

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

In the Matter of:)	
)	
TCI Cablevision of New Mexico, Inc.)	
)	CSR-5654-A
For Modification of the Albuquerque-Santa Fe,)	
New Mexico DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 2001

Released: July 17, 2001

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

I. INTRODUCTION

1. TCI Cablevision of New Mexico, Inc. ("TCI") filed the above-captioned petition for special relief seeking to modify the Albuquerque-Santa Fe, New Mexico DMA relative to television broadcast station KRPV (Ch. 27), Roswell, New Mexico. Specifically, TCI requests that KRPV be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable systems serving the communities of Aztec, Bloomfield, Farmington, Gallup and Gamerco, New Mexico. An opposition to this petition was filed on behalf of Prime Time Christian Broadcasting, Inc., licensee of Station KRPV to which TCI has replied.¹

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*"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹KRPV filed a must carry complaint against TCI's Farmington and Gallup, New Mexico cable systems which was granted on April 9, 2001. Due to the time constraints associated with resolving must carry complaints, this petition was processed separately. See *Prime Time Christian Broadcasting, Inc. v. TCI Cablevision of New Mexico, Inc.*, DA 01-906 (released April 11, 2001).

²8 FCC Rcd 2965, 2976-1977 (1993).

³Section 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). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's 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

(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.⁴

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.⁵

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.⁶

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.

(...continued from previous page)

(1999) ("Modification Final Report and Order").

⁴For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

* * * *

[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.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.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.⁹

4. 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

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁹*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

curves may also be included to support a technical service exhibit.¹⁰

(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.¹¹

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. The *Modification Final Report and Order* also provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant TCI's request to exclude Roswell television station KRPV from mandatory carriage in its cable system communities. TCI's petition for modification was filed subsequent to a must carry complaint filed by KRPV in December 2000 seeking carriage on TCI's Farmington and Gallup, New Mexico cable systems. Although KRPV met the definition of a "local commercial station" in that proceeding and its complaint was granted, our action therein did not preclude TCI from filing the instant petition. TCI's communities are located in the New Mexico counties of San Juan and McKinley, which are deemed to be part of the Albuquerque-Santa Fe DMA. KRPV is licensed to Roswell, New Mexico, which is also considered to be part of the Albuquerque DMA. The market change 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 TCI's deletion petition appears to be a legitimate request to redraw DMA boundaries to make them congruous with market realities.

6. In support of its request, TCI states that, despite being on-the-air for 14 years, KRPV has no history of carriage in the subject communities.¹² TCI argues that because KRPV has never been carried,

¹⁰The 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.

¹¹47 C.F.R. §76.59(b).

¹²Petition at Exhibit 4.

removing the station from carriage on its systems would cause no disruption to established viewing patterns and would not deprive KRPV of any existing audience.¹³ TCI points out that the Commission has stated that local coverage of a station for market modification purposes “may be demonstrated by the presence of a predicted Grade B contour, or by proximity to the community or communities in question. . .”¹⁴ TCI states that KRPV’s Grade B contour fails to reach any of the subject communities and it submits a Longley-Rice signal coverage study to illustrate this fact.¹⁵ In addition, TCI states that the distances between Roswell and the communities range from 282 to 312 miles.¹⁶ TCI maintains that these distances greatly exceed the distances found to justify previous market modification requests.¹⁷ Moreover, TCI notes that the Bureau recently granted two market modification requests to exclude KRPV from other New Mexico communities which were closer than those herein.¹⁸

7. TCI argues further that KRPV does not appear to provide any local programming tailored to the subject communities. Indeed, TCI notes that the Prime Time Christian Broadcasting (“PTCB”) Internet website shows the same programming schedule for all the stations licensed to PTCB.¹⁹ TCI states that KRPV is also not listed in the programming guides of either *The Daily Times* or *The Independent*, the local newspapers serving the communities or the New Mexico edition of *TV Guide*.²⁰ TCI argues that the fact that these programming guides do not list KRPV only emphasizes the station’s lack of nexus with the communities. In any event, TCI asserts that its cable communities already receive ample local programming addressing their interests and concerns from stations which it currently carries.²¹ Further, TCI states that a study conducted by Media Strategies was unable to find any viewership ratings for KRPV in either the cable or non-cable households in McKinley or San Juan Counties, where the cable communities are located. In view of the above, and based on the market modification factors established in the Communications Act, TCI therefore requests that its petition for exclusion be granted.

