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Before the

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

In the Matter of: )  
)  
Paxson Communications Corporation )  
)  
v. ) CSR-5731-M  
)  
DirecTV )  
)  
Requests for Mandatory Carriage )  
)  
)

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 11, 2002**

**Released: January 14, 2002**

By the Deputy Chief, Cable Services Bureau:

**I INTRODUCTION**

10 Paxson Communications Corporation (“Paxson”), licensee of several full power commercial television stations<sup>1</sup> filed the above-captioned must carry complaint against DirecTV, pursuant to Section 338 of the Communications Act of 1934, as amended (the “Act”), and Section 76.66 of the Commission’s rules,<sup>2</sup> for its refusal to carry Paxson’s television broadcast signals on its satellite system.<sup>3</sup> Paxson states that DirecTV is providing “local-into-local” satellite service in the 31 designated market areas (“DMAs”) where the stations operate, pursuant to the statutory copyright license.<sup>4</sup> In its complaint, Paxson alleges that DirecTV has refused

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<sup>1</sup> The 36 stations subject to the complaint are: (1) WPXN (New York DMA); (2) KPXN (Los Angeles DMA); (3) WCPX (Chicago DMA); (4) WPPX (Philadelphia DMA); (5) KKPX (San Francisco-Oakland-San Jose DMA); (6-9) WPXB/WBPX/WPXG/WDPX (Boston DMA); (10) KPXD (Dallas-Ft. Worth DMA); (11-12) WPXW/WWPX (Washington D.C. DMA); (13) WPXD (Detroit DMA); (14) WPXA (Atlanta DMA); (15) KPXB (Houston DMA); (16) KWPX (Seattle-Tacoma DMA); (17) KPXM (Minneapolis-St. Paul DMA); (18) WXPX (Tampa-St. Petersburg DMA); (19) WVPX (Cleveland DMA); (20) WPXM (Miami-Ft. Lauderdale DMA); (21) KPPX (Phoenix DMA); (22) KPXC (Denver DMA); (23) KSPX (Sacramento-Stockton-Modesto DMA); (24) WOPX (Orlando-Daytona Beach-Melbourne DMA); (25) KPXG (Portland DMA); (26) WIPX (Indianapolis DMA); (27-28) WFPX/WRPX (Raleigh-Durham DMA); (29) KPXE (Kansas City DMA); (30) WNPX (Nashville DMA); (31) WPXE (Milwaukee DMA); (32) KUPX (Salt Lake City DMA); (33) KPXL (San Antonio DMA); (34) WPXH (Birmingham DMA); (35) WPXP (West Palm Beach-Ft. Pierce DMA); and (36) WGPX (Greensboro-High Point-Winston Salem DMA). See Paxson’s Complaint (hereinafter “Complaint”) at Attachment 1.

<sup>2</sup> 47 C.F.R. § 76.66.

<sup>3</sup> We note that on December 7, 2001, the U.S. Court of Appeals for the Fourth Circuit unanimously upheld the constitutionality of Section 338 of the Act, and Section 76.66 of the Commission’s rules. See *SBCA v. FCC*, Nos. 01-1151, 01-1271, 01-1272 and 01-1818, 2001 WL 1557809 (4<sup>th</sup> Cir. Dec. 7, 2001).

<sup>4</sup> See Paxson’s Complaint at 2 and Attachment 1. See 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier

to meet its must carry obligations under the Commission's satellite broadcast signal carriage rules. DirecTV filed an opposition to the complaint and Paxson filed a reply.<sup>5</sup>

## II. BACKGROUND

20 Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"),<sup>6</sup> requires satellite carriers, by January 1, 2002, to carry upon request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>7</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>8</sup> In November 2000, the Commission adopted rules to implement the

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provides "local-into-local" satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

<sup>5</sup> Under Section 76.66(m)(3) of the Commission's rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its must carry obligations may obtain review of such denial or response by filing a "complaint" with the Commission in accordance with Section 76.7. 47 C.F.R. § 76.66(m)(3). Although styled as a "complaint," a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission's pleading requirements. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999). Responsive pleadings filed in this context, therefore, must comply with the requirements set forth in Section 76.7(b)(1).

