

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

In the Matter of:
Lenfest Broadcasting, LLC
Petition for Modification of the Television Market
of Television Station WMCN-DT, Atlantic City,
New Jersey
CSR-6278-A

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 2004

Released: May 20, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Lenfest Broadcasting, LLC ("Lenfest"), licensee of Station WMCN-DT, Atlantic City, New Jersey ("WMCN-DT" or the "Station"), channel 44, has filed the above-captioned petition for special relief, seeking to modify the Station's market to include certain cable communities located within Ocean County, New Jersey that are served by cable systems operated by Comcast Corporation ("Comcast").

II. BACKGROUND

2. Pursuant to Section 614 of the Act and the 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 The subject cable communities are: Stafford, Berkeley, Barnegat, Beachwood, Pine Beach, Ocean Gate, South Toms River, Lacey, Dover, Eagleswood, Tuckerton, Little Egg Harbor, Island Heights, Ocean Beach, Crestwood, Manchester, Lakehurst, Manahawkin, Beach Haven, Harvey Cedars, Long Beach, Ship Bottom, Surf City, Barnegat Light, Bay Head, Brick Town, Mantoloking, Point Pleasant, Point Pleasant Beach. We note that although WMCN-DT requested that the community of Pinehurst, New Jersey be included in its modification request, because it is located in the Philadelphia DMA, no relief is needed.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see Definition of Markets for Purposes of the Cable (continued...)

DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Each county in the United States is assigned 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 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

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.⁶

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.

* * * *

(...continued from previous page)

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

⁴ For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ 47 U.S.C. § 534(h)(1)(C).

⁶ *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.⁷

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁸

4. In the *Market Modification Final Report and Order*,⁹ 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 relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.¹⁰

(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

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

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

⁹ *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999).

¹⁰ 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.¹¹

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee. The *Market Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.¹²

5. In *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, a digital-only television station has mandatory carriage rights, and amended the rules accordingly.¹³ The Commission has established a framework for analyzing market modifications for digital television stations.¹⁴ The Commission stated that Nielsen’s market designations, publications, and assignments for the analog television market should continue to be binding on broadcast stations transitioning to digital television broadcasting. The presumption is that the market of the station’s digital signal is coterminous with the station’s market area for its analog signal during the transition period.¹⁵ The Commission also found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, will be applicable to digital television modification petitions during the transition period when television stations broadcast both an analog signal and a digital signal.¹⁶ The Commission recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of the analog television signal. Therefore, in deciding DTV market modification cases, the Commission stated that it would take into consideration changes in signal strength and technical coverage because of new digital television channel assignments and power limits. It concluded that all other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.¹⁷

III. DISCUSSION

6. WMCN-DT states that pursuant to special temporary authority the station commenced digital broadcasting on August 19, 2002.¹⁸ WMCN-DT adds that on December 13, 2002, it discontinued analog operations, and commenced digital-only operations, pursuant to Commission authorization.¹⁹ WMCN-DT states that the station is assigned to the Philadelphia, Pennsylvania DMA and that the cable communities it seeks to add to the Station’s must carry market are all located in Ocean County, New

¹¹ 47 C.F.R. § 76.59(b).

¹² *Market Modification Final Report and Order*, 14 FCC Rcd at 8389.

¹³ See 16 FCC Rcd 2598, 2606 (2001); 47 C.F.R. § 76.64(f)(4). The Commission concluded that for purposes of supporting the conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its high definition digital (“HDTV”) or standard definition digital (“SDTV”) television signals be carried on the cable system for delivery to subscribers in either a digital or an analog format. *DTV Must Carry Report and Order*, 16 FCC Rcd at 2630.

¹⁴ See *id.* at 2635-36.

¹⁵ We note that in adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to insure that a station’s digital over-the-air coverage area would replicate as closely as possible its current over-the-air analog coverage area. See *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

¹⁶ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

¹⁷ *Id.*

¹⁸ WMCN-DT Petition at 3.

