

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

In the Matter of:)	
)	
Avenue TV Cable Service, Inc.)	
)	CSR-5697-A
For Modification of the Los Angeles, California DMA)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	CSR-5713-M
v.)	
Avenue TV Cable Service, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 2001

Released: September 14, 2001

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

I. INTRODUCTION

1. Avenue TV Cable Service, Inc. (“Avenue Cable”), filed the above-captioned petition for special relief seeking to modify the Los Angeles, California DMA relative to television broadcast station KRPA (Ch. 44), Rancho Palos Verdes, California (“KRPA”). Specifically, Avenue Cable requests that KRPA be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable system serving Ventura, California, and the unincorporated portions of the western half of Ventura County, California. An opposition to this petition was filed on behalf of Rancho Palos Verdes Broadcasters, Inc., licensee of KRPA to which Avenue Cable replied. In addition, KRPA filed a must carry complaint against Avenue Cable for its failure to carry KRPA on its Ventura, California cable system. Avenue Cable filed an opposition to this complaint and KRPA replied. We are consolidating these cases in order to determine the signal carriage rights of KRPA on the system in question.

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.¹ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media

¹8 FCC Rcd 2965, 2976-1977 (1993).

Research.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.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

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.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

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

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*Id.*

[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.

* * * *

[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

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.⁷

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.⁸

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.

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

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

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

(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.⁹

(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.¹⁰

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

A. Market Modification

5. The issue before us is Avenue Cable's request to exclude television station KRPA from mandatory carriage on the Ventura cable system. Avenue Cable's system is located in Ventura County, California, which is deemed to be part of the Los Angeles DMA. KRPA is licensed to Rancho Palos Verdes, California, which is also considered to be part of the Los Angeles 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 Avenue Cable's deletion petition appears to be a legitimate request to redraw DMA boundaries to make them congruous with market realities.

⁹The 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.

¹⁰47 C.F.R. §76.59(b).

6. In support of its request, Avenue Cable states that in prior decisions the Commission has determined that, for must carry purposes, western Ventura County communities should be treated as belonging to the Santa Barbara-Santa Maria-San Luis-Obispo DMA instead of the Los Angeles DMA.¹¹ In view of the distant relationship between the areas which are the subject of this petition and KRPA, Avenue Cable requests that, consistent with these prior decisions, the Commission determine that the Ventura cable system does not belong in the DMA of KRPA for must carry purposes.

7. With regard to the four statutory factors, Avenue Cable argues that KRPA has no history of carriage on its system.¹² In addition, Avenue Cable states that, as evidenced from the TV section of the *Ventura County Star*, no other listed cable system serving Ventura County currently carries KRPA.¹³ Although Avenue Cable concedes that KRPA is a relatively new station, having begun operations on December 20, 2000, it maintains that the Commission has found that the fact that a station is new does not mean that its market area is without limits or that it should be exempt from the market modification process.¹⁴ Moreover, Avenue Cable states that, in instances where a station is new, the Commission has found that historical carriage is not by itself controlling in determining the scope of the station's market.¹⁵ Avenue Cable contends that because KRPA has never been carried, removing the station from carriage on its system would cause no disruption to established viewing patterns and would not deprive KRPA of any existing audience.

8. Avenue Cable points out that the Commission has stated that local coverage of a station for market modification purposes may be measured by examining the distance between the station and the cable subject cable communities, the station's broadcast of local programming and the station's Grade A or Grade B contour coverage.¹⁶ Avenue Cable states that its headend in Ventura is located 64 miles from KRPA's city of license and approximately 85 miles from KRPA's current transmitter site.¹⁷ Avenue Cable notes that the Bureau has regularly found that distances of 40-55 miles weaken the ties between cable communities and broadcast stations.¹⁸ Avenue Cable states that KRPA exceeds these distances. Avenue Cable points out that the Commission has found that Ventura County's mountainous terrain divides the area in such a way that portions of the county are far closer to the Santa Barbara market than to the Los Angeles market to which it is assigned.¹⁹ In addition, in *Smith Broadcasters of Santa Barbara Limited*

¹¹See e.g., *Avenue TV Cable Service, Inc.*, 15 FCC Rcd 17274 (2000); *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803 (1995); *Chronicle Publishing Co., d/b/a Ventura County Cablevision*, 10 FCC Rcd 9447 (1995) (“*Chronicle Publishing*”); and *Golden Orange Broadcasting Co.*, 10 FCC Rcd 10619 (1995).

