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FILED/ACCEPTED

JUN 13 2012

Federal Communications Commission
Office of the Secretary

June 13, 2012

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 2002

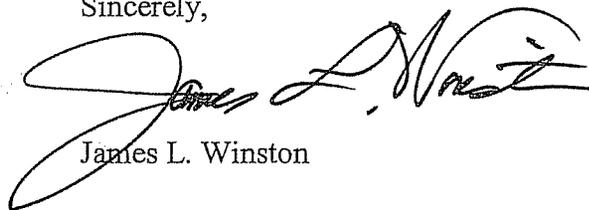
Re: Amended Complaint for Carriage – KSQA, L.L.C.

Dear Ms. Dortch:

KSQA, L.L.C., licensee of commercial television station KSQA, Channel 12, Topeka, Kansas, hereby submits an amended copy of the Complaint for Carriage filed yesterday against Cox Cable Communications, Inc. The amended Complaint provides the Certificate of Service that was inadvertently left off of the Complaint as filed yesterday. No change has been made to the content of the Complaint.

Please contact undersigned counsel should you require any additional information regarding this matter.

Sincerely,



James L. Winston

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re)
)
KSQA, L.L.C.)
Licensee of Television Station)
KSQA, Channel 12)
For Carriage of KSQA(TV), Topeka,)
Kansas)

To: Chief, Media Bureau

RECEIVED - FCC

JUN 12 2012

Federal Communications Commission
Bureau / Office

COMPLAINT FOR CARRIAGE

I. Introduction

KSQA, L.L.C, licensee of commercial television station KSQA, Channel 12, Topeka, Kansas, by its attorneys, hereby files this carriage complaint, pursuant to Sections 76.7 and 76.61 of the Commission's Rules, against Cox Cable Communications, Inc. ("Cox"), operator of a cable television system serving the community of Topeka, Kansas. KSQA submits that it is being denied over-the-air channel carriage in violation of Sections 76.56 and 76.57 of the Commission's Rules. KSQA requests an order directing Cox to begin carrying KSQA on its over-the-air Channel 12 immediately. In support of its Complaint KSQA submits the following:

II. Background

KSQA, L.L.C. is submitting with this Complaint the Declaration of Gregory Talley, a member of KSQA, L.L.C. and Operations Manager of KSQA.¹ Mr. Talley testifies that KSQA began broadcasting, pursuant to automatic program test authority on September 29, 1011. Mr.

¹ Exhibit 1, Declaration of Gregory Talley.

Talley states that Cox is the cable television system serving Topeka. Mr. Talley testifies that on September 28, 2011, he mailed a notice to Cox asserting KSQA's must carry rights on KSQA's over-the-air broadcast channel, Channel 12.² Mr. Talley testifies that he received no response to the September 28 letter, and sent a second notice letter on January 27, 2012.³ Mr. Talley testifies that, after receiving no response to the second notice letter, he sent a third notice letter on March 10, 2012.⁴

Mr. Talley testifies that, finally, on March 22, 2012, he received his first response from Cox to his many requests for carriage. Mr. Talley states that the response was a telephone call from Jay Allbaugh of Cox, who stated that Cox wished to discuss KSQA's carriage request. Mr. Talley testifies that he asked Booker Wade, a broadcast consultant, to communicate and coordinate with Mr. Allbaugh. Mr. Talley testifies that KSQA has been unable to agree with Cox on an alternate channel instead of Channel 12, and Cox continues to refuse to provide carriage on Channel 12.

KSQA, L.L.C. is also providing with this Complaint the Declaration of Booker Wade, a broadcast consultant.⁵ In his Declaration, Mr. Wade testifies that between March 22, 2012 and May 14, 2012, he had discussions with Jay Allbaugh of Cox seeking to obtain carriage for KSQA on Channel 12. Mr. Wade testifies that, in his initial conversations with Mr. Allbaugh, Mr. Allbaugh asked KSQA not to seek carriage on Channel 12, because Cox carries WIBW, Topeka, Channel 13, and that Cox preferred not to cause any viewer inconvenience that would

¹ Exhibit 1, Declaration of Gregory Talley.

