

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

In the Matter of:
CoxCom, Inc. d/b/a Cox Communications
Gainesville/Ocala
Petition for Determination of Effective
Competition in Gainesville, and Ocala, Florida,
FL0150, and FL01671
CSR 6626-E & CSR 6627-E

ORDER

Adopted: May 23, 2005

Released: May 25, 2005

By the Deputy Chief, Media Bureau:

1. On May 16, 2005, CoxCom, Inc. d/b/a Cox Communications Gainesville/Ocala ("Cox") filed an Emergency Petition for Reconsideration and Motion to Dismiss ("Emergency Petition"). Cox seeks reconsideration of the Media Bureau's May 5, 2005 order granting the Cities of Gainesville and Ocala's, Florida ("Cities") Motion for Extension of Time to file an opposition ("Order") to Cox's Petition for Special Relief ("Special Relief Petition") seeking a determination that the Cities of Gainesville and Ocala are subject to effective competition. The Emergency Petition also requests that the Commission vacate the Order and dismiss the Cities' original Motion for Extension of Time ("Motion"). The Cities filed an opposition, to which Cox replied. After considering the arguments of the parties, we deny Cox's Emergency Petition.

2. On February 11, 2005, Cox filed a Special Relief Petition with the Commission, seeking a determination that its cable systems serving Gainesville/Ocala are subjective to effective competition. The Special Relief Petition was served on Gainesville/Ocala as well as other local franchising authorities ("LFAs"). The Special Relief Petition was placed on Public Notice by the Commission on March 31, 2005. On April 13, 2005, the Cities' counsel requested an extension of time from Cox's counsel. The Cities counsel also notified the Commission staff that the Cities would be seeking an extension of time pursuant to the Commission's rules. On April 14, 2005, Cox's counsel informed the Cities' counsel that Cox would not consent to the Cities' Motion. The Cities claim that their counsel informed Cox's counsel again that the Cities' would be filing a Motion. That same day, the Cities' counsel filed the Motion with the Commission by overnight mail and facsimile, but the Cities' counsel failed to serve either Cox or its

1 In the Matter of CoxCom, Inc. d/b/a Cox Communications Gainesville/Ocala, 2005 WL 1075968 (rel. May 6, 2005).

2 Cox Emergency Petition at 3-4; Cities Response at 1.

3 Cox Emergency Petition at 4; Cities Response at 1.

4 Cities' Response at 2.

5 Id.; Cox Emergency Petition at 4.

6 Cities' Response at 2.

counsel.⁷ On April 20, 2005, Alachua County, another LFA included in Cox's Special Relief Petition, filed an opposition to Cox's Special Relief Petition, and on May 4, 2005, Cox filed a reply.⁸ On May 6, 2005, the Media Bureau issued its Order granting the Cities' Motion. Upon receiving the Order, Cox's counsel contacted the Media Bureau's Deputy Chief, Policy Division, and the Cities' counsel.⁹ The Cities' counsel confirmed that Cox was not served with the Cities' Motion.¹⁰

3. Cox argues that the Bureau should vacate the Order and dismiss the Motion with prejudice because it was based on unsupported factual representations.¹¹ Cox also argues that the Motion fails to satisfy the Commission's established standards and does not comply with the Commission's governing procedural and substantive rules.¹² Moreover, Cox contends that granting the Motion will severely and unfairly prejudice Cox.¹³

4. The Cities readily admit that the Motion was not sent to Cox's counsel, but argue that it was not intentional but merely an oversight by the Counsel's Administrative Assistant.¹⁴ The Cities also argue that Cox will not be severely prejudiced because they have only asked for one extension and the Cities will consent to an extension of time for Cox to submit a reply brief to the Cities' response.¹⁵ Finally, the Cities state that their only desire is to have the Commission consider their positions so that the ultimate decision is based on the merits.¹⁶ Cox has filed a reply to the Cities' response and states that the Cities' arguments confirm that the Motion was based upon inaccurate representations and thus the Cities' only argument is that Cox will not be prejudiced by an extension of time.¹⁷

5. The Commission does not condone or excuse the Cities apparently inadvertent failure to serve Cox with its Motion, however, we consider Cox's request to vacate our Order and dismiss the Motion as unnecessarily harsh in light of the relief sought under Cox's Special Relief Petition. The Special Relief Petition seeks a finding from the Commission that Cox's franchise areas in Gainesville and Ocala are subjective to effective competition from competing multichannel video providers and therefore exempt from the Cities' regulation of its Basic Service Tier ("BST") rates. Thus, although the Cities failure to serve Cox with its Motion is unfortunate and a breach of our rules of procedure, however, balanced against the Cities inability to participate in a proceeding which could strip their ability to regulate BST rates in their franchise areas, we believe that the public interest favors allowing the Cities' to file an opposition to Cox's Special Relief Petition.

6. The Commission is very reluctant to remove a LFA's regulatory authority without the most complete record possible, especially in an instance such as this, where the LFA actively seeks to participate in the proceeding. Furthermore, the Cities have stated that they will consent to an extension of

⁷ Cox Emergency Petition at 4; Cities Response at 2.

⁸ Cox Emergency Petition at 4.

⁹ *Id.*

¹⁰ *Id.*; Cities Response at 2.

¹¹ Cox Emergency Petition at 5.

¹² *Id.* at 5-8.

¹³ *Id.* at 9-11.

¹⁴ Cities Response at 2.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 3.

¹⁷ Cox Reply at 1-2.

time for Cox to submit a reply to the Cities' response. Finally, we do not believe that the Cities' filing of an opposition and Cox's reply will adversely affect the timing of the Commission's processing of Cox's Special Relief Petition.

7. Accordingly, **IT IS ORDERED** that the Emergency Petition for Reconsideration and Motion to Dismiss filed by CoxCom, Inc. d/b/a Cox Communications Gainesville/Ocala **IS DENIED**.

8. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

¹⁸ 47 C.F.R. § 0.283.