<sup>6</sup> *See* Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

<sup>7</sup> *See* 47 U.S.C. § 338.

<sup>8</sup> A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. *See* 17 U.S.C. § 122(j)(2)(A)-(C). *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Must Carry

provisions contained in Section 338.<sup>9</sup> For the initial election cycle, broadcast stations were required to notify satellite carriers by July 1, 2001, of their mandatory carriage election for carriage to commence by January 1, 2002.<sup>10</sup>

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*Report & Order*"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television stations is the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

<sup>9</sup> See generally *DBS Must Carry Report & Order*, 16 FCC Rcd at 1918 et. seq. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("*DBS Must Carry Reconsideration Order*").

<sup>10</sup> See 47 C.F.R. § 76.66(c)(3); see also 76.66(c)(4) ("Except as provided for in paragraphs 76.66(d)(2) and (3), local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1<sup>st</sup> of the year preceding the new cycle for all election cycles after the first election cycle.").

30 Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under Section 338 of the Act or our implementing regulations, such station shall first notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.<sup>11</sup> Within 30 days after such written notification, the satellite carrier must respond in writing and comply with its obligations or state its reasons for believing that it is already doing so.<sup>12</sup> If Commission action is needed, as Paxson alleges here, a broadcast station may file a complaint with the Commission within 60 days after the satellite carrier submits a final rejection of the station's carriage request.<sup>13</sup> If a satellite carrier provides no response to a must carry election, the 60 day period commences after the time for responding as required by the rule has elapsed.<sup>14</sup>

## 1 POSITIONS AND DISCUSSION

20 DirecTV seeks summary dismissal of Paxson's Complaint on jurisdictional grounds, arguing that the exclusive remedy for the failure of a satellite carrier to meet its carriage obligations under Section 338(a)(1) of the Communications Act is a civil action in federal district court.<sup>15</sup> We note that this argument was previously

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<sup>11</sup> See 47 U.S.C. § 338(f)(1); see also 47 C.F.R. § 76.66(m)(1).

<sup>12</sup> See 47 C.F.R. § 76.66(m)(2).

<sup>13</sup> See *id.* § 76.66(m)(6); *SHVIA Must Carry Reconsideration Order*, 16 FCC Rcd 16544 at ¶ 60. A television station seeking a finding on the facts and a resulting determination of whether it is entitled to carriage pursuant to Section 76.66 of our rules, may file a complaint with the Commission. If, however, a television station that is not being carried seeks damages or other forms of monetary or injunctive relief under Section 338(a) of the Act or Section 501(f) of the Copyright Act, then the United States District Court is the exclusive forum for adjudicating the merits of the claim. *DBS Must Carry Report & Order*, 16 FCC Rcd at 1974.

<sup>14</sup> See *DBS Must Carry Reconsideration Order*, 16 FCC Rcd 16544 at ¶ 60.

<sup>15</sup> DirecTV Opposition at 1.

considered and rejected by the Commission.<sup>16</sup> We have the authority to reach and decide the substance of Paxson's complaint.<sup>17</sup>

30 Paxson asserts that all of its stations are entitled to carriage under the Act and the Commission's rules. First, Paxson asserts that DirecTV provides local-into-local service in the DMAs in which it has stations; therefore the satellite carrier shall carry upon request the signals of all television broadcast stations, including its own, located within those local markets.<sup>18</sup> Second, Paxson asserts that its stations fit the definition of "television broadcast stations" under the Act, and therefore, are entitled to carriage.<sup>19</sup> Third, Paxson asserts that the stations are capable of delivering a good quality signal to DirecTV's local receive facilities in accordance with the Act and the Commission's rules.<sup>20</sup> Paxson asserts that it duly requested carriage for the stations in accordance with the Commission's rules.<sup>21</sup>

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<sup>16</sup> See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1974.

<sup>17</sup> See *id.* ("[W]e do not believe that Congress intended to deprive the Commission of the right to enforce the regulations the statute specifically directs us to adopt under Section 338.").

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 5. According to Paxson, most, if not all, of its stations place a City Grade signal over DirecTV's local receive facilities. We note that the addresses of DirecTV's local receive facilities can be found at DirecTV's web site at [www.directv.com](http://www.directv.com).

