

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

In the Matter of)
)
Tennessee Broadcasting Partners) CSR-7596-A
)
For Modification of the Television Market for)
WBBJ-TV/DT, Jackson, Tennessee)

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2008

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By the Senior Deputy Chief, Policy Division, Media Bureau:

TABLE OF CONTENTS

Heading	Paragraph
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	5
A. Historic Signal Carriage	5
B. Station Coverage and Local Service	11
i. Grade B Contour and Longley-Rice Analysis	12
ii. Geographic Proximity	18
iii. Programming Targeted to the Communities	22
iv. Shopping and Labor Patterns	38
C. Carriage of Other Stations	49
D. Station Audience and Viewing Patterns	50
IV. SUMMARY AND ANALYSIS	61
V. ORDERING CLAUSES	76

I. INTRODUCTION

1. Tennessee Broadcasting Partners (“Tennessee Broadcasting”), a wholly-owned subsidiary of Bahakel Communications and licensee of ABC-affiliate WBBJ-TV/DT, Jackson, Tennessee (“WBBJ”), filed the above-captioned petition for special relief seeking to modify the must-carry television market of WBBJ-TV, Jackson, TN, to include 37 cable communities located within the Nashville, Memphis,

Paducah-Cape Girardeau-Harrisburg, and Columbus-Tupelo DMAs.¹ Young Broadcasting of Nashville, LLC (“Young”), a general partner of WKRN, G.P., licensee of WKRN-TV, Nashville, TN, an ABC-affiliate in the Nashville DMA, filed an opposition to the inclusion of 14 of the communities identified by WBBJ.² Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”), licensee of station WPTY-TV, Memphis, TN, an ABC-affiliate serving the Memphis DMA, and WSIL-TV, Inc. (“WSIL”), licensee of WSIL-TV, Harrisburg, IL, and an ABC-affiliate in the Paducah-Cape Girardeau-Harrisburg DMA (“Paducah DMA”) serving the Kentucky Communities, also both oppose WBBJ’s petition.³ Thus, of the 37 locales included in the petition, 26 are contested by the broadcasters and 11 are not. WBBJ has replied to all three oppositions. For the reasons discussed, we grant in part and deny in part WBBJ’s Petition to the extent indicated below.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in the *Report and Order on the Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.⁴ A station’s market for

¹See Petition for Special Relief of Tennessee Broadcasting Partners, filed Oct. 4, 2007, at Exhibit A (“WBBJ Petition”). WBBJ is seeking to add the following communities in the Nashville DMA: Camden (Benton County, TN), Parsons, Perryville and Scotts Hill (Decatur County, TN), Cottage Grove, Henry, McKenzie, Paris, and Puryear (Henry County, TN), Linden and Lobelville (Perry County, TN), and Clifton, Collinwood, and Waynesboro (Wayne County, TN); in the Memphis DMA: Corinth and Rienzi (Alcorn County, MS), Alamo (Crockett County, TN), Dyersburg and Newbern (Dyer County, TN), Bolivar (Hardeman County, TN), Brownsville (Haywood, TN), Ripley (Lauderdale, TN), Selmer (McNairy County, TN), the unincorporated portions of McNairy County itself, Covington (Tipton County, TN); in the Paducah-Cape Girardeau-Harrisburg DMA: Hazel and Murray (Calloway County, KY), Fulton and Hickman (Fulton County, KY), Mayfield (Graves County, KY), Tiptonville (Lake County, TN), Union City (Obion County, TN), and Dresden and Martin (Weakley, TN); in the Columbus-Tupelo DMA: Belmont, Burnsville, and Iuka (Tishomingo, MS). See Petition Exhibit A.

²The communities and/or county areas relevant to Young’s opposition are the fourteen (14) communities of Camden, in Benton County, TN; Parsons, Perryville and Scotts Hill in Decatur County, TN; Cottage Grove, Henry, Paris, Puryear, and McKenzie in Henry County, TN; Linden and Lobelville in Perry County, TN; and, Clifton, Collinwood, and Waynesboro, in Wayne County, TN – each of which is located in the Nashville Designated Market Area (collectively, the “Nashville Communities”). Opposition to Petition for Special Relief, Young Broadcasting of Nashville, LLC, Oct. 25, 2007, at 1. (“*Young Opposition*”)

³Clear Channel opposes the petition with respect to the six communities of Corinth and Rienzi in Alcorn County, MS; Ripley in Lauderdale County, TN; Convington in Tipton County, TN; and, Dyersburg and Newbern in Dyer County, TN (collectively, the “Memphis Communities”). Opposition to Petition for Special Relief, Clear Channel Broadcasting Licenses, Inc., Nov. 15, 2007, at 1-2. Clear Channel also opposes WBBJ’s request to add McNairy County on the grounds that decisions must be made on a community and not a county basis. *Id.* at 2 n.2. (“*Clear Channel Opposition*”) WBBJ responds that it is attempting to add the “unincorporated portions” of McNairy County, which have been granted a Community Unit Identification Number and can be analyzed in the instant market modification proceeding. See *infra* para. 9 and n.26.

WSIL opposes the petition with respect to the five communities of Hazel and Murray, in Calloway County, KY; Fulton and Hickman, in Fulton County, KY, and Mayfield in Graves County, KY (collectively, the “Kentucky Communities”). Opposition to Petition for Special Relief, WSIL-TV, Inc., October 24, 2007, at 1. (“*WSIL Opposition*”)

⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, MM Docket No. 92-259, 8 FCC Rcd 2965, 2976-77, ¶¶ 42-47 (1993) (“*Must Carry Order*”); See also 47 (continued...)

this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁵ 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.⁶

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C)(i) 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.⁷

In reviewing 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.⁸

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

(...continued from previous page)
C.F.R. § 76.59.

⁵Section 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* 47 C.F.R. § 76.55(e).

⁶For a more complete description of how counties are allocated, *see* Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁷47 U.S.C. §534(h)(1)(C)(i).

⁸47 U.S.C. §534(h)(1)(C)(ii).

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.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.¹⁰

4. In the *Market Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for market modification petitions.¹¹ This approach was codified in that rulemaking, and the rule requires that 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.¹²

⁹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

¹⁰*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

¹¹ See *In the Matter of the Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, CS Docket No. 95-178, 14 FCC Rcd 8366, 8387, ¶ 49 (1999) ("*Market Modification Final Report and Order*").

¹²The 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 the second factor of the market modification test. See *Market Modification Final Report and Order*, 14 FCC Rcd at 8388, ¶ 50.

- (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.¹³

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.¹⁴ The *Market Modification Final Report and Order* also provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.¹⁵

III. DISCUSSION

A. Historic Signal Carriage

5. 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.”¹⁶ Such carriage can serve to demonstrate that there is a “market nexus” between the broadcast station and the communities where the station is carried and thus provide evidence as to the scope of a station’s market.¹⁷ As further discussed below, we believe WBBJ has established consistent, historic cable carriage for all but two of the communities under consideration – Cottage Grove and Rienzi.

6. WBBJ argues that when Congress enacted the 1992 Cable Act, 18 cable operators distributed WBBJ’s signal to at least 31 of the 37 cable communities at issue here, and possibly the six remaining communities as well, whereas today, cable operators deliver WBBJ’s signal to all of these cable communities pursuant to voluntary retransmission consent agreements.¹⁸ Consequently, WBBJ maintains that in no way will granting its Petition compel any cable operator to launch a signal that it does not now

¹³ 47 C.F.R. § 76.59(b)(1)-(6).

¹⁴ 47 C.F.R. § 76.59(c).

¹⁵ See 14 FCC Rcd at 8388, ¶ 52, n.141 (citing *Market Modification and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267-68, ¶ 10 (1997)).

