

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

In the Matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSR-6088-M
MediaCom, LLC)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 2003

Released: May 7, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California (“KXLA”) filed the above-captioned complaint against MediaCom, LLC (“MediaCom”), for its failure to carry KXLA on its cable systems serving Argus, Pioneer Point, Trona, Westend, Ridgecrest, China Lakes NWC, and Inyokern, California.¹ An opposition to this petition was filed on behalf of MediaCom to which KXLA replied. For the reasons discussed below, we grant KXLA’s complaint.

II. DISCUSSION

2. Pursuant to Section 614 of the Communications Act 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 are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A

¹KXLA also included the communities of Sun City and Ridgecrest in its complaint. Both of these communities were the subject of a prior must carry complaint filed by KXLA against MediaCom that the Bureau granted. *See Rancho Palos Verdes Broadcasters, Inc. v. MediaCom Communications Corporation*, 16 FCC Rcd 15830 (2001). A subsequent petition for reconsideration filed by MediaCom seeking to have KXLA’s carriage conditioned on the station’s ability to deliver a good quality signal was also granted. *See Rancho Palos Verdes Broadcasters, Inc. v. MediaCom Communications Corporation*, 17 FCC Rcd 544 (2002). Currently, there is a petition for order to show cause pending, involving the community of Sun City only, that was filed on behalf of KXLA for MediaCom’s failure to cooperate in allowing KXLA access to test its signal at MediaCom’s principal headend site. In view of the the current pending petition regarding the community of Sun City, that community will not be included as part of this petition. The community of Ridgecrest, however, will be included because it serves as the headend site for the communities of China Lakes NWC and Inyokern, communities that were not incorporated in the prior action.

²8 FCC Rcd 2965, 1976-2977 (1993).

station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³

3. In support of its complaint, KXLA states that it is an authorized full-service UHF television station licensed to a community located within the Los Angeles DMA as are the communities served by MediaCom. KXLA indicates that by letter dated September 27, 2002, it requested must carry status on the MediaCom cable systems, pursuant to Section 76.64(f) of the Commission's rules, beginning with the January 1, 2003 election period.⁴ KXLA states that MediaCom failed to respond to this request and, as a result, it filed the instant complaint within 60 days of MediaCom's failure to respond pursuant to Section 76.61(a)(5)(ii) of the Commission's rules.⁵ KXLA maintains that it can provide a good quality signal to MediaCom's principal headends. It states that it has arranged for satellite delivery of its station, at its own expense, to other cable headends in the Los Angeles DMA and has advised MediaCom that it is prepared to use this means of delivery if necessary.⁶ KXLA therefore requests that its complaint be granted and the Bureau order MediaCom to commence carriage of its signal.

4. In opposition, MediaCom argues that KXLA fails to provide an adequate signal to the subject cable systems and failed to demonstrate its ability to deliver a good quality signal using acceptable alternative means.⁷ MediaCom states that it has conducted signal test measurements of KXLA at the three principal headends serving the cable systems at issue and these measurements indicate that KXLA delivers no signal at all.⁸ As a result, MediaCom maintains that KXLA's complaint should be denied.

5. In reply, KXLA argues that MediaCom's reliance upon the signal strength requirement in Section 614(h)(1)(B)(iii) of the Act is misplaced because this provision defines a local commercial television station" in terms of technical signal levels solely for purposes of allocating the responsibility for providing a good quality signal to a cable headend.⁹ KXLA states that it does not dispute that it bears the responsibility for delivering a good quality signal to MediaCom's headends. KXLA maintains, however, that MediaCom is also misplaced in its failure to acknowledge that broadcast stations have the prerogative to deliver a good quality signal by alternative means, at their own expense.¹⁰ KXLA states that its offer to deliver its signal via satellite to MediaCom's principal headend sites fully complies with any and all of the regulatory obligations imposed on broadcasters.¹¹

6. We will grant KXLA's complaint. Under the Commission's must carry rules, cable

³Section 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. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) of the Commission's rules, 47 C.F.R. §76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(e).

⁴Complaint at Exhibit B; *see also* 47 C.F.R. § 76.64(f).

⁵Complaint at 2; *see also* 47 C.F.R. § 76.61(a)(5)(ii).

⁶Complaint at 3.

⁷Opposition at 1.

⁸*Id.* at Exhibit A.

⁹Reply at 2; *see also* 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁰Reply at 3; *see also* 47 C.F.R. § 76.55(c)(3); *Paxson Communications Corporation*, 13 FCC Rcd 20972, 20973 (1998).

¹¹Reply at 5.

operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage.¹² A review of the signal strength tests provided by MediaCom, however, indicates that the tests were not conducted employing good engineering practices. Specifically, in performing its tests, MediaCom used a 10-foot dipole antenna. Use of a directional type of antenna is generally required in conducting such tests and, at a minimum, the tests should have been conducted at a height of 30-feet.¹³ We cannot conclude, therefore, that MediaCom has shown that KXLA fails to provide a good quality signal to MediaCom's principal headends. We note that should properly conducted tests prove that KXLA does not deliver a good quality signal, KXLA has offered to deliver its signal at its own expense via alternative means. We find satellite delivery to be an acceptable alternative pursuant to Section 76.55(c)(3) of the Commission's rules.¹⁴

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Rancho Palos Verdes Broadcasters, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. MediaCom, LLC **IS ORDERED** to commence carriage of KXLA on its cable systems serving Argus, Pioneer Point, Trona, Westend, Ridgecrest, China Lakes NWC, and Inyokern, California, sixty (60) days from the release date of this order.

8. **IT IS FURTHER ORDERED** that KXLA shall notify MediaCom of its channel position elections within thirty (30) days from the release date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁵

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹²See *Must Carry Order*, 8 FCC Rcd at 2990.

¹³It should be noted that if MediaCom is receiving all of its other signals at a greater height, then KXLA's signal should have been tested at the same height as those signals.

¹⁴47 C.F.R. § 76.55(c)(3).

¹⁵47 C.F.R. §§ 76.57 and 76.64(f).

¹⁶47 C.F.R. § 0.283.