

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

In the Matter of:)	
)	
KNTV License, Inc.)	
)	CSR-5624-A
Modification of the Monterey-Salinas, California DMA)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2001

Released: March 19, 2001

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

I. INTRODUCTION

1. KNTV License, Inc., licensee of television broadcast station KNTV (Ind., Ch. 11), San Jose, California (“KNTV”), filed the above-captioned petition for special relief seeking to modify the Monterey-Salinas, California designated market area (“DMA”) to include 229 communities and unincorporated areas located in Alameda, San Francisco, San Mateo, Contra Costa, Napa, Marin, Solano and Sonoma Counties, California.¹ Oppositions to this petition were filed on behalf of Young Broadcasting of San Francisco, Inc., licensee of station KRON-TV (NBC, Ch. 4), San Francisco, California (“KRON-TV”), Hearst-Argyle Stations, Inc., licensee of television broadcast station KSBW (NBC, Ch. 8), Salinas, California (“KSBW”), and KCRA Hearst-Argyle Television, Inc., licensee of stations KCRA-TV (NBC, Ch. 3), Sacramento, California and KQCA-TV (Ch. 58), Stockton, California (“KCRA”). KNTV filed a consolidated reply to these oppositions. Subsequently, KCRA and KSBW filed responses to KNTV’s reply.

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”)*,² commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market. A

¹See Appendix I. KNTV originally requested the addition of 238 communities, but voluntarily withdrew its request for 9 communities. See Consolidated Reply.

²8 FCC Rcd 2965, 2976-2977 (1993).

station's market for this purpose is its DMA, as defined by Nielsen Media Research.³ 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.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

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

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). 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 most 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").

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).

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

5. The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that 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.⁷

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.⁸

⁶*Must Carry Order*, 8 FCC Rcd 2965, 2976 (1993).

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

⁸The 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.

- (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.⁹

7. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

8. With respect to deletions of communities from a station's market, the legislative history of this provision states that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's [DMA] may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.¹⁰

9. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.¹¹ 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.¹²

⁹47 C.F.R. §76.59(b).

¹⁰H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

¹¹8 FCC Rcd 15 2977 n. 139.

¹²47 C.F.R. §76.59.

(continued....)

III. DISCUSSION

10. The issue before us is whether to grant KNTV's request to include the subject communities within its television market. KNTV is considered to be within the Monterey-Salinas DMA, while Alameda, San Francisco, San Mateo, Contra Costa, Napa, Marin, Solano-East and Sonoma Counties, in which all of the subject communities are located, are part of the San Francisco-Oakland-San Jose, California DMA.

11. In support of its petition, KNTV states that although it is licensed to the community of San Jose, California, which is physically located within the San Francisco DMA, it has historically been assigned by commercial ratings services such as Arbitron and Nielsen to the Monterey market. KNTV states that Nielsen recently determined that, as of September 1, 2000, KNTV would be assigned to the San Francisco DMA.¹³ However, KNTV points out that the Commission's current must carry regulations will not allow KNTV to assert must carry rights in the San Francisco market until the next must carry election period which will not occur until January 1, 2003.¹⁴ KNTV argues that it should be allowed to add the requested communities, not only because of its re-assignment, but because the requested waiver meets all of the modification criteria.

12. KNTV states that the Commission has repeatedly held that as an objective measure, a station's predicted Grade B contour is an "efficient tool" for adjusting market boundaries.¹⁵ KNTV states that it recently obtained Commission authorization to improve its transmitting facilities by increasing its tower height and more than doubling its effective radiated power.¹⁶ Since it began operating with its new facilities, KNTV states that its Grade B contour now encompasses all of the communities in Alameda, Contra Costa, San Francisco and San Mateo counties, and the majority of communities in Marin, Solano and Napa counties.¹⁷ In addition, KNTV points out that it places a City Grade contour over a majority of the communities in Alameda and San Mateo counties and many other communities in the San Francisco DMA are within its Grade A contour.¹⁸ KNTV argues that while its petition satisfies the other market modification factors, its physical coverage of the communities alone should mandate grant of its request, particularly as a station's ability to meet the statutory coverage/local service factor through Grade B coverage is often the primary basis for the Commission's grant of a modification petition.¹⁹

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¹³Petition at Exhibit G.

¹⁴47 C.F.R. §76.55(e)(3).