¹⁶ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

¹⁷ See *Paxson Atlanta License, Inc.*, 13 FCC Rcd 5735, ¶ 21 (1996).

¹⁸ WBBJ Petition at 4, n.11, and Exhibit A.

voluntarily carry.¹⁹

7. In opposition, both Clear Channel and Young argue that WBBJ has not made a sufficient demonstration of historical and continuing carriage on the cable systems because it has not provided independent documentary evidence – using line-up cards or guide listings – to support its claims of continued and current coverage since 1992.²⁰ WSIL did not dispute WBBJ’s historic carriage in the Kentucky Communities.²¹

8. In its Reply, WBBJ supplements its filings and provides evidence of historic cable carriage for almost all the contested and uncontested communities at issue for the years 1998 and 2003, as well as online channel line-up data for 2007.²² Relying upon WBBJ’s data, the evidence shows that the subject cable systems carried WBBJ in 1992 in all 37 communities listed except in Rienzi, Cottage Grove, and Puryear. For 1998, cable systems carried WBBJ in every community except Rienzi, Cottage Grove, and Puryear. For 2003, cable systems appear to have carried WBBJ in every community except Rienzi and Cottage Grove. Finally, in 2007, cable systems carried WBBJ in every community except Cottage Grove.²³ Furthermore, WBBJ has asserted that its carriage in Rienzi since 2004 is sufficient history of carriage to meet the first statutory factor,²⁴ and WBBJ has apparently been carried in Puryear slightly longer than carriage in Rienzi.

9. In its opposition, Clear Channel objects to WBBJ’s addition of McNairy County to WBBJ’s market because it argues that the Commission does not evaluate market modification requests on a county basis.²⁵ WBBJ responds to Clear Channel that unincorporated McNairy County has “community” status for purposes of the retransmission consent agreements which WBBJ has entered with the cable system serving this community, that the Commission has assigned a Community ID to McNairy County, and that for rural areas such as this community, inclusion of references to unincorporated portions of a county have been analyzed by the Commission in its modification decisions.²⁶ Accordingly, we treat the unincorporated portions of McNairy County as a community for purposes of this action.

¹⁹ *Id.* at 4.

²⁰ Young Opposition at 2-3 (citing WBBJ Petition at Exhibit A); Clear Channel Opposition at 2, n.4 (citing WBBJ Petition at Exhibit A) (stating that at most, WBBJ’s evidence shows some Memphis Communities were carried in 1992).

²¹ WSIL Opposition at 2.

²² Unified Reply to Oppositions to Petition for Special Relief by Tennessee Broadcasting Partners, filed November 29, 2007 (“WBBJ Reply”), at 4-7, and Appendices Memphis-1 (“M-1”), M-2, M-3, Nashville-1 (“N-1”), N2, Paducah-1 (“P-1”), P-2, P-3, and P-4 (citing the 1998 and 2003 *Television and Cable Fact Books* and online channel lineup data).

²³ *Id.* Though WBBJ did not attach a copy of the consent agreement, it asserted it should have been carried in Cottage Grove by West Kentucky Rural Telephone Cooperative Corp. pursuant to a 2006 retransmission consent agreement, a mistake the operator is apparently correcting. *Id.* at 6. In addition to the data provided, according to Commission records, Rienzi lost cable carriage on Dec. 31, 2005, but Rienzi is presently serviced by virtue of Time Warner Cable’s provision of service to Kossuth, MS, and this system now carries WBBJ (and Memphis ABC-affiliate, WPTY). 2007 *Television and Cable Factbook* at 861.

²⁴ *Id.* at n.10.

²⁵ Clear Channel Opposition at 2 and n.2.

²⁶ WBBJ Reply at 5-6, n.12.

10. Furthermore, WBBJ argues the Bureau often concluded that “carriage by a cable system of a collocated station is frequently a reflection that these stations are part of the cable system’s market”²⁷ and adds “significant weight” to a subject station’s satisfaction of the statutory criteria.²⁸ In light of this consideration, WBBJ points out that pursuant to a prior Commission market modification order, its sole commercial Jackson DMA competitor, WJKT-TV, has enjoyed both cable carriage and must carry status for over 12 years in four communities it is seeking to add: Alamo in Crocket County, TN, Dyersburg and Newbern in Dyer County, TN, and Selmer in McNairy County, TN.²⁹ WBBJ has urged comparable carriage for itself in these same four communities so that its ability to compete with WJKT would not be adversely affected.³⁰ Clear Channel contests this,³¹ but we note that Section 614(h)(1)(C)(ii)(I) requires that we consider not only whether cable systems carry the station that is the subject of the market modification petition, but also whether “...other stations located in the same area, have been historically carried on the cable system...”³² Carriage by cable systems of competing stations such as WJKT in the same communities provides evidence of those communities’ interest in programming out of the Jackson DMA, and because WBBJ does not have carriage there, puts WBBJ at a distinct competitive disadvantage in those communities.³³ Although issued over a decade ago, the carriage by other cable systems of WJKT in Alamo, Selmer, Dyersburg, and Newbern provides significant weight that these communities should also be included in WBBJ’s market.

B. Station Coverage and Local Service

11. Second, we consider “whether the television station provides coverage or other local service to such community.”³⁴ To show that a station provides coverage or other local service to the cable communities, parties may demonstrate that the station places at least a Grade B coverage contour over the cable community, or is located close to the community in terms of mileage.³⁵ A station’s broadcasting of local programming which has a distinct nexus to the cable communities is also evidence of local service.³⁶ Discussed below are the differing degrees of signal coverage received by the subject communities, the distances between these communities and the relevant stations’ cities of license, and the

²⁷ *Id.* at 3-4 (citing *Ackerley Media Group, Inc.*, 18 FCC Rcd 16199, 16203, ¶ 9 (2003)).

²⁸ *Id.* at 5 (citing *Brenmor Cable Partners, L.P.*, 14 FCC Rcd 11742, 11753, ¶ 32 (1999)).

²⁹ *Id.* at 5-6 (citing *Television Mktg. Group of Jackson, Inc.*, 10 FCC Rcd 5002, 5005, ¶ 15 (1995) (“*WMTU Decision*”). The Commission found it logical to include Alamo, Selmer, Dyersburg, and Newbern (among other communities) in the market area of Jackson’s WJKT (formerly WMTU), and noted in particular as part of its determination that cable systems in each of these communities carried then competitor, WBBJ, in 1995. *WMTU Decision* at 5003-5004, ¶¶ 10-12.

³⁰ *Id.* at 6.

³¹ Clear Channel opposes this contention, arguing that the 1995 opinion added only two of the Memphis Communities at issue: Dyersburg and Newbern, and further argues that this twelve-year old decision should have little bearing on a WBBJ’s petition. Clear Channel Opposition at n.2.

³² 47 U.S.C. § 534(h)(1)(C)(ii)(I); *see also USA Station Group P’ship of Hollywood, FL*, 14 FCC Rcd 7211, 7217, ¶ 13.

³³ *WMTU Decision* at 5004, ¶ 13.

³⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(II).

³⁵ *Must Carry Order*, 8 FCC Rcd at 2977, ¶ 47.

