

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

In the Matter of:
Star Broadcasting Limited
v.
Brownwood Cable Television Service, Inc.
Request for Mandatory Carriage of
Television Station KXVA-TV,
Abilene, Texas
CSR-6142-M

MEMORANDUM OPINION AND ORDER

Adopted: August 12, 2003

Released: August 15, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Star Broadcasting Limited ("Star"), licensee of television broadcast station KXVA-TV, Abilene, Texas ("KXVA" or the "Station") filed the above-captioned must carry complaint against Brownwood Cable Television Service, Inc. ("Brownwood"), for failing to carry KXVA on three cable television systems serving Santa Anna; Rising Star/Cross Plains; and Clyde/Baird, Texas (the "cable communities").

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, 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 such as KXVA are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 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.

3. Section 614 of the Communications Act and the Commission's rules also limit the number of local commercial television stations a cable television system is required to carry. For example, if a cable system has 12 or fewer usable activated channels, it is only required to carry three local commercial television stations, and the cable operator has discretion in selecting the stations it carries.<sup>3</sup>

4. With regard to channel positioning rights, Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Communications Act and the Commission's rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.<sup>4</sup>

### III. DISCUSSION

5. In support of its complaint, Star states that its television station, KXVA, is licensed to Abilene, Texas, which is in the Abilene-Sweetwater DMA. It further states that Brownwood operates three cable television systems serving Santa Anna; Rising Star/Cross Plains; and Clyde/Baird, Texas, which are also in the Abilene-Sweetwater DMA. Star contends that because KXVA is located within the same DMA as the cable communities, KXVA is entitled to mandatory carriage on the cable systems serving the communities. Star asserts that in September 2002 and February 2003, it formally requested that Brownwood commence carriage of KXVA's signal on channel 15, its over the air channel, or on an alternative channel on its cable systems in the cable communities, and that Brownwood failed to respond within 30 days.<sup>5</sup> In its Opposition, Brownwood states that it has no legal obligation to carry KXVA on its Santa Anna cable system because it has already met its must carry obligations on that system. Brownwood further explains that the Commission's rules require cable systems with 12 or fewer channels to carry three local commercial television stations, and that its Santa Anna system only has 12 channels and currently carries three qualified local commercial stations.<sup>6</sup> In its Reply, Star states that it "accepts the validity of Brownwood's averments, and hereby withdraws its Complaint *as to the Santa Anna cable system only*."<sup>7</sup> Star also points out that Brownwood did not oppose carriage of KXVA on the other two cable systems, namely, the Rising Star and Clyde systems. Therefore, Star claims "that it is entitled to summary decision" in favor of carriage of KXVA on these systems under "Section 76.7(b)(2)(v) of the [Commission's] Rules ('Averments in a complaint are deemed to be admitted when not denied in the answer')."<sup>8</sup>

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<sup>3</sup> 47 U.S.C. § 534(b)(1)-(2); 47 C.F.R. § 76.56(b)(1) and (4).

<sup>4</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

<sup>5</sup> Complaint at 1-3.

<sup>6</sup> Opposition at 1-2, *see supra* n.3.

<sup>7</sup> Reply at 2 (emphasis original).

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

6. We grant Star's request to withdraw its complaint regarding that Santa Anna cable system, and grant its complaint regarding the Rising Star and Clyde cable systems. Brownwood's Rising Star and Clyde cable systems are located in the same DMA as KXVA. Further, Brownwood has not objected to Star's request for carriage on these two systems. Absent valid objection, KXVA is entitled to carriage on these two cable systems.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, and Section 76.56 of the Commission's rules,<sup>9</sup> that the must carry complaint filed by Star Broadcasting Limited **IS GRANTED** to the extent indicated herein, and is otherwise **DENIED** without prejudice. Brownwood Cable Television Service, Inc. **IS ORDERED** to commence carriage of KXVA on its cable systems serving Rising Star/Cross Plains and Clyde/Baird, Texas within sixty (60) days of the release of this order.

8. **IT IS FURTHER ORDERED** that KXVA shall notify Brownwood in writing of its channel position election in accordance with Section 76.57 of the Commission's rules with regard to the cable systems serving Rising Star/Cross Plains and Clyde/Baird within thirty (30) days of the release of this order.<sup>10</sup>

9. This action is taken under authority delegated by Section 0.283 of the Commission's rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division  
Media Bureau

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<sup>9</sup> 47 U.S.C. §534; 47 C.F.R. §76.56.

<sup>10</sup> 47 C.F.R. §76.57.

<sup>11</sup> 47 C.F.R. § 0.283.