

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

In the Matter of:	)	
	)	
Costa de Oro Television, Inc.	)	
For Modification of Market of	)	
Station KJLA, Ventura, California	)	
Petition for Reconsideration	)	CSR-5096-A
	)	
Century Cable of Southern California, Century	)	
Southwest Cable Television, Inc. and Multivision,	)	
Marcus Cable, MediaOne of Los Angeles, Inc.,	)	
American Cablesystems of South Central Los	)	
Angeles, Inc. dba MediaOne, King Videocable	)	
Company dba MediaOne, and TCI Cablevision of	)	
California, dba TCI of East San Fernando Valley.	)	
For Modification of Market of	)	
Station KJLA, Ventura, California	)	
Petition for Reconsideration	)	
	)	
Costa de Oro Television, Inc. v. Cox	)	
Communications, Inc.	)	CSR-5515-M
Request for Carriage	)	
	)	
Costa de Oro Television, Inc. v. Time Warner	)	
Cable	)	CSR-5520-M
Request for Carriage	)	
	)	
CoxCom, Inc.	)	
For Modification of Market of	)	CSR-5537-A
Station KJLA, Ventura, California	)	

**ORDER ON RECONSIDERATION  
MEMORANDUM OPINION AND ORDER**

**Adopted: July 7, 2000**

**Released: July 10, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. The Bureau has before it several matters that pertain to the cable television carriage rights of broadcast television station KJLA, Ventura, California. These matters include petitions for reconsideration, mandatory carriage, and modification of the station's market. For administrative convenience, the Bureau is consolidating the petitions into one proceeding. Costa de Oro Television, Inc., licensee of Television Station KJLA (formerly KSTV-TV), Channel 57, Ventura, California ("Costa") has

filed a petition for partial reconsideration of the Cable Services Bureau's February 25, 1998 Order ("Bureau Order"),<sup>1</sup> in which the Bureau granted, in part, and denied, in part, Costa's request to add certain communities located in Los Angeles and Orange Counties, California to television station KSTV-TV's market for purposes of mandatory carriage of the station.<sup>2</sup> Oppositions in this matter were filed by Time Warner Entertainment – Advance/Newhouse Partnership ("Time Warner"), Comcast Cablevision of Seal Beach, Santa Anna, Newport Beach, and North Orange, Coxcom, Inc., and a consolidated opposition was filed by Century Cable of Southern California, Century Southwest Cable Television, Inc. and Multivision, Charter Communications Entertainment, L.P., Long Beach Acquisition Corp., Jones Growth Partners II L.P., Marcus Cable, MediaOne of Los Angeles, American Cablesystems of South Central Los Angeles, Inc., MediaOne of Harbor, Inc., MediaOne of Lakewood, Inc., King Videocable Company dba MediaOne, MediaOne of Costa Mesa, Inc., MediaOne of Cypress, Inc., and TCI Cablevision of California. Biltmore Broadcasting filed comments in the proceeding. Costa filed a reply to the oppositions.

2. A joint petition for partial reconsideration has been filed by Century Cable of Southern California, Century Southwest Cable Television, Inc. and Multivision, Marcus Cable, MediaOne of Los Angeles, Inc., American Cablesystems of South Central Los Angeles, Inc. dba MediaOne, King Videocable Company dba MediaOne, and TCI Cablevision of California, dba TCI of East San Fernando Valley (the "cable operators").

3. Costa has also filed the above-captioned complaints for mandatory carriage against certain Cox Cable systems serving Central and South Orange County, California, and CoxCom, Inc. dba Cox Communications Palos Verdes, and against certain Time Warner systems serving the Los Angeles Designated Market Area (DMA) for their failure to carry KJLA.

4. CoxCom, Inc. ("Cox") has filed a petition which seeks to delete certain communities served by its Los Angeles County and Orange County cable systems from KJLA's market.

## II. BACKGROUND

5. 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"),<sup>3</sup> commercial television broadcast stations 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.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup> *Costa de Oro Television, Inc.* 13 FCC Rcd 4360 (1998).