³⁶ *See Time Warner Entm’t*, 11 FCC Rcd 6541, 6553, ¶ 25 (1996).

amount of broadcast programming received by each community. Each of these values and parameters alone is not outcome determinative, but considered together with the other parts of the market modification test discussed herein, they lead to the conclusion that some of the subject communities should be added to WBBJ's market, whereas others should not.

i. Grade B Contour and Longley-Rice Analysis

12. WBBJ maintains that, as demonstrated by the Grade B Contour Maps and Longley-Rice engineering study it submitted with its Petition,³⁷ almost all of the communities at issue receive its signal.³⁸

13. In its Opposition, Young contests WBBJ's showing with respect to eight communities, pointing out that WBBJ did not appear to entirely place a Grade B contour over at least two Nashville Communities, Puryear and Collinwood, failed to place a Grade B signal over Lobelville, Linden, and Waynesboro, failed to place a Grade B signal over the entirety of Paris and Perryville, and left Cottage Grove too indeterminately marked to make an adequate showing.³⁹ As a result, Young cites precedent it asserts bars these communities from being added to WBBJ's must carry market.⁴⁰

14. WBBJ replies that of the 14 Nashville Communities, Young's opposition concedes that all but two – Puryear and Collinwood – are within WBBJ's Grade B contour, and even these two receive partial Grade B coverage.⁴¹ Furthermore, WBBJ argues that its failure to cover Lobelville, Linden, Waynesboro, and the entirety of Paris, and Perryville would not bar it from modifying its market as to these communities because of other factors such as historic cable carriage and local programming.⁴²

15. In its Opposition, Clear Channel argued that each of the Memphis Communities is located on the outer edge of WBBJ's Grade B Countour, and WBBJ does not deliver a Grade B intensity signal over the entirety of the Memphis Communities.⁴³ WBBJ responds that with the exception of Rienzi, it places its Grade B contour over the Memphis Communities and that these same communities receive Grade B coverage according to Longley-Rice analysis.⁴⁴

16. In its Opposition, WSIL asserted that WBBJ does not place a Grade B contour over any of the Kentucky Communities, fails to place a signal of Grade B intensity over Murray, Mayfield, or Hickman, KY, and that the location of Hazel, KY, is too indeterminately marked for a necessary showing

³⁷ WBBJ Petition at Exhibit B (Engineering Maps prepared by du Treil, Lundin & Rackley, Inc.).

³⁸ *Id.* at 7-8.

³⁹ Young Opposition at 3-4.

⁴⁰ *Id.* (citing *Community Television Sys., Inc.*, 15 FCC Rcd 7275, 7276-77, ¶¶ 3-4 (2000) (communities excluded from a station's market because Longley-Rice study showed them to be outside the station's Grade B contour); *Comcast Cablevision of Gloucester County, Inc.*, 14 FCC Rcd 12136, 12145, ¶ 26 (1999) ("Spotty at best" Longley-Rice coverage bolstered determination that communities were outside station's local market)).

⁴¹ WBBJ Reply at 11.

⁴² *Id.* at 12.

⁴³ Clear Channel Opposition at 3.

⁴⁴ WBBJ Reply at 7 and Exhibit M-5. Furthermore, WBBJ argues that 74 percent of the area and 84 percent of the population of Rienzi is inside the station's Grade B contour, but this would not prevent a market modification for Rienzi. *Id.* at 7 (citing Ex. M-6, Statement of John Lundin).

as to this community.⁴⁵ WBBJ admits that the Paducah, KY Communities lie just a few miles beyond WBBJ's standard Grade B contour and just outside the areas that receive Grade B service according to a Longley-Rice analysis; however, it asserts that location at the fringe has not been determinative in prior decisions, particularly when the subject communities were geographically closer than the objector's community.⁴⁶

17. Based upon the evidence, we find all of the communities are predicted to receive Grade B coverage pursuant to Longley-Rice analysis, with the exception of the following: Camden, Rienzi, Perryville, Clifton, Collinwood, Waynesboro, Paris, and Puryear receive partial Longley-Rice coverage, Belmont, Burnsville, Iuka, Linden, Lobelville, and Tiptonville receive little to no coverage, or coverage that is *de minimis*, and Hazel, Murray, Hickman, and Mayfield are predicted to receive no Longley-Rice coverage. Furthermore, we find that all of the communities fall within WBBJ's Grade B contour line with the exception of the following: Belmont, Iuka, Tiptonville, Hazel, Murray, Fulton, Hickman, and Mayfield clearly fall outside the Grade B contour line, and Rienzi, Burnsville, Collinwood, and Puryear fall on the Grade B contour line.

ii. Geographic Proximity

18. Next, as WBBJ notes, the Commission has identified a station's close proximity "to the community in terms of mileage" as information that helps the Bureau determine whether the station satisfies the second statutory factor.⁴⁷ WBBJ asserts that its city of license, Jackson, TN, is located on average, just 51.5 miles from all of the cable communities at issue, and argues that the Commission has added communities to a station's must-carry market when similarly insubstantial and even greater distances separated communities from a station seeking market modification.⁴⁸ Furthermore, WBBJ argues no mountains or other natural geographic boundaries separate Jackson from the communities.⁴⁹

19. Young states that that the Nashville Communities themselves are, on average, 51.5 miles distant from Jackson and asserts that this works against WBBJ's assertions of proximity because the Commission has found 47 miles to not be closely proximate.⁵⁰ Young argues that lack of Grade B coverage in conjunction with these distances proves the Nashville Communities cannot be considered local under precedent.⁵¹ WBBJ replies that all 14 of the Nashville Communities are geographically closer to Jackson than Nashville – where Young's WKRN broadcasts.⁵² WBBJ asserts the Nashville Communities' distance from Jackson ranges between 34 and 69 miles, whereas their distance to Nashville itself varies between 64 and 97 miles – an average of 84.2 miles between the Nashville Communities at issue and Nashville itself – making the average distance to Jackson closer in

⁴⁵ WSIL Opposition at 2.

⁴⁶ WBBJ Reply at 15.

⁴⁷ *Id.* at 8 (citing 8 FCC Rcd at 2977, ¶ 47).

⁴⁸ *Id.* at 8.

⁴⁹ *Id.* at 9.

⁵⁰ Young Opposition at 4-5.

⁵¹ *Id.* at 4.

⁵² WBBJ Reply at 11.

comparison.⁵³

20. Clear Channel argues in its opposition that the 47 mile average distance between the Memphis Communities and Jackson argues against a determination of proximity.⁵⁴ WBBJ responds to Clear Channel that market modification has been granted even when distances ranged from 55-100 miles and some counties were outside Grade B.⁵⁵ WBBJ points out that Clear Channel's WPTY is on average 69.3 miles from the communities it serves – farther than the average distance of these Memphis Communities from Jackson.⁵⁶ Of the six Memphis Communities, all of them are farther from Memphis than they are from Jackson, except for Covington, which is in fact closer to Memphis than to Jackson.⁵⁷

21. Finally, WSIL objects that each of the Kentucky Communities is on average 69 miles distant from Jackson, TN, and that communities 60 miles distant and outside the Grade B contour are routinely regarded by the Commission as too far to be local.⁵⁸ WBBJ responds that as was true with the other two DMAs, WSIL's Paducah Communities are geographically much closer (on average 68.8 miles) to its community of license of Jackson, than to WSIL's community of license of Harrisburg, IL (on average 81.6 miles).⁵⁹ As argued above, WBBJ again states that location on the fringe of a Grade B contour has been overlooked in the past, particularly when the subject communities are closer than the objector's community.⁶⁰

iii. Programming Targeted to the Communities

22. Third, a station's broadcast of local programming, which has a distinct nexus to the communities, is also evidence of local service.⁶¹ WBBJ argues it meets this criterion by airing local news, weather, sports, community events, agricultural, and religious programming that is specifically targeted to the communities at issue, and some of which has included shows and segments produced in the communities by the residents there.⁶² Specifically, it has provided exhibits⁶³ which provide a representative sample of more than 300 local news segments WBBJ has targeted at the local cable communities, including live coverage of breaking news, tornadoes and earthquakes, prison escapes, local government expenditures, school closings, factory openings, Civil War reenactments, local blood drives, and fish fries.⁶⁴ WBBJ also reports on elections and political events (including up-to-the-minute election night reports), municipal referenda, public officials' retirements and deaths, campaign events, and

⁵³ *Id.* at 11.

