

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

In the Matter of:)	
)	
Mid-State Television, Inc.)	
)	CSR-5631-A
Modification of the Television Market)	
for Station WMFD (TV),)	
Mansfield, Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2001

Released: March 15, 2001

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

I. INTRODUCTION

1. Mid-State Television, Inc., licensee of Station WMFD (Channel 68) Mansfield, Ohio (“WMFD”), filed the above-captioned petition for special relief seeking to add the community of Mount Vernon, Ohio to its market for purposes of the cable television mandatory broadcast signal carriage rules. An opposition to the petition was filed by Time Warner Cable, the cable operator serving Mount Vernon. WMFD filed a reply to the opposition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*,¹ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market. A station’s market for this purpose is its designated market area (“DMA”), as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of

¹ 8 FCC Rcd 2965, 2976-2977 (1993).

² Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission’s rules provided that Arbitron’s “Areas of Dominant Influence,” or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. *See Definition of Markets for Purposes of the Cable Television* (continued....)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁴

4. In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides new coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

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

5. The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an

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Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

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

⁴ 47 U.S.C. §534(h)(1)(C).

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

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

6. Recently, in the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁷

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and

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

⁷ 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.⁸

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

III. DISCUSSION

8. The issue before us is whether to grant WMFD's request to include the community of Mount Vernon, Ohio within its television market. WMFD is located in Richland County, and is in the Cleveland, Ohio DMA. Mount Vernon is located in Knox County, and is in the Columbus, Ohio DMA.

9. With regard to the first statutory factor, historic carriage, WMFD submits that although it has never been carried in Mount Vernon, it has been carried in the local community of Fredericktown, Ohio since 1995.¹¹ WMFD maintains that the Commission has recognized that carriage on nearby systems could serve as evidence to define the logical scope of a station's market.¹² In opposition, Time Warner asserts that WWDP fails to meet the statutory requirement of having a record of historical carriage on its cable system.¹³

10. WMFD next argues that with regard to the second statutory factor, coverage and local service, it places a Grade B signal over Mount Vernon.¹⁴ WMFD further argues that its local news, weather and sports programming directly address the Mount Vernon community. WMFD maintains that there is a close proximity between its community of license, Mansfield, and Mount Vernon as demonstrated by the number of Mansfield businesses in the Knox County Chamber of Commerce, and the high number of Knox County residents that shop in a mall near Mansfield.¹⁵ WMFD asserts that its inclusion of Knox County in its

⁸ See *Modification Final Report and Order*, 14 FCC RCd 8366. See also C.F.R. §76.59(b).

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

¹⁰ 47 C.F.R. §76.59.

¹¹ Petition at 4.

¹² Reply at 2.

¹³ Opposition at 1. Time Warner states that the history of non-carriage extends back to May, 30, 1992, when WMFD resumed broadcast operations after three dark years.

¹⁴ Petition at 5-7.

¹⁵ *Id.* at 6.

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emergency alert system demonstrates that there is a connection between it and Knox County. In opposition, Time Warner asserts that WMFD is required to establish the extent of its coverage using the Longley-Rice prediction methodology.¹⁶ Time Warner further argues that newspaper circulation figures show the absence of meaningful ties between Mount Vernon and Mansfield.¹⁷ In reply, WMFD disputes that a service coverage prediction map using Longley-Rice methodology is required, but nonetheless submits a technical map which it claims demonstrates that its Grade B coverage includes Mount Vernon.¹⁸

11. With regard to the third statutory factor, local programming by other television stations, WFMD-TV asserts that there are no stations licensed to Mount Vernon.¹⁹ It states that in Mount Vernon, Time Warner carries two Cleveland stations, but that these stations are eighty miles away and do not deliver programming which addresses local issues of interest to Mount Vernon residents such as news, weather and sports. WMFD asserts that Time Warner's cable system carries the signals of five stations from Columbus, Ohio, but that these stations do not serve the Mount Vernon community with the same level of local programming that it does.²⁰ Time Warner does not dispute petitioner's assertions regarding its carriage of stations from Columbus, but submits it no longer carries the Cleveland stations.²¹

12. With regard to the fourth statutory factor, viewership in cable and noncable households, WMFD submits that it is a UHF station with a relatively small audience, and consequently, does not have a measurable audience in Knox County Nielson ratings surveys. Nonetheless, WWDP-TV asserts that the Commission has recognized that specialty stations typically attract limited audiences, so that viewership levels are of little probative value in cases where independent stations seek to add communities to their markets.²² In opposition, Time Warner contends that petitioner's concession that it has no audience in Knox County should not be easily dismissed because the station has been on the air for eight and a half years, which is a sufficient period of time in which to generate an audience.²³ In reply, WMFD states that in evaluating viewership, the Commission has recognized that although UHF stations typically attract a limited audience share, such stations do serve the public interest.²⁴

13. As an initial matter, we note that according to the legislative history of the 1992 Cable Act, the

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¹⁶ Opposition at 3.

¹⁷ *Id.* at 3.

¹⁸ Reply at 4 and Exhibit A.

¹⁹ Petition at 7.

²⁰ *Id.* at 7.

²¹ Opposition at 4.

²² Petition at 8, *citing Paxon Communications*, Memorandum Opinion and Order, 14 FCC Rcd 17700, 17703 (CSB 1999).

²³ Opposition at 4.

