

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

In the Matter of:)	
)	
Brownwood Cable Television Service, Inc.)	
)	CSR-5559-A
Petition for Modification of Television Market of)	
Television Station KPCB(TV), Snyder, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 2000

Released: October 10, 2000

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

I. INTRODUCTION

1. Brownwood Cable Television Service, Inc. ("Brownwood") filed the captioned petition which seeks to exclude from the market of television station KPCB(TV), Channel 17, Snyder, Texas, the communities of Brownwood, Bangs, Baird, Clyde, Cross Plains, Rising Star, and Santa Anna, Texas served by Brownwood's cable systems. An opposition to the petition was filed by Prime Time Christian Broadcasting, Inc. ("PTCB"), licensee of KPCB. Brownwood filed a reply to the opposition. PTCB also filed a supplement to its opposition.

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")*,¹ 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 ("DMA"), as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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*").

(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.³

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.⁴

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 community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁵

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

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³For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁴47 U.S.C. §534(h)(1)(C).

⁵*Must Carry Order*, 8 FCC Rcd 2965, 2976 (1993).

television stations be carried in the area in which they serve and which form their economic market.

* * * *

[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.⁶

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 relation 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.⁷

(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

⁶H.R. Rep. 102-628, 102d Cong., 2d Sess 97 (1992).

⁷The 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.

advertising and sales data or viewer contribution records.⁸

7. 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.

8. With respect to deletions of communities from a station's market, the legislative history of this 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.⁹

9. 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.¹⁰ The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of a modification request.¹¹

III. DISCUSSION

10. Station KPCB is located in the Abilene-Sweetwater DMA as are the Communities served by Brownwood's cable systems at issue. Brownwood requests that the Commission modify KPCB's television market by excluding the Communities served by the Brownwood cable systems from KPCB's television market. In support of this request, Brownwood asserts that KPCB has never been carried on these cable systems, is geographically distant from the cable systems, provides a Grade B signal over none of the Communities, doesn't broadcast programming of specific interest or impact to residents of the Communities, and achieves no measurable viewing audience in the counties where the cable systems are located.¹² Brownwood provides information showing that the average distances from Snyder, Texas,

⁸47 C.F.R. §76.59(b).

⁹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

¹⁰8 FCC Rcd 2965, 2977 at n. 139.

¹¹47 C.F.R. §76.59.

¹²Petition at 2-7.

KPCB's community of license, to the Communities is 110 miles.¹³ Brownwood asserts further that KPCB is not likely to provide any off-air signal to any of the Communities because of the distances involved. In this regard Brownwood argues that the inability of KPCB to provide any viewable KPCB signal in the Communities contributes to the absence of any evidence of KPCB viewership in the Communities, noting that a study conducted by Media Strategies was unable to find any ratings for KPCB in either cable or non-cable households in the counties in which the cable systems are located.¹⁴ Brownwood argues that the location of the Communities served by its cable systems and KPCB in the Abilene-Sweetwater DMA affords KPCB must carry status on the subject cable systems that is contrary to the goals underlying the statutory must carry provisions. Brownwood contends that the factual circumstances described in the petition fall squarely within the market modification provisions set forth in the 1992 Cable Act. Brownwood further contends that requiring carriage of KPCB, with no demonstrated nexus with the Communities, will disserve its cable subscribers by limiting the ability of the cable systems to provide programming and services desired by customers.

11. PTCB argues in opposition that the absence of historic carriage of KPCB on Brownwood's cable systems must be discounted, because KPCB qualifies as a "specialty" station that presents mainly religious programming.¹⁵ PTCB noted that KPCB was recently found by the Cable Services Bureau to be entitled to carriage on Brownwood's cable systems provided it delivered a good quality signal to the principal headends of those cable systems.¹⁶ PTCB claims significant cable and non-cable viewership in the counties in which Brownwood's cable systems are located, stemming from carriage of KPCB on six other cable systems in those counties.¹⁷ PTCB presented information taken from donation records to support its claim that KPCB has viewers in six of Brownwood's seven cable Communities. PTCB also presented a Nielsen Media Research report for the DMA which credits KPCB with viewership via PTCB's K58FZ translator station within four counties in which certain of the Communities are located.¹⁸

12. PTCB claims credit for local coverage by asserting that KPCB originates 51% of its broadcast schedule to insure that its religious programming is tailored to needs of the communities it serves and offers substantial amounts of local programming directly pertinent to Brownwood's cable Communities.¹⁹ PTCB notes that five percent of its programming is Hispanic programming directed to the

¹³*Id.* at 2-3.

¹⁴*Id.* at 7-8 & Exhibit 9.