⁵⁴ Clear Channel Opposition at 3.

⁵⁵ WBBJ Reply at 8, n.17.

⁵⁶ *Id.* at 8. *See also* Petition at Exhibit C.

⁵⁷ WBBJ has stated that both Ripley and Covington were closer to Memphis than to Jackson, but the Commission's own determination proves that only Covington is closer to Memphis.

⁵⁸ WSIL Opposition at 2.

⁵⁹ WBBJ Reply at 15.

⁶⁰ *Id.*

⁶¹ *See Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, ¶ 24 (1999).

⁶² WBBJ Petition at 10-11.

⁶³ *Id.* at Exhibit C; WBBJ Reply at Exhibits M-7 and N-3.

⁶⁴ WBBJ Petition at 11.

election-related litigation.⁶⁵ WBBJ also covers both national and local sports events, including every minor league game of the West Tennessee Diamond Jaxx with pre-season shows, local high school football highlights on the “Fifth Quarter” show, NASCAR coverage; the annual Rally Tennessee racing event in Perry County, “Ken Freeman Outdoors” – a regularly scheduled 30-minute program with a host from Adamsville, McNairy County, TN, and “Take it Outdoors” – a fishing program produced in Camden, Benton County, TN.⁶⁶ WBBJ also airs “Ag Day” – a syndicated agricultural program delivering critical news to rural viewers – and “In Touch” – a daily religious program, in addition to Sunday broadcasts of “Love and Truth Church” and “First Baptist Church.”⁶⁷ WBBJ broadcasts public service announcements for charity fundraisers, chamber of commerce promotions, agricultural fairs, high school theater productions, and musical events.⁶⁸ Finally, it further points out that it has strong community outreach as demonstrated by recent visits to schools in Martin, Linden, and Parsons, by allowing student groups from Dyersburg, and Benton, Henry, McNairy, and Perry Counties to tour its station, by providing notice of community events through an on-line calendar, and by raising money for public interest causes, such as the Red Cross.⁶⁹

23. Young argues in its Opposition that WBBJ’s evidence shows it has provided only *de minimis* local coverage of the Nashville Communities since 2001, providing only 19 stories directed specifically to the Nashville Communities themselves.⁷⁰

24. With respect to Wayne County (Clifton, Collinwood and Waynesboro), Young argues WBBJ covered one story more than 4.5 years ago, involving Wayne County (and three other counties in the same single story) and one other story more than 6.5 years ago, but provides no specific coverage to any of the communities of Clifton, Collinwood, or Waynesboro.⁷¹ WBBJ replies that Clifton, Collinwood, and Waynesboro have received one, one, and three stories each, respectively, out of what appear to be 20 stories concerning Wayne County from March 2002 through October 2007.⁷²

25. With respect to Perry County (Linden and Lobelville), Young argues WBBJ only broadcast six stories dealing with Perry County generally, two stories dealing specifically with Linden, and no stories dealing specifically with Lobelville – all in 2007, when WBBJ must have contemplated filing its petition.⁷³ WBBJ replies that it has produced four stories for Linden and two for Lobelville, and this appears to be from a total of 33 stories for Perry County from April 2001 through April 2007.⁷⁴ The Mayors of the City of Lobelville and Perry County as well as the Director of Schools in Perry County urge the importance of WBBJ because their residents are located between Jackson and Nashville (or work or have family in WBBJ’s broadcast region) and rely on coverage from both areas, and they note

⁶⁵ *Id.* at 11.

⁶⁶ *Id.* at 11-12.

⁶⁷ *Id.* at 12.

⁶⁸ *Id.*

⁶⁹ *Id.* at 14.

⁷⁰ Young Opposition at 6.

⁷¹ *Id.* at 5.

⁷² WBBJ Reply at 13 and Appendix N-3.

⁷³ Young Opposition at 5.

⁷⁴ WBBJ Reply at 13 and Appendix N-3.

that WBBJ's severe weather updates may not be available from other Nashville stations and are important, particularly for local school closings.⁷⁵ The Executive Director of the Perry County Chamber of Commerce supports carriage of WBBJ for its coverage of local news and sports, up-to-the-minute weather and school closing reports, as well as coverage of the annual Rally Tennessee event.⁷⁶

26. With respect to Decatur County (Parsons, Perryville, and Scotts Hill), Young argues WBBJ covered 21 stories dealing with Decatur County generally, but provided only three stories specifically for Parsons, and none for Perryville or Scotts Hill.⁷⁷ WBBJ replies that it has produced 22 stories for Parsons and one story each for Perryville and Scotts Hill out of a total of 49 stories for Decatur County between April 2003 and October 2007.⁷⁸

27. With respect to Henry County (Cottage Grove, Henry, Paris, Puryear, and McKenzie), Young argues WBBJ covered fourteen stories dealing generally with Henry County over 5.5 years, and it provided coverage of 12 stories regarding Paris and one story covering Puryear, but provided no specific coverage of Cottage Grove, Henry, or McKenzie.⁷⁹ WBBJ responds that it has produced 60 stories for Paris, three stories for Puryear, and one for McKenzie out of a total of 84 stories for Henry County from May 2002 through November 2007.⁸⁰ Furthermore, the Mayor of the City of Paris urges the carriage of WBBJ because it offers news, weather, and sports events to 250,000 homes not covered by Memphis and Nashville stations, and because it is one of the only stations that can be picked up over-the-air in rural areas.⁸¹ The Mayor of Henry County similarly supports WBBJ carriage for its news and weather coverage which may have saved lives in the tornado season of 2005.⁸² Representatives of the Henry County Alliance and Paris-Henry Chamber of Commerce also have written to discuss local businesses' reliance on WBBJ for co-op advertising and as the only major network affiliate covering local events.⁸³

28. With respect to Benton County (Camden), Young points out WBBJ provided 21 stories dealing with Benton County generally, but provided specific coverage of Camden in only one story.⁸⁴ WBBJ replies that it provided 37 stories with respect to Camden,⁸⁵ out of what appear to be 64 stories regarding Benton County from June 2004 through October 2007.⁸⁶ The Mayor of Benton County also supports WBBJ carriage and finds its coverage more accurate and valuable to Benton County than that from Nashville stations, and notes both the greater geographic proximity of the Jackson station and the reliance of residents on WBBJ for news and severe weather warnings.⁸⁷ The Executive Director of the

⁷⁵ WBBJ Petition at 13 and Exhibits D-5, D-6, and D-7.

⁷⁶ *Id.* at 13 and Exhibit D-13.

⁷⁷ Young Opposition at 5.

⁷⁸ WBBJ Reply at 13 and Appendix N-3.

⁷⁹ Young Opposition at 6.

⁸⁰ WBBJ Reply at 13 and Appendix N-3.

⁸¹ WBBJ Petition at 13 and Exhibit D-1.

⁸² *Id.* at 13 and Exhibit D-3.

⁸³ *Id.* at 13 and Exhibits D-10 and D-12.

⁸⁴ Young Opposition at 6.

⁸⁵ WBBJ Reply at 13 and Appendix N-3.

⁸⁶ *Id.* at Exhibit N-3.

