

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

In the Matter of:)	
)	
Young Broadcasting of Lansing, Inc.)	CSR-6220-A
)	
Petition For Modification of the Television Market)	
of Television Station WLNS-TV, Lansing,)	
Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 2003

Released: November 26, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Young Broadcasting of Lansing, Inc. (“Young”), licensee of television broadcast station WLNS-TV, Lansing, Michigan (“WLNS”), filed the above-captioned petition for special relief seeking to modify WLNS’s designated market area (“DMA”) to include the communities of Howell, Brighton, Genoa, Brighton Township, Oceola, and Green Oak, Michigan (the “cable communities”) served by a cable system operated by Comcast Cablevision of the South, Inc. (“Comcast”).¹ Comcast filed an opposition, to which Young replied. For the following reasons, we grant the petition.

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 (“Nielsen”).³ 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

¹ The cable communities are located in Livingston County, Michigan.

² 8 FCC Rcd 2965, 2976-77 (1993).

³ 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. 47 C.F.R. §76.55(e); *see Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

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 news 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.

* * * *

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

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:

(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.

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.⁹

(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

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.

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 with a filing fee. The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

III. DISCUSSION

5. The issue before us is whether to grant WLNS's request to include the communities of Howell, Brighton, Genoa, Brighton Township, Oceola, and Green Oak, Michigan within its television market. WLNS is an affiliate of the CBS television network, and is in the Lansing, Michigan DMA, while the cable communities are located in the Detroit, Michigan DMA.

6. WLNS explains in its petition that it had been carried on the cable system (the "Brighton system") since at least 1983 to December 15, 2000, when then-owner MediaOne ceased carriage of the station.¹¹ In addition, WLNS states that the station is currently carried on all of the cable systems serving communities adjacent to the cable communities in Livingston County.¹² WLNS states that the station places a predicted Grade A contour over all of the cable communities, located within 32 miles of the station's transmitter and 42 miles from Lansing, with the exception of Green Oak, which is well within the station's Grade B contour and 40 miles from the transmitter and 50 miles from Lansing.¹³ Petitioner contends that the station provides 5 daily half-hour newscasts, and two each weekend day, which cover topics of interest to residents of the cable communities.¹⁴ Petitioner states that the station is listed in major television guides circulated in the cable communities.¹⁵ In addition, WLNS states that its coverage of weather conditions in the cable communities is unique because of its superior weather radar.¹⁶ WLNS argues that it offers better coverage of local community events than do the majority of the stations carried by the cable system. Petitioner states that although the Detroit stations carried on the system may occasionally cover significant events occurring in the cable communities, these stations do not provide the type of routine news coverage that WLNS offers, which includes regular weather reports and coverage of local high school sports and community events.¹⁷ WLNS states that WWJ-TV ("WWJ"), the CBS affiliate assigned to the Detroit DMA provides no local news, sports, weather, or community programming for residents of the cable communities.¹⁸ In support, WLNS provides examples of newspaper articles and letters from viewers "expressing their disappointment" regarding MediaOne's decision to cease carrying the station.¹⁹ WLNS also contends that the station has a substantial viewing

¹⁰47 C.F.R. §76.59(b).

¹¹ Petition at 5.

¹² *Id.* at 6.

¹³ *Id.* at 7, 11.

¹⁴ *Id.* at 8, Exhibit 8.

¹⁵ *Id.*

¹⁶ *Id.* at 9, Exhibit 10 (Examples of viewers' praise for coverage of a local tornado).

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 14, Exhibits 5, 17, 18, 19 and 20 (including letters of protest from the City Manager's Office of Howell and Brighton).

audience in the cable communities, and supplies Nielsen data in support.²⁰ In addition, WLNS states that of the six cable systems serving Livingston County, the station is currently carried on all the systems except for Comcast's Brighton System.²¹

7. In its opposition, Comcast argues that WLNS's programming would duplicate the programming of WWJ, the Detroit market CBS affiliate, and since WLNS "may be slightly closer" to the system's headend, WWJ's must carry rights in the cable communities "would be at risk" since the cable operator would be required by the Commission's rules to carry only the closest of the affiliates.²² Comcast cites the *Portland Cases* for the proposition that even where the station seeking modification presents favorable statutory factors, the Commission is loathe to jeopardize the existing in-market affiliate's must carry rights.²³ Comcast contends that WLNS' claim of Grade A coverage to the cable communities is "spotty at best," while WWJ provides a Grade A signal to the cable communities according to Longley-Rice studies.²⁴ Comcast contends that WWJ's overall viewership exceeds that of WLNS in the cable communities,²⁵ and argues that even though both stations are "significantly viewed" in the cable communities, WWJ's higher overall viewership ratings demonstrate a preference for WWJ.²⁶ Comcast argues that voluntary carriage of an out-of-market station is "hardly proof" that the station should be entitled to mandatory carriage rights. In addition, Comcast contends that WLNS' programming does not focus on the cable communities, and that the cable system carries numerous Detroit stations that provide local programming to the communities.²⁷

