

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

In the Matter of:)	
)	
American Christian Television Services, Inc.)	CSR-5733-A
)	
For Modification of the Lima,)	
Ohio DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2002

Released: January 11, 2002

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

I. INTRODUCTION

1. American Christian Television Services, Inc., licensee of Station WTLW-TV (Ch. 44), Lima, Ohio (“WTLW-TV”), filed the above-captioned petition for special relief seeking to modify the Lima, Ohio designated market area (“DMA”) to include all of the cable communities located within the counties of Auglaize, Hardin, Mercer, Putnam and Van Wert, Ohio.¹ No opposition to this petition has been received.

II. BACKGROUND

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 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

¹The individual communities requested for inclusion are as follows: 1) Auglaize County – Buckland, Cridersville, Minster, New Bremen, New Hampshire, New Knoxville, St. Johns, St. Marys, Wapakoneta, Waynsfield, and Uniopolis; 2) Hardin County – Ada, Alger, Forest, Kenton, McGuffey, Mt. Victory, Ridgeway, and Roundhead; 3) Mercer County – Celina, Chickasaw, Fort Recovery, Franklin, Maria Stein, Mendon, Montezuma, Rockford, and St. Henry; 4) Putnam County – Columbus Grove, Continental, Ft. Jennings, Kalida, Leipsic, Miller City, Ottawa, Ottoville, Pandora and West Leipsic; and 5) Van Wert County – Convoy, Delphos, Middle Point, Ohio City, Van Wert, Willshire, and Wren.

²8 FCC Rcd 2965, 2976-1977 (1993).

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) requires that a commercial broadcast television station’s market be defined by (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.⁴

3. Under the 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.⁵

In considering such requests, the 1992 Cable 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;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

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 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.

(...continued from previous page)

Nielsen Media Research's 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").

⁴For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

* * * *

[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.⁷

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 in the market.⁸

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁹

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

⁹The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁰

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant WTLW-TV's request to include the cable communities located within the counties of Auglaize, Hardin, Mercer, Putnam and Van Wert, Ohio, within its television market. WTLW-TV is considered to be within the Lima, Ohio DMA, while Auglaize and Mercer Counties are located in the Dayton, Ohio DMA, Putnam County in the Toledo, Ohio DMA, Hardin County in the Columbus, Ohio DMA, and Van Wert County within the Ft. Wayne, Indiana, DMA.

6. In support of its request, WTLW-TV states that it is a religious television station located in Allen County, Ohio, which is the only county assigned to the Lima DMA. WTLW-TV states that the Lima market is surrounded by four larger markets – Toledo, Dayton, Columbus and Ft. Wayne. WTLW-TV indicates that each of the counties where the requested communities are located are geographically closer to Lima, Ohio, than they are to the metro areas of their assigned markets.¹¹ Moreover, WTLW-TV points out that it is presently carried on nearly all of the cable systems serving the communities requested for inclusion.¹² WTLW-TV maintains that the purpose of its petition is to preserve the ability of the relevant cable subscribers to continue to receive WTLW-TV on their respective cable systems.

7. WTLW-TV states that although it holds a commercial license, it mainly operates in a noncommercial fashion in that it is sustained by financial contributions from viewers.¹³ As a result, WTLW-TV states that it can track financial contributors from various areas.¹⁴ WTLW-TV notes that, since going on-the-air in 1982, it has maintained a large and consistent support base from many communities outside of its narrowly-defined market, including the communities requested for inclusion.¹⁵ WTLW-TV argues that maintaining cable carriage in the subject communities is therefore of serious financial concern.

8. WTLW-TV argues that the evidence it submits fully supports the requested inclusion. It points out that, except for Mercer County which is only three miles from Allen County, each of the counties where the communities are located directly border on WTLW-TV's home county.¹⁶ In all cases,

¹⁰47 C.F.R. §76.59(b).

¹¹Petition at 2.

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 3.

