

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

In the Matter of:	)	
	)	
KTNC Licensee, LLC	)	CSR-6129-A
	)	
Petition For Modification of the San Francisco, California DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 4, 2003**

**Released: August 6, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. KTNC Licensee, LLC, licensee of station KTNC-TV (Ind., Ch. 42), Concord, California (“KTNC-TV”), filed the above-captioned petition for special relief seeking to modify the San Francisco, California designated market area (“DMA”) to include more than 100 communities and unincorporated county areas located within the Sacramento-Stockton-Modesto, California DMA.<sup>1</sup> Comcast Cable Holdings, LLC (“Comcast”) filed an opposition for the inclusion of 29 of the communities identified by KTNC-TV.<sup>2</sup> USA Media Group, LLC (“USA”) filed an opposition with respect to the community of Forest Hill, California. Boulder Ridge Cable TV, d/b/a Starstream Communications (“Starstream”) filed an opposition with regard to the communities served by its cable system.<sup>3</sup> KTNC-TV has replied to all

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<sup>1</sup>See Appendix.

<sup>2</sup>Comcast serves approximately 63 of the requested communities. The communities and/or county areas relevant to its opposition are: Amador County, Arnold, Calaveras County, Cameron Park, Columbia, Colusa, Colusa County, El Dorado County, Jackson, Linda, Live Oak, Marysville, Mi-Wuk Village, Mokelumne Hill, Murphys, Olivehurst, Placerville, Plymouth, San Andreas, Sonora, Sutter Creek, Tierra Buena, Tuolumne County, Valley Springs, Wheatland, Yuba City, and Yuba County, California. Comcast also included the communities of Amador City and Beale AFB in its opposition because it was unsure if they were included in KTNC-TV’s request. A review of the requested communities, however, does appear to include these two areas.

<sup>3</sup>Starstream names the communities of Lincoln, Rocklin, and the unincorporated areas of Placer County, California. Starstream states that it is unclear whether KTNC-TV’s petition also includes the community of Loomis and the unincorporated areas of Placer County (known as Granite Bay, Penryn, Newcastle and the Loomis Basin area) it serves, but opposes their inclusion if sought by KTNC-TV. It states further that the community of Sunset-Whitney, originally listed by KTNC-TV, has been subsumed into the City of Rocklin franchise and is no longer a separate entity. A review of KTNC-TV’s request appears to indicate that the community of Loomis is not included in its request. The named unincorporated areas of Placer County, however, may be included in the 5 CUID numbers listed for that county. The community of Sunset-Whitney will be deleted as a separate community.

three oppositions. For the reasons discussed, we grant KTNC-TV's request to the extent indicated below.

## 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.<sup>4</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>5</sup> A DMA is a geographic market designation that defines each television market exclusive of 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>6</sup>

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.<sup>7</sup>

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 news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;

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<sup>4</sup>8 FCC Rcd 2965, 2976-1977 (1993).

<sup>5</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). Section 76.55(e) 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).

<sup>6</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>7</sup>47 U.S.C. §534(h)(1)(C).

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>8</sup>

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.

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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>9</sup>

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.<sup>10</sup>

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:

(1) 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.

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

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<sup>8</sup>*Id.*

<sup>9</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>10</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>11</sup>

- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) 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.-1 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.<sup>12</sup>

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 KTNC-TV's request to include the listed communities within its television market. KTNC-TV is located within the San Francisco, California DMA, while the cable communities at issue are located in the Sacramento-Stockton-Modesto, California DMA. In support of its request, KTNC-TV states that it is a Spanish-language station affiliated with the Azteca America television network.<sup>13</sup> KTNC-TV states although its city of license is located in the San Francisco DMA, the placement of its transmitter site on Mt. Diablo allows it to deliver a City Grade signal contour over Stockton, California, and a Grade A signal contour over most of the western portions of Modesto and Sacramento.<sup>14</sup> Indeed, KTNC-TV states that it provides at least a Grade B signal to more than 3 million residents in the Sacramento DMA.<sup>15</sup> KTNC-TV asserts that in *First Century Broadcasting, Inc.*, the Commission granted a petition for modification filed by KTNC-TV, under its old call letters,

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<sup>11</sup>The 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.

