

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

In the Matter of:)	
)	
Withers Broadcasting Company of West Virginia, Licensee of WDTV(TV), Weston, West Virginia)	CSR-6915-A
)	
Petition For Modification of the Clarksburg- Weston, West Virginia DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2005

Released: November 8, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Withers Broadcasting Company of West Virginia, licensee of television broadcast station WDTV (Ch. 5), Weston, West Virginia (WDTV), filed the above-captioned petition for special relief. WDTV seeks to modify the Clarksburg-Weston, West Virginia designated market area to include communities, for example, Morgantown and Westover, in Monongalia County, West Virginia (cable communities) for the purposes of the Commission's cable television mandatory broadcast signal carriage rules.¹ Oppositions to the petition were filed by broadcast stations WPGH(TV) and KDKA(TV), Pittsburgh, Pennsylvania. WDTV filed a reply. For the reasons discussed below, we dismiss WDTV's petition without prejudice.

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.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹Besides the cities of Morgantown and Westover, WDTV lists the towns of Blacksville, Granville, Osage and Star City, and "All Unincorporated Areas Within Monongalia County" as areas it seeks to include in the Clarksburg-Weston, West Virginia DMA. Petition at cover pages and i.

²8 FCC Rcd 2965, 2976-1977 (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). Section 76.55(e) requires that a commercial broadcast television station's market be defined by
(continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. The Act also directs the Commission to consider changes in market areas in the interest of localism, and provides factors to guide the Commission when it considers modifying a market.⁴

3. The Commission, moreover, in its *Modification Final Report and Order*, adopted rules⁵ to promote administrative efficiency by requiring standardized evidence in petitions to modify markets. The following evidence is required to 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.⁶

(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 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.⁷

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Nielsen Media Research's DMAs. 47 C.F.R. §76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("*Modification Final Report and Order*").

⁴47 U.S.C. §534(h)(1)(C).

⁵*Supra* n. 3, 47 C.F.R. §76.59(b).

⁶The 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.

⁷47 C.F.R. §76.59(b). *E.g.*, *Time Warner Entertainment-Advance/Newhouse Partnership*, 20 FCC Rcd 5213 (2005).

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 with a filing fee.⁸ The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

III. DISCUSSION

4. WDTV failed to comply with the requirements of the *Modification Final Report and Order* and Section 76.59(b) of the Commission's rules. While WDTV provided a map showing WDTV's predicted Grade B signal contour, it did not provide a map clearly illustrating station transmitter site, cable headend location, the relevant cable communities and their distances from WDTV's transmitter site, and terrain features that might affect station reception (evidence requirement 1 and 2 above).⁹ The information provided is not sufficient to make a reasoned analysis.

5. In addition, WDTV failed to provide other information indicated above, which may be relevant. No data was provided on shopping and labor patterns in the cable communities reflecting how they might be part of the Clarksburg-Weston DMA. WDTV also failed to include programming information based on station logs or published television guides. Although WDTV described in very general terms its programming directed to the cable communities and supplied some transcripts, stations usually offer a list of these programs or a copy of television guide listings (including name of program, general content of program and time period). Finally, WDTV did not provide ratings data beyond 2003. In light of WDTV's failure to provide information specified by Section 76.59, its petition for special relief is dismissed without prejudice. WDTV may re-file its request.

IV. ORDERING CLAUSES

6. 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, that the petition for special relief, filed by Withers Broadcasting company of West Virginia **IS DISMISSED WITHOUT PREJUDICE**.¹⁰

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

⁸47 C.F.R. §76.59(c).

⁹47 C.F.R. §76.59(b).

¹⁰47 U.S.C. §534(h), 47 C.F.R. §76.59(c).

¹¹47 C.F.R. §0.283.