¹⁹ *Id.*

Jersey, which lies at the extreme southern end of the New York DMA and immediately north of Atlantic City, WMCN-DT's city of license.²⁰ In addition, WMCN-DT asserts that each of the cable communities is within 55 miles of Atlantic City.²¹ WMCN-DT's market modification arguments are set forth below.

7. **History of Carriage and Viewership.** WMCN-DT argues that with regard to this factor, a station operating from the same transmitter site as WMCN-DT is currently carried on Comcast cable systems serving the cable communities.²² It states that the transmission facilities of WNJS(TV), an educational station licensed to Camden, New Jersey are collocated with the facilities of WMCN-DT and the fact that Comcast carries WNJS(TV) on its Ocean County cable systems is strong evidence that WMCN-DT's signal also merits carriage in Ocean County.²³ In addition, WMCN-DT asserts that historical carriage and evidence of viewership are irrelevant given the fact that WMCN-DT is effectively a new station since it began digital service to the cable communities, and, therefore, it has not had an opportunity to build a record of carriage or viewership.²⁴ WMCN-DT adds that the Commission gives little weight to historic carriage and viewership factors when a station has implemented a change in its technical facilities.²⁵ WMCN-DT states that the Station's former predicted Grade B analog service contour was extremely limited, covered only a small portion of the Philadelphia DMA and extended just slightly into Ocean County, and therefore as an analog station, WMCN-DT had no means to establish cable carriage or viewership in the cable communities.²⁶ However, WMCN-DT contends that by contrast, the Station's 41 dBu digital service contour²⁷ not only covers almost all of the Philadelphia DMA, it provides service to all of Ocean County.²⁸

8. In its opposition, Comcast asserts that although WMCN-DT has no history of carriage because it characterizes itself as a new station, WMCN-DT cannot be considered a new station because it is the reincarnation of WWAC-DT and WWAC-TV, which the latter began broadcasting in 1981.²⁹ Comcast states that neither WWAC-DT nor WWAC-TV were carried at any time on systems serving the cable communities.³⁰ Moreover its states that carriage of WNJS or any other educational station in the cable communities is based on the stations' must carry status in the cable communities and says absolutely nothing about a nexus between WMCN and the cable communities.³¹ Comcast indicates that the must carry status of educational stations, such as WNJS, is different from that of commercial stations which determine must carry status on the basis of DMAs.³²

9. Moreover, with regard to local viewing, Comcast asserts that WMCN-DT provides no

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.* at 12-13.

²⁵ *Id.* at 13.

²⁶ *Id.*

²⁷ For digital stations operating on channels 14-69, for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station's Grade B contour.

²⁸ *Id.* at 14.

²⁹ Comcast Opposition at 3. Comcast also asserts that WMCN is described as "formerly WWAC-DT."

³⁰ *Id.*

³¹ *Id.* at 3 n.3.

³² *Id.*

evidence of any audience viewing in either cable or non-cable households located in the cable communities, and it points out that television listings in the TV Guide do not include references to WMCN-DT.³³ Comcast argues that WMCN-DT's signal is essentially the same signal broadcast as its predecessor stations and despite having over two decades to build an audience and viewership, the level of WMCN-DT's viewership is no different from WWAC and there is no reason to believe that WMCN-DT will be better able to attract viewers.³⁴ Comcast additionally states that WMCN-DT broadcasts a digital signal which relatively few consumers currently have the capability to receive and display and that the Commission should not expand WMCN-DT's market by requiring Comcast to devote a channel for carriage of WMCN-DT's signal, particularly when many consumers within its own market do not have digital receivers.³⁵ Comcast asserts that the Commission should reject the Station's suggestion that WMCN-DT's lack of viewership in the cable communities should be ignored and find that this factor militates against modifying WMCN-DT's television market.³⁶

10. In reply, WMCN-DT asserts that Comcast's focus on factors such as historic carriage and viewership are irrelevant, and that the Station's analog facilities were very limited, covering its community of license, reaching half of its home county and the extreme southern tip of Ocean County.³⁷ With its digital facilities, however, WMCN-DT asserts that the Station resembles the previous analog station only insofar as it is still licensed to Atlantic City and WMCN-DT has dramatically expanded its coverage area by placing a 41 dBu DTV signal contour not only over the Philadelphia DMA but also all of Ocean County.³⁸