Benton County/Camden Chamber of Commerce also writes to express that residents find WBBJ's coverage more timely, accurate, and valuable than that from other Nashville stations, particularly for weather and school-closings information.⁸⁸

29. Furthermore, WBBJ argues that its weather coverage extends to all the communities with Paris and Parsons designated on its weather map for years and all counties including the Nashville Communities also on the map.⁸⁹ WBBJ's "Fifth Quarter" sports show has also provided video and rundowns of high school football games for at least nine years, and in the 2007 season it provided 15 stories for Camden, three for Collinwood, one for Covington, two for Linden, 19 for McKenzie, nine for Paris and six for Waynesboro.⁹⁰ WBBJ has also produced two 15-minute local programs it airs each week, such as "Tennessee River Arts" which is produced in Perryville and features local art and music,⁹¹ "In Good Company," produced at the station and highlighting charities, events, and interesting personalities,⁹² and it recognizes local teachers in a weekly segment entitled "Teacher of the Week."⁹³ WBBJ claims residents of the Nashville Communities also turn to WBBJ to spread the word about upcoming events, and the station's "Community Calendar" program has aired the following segments: three events in Camden, one in Henry, four in Linden, four in McKenzie, three in Paris, one in Perryville, one in Puryear, and three in Scotts Hill,⁹⁴ and public service announcements have also featured Parsons (eight), Linden (three), and Camden (one).⁹⁵ Finally community leaders have written to praise WBBJ's local service.⁹⁶

30. With respect to the Memphis Communities, Clear Channel argues that WBBJ has made an inadequate showing that it airs substantial programming tailored to the needs and interests of the following communities – and indeed no evidence that it provides any programming targeted to Rienzi.⁹⁷ Rather, Clear Channel argues, WBBJ provides evidence only that it broadcast on average two or three news segments per year dealing with issues pertinent to both the Memphis Communities and to Jackson, TN – a *de minimis* level of local coverage.⁹⁸ WBBJ contests its news coverage of the communities as *de minimis*, and argues there is not a plethora of news events occurring in these rural markets.⁹⁹

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⁸⁷ WBBJ Petition at 13 and Exhibit D-4.

⁸⁸ *Id.* at 13 and Exhibit D-11.

⁸⁹ *Id.* and Appendix G-1.

⁹⁰ *Id.* at 13-14, n.29, and Appendix G-2.

⁹¹ Over the last ten months, Tennessee River Arts has featured guests from Clifton on nine shows, from Linden on thirty-one shows, Lobelville on sixteen shows, Parsons for six shows, Perryville for eleven shows, and Scotts Hill on approximately six shows. *Id.* at 14.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 15.

⁹⁶ *Id.*

⁹⁷ Clear Channel Opposition at 3-4.

⁹⁸ *Id.* at 4.

⁹⁹ WBBJ Reply at 8. WBBJ also points to Exhibit C of its Petition where it asserts it documented hundreds
(continued...)

31. WBBJ argues that in Alcorn County (Corinth and Rienzi), it has produced 15 stories covering Corinth, with an additional two stories about Alcorn County, with the countywide total appearing to be 17 from September 2002 through April 2007.¹⁰⁰ WBBJ also notes that it is not surprising that Rienzi, MS, with a population of 330 residents as of the 2000 census, did not produce any news reports.¹⁰¹ The Corinth, MS, Theatre Arts' Board of Directors wrote to thank WBBJ for WBBJ's news and weather coverage, and particularly for the public service announcements and advertising WBBJ provides for this non-profit theatre as a courtesy.¹⁰²

32. In Dyer County (Dyersburg and Newbern), WBBJ states it has produced 15-plus stories covering events in Dyersburg and one on the nearby and much smaller community of Newbern, TN (with a dozen additional stories on events in surrounding Dyer County).¹⁰³ The Dyer County total appears to be 29 stories from March 2001 through April 2007.¹⁰⁴ In Lauderdale County (Ripley), WBBJ argues Ripley has received seven stories, with six additional stories about Lauderdale County for a county-wide total of 13 from June 2006 through April 2007.¹⁰⁵ Finally, with respect to Tipton County (Covington), WBBJ states it produced eight stories for Covington, Tennessee, with five additional stories about Tipton County for a county total of 13 stories from May 2003 through April 2007.¹⁰⁶

33. Based upon the Commission's review of WBBJ's filings on the unopposed counties in the Memphis DMA, Crocket County has a total of 25 stories from July 2003 through February 2007, with approximately 16 stories concerning Alamo;¹⁰⁷ 27 stories concerning Hardeman County from August 2004 through April 2007, with Bolivar having approximately 16 stories;¹⁰⁸ 22 stories concerning Haywood County from December 2004 through April 2007 with approximately 18 stories relating to Brownsville;¹⁰⁹ and 35 stories from McNairy County during November 2003 through August 2007, with approximately 24 stories related to Selmer.¹¹⁰ Furthermore, WBBJ argues that in weather reporting over

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of events in the almost 20 rural counties. *Id.*

¹⁰⁰ *Id.* at 9 and Appendix M-7; *see also* Petition at Exhibit C (listing 17 news stories from September 2002 through April 2007).

¹⁰¹ *Id.* at n.18.

¹⁰² WBBJ Petition at 14 and Exhibit D-14.

¹⁰³ WBBJ Reply at 9; *see also* Petition at Exhibit C (listing news stories from March 2001 through April 2007). WBBJ argues this number now reflects five additional stories for Dyersburg based upon closer review. *See id.* at n.18 and Appendix M-7.

¹⁰⁴ *Id.* at Appendix M-7.

¹⁰⁵ *Id.* at 9; *see also* Petition at Exhibit C (listing news stories from May 2002 through April 2007). WBBJ argues this number now reflects four additional stories for Ripley based upon closer review. *See* WBBJ Reply at n.18 and Appendix M-7.

¹⁰⁶ *Id.* at 9 and Appendix M-7; *see also* Petition at Exhibit C (listing 13 news stories from May 2003 through April 2007).

¹⁰⁷ *Id.* at Appendix M-7.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* The Commission is counting the Winkler murder and trial coverage as one story each because the number of stories related to each event is not specified in the record.

the past four years, WBBJ used a weather map that designated Dyersburg, Covington, Corinth, and Bolivar.¹¹¹ Furthermore, following its late evening newscasts on Friday nights in the fall, WBBJ broadcasts the “Fifth Quarter,” a show dedicated to covering video reports of six to ten local high school football games and scores and reports from other games – a rough tally showing eight reports on Covington, 20 reports on Dyersburg, 12 reports on Newbern, and nine on Ripley.¹¹² Various community groups have also run public service announcements through WBBJ in Dyersburg, Bolivar, and Corinth.¹¹³

34. WSIL argues concerning the Paducah Communities that WBBJ has not provided any local coverage evidence at all with respect to Mayfield and Hickman, KY. In Calloway County (Hazel and Murray), WSIL argues WBBJ directed only six news stories to Hazel and Murray, KY over the course of seven years, an average of less than one story per year for Calloway County, and less than a story per year per community.¹¹⁴ WBBJ argues it provided six stories to Calloway County (Hazel and Murray) from June 2002 through January 2007.¹¹⁵ In Fulton County (Fulton and Hickman), WSIL states that Fulton is the closest to WBBJ, and yet since 2001, WBBJ has only directed three stories to Fulton – each more than four years ago,¹¹⁶ and no stories regarding Hickman in Fulton County.¹¹⁷ WBBJ acknowledges that it provided three stories to Fulton County (Fulton) from July 2001 through June 2003. Finally, WSIL points out that WBBJ provides no programming to Mayfield in Graves County.¹¹⁸

35. WBBJ replies to WSIL that in addition to the news coverage discussed in its Petition, it provides weather coverage of the Paducah Communities, has covered football in Fulton, featured a guest on “Tennessee River Arts” from Murray, covered three events on “In Good Company” from Union City, and featured one item on a soldier from Mayfield stationed overseas.¹¹⁹ WBBJ also provides a letter from the County Judge/Executive of Graves County supporting WBBJ’s efforts in market modification.¹²⁰

36. The Commission’s analysis reveals that with respect to other counties in the Paducah DMA, Weakley County had a total of 28 stories between May 2002 and April 2007 with approximately 12 stories concerning Martin and two concerning Dresden;¹²¹ Obion County had seven stories with approximately three stories about Union City between March 2001 and January 2007,¹²² and Lake County had approximately 16 stories from November 2003 until February 2007 with approximately eight

¹¹¹ *Id.* at 9 and Appendix G-1.

