

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

In the Matter of:)
)
Eagle II Broadcasting LLC)
) CSR-5591-A
Modification of the Grand Junction-)
Montrose, Colorado DMA)

MEMORANDUM OPINION AND ORDER

Adopted: January 8, 2001

Released: January 12, 2001

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

I. INTRODUCTION

1. Eagle III Broadcasting, LLC, licensee of Station KKCO-TV (Ch. 11), Grand Junction, Colorado (“KKCO-TV”), filed the above-captioned petition for special relief seeking to modify the Grand Junction-Montrose, Colorado designated market area (“DMA”) to include the communities of Delta, Cedaredge, Hotchkiss, Orchard City, Crawford, Paonia, and unincorporated areas of Delta County, Colorado.¹ No opposition to this petition has been received.

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

¹KKCO-TV states that these communities are served by AT&T Broadband & Internet Services/TCI Cablevision of Colorado, Inc. and Rocky Mountain Cable from headends located at Paonia, Delta and Hotchkiss..

²8 FCC Rcd 2965, 2976-2977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). 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....)

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

(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

(Continued from previous page) _____

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).

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

[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

(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

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.

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

III. DISCUSSION

10. The issue before us is whether to grant KKCO-TV's request to include the communities of Delta, Cedaredge, Hotchkiss, Orchard City, Crawford, Paonia, and unincorporated areas of Delta County, Colorado, within its television market. KDUH-TV is considered to be within the Grand Junction-Montrose, Colorado DMA, while Delta County, in which all of the subject communities are located, is within the Denver, Colorado DMA.

11. In support of its request, KKCO-TV states that Delta County is essentially surrounded by

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.

the Grand Junction DMA counties of Mesa and Montrose and the largest city in Delta County, Delta, lies between the two largest cities of the Grand Junction market, Grand Junction and Montrose. KKCO-TV states that not only are all three communities connected by the same highway, but the area comprising them is known as the “Grand Valley” and includes substantially all of the population of Mesa, Montrose and Delta counties.¹³ Further, due to its size and availability of stores and malls, the city of Grand Junction is the regional shopping hub for the residents of every community within a 150-mile radius.¹⁴ KKCO-TV points out that, in the past, Delta County has been assigned to the Grand Junction market. However, KKCO-TV states that Delta County is currently assigned to the Denver DMA, creating a hole in the middle of the Grand Junction market. KKCO-TV states that, along with two other Grand Junction stations, KREX and KJCT, it is presently carried in two of the three cable systems serving the Delta County communities and these communities form a major part of KKCO-TV’s actual market.¹⁵ KKCO-TV states that because of a must carry demand from KUSA, the Denver market NBC affiliate, the Delta cable system operated by AT&T threatened to drop its signal as of September 15, 2000. KKCO-TV indicates that its competing market stations, KREX and KJCT, apparently will continue to be carried and its removal would therefore place it at a substantial competitive disadvantage.

12. KKCO-TV states that, with the exception of the Paonia system, it has been carried in Delta County since 1996 and it is the most watched station in Delta County.¹⁶ Indeed, KKCO-TV asserts that when it went on-the-air in 1996, the Delta and Hotchkiss cable systems dropped the Denver NBC affiliate, KUSA, in favor of KKCO-TV, clearly indicating that its programming is of greater relevance to the residents. KKCO-TV states that not only is Delta County within its economic market, but its predicted Grade B contour encompasses all of the cable systems’ principal headends and it has high viewership in the county. KKCO-TV indicates that its transmitting facilities are approximately 66 miles from the further system headend in Delta County, its signal is available over-the-air, and the *Delta County Independent* includes the programming schedules of the Grand Junction stations in its television guide.¹⁷ In comparison, KKCO-TV points out that the community of Delta is 256 miles from Denver and neither KUSA, nor any other Denver market station, encompasses the community with a Grade B contour.¹⁸ Moreover, KKCO-TV states that the rugged terrain of the Rocky Mountains prevents communities located in Colorado’s “Western Slope” from receiving any off-air signals from the state’s larger markets of Denver and Colorado Springs. KKCO-TV argues, therefore, that inclusion of the subject communities within its market more accurately reflects economic reality and the needs of the cable subscribers in Delta County for local news and information.¹⁹ Moreover, it argues that if it is supplanted by a Denver station, the historical carriage viewing patterns of the Delta communities will be disrupted.