8. In opposition, KRPV argues that TCI has failed to meet its burden of proof to justify its market modification request and that the petition should be denied. KRPV points out that in December 2000 it filed a must carry complaint against TCI regarding carriage of its signal in the communities of Farmington and Gallup, New Mexico.²² KRPV states that TCI did little to rebut the facts presented in this complaint other than to indicate that it intended to file a petition for special relief to exclude KRPV from its

¹³*Id.* at 4.

¹⁴*See Montgomery Cablevision L.P., d/b/a Cable TV Montgomery*, 10 FCC Rcd 2732, 2735 (1995), *citing Must Carry Order*, 8 FCC Rcd 2965, 2977 (1993).

¹⁵Petition at Exhibit 5.

¹⁶*Id.* at Exhibit 6.

¹⁷*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); *Time Warner Cable*, 12 FCC Rcd 23249 (1997)(42-58 miles); *Time Warner Cable*, 11 FCC Rcd 13149 (1996)(45 miles); *Cablevision of Cleveland, L.P. and V-Cable, Inc. d/b/a Cablevision of Ohio*, 11 FCC Rcd 18034 (1996)(41 miles).

¹⁸*See e.g., TCI Cablevision of New Mexico, Inc.*, DA 01-339 (released February 9, 2001)(260 miles); and *Comcast Cablevision of New Mexico, Inc.*, 15 FCC Rcd 7922 (2000)(200 miles).

¹⁹Petition at Exhibit 8.

²⁰*Id.* at Exhibits 9 and 10.

²¹*Id.* at Exhibits 4, 9 and 10.

²²*See supra*, n. 1.

communities.²³ KRPV notes that TCI has broadened its modification request to include the additional cable communities of Aztec, Bloomfield and Gamerco. KRPV states that TCI concedes that its cable communities are all located in the Albuquerque DMA; which alone establishes a *prima facie* case for KRPV's mandatory carriage. However, KRPV states that TCI opposes such carriage on the basis of KRPV's lack of historic carriage and viewership and its alleged failure to provide local coverage or service. KRPV maintains that these contentions are either irrelevant or incorrect in weighing KRPV's mandatory carriage rights against TCI's market modification request.

9. KRPV argues that the Commission has long held that a station's inability to establish historical carriage is not entitled to great weight, especially, as here, where a religious "specialty" station is involved.²⁴ KRPV directs the Commission's attention instead to KRPV's significant potential "local service" contribution to the subject communities. KRPV states that, to ensure that it provides a good quality signal to TCI's Farmington and Gallup headends, it is going to abandon its previously announced intention to make its signal available via Television Translator Station K47DR, Farmington, New Mexico, and instead deliver its signal via satellite.²⁵ KRPV asserts that satellite delivery should override the fact that an in-market station does not provide a Grade B signal to a cable system's headend and should qualify that in-market station as an "other local service."²⁶ KRPV believes that such delivery can supercede the Commission's historical view that "[a]s a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market."²⁷ KRPV maintains that this view is supported by the "local-into-local" provisions of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") and the *Review of the Commission's Regulations Governing Television Broadcasting ("Broadcasting Report and Order")*, which modified the meaning of "other local service" under market modification factors.²⁸ KRPV points out that it is not arguing, however, that the combined effect of SHVIA and the *Report and Order* is to make KRPV a local commercial television station for every cable community in the country.

10. KRPV challenges TCI's unproven assertion that KRPV's programming is not desired by TCI's customers and therefore does not provide a desirable programming service. KRPV points out that it has collected 722 signatures among Native Americans who live in the cable communities that request KRPV's programming be carried on their cable systems.²⁹ KRPV states that many of these petitioners live in Aztec, Farmington and Bloomfield.³⁰ KRPV maintains that this showing fully satisfies market

²³See *Prime Time Christian Broadcasting, Inc. v. TCI Cablevision of New Mexico, Inc.*, DA 01-906 (released April 11, 2001) at ¶5.