11. **Local Service.** WMCN-DT contends that the Station's 41 dBu contour and Longley-Rice propagation studies show that WMCN-DT is predicted to provide local-over-the-air service to all of the cable communities.³⁹ WMCN-DT states using the Longley-Rice methodology for determining signal coverage, it is clear that all of Ocean County can receive a 41 dBu signal from the facilities authorized in WMCN-DT's construction permit, that the Station's DTV signal actually extends well beyond Ocean County, and that such fact is not surprising given the flat topography of the area.⁴⁰ In addition, WMCN-DT points out the geographic proximity with the cable communities and states that its community of license, Atlantic City, is less than 12 miles from the Ocean County line, 15 miles from Little Egg Harbor, the closest of the cable communities within Ocean County, and that the most distant of the cable communities, Point Pleasant Beach, is 54 miles from Atlantic City.⁴¹ WMCN-DT argues that the distances between the Station and each of the cable communities are well within the range that the Commission has found acceptable in adding communities to stations' must-carry markets or in refusing to delete communities from stations' markets.⁴²

12. Moreover, WMCN-DT asserts that given Atlantic City's geographic proximity to the cable communities there is also a strong economic link since the region is well connected by highways

³³ *Id.* at 15.

³⁴ *Id.* at 16-17.

³⁵ *Id.* at 17.

³⁶ *Id.* at 18.

³⁷ *Id.*

³⁸ *Id.* at 2-3.

³⁹ WMCN-DT Petition at 7.

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

⁴² *Id.*, citing *KNTV License, Inc.*, 16 FCC Rcd 6785 (CSB 2001)(adding communities that were 35-55 miles away).

and residents are able to commute for purposes of work, shopping and gaming at Atlantic City's many casinos.⁴³ Also, WMCN-DT states that Atlantic City's newspaper publishes a special Ocean County edition every Sunday and carries numerous advertisements for Ocean County businesses.⁴⁴ WMCN-DT asserts that the cable communities and the Station are part of the same economic market because the cable systems serving the cable communities carry most of the Philadelphia DMA stations with whom WMCN-DT competes.⁴⁵

13. WMCN-DT also contends that it offers distinctive local programming, including extensive coverage of local events, environmental issues, public affairs, political affairs, and the casino industry.⁴⁶ Specifically, the programs include "Ocean County Focus" a half-hour public affairs program featuring interviews with Ocean County officials, "Guidelines to the Barnegat Bay", a special program that examines environmental issues, and "Report from the Capitol" a live half-hour program focusing on New Jersey's political affairs featuring New Jersey congressman and representatives from districts which include Ocean County.⁴⁷ WMCN-DT also states that it intends to resume airing "Casino Connection" a live hour-long news and information program focusing on New Jersey's casino industry, an important subject for the many casino patrons and employees that reside in the cable communities.⁴⁸ Through both its technical coverage and locally-oriented programming, WMCN-DT asserts that it is clear that the Station offers significant local programming service to the cable communities.⁴⁹

14. In opposition, Comcast asserts that WMCN-DT fails to provide coverage or local service to the subject communities.⁵⁰ Comcast states that WMCN-DT overstates the reach of the signal it is actually broadcasting and that the 41dBu contour coverage is not dispositive.⁵¹ Comcast points out that the Station broadcasts its signal from a tower with a height lower than authorized in its construction permit, and that WMCN-DT gives no indication of when, or even if, it will ever broadcast from its maximum permitted tower height.⁵² In addition, Comcast argues that an examination shows that several cable communities served by Comcast's Brick headend are clearly outside of WMCN-DT's 41 dBu contour and a number of communities in north-central Ocean County can be characterized as being on the very fringe of the Station's 41 dBu contour.⁵³ Moreover, Comcast asserts that WMCN-DT's predicted 41 dBu contour does not appear to accurately reflect the Station's off-air signal availability.⁵⁴ Comcast states that signal strength studies performed at its Brick and Toms River headends, which serve 23 of the 29 cable communities, reveal that it is unlikely that WMCN-DT provides an off-air signal of good quality to individual households in these cable communities.⁵⁵ Comcast also argues that a station's 41 dBu

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 10-11.