¹¹² *Id.* at 10.

¹¹³ *Id.*

¹¹⁴ WSIL Opposition at 3.

¹¹⁵ WBBJ Petition at Exhibit C.

¹¹⁶ WSIL Opposition at 3.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ WBBJ Reply at 15-16 (citing Appendices G-1, G-2, N-4).

¹²⁰ WBBJ Petition at Exhibit D-15.

¹²¹ WBBJ Petition at Exhibit C.

¹²² *Id.* The Commission counts the Goodyear contract negotiations as one story because the number of stories related to the event is not set out in the record.

stories concerning Tiptonville.¹²³ WBBJ also asserts that the Mayor of Hornbeak, TN, which is served by the same cable system that serves Tiptonville, officially declared WBBJ as his community's "hometown news station" due to its delivery of news and weather programming, and particularly for its May 4-7, 2003, wall-to-wall tornado coverage.¹²⁴

37. Finally, with respect to the Columbus-Tupelo Communities, the unopposed counties in Tishomingo County had approximately three stories from June 2001 through April 2003 with apparently one story concerning Iuka.¹²⁵ WBBJ points out that the Executive Director of the Tishomingo County, Mississippi Development Foundation expressed Tishomingo residents' appreciation for WBBJ local news, sports, and weather coverage.¹²⁶

iv. Shopping and Labor Patterns

38. WBBJ also argues that shopping and labor patterns validate the inclusion of the above mentioned communities in WBBJ's must-carry market.¹²⁷ WBBJ asserts that advertising purchasing patterns between the Jackson DMA and the communities at issue also demonstrate WBBJ's place as a cross-border bridge between sellers and buyers in these different areas.¹²⁸ Many local businesses in the communities at issue rely on WBBJ for co-op advertising which they cannot purchase from Memphis, Nashville, or Paducah stations because of the geographic boundaries established by their parent companies.¹²⁹ Finally, WBBJ states that it carries advertising from clients based in a range of areas including the cable communities, and it includes a summary of such advertisers in these communities.¹³⁰

39. WBBJ states approximately 61,000 people live in Jackson, TN, the seat of Madison County.¹³¹ Madison County, and the 12 counties that surround it comprise the Jackson Retail Trade Area ("JRTA"), which area includes Weakley, Benton, Decatur, McNairy, Hardeman, Haywood, and Crockett – all home to cable communities at issue in this case.¹³² The JRTA generated \$4,954,692,000 in total retail sales in 2005, and WBBJ asserts much of this retail activity is due to people from counties in the JRTA but outside the Jackson DMA, such as Weakley, Benton, Decatur, McNairy, Hardeman, Haywood,

¹²³ *Id.*

¹²⁴ *Id.* at 13 and Exhibit D-8.

¹²⁵ *Id.*

¹²⁶ *Id.* at 13 and Exhibit D-9.

¹²⁷ *Id.* at 14.

¹²⁸ *Id.* at 18.

¹²⁹ *Id.* at 18 and n.56 (citing Exhibit D-10, Letter from Joe Mahan, CEO, Henry County Alliance, and Exhibit D-12, Letter from Michael Murphy, President, Paris-Henry County Chamber of Commerce).

¹³⁰ *Id.* at 18 and Exhibit E (Showing the following number of advertisers per county – six in Alcorn, one in Crockett, four in Dyer, two in Hardeman, three in Haywood, two in McNairy, one in Tipton, one in Benton, four in Decatur, three in Henry, one in Calloway, two in Graves, seven in Obion, and five in Weakley).

¹³¹ *Id.* at 15 and n.44 (citing U.S. Bureau of the Census, Population Estimates Program, Jackson, TN, 2003 Population Estimate, <http://www.fedstats.gov/qf/states/47/4737640.html>).

¹³² *Id.* at 15 and n.45 (citing Retail Statistics: Jackson Area Chamber of Commerce, http://www.jacksontn.com/economic_development/demographics/retail_statistics.html). WBBJ also points out that the only enclosed shopping mall between Memphis and Nashville, the Old Hickory Mall, is located in Jackson. *Id.*

and Crockett Counties.¹³³ Furthermore, based upon data from the Jackson Area Chamber of Commerce, approximately 14.2 percent of the workforce in four of the Chamber's counties including four communities at issue – Crockett, Hardeman, Haywood, and McNairy – commute daily to jobs in Madison County.¹³⁴ The Mayor of Lobelville, Perry County, also noted that many residents of Lobelville work or have family in the Jackson DMA.¹³⁵

40. Young argues against a substantial economic nexus with the Nashville Communities in its Opposition. It asserts that Jackson Retail Trade Area data attached by WBBJ does not include any of the Counties of Henry, Perry, or Wayne, or the 10 Nashville Communities included within them.¹³⁶ And it asserts that none of the five counties in which the Nashville Communities are located are represented by the Jackson Area Chamber of Commerce, included in the Jackson “Labor Market Area,” or included in the “Major Daily Commuting Patterns” data available from the Jackson Chamber’s website.¹³⁷

41. WBBJ replies that the Jackson Retail Trade Area does include Camden, Scott’s Hill, Parsons, and Perryville.¹³⁸ Furthermore, WBBJ responds that many of the Nashville Communities are located on major highways that run through or just pass by Jackson, including Paris, Henry, McKenzie, Puryear, Camden, Parsons, Perryville, and Linden.¹³⁹ It asserts U.S. Census Bureau data shows that workers in Benton County (the location of Camden) are more than eight times as likely to commute to work in Madison County than to travel to Davidson County – where Young affiliate WKRN is located; that residents of Decatur County (where Scotts Hill, Parsons, and Perryville are located) are more than four times as likely to commute to Madison County as they are to Davidson County; that residents of Henry County (Puryear, Cottage Grove, Paris, Henry, and McKenzie) are nearly four times as likely to do so; and that although the residents of Wayne County (Waynesboro, Collinwood, and Clifton) are about four times more likely to commute to Davidson than to Madison County, there is still a strong connection to Madison because Nashville is more than nine times the size of Jackson.¹⁴⁰ WBBJ attaches letters showing that west-Tennessee businesses and social organizations use WBBJ to reach customers in all communities and particularly the Nashville Communities.¹⁴¹ Jackson realtors and the *Jackson Sun* also list properties for sale in Camden, Parsons, Perryville, Scotts Hill, Paris, McKenzie, Linden, and Clifton.¹⁴² Furthermore, argues WBBJ, Tennessee’s 8th Congressional District, which includes Jackson, also includes Camden, Cottage Grove, Henry, Paris, Puryear, and McKenzie.¹⁴³ Jackson high schools

¹³³ *Id.*

¹³⁴ *Id.* at 16 and n.50 (Jackson Area Chamber of Commerce, Economic Development, Labor Market, Major Daily Commuting Patterns, http://www.jacksontn.com/economic_development/labor_market/index.html). WBBJ asserts, and our independent analysis has verified, that approximately 20 percent of the workforce of Crockett County commutes to Madison County. *Id.*

¹³⁵ *Id.* at 17 and n.54 (citing Exhibit D-5).

¹³⁶ Young Opposition at 9.

¹³⁷ Young Opposition at 9-10.

¹³⁸ WBBJ Reply at 28.

¹³⁹ *Id.* at 27.

