

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

In the Matter of:)	
)	
KVMD Corporation)	CSR-6032-M
)	CSR-6035-M
Must Carry Complaints)	CSR-6049-M
)	CSR-6059-M
)	CSR-6060-M
)	CSR-6070-M
)	
Time Warner Cable)	CSR-6039-A
)	
Petition for Special Relief)	
)	

ORDER

Adopted: January 13, 2003

Released: January 17, 2003

By the Deputy Chief, Media Bureau:

1. KVMD Corporation (“KVMD” or “station”), permittee of station KVMD-DT, Twentynine Palms, California, has filed complaints against Time Warner Cable, AT&T Broadband, News-Press & Gazette, Citizens Cable, and Sierra Dawn Homeowners Association (“cable operators”) because of the cable operators’ refusal to carry the station’s digital television signal on their respective cable systems. Both the station and the cable systems are located in the Los Angeles Designated Market Area (“DMA”).¹

2. KVMD advised the cable operators that it was in the process of returning its analog license to the government and transitioning to a solely digital television service and was therefore entitled to assert carriage rights.² In response to the carriage request and complaints, Time Warner filed a market modification request, pursuant to Section 614(h) of the Communications Act (“Act”),³ seeking to exclude its communities from the station’s market so that it would be under no obligation to carry KVMD’s signal on its cable systems.⁴

¹ KVMD’s city of license, Twentynine Palms, is physically located in San Bernadino County, on the eastern side of the Los Angeles DMA.

² KVMD commenced analog television service on Channel 31, as of December 1, 1997. The station commenced digital television service on Channel 23, pursuant to Special Temporary Authority, on July 29, 2002.

³ 47 U.S.C. § 614(h)(1)(c).

⁴ AT&T Broadband and the other named cable operators have not filed market modifications in response to KVMD’s complaint.

3. On September 25, 2002, KVMD informed the Commission of its intention to discontinue operation of its analog broadcast system as of January 1, 2003.⁵ On December 19, 2002, the Media Bureau, by letter ruling, declined to authorize KVMD to discontinue its analog operation.⁶ As noted in this ruling, existing analog stations, like KVMD, may not terminate their analog service prior to completion of the DTV transition unless they first obtain the Commission's authority for such action.⁷ The Bureau denied the Station's request because, *inter alia*, KVMD failed to properly request or justify return of its analog license.⁸

4. With regard to cable carriage, the Commission has concluded that cable operators must carry the digital signals of "digital-only" local commercial and noncommercial stations.⁹ The digital-only carriage requirement includes new digital television stations and television stations that receive Commission authority to return their analog spectrum and broadcast only a digital signal. However, the Commission has not yet defined the must carry rights of television broadcast stations operating both analog and digital carriage facilities during the transition period.

5. Given that KVMD has not been authorized to terminate its analog facility and because the Commission has not yet issued final digital television carriage rules relevant to its circumstance, we find that the Station's digital signal is ineligible for carriage at the present time. KVMD's complaints against the named cable operators are dismissed as unripe for review. Time Warner Cable's related market modification petition is dismissed as moot.

6. Accordingly, **IT IS ORDERED** that the must carry complaints filed by KVMD Corporation against Time Warner Cable, AT&T Broadband, News Press & Gazette, Citizens Cable, and Sierra Dawn Homeowners Association **ARE DISMISSED**.

7. **IT IS FURTHER ORDERED** that the petition for special relief filed by Time Warner Cable **IS DISMISSED**.

8. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

⁵ See KVMD(TV), Twentynine Palms, CA; Request to Discontinue Analog Operation (Facility ID No. 16729), filed Sept. 25, 2002.

⁶ See Letter to Barry A. Friedman, Esq., Thomson Hine, LLP from W. Kenneth Ferree, Chief, Media Bureau, FCC, dated Dec. 19, 2002. ("Ferree Letter").

⁷ *Id.*, citing *Advanced Television Systems and Their Impact on the Existing Broadcast Television Service*, 12 FCC Rcd 12809, 12832-33 (1997 (R&O)).

⁸ See *Ferree Letter* at 2.

⁹ See *Carriage of Digital Television Broadcast Signals, First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 (2001).

¹⁰ 47 C.F.R. § 0.283.