¹²Petition at Exhibits A & B.

¹³*Id.* at Exhibit C.

¹⁴See e.g., *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298 (1998); and *Gulf & Pacific Communications, L.P.*, 12 FCC Rcd 21986 (1997).

¹⁵See *Horizon Broadcasting Corporation*, 12 FCC Rcd 11634 (1997).

¹⁶See *Media General Cable of Fairfax County, Inc.*, 15 FCC Rcd 149 (2000).

¹⁷Petition at 7. Avenue Cable states that its headend is also 85 miles from KRPA's proposed transmitter site of Mt. Wilson, California. It states that KRPA filed a request with the Commission to relocate its transmission facilities and that this request is still pending.

¹⁸See e.g., *Time Warner Cable*, 11 FCC Rcd 13149 (1996)(45 miles); *Cablevision of Ohio*, 11 FCC Rcd 18034 (1996)(41 miles); and *Continental Cablevision of Western New England*, 11 FCC Rcd 6488 (1996)(43-54 miles).

¹⁹See e.g., *Chronicle Publishing*, 10 FCC Rcd at 9474; and *Avenue Cable TV*, 11 FCC Rcd at 4811.

Partnership, Avenue Cable states that the Cable Services Bureau noted that there is a difference in viewing patterns between Ventura County East and Ventura County West with the western portion of the county, where Avenue Cable's system is located, more linked with the Santa Barbara market than the Los Angeles market.²⁰

9. Avenue Cable argues that KRPA does not provide any programming with a nexus to Ventura. Indeed, Avenue Cable states that KRPA appears to be broadcasting only 2-5 hours per day.²¹ Although KRPA has indicated that it plans to increase its broadcasting schedule, Avenue Cable asserts that no programming it currently provides, or may provide, will likely have any nexus to Ventura. Avenue Cable states that KRPA's lack of nexus is supported by the fact that the station's programming is not listed in either the county's local paper or the local edition of *TV Guide*. Avenue Cable argues further that KRPA's predicted Grade B contour fails to cover Ventura.²² Avenue Cable states the Grade B contour map of KRPA is predicated upon the station's transmission at full power and, at the present time, KRPA is operating below an 80 percent power threshold.²³ As a result, Avenue Cable maintains that it would be impossible for KRPA to provide a sufficient enough signal for carriage in Ventura, particularly as the Santa Monica Mountains create a significant natural barrier between KRPA and Ventura.²⁴

10. Avenue Cable states that it currently carries 11 local broadcast stations, all of which provide a full array of local programming to its subscribers.²⁵ Finally, Avenue Cable states that, due to KRPA's recent start of operations and the fact that it is providing limited programming, KRPA is unable to present any evidence of a measurable audience in the community at issue. Avenue Cable argues that given the evidence, it is highly unlikely that KRPA has any viewership in Ventura County.

11. In opposition, KRPA states that it is an authorized full-power UHF television station which began broadcasting under Program Test Authority on December 19, 2000 from a transmitter site on Santa Catalina Island.²⁶ KRPA states that, on January 31, 2001, it filed an application for modification of its construction permit with the Commission in order to relocate the antenna at Mt. Wilson, California, an area used by nearly all Los Angeles area broadcasters.²⁷ At the same time, pursuant to a request from the Commission's Enforcement Bureau, KRPA states that it voluntarily agreed to reduce its power from its current transmission site to 50 percent of its authorized level.²⁸ KRPA argues that the proposed relocation to Mt. Wilson will result in a 68 percent increase in the population it serves; an increase which will include

²⁰10 FCC Rcd 9447 (1995).

