

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

In the Matter of:	)	
	)	
Comcast Cablevision of the South d/b/a	)	
Comcast of Oak Ridge <sup>1</sup>	)	CSR-5535-A
	)	CSR-5544-M
For Modification of the Knoxville,	)	
Tennessee DMA	)	
	)	
Living Faith Ministries, Inc. v. Comcast	)	
Cablevision of the South d/b/a Comcast	)	
of Oak Ridge	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 15, 2000**

**Released: August 16, 2000**

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

**I. INTRODUCTION**

1. Comcast Cablevision of the South d/b/a Comcast of Oak Ridge (“Comcast”), filed the above-captioned petition for special relief seeking to modify the Knoxville, Tennessee DMA of television broadcast station WAGV (Ch. 44), Harlan, Kentucky (“WAGV”). Specifically, Comcast requests that WAGV be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the communities served by its Oak Ridge, Tennessee cable system.<sup>2</sup> An opposition to this petition was filed on behalf of Living Faith Ministries, Inc., licensee of Station WAGV to which Comcast has replied. In addition, WAGV has filed a must carry complaint against Comcast for its failure to carry its signal on the subject cable system. Comcast has filed an opposition to this complaint. No reply by WAGV was filed. We consolidate these cases in order to determine the signal carriage rights of WAGV in the communities served by Comcast.

**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*

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<sup>1</sup>Formerly Comcast Limited Partnership.

<sup>2</sup>The communities served by Comcast are Clinton, Oak Ridge, Oliver Spring, and surrounding unincorporated areas of Anderson and Roane Counties, Tennessee.

1992, *Broadcast Signal Carriage Issues (“Must Carry Order”)*,<sup>3</sup> commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market. A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>4</sup> 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 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>5</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>6</sup>

4. 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 new coverage of issues of concern to such community or

provides carriage or coverage of sporting and other events of interest to the

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<sup>3</sup>8 FCC Rcd 2965, 2976-1977 (1993).

<sup>4</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). Until January 1, 2000, Section 76.55(e) of the Commission’s rules provided that Arbitron’s “Areas of Dominant Influence,” or ADIs, published in the *1991-1992 Television Market Guide*, “be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

<sup>5</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>6</sup>47 U.S.C. §534(h)(1)(C).

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>7</sup>

5. 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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[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>8</sup>

6. Recently, 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:

(A) 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.

(B) 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.<sup>9</sup>

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<sup>7</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2976 (1993).

<sup>8</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<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.

- (C) Available data on shopping and labor patterns in the local market.
- (D) Television station programming information derived from station logs or the local edition of the television guide.
- (E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (F) 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.<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. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

7. With respect to deletions of communities from a station's market, the legislative history of the provision states that:

The provisions of [this subsection] 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. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.<sup>11</sup>

8. 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>12</sup>

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<sup>10</sup>See *Modification Final Report and Order*, 14 FCC Rcd 8366 (1999). See also 47 C.F.R. §76.59(b).

<sup>11</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>12</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

### III. DISCUSSION

#### A. Market Modification

9. The issue before us is Comcast's request to exclude WAGV from mandatory carriage in its cable system communities. The relevant communities served by Comcast are located in the Tennessee counties of Anderson and Roane, which are deemed to be part of the Knoxville DMA. WAGV is licensed to Harlan, Kentucky, which is also considered to be part of the Knoxville DMA. The market modification process incorporated into the Communications Act is not intended to be a process whereby cable operators may seek relief from the mandatory signal carriage obligations apart from the question of whether a change in the market area is warranted. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that Comcast's petition appears to be a legitimate request to redraw DMA boundaries to make them congruous with market realities.

10. In support of its request, Comcast argues that the relevant communities are not part of WAGV's market and requiring WAGV's carriage would limit its ability to provide the programming and services desired by Comcast's subscribers.<sup>13</sup> Comcast points out that WAGV has no history of carriage in the instant communities.<sup>14</sup> Moreover, Comcast states that WAGV is not available off-the-air and has no local ratings.<sup>15</sup> As a result, Comcast argues that granting its deletion request will cause no disruption of established viewing patterns. Comcast states further that WAGV is geographically remote from the subject communities at an average distance of 76 miles.<sup>16</sup> Comcast argues that this distance is similar to or exceeds distances in previous instances in which the Commission has granted exclusion.<sup>17</sup> In addition, Comcast states that a Longley-Rice signal coverage map illustrates that WAGV's Grade B contour fails to encompass any of the communities.<sup>18</sup> Comcast maintains that WAGV's failure to provide a Grade B signal and its geographic distance are strong indicators that the subject communities are not part of WAGV's market.