<sup>12</sup>47 C.F.R. §76.59(b).

<sup>13</sup>Modification Petition at 2.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at Exhibit Two.

KFCB, seeking the addition of 23 communities located in the Sacramento market.<sup>16</sup>

6. The first statutory factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community.”<sup>17</sup> KTNC-TV states that it is currently carried on Sacramento market cable systems serving the following requested communities: Colfax, Isleton, Lodi, Modesto, Rio Vista, Roseville, Tracy and Vacaville.<sup>18</sup> KTNC-TV argues that although it does not believe it has a history of carriage in the majority of the requested communities, it is clear that the cable systems currently carrying its signal are spread throughout the Sacramento DMA.<sup>19</sup> KTNC-TV notes that in *Paxson Atlanta License, Inc.*, the Commission stated that “such carriage serves to demonstrate the belief of both the stations and systems involved that there is a market nexus between the broadcast station and the communities where the station is carried and thus provides evidence as to the scope of a station’s market.”<sup>20</sup> KTNC-TV argues that its lack of carriage in the requested communities likely results from discrimination against carrying specialty stations.<sup>21</sup> KTNC-TV states that evidence of this discrimination is supported by the fact that many of the communities it seeks to include receive other stations licensed to communities in the San Francisco DMA.<sup>22</sup> In addition, KTNC-TV notes that the Commission has stated that lack of historical carriage will not, in itself, serve as a bar for granting a request to add a particular community.<sup>23</sup>

7. USA argues that KTNC-TV’s reliance on *Paxson Atlanta* is misplaced because while that decision stated that carriage in nearby communities could suggest historical carriage, it declined to find that such nearby carriage existed nor did it extend the station’s market on that basis.<sup>24</sup> USA notes that in *First Century*, the historical carriage factor was met because the station was actually carried in the affected communities.<sup>25</sup> Despite KTNC-TV’s assertions, USA argues that the Commission has never

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<sup>16</sup>*Id.* at 2, citing 10 FCC Rcd 13113 (1995) (“*First Century*”). The communities granted for inclusion were Brookshire, Carmichael, Citrus Heights, Elk Grove, Elverta, Fair Oaks, Folsom, French Camp, Galt, Gold River, Lathrop, Lincoln, Manteca, McClellan, North Highlands, Orangevale, Quail Lakes Garden, Rancho Cordova, Rio Linda, Sacramento, Stockton, and Venetian Garden, California. We note that 11 of these communities are listed among the communities requested for inclusion in the instant proceeding – Citrus Heights, Elk Grove, Folsom, Galt, North Highlands, Rancho Cordova, Sacramento, Lathrop, Manteca and Stockton. In light of the fact that KTNC-TV was previously granted must carry status in these communities, they will not be included in our action herein. Note: the community of Lincoln requested by KTNC-TV herein appears to be in a different county than that previously granted in *First Century*. We will consider the community of Lincoln as part of this proceeding.

<sup>17</sup>47 U.S.C. §534(h)(1)(C).

<sup>18</sup>Modification Petition at 4. KTNC-TV also included the communities of Manteca, Sacramento & Stockton that were granted for inclusion in *First Century*. KTNC-TV indicated that it was also carried in the communities of Esparto and Linden, but these communities were neither granted by *First Century* nor included among those requested for inclusion here.

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*, citing 13 FCC Rcd 20087, 20100 (1998) (“*Paxson Atlanta*”).

<sup>21</sup>*Id.* at 4.

<sup>22</sup>*Id.* at Exhibit Four.

<sup>23</sup>*Id.* at 5, citing *Costa de Oro Television, Inc.*, 13 FCC Rcd 4360, 4375 (1998); *Time Warner Cable*, 10 FCC Rcd 8045 (1995); *Time Warner Cable*, 10 FCC Rcd 6663 (1995).

<sup>24</sup>USA Opposition at 2, citing 13 FCC Rcd 20087 (1998).