² A copy of the September 28, 2011 letter, which was mailed certified, return receipt requested, to Cox is attached as Exhibit 2. A copy of the return receipt is included as part of the exhibit.

³ The second notice and return receipt are attached as Exhibit 3.

⁴ The third notice is attached as Exhibit 4.

accompany a channel shift. Mr. Wade testifies that he advised Mr. Allbaugh that KSQA would consider an alternate acceptable channel. Mr. Wade testifies that a number of alternate channels were considered, but no agreement could be secured, because all of the alternative channels presented unique and significant technical, prior contract, and other difficulties for Cox and KSQA.

Mr. Wade testifies that, when he and Mr. Allbaugh were unable to reach an agreement on an alternative to Channel 12, he advised Mr. Allbaugh that KSQA requested on-channel carriage on Channel 12. Mr. Wade testifies that, on May 3, 2012, Mr. Allbaugh declined to provide carriage on Channel 12, and, for the first time, asserted that KSQA was not entitled to carriage on Channel 12. Also, for the first time, Mr. Allbaugh asserted that there were technical problems with the KSQA signal, but that Cox would assist in resolving these problems, if KSQA would accept its alternative channel arrangements.

Subsequently, Mr. Talley received a letter from counsel for Cox.⁶ In the letter, Cox asserted that KSQA is not entitled to on-channel carriage. Cox provides its interpretation of the Commission's *Declaratory Order*⁷ to support this assertion. Cox asserts that, because KSQA has a program and system information protocol ("PSIP") Major Channel 22 designation, Channel 22 is the only channel upon which KSQA can assert mandatory carriage rights.

III. Cox has Intentionally and Deceptively Misstated the Law Regarding KSQA's Carriage Rights

Cox cites a deceptively edited portion of the *Declaratory Order* to support its assertion

⁵ Declaration of Booker Wade, attached as Exhibit 5.

⁶ Letter to Gregory M. Talley from Gary S. Lutzker, dated May 18, 2012, attached as Exhibit 6.

⁷ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Declaratory Order*, 23 FCC Rcd 14254 (2008) ("*Declaratory Order*").

that KSQA may only request carriage on its PSIP channel. Cox's selectively edited language from the Commission's order gives a reading of the order which is directly contrary to the meaning of the unedited language. Cox's edited language reads:

the channel placement options in Sections 614(b)(6) and 615(g)(5) of the Act, as implemented in Section 76.57 of the Commission's Rules, remain in effect after the digital transition.... [O]ne of those statutory options is carriage on the broadcast channel number. In digital broadcasting, a carriage on the broadcast channel is no longer identified by reference to its over-the-air radio frequency. Instead, in compliance with the ATSC standard, the station's "major channel number" is identified in its program and system information protocol ("PSIP").... We clarify that any station carried pursuant to mandatory carriage may demand carriage on its major channel number as broadcast in the station's PSIP.

IV. KSQA is Entitled to Mandatory Carriage on its Over-the-Air Channel 12

Cox has deceptively edited several paragraphs of the Commission's *Declaratory Order*, through selective use of ellipsis, to delete the language which provides the Commission's true meaning. In the unedited paragraphs, the Commission clearly stated that a television station may continue to seek mandatory carriage on its over-the-air channel. The unedited version of the Commission's language is as follows:

14. We clarify that the channel placement options in Sections 614(b)(6) and 615(g)(5) of the Act, as implemented in Section 76.57 of the Commission's Rules, remain in effect after the digital transition. **Section 614(b)(6) of the Act generally provides that commercial television stations carried pursuant to the mandatory carriage provision are entitled to be carried on a cable system on the same channel number on which the station broadcasts over-the-air. Under Section 615(g)(5) noncommercial television stations generally have the same right. The Act also permits commercial and noncommercial television stations to negotiate a mutually agreeable channel position with the cable operator. Historically, channel positioning has been part of the carriage election process, with must-carry stations choosing from among the statutory options as part of the must-carry election.**