11. Comcast maintains further that WAGV fails to provide any local programming directed specifically to the subject communities.<sup>19</sup> Comcast states that, according to its schedule, WAGV's programming consists primarily of general religious programs with no particular focus on the needs and interests of Oak Ridge residents. Moreover, Comcast points out that WAGV is not listed in the program guide of *The Knoxville New-Sentinel* or the Knoxville-Chattanooga edition of *TV Guide*.<sup>20</sup> Comcast argues that not only does WAGV's failure to be included in the local programming guides emphasize its lack of

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<sup>13</sup>Petition at 3.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>*Id.* at 4. The specific community distances are Clinton (69 miles), Oak Ridge (81 miles), and Oliver Springs (79 miles).

<sup>17</sup>See e.g., *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998)(39-70 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997)(38-61 miles); and *Time Warner Cable*, 12 FCC Rcd 23249 (1997)(42-58 miles).

<sup>18</sup>Petition at Exhibit 5. Comcast also includes signal strength studies which demonstrate that it is unlikely that WAGV provides an adequate off-air signal to the individual communities it serves. See Petition at Exhibit 6.

<sup>19</sup>Petition at Exhibit 7.

<sup>20</sup>*Id.* at Exhibit 9.

nexus to the subject communities, but there are no major roads or highways which directly connect Harlan and the Oak Ridge area.<sup>21</sup> Indeed, Comcast states that it is approximately 159 miles, or 4 hours driving time, between Harlan and Oak Ridge due to the mountainous terrain which separates the communities.<sup>22</sup>

12. In any event, Comcast argues that its cable communities already receive ample local programming addressing their interests from stations which it currently carries.<sup>23</sup> Comcast asserts that even if WAGV were to provide any specifically targeted programming to Oak Ridge, it would be undermined by the truly local programming the cable communities already receive. Further, Comcast states that a study done by Media Strategies was unable to find any ratings for WAGV in either cable or non-cable households in Anderson and Roane Counties where the cable system is located.<sup>24</sup> Comcast states that this is not surprising since WAGV generally is unable to deliver an off-air or Grade B signal to the communities at issue.

13. In opposition, WAGV states that it is a station licensed to serve the Knoxville DMA and the community of Knoxville, and that surrounding cities such as Oak Ridge and Clinton are its closest metropolises. When it was granted a construction permit application in the mid-1990s, WAGV states that it informed the Commission that setbacks in the mining and lumber industries in the Harlan area had resulted in a depressed local economy and dim prospects for any significant growth in either the size of the population or the health of the economy for the foreseeable future.<sup>25</sup> WAGV states that the situation has not changed and, as a result, its revenue potential is severely limited and many families have been forced to relocate outside of Harlan County. WAGV points out that many families now currently residing in Anderson County are originally from Harlan County and wish to maintain an ongoing relationship with the institutions and media located there.<sup>26</sup> Moreover, WAGV indicates that it functions as the only full power, full-time religious television station in the Knoxville DMA.

14. WAGV states that with the passage of the 1992 Cable Act, Congress determined that without cable carriage, stations like itself would be placed in financial jeopardy and be in danger of “deteriorat[ing] to a substantial degree or fail altogether.”<sup>27</sup> WAGV argues that Congress therefore gave each commercial television station the right to be carried by all of the cable television systems within its economic market and that if Congress had intended must carry to be a proxy for over-the-air coverage, it would have granted stations carriage rights within their Grade B signal contours only. While the Act did include a market modification exception, WAGV asserts that Congress did not intend it to be routinely used to eliminate the market-wide cable carriage rights of the very type of stations for which must carry was specifically designed to help.

15. With regard to the market modification factors, WAGV argues that its lack of historical carriage and lack of viewership do not defeat its right to carriage and do not support Comcast’s petition.<sup>28</sup>

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<sup>21</sup>*Id.* at Exhibit 2.

<sup>22</sup>*Id.* at Exhibits 1 and 4.