<sup>25</sup>*Id.* at 3, citing 10 FCC Rcd at 13117 (“*First Century*”).

granted a market modification based solely on a station's Grade B coverage and that to do so would effectively rewrite the must carry standard adopted by Congress in 1992.<sup>26</sup> Comcast and Starstream argue that KTNC-TV's reliance on *First Century* is misplaced because that petition was granted based on factors that are not present here.<sup>27</sup> Comcast points out that in *First Century*, KTNC-TV had been carried in the specified communities for at least 10 years; placed a Grade A contour over the communities; was located an average of 40-50 miles from the communities; and had some locally-focused programming.<sup>28</sup> In this instance, Comcast maintains that KTNC-TV has never been carried in any of the subject communities, despite 20 years of operation.<sup>29</sup> Although KTNC-TV relies on its carriage in other communities in the Sacramento DMA, Comcast argues that the fact that a cable system might choose to carry a particular out-of-market station is not proof that such out-of-market station merits mandatory carriage. Comcast points out that 3 of the 5 headends serving its communities carry no San Francisco DMA stations and the 2 that do carry only a small percentage of the total San Francisco stations available.<sup>30</sup> Comcast asserts that because of this limited carriage of San Francisco stations, KTNC-TV cannot claim that it would be placed at a competitive disadvantage if its request is not granted.<sup>31</sup> Indeed, Comcast states that grant of KTNC-TV's request would place the station at an unfair competitive advantage *vis-à-vis* the other San Francisco stations which do not have must carry rights in the subject communities.<sup>32</sup> Starstream argues that grant of KTNC-TV's request would set a dangerous precedent, opening the door to numerous other San Francisco DMA stations seeking similar modifications and resulting in cable systems, such as Starstream, becoming obligated to carry broadcasters licensed to two of the top 25 markets.<sup>33</sup> Starstream states that its communities are located an average of 74 miles from KTNC-TV's city of license and are separated by the City of Sacramento. Starstream states that not only has KTNC-TV never been carried in any of its communities, but Starstream does not carry any San Francisco DMA stations on its Placer County cable system.<sup>34</sup> Because of the length of time that KTNC-TV has been on-the-air, Starstream argues that KTNC-TV's lack of historic carriage cannot be excused simply because it is a "specialty" station.<sup>35</sup>

8. Second, we consider "whether the television station provides coverage or other local service to such community."<sup>36</sup> KTNC-TV maintains that, as demonstrated by the Longley-Rice

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<sup>26</sup>*Id.*

<sup>27</sup>Comcast Opposition at 3 and Starstream Opposition at 13, citing *First Century*, 10 FCC Rcd at 13113.

<sup>28</sup>Comcast Opposition at 3.

<sup>29</sup>*Id.* at Exhibits 4 and 5.

<sup>30</sup>Comcast Opposition at 5 and Exhibit 4.

<sup>31</sup>*Id.* at 6.

<sup>32</sup>*Id.*, citing *Guy Gannett Communications*, 13 FCC Rcd 23470 (1998) (Commission rejected a Portland, Maine's market modification where the competing Portland stations were being voluntarily carried in the Boston DMA communities at issue because denial would not place station at an unfair disadvantage to the stations with which it competed.).

<sup>33</sup>Starstream Opposition at 2. Starstream notes that Warren Communications News *2002 Cable & Station Coverage Atlas* demonstrates that numerous Sacramento DMA stations provide adequate coverage of the San Francisco market. *Id.* at Exhibit 1.

<sup>34</sup>*Id.* at Exhibit 5.

<sup>35</sup>*Id.* at 6.

<sup>36</sup>47 U.S.C. §534(h)(1)(C).

engineering study it submitted with its petition, each of the requested communities receives at least a Grade B signal from KTNC-TV.<sup>37</sup> KTNC-TV states further that the Azteca America television network is one of the largest Spanish-language programmers in the world and provides 12 hours of Spanish-language programming 7 days a week.<sup>38</sup> KTNC-TV argues that the only other station in the Sacramento DMA that provides Spanish-language programming is KUVS, Modesto, California, an affiliate of Univision.<sup>39</sup> KTNC-TV states that Azteca America seeks to provide an alternative programming source for the Sacramento DMA's nearly one million Hispanic viewers.<sup>40</sup>