¹³Petition at 8.

¹⁴*Id.* at 9.

¹⁵KKCO-TV states it is carried on the Delta and Hotchkiss systems. The Paonia system does not currently carry KKCO-TV. *See* Petition at 3.

¹⁶Petition at Exhibit D.

¹⁷*Id.* at 11-12.

¹⁸*Id.* at 4.

¹⁹KKCO-TV states that the roughly ten thousand households in Delta County comprise only ½ of 1 percent of the total Denver DMA households, but 15 percent of KKCO-TV’s natural market. *See* Petition at 5.

13. KKCO-TV states that it is the only 24-hour station in the market and it broadcasts half-hour local news programming four times a day, with the evening showings having viewership shares of 20 percent or higher.²⁰ KKCO-TV states that its programming contains numerous stories directly related to events in Delta County such as news, sports, weather and public affairs.²¹ KKCO-TV maintains that this level of local programming is not possible for the Denver stations whose major audience is located more than 200 miles away from Delta County. In addition, KKCO-TV states that businesses in Delta County primarily advertise on Grand Junction stations, due to the lower costs and the more locally-focused programming.²²

14. With regard to viewership, KKCO-TV states that for the sweeps period ending May 2000, it achieved an average weekly cumulative audience (“Cume”) of 49 percent in Delta County.²³ The weekly Cume for its companion market stations of KJCT and KREX was 24 and 51 percent, respectively.²⁴ By contrast, KKCO-TV states that none of the Denver stations had a weekly Cume of more than 39 percent in Delta County during the same period.²⁵ KKCO-TV asserts that during the 5-6:00 p.m. time period, Monday through Friday, it is the number one station in Delta County with a 20 share, which is particularly significant given that it is carried on only two cable systems in the county.²⁶ It points out that no Denver station exceeded an 8 share during this day part. KKCO-TV argues that viewers in Delta County prefer the truly local newscasts of KKCO-TV over that of KUSA.

15. KKCO-TV argues that the circumstances surrounding its request are similar to those in a recent Bureau decision involving Station KDUH-TV, Scottsbluff, Nebraska.²⁷ KKCO-TV states that in that decision the communities, which were on the eastern edge of the Denver DMA, had previously been included in the Cheyenne, Wyoming-Scottsbluff, Nebraska ADI, where KDUH-TV was located. KKCO-TV states that the Bureau granted KDUH-TV’s request for inclusion after the station proved that the cable communities shared a common economic market and that KDUH-TV provided Grade A coverage. KKCO-TV maintains that the Bureau should do no less here.

16. We grant KKCO-TV’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.”²⁸ The Act specifically provided that the Commission was to

²⁰Petition at 12-13.

²¹*Id.* at 13-14 and Exhibit C.

²²*Id.* at 14.

²³*Id.* at Exhibit E.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* at 17.

²⁷*See Duhamel Broadcasting Enterprises*, 15 FCC Rcd 4965 (2000).

²⁸H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

consider adding additional communities or excluding communities from the markets of television stations “to better effectuate the purposes” of the mandatory carriage requirements.²⁹ These factors, however, were “not intended to be exclusive.”³⁰ 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.”³¹ We believe that the addition of the communities herein to KKCO-TV’s television market will better effectuate the purposes of the must carry statutory provisions.

17. In an analysis of the four statutory factors for market modification, we find that KKCO-TV meets the historic carriage factor for the majority of the requested communities. With regard to the other modification factors, we note that the subject communities are encompassed by KKCO-TV’s predicted Grade B contour, the station has significant viewership in Delta County, and KKCO-TV provides locally-focused programming to the residents. This evidence demonstrates that the Delta County cable subscribers have a commonality of interest with the Grand Junction market and provides evidence of the scope of KKCO-TV’s market.

IV. ORDERING CLAUSES

18. 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 Eagle II Broadcasting LLC **IS GRANTED**.

19. This action is taken pursuant to authority delegated by Section 0.321 of the Commission’s rules.³²

FEDERAL COMMUNICATIONS COMMISSION

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

²⁹47 U.S.C. §534(h).

³⁰H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

³¹*Id.*

³²47 C.F.R. §0.321.