⁴⁸ *Id.*

⁴⁹ *Id.* at 12.

⁵⁰ Comcast Opposition at 4.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 5. Those communities at the Brick headend outside of WMCN-DT 41 dBu contour include Point Pleasant, Point Pleasant Beach, Bay Head, Brick Town, and Mantoloking.

⁵⁴ *Id.*

⁵⁵ *Id.*

coverage is not sufficient in itself to support an expansion of a market and that while the Commission has previously relied on a station's predicted Grade B contour coverage to prevent contraction, it does not typically rely solely on the Grade B or 41 dBu contour to expand a station's market.⁵⁶

15. In addition, despite WMCN-DT's assertion that there is a geographic nexus between the cable communities and city of license, Atlantic City, Comcast states that Atlantic City is 25 miles from the cable communities served by Comcast's Long Beach Island headend, 36 miles from the cable communities served by the Toms River headend, and more than 50 miles from the cable communities served by the Brick headend.⁵⁷ Moreover, Comcast indicates that WMCN-DT's transmitter is approximately 50 miles from the cable communities served by Comcast's Brick headend, 37 miles from the cable communities served by Comcast's Tom's River headend, and 39 miles from the cable communities served by Comcast's Long Beach Island headend. Comcast argues that these distances explain why it is unlikely that WMCN-DT provides an adequate quality signal to households in many of the cable communities.⁵⁸

16. With regard to WMCN-DT's assertion that there is an economic nexus between Atlantic City and the cable communities, Comcast argues that employment data reveals a much stronger economic link between Ocean County and northern New Jersey/New York than any that might exist between Atlantic City and Ocean County.⁵⁹ Moreover, Comcast contends that television ratings data in Ocean County reveals a much stronger nexus between Ocean County and New York than between Ocean County and Philadelphia, that it is clear that Ocean County was properly assigned to the New York DMA, and that even the WMCN-DT logo describes the Station as an "Atlantic City-Philadelphia" television station.⁶⁰

17. Comcast also asserts that despite WMCN-DT's claims to the contrary, the Station fails to provide truly local programming for purposes of the local coverage factor of the market modification test and in fact, only one hour of WMCN-DT's weekly programming can be arguably deemed to have a particular nexus to the cable communities.⁶¹ Moreover, Comcast argues that such programming appears to have been added to the Station's schedule for purposes of this proceeding a little over a month before WMCN-DT filed its petition requesting to add the Ocean County communities to its market.⁶² In addition, Comcast asserts that a program focusing on New Jersey political affairs may have featured an Ocean County politician in one telecast but does not consistently target any of the cable communities.⁶³ Comcast also states that a future local program about the casino industry has no particular nexus to the cable communities because only 0.3% of Ocean County residents are employed in Atlantic City's casino industry and WMCN-DT provides no evidence that any casino industry workers live in the cable communities.⁶⁴ In addition, Comcast asserts that the examples of purportedly "local" programming appear not be a regular part of WMCN-DT's program schedule.⁶⁵

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 10.

⁵⁸ *Id.* at 10-11.

⁵⁹ *Id.* at 12.

⁶⁰ *Id.* at 13.

⁶¹ *Id.* at 6.

⁶² *Id.* at 6-7.