15. **As noted above,** one of those statutory options is carriage on the broadcast channel number. In digital broadcasting, a broadcast station's channel number is no longer identified by reference to its over-the-air radio frequency. Instead, in

compliance with the ATSC standard, the station's "major channel number" is identified in its program and system information protocol ("PSIP"). **This usually corresponds to the radio frequency at which the station previously broadcast its analog signal. Therefore, in the *First Report and Order*, the Commission required that channel mapping information be passed through as part of the PSIP, linking the digital channel number with the appropriate primary video and program-related content. Thus, the cable operator can identify the correct channel location by reference to the PSIP.**

16. We clarify that any station carried pursuant to mandatory carriage may demand carriage on its major channel number as broadcast in the station's PSIP. **We also clarify that although the *First Report and Order* did not specifically address the significance of the statutory provisions and rules with respect to the "historic" carriage options, these statutory options remain available to digital must-carry broadcasters, who will make digital channel placement elections pursuant to Sections 76.57(a) or (b) just as they previously have for analog channel placement elections. Section 76.57(c), adopted in the *First Report and Order*, should be read as clarifying the manner in which cable operators are to determine the channel number on which a local commercial or qualified NCE station is "broadcast over the air" when implementing such a station's election under Sections 76.57(a) or (b). The statute also permits carriage on "such other channel number as is mutually agreed upon by the station and the cable operator." This negotiated option, as reflected in our Rules, also remains an option. We also note that Section 76.57(f) continues to apply to determine where a station must be carried if it makes no affirmative election.** (Emphasis added, footnotes omitted)

The bold sections of the above quote are all of the sections intentionally omitted by Cox. Indeed, Cox has attempted through this selective editing to delete more than half of the language in three paragraphs and to give the appearance of quoting a single paragraph. Thus, it is painfully clear that Cox used ellipsis to omit most of the paragraphs it purported to quote in an effort to distort the Commission's language to mean just the opposite of the fully quoted language. When read in its full context, it is unmistakable that, in paragraphs 14-16 of the *Declaratory Order*, the Commission made explicitly clear that the designation of a PSIP for a station did not in any way diminish or alter the "historic" carriage rights of television stations. Indeed, because the right to carriage on a station's over-the air channel is conferred by statute,

the Commission cannot diminish or alter that right.

In making this explicit statement, the Commission specifically cited the statutory language providing such mandatory on-channel carriage rights.⁸ The Commission also cited 47 CFR §76.57(a).⁹ Thus, there is no ambiguity in the Commission's language. A station entitled to must-carry rights had, before the digital transition, and continues to have after the digital transition, the statutory right to mandatory carriage on its over-the-air channel. The Commission made clear that requesting carriage on a station's PSIP channel is an option, in addition to, and not as a replacement for carriage on the station's over-the-air channel. Cox's tortured editing of the Commission's language must therefore be completely rejected.¹⁰ KSQA is entitled to its statutory right to carriage on its over-the-air channel.

⁸ Declaratory Order par. 16, footnote 32 citing 47 USC § 534(b)(6) which reads:

Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is **broadcast over the air**, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission. (Emphasis added.)

⁹ 47 CFR §76.57(a), which reads:

At the election of the licensee of a local commercial broadcast television station, and for the purpose of this section, a qualified low power television station, carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station is **broadcast over the air**, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992. (Emphasis added.)

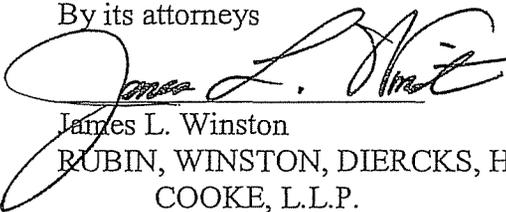
V. Conclusion

KSQA L.L.C has demonstrated through the Declarations of Gregory Talley and Booker Wade and accompanying exhibits that Cox is unlawfully denying KSQA carriage on its over-the-air Channel 12. In addition, KSQA L.L.C. has demonstrated that the purported legal basis for the denial of over-the-air carriage is a deceptively edited version of the Commission's *Declaratory Order*. Contrary to the distorted quotations from the Commission's *Declaratory Order* provided by Cox, it is clear that the Commission has ruled that KSQA is entitled to mandatory carriage on its over-the-air channel. KSQA, therefore, requests that the Commission order Cox immediately to begin carriage of KSQA on its over-the-air Channel 12 as required by the Communications Act and the Commission's rules.

