

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

In the Matter of:)
)
Frontier, A Citizens Communications Company)
) CSR-6117-A
Petition for Reconsideration)
)
)
)
)
)

ORDER ON RECONSIDERATION

Adopted: August 9, 2004

Released: August 12, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California (“KXLA”), has requested reconsideration of the Media Bureau’s decision granting the market modification request of Frontier, A Citizens Communication Company (“Frontier”) to exclude KXLA from its cable system serving Needles, California.¹ An opposition to this petition was filed on behalf of Frontier to which KXLA replied.

II. BACKGROUND

2. In its request for modification, Frontier sought to exclude the community of Needles from KXLA’s market. Both Frontier’s cable system and KXLA’s city of license are considered to be part of the Los Angeles, California designated market area (“DMA”). The Bureau granted Frontier’s request, finding that Frontier adequately met the four statutory market modification factors. Based on the information provided by Frontier, KXLA was found to be geographically distant, with no history of carriage, no Grade B contour, no locally-focused programming, and no viewership in the subject community.

III. DISCUSSION

3. In support of its request, KXLA argues that Bureau misapplied the market modification factors by giving priority to distance, terrain and coverage at the expense of local programming and population considerations. KXLA maintains that the *Bureau Order* failed to give adequate weight to the local service benefits to Asian-Americans in Needles, and throughout the Los Angeles market, provided

¹Frontier, A Citizens Communications Company, 18 FCC Rcd 9589 (2003) (“Bureau Order”).

by KXLA's unique programming.² KXLA states that the *Bureau Order* relied instead on the coverage component as dispositive; an outdated approach to localism that fails to account for the growing multicultural population in southern California.³ While the *Bureau Order* properly recognized that KXLA's status as a new specialty station minimized its lack of historical carriage and viewership, KXLA argues that it failed to acknowledge the significance of the locally-focused programming that it currently offers.⁴ KXLA states that it offers a variety of Asian-language programming tailored to Asian-American residents in the Los Angeles market, including prime-time news broadcasts.⁵ Given the value of this programming, KXLA argues that the instant proceeding presents a situation in which the Commission should look to factors beyond the technical Grade B contour requirement in considering coverage and local service.⁶ Indeed, KXLA points out that the Commission has stated that although "as a general matter Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market, it is not an exclusive test."⁷ KXLA maintains that in order to effectively promote the principles of localism underpinning the must carry rules, the Commission must not treat the signal strength contour as outcome determinative.⁸

4. KXLA argues further that emphasis on narrow geographic considerations is especially inappropriate where the Asian-American communities that serve as KXLA's audience form communities that cross city and county lines and transform the entire Los Angeles market into groups of interrelated markets.⁹ KXLA contends that the decision in *Fouce Amusement Enterprises, Inc.* supports this broader, more practical definition.¹⁰ KXLA also maintains that the Bureau's decision in *Comcast Cablevision of Danbury, Inc.*, where the station's lack of local programming was not treated as outcome determinative, should have been applied to the situation here.¹¹ KXLA argues that its programming addresses the needs and interests of Korean, Vietnamese, and Japanese speaking residents in southern California, including Needles and that these minority communities are presently underserved by Frontier's cable system.¹²

5. In opposition, Frontier states that KXLA, a station whose city of license is located over 228 miles from Needles, is precisely the type of non-local station which prompted Congress to adopt the market modification procedures contained in Section 614(h)(1)(C) of the Communications Act.¹³ Although KXLA argues that the *Bureau Order* gave priority to distance, terrain and coverage at the

²Reconsideration at 2.

³*Id.*

⁴*Id.* at 3.

⁵*Id.* at 3-4.

⁶*Id.* at 4.

⁷*Id.*, citing *Suburban Cable TV Co., Inc.*, 16 FCC Rcd 10790, 10797 (2001) (citing *Must Carry Order*, 8 FCC Rcd 2965, 2977 (1993)).

⁸*Id.* at 4.

⁹*Id.* at 4-5.

¹⁰*Id.* at 5, citing 10 FCC Rcd 668 (1995).

¹¹*Id.* at 5-6, citing 18 FCC Rcd 274 (2003).

¹²*Id.* at 6. KXLA states that to its knowledge no station currently carried by Frontier offers such programming.

¹³Opposition at 1-2; *see also* 47 U.S.C. § 534(h)(1)(C).

expense of local programming, Frontier points out that the Bureau is not required to weigh each market modification factor equally.¹⁴ In any event, Frontier states, KXLA provided no evidence that such a premise was correct, particularly in the face of the lack of local program offerings provided by KXLA that were specifically targeted to Needles and the abundance of local programming received from more local stations currently carried by Frontier.¹⁵ Frontier also notes that in *Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner Cable* the Bureau recently ruled that KXLA was too remote from a much closer cable system located in the community of Barstow and that it did not provide meaningful or sustained local coverage the community.¹⁶ Frontier argues that KXLA offers no reason here to depart from the precedent set in *Time Warner*, especially as Needles is even farther from Rancho Palos Verdes than Barstow.

