

Number as carried in its PSIP [*i.e.*, Program and System Information Protocol], namely Channel 22, and KSQA is incorrect that it would also have a right to carriage on Channel 12.”³

I. The Statute And The Commission’s Orders Unequivocally Deny KSQA The Right To Demand Cable Carriage On Its RF Digital Channel.

KSQA mistakenly claims that it has a statutory right to carriage on its digital RF Channel, and that the *Order* violates that right.⁴ In fact, the statute and the Commission’s orders demonstrate just the opposite.

Section 614(b)(6) of the Communications Act (the “Act”) does not even mention RF Channels, and instead only guarantees in certain cases that mandatory carriage stations may demand cable carriage “on the cable system channel number on which the local commercial television station is broadcast over-the-air” (the “**On-Channel Carriage Right**”).⁵ Moreover, Section 614(b)(4)(B) of the Act explicitly empowered the Commission “to establish any changes in the signal carriage requirements of cable television systems” necessary for accommodating the conversion to digital broadcasting.⁶ As the Bureau correctly recognized, the Commission’s *2008 Declaratory Order* unequivocally held — pursuant to Section 614(b)(4)(B) — that “in digital broadcasting, for purposes of channel positioning, a station’s over-the-air broadcast channel number in no longer identified by reference to its over-the-air radio frequency, but instead by its Major Channel Number as carried in its PSIP.”⁷ The Bureau, therefore, simply implemented the

³ *Order* at para. 4. KSQA’s PSIP Major Channel Number is 22 and its digital RF Channel is 12. See KSQA, L.L.C., *Complaint for Carriage*, MB Docket No. 12-168, CSR-8659-M, (filed June 12, 2012) (the “**Complaint**”) at 3; CoxCom, Inc. d/b/a Cox Communications Kansas, LLC, *Opposition and Motion to Dismiss*, MB Docket No. 12-168, CSR-8659-M, (filed June 12, 2012) (the “**Opposition**”) at 2 & n.5.

⁴ Application at 2-3, 3-4.

⁵ 47 U.S.C. § 534(b)(6).

⁶ 47 U.S.C. § 534(b)(4)(B).

⁷ *Order* at para. 4 & n.17 (citing Carriage of Digital Television Broadcast Signal: Amendment to Part 76 of the Commission’s Rules, *Declaratory Order*, 23 FCC Rcd. 14254, 14258 paras. 15-16 (2008) (“**2008 Declaratory Order**”). KSQA continues to argue that the Bureau misconstrued the *2008 Declaratory Order* and that the language of that decision actually entitles it to carriage on its digital RF Channel. Application at 3-4. Cox repeatedly has provided KSQA with the relevant language from the *2008 Declaratory Order* that disproves this claim in both private negotiations and in proceedings before the Bureau. See *Opposition* at 3-6; *Complaint* at Exhibit 6. The Bureau quoted the Commission’s decisions at length in vindicating Cox’s reading of the *2008 Declaratory Order*. *Order* at para. 4 & n.17. KSQA’s ongoing refusal to acknowledge the plain meaning of the

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Commission's well-settled interpretation of Section 614(b)(6) as applying to each digital broadcasters' PSIP Major Channel Number rather than its RF Channel. In other words, by electing mandatory carriage, KSQA is entitled to demand carriage on Channel 22, but not on Channel 12,⁸ and the *Order* must be affirmed.

As Section 614(b)(4)(B) of the Act demonstrates, KSQA's argument that the Bureau's reading of the *2008 Declaratory Order* would "abrogate congressionally prescribed measures" and therefore is outside the Commission's power misreads the statute and misunderstands the Commission's authority.⁹ The *2008 Declaratory Order* simply exercised the Commission's authority under Section 614(b)(4)(B) to construe the meaning of the On-Channel Carriage Right for digital broadcast stations that elect mandatory carriage.¹⁰ The Commission recognized that: (1) the ATSC (digital) transmission format requires broadcasters to include channel identification information in the PSIP included in their broadcast signals; and (2) DTV receivers built in accordance with that standard must tune the station on the PSIP Major Channel Number rather than the station's RF frequency.¹¹ It also credited broadcasters' arguments that assigning the PSIP Major Channel Number as a digital station's "channel" for must-carry purposes would permit the station to benefit from its brand identity established during the analog broadcasting era.¹² Under these circumstances, the Commission's interpretation of Section 614(b)(6) as requiring cable carriage in certain cases on a station's PSIP Major Channel rather than its RF Channel was both reasonable and explicitly authorized by Section 614(b)(4)(B). KSQA's claim that the Commission's interpretation of the statute is precluded by the Section 614(b)(6), therefore, is entirely meritless.¹³

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2008 Declaratory Order and its insistence that the Commission has granted it a right to carriage on its over-the-air DTV frequency is inexplicable and obviously erroneous.

⁸ *Order* at para. 4.

⁹ Application at 3.

¹⁰ See 47 U.S.C. § 534(b)(4)(B).

¹¹ See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 at paras. 150, 153 (2004).

¹² See *id.* A station's PSIP Major Channel generally corresponds to the over-the-air frequency on which the channel broadcast during the analog era. See *2008 Declaratory Order*, 23 FCC Rcd 14258 at n.30.

¹³ In addition to its explicit authority under section 614(b)(4)(B), the Commission's authority generally to construe ambiguous terms of the Communications Act is beyond cavil and entitled to

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II. KSQA Fundamentally Misunderstands The Bureau's Precedents.