<sup>2</sup> CSR-5096-A.

<sup>3</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>4</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). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations (continued....)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

6. Under the Communications Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>6</sup>

In considering such requests, the Communications Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides new coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>7</sup>

In this regard, the legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an

(Continued from previous page) \_\_\_\_\_  
were required to make their elections based on DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

<sup>5</sup> For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>6</sup> 47 U.S.C. §534(h)(1)(C)(i).

<sup>7</sup> *Id.* §534(h)(1)(C)(ii).

adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>8</sup>

7. From 1993 until the end of 1999, television broadcast stations were generally entitled to cable television carriage within their local market area which was defined as the station's ADI as defined by the Arbitron audience research firm. Because the Arbitron organization ceased defining local markets, the Commission's rules were amended to provide that carriage rights, commencing on January 1, 2000, would be based on DMAs as defined by the Nielsen audience research firm. During the time that the Arbitron ADI market areas were in use, the Commission has ruled on numerous ADI market modification requests filed pursuant to Section 614(h) of the Communications Act. As part of the change from ADI to DMA based markets, the Commission considered and sought comment on what continuing validity these decisions would have after the change to DMA based carriage rights. The Commission concluded that such decisions should generally be controlling and stated that:

[M]arket modification requests filed prior to the effective date of the change from ADI to DMA, including petitions, petitions for reconsideration, and applications for review, will be processed under Arbitron's ADI market definitions. We do not believe that the petitions for reconsideration and applications for review currently pending will be affected by the conversion to DMAs because, in most of these cases, the market assignment will not change. In cases in which the conversion to DMAs will have a direct consequence, we will take the future DMA assignment into account, as we have done since the *First Order* was released. We will also leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations. *Modification Final Report and Order, supra*, at 8384.

8. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations

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<sup>8</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess 97 (1992).

in the market.<sup>9</sup> The rules further provide, in accordance with the requirements of the Communications Act, that a station not be deleted from carriage during the pendency of a modification request.<sup>10</sup>

### III. DISCUSSION

#### A. Petition for Partial Reconsideration; Joint Petition for Partial Reconsideration (CSR-5096-A)

9. The allegations previously raised by the parties and our discussion and analysis of the issues raised are fully addressed in the *Bureau Order* and need not be reiterated here.<sup>11</sup> Costa contends that the Bureau erred in denying modification of KSTV's market by excluding those communities located outside of the station's Grade A contour but within its Grade B contour.<sup>12</sup> Costa did not seek reconsideration for those communities located outside of the stations's predicted Grade B contour. The *Bureau Order* noted that the existing state of the record in the proceeding was "far from ideal," and stated that in light of the "poor state of the record in [the] proceeding," parties in petitions for reconsideration might wish to provide the Bureau with more complete and accurate information with respect to the technical availability of the station's signal. In its petition for reconsideration, Costa supplies the Bureau with a list of telephone area codes and exchanges of callers responding to the station's live call-in programs. Costa concludes that the survey demonstrates that its viewers reside in communities encompassed by the station's Grade B contour, and thus, that the *Bureau Order* erred in denying modification outside of the station's Grade A contour.<sup>13</sup>

10. Opponents to the petition for reconsideration uniformly argue that Costa is attempting to use telephone records as a surrogate for signal strength surveys, and that the telephone study fails to specify the number of viewers or viewing habits of those who may have called in. In its reply, Costa argues that its telephone survey was undertaken to demonstrate that KJLA's programming was reaching viewers

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<sup>9</sup> 8 FCC Rcd 15 2977 n. 139.

<sup>10</sup> 47 C.F.R. §76.59.