Respectfully submitted,

KSQA, L.L.C.

By its attorneys



James L. Winston
RUBIN, WINSTON, DIERCKS, HARRIS &
COOKE, L.L.P.

1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 861-0870
jwinston@rwdhc.com

June 12, 2012

¹⁰ Indeed, were Cox's deceptively edited quotation made directly to the Commission, the Commission might caution Cox for such manipulation of its language.

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 1

DECLARATION OF GREGORY TALLEY

Declaration

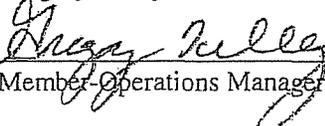
I, Gregory Talley, declare as follows:

1. I am a Member of KSQA L.L.C. and Operations Manager for KSQA TV, Channel 12, licensed to Topeka, Kansas. KSQA TV commenced broadcasting pursuant to program test authority on September 29, 2011, in the Topeka Designated Market Area which is served by Cox Cable Communications Inc. [Cox Cable].
2. On September 28, 2011, I provided written notice to Cox Cable asserting KSQA must carry rights on the Cox Cable cable television systems in the Topeka DMA. The notice requested carriage of the signal of KSQA on Channel 12, the cable system channel number on which KSQA is broadcast over the air. The notice was sent by certified mail return receipt requested. A copy of the notice and the U.S. Postal Service delivery receipt are attached.
3. Having not received a response to the notice of election and request for carriage, On January 27, 2012, I provided a second notice of the election and on-channel carriage request to Cox Cable. This notice was also sent via Certified Mail Return Receipt Requested. Copies of the notice and the U.S. Postal Service delivery receipt are attached.
4. Having not received a response to the second notice of the election and request for carriage; on March 10, 2012 I provided a third notice of the election and request for carriage. This notice also detailed the position of KSQA that the failure to commence carriage and the lack of a response was inconsistent with FCC obligations. This third notice was also sent via Certified Mail Return Receipt Requested.
5. On or about March 22, 2012, I received a message from a Cox Cable representative, Jay Allbaugh, who stated Cox Cable wished to discuss carriage. I asked Booker Wade, a broadcast consultant, to communicate and coordinate with Mr. Allbaugh. Despite discussions, KSQA has been unable to agree with Cox Cable on an alternative channel to Channel 12. Cox Cable declines to provide carriage of the signal of KSQA on Channel 12.
6. On or about May 18, 2012, I received a letter from Gary S. Lutzker, counsel for Cox Cable. A copy of the letter is attached. He advised that KSQA was not entitled to carriage on its over-the-air broadcast channel.

I declare under penalty of perjury that the foregoing is true.

June 8, 2012

Gregory Talley


Member-Operations Manager

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 2

**LETTER FROM KSQA TO COX
SEPTEMBER 28, 2011**



KSQA-TV 12 TOPEKA

September 28, 2011

CERTIFIED MAIL-Return Receipt Requested

System Manager
Cox Cable Communications Inc.
901 George Washington Blvd.
Wichita, Ks 67211

Re: Notice of Election to Exercise Must Carry Rights

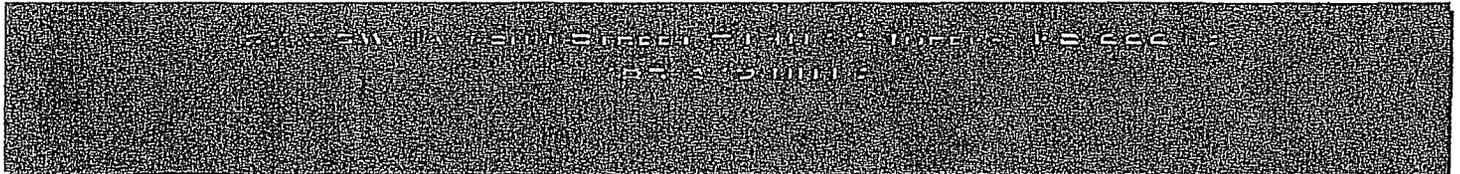
Dear System Manager:

