

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

In the Matter of:	)	
	)	
Media Venture Management, Inc.	)	
	)	CSR-5579-A
For Modification of the Gainesville, Florida DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 7, 2000**

**Released: December 12, 2000**

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

**I. INTRODUCTION**

1. Media Venture Management, Inc., licensee of Station WTXL-TV (ABC, Ch. 27), Tallahassee, Florida (“WTXL-TV”), filed the above-captioned petition for special relief seeking to modify the Gainesville, Florida DMA of television broadcast station WCJB (ABC, Ch. 20), Gainesville, Florida (“WCJB”). Specifically, WTXL-TV requests that the community of Live Oak, Florida be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the market of WCJB. Oppositions to this petition were filed on behalf of Diversified Broadcasting, Inc., licensee of WCJB and Time Warner Cable, operator of the cable system serving Live Oak, Florida. WTXL-TV has filed a consolidated reply to these oppositions.

**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”)*,<sup>1</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>2</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup>8 FCC Rcd 2965, 2976-1977 (1993).

<sup>2</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-  
(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>3</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>4</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 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>5</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

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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>3</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>4</sup>47 U.S.C. §534(h)(1)(C).

<sup>5</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2976 (1993).

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>6</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>7</sup>

(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

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

<sup>7</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.

noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>8</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>9</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>10</sup>

### III. DISCUSSION

9. The issue before us is WTXL-TV's request to exclude the community of Live Oak, Florida from mandatory carriage in WCJB's television market. In *Diversified Broadcasting, Inc.*, the Bureau, in 1998, granted a request for modification filed by WCJB to include communities from five different Florida counties within its market.<sup>11</sup> One of those communities was Live Oak which is located in Suwanee County, Florida.<sup>12</sup> WCJB is licensed to Gainesville, Florida, and is part of the Gainesville DMA. Live Oak is located within the Tallahassee, Florida-Thomasville, Georgia DMA. WCJB's request was opposed by WTXL-TV with respect to the community of Live Oak because that station is also located within the Tallahassee DMA. In support of the subject request, WTXL-TV states that the purpose of its petition is to restore the full benefit of its must carry rights within its own DMA. WTXL-TV argues that,

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<sup>8</sup>See *Modification Final Report and Order*, 14 FCC Rcd 8366 (1999). See also 47 C.F.R. §76.59(b).

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

<sup>10</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

<sup>11</sup>13 FCC Rcd 22331 (1998) ("*Diversified*").

<sup>12</sup>Although the community of Branford and surrounding unincorporated areas, also located in Suwanee County, were granted as part of WCJB's request, WTXL-TV does not include them in the instant petition.

as a result of *Diversified*, the cable operator serving Live Oak ceased carriage of its signal because its programming substantially duplicated that of WCJB and because WCJB was geographically closer to the cable system's principal headend than was WTXL-TV.<sup>13</sup> WTXL-TV states that although it is challenging Time Warner's refusal to carry its signal in a pending application for review of the Bureau's decision in *Media Venture Management, Inc. v. Time Warner Cable*, it is also seeking to restore its must carry rights through the modification process.<sup>14</sup>

10. WTXL-TV maintains that circumstances have changed since the decision in *Diversified*. WTXL-TV states that, due to the construction of a new tower and the installation of a new antenna in 1999, it now places a Grade A contour over Live Oak. WTXL-TV asserts that its improved service has increased its viewership in the Live Oak area and generated interest by Live Oak advertisers who would be willing to purchase time from WTXL-TV if it were carried by Time Warner. WTXL-TV argues that its carriage by Time Warner is warranted, not only by its changed circumstances, but also in the interest of preserving the economic dynamics of network affiliation agreements. WTXL-TV maintains that absent a reversal of *Diversified*, the only way to ensure its carriage on Time Warner's system is to remove the community of Live Oak from WCJB's television market for must carry purposes.