²⁴See e.g., *Time Warner Cable*, 10 FCC Rcd 936, 938 (1995), citing *Amendment of Part 76, Subparts 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, 58 FCC 2d 442, 452 (1976), *recon. denied*, 60 FCC 2d 661 (1976).

²⁵Opposition at 3.

²⁶*Id.* at 4.

²⁷*Rifkin/Narragansett South Florida*, 11 FCC Rcd 21090, 21104 n.59 (1996).

²⁸P.L. 106-113, §1000(9), 113 Stat. 1501 (1999); see *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 1918 (2000) ("*Satellite Must Carry Report and Order*"); *Review of the Commission's Regulations Concerning Television Broadcasting*, 14 FCC Rcd 12903, 12926-27 n.87 (1999).

²⁹Opposition at 4.

³⁰*Id.*

modification factor two by demonstrating that KRPV offers a local service which is desired by TCI's current and potential cable subscribers and the Commission should not allow TCI to ignore this outpouring of interest.

11. KRPV argues that its Hispanic religious programming is of special local importance to Hispanic television viewers in the subject cable communities and is not duplicated by any of the other stations carried by TCI. Although KRPV is aware that in *MetroCast Cablevision of New Hampshire, LLC*, the Commission concluded that Spanish-language programming was not specifically directed to the subject communities or served the community in a manner to establish a specific market connection, KRPV urges the Bureau to reconsider the importance of Spanish programming to Hispanic viewers.³¹ KRPV asserts that, given the increase in the Hispanic population, the Bureau and Commission should extend local programming status to Spanish-language programming when other TV stations are not carrying similar programming. KRPV contends that the fact that the programming is in Spanish makes it "local" to those who otherwise would be without that kind of programming. Therefore, KRPV concludes that it should receive significant credit under factors two and three for the local importance and uniqueness of its Spanish-language programming.

12. Finally, KRPV states that the explanation for the absence of KRPV's listings in *TV Guide* is simply because *TV Guide's* publishers do not list any religious TV stations in its New Mexico publication. In conclusion, KRPV requests that, based upon the record evidence, KRPV should be found to be a local broadcast station actively serving the cable communities at issue in this proceeding and therefore TCI's petition should be denied.

13. In reply, TCI argues that KRPV fails to rebut any of the factual showings presented in its petition, but instead essentially requests that the Bureau disregard the statutory factors and case law governing market modification proceedings.³² TCI states that the fact remains that KRPV has never been carried on its systems. TCI points out that the Commission has properly and consistently held that historical carriage will be considered along with the other three factors.³³ Further, TCI states that while it does not dispute that religious programming may serve the public interest, this does not mean that religious stations necessarily do so or that such stations automatically demonstrate a local nexus with every community throughout its DMA simply by virtue of their programming format. TCI argues that KRPV not only does not show how it serves the public interest in general, but the subject communities in particular.

14. TCI states that KRPV does not dispute that it does not come close to providing Grade B coverage to the communities, but instead erroneously insists that SHVIA and the *Report and Order* modified the meaning of "local service" in Section 614(h)(1)(C)(ii)(II) and that KRPV's satellite delivery qualifies as an "other local service."³⁴ TCI argues that this position is inconsistent with Commission precedent and any logical application of the market modification rules.³⁵ TCI notes that the Commission recently stated that while translators may be relevant to delivering a good quality signal in must carry proceedings, "translator coverage of a community does not lessen the relevance of the failure of the parent

³¹ See *Metrocast Cablevision of New Hampshire, LLC*, DA 01-577 at ¶¶17, 19 (rel. March 5, 2001).

³² Reply at 1.

³³ *TCI Cablevision of New Mexico*, DA 01-330 at ¶20; and *Time Warner Cable*, 12 FCC Rcd at 23254.

³⁴ 47 U.S.C. 614(h)(1)(C)(ii)(II).

³⁵ Reply at 4.

full power station to directly serve the subject cable communities and may not be used for the purpose of establishing a station's market under the market modification procedures set forth in Section 614(h)(1)(C)(ii)."³⁶ TCI maintains that KRPV's satellite argument should be rejected for the same reason.