KSQA L.L.C. construction permittee of television station KSQA, Topeka, Kansas, licensed to Topeka, Kansas and operating on channel 12 pursuant to Program Test Authority, in Topeka Nielsen DMA, located at 800 SW Jackson Street, Topeka, Suite 1407, Kansas, hereby gives you notice that it has elected to assert its MUST CARRY rights, pursuant to Sections 76.64 and 76.66 of the Rules and Regulations of the Federal Communications Commission, 47 Code of Federal Regulations, Sections 76.64 and 76.66. KSQA elects to be carried on channel 12, unless we agree with your system to be carried on another channel, in which case KSQA elects to be carried on that channel.

Should you require any additional information in connection with this election, please contact me.

Sincerely,

Gregory Talley
Operations Manager



SENDER: COMPLETE THIS SECTION		RECIPIENT: COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery Michelle Sams 9/29/11</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>Systems Manager Cox Cable Communications 901 George Washington Blvd Wichita, KS 67211</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7010 1670 0002 2193 1028</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3871, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee	\$	
Return Receipt Fee (Endorsement Required)	\$	
Restricted Delivery Fee (Endorsement Required)	\$	
Total Postage & Fees	\$	4.95

Sent To: Systems Manager, Cox Cable Communications
Street, Apt. No., or PO Box No. 901 George Washington Blvd

9201 EPT2 2000 049T 0102

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 3

**LETTER FROM KSQA TO COX
JANUARY 27, 2012**



KSQA-TV12 TOPEKA

January 27, 2012

CERTIFIED MAIL-Return Receipt Requested

System Manager
Cox Cable Communications
901 George Washington Blvd
Wichita, Ks 67211

Re: Notice of Election to Exercise Must Carry Rights

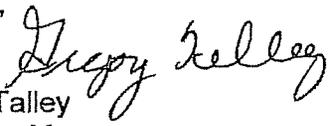
Dear System Manager:

Previously on September 28, 2011, KSQA, L.L.C., then construction permittee of full power television station KSQA, Topeka, Ks, in the Topeka Nielsen DMA, operating on channel 12 pursuant to Program Test Authority, and located at 800 SW Jackson street, Suite 1407, provided you with notice that it had elected to assert its MUST CARRY rights, pursuant to Sections 76.64 and 76.66 of the Rules and Regulations of the Federal Communications Commission [FCC], 47 Code of Federal Regulations, Sections 76.64 and 76.66 and elected to be carried on channel 12. Under FCC rules, carriage was required to be implemented on or before December 29, 2011. However no response has been provided.

On November 29, 2011, the FCC granted KSQA LIC a license for KSQA . KSQA now operates on a twenty-four-hour-seven-days-weekly basis. KSQA now re-asserts its rights and once again request that your system commence carriage of KSQA pursuant to FCC rules.

Should you require any additional information in connection with this election, please contact me.

Sincerely,


Gregory Talley
Operations Manager

800 SW Jackson Street #1407 • Topeka, KS 66612
785.379.0012

SENDER'S COPY

Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Systems Manager
 Cox Cable Communications
 901 George Washington Blvd
 Wichita, Ks 67211

2. Article Number (Transfer from service label) **7005 0390 0000 9293 0357**

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

A. Signature Agent Addressee
x [Signature]

B. Received by (Printed Name) **Michelle Jamms** C. Date of Delivery **2-1-12**

D. Is delivery address different from Item 1? Yes
 If YES, enter delivery address below: No

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7005 0390 0000 9293 0357

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 40.45	0980
Certified Fee	\$ 2.95	11
Return Receipt Fee (Endorsement Required)	\$ 2.35	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 45.75	01/28/2012

Sent To **Systems Manager Cox Cable Comm**
 Street, Apt. No., or PO Box No. **901 George Washington Blvd**
 City, State, ZIP+4 **Wichita, Ks 67211**

PS Form 3800, June 2002 See Reverse for Instructions

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 4

**LETTER FROM KSQA TO COX
MARCH 10, 2012**



KSQA-TV12
TOPEKA

March 10, 2012

CERTIFIED MAIL-Return Receipt Requested

Systems Manager
Cox Cable Communications Inc
901 George Washington Blvd
Wichita, Ks 67211