<sup>11</sup> The Bureau granted Costa's request to modify the market of KSTV-TV to include the communities of Agoura Hills, Calabasas, Canyon Country, East San Fernando Valley, Glendale, Hermosa Beach, Hidden Hills, Los Angeles (Eaglerock, Hollywood-Wilshire, Santa Monica, Sherman Oaks, South-central, West Hollywood, Western), Malibu, Redondo Beach, San Fernando, Santa Clarita, Sunland, and West San Fernando Valley (Canoga Park, Tarzana and Woodland Hills). These communities are within the predicted Grade A contour of the station. The Bureau denied Costa's request to modify the market of the station for all other communities that are located outside of the predicted Grade A contour of the station.

<sup>12</sup> Costa identifies these omitted systems, as follows: The Buenavision system serving East Los Angeles; the Charter Communications system serving La Canada, Altadena, Pasadena, Temple City, Alhambra, Monterey Park, and Montebello; the Time Warner system serving South Pasadena; the Liberty Communications system serving Southgate; the MediaOne system serving Compton, Downey, Carson, Norwalk, La Mirada, and Lakewood; the Cablevision Industries system serving Long Beach; the Cox system serving Palos Verdes and San Pedro; the Marcus system serving Whittier; and the TCI systems serving West Whittier, Industry, Baldwin Park, El Monte and Monrovia. Petition for Reconsideration at 2.

<sup>13</sup> Costa requests that the Bureau "[set] aside the hypertechnical engineering issues of how many dBs are delivered to a given cable headend" in determining the issues presented in its petition. Petition for Reconsideration at 13.

throughout the station's predicted Grade B contour, and that it is not necessary to quantify viewership in this regard. Cox Communications Palos Verdes conducted signal tests in San Pedro, a community subject to Costa's petition for reconsideration, and a community listed in the telephone records. Cox was unable to detect KJLA's signal in that community with a 100-mile range high-gain UHF antenna elevated 28 feet above ground level.<sup>14</sup> Cox concludes from its field strength studies that KJLA's signal is not available to viewers in the areas it tested, whether or not the station received a call from that location.

11. We note that Costa provides no information as to the methodology of its telephone study, nor does petitioner provide the Bureau with any specific information regarding parties who called the station. We are not convinced that the survey demonstrates coverage to the areas in question, particularly where specific technical evidence rebutting the existence of an acceptable signal has been raised. This type of ambiguous and anecdotal response does not satisfy the Bureau's invitation to provide more complete and accurate accounting of the technical availability of KJLA's signal. Furthermore, Cox has provided technical evidence that questions the methodology and validity of the survey itself. Accordingly, we find that Costa has not provided sufficient evidence upon which to overrule our earlier decision. The telephone survey does not provide the Bureau with any specific information regarding viewership. Moreover, of the approximately two hundred and fifty calls received over a ten-month period, nearly one-quarter of the calls are identified as having originated in Los Angeles, which may or may not cover cable communities which are subject to the petition for reconsideration. Even if we were to draw the most favorable conclusion from the survey, we could only conclude that the station received less than one call per day from communities that comprise one of the most populated metropolitan regions in the nation.

12. Costa also contends in its petition for reconsideration that the Bureau has erred in denying KJLA modification of its market within the station's predicted Grade B contour. Costa cites numerous Bureau decisions in support of its argument that the predicted Grade B contour has been the standard that the Bureau has relied upon in determining a station's market in such modification cases.<sup>15</sup> The opponents in this matter all argue that while predicted Grade B contour has been considered by the Bureau in the context of market modification cases, it is not, in itself, dispositive. Opponents contend that the order is entirely consistent with and supported by Commission precedent, and that none of the cases cited by Costa were decided solely on the basis of a station's predicted Grade B contour coverage, and are all otherwise distinguishable from the instant matter. We concur with opponents in that the cases cited by Costa were not decided by relying solely on an analysis of the station's predicted Grade B contour. The terrain involved in this geographic area also makes predicted contours of the type Costa would have us rely on particularly unreliable. Costa's arguments regarding coverage of the station were addressed in the *Bureau Order*, and petitioner has not raised any new arguments regarding this aspect of the Bureau's decision. The Commission has explicitly stated that petitions for reconsideration of market modification requests filed prior to the effective date of the change from ADIs to DMAs will be processed under the ADI market definitions, and we have done so here.

