

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

In the Matter of:	)	
	)	
KVMD Licensee Co., LLC	)	CSR-6990-M
v.	)	
Communications Services	)	
	)	
Request for Carriage	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 2006

Released: July 3, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KVMD Licensee Co., LLC, permittee of station KVMD-DT (Ch. 23), Twentynine Palms, California (“KVMD”), filed the above-captioned complaint against Communications Services (“CS”), for its failure to carry KVMD on its cable system serving the communities of Camarillo, Oxnard, Point Mugu and Ventura, California. A letter in response to KVMD’s petition against CS was filed on behalf of the cable system to which KVMD replied. For the reasons discussed below, we grant KVMD’s request.

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.<sup>1</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>2</sup>

3. In support of its complaint, KVMD states that, by certified letter dated November 22, 2005, it demanded must carry status on CS’s cable system for the 2006-2008 election period, pursuant to Section

<sup>1</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>2</sup>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) of the Commission’s rules 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).

76.61(a)(1) of the Commission's rules.<sup>3</sup> CS rejected this demand on November 30, 2005, based on KVMD's purported failure to deliver a good quality over-the-air signal to the cable system's principal headend.<sup>4</sup> KVMD argues that CS failed to provide any engineering data in its rejection letter to substantiate its claims of poor signal quality, as required by Section 76.61(a)(2) of the Commission's rules.<sup>5</sup> KVMD notes that the Commission has previously held that a bare claim of poor signal quality by a cable operator without the requisite engineering data cannot be relied upon to support a refusal of carriage.<sup>6</sup> Moreover, KVMD states, Section 76.55(c)(3) of the Commission's rules allows a broadcaster to deliver a good quality signal to the cable system by alternative means, as long as it agrees to bear the costs of such delivery.<sup>7</sup> KVMD states that it is committed to delivering a good quality signal to CS' principal headend.<sup>8</sup> As a result, KVMD requests that the Commission grant its request.

4. In a February 9, 2006 follow-up letter to KVMD, a copy of which was served on the Commission, CS submitted engineering data to KVMD which they claim demonstrates that because they cannot get a clear signal on channel 23 (KVMD's over-the-air channel) from Mount Wilson, there would be no possibility of receiving a clear signal from Twenty-Nine Palms, KVMD's city of license, which is farther away.<sup>9</sup> At the same time, they invite KVMD to send their own personnel to make their own signal test.<sup>10</sup>

5. In reply, KVMD reiterates its commitment to provide a good quality signal to CS's principal headend by either satellite or fiber optic delivery and is willing to bear the cost of such delivery.<sup>11</sup> As a result, KVMD argues that CS has no legitimate basis upon which to refuse to carry its signal.

6. We agree with KVMD and will grant its complaint. We find that the representations made by KVMD demonstrate that it is a local commercial television station qualified for carriage on CS' cable system. Under the Commission's must carry rules, cable 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.<sup>12</sup> Although CS belatedly provided KVMD with engineering data, the data submitted is not only

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<sup>3</sup>Complaint at Exhibit A; *see also* 47 C.F.R. § 76.61(a)(1).

<sup>4</sup>Complaint at Exhibit B.

<sup>5</sup>*Id.* at 2, citing 47 C.F.R. § 76.61(a)(2).

<sup>6</sup>*Id.*, citing *Rancho Palos Verdes Broadcasters, Inc.*, 16 FCC Rcd 15827 (2001); *Rancho Palos Verdes Broadcasters, Inc.*, 16 FCC Rcd 15830 (2001).

<sup>7</sup>*Id.*, citing 47 C.F.R. § 76.55(c)(3).

<sup>8</sup>KVMD is an authorized full-service digital UHF station. Its DTV facility is authorized to broadcast on Channel 23 and commenced operations, pursuant to special temporary authority, on July 29, 2002. On June 1, 2003, it discontinued analog operations and commenced digital-only operations, pursuant to Commission authorization. In *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, etc.*, 16 FCC Rcd 2598, 2617 (2001), the Commission concluded that "the signal level necessary to provide a good quality digital television signal at a cable system's principal headend is -61 dBm."

<sup>9</sup>CS Letter at 1.

<sup>10</sup>*Id.*

<sup>11</sup>Reply at 1.

<sup>12</sup>*See Must Carry Order*, 8 FCC Rcd at 2990.

incomplete, but appears to be that of station KTBN-TV, Santa Ana, California, which broadcasts from Mount Wilson. This information is insufficient to establish that KVMD does not currently deliver a good quality signal to CS' principal headend. In any event, KVMD has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.<sup>13</sup> KVMD has made this commitment and by doing so is eligible for mandatory carriage by CS on the subject cable system when it provides a signal which meets the Commission's signal strength criteria.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by KVMD Licensee Co., LLC **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534. Communications Services **IS ORDERED** to commence carriage of KVMD-DT on its cable system serving the communities of Camarillo, Oxnard, Point Mugu and Ventura, California, sixty (60) days from the date on which KVMD delivers a good quality signal to the cable system's principal headend.

8. **IT IS FURTHER ORDERED** that KVMD shall notify CS of its channel position elections thirty (30) days from the date it delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>14</sup>

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>13</sup>47 C.F.R. § 76.55(c)(3).

<sup>14</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>15</sup>47 C.F.R. § 0.283.