¹⁵See e.g., *Channel 39, Inc.*, 13 FCC Rcd 3108, 3115 (1998); *Charter Communications*, 12 FCC Rcd 12173, 12184 (1997); *Costa de Oro Television, Inc.*, 13 FCC Rcd 4360, 4374 (1998); and *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262 (1997) ("New York ADI Order").

¹⁶FCC File No. BPCT-19990923AAY, granted December 9, 1999. See Broadcast Actions Report No. 44631 (released 12/14/99).

¹⁷Petition at Exhibit B, Figures 2A-2D.

¹⁸*Id.*

¹⁹See e.g., *DP Media License of Battle Creek, Inc.*, 13 FCC Rcd 7122 (1998)(petition added 103 cable communities to a station's market based on evidence that its Grade B contour encompassed 93 of the communities (continued...))

13. KNTV states that a station's geographic proximity is also another factor which the Commission takes into consideration in market modification cases.²⁰ KNTV argues that its geographic proximity to the communities clearly demonstrates that it provides local service and that the communities' inclusion will better effectuate the purposes of the mandatory carriage provisions of the Act.²¹ For instance, KNTV indicates that the cities of San Francisco and Oakland are only 42 and 37 miles, respectively, from San Jose, KNTV's city of license.²² KNTV states that a total of 155 of the subject communities are within 55 miles of San Jose and 58 of those within just 35 miles distant.²³ KNTV maintains that these distances are well within the distances considered acceptable in prior Commission decisions granting the inclusion of communities.²⁴

14. KNTV argues that prior to the end of its affiliation agreement with ABC in July 2000, it had a significant focus on the subject communities with regard to programming. Since it became an independent station, KNTV states that it has redoubled its efforts and resources to serve the Bay Area. KNTV indicates that it has invested several million dollars in equipment, technology, and staff in order to expand its news coverage of the entire Bay Area.²⁵ KNTV states that, as part of the same burgeoning science and technology corridor, San Jose and the subject communities have increasingly similar needs and interests. KNTV states that it has addressed this development by providing original programming focused on technology and the technology industry.²⁶ KNTV asserts that with seven news personnel dedicated to technology coverage, it not only has the largest technology news team of all the television stations in the Bay Area, but it is the only station serving the communities which airs a daily technology-focused program.²⁷ KNTV states that it also provides award-winning news, sports, weather, and public affairs programming which is focused on the communities at issue.²⁸ KNTV states that its news staff has increased from 70 to 115 reporters, editors, producers and photographers and it has nearly doubled the

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requested, even though the station had no history of carriage or viewership); and *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997)(granted request to add communities to a station's market based on Grade A and B coverage although the station could not demonstrate historic carriage, viewership or programming).

²⁰See e.g., *Must Carry Order*, 8 FCC Rcd at 2977 (noting that a station can demonstrate that it provides coverage or local service to a community by showing that it is close to the community in terms of mileage); and *New York ADI Order*, 12 FCC Rcd at 12268 (upholding Bureau's consideration of the distance between stations and communities in determining coverage).

²¹Petition at Exhibit B, Figures 3A-3G.

²²*Id.*

²³*Id.*

²⁴See e.g., *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087 (1998)(50 miles); *Burnham Broadcasting, Inc.*, 10 FCC Rcd 7117 (1995)(48 miles); *Jasas Corporation*, 14 FCC Rcd 6968 (1999)(74 miles); *Time Warner Cable*, 11 FCC Rcd 8047 (1996)(60 miles); *Cablevision Systems Corporation*, 11 FCC Rcd 6453 (1996)(48-55 miles); and *Time Warner Cable*, 11 FCC Rcd 3510 (1996)(45 miles).

²⁵Petition at 8.

²⁶*Id.*

²⁷*Id.* at Exhibit J.