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<sup>14</sup> Cox Opposition to Petition for Reconsideration at 9. Cox also conducted field strength surveys in the Orange County locations from which KJLA received phone calls with the same results, i.e., that the station's signal is undetectable in these locations as well. *Id.*

<sup>15</sup> Costa Petition for Reconsideration at 4-6, citing *Venture Technologies Group, Inc.*, DA 98-102 (Cable Services Bureau, rel. January 23, 1998), *Jones Intercable*, 12 FCC Rcd 13779 (1997), *Marks Cablevision*, 12 FCC Rcd 22989 (1997), *Comcast Cablevision of Inland Valley, Inc.*, 12 FCC Rcd 6461 (1997).

13. Cable operators with systems within KJLA's Grade A contour filed a petition for partial reconsideration of that portion of the *Bureau Order* that granted modification of KJLA's market for those communities within the station's Grade A contour. These operators contend that their signal strength studies demonstrate that the station's actual signal coverage does not cover the communities granted in the *Bureau Order's* modification of KJLA's market.<sup>16</sup> Accordingly, these operators argue that the Bureau should reverse its partial grant for modification since they contend that the station's signal is not "technically available" in the cable communities subject to this portion of the order. In opposition, Costa argues that the station was operating at reduced power at the time the signal strength tests were taken, due to a lightning strike that damaged the station's facilities, and that this temporary situation should not be the basis upon which to analyze the station's signal strength and coverage areas.<sup>17</sup> The *Bureau Order* acknowledged that the topography relevant to this matter may present reception problems even within the Grade A contour of the station, but that a market modification was justified on geographic proximity as well as technical service.<sup>18</sup> In this regard, we do not believe that the cable operators have provided information on reconsideration to justify reversal of that portion of the order which granted modification of the station's market to include those named communities within KJLA's Grade A contour.

**B. Request for Carriage Against Cox (CSR-5515); Petition for Modification of KJLA's Market (CSR-5537-A)**

14. Costa has filed the above-captioned request for carriage against certain Cox cable systems serving Central and South Orange County and CoxCom, Inc., dba Cox Communications Palos Verdes, both located in the Los Angeles DMA.<sup>19</sup> In response, Cox has filed the above-captioned petition for special relief seeking to modify the market of KJLA to exclude those Los Angeles County and Orange County communities served by Cox's cable systems.<sup>20</sup> The communities subject to Costa's mandatory

<sup>16</sup> Joint Petition for Partial Reconsideration at 3.

<sup>17</sup> Costa Opposition to Joint Petition for Partial Reconsideration at 5.

<sup>18</sup> *Costa de Oro Television, Inc.*, 13 FCC Rcd at 4375.

<sup>19</sup> The communities listed in Costa's petition for mandatory carriage against Cox ("*Must-carry Petition v. Cox*") are as follows: Los Angeles County communities – Rolling Hills Estates, San Pedro Navel, San Pedro, Ft. MacArthur, Rancho Palos Verdes, Palos Verdes Peninsula, and Palos Verdes Estates. Orange County communities – South Laguna, Laguna Beach, Laguna Niguel, Dana Point, Capistrano Beach, Silverado Canyon, Modjeska Canyon, Lake Forest, Emerald Bay, Laguna Hills, Rancho Santa Marg., Portola Hills, Orange, Foothill Ranch, Aegean Hills, Aliso Viejo, Corona Del Mar, Coto De Caza, Coto De Caza Canyon, Dove Canyon, El Moro Beach, El Toro, El Toro MCB, Emerald Beach, Harbor Estates, Irvine, Mission Viejo, Newport Beach, Rancho Cielo, San Clemente, San Juan Capistrano, San Onofre, Silverado, Trabuco Canyon, and Tustin. Cox has filed an opposition in this matter, to which Costa has replied.

