

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

|  |   |            |
|--|---|------------|
| In the Matter of:                      | ) |            |
|  | ) |            |
| Avenue TV Cable Service, Inc.          | ) | CSR-5697-A |
|  | ) |            |
| Rancho Palos Verdes Broadcasters, Inc. | ) | CSR-5713-M |
| v.                                     | ) |            |
| Avenue TV Cable Service, Inc.          | ) |            |
|  | ) |            |
| Petition for Reconsideration           | ) |            |
|  | ) |            |
| Rancho Palos Verdes Broadcasters, Inc. | ) | CSR-6083-M |
| v.                                     | ) |            |
| Avenue TV Cable Service, Inc.          | ) |            |
|  | ) |            |
| Request For Carriage                   | ) |            |

**ORDER ON RECONSIDERATION**

**Adopted: August 12, 2004**

**Released: August 19, 2004**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California (“KXLA”), has requested reconsideration of the Cable Services Bureau’s (“Bureau”) decision granting the market modification request of Avenue TV Cable Service, Inc. (“Avenue Cable”) to exclude KXLA from its cable system serving Ventura, California, and the unincorporated portions of the western half of Ventura County, California.<sup>1</sup> An opposition to this petition was filed on behalf of Avenue Cable to which KXLA replied.<sup>2</sup>

**II. BACKGROUND**

2. In its request for modification, Avenue Cable sought to exclude the community of Ventura and surrounding unincorporated portions of Ventura County from KXLA’s market. Both

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<sup>1</sup>*Avenue TV Cable Service, Inc.*, 16 FCC Rcd 16436 (2001) (“*Bureau Order*”).

<sup>2</sup>We note that KXLA filed a second must carry complaint (CSR-6083-M) raising the same issues that are being contested in the reconsideration before us. Avenue Cable has requested that the complaint be dismissed as duplicative. We concur.

Avenue Cable's system and KXLA's city of license are part of the Los Angeles, California designated market area ("DMA"). The Bureau granted Avenue Cable's request, finding that Avenue Cable demonstrated that KXLA failed to adequately meet the four statutory market modification factors.<sup>3</sup> Based on the information provided by Avenue Cable, KXLA was found to be geographically distant, with no history of carriage, no Grade B contour, no locally-focused programming, and no viewership in the subject community.

### III. DISCUSSION

3. In support of its request, KXLA states that since the time of the *Bureau Order*, it was granted Special Temporary Authority ("STA") to move its transmitter site from Santa Catalina Island, California to the Mt. Wilson antenna farm located in Pasadena, California.<sup>4</sup> KXLA states that this move has been accomplished and the station has commenced operations from Mt. Wilson.<sup>5</sup> KXLA notes that while it admittedly commenced its operations at a lower power and a lower antenna height than that contemplated in its application for modification of its construction permit, transmission from the new location has still substantially increased its coverage of the Los Angeles DMA.<sup>6</sup> KXLA contends that, at full power, its relocation will result in a 68 percent increase in Grade B coverage and that such coverage will include Ventura, the location of Avenue Cable's principal headend.<sup>7</sup> KXLA points out that 10 of the 13 broadcast stations currently carried by Avenue Cable are licensed to communities located in the Los Angeles market and all transmit from Mt. Wilson.<sup>8</sup> KXLA argues that it is apparent that the geographic factors cited in the *Bureau Order* do not hamper Avenue Cable's carriage of these other stations.<sup>9</sup> KXLA maintains that the grant of its STA and the commencement of operations from Mt. Wilson are evidence that the grant of its construction permit to operate at full power from Mt. Wilson can be expected. As a result, KXLA maintains that the *Bureau Order's* reliance on Grade B measurements taken from KXLA's former transmitter site are not valid. KXLA submits, therefore, that the *Bureau Order* should be reconsidered and reversed, both with respect to the modification request and the must carry complaint.<sup>10</sup>

4. In opposition, Avenue Cable argues that the changed circumstances referred to by KXLA do not justify reconsideration of the *Bureau Order*. First, Avenue Cable maintains that the grant of KXLA's STA does not constitute approval to modify KXLA's construction permit. Avenue Cable states that in the *Bureau Order*, the Bureau noted that while KXLA's application for modification of its

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<sup>3</sup>In evaluating market modification requests, the Communications Act provided that the Commission pay particular attention to the value of localism by taking into account the following four factors: (I) whether the station, or other stations located in the same area, have been historically carried on the cable system; (II) whether the television station provides coverage or other local service to the cable system communities; (III) whether other television stations eligible to be carried by the cable system provide local interest programming; and (IV) evidence of viewership in the subject communities. See 47 U.S.C. § 534(h)(1)(C)(ii).

<sup>4</sup>Reconsideration at 2.

<sup>5</sup>*Id.*

<sup>6</sup>File No. BPCT-200101131ABS, *Public Notice*, Report No. 24923 (released February 15, 2001).