²⁸*Id.* at 9, n. 30.

amount of its local news programming.²⁹ In addition, KNTV states that it has established news bureaus in Oakland, Palo Alto, and San Francisco in order to broaden the reach of its news coverage.³⁰ KNTV states that it also regularly broadcasts both college and professional sporting events taking place in the communities and it has expanded its sports department to 6, the largest of any station in the San Francisco DMA.³¹

15. KNTV maintains that due to its recent power increase, its new status as an independent station and its re-assignment to the San Francisco DMA, it is effectively a new station for purposes of market modification analysis. As a result, KNTV argues that viewership and historic carriage should be accorded less weight in this instance and greater emphasis should be placed on other factors in the Bureau's analysis. KNTV states that, prior to its power increase, it operated well below the maximum power levels and its Grade B contour encompassed far fewer of the subject communities than it does today. KNTV states that its operation at such a low level was due to the terms of its affiliation agreement with the ABC network, which would not permit KNTV to increase its operating power or seek voluntary cable carriage within the San Francisco market outside of its county of license.³² KNTV states that this agreement was designed to protect the viewership of the San Francisco ABC station, KGO-TV. Like new or specialty stations, KNTV argues that its viewership levels and history of carriage in the subject communities are entirely unrelated to whether those communities are properly within its current economic market and service area. KNTV states that its lack of viewership and historic carriage are directly attributable to its previous operating power and its ABC affiliation agreement. Moreover, KNTV states that it only recently became available over-the-air to many of the communities when it completed its power upgrade. In any case, given the high cable penetration in the area, KNTV maintains that it would be extremely difficult for it to attain a significant level of viewership in the subject communities without cable carriage.

16. KNTV points out that because of its increasing presence in and focus on the subject communities, it has recently negotiated a retransmission consent agreement with AT&T Broadband and Internet Services for carriage on all of its cable systems in the San Francisco DMA.³³ KNTV argues that this agreement demonstrates that there is significant interest in its programming in many of the communities and weighs heavily in favor of a grant of its request. KNTV states that grant of its request will not upset any network-affiliate relationships or present viewers with duplicative programming.

17. KNTV states that San Jose and the subject communities are identified as a single region for numerous political and socio-economic purposes. KNTV indicates that there is extensive commuting between the North Bay and Silicon Valley and KNTV's programming is listed in several publications serving the communities.³⁴ KNTV states that San Jose and the communities are considered to be within the same Basic Trading Area, a commercial designation based on such factors as physiography, population

²⁹*Id.* at 9.

³⁰*Id.*

³¹*Id.* at 10.

³²*Id.* at 11.

³³*Id.* at 14, n. 46.

³⁴*Id.* at 15.

distribution, newspaper circulation, economic activity and transportation facilities.³⁵ KNTV states that the Office of Management and Budget ("OMB") has similarly designated San Jose and the communities to be within the same Consolidated Metropolitan Statistical Area ("CMSA") due to their economic and social integration.³⁶

18. KNTV argues that its re-assignment by Nielsen to the San Francisco DMA is the clearest indicator of its ties to the subject communities. KNTV states that where a station seeks to add communities which will be part of that station's market at the next carriage election, the Commission has generally considered this to be substantial evidence of a strong "market nexus" between the station and the subject communities.³⁷ Without expanded carriage rights in the San Francisco DMA, KNTV states that it will be at an even greater competitive disadvantage as compared to its Monterey DMA counterparts when it becomes an NBC affiliate on January 1, 2002.³⁸ KNTV states that due to the existence of another NBC affiliate in the Monterey DMA, the dual network affiliate and network nonduplication rules will prevent KNTV's voluntary or mandatory carriage in any community in the Monterey market.³⁹ Without expanded carriage rights in the San Francisco market, KNTV asserts that it will be without a must carry market for the entire year 2002. Finally, KNTV argues that grant of its petition will serve the public interest by fostering minority ownership of broadcast facilities, which increases the scope and diversity of views available over-the-air.

19. KCRA's and KRON-TV's opposition objects to KNTV's request to include the cable communities of Vacaville, Fairfield, Travis AFB, Suisun City, Dixon, and Rio Vista, all located in the eastern portion of Solano County. KCRA and KRON-TV state that KNTV incorrectly asserts that these communities are located in the San Francisco market when, in fact, they are located in the Sacramento-Stockton-Modesto, California, DMA.⁴⁰ KCRA and KRON-TV argue that KNTV neglects to mention in its petition that, in defining DMAs, Nielsen divides Solano County by zip code into "Solano-West" and "Solano-East." KCRA and KRON-TV state that "Solano-West" is located in the San Francisco market, but that "Solano-East" is located in the Sacramento DMA and all of the communities listed above have zip codes assigned to "Solano-East."⁴¹ Since KNTV has not made any showing that it is entitled to expand its market into the Sacramento market, KCRA and KRON-TV maintain that KNTV's request to add these particular communities should be denied. In addition, KCRA and KRON-TV object to KNTV's request to include three unincorporated, unnamed areas, simply referred to as "Solano."⁴² KCRA and KRON-TV state that KNTV does not identify the location of these three areas on any of the maps it provided and it is

³⁵*Id.* at 16, citing *Rand McNally 1999 Commercial Atlas and Marketing Guide* at 38 (Rand McNally, 1999).

