

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

In re Complaint of)	
)	
PAXSON SAN JOSE LICENSE, INC.)	
)	
vs)	CSR 4650-M
)	
CENTURY CABLE OF NORTHERN)	
CALIFORNIA, INC.)	
)	
Request for Carriage of KLXV-TV)	

MEMORANDUM OPINION AND ORDER

Adopted: April 5, 1996

Released: April 17, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. On January 11, 1996, Paxson San Jose License, Inc. ("Paxson"), licensee of television Station KLXV-TV, San Jose, California, filed a complaint pursuant to Section 614 of the Communications Act, as amended, 47 U.S.C. § 534, and Sections 76.7 and 76.61(a) of the Commission's Rules, 47 C.F.R. §§76.7 & 76.61(a), claiming that Century Cable of Northern California, Inc. ("Century"), operator of a cable system serving Benicia, California, has refused to carry KLXV-TV despite the requirements of the must-carry provisions of Section 614. Century, operator of a cable system serving Benicia, California, filed an opposition to the complaint on February 12, 1996.

BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,¹ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.² An

¹ 8 FCC Rcd 2965, 2972-74 (1993).

² Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. A commercial television station serving a community of license that is located within the same ADI as the principal headend of a cable system has a right of carriage on that cable system.⁴ However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of its activated channel capacity to compliance with the mandatory signal carriage obligations,⁵ 2) the station is responsible for delivering a good quality signal to the principal headend of the system,⁶ 3) indemnification may be required for any increase in copyright liability resulting from carriage,⁷ and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried or the signals of more than one local station affiliated with a particular broadcast network.⁸ If, pursuant to these requirements, a system operator elects to carry the signal of only a single affiliate of a broadcast network, it is obliged to carry the affiliate from within the market whose city of license is closest to the principal headend of the cable system.⁹

MARKET FACTS AND ARGUMENT

4. Paxson states that KLXV-TV's city of license, San Jose, California, is located in the San Francisco ADI and that the community of Benicia, served by Century's cable system, is also located in that ADI. Paxson contends that on August 15 and September 6, 1995 it wrote Century with requests for carriage, stating in the latter request that a test conducted with Century personnel present showed that KLXV-TV "obtained a signal level of +3db [sic] on the ground" at Century's headend. It asserts that this signal level "will increase well

³ Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

⁴ See 47 U.S.C. § 534(h)(1)(A). See also 47 C.F.R. § 76.56(b).

⁵ See 47 U.S.C. § 534(b)(1)(B).

⁶ See 47 U.S.C. § 534(h)(1)(B)(iii).

⁷ See 47 U.S.C. § 534(h)(1)(B)(ii).

⁸ See 47 U.S.C. § 534(b)(5).

⁹ 8 FCC Rcd at 2981.

beyond the +4db [sic] minimum signal level required¹⁰ with the addition of tower height. Paxson alleges that Century by a letter dated November 10, 1995, denied carriage of KLXV-TV on the grounds that the station does not deliver a good quality signal to Century's system headend.

5. Century asserts in opposition that KLXV-TV does not provide a good quality signal to its cable system head in Benicia and therefore does not qualify for must-carry under the Commission's rules. Century submitted in support this position the results of three antenna site survey reports all of which, according to Century, show that KLXV-TV does not deliver an adequate signal to its headend.

DISCUSSION

6. Paxson has shown that Station KLXV-TV, a commercial UHF television station is licensed to San Jose, California, which is located in the same ADI as is Benicia, the community served by Century's cable system on which it seeks carriage. Therefore, KLXV-TV meets the threshold requirement for must-carry rights on Century's cable systems. However, as noted earlier, such rights are subject to several conditions. In order to be entitled to must-carry on Century's cable system at issue here, KLXV-TV must deliver a good quality signal to Century's principal headend, which is located in Benicia, California.

7. We have reviewed the antenna site survey reports submitted by Century and find that none of them meets Commission requirements for measurement of signal strength levels for must-carry purposes. For that reason, we cannot accept any of those measurement results as demonstrating that KLXV-TV does not provide a good quality signal to KLXV-TV's principal headend at Benicia, California. In one of these tests, a quad-stacked UHF bow tie antenna was placed at the 13 foot level of Century's tower and adjusted in bearing for maximum signal strength. None of five measurements taken over a 24-hour period produced a signal strength level greater than -51.75 dBm.¹¹ A separate single measurement with the same antenna mounted at the top of the 50 foot tower produced a signal strength measurement of -53.75 dBm.¹² Another single measurement with an eight foot parabolic antenna mounted at the 30 foot level produced a signal strength of -50.25 dBm.¹³ None of these signal strength levels measured at Century's headend satisfies the requirement of the statutory provisions and our rules for the delivery of a -45 dBm or better signal level (for a

¹⁰ Complaint, p 2.

¹¹ See Opposition, Exhibit A.

¹² See Opposition, Exhibit B.

¹³ See Opposition, Exhibit C.

UHF station like KLXV-TV) at the cable system headend in order to qualify for must-carry.¹⁴

8. However, as noted, we cannot accept these measurements as demonstrating the absence of a good quality signal at Century's headend. In each case, information submitted with these test results shows that Century did not employ sound engineering practices that comply with Commission requirements that a station's signal level "shall be determined based on measurements made with generally accepted equipment that is currently used to receive signals of similar frequency range, type or distance from the principal headend."¹⁵ Century's reception antennas at its principal headend are mounted at a height of about 35 feet or above.¹⁶ The five measurements taken by Century at the 13 foot level fail to meet our requirements, where as here Century's reception antennas are mounted at the 35 foot or higher level. The other two sets of results are based on only one measurement in each case. Generally, if the test results are less than -51 dBm for a UHF station, we have said that at least four readings must be taken over a two-hour period. Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.¹⁷ Neither of these two tests satisfy these requirements.

9. We conclude that Paxson has demonstrated that Station KLXV-TV meets the threshold requirement for entitlement to must-carry rights on Century's cable system, namely that the station's city of license, San Jose, California, is in the same ADI as is Benicia, California, the community served by Century, and has requested carriage. In such circumstances, the Commission has made it clear that Century bears the burden of showing that KLXV-TV does not deliver a good quality signal to its principal headend,¹⁸ and that such a showing, if undertaken, must employ sound engineering practices.¹⁹ Century has not carried that burden in this case.

¹⁴ See 47 C.F.R. § 76.55(c)(3). See also 47 U.S.C. § 534(h)(1)(B)(iii). In the face of the showing made by Century, we cannot credit Paxson's naked assertion that KLXV-TV delivers a good quality signal to Century's headend.

¹⁵ See *Report & Order*, 8 FCC Rcd 4142, 4143 (1993).

¹⁶ See *Complaint*, p. 3.

¹⁷ *Memorandum Opinion and Order in Docket 92-259*, 9 FCC Rcd 6723, paras. 59-61 (1994).

¹⁸ See *Report & Order*, 8 FCC Rcd 4142-4143 (¶ 5).

¹⁹ See *Report & Order*, 9 FCC Rcd 6723, 6736 (1994).

ORDER

10. In view of the above, **IT IS ORDERED** that the complaint filed January 11, 1996 by Paxson San Jose License, Inc., licensee of commercial television station KLXV-TV, San Jose, California, **IS GRANTED**.

11. **IT FURTHER ORDERED** that Century Cable of Northern California, Inc. shall commence carriage of KLXV-TV sixty (60) days from the release date of this order, unless Century can demonstrate within fifteen (15) days from such date, using sound engineering practice meeting Commission requirements, that Station KLXV-TV does not deliver a good quality signal to its principal headend.

12. This Action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Service Bureau