9. USA argues that, if KTNC-TV's Longley-Rice showing is correct, the station provides only spotty coverage to the community of Forest Hill, a fact which is not surprising since its transmitter is over 96 miles away.<sup>41</sup> Moreover, KTNC-TV provides no evidence that its Spanish-language programming is in any way focused on Forest Hill.<sup>42</sup> In reply, KTNC-TV argues that USA's opposition should be dismissed because most of the community of Forest Hill receives at least a Grade B signal and some portions of the community actually receive a City Grade signal.<sup>43</sup> As a result, KTNC-TV maintains that it does provide "local service" to the community.

10. Comcast and Starstream note that the Longley-Rice studies they commissioned confirm that KTNC-TV provides, at best, fringe Grade B coverage to several of the subject communities.<sup>44</sup> Even in instances where there is Grade B coverage, however, Comcast and Starstream state that the Commission has specifically found that Grade B contours "[a]re not to be used as an absolute measure of the scope of a station's market."<sup>45</sup> Comcast and Starstream assert that while the Commission has previously relied on a station's Grade B contour coverage as a last resort to prevent the contraction of its existing market, it does not typically rely solely on the Grade B contour to expand a station's market.<sup>46</sup> Comcast and Starstream state further that their cable communities are geographically distant from KTNC-TV's city of license at an average of approximately 80 and 74 miles, respectively.<sup>47</sup> They state that these distances are similar to, or greater than, the distances found in prior Commission decisions justifying the exclusion of cable communities from a station's market.<sup>48</sup> Comcast states that KTNC-TV is also

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<sup>37</sup>Modification Petition at Exhibits One and Five. KTNC-TV states that, in fact, nearly all of the communities receive a City Grade service contour. *Id.* at 6.

<sup>38</sup>*Id.* at Exhibit Six.

<sup>39</sup>*Id.* at 6.

<sup>40</sup>*Id.*

<sup>41</sup>USA Opposition at 4 and Attachment A.

<sup>42</sup>*Id.* at 5.

<sup>43</sup>Reply to USA Opposition at Exhibit A.

<sup>44</sup>Comcast Opposition at 7 and Exhibit 7 and Starstream Opposition at Exhibit 6.

<sup>45</sup>*Id.* at 8 and Starstream Opposition at 7, citing *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803, n.32 (1996).

<sup>46</sup>*Id.* at 8 and Starstream Opposition at 8, citing *Agape Church, Inc.*, 14 FCC Rcd 2309 (1999); *Norwell Television, LLC*, 16 FCC Rcd 21970 (2001).

<sup>47</sup>*Id.* at Exhibit 2 and Starstream Opposition at 8.

<sup>48</sup>*Id.* at 9 and Starstream Opposition at 8, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-79 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997) (38-61 miles); *Time Warner Cable*, 11 FCC Rcd 13149 (1996) (45 miles); *Cablevision of Cleveland and V Cable, d/b/a Cablevision of Ohio*, 11

(continued...)

separated from the communities by several geographical boundaries such as the Bear Mountains, Red Hills, Hogback Mountain and Gopher Ridge.<sup>49</sup> Further, although KTNC-TV emphasizes its Spanish-language programming as evidence of a local nexus to the communities, both Comcast and Starstream state that KTNC-TV does not identify any programming that specifically targets their communities.<sup>50</sup> Comcast and Starstream argue that while KTNC-TV's programming may be of general interest to their subscribers, it does not focus on the informational needs of the franchise residents.<sup>51</sup> In any event, Comcast states that it already carries several stations and cable services that provide Spanish-language news and programming to its subscribers.<sup>52</sup> Starstream points out that another Spanish-language station it carries, KUVS, provides essentially the same type of programming as KTNC-TV.<sup>53</sup>

