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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Definition of Markets for Purposes of)
the Cable Television Broadcast)
Signal Carriage Rules)

CS Docket No. 95-178

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Time Warner Cable, by its attorneys, hereby opposes the Petition for Reconsideration filed by Costa de Oro Television, Inc. ("Costa") in the above-captioned rulemaking proceeding.^{1/} Time Warner Cable, through its Los Angeles Division, operates cable television systems serving communities situated in the Los Angeles Area of Dominant Influence (ADI) and the Los Angeles Designated Market Area (DMA). Costa is the licensee of Station KJLA, Ventura, California. It has requested the Commission to reconsider certain aspects of the Order on Reconsideration and Second Report and Order in CS Docket No. 95-178, FCC 99-116, released May 26, 1999 (herein the "Order").

I. Background

Time Warner Cable operates a cable television system serving the City of Orange and Orange County, California (the "Orange County System").^{2/} Time Warner Cable also operates a cable system that serves the communities of El Segundo, Hawthorne, Lawndale, Gardena and

^{1/} This Opposition is timely filed pursuant to Section 1.429(f) of the Rules.

^{2/} The Orange County System is owned by Time Warner Entertainment-Advance/Newhouse Partnership.

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Torrance, California (the “South Bay System”).^{3/} Both the Orange County System and the South Bay System are located within the Los Angeles ADI as well as the Los Angeles DMA.

Station KJLA is licensed to the city of Ventura, which is in Ventura County, California. Despite Arbitron’s assignment of Ventura County to the Los Angeles ADI, KJLA is assigned to the Santa Barbara ADI and has must carry rights in its home county of Ventura and other communities situated in the Santa Barbara ADI.

Because KJLA (then KSTV-TV) had no must carry rights on cable systems operating in the Los Angeles ADI, Costa petitioned in the Commission in 1997 to modify the station’s market to add 60 communities in Los Angeles County (46) and Orange County (14) to KJLA’s market for purposes of the mandatory signal carriage rules.^{4/} Time Warner Cable opposed the Costa Petition on behalf of the Orange County System and the South Bay System.^{5/}

By Memorandum Opinion and Order released on February 25, 1998,^{6/} the Cable Services Bureau (the “CSB”) granted the Costa Petition in part and ordered carriage of KJLA in certain Los Angeles communities, but denied carriage rights for KJLA in all other communities, including those served by the Orange County System and the South Bay System. With respect to the cable communities located outside the predicted Grade B service area of KJLA, such as the city of Orange and Orange County,^{7/} the CSB stated:

^{3/} The South Bay System is owned by Paragon Communications.

^{4/} CSR-5096-A (the “Costa Petition”).

^{5/} The Costa Petition identified only Torrance as a community served by the South Bay System.

^{6/} Costa de Oro Television, Inc. 13 FCC Rcd 4360 (CSB, 1998) (herein “Costa de Oro”).

^{7/} Costa did not dispute KJLA’s failure to provide Grade B service to Orange and Orange County.

[N]o significant evidence has been presented that suggests that KSTV-TV is in any sense local or that it is in the same market as these communities such that extension of its existing market would “better effectuate the purposes” of Section 614. None of the statutory factors have been met and such other evidence as is available tends to weigh against grant of the request.^{8/}

In addition to denying Costa’s attempt to add the South Bay System to KJLA’s market through the market modification process,^{9/} the CSB also recently denied Costa’s must-carry complaint against Time Warner Cable that alleged an impermissible refusal to carry KJLA on the South Bay System.^{10/} In sum, on two separate occasions, the CSB has refused to accord KJLA must carry rights on the South Bay System.

In support of its proposed modification of KJLA’s market to include communities in Los Angeles and Orange Counties, Costa relied heavily on the fact that Nielsen includes KJLA in the Los Angeles DMA, asserting that once the Commission begins using DMA designations for local market determinations, KJLA will have must carry rights in all of the communities covered by the Costa Petition.^{11/} Thus, Costa sought to invoke Nielsen’s DMA market assignment for KJLA as grounds for modifying KJLA’s ADI market designation to include the specified Los Angeles DMA communities.

^{8/} Costa de Oro 4373.

^{9/} Costa did not seek reconsideration of Costa de Oro as to the Orange County System or the South Bay System.

^{10/} See, Complaint of Costa de Oro Television, Inc. against Time Warner Cable, DA 99-1486 (Cable Serv. Bur. rel. July 29, 1999)

^{11/} See Costa de Oro at 4364.

The CSB considered KJLA's assignment to the Nielsen-defined Los Angeles DMA in the Costa de Oro decision, citing its policy to rely on DMA assignments in ADI market modification cases.^{12/} As is clear from Costa de Oro, however, KJLA's DMA assignment had no bearing on the CSB's findings that the Orange County System and South Bay System communities are not part of KJLA's market and KJLA therefore is not entitled to mandatory carriage rights on those cable systems.

II. The Commission Correctly Decided to Grandfather Final ADI Market Modification Cases

In the Order, the Commission concluded that it would not allow the change to a DMA market definition to disturb final market modification cases decided under Arbitron's ADI market definitions. The determination "to avoid disturbing settled expectations"^{13/} was based on a thorough review of the comments addressing this issue filed by interested parties. In a corollary decision, the Commission held that it would allow previous deletions of communities from a station's ADI market to remain in effect after the conversion to DMAs.^{14/}

Costa requests reconsideration of the Commission's conclusion that public policy would be served by grandfathering final market modification cases that have not been appealed. Based on its own, highly-particularized circumstances, Costa contends that the Commission's grandfather policy for ADI market modification cases is erroneous and unequitable.^{15/}

^{12/} See Costa de Oro at 4374.

^{13/} Order ¶ 42.

^{14/} Order ¶ 43.

^{15/} See Petition for Reconsideration at 8-10.

Costa has conveniently ignored the fact that the CSB does explicitly consider differences in ADI and DMA market assignments in analyzing individual market modification requests filed pursuant to Section 614(h) of the Communications Act.^{16/} Indeed, as discussed above, Costa claimed KJLA's assignment to the Los Angeles DMA in support of its request to add the Orange County System and South Bay System communities to KJLA's market for purposes of the must carry rules. The CSB thus was fully aware of the potential impact on KJLA of the conversion from ADIs to DMAs but nonetheless denied Costa's market modification request with regard to the Orange County System and the South Bay System. Apparently, Costa was not sufficiently concerned about this aspect of the CSB's decision in Costa de Oro to include the Time Warner Cable systems among the many systems as to which it requested reconsideration of the CSB's denial of must carry rights.

The Commission's conclusion not to disturb final market modification cases to reflect the conversion from ADIs to DMAs is fully justified by its resolution of the Costa Petition. The assignment of KJLA to the Los Angeles DMA was argued by Costa, and considered and rejected by the CSB in deciding that KJLA failed to meet the relevant market modification criteria to obtain carriage on the Orange County System and the South Bay System. No useful purpose would be served by allowing the parties to relitigate in a new market modification proceeding the question of whether KJLA is "local" to the Orange County System and South Bay System communities. That question has already been resolved by the CSB on the basis of its analysis of all relevant factors, including KJLA's presence in the Los Angeles DMA.

^{16/} See Order ¶21.

In conclusion, Time Warner Cable respectfully submits that the Commission should deny Costa's request for reconsideration of the decision not to disturb final market modification cases on the basis of the conversion from ADIs to DMAs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vanessa I. Hicks, a secretary in the law firm of Bryan Cave LLP, do hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was mailed, postage prepaid, this 25th day of August, 1999, to:

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