²¹Petition at Exhibit E.

²²*Id.* at Exhibit F. Avenue Cable states that this would be true even if KRPA were transmitting from Mt. Wilson.

²³*Id.* at Exhibit E. Avenue Cable states that on February 26, 2001, KRPA filed a notice with the Commission that it reduced the station's transmitter power below the required 80 percent level. KRPA notified Avenue Cable that it planned to continue operating at this level. *Id.*

²⁴*Id.* at Exhibit D.

²⁵*Id.* at 11.

²⁶Opposition at 2, n.1. KRPA states that it was required to locate its transmitter site here in order to comply with the Commission's rules governing interference between television stations. *Id.*

²⁷See *Public Notice*, Report No. 24923 (released February 15, 2001).

²⁸Opposition at Exhibit A.

the community of Ventura.²⁹

12. KRPA states that although it has sought carriage from the cable operators who specifically serve communities in Ventura County, none have agreed to carry its signal.³⁰ With respect to Avenue Cable, KRPA indicates that the parties entered into a “tolling” agreement; a letter co-signed by both parties to delay KRPA’s enforcement of its must carry rights and to encourage on-going carriage negotiations with Avenue Cable.³¹ KRPA states that while it was not required under the Commission’s must carry rules to provide the information requested in these discussions, it did so in order to facilitate negotiations. However, KRPA points out, upon entering into the tolling agreement, all communication from Avenue Cable ceased until the filing of the instant petition. KRPA submits that Avenue Cable is intending to use the market modification process as a shield from its mandatory signal carriage obligations.

13. In any event, KRPA argues that Avenue Cable fails to satisfy the market modification requirements and its petition should be denied. KRPA states that it is a new station, which has been operating for less than 6 months. Due to the fact that it has not yet been carried by any cable system serving Ventura, KRPA argues that it has not had the opportunity to build a record of historical carriage in the community.³² Moreover, KRPA points out that the Commission has repeatedly held with respect to new stations that lack of historical carriage is of little or no relevance in modification cases because, otherwise, such stations would be prevented from ever gaining carriage.³³ Finally, KRPA concedes its lack of viewership, but notes that it requires more than six months of operation for a television station to establish an audience.³⁴ KRPA states that although it submits its listings to both *TV Guide* and the *LA Times*, it is not guaranteed space in those publications without substantial investment, which as a new station it cannot presently afford.³⁵ KRPA argues, therefore, that its low viewership levels should be accorded no weight in this proceeding.

²⁹*Id.* at Exhibit B.

³⁰KRPA states that it has also requested carriage from systems served by AT&T Broadband and enforced its must carry rights against that system by filing a must carry complaint (CSR-5690-M). *See Public Notice*, Report No. 1306 (released May 4, 2001)..

³¹Opposition at Exhibit C. *See also* Petition at Exhibit E.

³²*See Comcast Cablevision of the South d/b/a Comcast of Oak Ridge*, 15 FCC Rcd 15105, 15113 (2000).

³³*See e.g., Time Warner Entertainment Co., L.P.*, 12 FCC Rcd 22069, 22077 (1997); *Horizon Broadcasting Corporation*, 12 FCC Rcd 11634, 11638 (1997); and *Time Warner Cable*, 11 FCC Rcd 8047, 8053-54 (1996).

³⁴*See DeSoto Broadcasting, Inc.*, 10 FCC Rcd 4491, 4494 (1995).

³⁵Opposition at 7.