11. WTXL-TV states that in its opposition to *Diversified* it explained that it was in the process of constructing a new tower. It pointed out that grant of WCJB's request to include Live Oak in its television market would endanger WTXL-TV's carriage rights on the Live Oak system because WTXL-TV is more distant from Time Warner's cable system than is WCJB. WCJB, however, maintained that the inclusion of Live Oak to its market would have no bearing on WTXL-TV's alleged continued carriage. WTXL-TV argues that the Bureau apparently agreed with WCJB's assessment that WTXL-TV's carriage would apparently not be jeopardized when it granted WCJB's request. WTXL-TV states that in light of WCJB's disclaimer and the Bureau's conclusion that *Diversified* would not apparently endanger its carriage rights, there was no basis for reconsideration. Ultimately, however, WTXL-TV states that when it requested must carry status for the January 2000 election period, Time Warner rejected its request by relying on Section 76.56(b)(5) of the Commission's rules, which allowed it to deny carriage to the more distant of two duplicating stations. WTXL-TV points out that although in its decision in *Media Venture*, the Bureau dismissed the must carry complaint filed against Time Warner, it did suggest that WTXL-TV file a modification petition should a change in circumstances justify Live Oak's exclusion from WCJB's market.<sup>15</sup>

12. WTXL-TV states that while, as an ABC affiliate in the Tallahassee market it was entitled to be carried on the Live Oak cable system, it discovered during the course of its must carry complaint against Time Warner that it was not being carried. However, WTXL-TV argues that Time Warner's failure to carry its signal does not preclude the historic carriage factor from being decided in its favor. WTXL-TV points out that the first statutory factor is not solely dependent on a particular station's carriage but also whether "other stations located in the same area" are also carried.<sup>16</sup> WTXL-TV states that the evidence shows that other television stations in the Tallahassee DMA have been carried on the Live Oak

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<sup>13</sup>47 C.F.R. §76.56(b).

<sup>14</sup>15 FCC Rcd 4689 (2000)(*Media Venture*). Due to the statutory deadline of WTXL-TV's modification petition and the fact that WTXL-TV's application for review must be decided at the Commission level, these two petitions cannot be processed simultaneously.

<sup>15</sup>15 FCC Rcd at 4692.

<sup>16</sup>47 U.S.C. §534(h)(1)(C).

cable system for many years.<sup>17</sup> WTXL-TV maintains that such carriage confirms Live Oak's identification with the Tallahassee market.<sup>18</sup> WTXL-TV argues that Time Warner's failure to carry its signal in Live Oak creates a severe competitive disadvantage for WTXL-TV in its own DMA because advertisers who would normally advertise on its station fail to do so.<sup>19</sup> Without such carriage, WTXL-TV asserts that it cannot compete effectively against the other Tallahassee stations, all of which are network affiliates. WTXL-TV states that the Commission has recognized the disadvantage a local station experiences when it is excluded from a system which carries its competitors and how it can impact the affiliation concept.<sup>20</sup> WTXL-TV argues that that is the precise impact it has experienced because, as a result of its exclusion from the Live Oak system, it has lost some of the economic benefit it bargained for in securing an ABC network affiliation in the Tallahassee DMA. WTXL-TV maintains that the inequity can be corrected by deleting Live Oak from WCJB's market and providing WTXL-TV with the right to enjoy its must carry benefits.

13. WTXL-TV states that the Commission has long held that predicted Grade B contour coverage over a community demonstrates service to that community and defines its economic market.<sup>21</sup> WTXL-TV submits a Longley-Rice coverage study which it asserts demonstrates that the community of Live Oak lies within its station's Grade A service contour.<sup>22</sup> Because Live Oak stands in the primary service area of its signal, WTXL-TV argues that it should logically be included among those communities in which it has must carry rights. WTXL-TV points out that, to its knowledge, there is no published decision in which the Commission relegated a television station, let alone a major network affiliate, to secondary status within its own DMA and allowed an out-of-market station to have superior must carry rights. WTXL-TV argues that *Diversified* does not constitute a bar to the relief it is requesting herein because the improved quality of its signal reflects a fundamental change in circumstances since the decision was released. WTXL-TV maintains that the public interest would also be served by grant of its request since it has always provided coverage of sports events and local news stories of interest to Live Oak and surrounding Suwanee County.<sup>23</sup>

14. WTXL-TV argues further that published audience data from Nielsen diaries for 1999 demonstrate that the enhancement of its signal has dramatically increased its viewership ratings in Live Oak over the past year, especially during hours when WTXL-TV's local news is aired.<sup>24</sup> At the same time, WTXL-TV states that WCJB's viewership, during the same time periods, has generally decreased or increased only minimally.<sup>25</sup> WTXL-TV maintains that if it had the carriage to which it is entitled, it would garner even better ratings. WTXL-TV contends that with regard to Live Oak, it can be compared to

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<sup>17</sup>Petition at Exhibit 3.

