

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COXCOM, LLC, d/b/a COX
COMMUNICATIONS,

Plaintiff,

v.

SUPER TOWERS, INC., and
WNAC, LLC,

Defendants.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff CoxCom, LLC, d/b/a Cox Communications, (“Cox”) brings this civil action to obtain equitable and other relief against Defendants Super Towers, Inc. (“Super Towers”) and WNAC, LLC (“WNAC”).

INTRODUCTION

1. This action seeks to redress the wrongful conduct that Defendants committed against Cox with respect to broadcast television station WNAC-TV, licensed by the Federal Communications Commission (“FCC”) to serve the Providence, Rhode Island—New Bedford, Massachusetts market. Since 2017, Cox has retransmitted on its cable systems WNAC-TV’s broadcast signal to its local subscribers in the Providence—New Bedford market under a negotiated retransmission consent agreement with Defendants, as required by federal law. Instead of upholding their contractual and legal obligations, and despite their repeated representations to Cox, Defendants transferred ownership of WNAC-TV but failed to assign the retransmission consent agreement to WNAC-TV’s buyer as the agreement requires. Defendants’ wrongful conduct eviscerates the bargained-for terms of the retransmission consent agreement through its term expiring at the end of February 2023, creates a risk that Cox must pay substantially increased

subscriber licensee fees for WNAC-TV's broadcast signal under the station's new ownership, and potentially exposes Cox to claims for breach of contract from WNAC-TV's new owner, copyright infringement, and FCC regulatory enforcement if Cox continues to exercise its right to retransmit WNAC-TV's broadcast signal under the retransmission consent agreement duly negotiated with Defendants.

PARTIES

2. Plaintiff Cox is a Delaware limited liability company with its principal place of business in Georgia. Cox Communications, Inc. is the sole member of Cox and is incorporated in Delaware with its principal place of business in Georgia.

3. Defendant Super Towers is a Florida corporation with its principal place of business in Massachusetts.

4. Defendant WNAC is a Rhode Island limited liability company with its principal place of business in Massachusetts. Upon information and belief, Super Towers is the sole member of WNAC, and no member is a citizen of Georgia or Delaware.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

6. This Court also has subject matter jurisdiction over Cox's declaratory judgment claim under 17 U.S.C. § 501(c) and 28 U.S.C. §§ 1331 and 1338(a), and supplemental jurisdiction over Cox's state law claims under 28 U.S.C. § 1367 because those claims are so closely related to Cox's federal declaratory judgment claim that they form part of the same case or controversy.

7. This Court has personal jurisdiction over Defendants because they each maintain a principal place of business in Massachusetts and have purposefully availed themselves of the privilege of conducting business in Massachusetts.

8. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to Cox's claims occurred in this District and because Defendants reside in this District.

9. The WNAC Retransmission Agreement,¹ as defined below, is construed in accordance with the laws of the State of Delaware.

10. Massachusetts law governs the statutory unfair competition claim under M.G.L. ch. 93A, § 11 because the parties engaged in trade or commerce in Massachusetts, and Defendants' unfair or deceptive acts or practices occurred primarily and substantially in Massachusetts, where both Defendants reside and have their principal place of business.

FACTUAL BACKGROUND

Retransmission Agreements

11. Most households in the United States get their television programming by subscribing to a multichannel video programming distributor ("MVPD"), such as a cable or satellite operator, which provides subscribers with access to a variety of news, sports, and general entertainment channels, including local broadcast television stations licensed by the FCC to serve a Nielsen-defined designated market area ("DMA"). Under federal law, MVPDs must obtain stations' consent to retransmit their signals.

¹ Cox incorporates by reference the WNAC Retransmission Agreement, which is confidential by its terms. Cox includes certain terms of the WNAC Retransmission Agreement as necessary and as permitted under Section 16 of the WNAC Retransmission Agreement. If required, Cox will file the WNAC Retransmission Agreement under seal.

12. The Communications Act of 1934, as amended, requires MVPDs to obtain consent from certain local broadcast television stations in order to retransmit such stations' signals to subscribers. More specifically, MVPDs are not permitted to "retransmit the signal of a broadcasting station, or any part thereof, except with the express authority of the originating station" 47 U.S.C. § 325(b).

13. The Copyright Act grants copyright holders several "exclusive rights to do and to authorize" use of their works, including "in the case of . . . audiovisual works, to perform the copyrighted work publicly." 17 U.S.C. § 106(4). In the context of broadcast television, this includes the exclusive right to transmit a performance of the work to the public. 17 U.S.C. § 101. MVPDs are subject to compulsory licensing schemes to allow the retransmission of broadcasts containing copyright works, which are further conditioned on compliance with the "rules, regulations, or authorizations of the Federal Communications Commission." *See* 17 U.S.C. §§ 111, 119, 122; 47 U.S.C. § 325(b).

14. MVPDs and the owners of broadcast television stations enter into retransmission consent agreements to establish the terms and conditions for retransmission of stations' signals, including compliance with the Communications Act and the Copyright Act.

15. Retransmission consent agreements commonly include after-acquired station and assignment provisions in the event the broadcast owner purchases or sells a television station from or to another broadcast owner through merger or acquisition, which is a common occurrence in recent years as the broadcast industry consolidates and owners grow or liquidate their television station portfolio.

16. After-acquired station and assignment provisions in retransmission consent agreements govern how an owner's television station(s) is treated upon the purchase or sale of a

station, ensure that only one transmission consent agreement with an MVPD applies with respect to one or more television stations, avoid the inconvenience of having to renegotiate the agreement every time a station changes ownership, and ensure certainty about which agreement applies in a change in ownership.

The WNAC Retransmission Agreement

17. As part of its business, Cox enters into retransmission agreements to retransmit local broadcast television stations in various markets.

18. Cox has a Retransmission Consent Agreement with Super Towers and WNAC that authorizes Cox to retransmit WNAC-TV's broadcast signal in the Providence, Rhode Island—New Bedford, Massachusetts television market (“WNAC Retransmission Agreement”).

19. The WNAC Retransmission Agreement became effective on March 1, 2017, was amended and extended on February 11, 2020, and expires at 11:59 p.m. Eastern Standard Time on February 28, 2023.

20. Neither Super Towers, WNAC, nor Cox has terminated the WNAC Retransmission Agreement.

21. Under Section 3(a) of the WNAC Retransmission Agreement, Super Towers and WNAC granted Cox the non-exclusive right to retransmit WNAC-TV's broadcast signal in the Providence, Rhode Island—New Bedford, Massachusetts market during the term of the WNAC Retransmission Agreement:

3. Consent to Carriage; Signal Delivery.

(a) Broadcaster [Super Towers and WNAC] hereby grants to Operator [Cox] the non-exclusive right (but not the obligation, except as otherwise provided in Section 4 below) to receive, retransmit and distribute each Station's Digital Signal (including any portion thereof and whether licensed under the current call letters or any successor call letters thereto) in an analog, SD or HD format, over each System that (i) serves Subscribers

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