¹⁵The commission has recognized "specialty" stations as a station category that is capable of offering a desirable diversity of programming that typically attracts limited audiences. *See, e.g., Time Warner Cable*, 10 FCC Rcd 936, 938 (CSB 1995) and *Amendment of Part 76, Subpart A and D of the Commission's Rules and Regulations Relative to Adding a New Definition for 'Specialty Stations' and 'Specialty Format Programming' and Amending the Appropriate Signal Carriage Rules, First Report and Order in Docket 20553*, 58 FCC 2nd 442, 452 (1976).

¹⁶*See Prime Time Christian Broadcasting, Inc. v. Brownwood Television Cable Services, Inc.* DA 00-982, (Cable Serv. Bur. Released May 4, 2000).

¹⁷Opposition at 4.

¹⁸*Id.* at 5 & Exhibit 6.

¹⁹*Id.* at 5.

area's growing Hispanic audience.²⁰ PTCB also seeks credit for local coverage based on KPCB's "Light of the Southwest" programs described as the station's flagship program, and points to several community leaders from Brownwood's cable system Communities that have been featured on "Light of the Southwest" programs.²¹ PTCB further seeks local coverage credit for KPCB's 30-minute "Update & News" programs that originate from KPCB five times daily, seven days per week and the daily weather forecast for the communities of Brownwood, Coleman and Eastland included in those programs.²² PTCB states that KPCB's program schedules are regularly listed on the front page of the Abilene-*Report-News* TV guide, disputing Brownwood's claim that KPCB's programming is not listed in local television guides. Finally, PTCB notes that Brownwood conceded carrying the three other stations from the Abilene-Sweetwater DMA in claiming existing local coverage from those other stations, and argues that the Commission should apply established policy by not allowing Brownwood to discriminate against the only other station in the DMA.²³

13. Section 614(h)(1)(C) of the Communications Act requires the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market. 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. The must carry 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]...."²⁴ KPCB is a commercial television station licensed to operate on Channel 17 at Snyder, Texas within the Abilene-Sweetwater DMA. Snyder is located approximately 85 miles from Clyde, Texas, the nearest Community served by Brownwood, and approximately 133 miles from Brownwood, the more distant Community served by the cable operator. Although these Communities are also in the Abilene-Sweetwater DMA, KPCB has no history of cable carriage in any of the relevant Communities, although the station has been operating since April of 1997. Nor does KPCB provide a Grade B or better signal over any of those communities. The distances involved and absence of any KPCB Grade B signal over the Communities dispels any suggestion that Brownwood's cable systems have served as a bottleneck denying KPCB access to the Communities at issue. These factors also tend to explain the history of non-carriage of the station in those communities. Although not conclusive of themselves, these factors tend to indicate that the communities served by Brownwood may be too distant to be a part of KPCB's market.

14. Brownwood presented evidence, not challenged by PTCB, which shows that KPCB provides very little programming specifically directed to the Communities at issue. More particularly, Brownwood demonstrated that KPCB carries the same programming that is carried by all stations licensed to PTCB, regardless of the stations' various locations in Texas and New Mexico.²⁵ PTCB provided

²⁰*Id.* at 5-7.

²¹*Id.* at 6.

²²*Id.* at 7.

²³*Citing Time Warner Cable*, 10 FCC Rcd 8050,8053 (CSB 1995) (Market modification proceeding inappropriate for discriminating among stations licensed to same community) ("*Time Warner Cable*").

²⁴*See Time Warner Entertainment-Advance Newhouse Partnership*, 11 FCC Rcd 6541 (CSB 1996).

²⁵Petition at 6 and Exhibit 6.

information indicating that several of the "Light of the Southwest" programs featured public figures from some of the Communities served by Brownwood and that daily weather forecasts for Brownwood, Coleman, and Eastland are included in the "Update & News" program. This programming is part and parcel of the programming schedule of all twenty six PTCB stations. On this record, we believe it reasonable to conclude that KPCB's programming, including its Hispanic portion, is directed more toward PTCB's multi-station audience than toward the Communities served by Brownwood. We have consistently declined to find that a station must be considered "local," as Congress intended the term to mean in Section 614(h), by airing the minimal amount of programming associated with the communities in question that is shown on this record.

15. Another factor considered in market deletion cases is the availability of other broadcasters in the market. Section 614(h)(1)(C)(ii)(I) specifically provides that, in considering requests to either include or exclude communities from a station's television market, the Commission shall take into account factors such as the carriage of other local stations by a cable operator serving the communities at issue. We have also stated, and reiterate here, that where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities within its DMA, and the station is providing only minimal local service to those 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. Carriage of other local stations may be used as evidence supporting a cable operator's deletion request when other evidence shows the communities at issue to be outside of the station's market. In the present case, Brownwood carries three network affiliated stations licensed to communities in the Abilene-Sweetwater DMA. However, Brownwood provided only those stations' published program schedules,²⁶ which include no program descriptions on which to base any credit under the local community service factor.

