

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

In the Matter of:	)	
	)	
Comcast of California/Idaho, Inc.	)	CSR-6277-A
Comcast of Montana/Indiana/Kentucky/Utah	)	
Comcast of Utah II, Inc.	)	
	)	
For Modification of the Salt Lake City,	)	
Utah DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 10, 2004**

**Released: May 12, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Comcast of California/Idaho, Inc., Comcast of Montana/Indiana/Kentucky/Utah, and Comcast of Utah II, Inc. (collectively "Comcast"), filed the above-captioned petition for special relief seeking to modify the Salt Lake City, Utah designated market area ("DMA") with respect to television broadcast station KUTF (Ch. 3), Price, Utah ("KUTF"). Specifically, Comcast requests that KUTF be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from 116 communities served by its various cable systems located in the Salt Lake City DMA.<sup>1</sup> An opposition to this petition was filed on behalf of Price Broadcasting, Inc., licensee of KUTF, to which Comcast replied. For the reasons stated below, we deny Comcast's request, in part, but otherwise grant its request.

**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>2</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of

<sup>1</sup>See Appendix I. Although 117 were listed by Comcast, one community was listed twice.

<sup>2</sup>8 FCC Rcd 2965, 2976-1977 (1993).

<sup>3</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. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable* (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.<sup>4</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>5</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;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>6</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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(...continued from previous page)

*Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

<sup>4</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>5</sup>47 U.S.C. §534(h)(1)(C).

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

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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>7</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>8</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.

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>9</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.

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

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

<sup>9</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.

(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>10</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 Comcast's request to exclude KUTF from mandatory carriage on the subject cable systems. All of the communities at issue are located in the Salt Lake City DMA, as is KUTF, which is licensed to Price, Utah. Considering all of the relevant factual circumstances in the record, we believe that the market modification petition is a legitimate request to redraw DMA boundaries to make them congruous with market realities.

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>11</sup> Comcast states that KUTF has no history of carriage on the subject cable systems.<sup>12</sup> Comcast argues that because KUTF has never been carried, there would be no disruption of established viewing patterns, nor would the requested action deprive the station of any existing cable audience.<sup>13</sup> KUTF argues that Comcast has inappropriately applied the historic carriage factor to KUTF because as a station that has been on-the-air for less than a year it has not had time to establish historic carriage.<sup>14</sup> In any event, KUTF notes that as a specialty station the historic carriage factor is not outcome determinative in a market modification proceeding.<sup>15</sup> Comcast argues that the Commission has consistently held that while the historical carriage factor might not be determinative in and of itself, it is significant in market modification requests when the broadcaster has failed to meet the other statutory factors.<sup>16</sup>

7. Second, we consider "whether the television station provides coverage or other local service to such community."<sup>17</sup> Comcast states that a Longley-Rice study demonstrates that the majority

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<sup>10</sup>47 C.F.R. §76.59(b).

<sup>11</sup>47 U.S.C. §534(h)(1)(C).

<sup>12</sup>Modification at Exhibit 5.

<sup>13</sup>*Id.* at 4.

<sup>14</sup>Opposition at 13-14.

<sup>15</sup>*Id.* at 14 n.25, citing *KTNC Licensee, LLC*, 18 FCC Rcd 16269 (2003).

<sup>16</sup>Reply at 4, citing *Time Warner Cable*, 12 FCC Rcd 23249, 23254 (1997); *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *TCI of Illinois, Inc.*, 12 FCC Rcd 23231, 23241 (1997); *Dynamic Cablevision of Florida, Ltd.*, 11 FCC Rcd 9880, 9889-9890 (1996), *aff'd*. 14 FCC Rcd 137783 (1999).

