

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

In the Matter of:)	
)	
DOMINION BROADCASTING, INC.)	CSR-6019-A
)	
Petition For Modification of the DMA Market of)	
Television Broadcast Station WLMB(TV), Toledo,)	
Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 2003

Released: February 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Dominion Broadcasting, Inc. (“Dominion”) filed the above-captioned Petition for Special Relief seeking to modify the designated market area of Station WLMB(TV), Toledo, Ohio to add twenty-one communities in Monroe County, Michigan (the “Cable Communities”). The Cable Communities are served by Avalon Cable, Buckeye Cablevision, Inc., CC Michigan, Charter Communications, Comcast Communications, Comcast of Taylor, D&P Cable, Frenchtown Cable, Jones Cable Holdings II, and Monroe Cablevision Inc. No opposition to this petition has been received.¹ No opposition to the petition was filed. After examining the record, we grant Dominion’s request.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992* (“*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

¹Dominion has filed a Consent Motion to Amend Petition for Special Relief (“Consent Motion”) to delete five communities from the proposed list in its original petition and add two other communities pursuant to a settlement with Comcast Communications and Comcast of Taylor (“Comcast”). Comcast operates cable systems serving certain communities named in Dominion’s petition. We grant Dominion and Comcast’s Consent Motion to Amend Petition for Special Relief.

²8 FCC Rcd 2965, 2976-2977 (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 Nielsen Media Research’s DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

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.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

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:

(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 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

(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., 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

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

⁸*Must Carry Order*, 8 FCC Rcd at 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.

¹⁰47 C.F.R. §76.59(b).

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 WLMB's request to include the communities of Azalia, Bedford, Carlton, Detroit Beach, Erie, Estral Beach, Frenchtown Township, Ida, Lambertville, La Salle, Luna Pier, Maybee, Monroe, Monroe Township, Newport, Ottawa Lake, Petersburg, Raisinville, Samaria, Scofield, and Temperance, Michigan, within its television market.¹¹ WLMB is licensed to Toledo, Ohio, which is assigned to the Toledo, Ohio DMA, while Monroe County, where the Cable Communities are located, is within the Detroit, Michigan DMA. In support of its request, WLMB argues that the subject communities should be added to its market because it is a "specialty" station; it provides predicted City Grade, Grade A, or Grade B coverage to the Cable Communities; it is geographically close since it is located between 19 and 44 miles from the Cable Communities; and two of the relevant cable operators carry WLMB while the other cable operators carry other stations licensed to the City of Toledo or licensed to other communities within the Toledo, Ohio DMA. Due to its religious programming, WLMB heavily relies on financial support from local viewers including those in the Cable Communities, which makes cable access critical to its ability to raise donations to operate and provide unique, locally produced programs. Furthermore, the Station broadcasts sporting events of teams from high schools in some of the Cable Communities. It also originates weekly religious programming from Monroe, Michigan, and produces the only Spanish-language programs designed to serve the growing Hispanic population in the Cable Communities. WLMB also asserts that the Cable Communities and WLMB are closely tied, economically and physically.¹²

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."¹³ WLMB was licensed in 1988. WLMB asserts that it is currently carried on two of the cable systems at issue: Buckeye Cablevision, Inc. and Avalon Cable serving the communities of Frenchtown, Monroe Township, La Salle, Carlton, Luna Pier, Erie, Raisinville, Ida, Estral Beach, Maybee, and Monroe City.¹⁴ WLMB contends that the other cable operators involved in this proceeding carry numerous stations licensed to the City of Toledo, which is WLMB's city of license, (WGTE, WTOL, WVPW, WNWO, and WTVG), as well as stations licensed to other cities in the Toledo, Ohio DMA.¹⁵ WLMB also notes that it is listed as a local station in the television listings for the communities of Erie, Lambertville, Petersburg, Samaria, and Temperance.¹⁶ WLMB asserts that its historic carriage on two of the cable systems at issue, combined with the other cable systems carriage of numerous stations licensed to the City of Toledo establish its historic carriage in the subject communities. We agree. The historic carriage factor not only takes into consideration the carriage of WLMB, but all other stations licensed to WLMB's DMA. In this instance, it is undisputed that WLMB is carried on two of the relevant cable systems. It is also undisputed that the other cable operators involved in this proceeding carry numerous stations licensed to the City of Toledo and the Toledo, Ohio DMA. Consequently, we find that WLMB

¹¹Petition at Exhibit I and Consent Motion at Revised Exhibit 1.

¹²Petition at 1 – 2.

¹³47 U.S.C. § 534(h)(1)(C).

¹⁴Petition at 9 – 10.

¹⁵*Id.* at 11 and Exhibit IX.

¹⁶*Id.* at 11 – 12.

has met its burden of establishing historic carriage.