³⁶*Id.* at 17, citing *Office of Management and Budget Bulletin 99-04*.

³⁷*See e.g., Jasas Corporation*, 14 FCC Rcd 6968 (1999); *Panhandle Telecasting Co.*, 12 FCC Rcd 884 (1997); and *Paxson Phoenix License, Inc.*, 13 FCC Rcd 8555 (1998).

³⁸Petition at 23.

³⁹*Id.*

⁴⁰KCRA Opposition at 1; KRON-TV Opposition at 2.

⁴¹KCRA Opposition at Appendix A.

⁴²The CUID numbers for these areas are CA0480, CA0580 and CA1466.

therefore unclear whether these areas are actually within the San Francisco market. KRCA and KRON-TV request that the Commission also deny the addition of these areas until KNTV can conclusively prove that they are located in "Solano-West."

20. KRON-TV and KSBW also argue that while they do not object to KNTV's request for must carry status in the San Francisco DMA, KNTV cannot be entitled to simultaneous mandatory carriage in two DMAs. Accordingly, KRON-TV and KSBW assert that the Commission should condition the grant of KNTV's request with the contemporaneous deletion of its must carry rights in the Monterey DMA. KSBW points out that, because of its re-assignment by Nielsen, KNTV's continuing must carry rights in the Monterey DMA until January 1, 2003 is simply a regulatory anomaly and does not represent true market conditions. Indeed, KSBW states that KNTV recognized in its petition that its anticipated NBC affiliation agreement, as of January 1, 2002, would effectively eliminate its carriage rights in the Monterey market in favor of KSBW and it expressly said it would not object "should the Bureau choose to condition grant of this petition on deletion of communities within Monterey-Salinas DMA from the Station's must carry market."⁴³ KSBW argues that such a deletion would conform KNTV's must carry market with its future market for the next must carry election period, eliminate confusion when KNTV's affiliation changes, and allow KNTV to focus all its efforts on the San Francisco market communities.

21. In a consolidated reply, KNTV notes that none of the stations opposed inclusion of the majority of the communities it requested for inclusion. Rather, they have urged both a grant conditioned on the immediate deletion of KNTV's carriage in the Monterey market and that certain communities located outside of the San Francisco market not be included. KNTV clarifies that although it does not object to the deletion of the Monterey DMA communities from its market, the public interest would best be served by its continued mandatory carriage rights in the Monterey market until at least January 1, 2002, when it becomes an NBC affiliate. KNTV states that its operations are in a state of transition and that allowing it to remain a must carry station in the Monterey DMA will not only preserve those viewers' access to a station offering a significant amount of local news, public affairs and entertainment programming not otherwise available, but allow cable subscribers continued access to one of only five local television stations in the Monterey DMA. KNTV argues that its continued mandatory carriage will not result in any competitive harm because it is currently operating as an independent station and it is not offering programming which is similar to either KSBW or KRON-TV. KNTV points out that it provides an over-the-air signal of at least Grade B intensity to the majority of the Monterey market communities, is presently carried on all the cable systems in the DMA, and still enjoys significant viewership in the market. KNTV asserts that its commitment to local service in the Monterey market has not wavered, despite its expanded coverage to include increased programming aimed at the San Francisco communities and that Monterey viewers continue to rely on KNTV for coverage of local news, sports and weather. If its mandatory carriage is immediately deleted, KNTV argues that there would be no guarantee that the cable operators in the Monterey market would continue to carry its signal and viewers could lose access to valuable programming. KNTV therefore urges that the stations' proposal to require deletion of its mandatory carriage rights in the Monterey DMA not be effective until January 1, 2002.

22. KNTV amended its petition to remove the Sacramento market communities of Fairfield, Travis AFB, Rio Vista, Suisun City,, Dixon, Vacaville and two of the "unincorporated, unnamed areas" objected to by KCRA and KRON-TV - the unincorporated areas adjacent to Fairfield, and the unincorporated areas adjacent to Vacaville.⁴⁴ KNTV states that the third "unincorporated, unnamed" area

⁴³Petition at 25, n. 81.