11. In a combined reply to Comcast and Starstream, KTNC-TV states that while both parties cite a number of cases where the Commission has deleted communities based on distance, KTNC-TV argues that reliance on these cases is misplaced because in each instance the television station involved also failed to provide at least a Grade B signal to any part of the communities at issue.<sup>54</sup> KTNC-TV states that it has demonstrated that it does provide at least a Grade B signal to each of the communities and the Commission has repeatedly stated that communities within a station's Grade B signal are logically relied upon for economic support and will be considered to receive "local service" for mandatory carriage purposes.<sup>55</sup> KTNC-TV points out that, in *Paxson Atlanta*, the Commission granted the inclusion of communities that had been shown through a Longley-Rice study to receive a Grade B signal, despite the fact that the station otherwise failed to satisfy any of the other statutory factors.<sup>56</sup> KTNC-TV argues that Comcast's and Starstream's contention that their communities should only receive one Spanish-language station is as illogical as requiring cable systems to limit television broadcast carriage to only one network affiliate since all provide similar programming.<sup>57</sup> Finally, KTNC-TV states that the Commission has long held that the market modification process is a fact-intensive process that must be completed on a station-by-station, community-by-community basis.<sup>58</sup> Because of territorial restrictions, KTNC-TV argues that it is highly unlikely, as claimed by Comcast and Starstream, that a grant here would lead to a landslide of similar requests by other San Francisco stations.

12. The third statutory factor we must consider is "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

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FCC Rcd 18034 (1996) (41 miles).

<sup>49</sup>*Id.* at Exhibit 3.

<sup>50</sup>*Id.* at 9 and Starstream Opposition at 9.

<sup>51</sup>*Id.* Comcast notes that KTNC-TV is actually a satellite of KFWU, Ft. Bragg, California, which is part of the San Francisco, California DMA, and provides the same programming format. *Id.* at Exhibit 4.

<sup>52</sup>*Id.* at Exhibit 5.

<sup>53</sup>*Id.* at 11.

<sup>54</sup>Reply to Comcast/Starstream Oppositions at 3.

<sup>55</sup>*Id.* at 3, citing Modification Petition at Exhibit 1; *see also Media General Cable of Fairfax County, Inc.*, 15 FCC Rcd 149 (2000).

<sup>56</sup>*Id.*, citing 13 FCC Rcd 20087 (1998).

<sup>57</sup>*Id.* at 5.

<sup>58</sup>*Id.*, citing *Must Carry Order*, 8 FCC Rcd at 2977.

section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>59</sup> In general, we believe that Congress did not intend this third criterion to operate as a bar to a station’s DMA claim whenever other stations could also be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue.<sup>60</sup> In this case, because other stations serve the communities in question, this enhancement factor does not appear applicable.

13. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”<sup>61</sup> KTNC-TV concedes that it does not command substantial viewership in the subject communities.<sup>62</sup> It argues, however, that its lack of ratings, just like its lack of historical carriage, is the direct result of its status as a specialty station. It therefore maintains that its lack of ratings should not be determinative.<sup>63</sup> USA argues that although the *Norwell Television* decision that KTNC-TV cites may have discounted the station’s lack of viewership because it was a specialty station, it had other factors on which to rely that are not present in this case – proximity of station’s transmitter and Grade B coverage of all of the communities.<sup>64</sup> Comcast and Starstream state that recent viewership studies failed to find any ratings for KTNC-TV in either the cable or non-cable households of the seven Sacramento market counties where Comcast’s systems are located or Placer County where Starstream’s cable communities are located.<sup>65</sup> Starstream argues that KTNC-TV cannot argue that its lack of ratings is due to discrimination or should be minimized due to its specialty station status.<sup>66</sup>

14. The communities encompassed by KTNC-TV’s request appear to be comprised of approximately 30 separate cable systems that are located throughout the Sacramento DMA. KTNC-TV has argued that because it can serve the requested communities with City Grade, Grade A or Grade B signals, it should be entitled to carriage, despite the fact that, except for a limited number of communities, it meets no other market modification criteria and it is licensed to a neighboring DMA. KTNC-TV argues that, as an affiliate of the Azteca America network, it is an invaluable asset to the Hispanic residents of the requested communities. It also relies on the Bureau’s prior decision in *First Century* which granted KTNC-TV’s request to include 22 Sacramento market communities.