<sup>18</sup>See e.g., *Rifkin & Associates, Inc.*, 12 FCC Rcd 22080, 22084 (1997); *Cablevision of Cleveland, L.P.*, 12 FCC Rcd 15173, 15183 (1997); and *TWI Cable, Inc.*, 12 FCC Rcd 13187, 13192 (1997).

<sup>19</sup>Petition at Exhibit 4.

<sup>20</sup>See e.g., *Service Electric Cable TV, Inc.*, 12 FCC Rcd 13299, 13311 (1997); and *Guy Gannett Communications*, 13 FCC Rcd 23470, 23478 (1999).

<sup>21</sup>See *Orlando-Daytona Beach-Melbourne, and Cocoa, Florida*, 102 FCC 2d 1062, 1070 (1985).

<sup>22</sup>Petition at Exhibit 5.

<sup>23</sup>*Id.* at Exhibit 4.

<sup>24</sup>*Id.* at 14.

<sup>25</sup>*Id.*

a new station because, despite the fact that it has served its DMA for many years, it was not carried by Time Warner. In spite of this, WTXL-TV points out that it has expended substantial sums to improve signal delivery to Live Oak and it should therefore be rewarded for trying to provide more responsive local programming to communities within its own DMA.

15. Time Warner argues that because it now carries WCJB as its must carry ABC affiliate, pursuant to the Bureau's decision in *Diversified*, and in accordance with Section 76.56(b)(5) of the Commission's rules, grant of WTXL-TV's request would adversely affect not only its cable system operations, but the interests of its subscribers.<sup>26</sup> Time Warner points out that its carriage of WCJB, in lieu of WTXL-TV, was affirmed by the Bureau in its decision in *Media Venture* which denied the must carry complaint WTXL-TV filed against Time Warner for its refusal to carry the station based on Section 76.56(b)(5) of the rules.<sup>27</sup> Although WTXL-TV now seeks to overturn *Diversified*, Time Warner maintains that WTXL-TV has failed to establish sufficient grounds to justify grant of its request.

16. Time Warner argues that WTXL-TV's petition is not about establishing the station's entitlement to carriage on the Live Oak system because WTXL-TV already has this right, subject to the provisions of Section 76.56(b)(5) of the rules.<sup>28</sup> WTXL-TV's absence from the system's channel line-up, therefore, is a result of the discretion afforded Time Warner under the 1992 Cable Act and the Commission's rules, allowing it to pick between two duplicating stations the one which best meets the programming needs and interests of its subscribers. As a result, Time Warner maintains that WTXL-TV's lack of historic carriage on the Live Oak system and Time Warner's carriage of two other Tallahassee DMA stations are simply not relevant to the relief requested herein. Time Warner states that WCJB has been carried on the Live Oak system for over nine years and that its subscribers have become accustomed to its programming and WTXL-TV, in contrast, has not been carried for nearly a decade. Time Warner argues that this record of historical carriage is probative evidence of the geography of the market from the cable subscriber's perspective.<sup>29</sup> Moreover, Time Warner points out that WCJB is not the only Gainesville DMA station carried on the Live Oak system. The system also carries two stations from the Jacksonville-Brunswick, Florida DMA and two stations from the Tallahassee DMA as well. Time Warner contends that the sources of the in-state television stations it carries are sufficiently diverse as to construe that Live Oak's nexus is with the closest signal source, Gainesville, rather than either Tallahassee or Jacksonville.

