

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

In the Matter of)
CoxCom, Inc. d/b/a) CSR-6252-A
Cox Communications Orange County)
Petition for Reconsideration)
KVMD Licensee Co., LLC) CSR-8074-M
v.)
CoxCom, Inc.)
Request for Carriage)

ORDER ON EMERGENCY PETITION FOR STAY

Adopted: April 9, 2009

Released: April 9, 2009

By the Senior Deputy Chief, Media Bureau:

I. INTRODUCTION

1. On March 13, 2009, CoxCom, Inc. d/b/a Cox Communications Palos Verdes (hereinafter "Cox") filed an Emergency Petition for Stay of the Media Bureau's Order on Reconsideration ("Reconsideration Order"). KVMD Licensee Co., LLC ("KVMD") has filed an Opposition to this emergency petition. We issue this order to clarify that an automatic stay is presently in effect, and we do not need to reach Cox's substantive arguments for issuance of a stay.

II. BACKGROUND

2. The Bureau released an order on March 11, 2004, in which it granted the market modification petition of Cox (and consequently denied must carry petitions by KVMD) and excluded KVMD from 35 Los Angeles and Orange County communities in the Los Angeles DMA (the "Cox communities"). KVMD subsequently filed a petition for reconsideration requesting reversal of the Bureau's decision, and both sides filed several additional pleadings. On February 11, 2009, the Bureau issued its Reconsideration Order, in which it granted and denied in part KVMD's petition for

1 Emergency Petition for Stay of Media Bureau Order on Reconsideration, filed Mar. 13, 2009, by CoxCom, Inc. d/b/a Cox Communications Palos Verdes ("Emergency Petition").

2 Order on Reconsideration, DA 09-224, (rel. Feb. 11, 2009) ("Reconsideration Order").

3 Opposition to Emergency Petition for Stay, filed Mar. 25, 2009, by KVMD Licensee Co., LLC ("Opposition").

4 See CoxCom, Inc. d/b/a Cox Communications Orange County; KVMD Licensee Co., LLC v. Cox Communications, Inc., 19 FCC Rcd 4509, 4518 ¶¶ 17-18 (MB 2004) ("Market Order").

5 See Reconsideration Order at ¶ 2 & n.4 (citing Petition for Reconsideration, filed April 12, 2004 by KVMD Licensee Co., LLC).

reconsideration.⁶ The *Reconsideration Order* reversed the *Market Order* by adding Cox's Los Angeles communities to KVMD's market.⁷ It also required Cox to respond in writing to KVMD's latest request for carriage within 30 days of release of the order and either commence carriage or KVMD's signal or inform the Commission of its reasons for failing to carry the station.⁸

3. On March 13, 2009, Cox filed a Partial Application for Review in addition to the Emergency Petition for Stay now before us. In the petition, Cox asserts that the *Reconsideration Order* should be automatically stayed while Cox's Application for Review is pending.⁹ Cox argues that both the Communications Act and the Commission's rules and policies are designed to maintain the *status quo* in carriage disputes until related market modification proceedings pending before the Commission are completed.¹⁰ Cable operators are, it argues, neither permitted to cease nor required to commence carriage of broadcast stations while a market modification petition is pending.¹¹ Cox believes this stay is automatic, but its petition extensively lays out arguments pursuant to the standards traditionally applied by the Commission for issuing a stay.¹² Meanwhile, KVMD opposes Cox, and argues that contrary Commission precedent exists where the Commission has disavowed the concept of an automatic stay.¹³

III. DISCUSSION

4. Cox is correct that an automatic stay will continue to remain in effect until the disposition of its Partial Application for Review. The dicta alluded to by KVMD in the *WRNN Stay Order* was superseded a year later by the Commission's decision in the *Dynamic Cablevision Stay Order*.¹⁴ Therein, the Commission had been asked whether a station had a right to continued carriage while the Commission considered a market modification decision by the Bureau which had removed certain communities from the station's market.¹⁵ The Commission took that opportunity to explicitly "provide an interpretation of Section 614(h)(1)(C)(iii) ... which [it had] not previously had occasion to interpret."¹⁶ The Commission expressly determined that the statute forbids deletion of a station from a

⁶ *Id.* at ¶¶ 7 & 15.

