

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

In the Matter of:)	
)	
Costa de Oro Television, Inc.)	
)	
v.)	
)	
Cox Communications, Inc.)	CSR 6050-M
)	
and)	
)	
Comcast Corporation)	CSR 6073-M
)	
Request for Mandatory Carriage)	
of Television Station KJLA-TV, Ventura,)	
California)	

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2003

Released: April 16, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Costa de Oro Television, Inc. ("Costa"), licensee of television broadcast station KJLA-TV (Ind. Ch. 57), Ventura, California ("KJLA"), has filed must carry complaints with the Commission pursuant to Sections 76.7 and 76.61(a)(3) of the Commission's rules, claiming that Cox Communications ("Cox")¹ and Comcast Corporation [formerly MediaOne] ("Comcast")² have failed to commence carriage

¹ Cox's **Los Angeles** cable system serves the following communities: (1) Rolling Hills; (2) Rancho Palos Verdes; (3) Palos Verdes Estates; (4) Los Angeles (portions thereof); (4) Rolling Hills Estates; (5) San Pedro Naval; and (6) Fort MacArthur AFB. Cox's **Orange County** cable system serves the following communities: (1) Aegean Hills; (2) South Laguna; (3) Irvine; (3) Newport Beach; (4) San Clemente; (5) Tustin; (6) Laguna Beach; (7) Laguna Niguel; (8) San Juan Capistrano; (9) Dana Point; (10) Capistrano Beach; (11) Silverado Canyon; (12) Trabujo Canyon; (13) Modjeska Canyon; (14) Coto De Caza; (15) Lake Forest; (16) Emerald Bay; (17) Laguna Hills; (18) Rancho Santa Margarita; (19) Portola Hills; (20) Orange; (21) Foothill Ranch; (22) Mission Viejo; (23) El Toro; (24) Newport Coast; and (25) Aliso Viejo.

² Comcast's **Compton** cable system serves the following communities: (1) Athens; (2) Compton; (3) Firestone; (4) Florence; (5) Los Angeles (portions thereof); (6) Maywood; and (7) Willow Brook. Comcast's **Bowcroft** cable system serves the following communities: (1) Carson; (2) Harbor City; (3) Lomita; (4) Los Angeles; (5) San Pedro; (6) Wilmington; (7) South El Monte; and (8) Lakewood. Comcast's **Corona** cable system serves the following communities: (1) Covina; (2) Los Angeles (portions thereof); (3) Pomona; (4) Corona; and (5) Riverside. Comcast's **Cypress** cable system serves the following communities: (1) Bell Gardens; (2) Bellflower; (3) Downey; (4) Hawaiian Gardens; (5) La Mirada; (6) Lynwood; (7) Paramount; and (8) Santa Fe Springs. Comcast's **Orange County** cable system serves the following communities: (1) Costa Mesa; (2) Cypress; (3) Lapalma; (4) Tustin; and (5) Orange. Comcast's **Riverside** cable system serves the following communities: (1) Lake Elsinore; (2) Murrieta Hot Springs; (3) Riverside; (4) The Farm; (5) California Oaks; and (6) Menifee.

of KJLA on their cable systems serving several southern California communities (the “Communities”).³ Both Cox and Comcast have filed Oppositions and Costa has filed replies. For the reasons stated below, we deny the relief Costa seeks.

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 KJLA, are entitled to assert mandatory carriage rights on cable systems located within the station’s market.⁴ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁵ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. KJLA has been the subject of several must carry disputes and market modification decisions involving cable operators in the Los Angeles DMA, including Cox and Comcast. Prior to 2000, KJLA was assigned by Arbitron to the Santa Barbara, California Area of Dominant Influence (“ADI”), for cable carriage purposes, and had sought modification of its market to include certain communities within the station’s Grade A and Grade B contours in the Los Angeles ADI. In response to its petition, the Cable Services Bureau (now the Media Bureau or “Bureau”) limited KJLA’s television market to communities within the station’s Grade A contour in the Los Angeles ADI.⁶ In a related action, the Bureau granted a market modification petition filed by MediaOne which similarly curtailed KJLA’s carriage rights in the Los Angeles television market.⁷ Costa’s requests for mandatory carriage in the communities served by Cox and MediaOne were dismissed as the operators were under no legal obligation to carry the station’s signal. For the 2000 retransmission consent-must carry election cycle, and all such cycles thereafter, the Commission has used Nielsen’s DMAs to determine market boundaries for broadcast signal carriage purposes.⁸ Nielsen has assigned KJLA to the Los Angeles DMA. Costa filed Applications for Review of the Bureau’s decisions broadly arguing, *inter alia*, that it is a Los Angeles television station with the right to request mandatory carriage on all cable systems located in the Los Angeles DMA.⁹ These Applications remain pending before the Commission.

III. DISCUSSION

4. Costa argues that KJLA is a station licensed to a community within the Los Angeles DMA, and since there is no final order from the Commission removing KJLA from that market, it is

³ 47 C.F.R. §§ 76.7 and 76.61(a)(3).

⁴ 8 FCC Rcd 2965, 2976-77 (1993).

⁵ Section 614(h)(1)(C) of the Communications Act, 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. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast station’s market be defined by Nielsen Media Research’s DMAs.

⁶ *Costa de Oro Television, Inc.*, 15 FCC Rcd 12637 (2000) (“Costa de Oro”).

⁷ *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386 (2000) (“MediaOne”).

⁸ 47 C.F.R. § 76.55(e).