<sup>7</sup>Reconsideration at Exhibit A.

<sup>8</sup>*Id.* at 3.

<sup>9</sup>*Bureau Order*, 16 FCC Rcd at 16444-16445.

<sup>10</sup>KXLA states that, alternatively, the Bureau should reconsider the matter now and reverse the decision upon the grant of KXLA's construction permit for permanent operations at the Mt. Wilson site.

construction permit was pending, the issue of service to Ventura was not timely.<sup>11</sup> Avenue Cable points out that this situation has not changed as KXLA's construction permit has not been granted, the station is not operating at full power and KXLA is not providing a Grade B signal to the cable system's principal headend.<sup>12</sup> Secondly, Avenue Cable asserts that, even if KXLA's operations did change with the grant of its STA, such change would not affect the Commission's decision to grant the requested market modification. Avenue Cable states that the *Bureau Order* identified two reasons for grant of the requested market modification – KXLA's failure to provide Grade B coverage to Ventura and its failure to provide local programming.<sup>13</sup> Avenue Cable states that grant of KXLA's STA does not alter the station's failure to meet these criteria. As a result, Avenue Cable argues that KXLA's petition should be denied.

5. In reply, KXLA reiterates that the relocation of its facilities constitutes changed circumstances which warrant reconsideration. KXLA points out that the *Bureau Order* stated that “[s]hould [KXLA]’s transmission facilities be relocated in the future, however, [KXLA] may seek further consideration.”<sup>14</sup> KXLA argues that the Bureau therefore contemplated that such a relocation would not only impact KXLA's ability to provide local programming, but also Avenue Cable's must carry obligations as the move would improve signal quality and Grade B coverage.<sup>15</sup> Moreover, KXLA maintains that, contrary to Avenue Cable's assertions, the Bureau did not condition reconsideration upon the grant of an application to modify KXLA's facilities, but rather on the actual relocation of such facilities.<sup>16</sup> KXLA concedes that, through no fault of its own, its application for modification of its license has yet to be granted. Despite this, however, KXLA argues that the Bureau failed to fully analyze or consider the impact of KXLA's proposed permanent operations at Mt. Wilson upon the Grade B/local service factor of the market modification standard in its haste to grant Avenue Cable's market modification petition.<sup>17</sup> KXLA maintains that, because the measurements taken from its previous transmitter site, which were the underlying basis for the *Bureau Order*, are no longer valid, the Bureau should at the very least have held its decision in abeyance pending a review of the new measurements taken from the Mt. Wilson site. KXLA concludes that if the Bureau accepts Avenue Cable's claim that grant of an STA does not constitute “changed circumstances,” it will lead to an inconsistent and patently unfair result.

6. We agree with the arguments raised by Avenue Cable herein and will deny KXLA's petition for reconsideration. While it is true that the Bureau gave KXLA the option to seek reconsideration if it moved its facilities, there was no express statement that, in doing so, KXLA would be guaranteed a grant of its request based solely on a relocation. Just like any other petitioner, KXLA was expected to demonstrate that, based on changed circumstances, it now met the market modification criteria. In this instance, KXLA has failed to provide any information that it currently meets the market

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<sup>11</sup>*Bureau Order*, 16 FCC Rcd at 16444-16445.

<sup>12</sup>Avenue Cable states that KXLA did not provide its current Grade B contour while operating at reduced power, but a review of its expected Grade B contour when operating at full power reveals that KXLA's Grade B contour would still fail to reach Ventura.

<sup>13</sup>*Bureau Order*, 16 FCC Rcd at 16445-16446.

<sup>14</sup>*Id.* at 16445.

<sup>15</sup>Reply at 2, citing *Rancho Palos Verdes Broadcasters, Inc.*, 16 FCC Rcd 18499 (2001).

<sup>16</sup>*Id.* at 2.

<sup>17</sup>*Id.*

modification criteria it previously failed to meet. Not only does it still fail to provide Grade B coverage to the subject cable system, despite its relocation, but it has provided no information as to an improvement in locally-focused programming. Market modification decisions are based on the facts as presented and current at the time, and cannot be based on as yet unrealized future events. Moreover, in view of the fact that market modification petitions have a Congressionally-imposed statutory deadline of 120 days for processing, the Bureau was not at liberty, as KXLA suggests, to hold its decision in abeyance.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, that the petition for reconsideration filed by Rancho Palos Verdes Broadcasters, Inc. **IS DENIED**.

8. **IT IS FURTHER ORDERED**, that the must carry complaint filed by Rancho Palos Verdes Broadcasters, Inc. (CSR-6083-M) **IS DISMISSED AS MOOT**.

9. This action is taken pursuant to authority delegated by Sections 0.283 and 1.106 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>18</sup>47 C.F.R. §§0.283 and 1.106.