

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

In the Matter of:)	
)	
Sky Television, LLC)	CSR-6012-A
)	
For Modification of the Norfolk-Portsmouth- Newport News, Virginia DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 2003

Released: February 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sky Television, LLC, licensee of television broadcast station WSKY (Ch. 4), Manteo, North Carolina (“WSKY”), filed the above-captioned petition for special relief seeking to modify the Norfolk-Portsmouth-Newport News designated market area (“DMA”) to include the Mediacom Southeast, LLC (“Mediacom”) cable system communities of Colerain, Kelford, Lewiston Woodville, Merry Hill, Powellsville, Roxobel, Windsor, Jamesville, Columbia, Creswell, Plymouth and Roper, North Carolina (“cable communities”). No opposition to this petition has been received. For the reasons discussed below, we grant the petition.

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 Research.² A DMA is a geographic market designation that defines each television market exclusive of

¹8 FCC Rcd 2965, 2976-1977 (1993).

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*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

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 news 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 [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.

* * * *

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.*

[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

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.⁷

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:

(1) 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.

(2) 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 to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁸

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

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

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

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over

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

⁷*Must Carry Order*, 8 FCC Rcd 2965, 2977 n 139.

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.-1 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

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* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant WSKY's request to include the communities of Colerain, Kelford, Lewiston Woodville, Merry Hill, Powellsville, Roxobel, Windsor, Jamesville, Columbia, Creswell, Plymouth and Roper, North Carolina, within its television market. WSKY is in the Norfolk-Portsmouth-Newport News DMA, while the above cable communities are located in the Greenville-New Bern-Washington, North Carolina DMA.

6. WSKY explains in its petition that it is a new station that began operation in October, 2001, and that it is the only commercial television station licensed to a community on North Carolina's Outer Banks. WSKY further explains that because it is a new station, it has not been historically carried on Mediacom's cable system serving the cable communities and lacks substantial viewership. In support of its request, WSKY argues that the inland cable communities should be added to its market because its community of license, Manteo, has important economic and geographic ties to the cable communities. For example, residents of the inland communities rely on coastal communities as a source of employment. In addition, WSKY asserts that it provides at least Grade B signal coverage and local programming services to the cable communities. WSKY further indicates that its coverage to the inland cable communities is enhanced by the geographic characteristics of eastern North Carolina, namely, flat coastal plain and several wide bodies of water extending from the Atlantic Ocean. WSKY also states that it is located close to the cable communities. WSKY asserts that its transmitter is closer to Mediacom's principal cable headend in Edenton (41 miles), which serves the cable communities, than any other commercial television station carried by Mediacom, and that the Edenton headend is actually in the same DMA as WSKY, but also borders the Greenville DMA.¹⁰

7. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."¹¹ WSKY admits that it has not been carried on Mediacom's cable system, but states that this is to be expected because it is a new station. WSKY also notes that Mediacom carries five other stations located in the same DMA as WSKY, the Norfolk DMA, even though these stations are in a different state and more distant from the cable communities than WSKY.¹²

8. The second factor to consider is "whether the television station provides coverage or

⁹47 C.F.R. §76.59(b).

¹⁰Petition at 2, 5, 8-9, 12 and 14.

¹¹47 U.S.C. §534(h)(1)(C)(I).

¹²Petition at 14.

other local service to such community.”¹³ WSKY states that it developed a coverage map based on the Longley-Rice method that reflects that it provides Grade B coverage to the cable communities. Moreover, WSKY states that the topography in the area consists of flat coastal plain and bodies of water which enhance the propagation characteristics of its signal, and that there are no mountains or other terrain features to obstruct reception by the cable communities.¹⁴ As indicated by WSKY, it appears that the Mediacom cable system is an integrated cable system with the cable communities covered by the Grade B contour. WSKY also explains that it provides local service to the cable communities such as local public affairs, shopping, and travel programs. Two programs that WSKY describes in detail are a news discussion program called “N.C. spin” and a travel program called “My Heart Will Always be in Carolina.”¹⁵

9. The third statutory factor we must consider is “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 news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”¹⁶ In general, we believe that Congress did not intend this third criterion to operate as a bar to a station’s DMA claim whenever other stations could also be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue.¹⁷ In this case, because other stations appear to serve the communities in question, this enhancement factor does not appear applicable.

10. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”¹⁸ WSKY admits that it has not been carried on Mediacom’s cable system and lacks substantial viewership in the area, but explains that this is to be expected because of its status as a new station.¹⁹

11. Despite its lack of historic carriage and negligible audience share, we find that, in this instance, other factors deserve more relative weight. WSKY’s lack of carriage by Mediacom and its status as a new station may explain why its ratings are low in the cable communities. Further, WSKY’s transmitter is located approximately 41 miles from the cable system’s headend (closer than other commercial television stations carried by Mediacom), and its Longley-Rice study indicates that its Grade B contour encompasses the cable communities.²⁰ We agree with WSKY that these factors suggest that WSKY provides coverage or other local service to the communities.²¹ In addition, there are no significant

¹³47 U.S.C. §534(h)(1)(C)(II).

¹⁴Petition at 9.

¹⁵*Id.* at 4, 9-10.

¹⁶47 U.S.C. §534(h)(1)(C)(III).

¹⁷*See Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

¹⁸47 U.S.C. §534(h)(1)(C)(IV).

¹⁹Petition at 14.

²⁰*See Marks CableVision and TCI CableVision of California*, 12 FCC Rcd 22989, 22997 (1997); *recon. denied*, 15 FCC Rcd 814 (2000). *See also Norwell Television*, 17 FCC Rcd 16085, 16090-1 (2002).

²¹*See Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267 (1997) (“the Bureau’s reliance on Grade B contour coverage and distance to the community, in terms of both
(continued...)”)

natural barriers between WSKY and the cable communities, Manteo has economic and geographic ties to the cable communities, and the cable communities requested for inclusion are located on the northeastern edge of the Greenville market close to the Norfolk DMA. Finally, WSKY's petition is unopposed. For all the reasons discussed above, we grant WSKY's request.

IV. ORDERING CLAUSES

12. 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-6012-A), filed by Sky Television, LLC **IS GRANTED**.

13. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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geography and mileage, is fully supported by the [1992 Cable Act], its legislative history, and Commission precedent.”).

²²47 C.F.R. §0.283.