²⁴ Reply at 7, *citing Home Shopping Stations*, Memorandum Opinion and Order, 8 FCC Rcd 5321, 5327 (1993).

use of [DMA] market areas is intended “to ensure that television stations [are] carried in the areas which they service and which form their economic market.”²⁵ The DMA market change process incorporated into the Communications Act, however, is neither 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, nor is it a vehicle for broadcast stations to reach service areas that they otherwise could not serve. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that WMFD’s petition appears to be a legitimate request to redraw DMA boundaries to make them more harmonious with market realities.

14. Historic Carriage. As stated, WMFD resumed operations in 1992 after three dark years. Despite operating for eight and a half years, the Station has no history of carriage on Time Warner’s cable systems. Historical carriage is a factor that the enabling statute requires the Commission to consider when giving value to localism.²⁶ Evaluation of this factor, however, must be done bearing in mind that the objective of the Section 614(h) process is to better effectuate the purposes of the broadcast signal carriage scheme.²⁷ Thus, historical carriage is not by itself controlling because such an interpretation of the 1992 Cable Act would, in effect, prevent weaker stations that cable systems had previously declined to carry, from ever obtaining carriage rights.²⁸ As such, evidence relating to this statutory factor weighs in favor of excluding Mount Vernon from WMFD’s market, but is not outcome determinative by itself.

15. Grade B Coverage/Local Service. A station’s local service to cable communities is one of the relevant factors to consider. The type or age of the station involved or historical carriage does not influence consideration of this factor. 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 evidence of local service. Also, 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.²⁹ In the instant case, WMFD satisfies the local coverage elements we find important in the market modification analysis. WMFD demonstrates that its programming includes specific ties to the community in question. The record includes stories related to the Mount Vernon community presented during WMFD’s local newscasts, and sports highlights from Mount Vernon schools shown in a weekly program about local school athletics. The record also includes evidence of shopping patterns which indicate an economic connection between Mount Vernon and Mansfield, the city in which WMFD is licensed. Thus we find that WMFD’s programming serves Mount Vernon in a manner that establishes a specific market connection.

²⁵ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

²⁶ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

²⁷ *Gulf & Pacific Communications, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 21986 (1997).

²⁸ *Market Modifications and the New York ADI*, Memorandum Opinion and Order, 12 FCC Rcd 12,262 (1997).

²⁹ As a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station’s natural economic market. See *Must Carry Order*, 8 FCC Rcd at 2977. See also *Amendment of Section 76.51 (Orlando-Daytona Beach-Melbourne, and Cocoa, Florida)*, 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.”).

We note that Mount Vernon is within WMFD's Grade B contour.³⁰ Further the WMFD's city of license is twenty-eight miles from Mount Vernon, but there are no intervening geographical barriers between the two communities, indicating a close geographical proximity. Therefore, Factor II favors WMFD's request to add Mount Vernon to its market.

16. **Carriage of Other Stations.** The third factor concerns the availability of programming of interest to the community in questions by other stations television stations carried by the cable system. In this regard, Time Warner does not dispute WMFD's contention that it provides more community specific programming to Mount Vernon than do the Columbus stations carried on the cable system, nor does Time Warner provide any specific information regarding programming that the Columbus stations provide regarding issues of interest to Mount Vernon residents. In terms of geography, WMFD is also closer to Mount Vernon than Columbus. These facts support WMFD's modification request under the third factor.

17. **Viewership.** WMFD has no significant viewership in Mount Vernon as confirmed by Nielson's 2000 County/Coverage Study of Knox County. A lack of an over-the-air audience in the cable communities at issue, however, is not a controlling factor.³¹ We recognize that a lack of cable carriage is a contributing factor to a station's low viewership.

18. Evaluating the evidence presented in this case, we find that WMFD has sufficiently justified its request to add the community of Mount Vernon to its market. As indicated above, two of the statutory factors (factors II and III) provide WMFD support for its request. As noted above, however, the Commission has recognized the difficulty of applying the statutory factors to stations attracting a small audience share such as WMFD.³² In such situations, the Commission has focused more heavily on basic geography and technical features, mileage and Grade B contour to provide a clearer picture and the best available alternative evidence of the market boundaries of the station.³³ In the present situation, WMFD's transmitter is relatively close to Mount Vernon (28 miles), and it provides a Grade B signal to the community. There is no terrain obstacle presenting a market barrier. In view of the foregoing, based on geography and other information indicating a nexus between the community and the station, we conclude that the addition of Mount Vernon to WMFD's television market is consistent with the objectives of Section 614 of the Communications Act.³⁴

³⁰ Most of Mount Vernon also appears to be within WMFD's Grade B contour based on the Longley-Rice propagation model.

³¹ *Market Modifications and the New York Area of Dominant Influence*, Memorandum Opinion and Order, 12 FCC Rcd 12262, 12268 (1997).

³² The statute's legislative history indicates that the four enumerated factors are not intended to be exclusive in determining a particular station's television market, and other factors can also be considered in the analysis. *Id.*

³³ See e.g., *Gulf & Pacific Communications, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 21986 (1997).

³⁴ We note that on a prior occasion, WMFD's request to add Mount Vernon to its market was denied. *Mid-State Television, Inc.*, Memorandum Opinion and Order, 10 FCC RCd 7109 (1995). That case is distinguishable from the present finding. That opinion noted that the record lacked evidence to make a determination whether Mount Vernon was in WMFD's Grade B contour.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534(h) and §76.59), that the petition for special relief filed on behalf of Mid-State Television, Inc. **IS GRANTED**.

20. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.³⁵

FEDERAL COMMUNICATIONS COMMISSION

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

³⁵ 47 C.F.R. §0.321.