17. Time Warner states that while WTXL-TV argues that the changes in its facilities warrant grant of its request, it fails to explain any grounds for the removal of Live Oak from WCJB's market. Further, Time Warner notes that the Longley-Rice study provided by WTXL-TV indicates that Live Oak is closer to the outer edge of Grade B coverage as determined by the study, rather than within the Grade A coverage as alleged by the station. Finally, Time Warner points out that WTXL-TV supplies ratings table information (without cable) for itself and ratings table information (with cable) for WCJB during the same specific time periods to support its claim of an increase in viewership. However, Time Warner argues that such a showing is insufficient because WTXL-TV fails to disclose consistent, comparative ratings and share data for WTXL-TV and WCJB in the noncable households of Suwanee County. Accordingly, Time Warner states, there is no evidentiary basis for concluding that WCJB does not continue to enjoy significant viewership in the area.

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<sup>26</sup>47 C.F.R. §76.56(b)(5).

<sup>27</sup>15 FCC Rcd 4689, 4692.

<sup>28</sup>47 C.F.R. §76.56(b)(5).

<sup>29</sup>*Diversified* at 22338.

18. In its opposition, WCJB states that WTXL-TV does not present any evidence that would justify overturning *Diversified*, particularly given WCJB's historical carriage and its service to the community. WCJB argues that WTXL-TV's petition fails to meet the Commission's procedural requirements for a market modification petition. WCJB points out that the *Modification Final Report and Order* requires that petitioners must follow strict guidelines when submitting their requests.<sup>30</sup> One of these requirements, states WCJB, is the submission of a map "illustrating the relevant community locations and geographical 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, [and] transportation routes."<sup>31</sup> WCJB states that WTXL-TV admits that it did not include this information.<sup>32</sup> For this reason alone, WCJB contends, WTXL-TV's petition should be dismissed as procedurally defective.

19. WCJB asserts that WTXL-TV's arguments simply confirm what has never been at issue – that WTXL-TV is entitled to must carry status in Live Oak. WCJB points out that WTXL-TV's arguments, however, do not prove the reverse, that Live Oak should be eliminated from WCJB's market, because the facts which persuaded the Commission to grant *Diversified* still hold true. Although WTXL-TV stated that other Tallahassee DMA stations were carried on the Live Oak system, WCJB notes that WTXL-TV failed to indicate that not all Tallahassee market stations were carried. WCJB argues that, considering that two Gainesville DMA stations are also carried on the system, Live Oak could just as easily be identified with the Gainesville market.<sup>33</sup> Moreover, WCJB states that despite the fact that Live Oak, admittedly lies no more than 14 miles outside of its Grade B contour, the Commission determined in *Diversified* that "given the flatness of the terrain involved, WCJB's signal is likely viewed well beyond its predicted contour radius."<sup>34</sup> WCJB states that this determination is well supported by evidence of the news broadcasts expressly focused on Live Oak and surrounding Suwanee County and additional survey data.<sup>35</sup>

20. WCJB states that, according to 2000 Nielsen Media Research data for Suwanee County, it is one of the most watched broadcast stations in terms of total viewers, achieving an 8 percent total viewing hours share and a net weekly circulation of 48 percent.<sup>36</sup> WCJB contrasts this to WTXL-TV's respective shares of 1 percent total viewing hours and 11 percent net weekly circulation.<sup>37</sup> Further, WCJB argues that it has never disputed that WTXL-TV is entitled to such must carry rights. However, when there are two duplicating stations as is the case here, WCJB points out that the cable system has to carry the station which is physically closer to the cable system's headend. Only then, states WCJB, may the cable provider make its own business decision as to whether to carry the second duplicating station. WCJB states that, in this instance, Time Warner has chosen not to carry WTXL-TV and the Commission determined in the *Media Venture* that Time Warner made a valid decision to deny WTXL-TV carriage.

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<sup>30</sup>14 FCC Rcd 8366, 8385 (1999).

<sup>31</sup>*Id.*

<sup>32</sup>See *CSC TKR, Inc.*, DA 00-1804 (released August 9, 2000), paras. 3-4, in which the Bureau dismissed a petition for modification for petitioner's failure to include required information.

<sup>33</sup>Opposition at 5.

<sup>34</sup>*Diversified* at 22339.

<sup>35</sup>Opposition at 5.

<sup>36</sup>*Id.* at Exhibit B.