<sup>23</sup>*Id.* at 7.

<sup>24</sup>*Id.* at Exhibit 11.

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

<sup>26</sup>*Id.*, citing Declarations of Michael D. Smith, Senior Pastor W.B. Bingham, II and Bob Lee.

<sup>27</sup>*See Turner Broadcasting Systems, Inc., v. FCC*, 117 S. Ct. 1174, 1181 (1997).

<sup>28</sup>*See* Opposition at Exhibit 1. While WAGV listed Hawkins County among this group, we note that  
(continued...)

WAGV points out that it is carried on systems located in the Tennessee counties of Campbell, Grainger, Hamblen, Jefferson and Cocke, and that Campbell County is adjacent to Anderson County. WAGV states that it is a new station, commencing broadcast operations less than a year ago. It points out that the Commission has repeatedly held with respect to new stations that lack of historical carriage is of little or no relevance in modification cases because, otherwise, such stations would be prevented from ever gaining carriage.<sup>29</sup> Even in the case of older stations, WAGV notes that the Commission has stated that lack of historical carriage is not a controlling factor because either it might prevent weaker stations from ever obtaining carriage rights or some stations have not had the opportunity to build a record of historical carriage.<sup>30</sup> As far as ratings data is concerned, WAGV states that the Commission has indicated that it may take up to three years to establish viewing patterns in the case of a new station, especially a religious station such as WAGV.<sup>31</sup>

16. WAGV maintains that it does satisfy the local service criterion. While it concedes that it does not provide Grade B service to the communities, WAGV asserts that its failure to do so is not dispositive because it represents but one indicia of local service. WAGV states that the wording of the Cable Act speaks of “coverage or other local service” to a community.<sup>32</sup> In addition, its legislative history indicates that “Grade B contours are not to be used as any absolute measure of a scope of a station’s market.”<sup>33</sup> WAGV argues that it offers programming which is of local interest to the instant communities.<sup>34</sup> WAGV states that it utilizes a technique common in the broadcast industry of airing stories, targeted to petitioner’s communities, whose leads are taken from a local newspaper, *The Oak Ridger*.<sup>35</sup> WAGV states that further support is evidenced by a letter from an Anderson County Commissioner who indicates that WAGV’s religious programming will fill a void in the market.<sup>36</sup>

17. WAGV maintains that there is a nexus between Harlan and Anderson counties and the subject communities. WAGV states that residents of Harlan County utilize the hospitals, shopping centers and businesses located in and around Knoxville and Oak Ridge as they are the closest major metropolitan areas.<sup>37</sup> Finally, WAGV notes that for decades the coal mines located in and around Harlan County have sold and delivered tons of coal to Tennessee Valley Authority energy plants located in and around Oak

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Hawkins County is located within the Tri-Cities, TN-VA DMA market.

<sup>29</sup>See e.g., *Time Warner Entertainment Co., L.P.*, 12 FCC Rcd 22069, 22077 (1997); *Horizon Broadcasting Corporation*, 12 FCC Rcd 11634, 11638 (1997); and *Time Warner Cable*, 11 FCC Rcd 8047, 8053-54 (1996).

<sup>30</sup>See e.g., *Cablevision Systems Corporation*, 11 FCC Rcd 6453, 6473 (1996); and *Nationwide Communications, Inc.*, 10 FCC Rcd 13040, 13043 (1995).

<sup>31</sup>See e.g., *Horizon Broadcasting*, 12 FCC Rcd at 11638; and *Time Warner Cable*, 11 FCC Rcd at 8054.

<sup>32</sup>47 U.S.C. §534(h)(1)(c)(ii).

<sup>33</sup>See e.g., *Chronicle Publishing*, 10 FCC Rcd 9474, 9483 n.27 (1995); *Time Warner Cable*, 11 FCC Rcd 2902 (1996); and *Greenville Television, Inc.*, 10 FCC Rcd 6491, 6492-93 (1995).

<sup>34</sup>Opposition at 11. WAGV notes that the fact that Comcast carries other local stations in its immediate area does not obviate its statutory obligation for carriage of WAGV. See Opposition at 14.

<sup>35</sup>See Declaration of Michael D. Smith.

<sup>36</sup>Opposition at 12.

<sup>37</sup>See Declaration of Michael D. Smith.

Ridge and that there is a close economic relationship as well.