Indeed, TCI points out that the Commission specifically considered and rejected the same argument made by KRPV in *TCI Cablevision of New Mexico, Inc.*³⁷

15. TCI argues that because it only applies to satellite carriers, KRPV's reliance on SHVIA in asserting its carriage rights is wholly unsupported. In any event, contrary to KRPV's claims, TCI states that SHVIA does not separately address market modification proceedings, nor does it address the delivery of satellite signals to cable system headends. TCI also points out that the "local-into-local" provision to which KRPV alludes is irrelevant because that issue concerns individual direct broadcast satellite ("DBS") customers receiving signals on their own satellite dishes. In addition, TCI argues that the *Broadcasting Report and Order* to which KRPV refers is inapposite because it addresses the geographic scope of regulations regarding common ownership limits on local broadcast stations within overlapping Grade B contours.³⁸

16. TCI argues further that the 722 signatures provided by KRPV of people allegedly requesting carriage of the station fails to overcome KRPV's failure to meet the local coverage factor. TCI points out that several pages of KRPV's submission provide no address with the signatures so there is no way to determine whether these individuals are, in fact, residents of the cable communities at issue.³⁹ TCI asserts that several pages which do include addresses are from individuals who do not reside in the cable communities and are not even located in the Albuquerque DMA. In addition, TCI states that 437 of the 722 signatures do not specifically request carriage of KRPV, but simply a general "desire for a Christian television channel on Cable T.V. in the Four Corners area (New Mexico, Arizona, Utah, Colorado) as well as the Navajo Indian Reservation."⁴⁰

17. TCI maintains that KRPV's assertion that it should get local programming credit simply because it broadcasts Hispanic religious programming to Hispanic viewers in the communities is misplaced because it fails to demonstrate a local nexus with the subject communities. TCI states that the critical issue for the local programming criterion is the nature and magnitude of the station's local programming. TCI points out that the Commission has consistently held that "[w]hile it is true that the [Spanish language] programming provided . . . may be of potential general interest, it is not 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."⁴¹ TCI asserts that Spanish-language programming which is not directed to the communities is no more local than English-language programming which is not specifically targeted. TCI states that this is particularly true when one notes that PTCB's 26 broadcast stations throughout Texas and New Mexico have the exact same line-up.

³⁶See *Brownwood Cable Television Service, Inc.*, DA 01-375 (released February 13, 2001) at ¶5, citing *Dynamic Cablevision of Florida, Ltd., et al.*, 12 FCC Rcd 9952 (1997) and *KBL Cable Systems of the Southwest, Inc. d/b/a Paragon Cable*, 12 FCC Rcd 21923 (1997).

³⁷DA 01-339 (released February 9, 2001).

³⁸Reply at 5.

³⁹TCI states that KRPV simply indicates that the signers "live on or near the Navajo Indian Reservation in the Four Corners area (Arizona, Utah, Colorado & New Mexico)." See Opposition at Exhibit A.

⁴⁰Reply at 6. See also Opposition at Exhibit A.

⁴¹See *MediaOne of Los Angeles, Inc. v. Costa de Oro Television, Inc.*, 15 FCC Rcd 19386, 19398 (2000).

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

19. **Historic Carriage.** KRPV began operation in September 1986. Despite being on-the-air for 14 years, the station has no history of carriage on TCI's cable systems. 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. Thus, with respect to the question of historical carriage patterns, attention must be paid to the circumstances from which such patterns developed. 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 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.⁴² In this instance, we note that, along with KRPV, no other station licensed to Roswell has ever been carried on TCI's cable systems, nor, apparently, on any other nearby cable systems. TCI's failure to carry other similarly-situated stations indicates a lack of nexus between KRPV and the subject cable communities.

20. **Grade B Coverage/Local Service.** A station's local service to cable communities is one of the relevant factors 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.⁴³ 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.⁴⁴ In the instant proceeding, KRPV does not satisfy any of the local coverage elements we find important in a market modification analysis. In this case, KRPV cites no examples of any programming specifically directed to the subject communities, but instead contends that its 24-hour Spanish-language religious format provides valuable programming services to the Hispanic residents in the subject communities. We are not convinced that such programming, while of potential general interest, 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. It should be noted that the must carry rules, as written, are content neutral.⁴⁵ Because the rules are explicitly content neutral, carriage cannot be either granted or denied based solely on factors related to the type of programming that a particular station carries. Likewise, we do not find KRPV's submission of a 722-signature petition sufficient to overcome its

⁴²See *Home Link Communications of Princeton, L.P. and ComVideo Systems, Inc.*, 13 FCC Rcd 1578, 1591 (1997).