8. In reply, WLNS contends that it broadcasts an abundance of local programming specifically targeted to the cable communities, in addition to its highly localized weather reports which focus on individual neighborhoods within the cable communities.²⁸ WLNS states that during a representative four month period, the station produced 33 stories specifically targeted toward the six cable communities and aired these stories, with updates, a total of 124 times.²⁹ WLNS contends that Comcast's argument that the system's carriage history should be "discounted" because it was voluntary rather than mandatory is faulty. WLNS argues that such voluntary carriage affirms that the station provides programming and information of interest to the residents of the cable communities.³⁰ In response to Comcast's contention that WLNS provides "spotty" Grade A coverage, petitioner submitted a Longley-

²⁰ According to Nielsen reports for the years 2000-2001, WLNS had a 6 share of total households in Livingston County at 5:00 P.M., and a 7 share at 5:30 P.M., 6:00 P.M. and 6:30 P.M. In 2001, the station achieved a 3 share at 6:00 P.M. and a 4 share at 6:30 P.M. *Id.* at 10, Exhibit 12.

²¹ *Id.* at 5.

²² Opposition at 4-5, citing *Broad Street Television, L.P.*, 10 FCC Rcd 5576 (1995); *Guy Gannet Communications, Inc.* 13 FCC Rcd 23470 (1998), recon. denied, 15 FCC Rcd 10762, *Pacific and Southern Company, Inc.* 14 FCC Rcd 4558 (1999) (the "*Portland Cases*"). See also 47 C.F.R. § 76.55(b)(5).

²³ Opposition at 4-5.

²⁴ *Id.* at 7, Exhibit 3.

²⁵ *Id.* at 7, Exhibit 7.

²⁶ *Id.* at 8. Comcast supplies letters from Media Strategies, based on Nielsen research for 2002.

²⁷ *Id.* at 13-14.

²⁸ Reply at 3, Exhibits 1, 2.

²⁹ *Id.* at 3.

³⁰ *Id.* at 9.

Rice study which demonstrates that the station provides Grade A coverage to all six cable communities.³¹ In addition, in response to Comcast's pleading, WLNS recalculated the distances from its transmitter to the cable headend and cable communities.³² According to its new calculations, WLNS states that its transmitter is less than 29 miles from the cable system's headend and that the distances to the cable communities range from 23 to 36 miles.³³ WLNS disputes Comcast's claim that WWJ is "significantly viewed" in the cable communities.³⁴ WLNS argues that Comcast overstates the respective viewing audiences in favor of WWJ, and that, in fact, viewership data shows that viewers in the cable communities prefer WLNS to WWJ.³⁵ WLNS also contends that Comcast's concerns regarding carriage of two CBS affiliates "ring hollow" given that the system carries two ABC affiliates and two NBC affiliates, including the Lansing market NBC affiliate and WKAR, the Lansing market PBS affiliate. In addition, WLNS contends that Comcast carries both WLNS and WWJ on its Harland system, also serving viewers in Livingston County. WLNS argues that this carriage implicitly acknowledges that WLNS provides programming valuable to residents of the county who already receive WWJ.³⁶ Moreover, WLNS contends that WWJ's lack of participation in the instant proceeding is evidence that it will not be harmed by Comcast's carriage of WLNS in the cable communities.³⁷

9. In granting WLNS' petition to modify its DMA to include the cable communities, we find that WLNS meets the mandatory statutory criteria for market modification. With regard to the first of the four statutory factors, KCBA has a long history of carriage on Comcast's Brighton system serving the cable communities. We also note that Comcast carries both WLNS and WWJ on its other cable system serving Livingston County, and that of the six cable systems serving the county, only Comcast's Brighton system does not carry WLNS. Secondly, WLNS has demonstrated that it provides coverage and local service because its Longley-Rice Grade A contour encompasses the cable communities. We have stated previously that such coverage alone may be sufficient to satisfy the second statutory requirement.³⁸ In addition, WLNS presented evidence that it provides local programming to the cable communities, and letters from the Brighton and Howell City Managers Offices stating that WLNS provides valuable programming to their communities. With regard to the third statutory factor, namely, whether other

³¹ *Id.* at 10, Exhibit 7. WLNS contends that its Longley-Rice analysis uses standard parameters and methodology, as opposed to Comcast's Longley-Rice analysis which contains no indication of the parameters or methodology used.