<sup>21</sup> *Id.* at 5-6.

40 To ensure that its stations could enforce must carry rights against DirecTV, Paxson sent a letter, on June 22, 2001, formally electing mandatory carriage. Paxson states that on June 29, 2001, DirecTV responded to the election letter and denied its requests.<sup>22</sup> Paxson states that although it would prefer to resolve this matter through the completion and execution of a mutually acceptable carriage agreement, the Commission's rules impose a strict 60 day deadline for filing complaints against satellite operators that deny a broadcaster's carriage election. Paxson asserts that it has timely filed its complaint with the Commission on August 28, 2001.<sup>23</sup> Paxson adds that had it not elected must carry in June 2001, it would have risked losing its must carry rights until January 1, 2006, an event which would have given DirecTV the incentive to prevent the execution of a mutually acceptable Definitive Agreement.<sup>24</sup>

50 DirecTV does not address, at this juncture, whether Paxson's stations are qualified for carriage under the Act and the Commission's rules.<sup>25</sup> Rather, DirecTV asserts that Paxson cannot request mandatory carriage because it has obtained carriage for its stations through retransmission consent.<sup>26</sup> DirecTV asserts that the retransmission consent agreement, which does not expire until 2005, does not permit Paxson to seek mandatory

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<sup>22</sup> Paxson Complaint at 2-3. DirecTV rejected Paxson's must carry election stating that it "is of no force and effect because, pursuant to Section 9 of the parties' letter agreement dated April 27, 2000, Paxson waived its must carry rights for the Stations [ ] during the Term of the Agreement." See letter to Steve Freidman (Paxson) from Todd Mathers (DirecTV), dated June 29, 2001.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> Paxson Reply at 8.

<sup>25</sup> DirecTV implies that because the Commission does not have jurisdiction over the existing dispute, it did not need to address the merits of Paxson's qualifications in its Opposition. Instead, DirecTV states that it will present its counter-arguments at a later time if the need arises. DirecTV Opposition at 2.

<sup>26</sup> DirecTV Opposition at 8.

carriage during the term of the agreement.<sup>27</sup> DirecTV cites to an April 27, 2000 letter agreement between the parties, which states, in part:

Paxson will provide DIRECTV with retransmission consent, at zero cost, for the analog and Primary Digital Channel Equivalent<sup>28</sup>. . . of all PAX TV television stations (now or hereafter acquired) for so long as DIRECTV distributes the national PAX TV feed, with no carriage obligation for the analog and Primary Digital Channel Equivalent of any such station. DIRECTV may elect to carry any or all PAX TV stations, but shall in no event be required to do so. Such retransmission consent will not include any must carry/retransmission consent obligations relating to the digital signals of such PAX TV television stations comprising the Multicast Digital Channels.<sup>29</sup>

DirecTV states that it properly denied Paxson's request for carriage because the broadcaster cannot avail itself of the rights and remedies of Section 338 when it has chosen retransmission consent.<sup>30</sup>

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<sup>27</sup> DirecTV Opposition at 9.

<sup>28</sup> According to the Agreement, "Primary Digital Channel Equivalent" means: (a) the digital broadcast signal of such PAX TV station if such station does not multicast more than one digital channel of programming as part of its digital broadcast service, and (b) the digital channel of such PAX TV station which carries substantially the same programming of the analog broadcast service of such station if such station multicasts more than one digital channel of programming as part of its digital broadcast service. *See* letter to Jeff Sagansky, President and CEO, Paxson Communications Corporation from Stephanie Campbell, Senior Vice President—Programming, DirecTV of April 27, 2000 (attached to Paxson Complaint, Exhibit A. at 1, ¶ 1.).

<sup>29</sup> According to the Agreement, "Multicast Digital Channels" for any PAX TV station means the digital channels of programming, if any, of such station included in the multicast digital broadcast service of such station other than the Primary Digital Channel Equivalent. *Id.* The agreement also states that it is the intent of the parties that only the Multicast Digital Channels of any PAX TV station will be entitled to digital must carry rights during the term of this agreement in the event the must carry rules for satellite provide Paxson with must carry rights for its Digital Programming Service. *Id.*

<sup>30</sup> DirecTV Opposition at 11.