<sup>17</sup>47 U.S.C. §534(h)(1)(C).

of the communities at issue are well beyond KUTF's Grade B service area.<sup>18</sup> Comcast admits that a few communities, however, do lie on the fringe of KUTF's Grade B coverage area according to the same Longley-Rice study.<sup>19</sup> Comcast maintains that KUTF's general lack of signal coverage is hardly surprising considering that the average distance between Price, Utah and the communities is 119 miles.<sup>20</sup> Comcast points out that these distances exceed those found to justify other similar market modification requests.<sup>21</sup> Comcast states the lack of nexus between KUTF and the communities is also demonstrated by the driving distance and time. For instance, Comcast states that it takes an estimated 4 hours to drive the approximately 215 miles from Price to Lewiston, Utah due to the terrain separating the communities.<sup>22</sup> Finally, Comcast argues that KUTF does not appear to provide any local programming tailored to the communities at issue.<sup>23</sup> Comcast asserts that it unable to locate any program listings for KUTF in *The Salt Lake City Tribune*, the paper serving the residents of the communities, or the local edition of *TV Guide*.<sup>24</sup>

8. KUTF argues that this is not a typical market modification proceeding and the Bureau should not base the outcome of the case primarily on Grade B coverage because other, more important factors, are at play in the Salt Lake City DMA.<sup>25</sup> KUTF states that it is one of only two local Spanish-language full-power television stations licensed to the Salt Lake City DMA.<sup>26</sup> KUTF points out that the Hispanic/Latino population of the Salt Lake City DMA is rapidly growing.<sup>27</sup> Despite this, KUTF states that Comcast carries local Spanish-language programming on less than one-third of its systems, thus depriving many of its Hispanic/Latino subscribers access to this important type of programming.<sup>28</sup> Although more than 150,000 Utah residents speak Spanish, KUTF asserts that Comcast is doing everything in its power to ensure that its subscribers are deprived of the opportunity to access the more than 20 hours of local Spanish-language programming that KUTF provides its viewers each week as well as the Telefutera programming it provides.<sup>29</sup> KUTF notes, for instance, that in Salt Lake City, Comcast

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<sup>18</sup>Modification at Exhibit 4.

<sup>19</sup>*Id.* Comcast states that signal strength tests indicate that KUTF does not provide an adequate off-air signal to the communities served by the systems. See Exhibit 6.

<sup>20</sup>*Id.* at Exhibits 1-3. The closest community, Elk Ridge, Utah, is 54 miles distant and the farthest community, Preston, Idaho, is 181 miles distant.

<sup>21</sup>*Id.* at 5, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-70 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997) (38-61 miles); *Time Warner Cable*, 12 FCC Rcd 23249 (1997) (42-58 miles); *Time Warner Cable*, 11 FCC Rcd 13149 (1996) (45 miles); *Cablevision of Cleveland, L.P. and V Cable, Inc., d/b/a Cablevision of Ohio*, 11 FCC Rcd 18034 (1996) (41 miles).

<sup>22</sup>*Id.* at Exhibit 7. Comcast notes that KUTF is separated from the cable communities by, among other things, a national forest and mountainous terrain.

<sup>23</sup>*Id.* at 6.

<sup>24</sup>*Id.* at Exhibits 10 and 11.

<sup>25</sup>Opposition at 2.

<sup>26</sup>*Id.* KUTF states that it broadcasts local Spanish-language programming and Telefutera programming. The other Spanish-language station, KUTH, Logan, Utah, broadcasts local Spanish-language programming and Univision programming and its licensee is Logan 12, Inc. The parent company of both KUTF and KUTH is Equity Broadcasting Corporation. See Declaration of Lori Withrow

<sup>27</sup>*Id.* at 3 and Exhibit II.

<sup>28</sup>*Id.* at 2.

<sup>29</sup>*Id.* at 3-4 and Exhibit II.

offers only one local Spanish-language station – KUTH.<sup>30</sup> On seven out ten of its cable systems in the DMA, however, KUTF states that Comcast carries no Spanish-language stations, despite having Spanish-speaking residents in the communities.<sup>31</sup> KUTF argues that, according to the online version of the *Cable & Television FactBook*, Comcast has more than enough channel capacity on its various cable systems to accommodate carriage of KUTF.<sup>32</sup> KUTF states that instead of carrying a truly local station, however, Comcast wastes its channel capacity by carrying television stations that have no carriage rights in the DMA.<sup>33</sup> For instance, KUTF notes that Comcast carries station KCBY-TV, Coos Bay, Oregon, which is approximately 650 miles from the communities and station KIDK, Idaho Falls, Idaho, which, given the terrain, is unlikely to provide any actual Grade B coverage.<sup>34</sup> KUTF argues that Comcast should not be allowed to obtain an order from the Bureau deleting KUTF from cable communities for its alleged failure to provide either actual or predicted Grade B coverage, predicted or otherwise. KUTF argues that in *Brenmor Cable Partners, L.P.*, the Commission refused to allow a cable operator to delete cable communities from a station’s market for its failure to provide Grade B coverage when the cable operator chose to carry other stations, licensed to the same city, which also failed to provide the communities with Grade B coverage.<sup>35</sup> With regard to local programming, KUTF argues that it has developed a top-quality local programming schedule which provides viewers with more than 20 hours of local news, weather and other local information per week.<sup>36</sup>