⁹ The United States Court of Appeals for the District of Columbia Circuit upheld the Commission’s decision that the market determinations rendered prior to the ADI/DMA transition continue to be binding on parties in carriage cycles occurring after the transition. See *Costa de Oro Television v. FCC*, 294 F.3d 123 (D.C. Cir. 2002).

entitled to carriage on the Cox and Comcast systems in the DMA¹⁰ Costa states that if the Bureau is not inclined to grant the must carry complaints because of the pendency of the Applications for Review, it seeks a declaratory ruling stating that, in the event the Commission grants it Applications, and declares KJLA to be a must carry station, KJLA will be allowed to enforce those rights during the 2003-2005 election cycle against Cox and Comcast.¹¹

5. Costa adds that KJLA will soon commence broadcasting of KJLA-DT (Ch. 49), its paired digital facility, from the Mt. Wilson antenna farm, where nearly all of the stations licensed to the Los Angeles DMA are located.¹² Costa states that KJLA-DT will be providing a signal contour comparable to the network affiliates in the market, and that its coverage area will encompass all of the cable systems at issue here. Costa asserts that this circumstance provides an alternative justification for the Bureau to grant the complaints immediately.

6. Cox and Comcast argue that Costa does not have standing to bring its complaints because KJLA does not qualify as a local commercial television station insofar as its systems are concerned.¹³ Cox and Comcast assert that KJLA does not provide a good quality signal to their respective headends and, in any event, the communities are not part of KJLA's television market per the Order of the Commission's then Cable Services Bureau.¹⁴ Cox asserts that, other than the launch of its digital signal, which has no relevance to KJLA's analog carriage rights or the effectiveness of the Bureau's prior determination, Costa has not asserted any changes to the facts considered by the Bureau in its earlier decisions.¹⁵

7. Cox also argues that Costa's filing is untimely because it has not demanded carriage.¹⁶ It states that the letters Costa sent to Cox in September 2002 do not qualify as "demand letters" under the Act or the Commission's rules. Cox asserts that Costa did not explicitly notify it in writing of its alleged failure to honor KJLA's must carry rights or provide any theory under which Cox could be determined to have violated the mandatory carriage provisions. By failing to send Cox demand letters, Costa has not satisfied the legal prerequisites to filing a carriage complaint. Cox argues that the Complaint is therefore procedurally deficient and must be dismissed.¹⁷

8. Costa argues that each of Cox's defenses is without merit. First, it argues that a station's poor signal quality cannot void a carriage request because a licensee is permitted to improve its signal if it is willing to pay for the necessary equipment.¹⁸ As for Cox's argument that KJLA is not a local television signal that may demand carriage, Costa argues that there is no final Commission Order to that effect; since the full Commission has not yet ruled on KJLA's carriage rights in the Los Angeles DMA, the case has not been ultimately resolved.¹⁹ With regard to the prematurity of its Complaint, Costa argues that its

¹⁰ Costa Complaints at 6.

¹¹ Costa (Cox) Complaint at 7; Costa (Comcast) Complaint at 8.

¹² Costa (Cox) Complaint at 6; Costa (Comcast) Complaint at 7.

¹³ Cox Opposition at 1; Comcast Opposition at 2.

¹⁴ See Comcast Opposition at 2. Comcast states that, in the unlikely event that the Commission ultimately grants KJLA's Applications for Review, it will not claim that KJLA waived its must carry rights by failing to file an additional complaint during the pendency of the Commission's review. *Id.*

¹⁵ Cox Opposition at 3.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 7.

¹⁸ Costa (Cox) Reply at 2; Costa (Comcast) Reply at 5.

¹⁹ Costa (Cox) Reply at 5 and n 13.

letters to Cox clearly indicate that it indeed had requested carriage in a timely manner.²⁰ Costa additionally asserts that Cox has failed to explain the status of many cable systems that the Commission's records indicate are owned and operated by Cox; KJLA should be carried on these systems if they are, in fact, owned by Cox.²¹

9. We deny Costa's must carry complaints. While the Commission has not yet acted on the pending Applications for Review, the Bureau's market modification decisions remain in full force and effect. Thus, KJLA is not a local station entitled to mandatory carriage on either Cox or Comcast's cable systems. If the Commission, at some future date, reverses the Bureau's Orders, then the station may assert its right to carriage as is appropriate. As for KJLA's digital station, we note that the carriage status of that signal is not at issue in this proceeding. Costa's assertions about KJLA-DT's coverage area are irrelevant to the carriage dispute currently before the Commission. Given our holding here, we need not address the signal quality and procedural arguments raised by the parties.

10. As for Costa's claim that the cable operators have not sufficiently stated which systems they own, or where they operate, we expect the parties to discuss and clarify KJLA's status in each relevant cable community.²² Minor matters regarding system and community identification are best clarified through private discussions between cable operators and television broadcast stations.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaints against Cox Communications (CSR 6050-M) and Comcast Corporation (CSR 6073-M), in the above noted communities, filed by Costa de Oro Television, Inc. **ARE DENIED**.

12. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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²⁰ *Id.* at 6 and n 17 (citing its letters to Cox, dated September 9, 2002, stating, in part, "This will further notify you that the Station requests carriage on Channel 57").

²¹ *Id.* at 8. In its Opposition, Comcast also states that Costa has claimed that some of its CUIDs are incorrectly identified. *See* Comcast Opposition at 3. Costa states, without clarification, that it should be carried on all Comcast systems not subject to the earlier market modifications. Costa (Comcast) Reply at 5.

²² While the names of the communities may be new or different, the cable systems serving those communities are the same that were at issue in the previous Cox and Comcast market modification proceedings.

²³ 47 C.F.R. § 0.283.