<sup>20</sup> The communities served by Cox' Los Angeles County system are as follows: Los Angeles (San Pedro), L.A. County (unincorporated), Fort MacArthur AFB, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, and Rolling Hills. The communities served by Cox' Orange County System are as follows: Aliso Viejo, Camp Pendleton, Coto De Caza, Dana Point, Dove Canyon, El Moro Beach, Marine Air Station (El Toro), Emerald Bay, Foothill Ranch, Foothill/Sonterra, Irvine, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Modjeska Canyon, Newport Beach, Orange, Ranch Cielo, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Silverado Canyon, Trabuco Canyon, Tustin/Tustin Heights, and Marine Air Station (Tustin). Costa has filed an opposition in this matter, to which Cox replied.

carriage petition against Cox were also the subject of the *Bureau Order* in which the Bureau declined to modify KJLA's market under the former ADI market assignment to include said communities.<sup>21</sup> As set forth above, we have denied Costa's petition for reconsideration in which Costa sought reconsideration of our ruling regarding the Los Angeles County communities within the station's Grade B contour, but not the Orange County communities outside of the contour. In its petition for mandatory carriage against Cox, Costa contends that its previous assignment by Arbitron to the Santa Barbara ADI market has been corrected as of January 1, 2000, and that it is now correctly assigned to the Los Angeles DMA. Costa argues that the must-carry status of the station must be determined by its current DMA designation, and that the *Bureau Order*, which ruled that KJLA had mandatory carriage rights only in those communities within its Grade A contour, does not govern the station's current status, as that order is not a final determination because of Costa's pending petition for reconsideration.<sup>22</sup> In support of this contention, Costa argues that the *Modification Final Report and Order*, *supra*, at 8384, states that "the only instance where the DMA assignment of a station would not govern was in instances where there had been a **final** market modification (emphasis in original)." Accordingly, Costa now seeks mandatory carriage rights in those communities that have previously been excluded from its market. Cox argues that the Bureau rightfully excluded those communities, and that our prior determination with respect to the communities served by Cox is binding, regardless of the change to DMA markets, pursuant to the Commission's holding in its *Modification Final Report and Order*.

15. Costa's argument that the *Bureau Order* in question is not "final" is not relevant here in light of the Commission's clear statement as to how reconsideration petitions of pending cases would be addressed. The *Modification Final Report and Order*, which Costa relies upon, states that market modification requests filed prior to the effective date of the change from ADI to DMA will be processed under Arbitron's ADI market definitions.<sup>23</sup> It is clear that Costa filed its initial request for market modification under the ADI market definitions, which declined to modify KJLA's market to include the communities subject to Costa's must-carry complaint against Cox. In addition, Costa chose not to seek reconsideration as to the Orange County communities served by Cox. For these reasons, Costa cannot now seek mandatory carriage rights for communities that have been ruled as outside of KJLA's market. Accordingly, we deny Costa's petition for mandatory carriage against Cox, and will dismiss Cox's petition for modification of its market as moot.

### C. Request for Carriage Against Time Warner (CSR-5520-M)

16. Costa has also filed a petition for mandatory carriage against certain Time Warner cable systems located in Los Angeles County and Orange County, both located within the Los Angeles DMA,

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<sup>21</sup> In its original petition for special relief in CSR-5096-A ("*Petition for Special Relief*"), Costa incorrectly identified communities served by Cox. In its opposition, Cox correctly identified the communities it served, for both Los Angeles and Orange Counties. Cox *Opposition to Petition for Special Relief* at 2. All of the Los Angeles County and Orange County communities identified by Costa in the instant petition for mandatory carriage were identified by Cox in the former proceeding, and thus part of the record on which the *Bureau Order* was based.

<sup>22</sup> Must-carry Petition v. Cox at 3.

<sup>23</sup> See *Modification Final Report and Order*, *supra*, at 8384.

KJLA's market designation since January 1, 2000.<sup>24</sup> Time Warner has filed an opposition<sup>25</sup> to which Costa has replied.