9. KUTF states that, in terms of square mileage, the Salt Lake City DMA is the largest market in the United States and much of the terrain is rural, isolated and mountainous.<sup>37</sup> As a result, KUTF maintains that the vastness of the DMA makes it impossible for any local television station in the market to provide actual Grade B coverage to more than a small portion of the market.<sup>38</sup> As a result, KUTF argues that carriage of local stations on cable and direct broadcast systems serving the DMA is critical, not only so residents can be provided with good quality signals, but so that stations in the market can survive. KUTF asserts that this survival is even harder when a station such as KUTF is classified as a “specialty station” because they typically attract limited audience.<sup>39</sup> KUTF states that, as shown in the Longley-Rice study it submits, it provides actual Grade B coverage to the following cable communities: American Fork, Copperton, Elk Ridge, Herber City, Herriman, Jeremy Ranch, Lehi, Lindon, Mapleton, Midway, Nephi, Orem, Payson, Pleasant Grove, Pleasant View, Provo, Salem, Spanish Fork and Springville, Utah.<sup>40</sup> KUTF concludes that if the Bureau grants Comcast, Utah’s largest cable operator, the

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<sup>30</sup>*Id.* at 4.

<sup>31</sup>*Id.* at 4-5.

<sup>32</sup>*Id.* at 7 and Exhibit IV.

<sup>33</sup>*Id.* at 7 n.20.

<sup>34</sup>*Id.* at 21 and Exhibits III and X.

<sup>35</sup>*Id.* at 22, citing 14 FCC Rcd 11742 (1999).

<sup>36</sup>*Id.* at 27-28.

<sup>37</sup>*Id.* at 9. KUTF notes that the Salt Lake City DMA encompasses the entire state of Utah; Dolores County, Colorado; Bear Lake, Franklin and Oneida Counties, Idaho; Elko, Eureka and White Pine Counties, Nevada; and Lincoln, Sublette, Sweetwater and Uinta Counties, Wyoming.

<sup>38</sup>*Id.* at 9 n.26.

<sup>39</sup>*Id.* at 12.

<sup>40</sup>*Id.* at Exhibit IX. KUTF states that the communities of Elk Ridge, Herriman, Mapleton, Pleasant View and Salem, Utah were added to this list, based on a fair reading of Comcast’s Longley-Rice map.

instant request, it would have a severe effect on KUTF's future economic success

10. Comcast argues in reply that KUTF's attempt to use the vast distances and geographic barriers of the Salt Lake City DMA as an excuse to provide a signal beyond a limited area only underscores the limits of the station's actual television market and affirm its lack of local nexus with the subject communities. As Congress explained, the market modification provisions "reflect a recognition that . . . a community within a station's [DMA] may be so far removed from the station that it cannot be deemed part of the station's market."<sup>41</sup> Comcast maintains that is the case here where the average distance is 119 miles and individual distances range as high as 175 miles.<sup>42</sup> Comcast notes that, instead of providing any relevant evidence that would have established a nexus with the subject communities, KUTF chose to focus on Comcast's carriage of two distant stations, KCBY and KDIK, on certain of its cable systems.<sup>43</sup> Comcast asserts, however, that carriage of these stations says nothing about a nexus between KUTF and the subject communities. Comcast states that the majority of stations carried on its systems are licensed to Salt Lake City, Ogden and Provo, Utah. Comcast argues that this carriage is consistent with the "hub and spoke" model described in *WLNY-TV, Inc. v. FCC*.<sup>44</sup> In that decision, Comcast states, the Second Circuit observed that viewers tune in to stations located in a central metropolitan region (the "hub") with programming of widespread interest throughout the DMA, whereas outlying communities (the "spokes") generally feature programming of interest to those communities in closer proximity to the station.<sup>45</sup> Comcast states that in this case the residents of the cable communities clearly look to the Salt Lake City metropolitan "hub" area, including nearby Ogden and Provo, for news and information and that residents of the "hub" communities would not look to the cable communities for their programming.<sup>46</sup> Comcast asserts, therefore, that it is irrelevant that Comcast carries the DMA's "hub" stations or that those stations happen to be further away from the cable communities than KUTF and their carriage on Comcast's systems say nothing about a nexus between KUTF and the communities at issue.<sup>47</sup> Moreover, KUTF's reliance on *Brenmor Cable* is misplaced.<sup>48</sup> In that case, Comcast notes, the Commission rejected a modification request to exclude a station licensed to the same community as seven other television stations carried by the cable operator. Comcast states that in this instance, however, it does not carry any other stations licensed to the same community as KUTF.<sup>49</sup>