60 Paxson acknowledges that it executed a letter agreement with DirecTV that sets forth the “basic terms” regarding, among other things, DirecTV’s carriage of PAX TV programming.<sup>31</sup> According to Paxson, the agreement expressly provides that the parties would negotiate and attempt to enter into a “Definitive Agreement” that would include the basic terms set forth in the letter agreement and such other terms and conditions customarily found in similar agreements.<sup>32</sup> Paxson explains that the letter agreement provides that, if the parties have not entered into the Definitive Agreement by May 30, 2000, either party could terminate the letter agreement “with no obligations.”<sup>33</sup> Paxson asserts that the Definitive Agreement expressly required by the letter agreement was not signed by the May 30, 2000 deadline. Paxson asserts that the only explicit language in the record granting DirecTV retransmission consent is found in the draft retransmission consent agreement, and that document remains the subject of negotiations.<sup>34</sup> Paxson argues that the letter agreement obligated the parties to negotiate a long term carriage arrangement, but it certainly cannot be considered a valid election of retransmission consent under the Act and the Commission’s rules.<sup>35</sup> Moreover, Paxson states that it never agreed to waive its right to assert mandatory carriage in any of its draft agreements with DirecTV.<sup>36</sup> Paxson states that the discussions between itself and DirecTV essentially concern not the retransmission of the stations’ signals, but the carriage of the PAX TV non-broadcast programming service.<sup>37</sup> Paxson additionally argues that it could not have elected retransmission consent through its letter agreement because the Commission had, at that point

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<sup>31</sup> Paxson Complaint at 2.

<sup>32</sup> *Id.* According to Paxson, the Definitive Agreement would include the PAX TV affiliation agreement for the non-broadcast Paxson network programming *and* the Paxson-DirecTV retransmission consent agreement.

<sup>33</sup> *Id.*

<sup>34</sup> Paxson Reply at 7, Exhibit 1 (containing draft affiliation agreement and draft retransmission consent agreement).

<sup>35</sup> *Id.* at 4. Paxson states that it has communicated to DirecTV, as recently as July 27, 2001, alternative proposals for carriage, and the parties have been discussing those proposals. Paxson Complaint at 2.

<sup>36</sup> *Id.* at 14.

<sup>37</sup> Paxson Reply at 11.

in time, not yet adopted election rules or mandatory carriage rules in general.<sup>38</sup>

70 The question presented is whether Paxson validly elected retransmission consent or mandatory carriage for the first election and carriage cycle. In the context of satellite carriage of local broadcast stations, in contrast to cable carriage, in the absence of any election, the station is deemed to have elected retransmission consent.<sup>39</sup> Thus, had Paxson not elected must carry by the July 1, 2001 deadline established in our rules, it would have defaulted to retransmission consent as the only option to gain carriage on DirecTV's satellite system.<sup>40</sup> Failing to elect must carry would have left Paxson in the precarious position of losing its right to assert mandatory carriage had DirecTV terminated the Letter Agreement.<sup>41</sup> Based on the evidence and the law, we find that Paxson validly elected mandatory carriage for the stations subject to this complaint.<sup>42</sup> Whether Paxson has a binding carriage agreement with respect to its non-broadcast PAX TV programming service is beyond the scope of this proceeding and the Commission's broadcast carriage rules, but we do find, as discussed below, that Paxson granted permission for retransmission of its broadcast stations if DirecTV chose to carry them from the date the Letter Agreement was signed until it was terminated.

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<sup>38</sup> *Id.* at 8.

<sup>39</sup> See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1929.

<sup>40</sup> See 47 C.F.R. § 76.66(d)(1)(v).

<sup>41</sup> See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1929. See also *DBS Must Carry Reconsideration Order*, 16 FCC Rcd at 16575-76 (“[I]f a broadcast station has a retransmission agreement that extends into and terminates during an election cycle, the station—at the end of its contract term with the carrier—will not be entitled to demand must carry if it has not elected must carry by the required date. . .”).

<sup>42</sup> It is undisputed that Paxson's television stations are located in markets where DirecTV provides local-into-local satellite television service. As discussed, *infra*, this decision is limited to the validity of Paxson's election and does not address other issues related to carriage rights that were not raised in this proceeding.