17. Generally speaking, the process of adding or subtracting communities from a market pursuant to Section 614(h) is done on a community specific basis. There are instances where a system operator is identified with a central named community that is intended to represent and encompass all of the immediately surrounding communities served by that system. As we have indicated previously, the communities and operations that were intended to be covered by the previous requests in this proceeding were particularly poorly defined.<sup>26</sup> Accordingly, we ruled only on those communities that could be specifically identified.

18. Costa states that following the release of the *Bureau Order*, it filed a complaint against the Time Warner Los Angeles County "South Bay system," which it believed to be subject to the carriage requirements set forth in the *Bureau Order*. Costa argues that although the Bureau denied that complaint,<sup>27</sup> the Bureau found that "for that portion of the South Bay system serving the communities of El Segundo, Hawthorne, Lawndale and Gardena, KJLA will attain must carry rights on January 1, 2000, when the changeover from ADIs to DMAs takes place, since the carriage rights for these communities was not considered in the Costa de Oro [*Bureau Order*] decision."<sup>28</sup> Costa argues that Time Warner did not appeal that decision, and that the Bureau's declaration as to those communities is final. In its opposition, Time Warner contends that Costa identified only the community of Torrance in its original petition for modification (CSR-5096-A), and that Time Warner informed the Bureau in that proceeding of the names of the additional communities comprising the "South Bay system." We have looked to the record in that proceeding and cannot reference any "South Bay system" communities other than Torrance. In our decision in *Costa v. Time Warner, supra*, we recognized that the Bureau did not rule on communities not specifically identified in the *Bureau Order*, and so stated that certain communities would be in KJLA's market as of the January 1, 2000 conversion to DMA markets. Costa's original petition for modification

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<sup>24</sup> Costa identifies the communities subject to its petition as follows: Los Angeles County – El Segundo, Gardena, Hawthorne, Lawndale, Torrance; Orange County - Orange. Costa also identifies additional communities as served by Time Warner "according to the following headends:" Gardena – Gardena, El Segundo, Hawthorne, Lawndale, Torrance, Los Angeles County (portions), North Torrance; Orange – Orange, Santa Ana; Garden Grove – Garden Grove, Los Alamitos, Anaheim; and Huntington Beach – Huntington Beach, Costa Mesa, Fountain Valley, Midway City, Rossmoor, Stanton, Westminster and Cypress.

<sup>25</sup> Time Warner identifies the systems subject to the instant petition as follows: Los Angeles County communities – Gardena, Torrance, El Segundo, Hawthorne, Lawndale and North Torrance (the "South Bay" system); Orange County communities – City of Orange, unincorporated Orange County, Garden Grove, Anaheim, Los Alamitos, Huntington Beach, Costa Mesa, Fountain Valley, Midway City, Rossmoor, Stanton, Westminster and Cypress (The "Orange County" system).

<sup>26</sup> See *Costa de Oro Television, Inc., supra*, at footnote 1, where the Bureau stated, *inter alia*, "We cannot make a determination when it is unclear which community Costa de Oro seeks to add [and] which cable operator would be affected thereby... We note that several Oppositions raise the issue of misidentified communities and made an apparent effort to determine which communities Costa de Oro seeks to include."

<sup>27</sup> See *Complaint of Costa De Oro Television v. Time Warner Cable*, 14 FC Rcd 12127 (1999) ("*Costa v. Time Warner*").

<sup>28</sup> *Id.* at footnote 28.

requested that the Bureau add the community of Torrance to KJLA's market, which the Bureau denied. However, Time Warner did not identify any of the other communities comprising the "South Bay system" in that proceeding, and so the Bureau did not rule on what were subsequently identified as the other "South Bay" communities.