¹⁴⁰ *Id.* at 28 and Appendix N-9 (U.S. Census Bureau Commuter Data Flow).

¹⁴¹ *Id.* at 28-29 and n.82 (citing Appendices G-7-1 through G-7-4, G-7-10, G-7-12, G-7-14, G-7-15, and G-7-17 through G-7-22).

¹⁴² *Id.* at 29 and nn.84-85 (citing Appendices N-10 and N-11).

and colleges compete against schools from the Nashville Communities in a variety of sports.¹⁴⁴ Hence, WBBJ argues that the economic, political, and social ties between Jackson, WBBJ, and the Nashville Communities are more than strong enough to defeat Young's attack on their inclusion of those communities in WBBJ's market.¹⁴⁵

42. In the Memphis Communities, WBBJ asserts that commuting patterns across the Mississippi-Tennessee border show a similarly significant pattern of cross-commuting between Tennessee residents in the DMA and cable communities in Alcorn and Tishomingo Counties.¹⁴⁶ WBBJ asserts that approximately 10 percent of the Alcorn County, MS workforce commutes to Alcorn County from five counties included in the Jackson DMA and two of the cable communities at issue – Hardeman and McNairy; and, some 4 percent of employed Alcorn County residents commute to work in the Jackson DMA or in the cable communities at issue.¹⁴⁷

43. Clear Channel argues WBBJ does not establish an economic nexus with the Memphis Communities, as the Jackson Retail Trade Area used by WBBJ does not include Alcorn, Lauderdale, Tipton, or Dyer Counties.¹⁴⁸ Nor does WBBJ's Petition provide evidence of significant commuting patterns between Madison County and the Memphis Communities because not only are such percentages low, they are overstated in that the Alcorn County website shows only that 0.39 percent of Alcorn County residents commute to Madison County and only 0.06 percent of Madison County residents commute to Alcorn county.¹⁴⁹ Furthermore, it disputes that letters from community leaders establish any economic nexus.¹⁵⁰

44. WBBJ responds that the Memphis Communities of Newbern, Dyersburg, and Corinth are all located near highways that run through Jackson, and Corinth is also located on a freight line that runs through west-central Tennessee.¹⁵¹ WBBJ also attaches letters from advertisers showing that businesses and social service organizations can buy affordable advertising on WBBJ to reach *every one* of the Memphis Communities.¹⁵² WBBJ also attaches commuter information from the U.S. Census Bureau that shows that more people commute from Dyer County to Madison County than to Shelby County (where

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¹⁴³ *Id.* at 29 and n.86 (citing Appendix G-5).

¹⁴⁴ *Id.* at 29-30 and nn.88-90 (citing Appendix G-8 and N-13).

¹⁴⁵ *Id.*

¹⁴⁶ WBBJ Petition at 17.

¹⁴⁷ *Id.* at 17 and n.52 (citing 2000 U.S. Census Summary File 3, Workplace County by Residence County (In Commuters), Alcorn County, http://mdes.ms.gov/wps/PA_1_0_CH/docs/LMI/Publications/CommutingPatterns/InCommuter/Alcorn%20IN.pdf; also citing 2000 U.S. Census Summary File 3, Residence County by Workplace County (Out Commuters), http://mdes.ms.gov/wps/PA_1_0_CH/docs/LMI/Publications/CommutingPatterns/OutCommuter/Alcorn%20OUT.pdf).

¹⁴⁸ Clear Channel Opposition at 5.

¹⁴⁹ *Id.* at 5; *see also* n.143 *supra*.

¹⁵⁰ *Id.* at 6.

¹⁵¹ WBBJ Reply at 24 and nn.64-66 (citing Appendices G-4 and G-5).

¹⁵² *Id.* at 25 and n.67 (citing Appendices G-7-1, G-7-3, G-7-7, G-7-10, G-7-12, G-7-14, G-7-15, and G-7-17).

Memphis is located).¹⁵³ Moreover, although only approximately 0.4 percent of commuters from Alcorn County travel to Madison County, this is more than a quarter of the number from that community who travel to Shelby County (where Memphis is located), which is comparatively important because Memphis is about 10 times the size of Jackson.¹⁵⁴ Furthermore, Jackson based realtors and the *Jackson Sun* list properties for sale in the Memphis Communities of Dyersburg, Newbern, Ripley and Covington.¹⁵⁵ Tennessee's 8th Congressional District also includes Ripley, Covington, Dyersburg, and Newbern with Jackson, but omits Memphis.¹⁵⁶ Jackson high schools also compete with schools in Ripley, Covington, and Dyersburg, and Jackson State Community College competes with schools in Dyersburg.¹⁵⁷

45. In the Paducah Communities, WBBJ argues data from the Kentucky Cabinet for Economic Development shows that the counties of Graves, Fulton, and Calloway each define their "Labor Market Areas" to include several Tennessee counties within the 60-minute drive range of each originating county seat;¹⁵⁸ and, WBBJ asserts, the circles used in these analyses overlap many of the Tennessee cable communities at issue and the northern part of the Jackson DMA.

46. WSIL argues that the Jackson Retail Trade Area cited by WBBJ does not include any of the Kentucky Communities, and the fact that three Kentucky Communities define their labor markets to include Tennessee counties shows only that those counties have a closer nexus with *Kentucky* than with Jackson.¹⁵⁹

47. WBBJ replies that Fulton, Mayfield, Murray, Hickman, and Hazel all lie on highways that run, or link up with highways that run directly to Jackson, whereas the only major north-south rail link in West Tennessee links Jackson with Fulton and runs north between Hickman and Mayfield.¹⁶⁰ WBBJ admits that there is not as much commuting between the Paducah Communities and Jackson as there is between the communities in Memphis and Nashville.¹⁶¹ WBBJ attaches letters from advertisers showing that businesses and social service organizations can buy more affordable advertising on WBBJ to reach every one of the Paducah Communities than they could through paying the higher rates of Paducah

¹⁵³ *Id.* at 25 and Appendix M-9 (U.S. Census Bureau Commuter Flow Data).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 26 and nn.70-71 (citing Appendices M-10 and M-11).

¹⁵⁶ *Id.* at 26 and n.72. (citing Appendix G-5).

¹⁵⁷ *Id.* at 26 and nn.73-74 (citing Appendices G-8 and G-9).

¹⁵⁸ WBBJ Petition at 16 and n.51. Graves County includes Obion and Weakley, TN. *See* Kentucky Cabinet for Economic Development, Mayfield, Grave County - Community Information Index, Total Available Labor, at fig.1, Labor Market Area, <http://www.thinkkentucky.com/EDIS/cmnty/Workforce.aspx?cw=019> (last visited Jan. 27, 2008). Fulton County includes Lake, Obion, and Weakley. *See* Kentucky Cabinet for Economic Development, Fulton County - Community Information Index, Total Available Labor, at fig.1, Labor Market Area, <http://www.thinkkentucky.com/EDIS/cmnty/Workforce.aspx?cw=018> (last visited Jan. 27, 2008); Calloway County includes Henry and Stewart. *See* Kentucky Cabinet for Economic Development, Murray, Calloway - Community Information Index, Total Available Labor, at fig.1, Labor Market Area, <http://www.thinkkentucky.com/EDIS/cmnty/Workforce.aspx?cw=017> (last visited Jan. 27, 2008).

¹⁵⁹ WSIL Opposition at 4.

¹⁶⁰ WBBJ Reply at 31 and nn.94-95 (citing Appendices G-3 an P-5).