⁴⁴Reply at 2.
(continued...)

(CUID #CA0580) is an unincorporated area served by the same cable system headend as the city of Vallejo. To clarify that this area is part of the San Francisco DMA, KNTV submitted an additional exhibit delineating the line between the San Francisco and Sacramento DMAs and providing the location of this unincorporated area in relation to that boundary.⁴⁵ KNTV argues that this exhibit shows that Vallejo and the surrounding unincorporated area are part of “Solano-West” and therefore part of the San Francisco DMA.

23. KCRA’s response maintains that the evidence presented by KNTV as to one of the “unincorporated, unnamed” areas (CUID #CA0580) fails to identify the exact location and DMA of this area. KCRA points out that KNTV does not list any zip codes associated with this area to prove it is part of “Solano-West.” KCRA contends that KNTV’s reliance on signal leakage reports as proof that this unincorporated area is served by the city of Vallejo ignores the fact that cable systems often straddle DMA boundaries. KCRA argues that the map KNTV produces is inconclusive without the actual coordinates of this area as a reference, something KNTV admits it does not have. As a result, KCRA argues that KNTV’s request to add this area should be denied. In addition, KCRA notes that KNTV failed to make any concession to one of the two communities listed as Rio Vista (CUID #CA1576) and that this community is located in “Solano-East” and should not be included in KNTV’s inclusion request.

24. In a response to KNTV’s consolidated reply, KSBW submits that maintaining KNTV’s must carry status in the Monterey DMA, even until January 1, 2002, while at the same time allowing KNTV’s must carry rights to expand into the San Francisco market would be contrary to the public interest. KSBW argues that, at this point, KNTV’s “longstanding tradition” to the Monterey DMA is irrelevant. KSBW points out that KNTV’s ABC affiliation ended in July 2000 and its goal now is to get out of the Monterey market as soon as it becomes an NBC affiliate. KSBW asserts that KNTV provides no evidence that it continues to serve the public in the Monterey market while at the same time focusing on securing carriage rights in another market. Given the wide range of television programming available in the Monterey DMA, KSBW argues that it is unlikely that KNTV’s programming is truly unique. In any event, despite KNTV’s assertions, KSBW points out that KNTV’s viewership in the Monterey DMA has significantly dropped since it became an independent station in July 2000.⁴⁶ Therefore, the public interest would be better served by allowing the Monterey cable systems the option of finding other programming to air in the place of KNTV now rather than requiring them to continue to carry a station whose ultimate interests are focused elsewhere. KSBW therefore reiterates its request that a grant of KNTV’s requests be conditioned on the station’s immediate deletion from the Monterey DMA.

25. We grant KNTV’s petition. The cable television mandatory broadcast signal carriage rules were adopted as part of the 1992 Cable Act. According to the legislative history of that 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.”⁴⁷ The Act specifically provided that the Commission was to consider adding additional communities or excluding communities from the markets of television stations “to better effectuate the purposes” of the mandatory carriage requirements.⁴⁸ These factors, however, were

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⁴⁵*Id.* at Exhibit 4.

⁴⁶KSBW supplement at 4.

⁴⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁴⁸47 U.S.C. §534(h).

“not intended to be exclusive.”⁴⁹ In acting on such requests, the Commission was instructed to “afford particular attention to the value of localism, taking into account four specified statutory factors.”⁵⁰ We believe that the addition of the communities herein to KNTV’s television market will better effectuate the purposes of the must carry statutory provisions.

26. In an analysis of the four statutory factors for market modification, we find that although KNTV fails to meet the historic carriage and viewership criteria for the requested communities, this is overridden by other factors. Most importantly, we note Nielsen’s re-assignment of KNTV to the San Francisco DMA. While this re-assignment does not affect KNTV’s must carry obligations until the January 1, 2003 must carry election period, it is significant evidence that KNTV provides service to the subject communities. Further, we note that the majority of the subject communities are encompassed by either KNTV’s predicted Grade B contour or its Grade A contour, and it appears to provide locally-focused programming to the residents in the communities. This evidence demonstrates that the cable subscribers in the subject communities have a commonality of interest with the KNTV and provides evidence of the scope of KNTV’s market.