11. Comcast argues further that it is undisputed that the vast majority of the cable communities are beyond KUTF's Grade B service area according to Longley-Rice.<sup>50</sup> Comcast points out that KUTF essentially concedes the absence of Grade B coverage to all but 19 of the communities at issue.<sup>51</sup> In any event, Comcast argues that for the relatively few communities for which KUTF claims

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<sup>41</sup>Reply at 6, citing H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>42</sup>*Id.*, citing Modification at Exhibits 1-3.

<sup>43</sup>*Id.* at 6.

<sup>44</sup>*Id.* at 6-7, citing 163 F.3d 137 (2d Cir. 1998).

<sup>45</sup>*Id.*, citing 163 F.3d at 144-45.

<sup>46</sup>*Id.* at 7.

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.* at 8.

<sup>51</sup>*Id.* citing Opposition at 15 n.46, 20, and Exhibit IX.

Grade B coverage, KUTF is overly restrictive in its reading of Comcast's Longley-Rice map and overly generous in interpreting its own coverage map.<sup>52</sup> Comcast states that, despite KUTF's assertions, Comcast's and KUTF's Longley-Rice maps clearly show that KUTF fails to provide Grade B coverage to 12 of these 19 communities: American Fork, Copperton, Elk Ridge, Herriman, Jeremy Ranch, Lehi, Lindon, Mapleton, Nephi, Orem, Pleasant View and Salem.<sup>53</sup> Comcast maintains that a careful review of both parties' Longley-Rice maps reveals that KUTF can claim only that it may provide fringe Grade B coverage, at best, to a total of just seven communities: Heber City, Midway, Pleasant Grove, Payson, Provo, Spanish Fork and Springville.<sup>54</sup> Comcast argues, however, that such theoretical coverage is inconclusive and insufficient to overcome KUTF's lack of nexus with the cable communities. Comcast maintains that it remains highly unlikely, as demonstrated by signal strength studies, that KUTF provides an adequate over-the-air signal to individual households in these communities.<sup>55</sup> Comcast argues that, contrary to KUTF's assertions, the Commission has previously considered signal strength tests relevant in the market modification context.<sup>56</sup> While Comcast admits that it may have inadvertently omitted a small number of cable communities from its Longley-Rice maps, this omission is not of decisional significance and KUTF does not claim to have been prejudiced by a failure to identify these communities.<sup>57</sup> Indeed, Comcast points out that not only did KUTF file an earlier must carry complaint against Comcast requesting carriage in these communities, but these communities were located on its own Longley-Rice maps.<sup>58</sup> Further, while KUTF relies almost entirely on its Spanish-language programming format to establish a nexus with the cable communities, it offers virtually no description of any truly local programming.<sup>59</sup> Comcast states that the Commission has consistently held that programming is not "local" simply by virtue of its foreign language format.<sup>60</sup> The Commission has also found on numerous occasions that it is "not convinced that such [Spanish language] programming, while of potential general interest, is the kind that suggests that the subject communities, in total, are a particular focus of the station or are in any sense in a manner that establishes a specific market connection."<sup>61</sup> Comcast points out that the majority of KUTF's programming is identical to TeleFutura's nationwide program network.<sup>62</sup> Comcast states that while this DMA-wide programming may appeal to general audiences, it does not indicate a focus on news and events specific to the communities at issue. Finally, Comcast states that

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<sup>52</sup>*Id.* at 8.

<sup>53</sup>*Id.* at 9.

<sup>54</sup>*Id.*

<sup>55</sup>*Id.* citing Modification at Exhibit 6.