KSQA misreads *Channel 20 TV Co.*¹⁴ as supporting its interpretation of the 2008 *Declaratory Order*.¹⁵ That case actually affirms that stations may seek “on channel” carriage only on their PSIP Major Channel.¹⁶

KSQA confuses the proponent in that case (KCDO, which sought carriage on its PSIP Channel 3) with another station in the market (KTVD, which had been assigned PSIP Channel 20).¹⁷ The outcome of the case is precisely the opposite of what KSQA claims: in fact, the request of the station seeking mandatory carriage on its PSIP Major Channel was granted, and the decision includes a lengthy footnote explaining in detail why a digital broadcaster’s “over-the-air channel” for mandatory carriage purposes is its PSIP Major Channel rather than its RF Channel.¹⁸ In short, *Channel 20 TV Company* provides no support for KSQA’s position in this case.

III. KSQA’s Pending Request For Waiver Provides No Support For The Application.

KSQA makes reference to its request for a change in its PSIP, which is pending before the Bureau, as somehow justifying relief.¹⁹ That request remains before the Bureau in a separate proceeding; it is inapposite here and should not be considered.²⁰ Cox nevertheless will address the substantial factual misrepresentations contained in Section IV of the Application in the interest of ensuring the Commission has a full record on these issues.

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substantial deference from the courts. *See, e.g., NCTA v. Brand X Internet Services*, 545 U.S. 967 (2005).

¹⁴ *See Channel 20 TV Co.*, 25 FCC Rcd 2219 (Med. Bur. 2010) (“*Channel 20 TV Co.*”).

¹⁵ Application at 4-5.

¹⁶ *See Channel 20 TV Co.*, 25 FCC Rcd 2219 at paras. 3-4 & n.12, 16.

¹⁷ Compare Application at 4 with *Channel 20 TV Co.*, 25 FCC Rcd 2219 at paras. 4 (KCDO assigned PSIP Channel 3 and seeking carriage on cable Channel 3), 5 (KTVD assigned PSIP Channel 20 but seeking to retain retransmission consent carriage on cable Channel 3).

¹⁸ *See id.* at n.12.

¹⁹ Application at 5-6.

²⁰ *See* Letter from Gary S. Lutzker, Counsel for Cox, to Marlene H. Dortch, dated Sept. 7, 2012; letter from James L. Winston, Counsel for KSQA, L.L.C., to Ms. Marlene H. Dortch, dated Aug. 23, 2012.

KSQA's claim that it has "formally requested" carriage on Channel 22 simply is false.²¹ As the pleadings below confirm at length, KSQA has continuously claimed a right to carriage on Channel 12 and Cox sought diligently for many months to negotiate an alternative, mutually agreeable, channel position for KSQA.²² KSQA has never requested carriage on Channel 22 or entertained other viable channel position options that Cox proposed, and KSQA fails to even explain what it means by "interim carriage." KSQA's consistently incorrect position is and has been that it is entitled to, and will only accept, carriage on Channel 12. Cox remains open to discussing carriage of KSQA on a mutually agreeable channel, but those negotiations are irrelevant to the Commission's decision in this case, which should be to affirm the *Order* in full and dismiss the Application with prejudice.

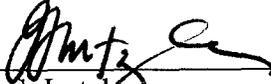
CONCLUSION

For the foregoing reasons, the Commission should deny and dismiss the Application and affirm the Bureau's *Order*.

Respectfully submitted,

COXCOM, INC. D/B/A COX
COMMUNICATIONS KANSAS, LLC

By: _____


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December 3, 2012

²¹ See Application at 5; see also Declaration of Jay Allbaugh, attached hereto, at para. 3.

²² See Opposition at 1-2; Complaint at Exhibit 6.

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, hereby certify that a true and correct copy of the foregoing Opposition to Application for Review was sent by first class U.S. mail, postage prepaid, except where hand-delivery is indicated, on this 3d day of December 2012 to the following:

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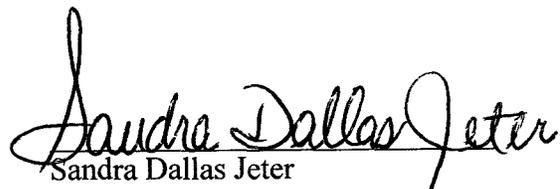
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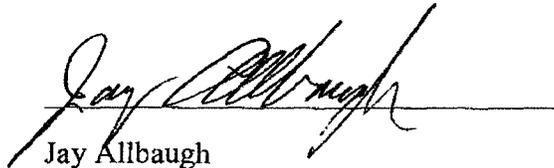
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
KSQA, L.L.C.) MB Docket No. 12-168
) CSR-8659-M
v.)
)
Cox Cable Communications, Inc.)
On behalf of its subsidiaries and affiliates)

To: The Commission
Office of the Secretary

DECLARATION OF JAY ALLBAUGH

1. My name is Jay Allbaugh and I am Vice President, Field Government and Public Affairs for CoxCom, Inc. d/b/a Cox Communications Kansas ("Cox"), which operates cable systems in the Topeka, Kansas Designated Market Area (the "System").
2. I have read the foregoing "Opposition to Application for Review" (the "Opposition") and I am familiar with the contents thereof.
3. Contrary to the representations made in the Application for Review filed by KSQA in this matter, KSQA has never requested carriage on Channel 22 of the System.
4. The facts contained herein and within the foregoing Opposition are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry. The Opposition is well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.
5. I declare under penalty of perjury that the foregoing is true and correct



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Executed on: December 3, 2012