27. With regard to the two contested communities, we note that KNTV has provided no evidence that the second of two Rio Vista communities, identified by the CUID number CA1576, is located within Solano-West, the portion of the county located within the San Francisco DMA. As a result, we do not include this community among those we are granting for inclusion herein. Second, we do not agree with KCRA that KNTV has failed to prove that the “unincorporated, unnamed” Solano area, identified by the CUID number CA0580, is not part of Solano-West. While it is true that KNTV may not have provided precise coordinates or zip codes for this area, the information it does provide appears to sufficiently indicate that this unincorporated area is indeed part of Solano-West County. In any event, KCRA has not provided any information to refute this evidence.

28. Finally, we decline the opposing parties’ request to condition our grant herein to delete KNTV’s current must carry rights in the Monterey DMA. While the stations argue that it would be contrary to the public interest to allow KNTV simultaneous must carry rights in two DMAs, they overlook the fact that such an eventuality is inherent in the grant of any modification request to include additional communities outside of a station’s market. The main difference in this instance from the numerous petitions for inclusion granted previously by the Commission, aside from the number of communities requested for inclusion, is the fact that KNTV’s television market has been re-assigned by Nielsen. However, due to the fact that this re-assignment is not effective until the must carry election of January 1, 2003, we do not believe it would be in the public interest to decline KNTV the right to assert its must carry rights in the only market it is currently able to so, absent a waiver. We note that no cable system located within the Monterey market currently carrying KNTV has objected to the station’s continued carriage. Moreover, only one of the four stations participating in this proceeding is a Monterey-based station, KSBW, which as an NBC station would not be at a competitive disadvantage with KNTV’s continued carriage. Even when KNTV assumes its NBC affiliation in January 2002, KSBW will not be harmed because, as the closer of two network affiliates, it will generally have priority carriage rights over KNTV in the Monterey DMA. Therefore, based upon our analysis of the evidence presented, we grant KNTV’s request for modification.

⁴⁹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁵⁰*Id.*

IV. ORDERING CLAUSES

29. 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 KNTV License, Inc. **IS GRANTED**.

30. **IT IS FURTHER ORDERED**, that the community of Rio Vista (CUID #CA1576) is not included among those we are granting for inclusion.

31. This action is 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

APPENDIX I

The communities requested for inclusion by KNTV, by county, are as follows:

<u>Alameda County:</u>	
Berkeley	CA0006
Albany	CA0014

⁵¹47 C.F.R. §0.321.

Fremont	CA0100
San Lorenzo	CA0185
Castro Valley	CA0238
Dublin	CA0363
	CA1560
Livermore	CA0356
	CA1537
Pleasanton	CA0360
	CA1559
Sunol	CA0364
Hayward	CA0370
San Leandro	CA0416
	CA0780
	CA0781
	CA0949
	CA1016
Newark	CA0496
Piedmont	CA0588
Oakland	CA0589
Emeryville	CA0852
Union City	CA0901
Alameda	CA0972
	CA1334
Ballena Village	CA1321
Lakeside Village Apt.	CA1324
Alameda NAS	CA1335
Georgian Manor MHP	CA1371
Mission Bay MHP	CA1372
Spanish Ranch MHP	CA1375
US Naval Hospital	CA1416
<u>Contra Costa County:</u>	
San Pablo	CA0021
Clayton	CA0061
	CA1584
Concord	CA0062
	CA0063
	CA1582
Pinole	CA0069
Contra Costa	CA0070
	CA0267
	CA0346
	CA0354
	CA0576
Crockett	CA0075
Lafayette	CA0239
Martinez	CA0241
Contra Costa (N)	CA0243
Pleasant Hill	CA0244

	CA1583
Danville	CA0288
	CA1060
	CA1061
Contra Costa (S)	CA0289
Lafayette (S)	CA0290
Orinda	CA0291
Moraga	CA0292
Walnut Creek	CA0293
	CA0350
	CA1395
	CA1585
Antioch	CA0361
Pittsburg	CA0359
Bay Point	CA0365
Rheem Valley	CA0376
Richmond	CA0487
	CA0747
	CA1373
Brentwood	CA0556
El Cerrito	CA0574
Kensington	CA0598
North Orinda	CA0687
Pacheco	CA0688
Vinehill	CA0689
Port Costa	CA0722
	CA1533
Hilltop Green	CA0746
Hercules	CA0769
San Ramon	CA0829
	CA1115
Rodeo	CA0924
Oakley	CA0945
The Keys Apts.	CA1196
Knightsen	CA1230
Discovery Bay	CA1231
Bethel Island	CA1232
Contra Costa (E)	CA1233
Alamo	CA1234
The Shore Apts.	CA1327
Marsh Creek MHP	CA1350
Concord NAV WPNS Sta.	CA1361
Clyde	CA1362
	CA1507
Roundhill	CA1396
Blackhawk	CA1397