7. The second factor to consider is “whether the television station provides coverage or other local service to the community.”¹⁷ WLMB states that, as demonstrated by signal contour coverage maps, it provides: City Grade signal contour coverage to Bedford, Erie, Ida, Lambertville, Ottawa Lake, Petersburg, Samaria, and Temperance; Grade A signal contour coverage to Azalia, La Salle, Luna Pier, and Maybee; and Grade B signal contour coverage to Carlton, Detroit Beach, Estral Beach, Frenchtown Township, Monroe, Monroe Township, Newport, Raisinville, and Scofield.¹⁸ Moreover, WLMB states, that, as demonstrated by terrain coverage maps, there are no mountains, valleys, or waterways that degrade the reception of WLMB’s signal in the communities.¹⁹ WLMB maintains that it is also geographically close to the communities since it is located between 19 and 44 miles from the Cable Communities.²⁰ WLMB argues that, as a general matter, Grade B coverage demonstrates local service to the cable communities.²¹ WLMB maintains that the economic nexus between Toledo, its community of license, and the subject communities is supported not only by the local service that WLMB provides and the station’s geographic proximity, but also by similar population characteristics, work forces, economies, and governments.²² WLMB points out that Toledo borders Monroe County, and that the two areas are linked by rail lines and Interstate Highways.²³ WLMB notes that according to the 1990 Census, 12,263 Monroe County residences commuted to jobs in Lucas County, the County in which Toledo is located, to large employers such as Jeep, General Motors, the Toledo Public School System, and the Toledo Hospital.²⁴ Moreover, 2,994 Lucas County residents commute to Monroe County. WLMB further notes that Toledo offers other attractions for Monroe County residents including a university, minor league baseball team, the Toledo Zoo, and a convention center.²⁵ Finally, WLMB states that it received financial support from 87 Monroe County residents in 2001, it was contacted by 46 additional Monroe County residents, and a company in Petersburg, Michigan has spent \$2,440 in advertising since 2000. WLMB maintains that all of these facts demonstrate that it has a specific economic nexus with the communities. WLMB also notes that Monroe, Michigan is closer – at 20 miles -- to Toledo than it is to the “core” of the Detroit DMA, which is 35 miles away.²⁶

8. The third factor 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 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.”²⁷ In general, we believe that Congress did not intend this third criterion to

¹⁷47 U.S.C. §534(h)(1)(C).

¹⁸Petition at Exhibit II. Dominion did not include new contour and terrain maps for Monroe Township and Raisinville due to the costs involved. Dominion asserted in its Consent Motion that Comcast is the only cable operator serving these two communities and Comcast acknowledges and agrees that they are both within WLMB’s predicted Grade B contour. *See* Consent Motion to Amend Petition For Special Relief at 2 n. 3.

¹⁹Petition at 4.

²⁰*Id.*

²¹*Id.*

²²*Id.* at 7. Dominion has provided U.S. Census Bureau economic comparisons between Monroe and Lucas Counties.

²³*Id.*

²⁴*Id.* at 7 – 8.

²⁵*Id.*

²⁶*Id.* at 4 – 5 n. 4.

²⁷47 U.S.C. §534(h)(1)(C).

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.²⁸ Accordingly, given the facts of this proceeding, we do not believe this factor weighs against granting WLMB's petition.

9. 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."²⁹ WLMB concedes that it does not command high viewership ratings in the Cable Communities.³⁰ It argues, however, that its lack of ratings should not be determinative given the station's limited mass appeal.³¹ In any event, WLMB points out that it broadcasts the only locally produced Spanish-language programming in the communities.³²

10. The Commission has recognized that specialty stations, such as WLMB, often fail to meet the historic carriage factor and often have no appreciable audience shares due to the nature of their programming. However, in this instance, although WLMB has no appreciable audience share, it has established historic carriage. Other statutory factors also favor granting WLMB's petition. WLMB's transmitter is located between 19 to 44 miles from the communities and its predicted City Grade, Grade A, and Grade B contour encompasses all of the Cable Communities requested.³³ We agree with WLMB that these factors establish that WLMB provides coverage or other local service to the communities.³⁴ In addition, WLMB's petition is unopposed. Finally, all of the Cable Communities requested for inclusion are located on the south western edge of the Detroit market closest to the Toledo, Ohio DMA. For the reasons discussed above, we grant WLMB's request.

²⁸See *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

²⁹47 U.S.C. §534(h)(1)(C).

³⁰Petition at 12.

³¹*Id.*

³²*Id.*

³³See *Marks CableVision and TCI CableVision of California*, 12 FCC Rcd 22989 (1997); *recon. denied*, 15 FCC Rcd 814 (2000).

³⁴See *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267 (1997) ("the Bureau's reliance on Grade B contour coverage and distance to the community, in terms of both geography and mileage, is fully supported by the [1992 Cable Act], its legislative history, and Commission precedent.").

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, the captioned petition for special relief (CSR-6019-A) filed by Dominion Broadcasting, Inc. **IS GRANTED**.

12. This action is taken by the Deputy Chief, Policy Division, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

³⁵47 C.F.R. §0.283.