⁶³ *Id.* at 7.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.*

18. In reply, WMCN-DT reiterates that there is a strong economic and geographic link between Atlantic City and the cable communities, and the Station's broadcast of programming tailored to the specific interests of individuals living in the cable communities provide further evidence of significant local service.⁶⁶ In terms of the economic nexus, WMCN-DT states that Ocean County businesses regularly conduct business with the casinos in Atlantic City, Ocean County residents subscribe to the Press of Atlantic City which carries numerous advertisements for Ocean County businesses and lists WMCN-DT in its television viewing guide distributed in Ocean County, and a number of businesses located in the cable communities are members of the Atlantic City Regional Chamber of Commerce.⁶⁷ In response to Comcast questioning the Station's signal strength at the Brick and Toms River headends, WMCN-DT states that in market modification requests, the issue is whether the community in question is within the station's Grade B contour, not whether there is adequate signal strength to any one isolated point.⁶⁸ However, WMCN-DT also states that it currently operates the Station at an antenna height lower than that specified in the permit, and as a result, a few of the cable communities served by Comcast's Brick headend lie on the fringe of the WMCN-DT service area.⁶⁹ The Station indicates that if the Commission does not grant its modification request with respect to the Brick headend communities, it will revisit the issue at a later date when its tower issues have been resolved.⁷⁰ WMCN-DT also disputes Comcast's observation that few households are able to view the digital signal which WMCN-DT broadcasts and states that affording a digital-only station like WMCN-DT lesser carriage rights than its analog competitors because the DTV transition is still in an early stage is unjustified and ignores clear evidence of local service.⁷¹

19. **Coverage by Other Qualified Stations.** With regard to coverage by other qualified stations, Comcast contends that its systems do carry a host of stations licensed in and around New York and northern New Jersey which provide extensive coverage of local news and sporting events to the cable communities.⁷² In addition, Comcast states that its systems carry several PEG channels which feature locally-produced programming of local significance, such as local government meetings and local school sports and events that occur in and around the cable communities.⁷³ WMCN-DT reiterates that it provides significant local programming.⁷⁴ Moreover, WMCN-DT argues that Comcast's unsupported claim that these New York DMA television stations extend to Ocean County and carry local news and local programming on a regular basis is entitled to no weight in this proceeding because other station coverage does not weigh against a station seeking to add communities to its market.⁷⁵

20. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include

⁶⁶ Reply at 2.

⁶⁷ *Id.* at 5.

⁶⁸ *Id.* n.6.

⁶⁹ *Id.* n.4.

⁷⁰ *Id.*

⁷¹ *Id.* at 4.

⁷² Comcast Opposition at 14 n.22. For example, Comcast states that the Long Beach Island communities receive a full slate of broadcast stations licensed in the New York DMA: WCBS (CBS, NY), WNBC (NBC, NY), WNYW (Fox, NY), WWOR (UPN, NY) WPIX (WB, NY), WNET (PBS, NY) WNJU (Ind., NY) and WFUT (Telefutura, Newark, NJ). Comcast states that these New York stations recognize that their market extends to Ocean County, and thus carry local news and local programming on a regular basis, including local news for Ocean County.

⁷³ *Id.* at 14-15.

⁷⁴ Reply at 7.

⁷⁵ *Id.* at 6 n.16.

or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.⁷⁶ Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission to afford particular attention to the value of localism, taking into account four specified statutory factors.⁷⁷ These principles apply to all television stations without regard to the mode in which the station broadcasts. Furthermore, the Commission has found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, are applicable to digital television modification proceedings during the transition period.⁷⁸

21. In analyzing the statutory factors for market modification, we find that although WMCN-DT fails to meet the historic carriage and viewership criteria for the requested communities, there is strong evidence of the Station's local connection to the majority of the cable communities, demonstrating that they should be included in WMCN-DT's market. WMCN-DT has no history of carriage and no discernable viewership in the communities at issue, and the record evidence indicates that the former WWAC's analog signal was not carried on Comcast's systems and did not have viewership in the cable communities. Nevertheless, in terms of geographic proximity, a significant number of the cable communities are relatively close to both WMCN-DT's transmitter and to its city of license. WMCN-DT is not separated from the cable communities by mountain ranges or desert plateaus that would impede the carriage of the signal or commerce between the areas. This clear physical nexus shows that social, financial, and economic business can be conducted without traveling significant distances. With regard to geographic proximity from the city of license, most of the cable communities are 20 to approximately 46 miles away from Atlantic City. The community of Ocean Beach, is less than 45 miles from WMCN-DT's transmitter. We also note that WNJS(TV), which broadcasts from the same transmitter as WMCN-DT, is an educational station that is carried by Comcast in the cable communities pursuant to mandatory carriage, because it is considered a local station.⁷⁹ Thus, its carriage does provide some probative value supporting WMCN-DT's modification request.