<sup>37</sup>*Id.*

21. In reply, WTXL-TV maintains that neither WCJB nor Time Warner challenge the viewership data it submitted which shows that viewership of its signal has grown substantially since completion of its new tower, not only in Suwanee County as a whole, but Live Oak in particular. WTXL-TV argues that even if WCJB does enjoy significant viewing in Suwanee County, as claimed by both parties, denial of the instant petition would still not be warranted because that factor does not provide any legal basis for precluding WTXL-TV's carriage. Moreover, WTXL-TV points out that, by focusing solely on WCJB's ratings, WCJB's and Time Warner's oppositions ignore the fact that television stations in the Tallahassee DMA have a following in Suwanee County which equals, if not surpasses, the following of the Gainesville DMA stations. In addition, WTXL-TV notes that both parties submitted data for the entire county of Suwanee, when the only issue is the community of Live Oak. WTXL-TV argues that its ties to Live Oak would have been much greater if Time Warner had honored its obligation to carry WTXL-TV during the seven years when its must carry status entitled it to such carriage and further, that Live Oak's ties to Tallahassee will become greater in the future since WTXL-TV now places a Grade A signal over the community. WTXL-TV maintains that grant of its petition, based on a recognition of its improved signal and the consequent improved service to Live Oak generated by a stronger signal, would not be inconsistent with the Commission's prior decision in *Diversified*.

22. Finally, WTXL-TV notes that WCJB makes an issue of its failure to include as part of its petition a map denoting cable headend locations as required by the Commission's new evidentiary rules. WTXL-TV argues that this objection should be rejected. While it concedes that the Commission had specific reasons for requiring this information, it asserts that the Commission would not require the submission of evidence that was not relevant or appropriate to the decision at hand. In this instance, WTXL-TV states that it did not include this information because it did not think it relevant to its petition. WTXL-TV points out that not only does WCJB make no effort to explain how this information would be relevant to disposition of this petition, but its reliance on *CSC TKR*, which was dismissed for failure to provide specific information, is misplaced.<sup>38</sup> WTXL-TV states that in that decision, the petition was dismissed because the petitioner failed to provide certain required information and also because it failed to provide an explanation as to their absence. WTXL-TV states that it has explained why this additional information was unnecessary. To the extent that it may have any relevance, however, WTXL-TV submitted the contested information.<sup>39</sup>

23. WTXL-TV has stated that its express purpose for filing the instant modification petition is to restore the full benefit of its must carry rights in the community of Live Oak. However, WTXL-TV's petition is not a traditional modification request in which a station seeks to include within its market a particular community located in another market in order to obtain must carry rights. In this instance, the community of Live Oak is located within the same television market as WTXL-TV. WTXL-TV is claiming, in essence, that it has lost its must carry rights in Live Oak due to the Commission's prior decision in *Diversified* which granted WCJB's request to include within its market a number of Florida communities, among which was the community of Live Oak. WTXL-TV maintains that because *Diversified* granted must carry status to WCJB in Live Oak, not only was WTXL-TV denied carriage when it asserted its must carry rights for the January 2000 election period, due to the fact that it was the more distant of two duplicating stations, but the must carry complaint it subsequently filed was dismissed. WTXL-TV therefore requests that the Bureau reverse its decision in *Diversified* so that it may re-establish

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<sup>38</sup>Reply at 7. WTXL-TV points out that WCJB did not provide this information in its own modification petition. We note, however, that at the time WCJB filed its request, there was no requirement that such specified information be included.

<sup>39</sup>*Id.* At Exhibit 3.

its must carry rights in Live Oak. We do not find, however, that WTXL-TV has provided sufficient evidence to overturn our original decision.