Re: Notice of Election to Exercise Must Carry Rights:

On September 28, 2011, KSQA L.L.C., then construction permittee of a full power television station KSQA, Channel 12, Topeka, Kansas, in the Topeka Nielson DMA, provided you with notice that it had elected to assert its MUST CARRY rights, pursuant to Section 76.66 of the Rules and Regulations of the Federal Communications Commission [FCC]. Under FCC rules, carriage was required to be implemented on or before December 29, 2011. No response to the request was received. On January 27, 2012, KSQA LLC, licensee of KSQA provided you with a second notice and again re-asserted its rights for carriage. To date, no response confirming your intent for carriage has been received. Additionally, telephone messages seeking a response to the carriage requests have not been returned.

We request that you notify us in writing within the next ten days confirming that the system will commence carriage of the signal of KSQA within the next thirty days. Alternatively and regrettably, we will be compelled to file a complaint with the FCC. We ask that you cease ignoring and instead voluntarily comply with the FCC Rules and Regulations.

Sincerely,

Gregory Talley
Operations Manager

800 SW Jackson Street #1407 • Topeka, KS 66612
785.379.0012

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 5

DECLARATION OF BOOKER WADE

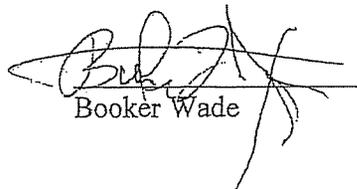
Declaration

I, Booker Wade, declare as follows:

1. I am a broadcast consultant to KSQA L.L.C. I am familiar with the Commission's rules regarding the carriage of broadcast stations by cable television systems.
2. Between March 22, 2012 and May 14, 2012, at the request of KSQA L.L.C., I had discussions with Jay Allbaugh of Cox Cable seeking carriage of the signal of KSQA on Cox Cable channel 12, the channel on which KSQA broadcasts over the air.
3. In our first discussion, Mr. Allbaugh asked that KSQA not seek carriage on cable Channel 12 as Cox Cable carries the signal of WIBW, Topeka, Channel 13, and that Cox Cable prefers not to cause any viewer inconvenience that would accompany a channel shift. I advised Mr. Allbaugh that KSQA would consider an alternative acceptable channel. A number of alternative channels to Channel 12 were considered but no agreement could be secured as all the alternative channels presented unique and significant, technical, prior contract and other difficulties for Cox Cable and KSQA L.L.C.
4. Unable to reach an agreement on an alternative to Channel 12, I advised Mr. Allbaugh that KSQA requested on-channel carriage on Channel 12. On May 3, 2012, Mr. Allbaugh declined to provide carriage on Channel 12 and for the first time asserted that KSQA was not entitled to carriage on Channel 12. Also for the first time, Mr. Allbaugh stated there were technical problems with the KSQA signal but that Cox Cable would assist in resolving these problems if KSQA would accept its alternative channel arrangements. Since May 3, 2012, Cox Cable has not responded to requests for commencement of carriage on Channel 12.

I declare under penalty of perjury that the foregoing is true.

June 7, 2012


Booker Wade

KSQA, L.L.C.
KSQA(TV), Topeka, KS
June, 2012
Exhibit 6

**LETTER FROM COUNSEL FOR COX TO KSQA
MAY 18, 2012**

May 18, 2012

**By Electronic Mail and
Certified Mail, Return Receipt Requested**

Mr. Gregory M. Talley
Operations Manager
KSQA-TV
800 S.W. Jackson Street
Suite 1407
Topeka, Kansas 66612

Re: KSQA Channel Position on Cox Cable System Serving Topeka, Kansas

Dear Mr. Talley:

As legal counsel with extensive experience in cable television broadcast carriage and regulatory matters, including, among other things, the Communications Act of 1934, as amended (the "Act"), and the applicable regulations and policies of the Federal Communications Commission (the "FCC"), CoxCom, Inc. and its subsidiary Cox Communications Kansas, LLC (collectively, "Cox") have asked us to respond to KSQA-TV's ("KSQA's" or the "Station's") stated position that it is entitled to carriage on Channel 12 of the Cox cable television system serving Topeka, Kansas (the "System"). As demonstrated below but contrary to KSQA's position, the Station has no right to demand carriage on Channel 12 because its broadcast channel for purposes of the FCC's mandatory carriage rules is Channel 22.