14. KRPA notes that of the 13 local broadcast stations Avenue Cable lists as currently carried, at least 10 transmit from Mt. Wilson.³⁶ KRPA argues that, apparently, the geographic barriers referenced by Avenue Cable do not seem to hamper the system's carriage of these other stations. KRPA asserts that the cases cited by Avenue Cable, while indeed speaking of the geographical barriers between Los Angeles and the western communities of Ventura County, are distinguishable from the situation herein because KRPA is prepared to offer unique local service to Ventura.³⁷ Despite Avenue Cable's assertions, KRPA maintains that, based upon the pending relocation to Mt. Wilson and its operation at full power, KRPA's predicted Grade B contour will encompass Ventura.³⁸ KRPA notes that the Bureau recently denied a request for exclusion for communities located on the "fringe" of a station's Grade B contour, stating that while "as a general matter Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market, it is not an exclusive test."³⁹

15. More important, states KRPA, is the locally-focused programming it currently provides and which it intends to expand in the future.⁴⁰ In September 2001, KRPA indicates that it is contemplating switching primarily to programming focused on Asian, Pacific Islander and other minority/foreign language audiences in the Los Angeles region which will be broadcast daily between the hours of 4-12 p.m.⁴¹ KRPA states that this programming will include news, dramas, soap operas and movies.⁴² KRPA asserts that no other station currently carried by Avenue Cable offers this type of programming, a fact which is particularly important because, according to the 2000 Census, the Asian community now accounts for 5.3 percent of the population in Ventura County.⁴³

16. In reply, Avenue Cable agrees with KRPA that, as a new station, its lack of historical carriage and viewership should have little weight herein. However, Avenue Cable argues that the factors involving coverage by KRPA and provision of local issues should still be of import. Avenue Cable states that KRPA has not disputed the fact that its Grade B contour, as measured from its current transmitter site, does not reach Ventura. Instead, Avenue Cable points out, KRPA bases its assertion that it does provide coverage on a pending application to move its transmitter; an application which there is no certainty will be granted. Avenue Cable maintains that the mere application to move a transmitter site by a station cannot be used as a basis to deny a market modification request. Avenue Cable notes that in *Marcus Cable Associates, LLC*, the Bureau held that a station could not rely upon a future grant of a pending application to increase power and expand the Grade B contour in opposing a market modification request.⁴⁴

17. Further, Avenue Cable argues that, despite its assertions, the programming currently provided by KRPA is not "locally-focused" to Ventura. Avenue Cable states that KRPA cannot rely on

³⁶*Id.* at 5, n.4.

³⁷See footnote 11 above.

³⁸Opposition at Exhibit B.

³⁹See *Suburban Cable TV Co., Inc.*, DA 01-1226 (released May 18, 2001), citing *Must Carry Order*, 8 FCC Rcd 2965, 2977 (1993).

⁴⁰Opposition at Exhibits D, E, F and G.

⁴¹*Id.* at 6.

⁴²*Id.* KRPA states that it is also negotiating with a Japanese entity to obtain live news from Tokyo.

⁴³*Id.* at Exhibit G.

⁴⁴14 FCC Rcd 1 (1998).

speculative or future programming plans as a basis for showing that it is a local station. While the two programs carried by KRPA may be of general interest to the Los Angeles market as a whole, Avenue Cable contends that KRPA has not provided any evidence that its programming is specific to the community at issue.⁴⁵ KRPA states that, aside from these two programs, KRPA only carries infomercials and/or paid programming and the Commission has held that home shopping and other “paid programming” is not local to the majority of cable communities.⁴⁶ In addition, Avenue Cable indicates that it already carries a substantial amount of children’s programming and therefore its subscribers’ needs for this and other local programming are being fully met by the stations it currently carries.⁴⁷

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

19. **Historic Carriage.** KRPA began operation in December 2000 and has no history of carriage on Avenue Cable’s system. Given the statutory directive, consideration must be given to this factor, bearing in mind that the objective of the Section 614(h) process is to “better effectuate the purposes” of the broadcast signal carriage scheme. 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.⁴⁸ We are aware that as a newer station, KRPA has not had the opportunity to build a record of historical carriage. As such, while the evidence relating to this statutory factor does weigh in favor of excluding Avenue Cable’s system from KRPA’s market, it is not by itself outcome determinative.

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.⁴⁹ 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.⁵⁰ In the instant proceeding, KRPA does not satisfy any of the local coverage elements we find

⁴⁵See *Comcast Cablevision of Gloucester County, Inc.*, 14 FCC Rcd 12136 (1999).