<sup>56</sup>*Id.*, citing *Costa de Oro Television, Inc.*, 13 FCC Rcd 4360, 4375 (1998) (signal strength test data "taken at cable system headends strongly suggests that reception may be difficult for individual viewers in the community.").

<sup>57</sup>*Id.* at 10.

<sup>58</sup>*Id.* at 10-11; see also *Price Broadcasting, Inc. v. Comcast Cable Communications, Inc.*, 18 FCC Rcd 21398 (2003).

<sup>59</sup>*Id.* at 11-12.

<sup>60</sup>*Id.* at 11, citing *Dynamic Cablevision of Florida, Ltd.*, 12 FCC Rcd 9952 at paras. 6, 11-12 (1997).

<sup>61</sup>*Id.* at 12, citing *TCI Cablevision of Mexico*, 16 FCC Rcd 13959, 13967 (2001); *Service Electric Cable TV, Inc.*, DA 04-349 (CSR-6246-A) at para. 12 (rel. Feb. 13, 2004); *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386, 19398 (2000); *Comcast Cablevision of Gloucester County, Inc.*, 14 FCC Rcd 12136, 12144 (1999); *Blue Ridge Cable Technologies, Inc.*, 14 FCC Rcd 2320, 2327 (1999).

<sup>62</sup>*Id.* at Exhibit 2.

KUTF is in error in its assumption that Comcast is deliberately discriminating against Spanish-language programming in the cable communities. Comcast states that it has shown that it carries Spanish-language programmer Univision in the majority of the communities and an entire Spanish-language programming tier, consisting of ten Spanish-language networks, in many of the communities at issue.<sup>63</sup> In addition, Comcast states that it carries KUTF's affiliated station KUTH in at least 75 of the communities at issue and low power station KSVN-TV, Ogden, Utah, on its Salt Lake City system which broadcasts Azteca America.<sup>64</sup>

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 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>65</sup> Comcast states that it currently carries several stations licensed in and around Salt Lake and Weber Counties that more than adequately cover news and weather pertinent to the cable communities.<sup>66</sup> KUTF argues that, despite its claims, Comcast, failed to note one single program on any station it carries that referenced the subject cable communities.<sup>67</sup> Comcast states that as shown in the examples it provides, the stations it currently carries do provide programming that addresses news, weather, sports and issues of interest and events occurring in the cable communities.<sup>68</sup>

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>69</sup> Comcast states that because KUTF is generally unable to deliver an off-air signal or a Grade B signal to communities at issue, it is not surprising that it has been unable to find any viewership figures for KUTF in either cable or noncable households for any county in the Salt Lake City DMA.<sup>70</sup> KUTF states that, as with historic carriage, the Commission has found that the viewing patterns factor in a specialty station's case is not outcome determinative.<sup>71</sup> Moreover, KUTF notes that it has been on-the-air for less than a year and the Commission has held that it takes years for a television station to establish viewing patterns and ratings.<sup>72</sup> As with historic carriage, Comcast argues that this is a factor that, while not outcome determinative itself, is not overlooked when other market modification factors are not met.<sup>73</sup>

14. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a

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<sup>63</sup>*Id.* at 14, citing Modification at Exhibit 5.

<sup>64</sup>*Id.*

<sup>65</sup>47 U.S.C. §534(h)(1)(C).

<sup>66</sup>Modification at 7 and Exhibits 5, 10 and 11. Comcast states that these stations also provide Grade A and/or Grade B coverage to many of the subject communities.

<sup>67</sup>Opposition at 26.

<sup>68</sup>Reply at Exhibit 4.

<sup>69</sup>47 U.S.C. §534(h)(1)(C).

<sup>70</sup>Modification at 8.

<sup>71</sup>Opposition at 30, citing *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

<sup>72</sup>*Id.*, citing *Time Warner Cable*, 10 FCC Rcd 6663 (1995).