⁷ *Id.* at ¶ 12. Cox's Los Angeles Communities consist of Los Angeles (San Pedro), L.A. County (unincorporated), Fort McArthur AFB, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, and Rolling Hills, California. *Id.* at n.2.

⁸ *Id.* at ¶ 14.

⁹ *Emergency Petition* at 5.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 5. "Under the standard traditionally applied..., Cox is entitled to a stay if: (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury absent a stay; (3) a stay will not substantially harm other parties, and (4) public interest considerations favor preserving the status quo pending appeal." *Id.* (citing *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 673-74 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Assoc. v. F.P.C.*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

¹³ *Opposition* at 14 (citing *Cablevision Systems Corp.*, 11 FCC Rcd 12669 (1996) (stating that "Moreover, if we were to accept the general arguments for granting the stay raised by Time Warner and Cablevision, every initial market modification decision adverse to any cable operator would be postponed while either the Bureau or Commission acts on the petition for reconsideration or application for review. Such a result would unduly delay qualified television stations from realizing their statutory cable carriage rights.") ("*WRNN Stay Order*").

¹⁴ See *Dynamic Cablevision of Florida, Ltd.*, 12 FCC Rcd 9952 (1997) ("*Dynamic Cablevision Stay Order*").

¹⁵ *Dynamic Cablevision Stay Order*, 12 FCC Rcd at 9958, ¶ 15.

¹⁶ *Id.* at 9958-59, ¶ 15.

cable system “during the pendency of any proceeding pursuant to this subparagraph.”¹⁷

5. Accordingly, the Commission held “that a commercial television station may not be deleted from a cable system until the Commission has completed all administrative proceedings pertaining to a particular market redefinition.”¹⁸ The Commission restricted this automatic stay to the “pendency” of the proceeding before the Commission but not to any subsequent appeal before the courts.¹⁹ This stay is not just applicable in cases where communities are added to a station’s market, but is also applicable in cases where communities are deleted as well. As stated by the Commission in its *Must Carry Order*:

During the pendency of a petition before the Commission, cable operators will be required to maintain the status quo with regard to signal carriage. Not only is this the least disruptive approach, but it also is consistent with Section 614(h)(1)(C)(iii), which prohibits cable operators from dropping any commercial station pending disposition of requests filed pursuant to this section. We reject INTV's proposal to require a signal to be added while a petition is pending, since an adverse Commission decision would result in the unnecessary and potentially harmful disruption of a recently added signal quickly losing carriage.²⁰

Therefore, Cox is correct that an automatic stay is applicable in this proceeding, and will be applicable until 30 days after a decision is made by the Commission on Cox’s Partial Application for Review.²¹ Because we affirm that an automatic stay is provided under our rules in this proceeding, we need not consider Cox’s arguments for why a stay is warranted under the traditional four-factor test.²²

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, that CoxCom, Inc. d/b/a Cox Communications Palos Verdes’ Emergency Petition for Stay **IS DISMISSED AS MOOT** in light of the automatic stay provided under the Commission’s rules.

7. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission’s rules, 47 C.F.R § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division
Media Bureau

¹⁷ *Id.* at 9960, ¶ 20 (citing 47 U.S.C. 534(h)(1)(C)(iii)).

¹⁸ *Id.* at 9960, ¶ 20.

¹⁹ *Id.* at 9960-61, ¶ 22.

²⁰ *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket No. 92-259, Report and Order*, 8 FCC Rcd 2965, 2977, ¶ 46 (1993) (“*Must Carry Order*”).

²¹ *Dynamic Cablevision Stay Order*, at 9961, ¶ 23.

²² *See supra* n.12.