

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

In the Matter of:
Rancho Palos Verdes Broadcasting, Inc.
v.
Rapid Communications, L.L.C.
Request for Mandatory Carriage of
Television Station KXLA-TV,
Rancho Palos Verdes, California
CSR-6994-M

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2006

Released: July 3, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Rancho Palos Verdes, Inc., licensee of television broadcast station KXLA-TV, Rancho Palos Verdes, California ("KXLA") filed the above-captioned must carry Complaint against Rapid Communications, L.L.C. ("Rapid"), for failing to carry KXLA on its cable television system serving Needles, California (the "cable community"). Rapid filed a Request for Dismissal of Must Carry Complaint and KXLA responded with an Opposition to Request for Dismissal. For the reasons discussed below, we dismiss KXLA's Complaint, but acknowledge that it has, as indicated below, a contingent right to claim must carry status in the cable community.

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

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 Section 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)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by Nielsen Media Research. 47 C.F.R. § 76.55(e)(2).

3. Section 614 of the Communications Act and the Commission's rules also provide that a commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator.³

4. Prior to KXLA's filing of this must carry Complaint, Frontier, A Citizens Communications Company ("Frontier"), the previous owner of the cable television system in Needles, filed a Petition for Special Relief seeking to modify the Los Angeles, California DMA with respect to KXLA. Frontier requested that Needles be excluded from the television market of KXLA for the purposes of the cable television mandatory broadcast signal carriage rules.⁴ KXLA is located near the Pacific Ocean west of Long Beach at the western boundary of the Los Angeles DMA. Needles is about 228 miles east of Rancho Palos Verdes at the eastern boundary of the Los Angeles DMA, and near the intersection of the California, Nevada and Arizona state lines. In the *Bureau Order* addressing Frontier's petition for special relief, the Media Bureau granted the Petition and excluded Needles from KXLA's market.⁵ KXLA then filed a Petition for Reconsideration of the *Bureau Order*, which the Media Bureau denied in its *Order on Reconsideration*.⁶ KXLA subsequently filed an Application for Review of the *Order on Reconsideration*, which is pending before the Commission.

III. DISCUSSION

5. In its Complaint, KXLA explains that it sought must carry status on Rapid's cable system in Needles in the fall of 2005, and Rapid did not reply. KXLA states that it then filed its Complaint "to assert and preserve" its must carry rights for the 2006-8 must carry cycle during the pendency of its Application for Review. KXLA also requests that, if the Commission grants its Application for Review and reverses the Bureau's *Order on Reconsideration*, that the Commission require Rapid to carry KXLA on its cable system in Needles.⁷

6. Rapid responded by submitting a Request for Dismissal of Must Carry Complaint. Rapid argues that because the *Bureau Order* granted the cable system's market modification request to exclude Needles from KXLA's market, KXLA is not entitled to must carry on its system. Rapid explains that KXLA may not assert must carry rights while its Application for Review is pending because the *Bureau Order* altering its market has not been stayed, and KXLA has never been carried by the cable system. Thus, there is no status quo that needs to be maintained regarding carriage while KXLA's Application for Review is pending.⁸

7. KXLA, in its Opposition to Request for Dismissal, replied that Rapid misunderstands its Complaint. KXLA explains that it did not file its Complaint to obtain immediate carriage on Rapid's cable system while its Application was pending, but to preserve its right to assert must carry during the current election cycle if the Commission reversed the Bureau's *Order on Reconsideration*, and to obtain

³ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁴ 47 C.F.R. §§ 76.51-76.64.

⁵ *Frontier, A Citizens Communications Company*, 18 FCC Rcd 9589 (2003) ("*Bureau Order*").

⁶ *Frontier, A Citizens Communications Company*, 19 FCC Rcd 15439 (2004) ("*Order on Reconsideration*").

⁷ Complaint at 2.

⁸ Request for Dismissal of Must Carry Complaint at 1-4.

mandatory carriage at that time.⁹

8. We dismiss KXLA's must carry Complaint. Because the Commission has not acted on KXLA's Application for Review, the Bureau's market modification decision in the *Bureau Order* and *Order on Reconsideration* remains in effect. Thus, KXLA is not a local station in Needles entitled to mandatory carriage rights on Rapid's cable system. If the Commission reverses the Bureau's Orders, KXLA may assert must carry rights as appropriate.¹⁰ We recognize this as a contingent right of stations appealing market modification orders excluding them from markets. If a subsequent decision reverses a market modification order, a station may assert must carry rights at that time. Thus, there is no need for a station to claim must carry status during the pendency of an appeal to preserve must carry rights, and we will no longer consider complaints of this nature.¹¹

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(d)(3), that the must carry complaint filed Rancho Palos Verdes Broadcasting, Inc. against Rapid Communications (CSR-6994-M) in Needles, California **IS DISMISSED**.

10. This action is taken under authority delegated by Section 0.283 of the Commission's rules, 47 C.F. R § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

⁹ Opposition to Request for Dismissal at 1-2.

¹⁰ *Costa de Oro Television, Inc. v. Cox Communications, Inc. and Comcast Corporation*, 18 FCC Rcd 7103, 7106 (2003).

¹¹ In two recent cases, namely, *KVMD Licensee Co., LLC v. CoxCom, Inc d/b/a Cox Communications Palos Verdes and Cox Communications Orange County*, DA 06-1086 (rel. May 30, 2006), and *KVMD Licensee Co., LLC v. Time Warner Cable*, DA 06-1081 (rel. May 30, 2006), similar must carry complaints from stations were granted. In these cases, as in this proceeding, the stations filed must carry complaints, in an abundance of caution, to protect their carriage rights pending the outcome of appeal proceedings. We held that, although the stations did not currently have status to assert must carry rights because of market modification decisions, the stations had the right to file complaints to preserve their right to assert mandatory carriage contingent on the results of their appeals. While we addressed and granted the relief sought in these cases, we now believe that we should no longer entertain such requests. In doing so, we will conserve Commission resources and relieve stations from filing unnecessary petitions. Instead, we recognize that a station has a right to assert must carry status following the successful appeal of a market modification case. The fact that such station did not elect must carry or lodge a complaint following a denial of carriage while the market modification appeal was pending shall not preclude the assertion of carriage rights at that time.