80 Based on the information presented to us, the April 27, 2000 letter agreement appears to be a grant of Paxson's consent to DirecTV's voluntary retransmission of the signals of its broadcast stations for the term of the Letter Agreement or until terminated by one or the other of the parties, whichever event first occurs.<sup>43</sup> At the time the Letter Agreement was signed, the SHVIA provided that, beginning May 29, 2000, satellite carriers would not be permitted to carry local-into-local broadcast stations without the station's retransmission consent.<sup>44</sup> At that time, the procedures for stations to elect between mandatory carriage and retransmission consent were not in effect. Thus, in the context of the time in which this Letter Agreement was made, the choice was not between asserting mandatory carriage or retransmission consent, but rather between granting or denying a satellite carrier the right to carry the station's signal. It appears that Paxson and DirecTV never finalized a long-term retransmission consent agreement. Although the April 27, 2000 letter can be considered an interim consent for retransmission, we believe that it does not constitute an irrevocable election of retransmission consent in lieu of must carry.<sup>45</sup> Before the July 1, 2001 deadline for carriage elections, Paxson followed the Commission's carriage election procedures and made its election request for mandatory carriage. Therefore, in light of the specific facts and circumstances of this matter, we believe that it is appropriate to conclude that Paxson properly elected mandatory carriage for the stations that are the subject of this proceeding by the July 1, 2001 deadline.

90 Based on the evidence in the record, we do not believe that Paxson had waived its right to mandatory carriage by virtue of granting retransmission consent on an interim, temporary basis prior to the establishment of the procedures for mandatory carriage and the establishment of an election cycle.<sup>46</sup> We note that disputes as to the terms of the private Letter Agreement between the parties would generally be a private contractual matter for the parties or the courts to resolve. Our review of the Letter Agreement herein is limited to the necessary determination that although retransmission consent was granted, the Letter Agreement does not appear to constitute an election of retransmission consent over mandatory carriage for purposes of the Commission's rules.

100 Effective with the release of this Order, Paxson's stations are entitled to mandatory carriage unless DirecTV provides specific evidence that one or more of the stations is not entitled to mandatory carriage due to any of the statutory reasons for which DirecTV has reserved its arguments. We recognize that DirecTV requires some period of time to make the necessary technical arrangements to commence carriage of each of these stations. Therefore, DirecTV must commence carriage of Paxson's stations within sixty (60) days of the release of this Order or explain in writing to Paxson, within fifteen (15) business days from the date of the release of this Order, why it refuses to carry any of the stations. This writing must specify DirecTV's reasonable basis for believing

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<sup>43</sup> DirecTV Opposition at 2 and Paxson Complaint, Exhibit A at 1, para. 1.

<sup>44</sup> See 47 U.S.C. § 325(b)(2)(E) (during the six months following enactment of the SHVIA, satellite carriers did not need retransmission consent to carry local broadcast stations in their local markets) and § 325(b)(1)(A) (prohibiting retransmission without the express authority of the originating station). See also *DBS Must Carry Report & Order*, 16 FCC Rcd at 1926-29.

<sup>45</sup> Unless extended or terminated, the term of the Letter Agreement expires on May 1, 2005, seven months prior to the end of the first carriage cycle on December 31, 2005.

<sup>46</sup> See 47 U.S.C. § 325(b)(3)(C)(i) (provision added by the SHVIA requiring the Commission to conduct a rulemaking to establish election time periods for satellite carriage of local broadcast stations).

a particular station is not entitled to immediate mandatory carriage. If Paxson disagrees with DirecTV's assertions, it must so state in writing to DirecTV within seven (7) business days of receiving the satellite carrier's rejection letter. If Paxson so states its disagreement, and DirecTV fails to agree to carry the station in question within seven (7) business days of receipt of Paxson's letter, Paxson may file a new carriage complaint with the Commission within seven (7) business days of receipt of DirecTV's refusal. While we believe it was incumbent upon DirecTV to raise all of its affirmative defenses to carriage in its Opposition, including the duplication defense and the signal quality defense, we recognize that it declined to do so because it did not believe it was necessary given its contractual claim and defense. In this circumstance, at the beginning of new carriage requirements with untested procedures and issues, we will permit DirecTV to argue these defenses provided they are raised and substantiated promptly, as provided in this Order. Such a piecemeal approach will not normally be permitted in the future.