19. In its opposition to Costa's must-carry complaint, Time Warner identifies the communities it serves in Orange County, but does not aver that it so identified said communities in Costa's modification proceeding. The record in the *Bureau Order* does not disclose any reference to any communities served by Time Warner in Orange County other than the City of Orange,<sup>29</sup> and "certain unincorporated areas of Orange County."<sup>30</sup> Accordingly, the remaining communities subject to Costa's request for carriage on Time Warner's cable system serving Orange County communities has not been subject to any Commission order for modification of KJLA's market.

20. In its *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*,<sup>31</sup> the Commission states that "Section 614(h)(1)(C) of the 1992 Act permits the Commission to add communities to or subtract communities from a station's television market to better reflect marketplace conditions following a written request."<sup>32</sup> We have recognized that each request for modification of a station's market was intended to be specific to that particular request and the inclusion or exclusion of anything other than specifically-named individual communities was not contemplated.<sup>33</sup> According to the record, KJLA has requested carriage in the Los Angeles County communities of El Segundo, Gardena, Hawthorne, Lawndale, Torrance, and North Torrance, and the Orange County communities of Orange, Santa Ana, Garden Grove, Los Alamitos, Anaheim, Huntington Beach, Costa Mesa, Fountain Valley, Midway City, Rossmoor, Stanton, Westminster and Cypress, and that Time Warner has declined to commence carriage.<sup>34</sup> In regard to the communities of Torrance, Orange, and unincorporated areas of Orange County which were subject to the *Bureau Order*, Time Warner is under no obligation to honor Costa's request for carriage for reasons set forth in our disposition of Costa's request for carriage on Cox's systems. As to the remaining communities served by Time Warner, we find that KJLA and the communities are co-located within the same DMA, and that the station has properly requested carriage on channel 57 of Time Warner's cable systems.<sup>35</sup>

#### IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59,

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<sup>29</sup> CUID No. CA0940.

<sup>30</sup> CUID No. CA0814. Time Warner Opposition to Petition for Special Relief (CSR-5096-A) at 1.

<sup>31</sup> 8 FCC Rcd 2965 (1993).

<sup>32</sup> *Id.* at 2976.

<sup>33</sup> *See Costa v. Time Warner*, 14 FCC Rcd at 12131.

<sup>34</sup> Costa Request for Carriage at 3.

<sup>35</sup> Costa Request for Carriage at Attachment 2.

that the petition for partial reconsideration (CSR-5096-A), filed by Costa De Oro Television, Inc., **IS DENIED**.

22. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the petition for partial reconsideration (CSR-5096-A), filed by Century Cable of Southern California, Century Southwest Cable Television, Inc., Marcus Cable, MediaOne of Los Angeles, Inc., American Cablesystems of South Central Los Angeles, Inc. dba MediaOne, King Videocable Company dba MediaOne, and TCI Cablevision of California, dba TCI of East San Fernando Valley, **IS DENIED**.

23. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 614(h), that the petition for market modification (CSR-5537-A), filed by CoxCom, Inc. **IS DISMISSED**.

24. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 614, that the complaint for mandatory carriage filed by Costa de Oro Television, Inc., (CSR-5515-M), against Cox Communications, Inc. **IS DENIED**.

25. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 614, that the complaint for mandatory carriage filed by Costa de Oro Television, Inc. (CSR-5520-M) against Time Warner Cable, **IS GRANTED**, to the extent indicated above. Time Warner Cable **IS ORDERED** to commence carriage of television station KJLA on channel 57 of its cable systems serving the communities of El Segundo, Gardena, Hawthorne, Lawndale, North Torrance, Santa Ana, Garden Grove, Los Alamitos, Anaheim, Huntington Beach, Costa Mesa, Fountain Valley, Midway City, Rossmoor, Stanton, Westminster and Cypress, California within sixty (60) days from the date of this *Order*.<sup>36</sup>

26. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>36</sup> Costa has identified the community of Santa Ana in its request for carriage against Time Warner, although Time Warner does not identify Santa Ana as a community that it serves. To the extent that the record in this matter has been problematic, we have included Santa Ana in the ordering clause if appropriate.