Marin County:

Fairfax	CA0050
Mill Valley	CA0051
San Anselmo	CA0052
Tiburon	CA0054
	CA0484
	CA0526
	CA1518
Marin	CA0105
	CA0167
	CA0363
	CA0377
	CA0486
	CA0523
	CA0602
Novato	CA0107
Sausalito	CA0156
	CA0168
	CA0483
	CA0524
	CA0525
Corte Madera	CA0352
	CA0381
	CA1558
Larkspur	CA0355
	CA0522
Ross	CA0361
	CA0521
San Rafael	CA0362
	CA0539
Belvedere	CA0472
	CA0527
Hamilton AFB	CA0789
Inverness	CA1090
Stinson Beach	CA1455
<u>Napa County:</u>	
Calistoga	CA0305
Napa	CA0314
	CA0407
	CA0498
	CA1586
St. Helena	CA0319
Yountville	CA0326
Oakville	CA0447
American Canyon	CA1339
American Canyon- Napa	CA1538

San Francisco County:

San Francisco	CA0245
	CA0485
The Presidio	CA1202
Treasure Island NVL	CA1259
Northpoint Apts.	CA1325
Golden Gateway Ctr.	CA1326

San Mateo County:

Belmont	CA0007
	CA1370
San Mateo	CA0074
	CA0206
	CA0402
	CA0573
	CA1374
El Granada	CA0076
Half Moon Bay	CA0077
Montara	CA0078
Moss Beach	CA0079
Foster City	CA0099
	CA0770
	CA0785
Pacifica	CA0197
Redwood City	CA0205
San Carlos	CA0207
	CA1470
Daly City	CA0280
	CA1337
S. San Francisco	CA0282
Pacific Manor	CA0411
Brisbane	CA0440
San Bruno	CA0497
Menlo Park	CA0547
	CA1433
Broadmoor	CA0575
Millbrae	CA0578
Westlake Terrace	CA0642
Pescadero	CA0859
Lahonda	CA0860
Burlingame	CA0925
Burlingame Hills	CA0967
Crown Colony	CA1004
Colma	CA1200
	CA1471
Hillsborough	CA1270
Dale City	CA1280
Hillsdale Garden Apt.	CA1322
Franciscan MHP	CA1369
Woodside	CA1377

	CA1463
Woodlake	CA1382
East Palo Alto	CA1434
Atherton	CA1435
Los Trancos Woods	CA1461
Redwood Mobile Est.	CA1462
Portola Valley	CA1464
Laruidale Area	CA1501
Skylonda Area	CA1502
San Mateo (SE/W)	CA1523
Redwood City	CA1569

Solano County:

Benicia	CA0015
Vallejo	CA0388
Solano	CA0580
Rio Vista	CA1576
Mare Island NAS	CA1293

Sonoma County:

Cloverdale	CA0110
Healdsburg	CA0111
Sonoma	CA0112
	CA0317
	CA0325
	CA0357
	CA0380
	CA0445
The Sea Ranch	CA0252
Santa Rosa	CA0255
	CA0520
	CA0658
Cotati	CA0306
	CA0449
Rohnert Park	CA0318
Sebastopol	CA0324
	CA0619
Petaluma	CA0358
	CA0362
Monte Rio	CA0443
Bodega Bay	CA0444
Glen Ellen	CA0448
Temelec	CA0610
Cotati-Rohnert Park	CA0618
US Cst. Grd. Trng. Sta.	CA1330
NSGA Springs Island	CA1332
Windsor	CA1513

Communities in Solano County voluntarily withdrawn from request:

Vacaville	CA0349
Travis AFB	CA0368
Fairfield	CA0489
Suisun City	CA0479
Solano	CA0480
	CA1466
Dixon	CA0542
	CA0623
Rio Vista	CA0611