16. PTCB cites Brownwood's carriage of the three network stations as precluding under Commission policy the discrimination against KPCB that would result from the requested market modification.²⁷ We reject this argument. Although KPCB and the three stations carried by Brownwood are all within the Abilene-Sweetwater DMA, KPCB is not licensed to the same community as are the three other stations. Snyder, Texas, KPCB's community of license, is in Scurry County, Texas, which is separated by Fisher and Nolan Counties from Taylor County where the community of license of the other stations is located. Moreover, the Abilene stations provide Grade B signal coverage of the Communities served by Brownwood, unlike KPCB.²⁸

17. Finally, we find that KPCB has at best minimal viewing in the Communities served by Brownwood. The study conducted by Media Strategies was unable to find any viewing for KPCB in either cable or non-cable households in the counties where the Communities served by Brownwood are located.²⁹ PTCB on the other hand provided a report by Nielsen Media Research that gives credit to KPCB for viewing by means of KPCB's K58FZ translator station.³⁰ The Commission, in the *Must Carry Order*,

²⁶Petition at 7 and Exhibits 2 & 8.

²⁷*Citing Time Warner Cable.*

²⁸Brownwood Reply at 7.

²⁹Petition at 7-8 & Exhibit 9.

³⁰PTCB also provided Nielsen 2000-2001 audience data showing KPCB viewership in the Abilene-Sweetwater DMA, but does not show any of that KPCB viewership as being in the Communities served by Brownwood. See PTCB Supplement at 2-3 and Attachment.

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pointed out that Section 614 (h)(1)(C) specifically excludes translators from the definition of a local commercial station. More recently, the Commission pointed out that translators are a secondary service explicitly not entitled to carriage in their own right and held that translator coverage of a community does not lessen the relevance of the failure of the parent full power station to directly serve the subject cable communities.³¹ The instant case involving cable communities separated by comparable distances over sparsely populated portions of southwest Texas presents reasons equally as compelling as that considered in *Dynamic* and *Paragon Cable* for not permitting translator station K58FZ to establish KPCB's television market for purposes of Section 614(h)(1)(C).

18. We have carefully considered each statutory factor in the context of the circumstances presented here. We conclude that the record demonstrates that the requested exclusion of the communities served by Brownwood's cable systems from KPCB's television market will better effectuate the must carry statutory provisions' purpose of ensuring that television stations are carried in areas which they serve and which form their economic market. We conclude that KPCB's economic market does not include, and that it does not serve, communities reached only marginally, or not at all, by its Grade B signal, a signal that includes only a minimal amount of programming directed toward the relevant communities in which station viewership is not established except in a few isolated instances. Additionally, KPCB -TV has never been carried on the cable systems serving the Communities at issue. That numerous other cable systems in the Abilene-Sweetwater DMA carry KPCB either directly or via one of three KPCB's translator stations does not mandate a particular resolution of this market modification case, as PTCB suggests. Instead, we must apply the four statutory factors in this market modification case on the basis of the record before us, which includes no evidence concerning the carriage of KPCB on those other cable systems other than the fact of carriage and the locations of the cable systems. Finally, PTCB asserts that KPCB's programming must be considered "local" to the Communities because the station's programming format "is inherently unique, educational, and morally edifying, thereby establishing a specific programming connection with Brownwood's cable communities."³² As noted above, the record shows instead that KPCB's programming is the same as that of PTCB's other twenty five stations located in Texas and New Mexico, which precludes the findings of specific programming connection to those communities requested by PTCB. We therefore grant Brownwood's request.

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³¹*Dynamic Cablevision of Florida, Ltd., et al.*, 12 FCC Rcd 9952 (1997); *See also KBL Cablesystems of the Southwest, Inc. d/b/a Paragon Cable*, 12 FCC Rcd 21923 (CSB 1997).

³²Opposition at 8.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534(h) and §76.59), that the petition for special relief filed on behalf of Brownwood Cable Television Service, Inc. **IS GRANTED**, and the communities of Brownwood, Bangs, Baird, Clyde, Cross Plains, Rising Star, and Santa Anna, Texas **ARE HEREBY EXCLUDED** from the television market of television station KPCB, Snyder, Texas.

20. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.³³

FEDERAL COMMUNICATIONS COMMISSION

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

³³47 C.F.R. §0.321.