6. Frontier argues further that although KXLA consistently maintains that the *Bureau Order* was incorrect in its holding, at no time does KXLA describe specifically how it serves the community of Needles.¹⁷ KXLA relies instead on sweeping statements regarding its allegedly “local” service to the entire vast Los Angeles DMA or all of San Bernardino County without once demonstrating that it addresses any specific local issues involving Needles which is located at the other end of the Los Angeles DMA and San Bernardino County from KXLA.¹⁸ Moreover, Frontier asserts that KXLA’s contention that the *Bureau Order* relied exclusively on Grade B coverage, distance and geography in making its determination is misplaced. Frontier states that it provided demonstrations pursuant to all of the market modification factors designated by Congress, as well as additional information, that KXLA could not be considered “local” to Needles.¹⁹ More importantly, Frontier states, the *Bureau Order* noted the importance of a number of factors in its decision – carriage history, distance, Grade B coverage, lack of locally-targeted programming, local service by other stations, lack of viewership – and these factors represent a sizable portion of the Bureau’s rationale in making its decision.²⁰ Notwithstanding this, Frontier argues that Grade B coverage, distance and geographic barriers are crucial factors in determining whether or not to modify a station’s DMA. Indeed, they are among the factors established by Congress in considering market modification petitions.²¹ Frontier points out that the legislative history of the 1992 Cable Act “reflect a recognition that the Commission may conclude 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.”²² Following this congressional directive, Frontier states that the Commission has focused on these factors in rulemakings and in hundreds of market modification decisions.²³

¹⁴*Id.* at 2.

¹⁵*Id.*

¹⁶*Id.*, citing 18 FCC Rcd 4990 (2003).

¹⁷*Id.* at 3.

¹⁸*Id.*

¹⁹*Id.* at 4; *see also* Modification Petition at 3-15.

²⁰*Id.*

²¹*Id.* at 5, citing 47 U.S.C. § 534(h)(1)(C)(ii).

²²*Id.*, citing H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992) (“*House Report*”).

²³*Id.* at 6.

7. In reply, KXLA argues that Frontier fails to counter its arguments that the market modification decision should be reversed. While KXLA states that it does not take issue with the Bureau's discretion to tailor its market modification analysis to the specific facts of individual proceedings, it does contend that, in this instance, it abused its discretion by giving short shrift to KXLA's local programming and falling back on distance and coverage to decide the instant proceeding.²⁴ Further, while Frontier argues that the *Bureau Order* properly encompassed all of the statutory factors, KXLA states that such argument fails to recognize that the first and fourth statutory factors carried little weight due to KXLA's status as a specialty station.²⁵ The only important factors left, therefore, were coverage and local service and carriage of other local stations. KXLA does not agree with Frontier that the Bureau acted reasonably in basing its decision on just these factors.

8. We agree with the arguments raised by Frontier and will deny KXLA's petition for reconsideration. 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."²⁶ In order to make a fair determination, we have to look at a combination of factors and no one factor has more relevance than another. We note that the Commission has recognized that specialty stations, such as KXLA, often fail to meet the historic carriage factor and often have no appreciable audience shares due to the nature of their programming. In analyzing market modification requests involving specialty stations, therefore, we give little weight to these factors and focus on the other factors. However, while to a certain extent they may not be controlling, taken in conjunction with a totality of factors they must be taken into account.

9. We also reject KXLA's argument suggesting that regardless of the Section 614(h) process, it should in this instance essentially be guaranteed the right to carriage throughout the Los Angeles DMA because of its programming. The statute specifically provides that the Commission may, where appropriate, exclude communities from a station's DMA.²⁷ Moreover, the must carry rules, as written, are content neutral. The type of programming that a station carries, therefore, does not influence whether a station is entitled to carriage under the rules. The legislative history notes that when making its market determination, the Commission may conclude that a community within a station's DMA may be "so far removed" from the station that it cannot be deemed to be part of the station's market.²⁸ The Bureau correctly determined that such was the case in this proceeding. Further, we note that KXLA's reliance on *Fouce Amusement* and *Comcast Cablevision* are misplaced. In both instances, the stations involved, while admittedly falling short in meeting the local programming factor, were geographically close to the communities at issue providing either Grade A or Grade B coverage. These factors were a strong support in demonstrating the stations' service to the communities.

10. Finally, with respect to the local programming evidence presented by KXLA, we cannot conclude that a station must be considered "local," as Congress intended that term to mean in Section 614 of the Communications Act, solely by airing programming that is not specifically associated with the

²⁴Reply at 2.

²⁵*Id.*

²⁶See 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 Rcd 13788 (1999).

²⁷47 U.S.C. § 534(h)(1)(C)(i).

²⁸*House Report* at 97-98.

community in question, but more general in nature.²⁹ The programming that KXLA cites in support of local service appears in large part to be general interest programming, rather than programming focused on the community at issue. KXLA itself has stated that “it offers a variety of Asian-language programming tailored to Asian-Americans residing in the Los Angeles market.”³⁰ Indeed, the three television programs KXLA references “provide native language programming to the Korean-American and Vietnamese-American communities in San Bernardino, Riverside and Orange Counties.”³¹ KXLA has not provided any examples of programming that specifically focuses on the community of Needles.³²

IV. ORDERING CLAUSE

11. Accordingly, **IT IS ORDERED** that the petition for reconsideration filed by Rancho Palos Verdes Broadcasters, Inc. **IS DENIED**.

12. This action is taken pursuant to authority delegated by Sections 0.283 and 1.106 of the Commission’s rules.³³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

²⁹47 U.S.C. § 534(h)(1)(A).

³⁰See Reconsideration at 3.

³¹*Id.* at 4. These programs are “Korean Christian,” “KTE,” and “Little Saigon.”

³²See *Mediacom California LLC*, 18 FCC Rcd 16206 (2003).

³³47 C.F.R. §§ 0.283 and 1.106.