18. In reply, Comcast states that WAGV does not rebut the fact that it fails the statutory four-part test for market modifications. Comcast states that while WAGV's opposition contains a discussion of the station's view of the must carry requirements, it avoids addressing the specific statutory requirements for market modification. Comcast argues that the fact that WAGV and the subject cable communities share a common assignment to the Knoxville DMA does not justify forcing Comcast to carry WAGV, or indeed, every station within the DMA. Comcast points out the Commission has observed that "[t]he broadcast signal carriage rules were not intended to transform an otherwise local station into a regional "super station" that must be automatically carried in every single community in [a DMA]. . . . If this were the case, then Congress would not have included a deletion mechanism as it had in Section 614(h) of the 1992 Communications Act."<sup>38</sup> Comcast points out that Congress determined that 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>39</sup> Comcast argues that, consistent with the Cable Act and Congress's intent, the market modification process allows for the addition of stations or the deletion of communities so that a true marketplace can be reflected.

19. Comcast argues that historic carriage is not a factor than can be overlooked. Moreover, Comcast states that WAGV's attempt to gain credit for this factor because of carriage "on cable systems in the same area" is of little importance.<sup>40</sup> Comcast argues that the carriage WAGV refers to is in communities located an average of more than 38 miles from the subject communities and is not sufficient to overcome the absence of historical carriage. In addition, Comcast states that while a Grade B contour may not be an absolute measure of the scope of a station's market, its absence in this case militates against affording WAGV must carry rights in the communities, particularly in light of WAGV's failure to meet other statutory criteria such as local programming. Finally, Comcast argues that WAGV's accounts of a "social connection" between Anderson and Harlan Counties fail to demonstrate a sufficient nexus between WAGV and the communities. For instance, there is no indication of the number of people WAGV claims have relocated or whether they represent a significant percentage of the residents in the subject cable communities. Comcast contends that even if there were a significant number of former Harlan County residents currently living in the cable communities, that it does not necessarily follow that they are at all interested in watching WAGV or even cable subscribers.

20. With respect to the mandatory statutory criteria, we have carefully reviewed the information provided by Comcast in the context of its request. An analysis of this evidence, as it relates to each factor, is provided below.

21. **Historic Carriage.** WAGV began operation approximately one year ago and has no history of carriage on Comcast's cable system. Given the statutory directive, consideration must be given to this factor, bearing in mind that the objective of the Section 614(h) process is to "better effectuate the purposes" of the broadcast signal carriage scheme. Some stations have not had the opportunity to build a record of historical carriage for specific reasons that do not necessarily reflect a judgment as to the geography of the market involved. Therefore, the historical carriage factor – to the extent such lack of carriage is reflective of factors outside of the shape of the market – is not by itself controlling in these

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<sup>38</sup>See *Time Warner Entertainment-Advance/Newhouse Partnership*, 11 FCC Rcd 6541, 6553 (1996); and *TCI of Illinois, Inc., et al.*, 12 FCC Rcd 23231, 23243 (1997).

<sup>39</sup>H.R. Rep. No. 268, 102d Cong., 2d Sess 97 (1992).

<sup>40</sup>Opposition at 10.

circumstances because such an implementation of the 1992 Cable Act would, in effect, prevent weaker stations, that cable systems had previously declined to carry, from ever obtaining carriage rights. In this instance, we note that Comcast does not carry any stations licensed to Kentucky. Comcast's failure to carry other similarly-situated stations demonstrates a lack of nexus between WAGV and the subject cable communities. Moreover, while WAGV is apparently carried in some Tennessee counties in the Knoxville market, we note that the counties it lists are located in the northeastern portion of the market closest to Harlan County while Anderson and Roane Counties, where Comcast's cable systems is located, are more to the southwest. In any event, no cable systems located directly in Anderson and Roane Counties appear to be carrying WAGV.