³² WLNS calculated its revised distances using a program from the U.S. Department of Agriculture, and contends that its figures are more accurate than Comcast's distance calculations. *Id.* at 13, Exhibit 10.

³³ *Id.* at 14.

³⁴ *Id.* at 11-12. WLNS argues that Comcast's Exhibit 8 references the Cable & Station Coverage Atlas (2000 edition) which lists WDIV, channel 4, whose call sign letters were WWJ-TV until 1978. The WWJ-TV referenced in the instant matter broadcasts on channel 62 and is not listed in the 2003 edition of the Cable & Station Coverage Atlas as significantly viewed in Livingston County.

³⁵ *Id.* at 12. WLNS argues that Comcast's Exhibit 7, *supra*, shows that during, e.g., late-afternoon and evening news, primetime Monday through Sunday, and late-night Monday through Friday, WLNS has significantly more viewers in non-cable households than WWJ. Even in total viewership, where WLNS is "severely hampered by its lack cable carriage" in the cable communities, WLNS has greater viewership than WWJ in the late-afternoon and evening news periods.

³⁶ *Id.* at 18.

³⁷ *Id.* at ii.

³⁸ *KSBW License, Inc.*, 11 FCC Rcd 2368, 2371 (1996).

television stations provide local programming, we believe that Congress did not intend this criterion to bar a station's DMA modification claim, but instead was intended to enhance its claim where it could be shown that other stations do not serve the communities at issue.³⁹ Concerning the fourth factor, viewing patterns, WLNS's petition indicates it has a moderate level of viewership in the cable communities, and that many viewers prefer WLNS's local programming.⁴⁰

10. With regard to Comcast's argument that grant of WLNS' petition could lead to the dropping of the in-market CBS affiliate, we acknowledge that the Commission is reluctant to grant a market modification where an in-market affiliate's status on a cable system may be jeopardized.⁴¹ However, this does not mean that the Commission will not grant market modifications merely because there is an in-market affiliate. In the *Portland Cases*, network stations in Portland, Maine, in the Portland-Poland Spring ADI (now DMA) sought to include in their market cable communities in the Boston, Massachusetts ADI. The Commission noted, in denying the requests, that this would jeopardize the continued carriage on the cable system of stations licensed to Boston that were affiliated with the same network. In the *Portland Cases*, the Portland television stations and the Boston stations were generally an equal distance from the cable communities at issue, as is the case here. In that instance, the Commission concluded that if the market modifications were granted, the in-market Boston affiliates' must carry status within their own ADI market would be jeopardized.⁴² In the *Portland Cases*, however, it was clear that the in-market affiliate had substantial viewership levels and was significantly viewed in the communities, whereas the out-of-market affiliate had significantly less viewership and was not significantly viewed in the communities. The facts are different in the present situation. In this matter, WLNS has demonstrated that it is significantly viewed in the cable communities, whereas WWJ is not. WLNS has also shown that viewership levels show a preference for its local programming. An additional important distinction between the *Portland Cases* and WLNS's situation is that, in the *Portland Cases*, the television stations provided only predicted Grade B coverage to the cable communities, whereas WLNS provides Grade A coverage. For the reasons discussed above, we believe WLNS' petition presents a legitimate request to redraw DMA boundaries to make them congruous with market realities, and hereby grant WLNS's request.

³⁹ See *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

⁴⁰ See *KSBW License, Inc.*, 11 FCC Rcd at 2371.

⁴¹ See, e.g., *Duhamel Broadcasting Enterprises*, 15 FCC Rcd 4965, 4972 (2000).

⁴² *Guy Gannett Communications, Inc.*, 13 FCC Rcd at 23478; see *Portland Cases*, *supra* n.23.

IV. ORDERING CLAUSES

11. 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-6220-A), filed by Young Broadcasting of Lansing, Inc., licensee of television station WLNS-TV, **IS GRANTED**.

12. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁴³

FEDERAL COMMUNICATIONS COMMISSION

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⁴³ 47 C.F.R. § 0.283.