¹⁵*Id.*

¹⁶*Id.* at Exhibit B.

states WTLW-TV, not only do major transportation routes connect all of the requested communities with Allen County but the county seat of every affected county is geographically closer to Lima, Ohio than to each of the central communities of their respective DMAs.¹⁷ WTLW-TV asserts that Lima, Ohio acts as a hub between these four, much larger DMAs and that shopping and employment patterns for the area reveal an economic interdependence between Allen County and the requested communities.¹⁸

9. WTLW-TV maintains that, as a religious station, the programming it provides is of unique interest to the residents of the requested communities and is not duplicated by any other stations serving the communities.¹⁹ WTLW-TV states that also produces many local programs which often feature persons or items of interest from these communities.²⁰ In addition, WTLW-TV points out that not only has it been historically carried by cable systems serving the counties where the communities are located, but many of those systems have carried its signal since it began broadcasting in 1982.²¹ WTLW-TV notes that Lima's NBC affiliate, WLIO, successfully petitioned the Commission in 1993 to include 98 communities located in the same counties as here.²²

10. Finally, WTLW-TV states that although it does not subscribe to Nielsen's quarterly ratings books, viewer contribution records indicate that in 2000 WTLW-TV, with an IRS tax-exempt status as a religious organization, received a total of 4250 gifts from the counties where the requested communities are located.²³ WTLW-TV maintains that this figure represents over 41.5 percent of the overall contributions to WTLW-TV over the past year.²⁴

11. We grant WTLW-TV's petition. The cable television mandatory broadcast signal carriage rules were adopted as part of the 1992 Cable Act. According to the legislative history of that Act, the use of DMA market areas is intended "to ensure that television stations be carried in the areas which they serve and which form their economic market."²⁵ The Act specifically provided that the Commission was to consider adding additional communities or excluding communities from the markets of television stations "to better effectuate the purposes" of the mandatory carriage requirements.²⁶ These factors, however, were "not intended to be exclusive."²⁷ In acting on such requests, the Commission was instructed to "afford particular attention to the value of localism, taking into account four specified statutory factors."²⁸ We believe that the addition of the communities to WTLW-TV's television market will better effectuate the purposes of the must carry statutory provisions.

12. In an analysis of the four statutory factors for market modification, we find that WTLW-

¹⁷*Id.* at 5-7.

¹⁸*Id.* at Exhibit C.

¹⁹*Id.* at 8.

²⁰*Id.* at Exhibit D.

²¹*Id.* at Exhibit E.

²²*See Lima Communications Corporation*, 9 FCC Rcd 274 (1993).

²³Petition at Exhibit F.

²⁴*Id.* at 13.

²⁵H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

²⁶47 U.S.C. §534(h).

²⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

²⁸*Id.*

TV meets the historic carriage factor for the majority of the requested communities. With regard to the other modification factors, we note that the majority of the subject communities are encompassed by either WTLW-TV's predicted Grade A or Grade B contours. In addition, all of the communities are geographically closer to Lima, Ohio than to the cores of their respective markets and there appears to be a close nexus between Lima and the areas in which the communities are located. Further, according to Nielsen's *2001 County/Coverage Study*, and given the station's specialty station status, it achieves reasonable viewership in the five counties where the communities are located. Finally, from the evidence provided, WTLW-TV provides programming which is of interest to the residents of these communities. In light of these factors, and the fact that WTLW-TV's request for inclusion is unopposed, we find that WTLW-TV has provided evidence of the scope of its market and demonstrated that the cable subscribers in the requested communities have a community of interest with the Lima DMA.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534) and Section 76.59 of the Commission's rules (47 C.F.R. §76.59), that the captioned petition for special relief (CSR-5733-A), filed by American Christian Television Services, Inc. **IS GRANTED**.

14. These actions are taken pursuant to authority delegated by Section 0.321 of the Commission's rules.²⁹

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

²⁹47 C.F.R. §0.321.