22. **Grade B Coverage/Local Service.** A station's local service to cable communities is a relevant factor to consider in this particular case. It is not influenced by the type or age of the station involved or historical carriage. Service may be measured through geographic means: by examining the distance between the station and the cable communities subject to the deletion request and taking into account natural phenomena such as waterways, mountains and valleys which tend to separate communities. A station's broadcast of local programming, which has a distinct nexus to the cable communities, is also evidence of local service. Finally, a station's Grade A or Grade B contour coverage is an additional indicator of local service and we will weigh the presence or absence of such technical coverage accordingly.<sup>41</sup> In the instant proceeding, WAGV does not satisfy any of the local coverage elements we find important in the market modification analysis. WAGV cites only one example of programming it claims is specifically directed to the subject communities, but in general contends that its religious format provides valuable programming services to the instant communities. We are not convinced that such programming is the kind that suggests that the subject communities, in total, are a particular focus of the station or are in any sense served in a manner that establishes a specific market connection. While WAGV has tried to buttress its connection with the communities by arguing that many former Harlan County residents now reside there, these general assertions are not supported by any factual information.<sup>42</sup> Further, the cable communities in question lie outside of WAGV's predicted Grade B contour and are, on average, approximately 76 miles from WAGV's city of license. WAGV's lack of service is bolstered by the Longley-Rice propagation study provided by Comcast which clearly indicates that WAGV's strongest service area lies north and east of the subject cable system. The mountainous terrain inherent in the Knoxville market is likely a factor in this instance.

23. **Carriage of Other Stations.** We also believe that Comcast's carriage of other local television stations provides support for the action requested. Where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities, the issue of local coverage by other stations becomes a factor to which we will give greater weight than in cases where a party is seeking to add communities. In this case, we find that the Knoxville stations carried by Comcast have a closer nexus to the cable system herein than does WAGV. These market facts, coupled with the distance between the cable system and WAGV, support Comcast's modification request under the third factor.

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<sup>41</sup>As a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market. See *Must Carry Order*, 8 FCC Rcd at 2977. See also *Amendment of Section 76.51 (Orlando-Daytona Beach-Melbourne, and Cocoa, Florida)*, 102 FCC 2d 1062, 1070 (1985) ("We believe that television stations actually do or logically can rely on the area within their Grade B contours for economic support.")

<sup>42</sup>We note that Comcast failed to provide any data on shopping and labor patterns in the local Knoxville market as required by the *Modification Final Report and Order*. While this was an issue raised by WAGV in a general context, its lack of inclusion does not alter the evidence in favor of granting Comcast's request.

24. **Viewership.** The survey information provided by Comcast, which was conducted by Media Strategies Marketing & Research consultants who relied on Nielsen's *1999 County/Coverage Study*, indicates that WAGV fails to achieve any viewership in Anderson and Roane Counties, in which the subject cable communities are located. While WAGV is a specialty station which historically have low viewership, its dearth of viewership is of evidentiary significance when tied with the lack of historical carriage and Grade B coverage.

25. After carefully considering each statutory factor in the context of the circumstances presented here, as well as other relevant information, we grant Comcast's modification request. Based on geography, we believe that the cable communities herein are sufficiently removed from WAGV that they ought not be deemed part of WAGV's market for mandatory carriage purposes.<sup>43</sup> According to the legislative history of the 1992 Cable Act, the use of [DMA] market areas is intended "to ensure that television stations be carried in the areas which they service and which form their economic market."<sup>44</sup> Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements."<sup>45</sup> Moreover, given the evidence as to the lack of Grade B coverage, the lack of viewership in the cable communities at issue, the lack of historic carriage, the absence of evidence indicating that WAGV provides local programming, and geographic factors, we conclude that deletion of Comcast's cable communities from WAGV's market for mandatory carriage purposes effectuates the purposes of Section 614 of the Communications Act.

#### **B. Must Carry Complaint**

26. In view of our decision in Comcast's modification petition set forth in paragraph 25 above, the arguments raised by Comcast and WAGV in reference to the above-described must carry complaint are moot. As such, WAGV's must carry complaint will be dismissed.

#### **IV. ORDERING CLAUSES**

27. 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-5535-A), filed by Comcast Cablevision of the South d/b/a Comcast of Oak Ridge, Inc. **IS GRANTED**.

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<sup>43</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>44</sup>*Id.* at 97.

<sup>45</sup>47 U.S.C. §534(h).

28. **IT IS FURTHER ORDERED**, that the must carry complaint (CSR-5544-M) filed April 26, 2000, on behalf of Living Faith Ministries, Inc. **IS DISMISSED**.

29. These actions are taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>46</sup>

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau

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<sup>46</sup>47 C.F.R. §0.321.