

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

In the Matter of:
KM Television of El Dorado, L.L.C.
v.
Cox Communications
Request for Carriage of
Television Station KEJB(TV),
El Dorado, Arkansas
CSR-6286-M

ORDER ON RECONSIDERATION

Adopted: April 10, 2006

Released: April 11, 2006

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. KM Television of El Dorado, L.L.C. ("KM") filed a petition for partial reconsideration of the Media Bureau's Order ("Bureau Order") denying must carry status to KEJB(TV) ("KEJB" or the "Station") on Cox Communications Inc.'s ("Cox") cable systems serving Bastrop, Grambling, Hodge (including East Hodge and North Hodge), Jackson, Jonesboro, Mer Rouge, Quitman, Ruston, Simsboro, Vienna, Union, Winn and Winfield, Louisiana.1 Cox filed an opposition to which KM replied.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in Implementation of 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.2 A station's market for this purpose is its "designated market area" or DMA, as defined by Nielsen Media Research.3 A DMA is a geographic market designation that defines each television market exclusive of

1 KM Television of El Dorado, L.L.C. v. Cox Communications, Inc., 19 FCC Rcd 9889 (2004) ("KM Television").

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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.

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others, based on measured viewing patterns.

3. Pursuant to 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 is not entitled to carriage.<sup>4</sup> One method of doing so is for a cable operator to establish that a subject television station, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>5</sup> Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>6</sup>

### III. DISCUSSION

4. In the initial proceeding, KEJB filed a must carry complaint against Cox for its failure to carry KEJB on a number of cable systems.<sup>7</sup> In response, Cox urged that the petition should be dismissed because: 1) it was procedurally defective in that it failed to comply with the mandatory carriage notification process established by Section 534(d)(1) of the Communications Act and Section 76.61 of the Commission's rules; 2) the station failed to provide a good quality signal to some of the communities involved; and 3) the complaint had not been properly served on franchise authorities in accordance with the service requirements of Section 76.7(a)(3) of the Commission's rules. In the underlying decision, the petition was dismissed for KEJB's failure to comply with the Commission's service requirements.

5. In its reconsideration petition, KEJB does not seek reconsideration of this dismissal, but seeks only a declaration from the Commission that the service provisions of Section 76.7(a)(3) of the rules do not require service of petitions of this type on local franchise authorities, which, KEJB avers, have no interest in proceedings of this type. The Commission in the past, on numerous occasions, identified "interested parties" as including franchising authorities.<sup>8</sup> We note that, although KEJB disputes that local authorities have any interest in matters of this type, the Commission has indicated its belief that these authorities represent the interests of the community involved.<sup>9</sup> Moreover, carriage or non-carriage may have specific consequences for the local regulatory process, such as changes in rates charged for basic tier cable service. KEJB disputes the importance of these interests. Given the long standing existence of the service precedent, however, we do not find that this is a proper proceeding in which to take the action KEJB requests. We note also that in many situations in the past, the Commission has found that failure to comply with the Section 76.7 service requirement was not fatal when petitioners

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§ 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. 47 C.F.R. § 76.55(e).

<sup>4</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>7</sup> *KM Television*, 19 FCC Rcd at 9889.

<sup>8</sup> *KMSO-TV, INC.*, 66 FCC 2d 603, 604 (1977) ("The Commission specifically identified 'interested parties' as franchising authorities ..."). See also *XYZ Television, Inc.*, 65 FCC 2d 459 (1977); *KMSO-TV, INC.*, 57 FCC 2d 251 (1975).

<sup>9</sup> *KMSO-TV, INC.*, 66 FCC 2d 603, 604 (1977) (Noting the need for informed participation by "representatives of those members of the public who would be directly affected by a grant.").

complied with the service obligation after failure was brought to their attention.<sup>10</sup> Petitioners here specifically declined to take that action. Based on the foregoing, we deny KEJB's Petition for Partial Reconsideration and affirm our prior decision.

6. Accordingly, **IT IS ORDERED**, that the Petition for Partial Reconsideration filed by KM Television of El Dorado, L.L.C. **IS DENIED**.

7. This action is taken pursuant to authority delegated by Sections 0.283 and 1.106 of the Commission's rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>10</sup> *XYZ Television, Inc.*, 65 FCC 2d 459 (1977) ("We will not dismiss the petition in this case since XYZ subsequently served the required parties.").

<sup>11</sup> 47 C.F.R. §§ 0.283 and 1.106.