24. Because the arguments raised by WTXL-TV herein basically reiterate arguments it made in its opposition to *Diversified* and in its complaint in *Media Venture*, certain issues raised in those matters are relevant. A comparison between those prior decisions and the instant petition finds several unexplained discrepancies. First, in *Diversified*, it appeared at the time that both WTXL-TV and WCJB had enjoyed long-term carriage on the cable system in Live Oak, pursuant to retransmission consent agreements. While WTXL-TV made no statement to the contrary, it had apparently never previously asserted its must carry rights. In *Media Venture*, however, it was made clear by both WTXL-TV and Time Warner that WTXL-TV had not been carried on the Live Oak system since 1991, some seven years prior to the Bureau's decision in *Diversified*. WTXL-TV stated that it was unaware of this fact until it filed its complaint. Knowledge of WTXL-TV's lack of carriage on the Live Oak system would not have altered the Bureau's determination in *Diversified*; if anything, it would have further supported WCJB's claims. Second, while WTXL-TV made no claims of signal coverage of Live Oak in *Diversified*, in *Media Venture* it claimed Grade B coverage due to its new tower and antenna and in the instant petition, it claims Grade A coverage due the same facilities. There are a variety of maps and/or studies relied on in making these claims which further cloud the issue. In *Media Venture*, WTXL-TV relied first on a self-produced map which indicated that Live Oak fell just within its Grade B contour. When Time Warner pointed out that WTXL-TV's new Grade B contour map on file with the Commission did not indicate such coverage, WTXL-TV argued that it was based on an inaccurate hand drawing and it submitted instead a computer-generated map to support its claim, a type of submission unapproved in prior Commission decisions.<sup>40</sup> In the subject petition, WTXL-TV submits the results of a Longley-Rice propagation study, a method whose use is approved by the Commission, in its claim that it provides Grade A coverage. A review of this map indicates, however, that Live Oak falls within the area of the map designated as Grade B coverage, not Grade A.

25. With regard to the ratings data provided by WTXL-TV, we note that this data does not conform to criterion that published audience data include both cable and noncable households.<sup>41</sup> The county-wide Nielsen data provided by WCJB, however, does conform to this criterion and is the more established method for the submission of viewership data in modification cases. While WTXL-TV has objected to the use of county-wide data in this instance, since only the community of Live Oak is involved, a more accurate representation of its viewership in Live Oak would be to perform a community-specific survey similar to the methodology described in Section 76.54(b) of the Commission's rules, but including both cable and noncable households.<sup>42</sup>

26. While WTXL-TV makes much of its alleged loss of must carry status in Live Oak, it has only been recently that the station evinced any interest in asserting those rights.<sup>43</sup> Indeed, the fact that WTXL-TV seemed to be unaware of its own lack of carriage in Live Oak for at least seven years, does not indicate a great deal of interest in carriage in the area. Moreover, despite its claims, WTXL-TV has not lost any carriage rights within its own market. Time Warner has simply exercised its business judgment and an option under the must carry rules allowing it to choose between two duplicating stations the one

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<sup>40</sup>Reply to Must Carry Complaint at Exhibit 1.

<sup>41</sup>47 C.F.R. §76.59(b)(6).

<sup>42</sup>47 C.F.R. §76.54(b).

<sup>43</sup>WTXL-TV asserted its must carry rights on the Live Oak for the first time for the January 2000 election period.

which is most popular with its viewers. There is no requirement under our must carry regulations that every station assigned to a particular market must be carried on every system within that market, only that they are entitled to such carriage providing certain conditions are met. For instance, not only does the requesting station have to provide a good quality signal in order to be carried, but cable systems only have to fill one-third of their channel capacity with must carry channels. WTXL-TV, therefore, could just as easily have been denied carriage simply because Time Warner had reached its full complement of must carry signals or because WTXL-TV was unable to provide a good quality signal. There is no reason to assume, even despite WCJB's current status, that Time Warner might not carry WTXL-TV at some future date, particularly if the station's service to the community improves to the extent it claims. Further, we note that the community of Live Oak is on the outer fringes of the Tallahassee market and is located in one county out of the 18 which comprise the market. Finally, we note that the community of Live Oak is now served as part of an integrated system from a headend located in Lake City, Florida. Lake City is located in Columbia County, which is considered to be part of the Jacksonville-Brunswick, Florida DMA. While this does not negate WTXL-TV's must carry rights in the community of Live Oak, WTXL-TV would not be entitled to carriage on any other portion of the cable system.

#### 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-5579-A), filed by Media Venture Management, Inc. **IS DENIED**.

28. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>44</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>44</sup>47 C.F.R. §0.321.