⁴³See *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818 (1999).

⁴⁴As 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*, Report and Order, 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.").

⁴⁵As the Supreme Court stated in *Turner Broadcasting v. FCC*, "... the must-carry rules, on their face, impose burdens and confer benefits without reference to the content of the speech." 512 U.S. 622, 644 (1994).

lack of any other specific programming information due to the unreliability of the information contained therein.⁴⁶ Further, the cable communities in question lie outside of KRPV's predicted Grade B contour and are, on average, approximately 300 miles from KRPV's city of license. While KRPV has argued that its ability to deliver a good quality signal via satellite should countermand its lack of Grade B coverage, we do not believe that satellite delivery of a station necessarily establishes a nexus between that station and the communities at issue.

21. Moreover, despite KRPV's assertions, the SHVIA did not alter the definition of what constitutes a local station under the cable must carry requirements. Any such alteration would require a rulemaking specifically amending the existing must carry regulations. While the *Satellite Must Carry Report and Order* discussed certain aspects of must carry, the issues addressed in that proceeding were focussed on matters specifically dealing with satellite delivery of local network stations and did not impact the cable television must carry regulations. Likewise, we find KRPV's reliance on the *Broadcasting Report and Order* to be misplaced. That document involved a revision of the local television ownership rules and did nothing to change the "local" concept as set forth in the market modification concept. The reliance on Grade B coverage as an indicator of local service in market modifications cases therefore remains a valid criterion. In this instance, KRPV's ability to deliver its signal via satellite is no different from another station's transmission of its signal via microwave or translator, types of transmission which also do not bestow local status on a station. Stations are entitled to employ alternative forms of signal delivery, other than over-the-air, particularly when they wish to ensure the receipt of a good quality signal, but such methods are not considered to be indicators of local service.⁴⁷

22. **Carriage of Other Stations.** We also believe that TCI'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 other Albuquerque market stations carried by TCI have a closer nexus to the cable systems herein than does KRPV. These market facts, coupled with the distance between the cable system and KRPV, support TCI's modification request under the third factor.

23. **Viewership.** Nielsen's *2000 County/Coverage Study* fails to indicate any viewership for KRPV in the counties in which the subject cable communities are located. This dearth of viewership is of evidentiary significance when tied with the lack of historical carriage and Grade B coverage.

24. After carefully considering each statutory factor in the context of the circumstances presented here, as well as other relevant information, we grant TCI's modification request. Based on geography, we believe that the cable communities herein are sufficiently removed from KRPV that they ought not be deemed part of KRPV's market for mandatory carriage purposes.⁴⁸ 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 serve and which form their economic market."⁴⁹ Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements."⁵⁰ Moreover, given the evidence as to the lack of Grade B coverage, the

⁴⁶See para. 16 above.

⁴⁷See *Dynamic Cablevision of Florida, Ltd., et al.*, 12 FCC Rcd 9952 (1997).

⁴⁸H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁴⁹*Id.* at 97.

⁵⁰47 U.S.C. §534(h).

lack of viewership in the cable communities at issue, the lack of historic carriage, and the absence of evidence indicating that KRPV provides local programming, we conclude that deletion of TCI's cable communities from KRPV's market for mandatory carriage purposes effectuates the purposes of Section 614 of the Communications Act.

IV. ORDERING CLAUSES

25. 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-5654-A), filed by TCI Cablevision of New Mexico, Inc. **IS GRANTED**.

26. **IT IS FURTHER ORDERED**, in view of our action herein, that the Cable Services Bureau's April 9, 2001 grant of KRPV's must carry complaint against TCI (CSR-5636-M) **IS RESCINDED**.

27. These actions are taken pursuant to authority delegated by Section 0.321 of the Commission's rules.⁵¹

FEDERAL COMMUNICATIONS COMMISSION

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

⁵¹47 C.F.R. §0.321.