110 We further note that, with respect to stations carried pursuant to mandatory carriage, the parties may not make any agreements inconsistent with the statute or our rules concerning mandatory carriage.<sup>47</sup>

120 DirecTV also argues that Paxson has failed to negotiate in good faith the terms of a definitive agreement for retransmission consent as contemplated by the current agreement that is in place.<sup>48</sup> Paxson counters that DirecTV cannot use the Commission's good faith rules as an affirmative defense in broadcast signal carriage disputes brought before the Commission. Given our decision above, we find it is not necessary to rule on DirecTV's good faith argument in this proceeding. In light of Paxson's election of must carry, it cannot be heard to object to carriage of any or all of its broadcast stations listed herein for the duration of this election cycle on the grounds that it has not granted retransmission consent.<sup>49</sup> Thus DirecTV's argument that Paxson has not engaged in good faith retransmission consent negotiations is mooted by Paxson's election and our decision.<sup>50</sup>

### XIII ORDERING CLAUSES

140 Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. § 76.66, that the must carry complaint filed by Paxson Communications Corporation against DirecTV **IS GRANTED** to the extent indicated herein.

150 **IT IS FURTHER ORDERED** that DirecTV, Inc. **IS ORDERED** to commence carriage of WPXN-TV (New York, NY); KPXN-TV (San Bernardino, CA); WCPX-TV (Chicago, IL); WPPX-TV (Wilmington, DE); KKPX-TV (San Jose, CA); WPXB-TV (Merrimack, NH); WBPX-TV (Boston, MA); WPXG-TV (Concord, NH); WDPX-TV (Vineyard Haven MA); KPXD-TV (Arlington, TX); WPXW-TV (Manassas, VA); WWPX (Martinsburg, WV); WPXD-TV (Ann Arbor, MI); WPXA-TV (Rome, GA); KPXB (Conroe, TX); KWPX-TV (Bellevue, WA); KPXM-TV (St. Cloud, MN); WXPX-TV (Bradenton, FL); WVPX-TV (Akron, OH); WPXM-TV (Miami, FL); KPPX-TV (Tolleson, AZ); KPXC-TV (Denver, CO); KSPX-TV (Sacramento, CA); WOPX-TV (Melbourne, FL); KPXG-TV (Salem, OR); WIPX-TV (Bloomington, IN); WFPX-TV

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<sup>47</sup> See, e.g., 47 C.F.R. § 76.66(1)(1).

<sup>48</sup> DirecTV Opposition at 12, citing 47 U.S.C. § 325(b)(3)(C).

<sup>49</sup> We note that Section 325(b)(1)(C) specifically provides that retransmission consent is not required when mandatory carriage is elected.

<sup>50</sup> See DirecTV Opposition at 12, citing 47 U.S.C. § 325(b)(3)(C). DirecTV argues that the Commission's good faith standards require the broadcaster not to act in a manner that would unduly delay the course of negotiations and asserts that, despite repeated communications by DirecTV during the course of the summer and fall of 2000, Paxson refused to respond substantively to any of its inquiries requesting comments or status with respect to execution of a Definitive Agreement. *Id.* at 3 and 12, citing 47 C.F.R. § 76.65(b)(1)(C).

(Fayetteville, NC); WRPX-TV (Rocky Mount, NC); KPXE-TV (Kansas City, MO); WNPX-TV (Cookeville, TN); WPXE-TV (Kenosha, WI); KUPX-TV (Provo, UT); KPXL-TV (Uvalde, TX); WPXH-TV (Gadsden, AL); WPXP-TV (Lake Worth, FL); and WGPX-TV (Burlington, NC) within sixty (60) days of the release date of this Order unless DirecTV, Inc. provides Paxson Communications Corporation with specific reasons for refusing to carry any of these stations and the reasonable bases therefor within fifteen (15) business days of the release date of this Order, and subsequent actions are taken as provided herein.

160 This action is taken by the Deputy Chief, Cable Services Bureau, 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