22. With regard to an economic nexus, residents of the cable communities work, shop, and conduct business at WMCN-DT's city of license. Also, advertisements for Ocean County and a special Ocean County edition appear in a local Atlantic City newspaper. Also, the newspaper, the Press of Atlantic City, lists WMCN-DT in its television viewing guide distributed in Ocean County. In addition, a number of businesses are members of Atlantic City's Chamber of Commerce. All these factors show an economic connection between WMCN-DT's city of license and the cable communities we are including in WMCN-DT's market.

23. Pursuant to operations under special temporary authority ("STA"), WMCN-DT's signal encompasses a majority of the communities, including those located at Comcast's Tom's River headend, some of which are located on the fringe of WMCN-DT's predicted 41 dBu contour. In contrast, the cable communities served by Comcast's Brick headend are the farthest of the subject cable communities from the city of license, and it appears the majority of these communities are outside of WMCN-DT's 41 dBu signal contour based upon WMCN-DT's current STA operations.⁸⁰ More importantly, WMCN-DT concedes that it is operating at a lower antenna height and that it is not opposed to revisiting the issue of

⁷⁶ 47 U.S.C. § 534(h)(1)(C).

⁷⁷ 47 U.S.C. § 534(h)(1)(C)(i).

⁷⁸ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

⁷⁹ Local determinations for non-commercial educational stations are based upon geographic or Grade B proximity to the cable headend rather than the DMA. See 47 C.F.R. § 76.55(b).

⁸⁰ Because WMCN-DT is not currently operating pursuant to its construction permit, the predicted 41 dBu contour coverage model filed according to WMCN-DT's construction permit cannot be considered.

modifying its market to include the communities located at Comcast's Brick headend at a later date when its tower issues have been resolved. Consequently, we deny WMCN-DT's request regarding the communities served from Comcast's Brick headend.

24. The third statutory factor 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."⁸¹ We believe that Congress did not intend this factor to bar a request to modify a DMA when other stations could 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.⁸² In relation to programming, WMCN-DT demonstrates that it will provide some local programming of interest to the cable communities.

25. With regard to the Longley-Rice studies, we note that although we are granting WMCN-DT's modification request for the majority of the cable communities, it was unnecessary to rely on the Longley-Rice studies filed. WMCN-DT submitted two separate studies relating to operations under a construction permit and to its STA. The Longley-Rice study reflecting operation under the construction permit is not probative because it does not reflect the Station's current operations. The second Longley-Rice study filed was conducted pursuant to the STA, under which WMCN-DT is currently authorized to operate. Neither Longley-Rice study was accompanied by information disclosing whether they were conducted in accordance with the parameters set out in the Commission's Office of Engineering and Technology's Bulletin 69.⁸³ WMCN-DT's failure to provide information regarding interference and other necessary engineering variables limited our analysis to other information submitted that supported the grant of WMCN-DT's modification request.

⁸¹ 47 C.F.R. § 76.59(b).

⁸² See, e.g. *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

⁸³ *Market Modification Final Report and Order*, 14 FCC Rcd at 8388 n.135 [Longley-Rice Methodology for Evaluating TV Coverage and Interference, OET Bulletin 69, Federal Communications Commission].

26. In view of the above, carriage of the station's signal is reasonable and appropriate under the Act and the Commission's rules. With regard to the following cable communities in Ocean County, WMCN-DT has presented evidence in the record to support its request: Stafford, Berkeley, Barnegat, Beachwood, Pine Beach, Ocean Gate, South Toms River, Lacey, Dover, Eagleswood, Tuckerton, Little Egg Harbor, Island Heights, Ocean Beach, Crestwood, Manchester, Lakehurst, Manahawkin, Beach Haven, Harvey Cedars, Long Beach, Ship Bottom, Surf City, and Barnegat Light.

IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-6278-A), filed by Lenfest Broadcasting, LLC **IS GRANTED IN PART**, as indicated herein.

28. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.⁸⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

⁸⁴ 47 C.F.R. § 0.283.