

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

In the Matter of:)	
)	
KVMD Licensee Co., LLC)	CSR-6984-M
v.)	
CoxCom, Inc. d/b/a Cox Communications)	
Palos Verdes and Cox Communications)	
Orange County)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 22, 2006

Released: May 30, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KVMD Licensee Co., LLC, permittee station KVMD-DT, Twentynine Palms, California (“KVMD”), filed the above-captioned complaint against CoxCom, Inc. d/b/a Cox Communications Palos Verdes and Cox Communications Orange County (“CoxCom”), for its failure to carry KVMD on certain cable systems in the Los Angeles DMA.¹ CoxCom filed a motion to dismiss the complaint and a request for sanctions 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.² A

¹The specific communities involved are: 1) Los Angeles County system -- Los Angeles (San Pedro), unincorporated Los Angeles County, Fort MacArthur AFB, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, and Rolling Hills; 2) Orange County system – Alsio Viejo, Camp Pendleton, Coto de Caza, Dana Point, Dove Canyon, El Moro Beach, Marine Air Station (El Toro), Emerald Bay, Foothill Ranch, Roothill/Sonterra, Irvine, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Modjesda Canyon, Newport Beach, Newport Coast, Orange, Rancho Cielo, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Silverado Canyon, Trabuco Canyon, Tustin/Tustin Heights, and Marine Air Station (Tustin).

²8 FCC Rcd 2965, 2976-2977 (1993).

station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³

3. In support of its complaint, KVMD states that in *CoxCom, Inc. d/b/a Cox Communications Orange County*, the Media Bureau granted a market modification filed on behalf of CoxCom to exclude KVMD from carriage on its cable systems serving the cable communities herein.⁴ KVMD states that it filed a reconsideration to seek reversal of this order, but it remains pending before the Commission.⁵ KVMD states that, by certified letters dated November 7, 2005, it demanded must carry status on CoxCom's cable systems within the Los Angeles DMA for the 2006-2008 election period, pursuant to Section 76.61(a)(1) of the Commission's rules.⁶ CoxCom rejected this demand on November 14, 2005.⁷ As a result, KVMD states that it filed this complaint in order to assert and preserve its 2006-2008 must carry rights during the pendency of the above-described reconsideration proceeding. KVMD also requests that, upon reversal of the *CoxCom Order*, the Commission require CoxCom to carry the digital broadcast signal of KVMD-DT.

4. In a Motion to Dismiss, CoxCom argues that KVMD's complaint should be summarily denied because the Media Bureau specifically removed the subject communities from KVMD's market nearly two years ago in granting the *CoxCom Order*.⁸ CoxCom states that KVMD is aware that this *Order* remains binding and, as a result, it asserts that KVMD is not a local commercial station in the communities at issue.⁹ CoxCom asserts, therefore, that KVMD's complaint is frivolous and has no basis in fact or law. Given KVMD's blatant abuse of the must carry process, CoxCom argues that the Bureau should also impose sanctions on KVMD as well as award CoxCom costs in this proceeding.¹⁰

5. In reply, KVMD argues that it is aware of the Bureau's decision in *CoxCom* and the fact that the *Order* remains in full-effect during the pendency of the reconsideration proceeding.¹¹ However, in considering the 2006-2008 must carry landscape in the event the Commission should reverse *CoxCom*, KVMD states that it sought to prevent CoxCom from arguing that KVMD failed to perfect its carriage rights in the new triennial carriage cycle.¹² KVMD maintains that its only intent in filing the instant

³Section 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).

⁴Complaint at 2, citing 19 FCC Rcd 4509 (2004), *recon. pending*.

⁵*Id.*

⁶*Id.* at Exhibit A; *see also* 47 C.F.R. § 76.61(a)(1).

⁷*Id.* at Exhibit B.

⁸Motion at 1.

⁹*Id.* at 2.

¹⁰*Id.*

¹¹Reply at 1.

¹²*Id.* at 2.

complaint was to preserve its must carry rights during 2006-2008 election cycle.¹³ It is not seeking carriage on CoxCom's systems during the pendency of the reconsideration request.

6. We agree with KVMD and will grant its complaint. Section 76.64(f)(2) of the Commission's rules requires that all television stations make an election between must carry and retransmission consent every three years.¹⁴ KVMD did so in its September 26, 2005 letters to CoxCom and, by letters dated November 7, 2005, subsequently made a demand for carriage pursuant to Section 76.61(a)(1) of the rules.¹⁵ While both parties agree that KVMD does not currently have carriage rights in the subject communities due to the Media Bureau's decision in *CoxCom*, KVMD was within its rights in construing CoxCom's November 14, 2005 response as a denial of carriage and in subsequently filing the instant complaint in order to preserve any future must carry rights. Should the decision in *CoxCom* be reversed during the current election cycle, CoxCom will be subject to the must carry requirements with regard to carriage of KVMD. As a result of our decision, we deny CoxCom's request for sanctions.

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, to the extent indicated herein.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹³*Id.*

¹⁴47 C.F.R. § 76.64(f)(2).

¹⁵47 C.F.R. § 76.61(a)(1).

¹⁶47 C.F.R. § 0.283.