<sup>73</sup>Reply at 5.

television station is carried in the areas which it serves and which form its economic market.<sup>74</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.<sup>75</sup> In this matter, KUTF has no history of carriage and no discernable viewership in the communities at issue. As a relatively new specialty station, we do not afford considerable weight to these deficiencies. In addition, although KUTF has alleged that it provides local programming to the communities at issue, it provided no programming examples pointing to individual communities. It is also clear that KUTF is geographically distant from the majority of communities, up to 181 miles distant; that it fails to provide a Grade B signal according to Longley-Rice and is separated by geographic barriers such as a national forest and mountainous terrain. For these communities, the factors recited by Comcast do weigh in favor of its request and we grant its request. For the following communities, however, we find that other factors deserve more weight and we deny Comcast's request to exclude them: American Fork, Elk Ridge, Heber City, Lehi, Lindon, Mapleton, Midway, Nephi, Orem, Payson, Pleasant Grove, Provo, Salem, Spanish Fork, Spring Lake and Springville. Our review indicates that these communities are not only geographically closer to KUTF at distances ranging from 54 to 79 miles, but both the station's predicted Grade B contour appears to encompass the communities and the it provides Grade B coverage according to the Longley-Rice study provided by Comcast.<sup>76</sup>

#### IV. ORDERING CLAUSES

15. 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-6277-A), filed by Comcast of California/Idaho, Inc., Comcast of Montana/Indiana/Kentucky/Utah, and Comcast of Utah II, Inc. **IS DENIED** for the communities of American Fork, Elk Ridge, Heber City, Lehi, Lindon, Mapleton, Midway, Nephi, Orem, Payson, Pleasant Grove, Provo, Salem, Spanish Fork, Spring Lake and Springville, Utah and **IS OTHERWISE GRANTED**.

16. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>77</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker

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<sup>74</sup>47 U.S.C. § 534(h)(1)(c).

<sup>75</sup>47 U.S.C. § 534(h)(1)(C)(i).

<sup>76</sup>We note that the Longley-Rice study submitted by KUTF, which was based on coverage from KUTF's translator K68FY, was not an acceptable submission and could not be relied upon as an indication of KUTF's coverage area. While we recognize that translators which retransmit stations' signals may encompass particular cable communities in instances such as these, translators do not have carriage rights under Section 614 and given all the circumstances they do not provide evidence that the cable communities are within a station's natural market. *See Rifkin/Narragansett South Florida, CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996).

<sup>77</sup>47 C.F.R. §0.283.

Deputy Chief, Policy Division  
Media Bureau

## Appendix I

Salt Lake City System

Alpine  
Al's Apple Acre Mobile Home Park  
American Fork  
Bennion  
Bluffdale  
Bountiful  
Brigham City  
Centerville  
Clearfield  
Clinton  
Copperton  
Draper  
East Layton  
Elite Motor Home Park  
Elk Ridge Farmington  
Farr West  
Fruit Heights  
Harrisville  
Herriman  
Highland  
Hill Air Force Base  
Hooper  
Jeremy Ranch  
Kaysville  
Kearns  
Layton  
Lehi  
Lindon  
Magna  
Mapleton  
Midway  
Midvale  
Murray  
North Ogden  
North Salt Lake City  
Ogden  
Ogden Canyon  
Orem  
Park City  
Payson  
Perry  
Plain City  
Pleasant Grove  
Pleasant View  
Provo

Riverdale  
Riverton  
Ron Clair  
Roy  
Salem  
Salt Lake City  
Sandy  
South Jordan  
South Ogden  
South Salt Lake City  
South Weber  
Spanish Fork  
Springlake  
Springville  
Sommerset Condonimiums  
Sunset  
Syracuse  
Taylorsville  
Uintah  
Warren  
Washington Terrace  
West Haven  
West Jordan  
West Ogden  
West Point  
West Valley City  
Willard  
Woods Corss

Logan System

Clarkston  
Cornish  
Fairview, ID  
Franklin, ID  
Hyde Park  
Hyrum  
Lewiston  
Logan  
Millville  
Mendon  
Newton  
Nibley  
North Logan  
Paradise  
Providence  
Richmond  
River Heights  
Smithfield  
Wellsville

Morgan System

Morgan City  
Mountain Green  
Stoddard

Fish Haven System

St. Charles, ID  
Fish Haven, ID  
Garden City, UT

Tremonton System

Bear River City  
Corinne  
Deweyville  
Fielding  
Garland  
Honeville  
Plymouth  
Riverside  
Tremonton

Nephi System

Nephi

Heber System

Heber City  
Midway

Coalville System

Coalville  
Hoytsville

Preston System

Preston, ID

Stansbury System

Grantsville  
Stansbury  
Tooele  
Tooele Army Depot