⁴⁶See *Costa de Oro Television, Inc.*, 18 FCC Rcd 4369 (1998).

⁴⁷Reply at 5. See also Petition at Exhibit G.

⁴⁸See *Home Link Communications of Princeton, L.P. and ComVideo Systems, Inc.*, 13 FCC Rcd 1578, 1591 (1997).

⁴⁹See *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818 (1999).

⁵⁰As 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

(continued...)

important in a market modification analysis. In this case, KRPA has only offered statements as to its intentions to provide locally-focused Asian-language programming to Ventura in the future. It does not provide any examples of programming it currently provides which is specifically directed to the subject community. Based on the information provided, we cannot conclude that KRPA has met this statutory factor. Further, the cable community in question not only currently lies outside of KRPA's predicted Grade B contour but is geographically separated by the Santa Monica Mountains and is, on average, approximately 85 miles from KRPA's city of license. While KRPA has argued that its proposed relocation of its transmitter site to Mt. Wilson will enable it to provide a Grade B signal to Ventura, the fact remains that KRPA's application for modification of its construction permit is still pending. We therefore cannot conclude that, at the present time, KRPA provides local service to Ventura. Should KRPA's transmission facilities be relocated in the future, however, KRPA may seek further consideration.

21. **Carriage of Other Stations.** We also believe that Avenue Cable'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 community at issue is currently served by a number of Los Angeles market stations. These market facts, coupled with the distance between the cable system and KRPA, support Avenue Cable's modification request under the third factor.

22. **Viewership.** Stations normally take up to 3 years to build viewership within their licensed areas. KRPA has only been operating for less than one year and therefore has not had the opportunity to build sufficient viewership in Ventura County, or elsewhere, to be listed in Nielsen's *2000 County/Coverage Study*. As a result, KRPA's dearth of viewership is of little evidentiary significance in this proceeding.

23. Further, we cannot find any evidence that the "tolling agreement" which KRPA states that it entered into with Avenue Cable in any way jeopardized its rights. While the information which Avenue Cable sought from KRPA was not information normally required to be provided by a station seeking must carry status from a cable system, there is no Commission regulation against the request of such information. In any event, KRPA apparently provided the information voluntarily. Moreover, we cannot find any evidence that Avenue Cable used this agreement, or the market modification process in general, in an effort to evade its must carry responsibilities. Avenue Cable was well within its rights to file a market modification request just as KRPA similarly was entitled to file its must carry complaint.

24. After carefully considering each statutory factor in the context of the circumstances presented here, as well as other relevant information, we grant Avenue Cable's modification request. Based on geography, we believe that the cable community herein is sufficiently removed from KRPA that it ought not be deemed part of KRPA's market for mandatory carriage purposes.⁵¹ 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."⁵² Changes may be sought and granted by the Commission "to better effectuate the purposes" of the

(...continued from previous page)
contours for economic support.").

⁵¹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁵²*Id.* at 97.

mandatory carriage requirements.”⁵³ Moreover, given the evidence as to the lack of Grade B coverage, and the absence of evidence indicating that KRPA provides local programming, we conclude that deletion of Avenue Cable’s system from KRPA’s market for mandatory carriage purposes effectuates the purposes of Section 614 of the Communications Act.

B. Must Carry Complaint

25. In view of our decision in the instant petition, the arguments raised by KRPA and Avenue Cable in reference to the above-described must carry complaint are now moot. As such, KRPA’s must carry complaint is dismissed.

IV. ORDERING CLAUSES

26. 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-5697-A), filed by Avenue TV Cable Service, Inc. **IS GRANTED**.

27. **IT IS FURTHER ORDERED**, in view of our action herein, that the must carry complaint (CSR-5713-M) filed by Rancho Palos Verdes Broadcasters, Inc. **IS DISMISSED**.

28. These actions are taken pursuant to authority delegated by Section 0.321 of the Commission’s rules.⁵⁴

FEDERAL COMMUNICATIONS COMMISSION

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

⁵³47 U.S.C. §534(h).

⁵⁴47 C.F.R. §0.321.