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

In the Matter of:	)	
	)	
TCI Cablevision of New Mexico, Inc.	)	CSR-5654-A
For Modification of the Market of	)	
Station KRPV, Roswell, New Mexico	)	
	)	
Application for Review	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 21, 2004 **Released: August 26, 2004**

By the Commission: Commissioner Adelstein concurring and issuing a separate statement; Commissioners Copps and Martin dissenting and issuing separate statements.

I. INTRODUCTION

1. The Commission has before it an application for review filed by Prime Time Christian Broadcasting, Inc., licensee of television broadcast station KRPV, Roswell, New Mexico, of a decision taken under delegated authority by the former Cable Services Bureau in the captioned proceeding.[1]

2. We have analyzed the application for review and find that the Commission staff properly decided the matters raised. Therefore we uphold the staff decision for the reasons stated therein.

3. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Sections 76.59 and 1.115 of the Commission's rules, 47 C.F.R. §§76.59 and 1.115, that the Application for Review filed by Prime Time Christian Broadcasting, Inc. **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[1] *TCI Cablevision of New Mexico*, *Inc.*, 16 FCC Rcd 13959 (2001).

DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5654-A); TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5623-A, CSR 5598-M); and Comcast Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5508-A, CSR 5486-M)

I respectfully dissent from the decision to affirm the Bureau's conclusion that television station KRPV is not entitled to carriage on certain cable systems. KRPV is licensed to Prime Time Christian Broadcasting and carries 24-hour a day religious programming, including Spanish-language programming.

Although KRPV broadcasts from Roswell, New Mexico, which is as much as 200 miles from the cable systems' communities, it is in the same DMA, which generally provides KRPV with must carry rights on the cable systems. The Commission, however, has authority under the statute to exclude communities from a television station's market to better effectuate the purposes of the must carry statute. In making this determination, Congress directed the Commission to focus on the "value of localism" and examine, among other things, whether the station provides local service to the community.

In this instance, the Bureau held that KRPV does not satisfy any of the statutory criteria. Yet, the Bureau's decision does not adequately take into account that specialty stations, such as those with religious or non-English programming, may not have an appreciable audience share or historic carriage due to the specialized nature of its programming. The Bureau similarly dismisses, without adequate analysis, KRPV's argument that it provides programming to the communities in question by offering regular daily segments for all local churches to have television access and by airing a talk show hosted by a citizen of one of the cable communities.

I also take this opportunity to note an anomaly between this decision and the Commission's June 2003 media ownership decision. Today's decision makes much of the fact that the station is geographically distant from the cable communities and that citizens in the relevant communities cannot receive the over-the-air signal of KRPV. Today, the majority affirms that consumers will also not receive this station through their cable system. But, under our media consolidation decision, KRPV would have counted as a local station for evaluating mergers. So, for example, if two television stations in Albuquerque, Santa Fe or any of these other communities sought to merge, this Roswell station would have counted as another voice in the market. It is troubling that the Commission put in place rules under which KRPV is not part of the market for cable carriage purposes, but is part of the market when it comes to allowing more media consolidation. I hope the Commission would reexamine this anomaly when it considers the media ownership rules.

DISSENTING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5654-A); TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5623-A, CSR 5598-M); and Comcast Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5508-A, CSR 5486-M)

Each of these cases involves a cable operator's effort to take a religious broadcasting station, Prime Time Christian Broadcasting, "out" of its market so that it does not need to carry the religious programming pursuant to the statutory and regulatory must carry regime. In each case, the PTCB station at issue is in the same DMA as the cable operator, which ordinarily would guarantee it must carry rights on the cable system.

Congress provided a mechanism for adjusting a given market to "better effectuate the purposes" of the must carry regime.[1] The statute instructs the FCC to focus on "the value of localism" in making the market-adjustment decisions, including whether the station provides "local service" to the community at issue.[2] In each of these cases, PTCB provides an important local service to its community that these Orders refuse to recognize, and thus I dissent to each. I view televising local church services, for example, or providing the only Spanish-language religious broadcasting to the significant Spanish-speaking population, or creating a highly popular religious talk show hosted by a local citizen as providing a significant local service to the community that the Commission should value greatly when deciding whether to deny cable carriage to a local station.

[1] 47 U.S.C. §534(h)(1)(C).

[2] *Id.*

CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5654-A); TCI Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5623-A, CSR 5598-M); and Comcast Cablevision of New Mexico, Inc., Memorandum Opinion and Order (CSR 5508-A, CSR 5486-M)

In these cases we are called upon to examine whether the Bureau correctly excluded communities for must carry purposes from the market of a television station that offers religious, sometimes Hispanic religious, programming. Given that the stations are located on average hundreds of miles from the communities and that the extent of the local programming is not clear, I concur in the decision to exclude the communities. I write separately, however, to emphasize adherence to our longstanding specialty station policies under which a station's inability to show historic carriage and viewership is not decisionally significant.

Under section 614(h)(1)(C), the Commission may exclude communities from a station's television market to better effectuate the purposes of the must carry statute, focusing on the value of localism by taking into account certain factors. The Commission has long recognized that specialty stations, such as religious stations or stations broadcasting in a language other than English, often fail to have historic carriage or appreciable audience shares due to the nature of their programming. Yet this does not necessarily mean they are not serving the communities. To hold otherwise would effectively prevent weaker stations from ever obtaining carriage rights. Unfortunately, in these cases the Bureau appears to have given short shrift to the specialty status of these stations and deemed the lack of historic carriage and viewership of evidentiary significance.

The Bureau also maintains that none of the programming at issue was specifically tied to the communities in question. I believe a more in-depth examination is warranted. For example, Prime Time Christian Broadcasting maintains that it offers regular daily segments for local churches to broadcast announcements, promotional spots, and interviews. The station also offers several hours of Spanish-language religious programming. I caution the Bureau not to discount too readily the potential for this programming to serve the local communities. The Bureau should be more mindful of the ways in which local religious and Spanish-language programming can serve the needs of the communities.