15. As an initial matter, we note that, according to the legislative history of the Act, the use of DMA market areas is intended “to ensure that television stations be carried in the areas which they service and which form their economic market.”<sup>67</sup> The DMA market change process incorporated into the

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<sup>59</sup>47 U.S.C. §534(h)(1)(C).

<sup>60</sup>See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

<sup>61</sup>47 U.S.C. § 534(h)(1)(C).

<sup>62</sup>Modification Petition at 7.

<sup>63</sup>*Id.* at 8.

<sup>64</sup>*Id.* at 6, citing 17 FCC Rcd 16085, 16088 (2002); see also *WRNN-TV Associates Limited Partnership*, 14 FCC Rcd 13453 (1999).

<sup>65</sup>Comcast Opposition at Exhibit 10 and Starstream Opposition at Exhibit 9.

<sup>66</sup>Starstream Opposition at 12.

<sup>67</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

Communications Act, however, is neither intended to be a process whereby cable operators may seek relief from the mandatory signal carriage obligations apart from the question of whether a change in the market is warranted, nor is it a vehicle for broadcast stations to reach service areas that they otherwise could not serve. There is no question that Nielsen, in its assignment of KTNC-TV to the San Francisco DMA, has concluded that that DMA represents KTNC-TV's economic market. In *First Century*, the Bureau granted KTNC-TV's request based on the fact that it met 3 of the 4 market modification factors – local service (Grade A contour coverage, geographic proximity and a reasonable amount of locally-focused programming); historic carriage and some viewership based on an independent survey submitted by the cable system.<sup>68</sup> In the case before us, the issues are less clear cut. In the majority of communities at issue KTNC-TV meets only one of the market modification factors – signal coverage. In some communities even that determination is questionable. For a limited number, less than 8 communities KTNC-TV meets the historic carriage and signal coverage factors. In none of the communities does KTNC-TV show any viewership and, other than generalized statements about its Spanish-language programming, KTNC-TV has not shown that any of its programming has a local nexus to the communities.

16. We note that the Commission has recognized that specialty stations, such as KTNC-TV, often fail to meet the historic carriage factor and often have no appreciable audience shares due to the nature of their programming. In this instance, KTNC-TV argues that given its status as a specialty station, its lack of historic carriage and viewership should be given little weight. We agree. Therefore, in analyzing specialty stations' requests to modify television markets, we often look past these criteria to other factors. However, while these factors are not controlling, we cannot totally disregard them as urged by KTNC-TV. KTNC-TV has also argued that its lack of historic carriage, in particular, is most likely a symptom of the general discrimination against specialty stations. While to a certain extent this may be true, it cannot apply in this instance. Because of the fact that KTNC-TV is licensed to a different DMA, it would not be entitled to mandatory carriage in communities in the Sacramento DMA absent a market modification waiver granting such rights. Its lack of carriage, therefore, should not be blamed on discrimination.

17. The Commission has stated repeatedly that the “fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process.”<sup>69</sup> KTNC-TV's signal coverage over many of the requested communities, therefore, does not in and of itself necessarily entitle it to carriage. In order to make a fair determination, we have to look at a combination of factors - the station's coverage, its geographic proximity and/or historic carriage. No one factor has more relevance than another. In this instance, a review indicates that of the approximately 30 cable systems involved herein, only 10 meet more than one factor. For instance, the Isleton, Lodi, Tracy, Fairfield, Rio Vista, Suisun City, Travis AFB and Vacaville cable systems are encompassed by KTNC-TV's predicted City Grade contour and are in geographic proximity to the station.<sup>70</sup> The Davis cable system is encompassed by KTNC-TV's predicted Grade A contour and is geographically proximate. Finally, the West Sacramento cable system has City Grade coverage from KTNC-TV according to Longley-Rice and all of the communities are in geographic

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<sup>68</sup>10 FCC Rcd at 13117.

<sup>69</sup>See e.g., *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386, 19396 (2000); *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298, 306 (1998); *Rifkin/Narragansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, 21104 (1996), *recon. denied*, 14 FCC 13788 (1999).

<sup>70</sup>The community of Isleton appears to be served by the Sacramento cable system that was granted for inclusion by *First Century*.

proximity to the station. As a result, KTNC-TV's request for inclusion of these systems will be granted. For the remaining communities and/or cable systems, KTNC-TV's request is denied.

