSCI has not given them any reason why they should consent to any variation or amendment to the terms of the lease. Moreover, the landowners and lessors state that they are not subject to the Commission's jurisdiction in this matter. They also state that if the lessee, Continental, grants any rights or permits any use with respect to their land without an agreeable arrangement with them as landowners and lessors, Continental will subject itself to termination of its lease.

4. In its comments, Continental states that it does not object to the carriage of KSCI assuming that the broadcast station can deliver a good quality signal and pay any costs associated with its carriage request. Indeed, according to Continental, it is currently carrying KSCI on several other systems in the Los Angeles ADI. Continental goes on to state that it is undisputed that KSCI does not provide a sufficient off-air signal to its Santa Clarita headend, by which Continental serves the communities of Valencia and Newhall. Continental states that although KSCI has stated that it is willing to deliver an adequate signal via microwave and pay any associated costs, it has not done so. Continental notes that KSCI has neither indicated what type of equipment it proposes to use, nor provided evidence, such as test measurements, demonstrating that such equipment can provide a good quality signal to its headend.

5. Moreover, Continental states that KSCI has not demonstrated a willingness to bear the costs associated with delivering a good quality signal to its headend. Specifically, Continental states that while KSCI has indicated that it will be necessary to install additional receiving equipment at its headend location, KSCI has failed to obtain the consent of the landowners of Continental's headend for the additional use of property. In addition, Continental notes the opposition filed by the landowners and lessors and their objection to the use of their real property to expand KSCI's viewing audience without adequate compensation. Continental states that given this objection, it is not willing to jeopardize the continued operation of its Santa Clarita headend solely to accommodate KSCI's carriage request. Continental offers that in the event KSCI can work out an arrangement with the headend landowners and demonstrate that it can provide a good quality signal to its headend, Continental will comply with KSCI's carriage request.

6. In its joint reply, KSCI states that the "compensation" provision of Continental's headend site lease does not provide Continental with any basis for refusing to carry KSCI.

According to KSCI, that provision requires the lessee, Continental, to pay as rental an amount equal to the number of subscribers for lessee's cable television services in its service area multiplied by five cents per subscriber. Thus, by its own terms, KSCI points out that the provision only requires Continental to pay a per-subscriber fee for Continental's use of the owner's property. Moreover, the provision does not require Continental or KSCI to pay the property owner anything as a condition to locating KSCI's antenna on the premises.³

7. KSCI states that the only limitation in the lease is the requirement that Continental's use of the premises does not interfere with other users. According to KSCI, neither Continental nor the landlords has presented any evidence that placement of KSCI's receiving antenna on the premises will cause such disruption. Thus, according to KSCI's interpretation of the situation, Continental does not need to obtain permission, nor does KSCI need to negotiate with the landlords. Indeed, KSCI points out, the landlords have not stated their opposition to carriage of the station if permission is obtained and compensation rendered. However, KSCI states that it should not be in the position of having to argue the lease rights of Continental. According to KSCI, Continental's passive failure to substantiate its rights with the landlords appears to be a smoke screen designed to avoid carriage of its station.

DECISION

8. We will grant KSCI's complaint. It is undisputed that KSCI does not provide a sufficient off-air signal to its Santa Clarita headend. KSCI, however, has stated that it is willing to deliver an adequate signal via microwave and pay any associated costs, in accordance with Section 614(h)(1)(B)(iii) of the Communications Act of 1934, as amended. Thus, once KSCI provides a good quality signal to Continental's principal headend, the station is entitled to carriage. Continental, in reply to KSCI's petition, maintains that it is willing to carry KSCI but cannot do so because it has been unable to obtain permission from the lessor of its antenna site to add the necessary equipment to carry KSCI. We do not agree with Continental that the lease as introduced into the record prevents KSCI's carriage. According to the lease, Continental is required to pay a monthly rental based on the number of subscribers it serves multiplied by five cents. Thus, we agree with KSCI that this provision only requires Continental to pay a per-subscriber fee for Continental's use of its landowners' property. There is nothing in the lease which requires either Continental or KSCI to pay the property owner anything as a condition to locating KSCI's antenna on the premises. The only limiting factor in the lease is the requirement that Continental's use of the property does not interfere with other users. However, no evidence has been presented to us, by either Continental or the landowners, that placement of KSCI's receiving antenna will cause disruption to other users.

³ KSCI notes that another station, KRCA (Channel 62), has a receiving antenna that was installed on these premises last year, but KSCI has been unable to learn what, if anything, is being paid for location of this antenna on the premises.

ORDER

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534), that the petition filed by KSLs, Inc. against Continental Cablevision, Inc. **IS GRANTED**. Continental Cablevision, Inc. **IS ORDERED** to commence carriage of Station KSCI sixty (60) days after KSCI establishes that it is capable of providing a good quality signal to Continental's principal headend.

10. These actions are taken pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Gary M. Laden
Chief, Consumer Protection and Competition Division
Cable Services Bureau