According to the FCC's records, KSQA is a full-power digital television station licensed to Topeka, Kansas that operates on radiofrequency Channel 12 (204-210 MHz) and transmits Major Channel 22 in its program and system information protocol ("PSIP"). On or about September 30, 2011, KSQA elected mandatory carriage for the System on Channel 12, and on or about March 10, 2012, it demanded carriage on the System apparently pursuant to Section 76.61 of the FCC's rules, 47 C.F.R. § 76.61. Cox informed KSQA in response that under FCC rules, the Station was not entitled to demand carriage on Channel 12 because Channel 22 was KSQA's PSIP Major Channel Number. Following discussions with the Station, Cox offered additional potential channel positions for KSQA subject to the FCC-required thirty-day subscriber, local government, and broadcaster notices, among other things. KSQA rejected that offer in a message to Mr. Jay Allbaugh, Cox's Vice President of Governmental Affairs, on May 14, 2014. KSQA reiterated its belief that "it is entitled to cable carriage on Channel 12, the channel on which it broadcasts over-the-air," and indicated that "it appears resolution requires FCC intervention."

KSQA is mistaken. Under the FCC's mandatory carriage rules, the only channel position KSQA may demand is Channel 22, the channel number on which television receivers with

Mr. Gregory M. Talley
KSQA-TV
May 18, 2012
Page 2

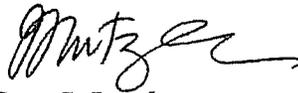
digital tuners will display the Station's broadcast signal.¹ In the *DTV Channel Position Declaratory Order*,² the FCC specifically addressed this issue and clarified that

the channel placement options in Sections 614(b)(6) and 615(g)(5) of the Act, as implemented in Section 76.57 of the Commission's Rules, remain in effect after the digital transition. . . . [O]ne of those statutory options is carriage on the broadcast channel number. In digital broadcasting, a broadcast station's channel number is no longer identified by reference to its over-the-air radio frequency. Instead, in compliance with the ATSC standard, the station's "major channel number" is identified in its program and system information protocol ("PSIP"). . . . *We clarify that any station carried pursuant to mandatory carriage may demand carriage on its major channel number as broadcast in the station's PSIP.*³

The foregoing FCC clarification indisputably demonstrates that KSQA may not require Cox to carry the Station on Channel 12 in the Topeka System. If the Station prefers to have the FCC reiterate its previous determination for KSQA's benefit, as the Station's May 14 correspondence appears to indicate, we will confidently represent Cox in that proceeding.

Please contact the undersigned counsel if you have any questions regarding this matter.

Sincerely



Gary S. Lutzker
Counsel for CoxCom, Inc. and
Cox Communications Kansas, LLC

GSL/sad

cc: Alysia Long, Esq.
Mr. Jay Allbaugh
Mr. Booker Wade

¹ The rules, of course, also allow carriage on another channel position that is mutually agreeable to Cox and the Station. 47 C.F.R. § 76.57(d).

² Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, *Declaratory Order*, 23 FCC Rcd 14254 (2008).

³ *Id.* at paras. 14-16 (footnotes omitted) (emphasis added). The FCC also noted that "[o]ne of the most important elements in the PSIP is the Major Channel Number ('MCN'), the channel 'location' identified with a given station regardless of its over-the-air broadcast frequency. ATSC receivers (whether a TV set in a home or a receiver at a cable headend) can use this data to determine the information that will be displayed to viewers." *Id.* at n.30.

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on June 13, 2012, true copies of the foregoing "Complaint for Carriage" were mailed, first class U.S. mail, postage pre-paid to the following:

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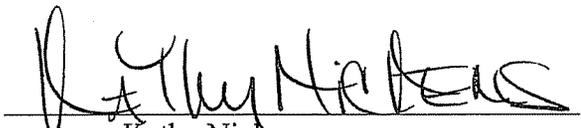
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