#### IV. ORDERING CLAUSES

18. 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-6129-A), filed by KTNC-TV Licensee, LLC **IS GRANTED** for the communities of Isleton, Lodi, Tracy, Fairfield and associated unincorporated areas of Solano County, Rio Vista, Suisun City, Travis AFB, Vacaville, Davis and associated unincorporated areas of Yolo County, West Sacramento, Winters, Woodland, Yolo and Dixon, California. In all other respects, KTNC-TV's petition **IS DENIED**.

19. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>71</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>71</sup>47 C.F.R. §0.283.

## APPENDIX

<u>Community/County Areas Requested</u>	<u>CUID No.*</u>	<u>Geographic Distance from Concord*</u>
Amador County#	CA0637	
	CA 1422	
Ione	CA1423	63
Jackson#	CA0267	72
Pioneer	CA1006	84
Plymouth#	CA1269	72
Sutter Creek#	CA0273	71
Calaveras County	CA1535	
Arnold#	CA0372	96
Mokelumme Hill#	CA0971	74
Murphys#	CA0373	85
San Andreas#	CA0371	74
Valley Springs#	CA0933	66
West Point	CA1469	85
Colusa County#	CA0384	
Arbuckle	CA1044	72
Colusa#	CA0383	85
Williams	CA1043	82
El Dorado County#	CA0635	
Cameron Park#	CA1012	74
Placerville#	CA0270	84
Nevada County		
Placer County#	CA0517	
	CA0518	
	CA0586	
	CA0777	
	CA1318	
Auburn	CA0519	81
	CA0717	
Colfax**	CA1046	96
Forest Hill#	CA1271	
Lincoln#	CA0858	74
Rocklin#	CA0912	71
Roseville**	CA0163	66
	CA1277	
Plumas County		

Sacramento County	CA1511	
Isleton**	CA1258	25
San Joaquin County	CA0430	
	CA1315	
	CA1316	
	CA0404	
	CA0639	
	CA0736	
Escalon	CA0851	56
Lodi**	CA0155	41
Ripon	CA0861	51
Riverbank	CA0800	60
Tracy**	CA0348	35
Sierra County		
Solano County	CA0480	
	CA0580	
	CA1466	
	CA1629	
Dixon	CA0542	34
	CA0623	
Fairfield	CA0459	19
Rio Vista**	CA0611	21
	CA1576	
Suisun City	CA0479	19
Travis AFB	CA0368	
Vacaville**	CA0349	27
Stanislaus County	CA0435	
	CA0436	
	CA0461	
	CA0669	
	CA0670	
	CA1308	
	CA1398	
Ceres	CA0434	63
Empire	CA0990	64
Hickman	CA0987	72
Hughson	CA0989	67
Modesto**	CA0019	59
Oakdale	CA0256	64
Patterson	CA0537	59
Riverbank	CA0433	60
	CA0799	
	CA0801	
Salida	CA1041	53

Turlock	CA0460	71
Waterford	CA0988	71
Sutter County	CA0011	
Live Oak#	CA0700	92
	CA1170	
Tierra Buena#	CA0663	84
Yuba City#	CA0012	83
Tuolumne County#	CA1212	
Big Oak Flat	CA1344	96
Cold Springs	CA1514	107
Columbia#	CA1214	87
Mi-Wuk Village#	CA1215	100
Pinecrest	CA0281	111
Sonora#	CA0260	88
	CA0261	
Yolo County	CA1500	
	CA1497	
Davis	CA1058	43
West Sacramento	CA1192	47
	CA1608	
Winters	CA0936	39
Woodland	CA0543	50
Yolo	CA1483	53
Yuba County#		
Linda#	CA0010	83
Marysville#	CA0009	84
Olivehurst#	CA0516	80
Wheatland#	CA0902	78

\*where known

\*\*communities where KTNC-TV is currently carried

#contested communities

NOTE: A number of the listed areas include more than one CUID number. Over time, some of these CUID numbers may have been eliminated or merged with another due to changes in cable system ownership.