¹⁶¹ *Id.* at n.95.

stations.¹⁶² In addition, Jackson State Community College plays basketball against a college in Mayfield, KY.¹⁶³

48. Finally, with respect to the Columbus-Tupelo Communities WBBJ asserts that while evidence on Tishomingo County is more limited, it does reveal that some 6 percent of employed residents commute to work in Hardin County, TN, a Jackson DMA county.¹⁶⁴

C. Carriage of Other Stations

49. 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.”¹⁶⁵ In general, we believe that Congress did not intend this third criterion to operate as a bar to a station’s market modification claim whenever other stations could also be shown to serve the communities at issue.¹⁶⁶ 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.¹⁶⁷ In this case, because other stations serve the communities in question, this enhancement factor does not appear applicable.

D. Station Audience and Viewing Patterns

50. 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.”¹⁶⁸ As further discussed below, we believe that while WBBJ’s viewership ratings vary from moderate to substantial among most of the Nashville and Memphis Communities, they are generally lower in the Paducah and Columbus-Tupelo Communities; however, the following viewership ratings must be considered in connection with the other factors discussed elsewhere herein for a final determination to be made as to a community.

51. WBBJ asserts that Nielsen Media Research ratings consistently show that residents of the communities at issue turn to WBBJ as a source of local programming.¹⁶⁹ It claims it garnered total, cable, and non-cable shares superior to at least one in-market station in 11 of the 20 counties including the cable communities at issue, which it asserts is significant because many in-market stations enjoy carriage throughout their respective DMA’s on virtually all cable systems.¹⁷⁰ In seven of the remaining

¹⁶² *Id.* at 31-32 and nn.96 (citing Appendices G-7-1, G-7-7, G-7-9, G-7-11 through G-7-14, G-7-17).

¹⁶³ *Id.* at 32 and n.97 (citing Appendix G-9).

¹⁶⁴ Petition at 17 and n.53 (citing Labor – Regional Study in Progress, <http://www.tishomingo.org/laborforce.htm>).

¹⁶⁵ 47 U.S.C. §534(h)(1)(C)(ii)(III).

¹⁶⁶ *See e.g., Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

¹⁶⁷ *See id.*

¹⁶⁸ 47 U.S.C. §534(h)(1)(C)(ii)(IV).

¹⁶⁹ WBBJ Petition at 19.

¹⁷⁰ *Id.* at 21, n.69, and Exhibit F (reporting higher WBBJ shares in Alcorn, Crockett, Dyer, Hardeman, Haywood, Lauderdale, McNairy, Decatur, Henry, Obion, and Weakley). In fact, WBBJ states it earned a higher

(continued...)

nine counties that include the communities at issue, WBBJ asserts its total, cable, and non-cable share tied or surpassed at least one in-market station.¹⁷¹ Nielsen provided no data for WBBJ in two counties, one of which – Perry – provides no out-of-market station data.¹⁷² In conclusion, WBBJ asserts that its data exceeds viewership data previously found by the Commission to weigh in favor of granting market modification.¹⁷³

52. WBBJ asserts that it garnered its highest cable/non-cable share (14/19), as well as substantial “cumes,” or cumulative audience numbers, in McNairy County, TN – higher than the cable, non-cable, and total shares of Memphis DMA station WPTY of Clear Channel.¹⁷⁴ Furthermore, in Decatur County in the Nashville DMA, WBBJ asserts it surpassed all in-market stations in cable, non-cable, and total shares except for Young’s WKRN, which exceeded WBBJ’s non-cable share by one point, and in Henry County it earned higher shares than four of the seven in-market stations.¹⁷⁵ In the Paducah DMA, WBBJ earned higher cable, non-cable, and total shares than all but one station, WPSD-TV, in Weakley County, whereas in Obion County, WBBJ surpassed three stations in shares, and surpassed WSIL in cable and total shares while tying this in-market ABC affiliate in non-cable shares.¹⁷⁶ In Tishomingo County, the only county including cable communities in the Columbus Tupelo DMA, WBBJ earned higher total and cable shares than two stations – including the in-market ABC affiliate, and tied both stations in non-cable shares.

53. Young argues in opposition that WBBJ does not have “significantly viewed” status in Benton, Henry, Perry, or Wayne Counties and therefore does not have substantial, historical ‘over the air’ viewership in these eleven Nashville Communities.¹⁷⁷ According to Young, this ratings information evidences that WBBJ also does not attain significantly viewed status in these communities – which lack of viewership is particularly probative given that it is a major network affiliate.¹⁷⁸ Viewers show no preference in these 11 communities for WBBJ over its in-market affiliate, WKRN.¹⁷⁹ In Perry County (Linden and Lobelville), WBBJ does not even appear in the Nielsen County Coverage Study.¹⁸⁰ In Wayne County, WBBJ has a 0 share and a cume of 3 in non-cable households and a 3/23 in total

(...continued from previous page)

share than a majority of the stations in 7 of these 11 counties – those being: Crockett, Dyer, Hardeman, McNairy, Decatur, Henry, and Weakley. *Id.* at 21, n.69.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 22 (citing, e.g., *Gray Television Licensee, Inc.*, 21 FCC Rcd 8719 (MB 2006); *Seal Rock*, 18 FCC Rcd 16262; *Ackerley*, 18 FCC Rcd 16199; *KSBW License, Inc.*, 11 FCC Rcd 2368 (CSB 1996)).

¹⁷⁴ *Id.* at 20, n.61, (citing Exhibit F, Nielsen 2006 County Coverage Survey).

¹⁷⁵ *Id.* at 20.

¹⁷⁶ *Id.* at 20-21.

¹⁷⁷ Young Opposition at 7.

¹⁷⁸ *Id.* at 7 (citing Exhibit F).

¹⁷⁹ *Id.* at 8. Young asserts this is particularly relevant given that the Commission has been “especially concerned” that market modification decisions “not unduly upset the economic marketplace expectations underlying the affiliation concept.” *Id.* at 8 (citing *Guy Gannett Comms., Inc.*, 13 FCC Rcd 23470, 23477, ¶21 (1998)).

¹⁸⁰ *Id.* at 8. (citing *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2819, ¶27 (1999)).

households, while WKRN has a 9/53 in non-cable households and a 9/55 in total households.¹⁸¹ In Benton County, while WBBJ has no measurable share or net weekly circulation in non-cable households, and 6/22 (share/cume) in total households, WKRN's value is 21/59.¹⁸² Finally, in Henry County, WBBJ has a share of 7, but a cume of only 18 in non-cable households, while WKRN's 6/36 number shows that viewers have a marked preference for WKRN.¹⁸³

54. WBBJ responds that Young has failed to show that WBBJ has significantly lower ratings than in-market stations in the Nashville DMA counties including the Nashville Communities.¹⁸⁴ In Henry County, WBBJ has a comparable weekly share and cume (6/35) to Young's in-market ABC-affiliate, WKRN (6/43), and higher numbers than in-market stations WNAB, WNPT, and WZTV.¹⁸⁵ In Wayne County and Benton County, WBBJ's total share and cume exceed those of in-market stations WNAB and WUXP, and are comparable to those of WNPT.¹⁸⁶ While no out-of-market stations were reported for Perry County in the 2006 Nielsen County Summary, the 2007 Nielsen ratings show that WBBJ achieved a viewership greater than or comparable to in-market stations WKRN, WSMV, WUXP, and WXTV.¹⁸⁷

55. Clear Channel echoes WSIL and Young's statements, arguing the FCC itself does not deem WBBJ to be significantly viewed in three of the four counties where the Memphis Communities are located – Alcorn County (Corinth and Rienzi), Lauderdale County (Ripley), and Tipton County (Covington), and therefore WBBJ cannot demonstrate that it enjoys historical over the air viewership in these communities.¹⁸⁸ Clear Channel admits that WBBJ is included on the FCC's significantly viewed list only for Dyer County, TN, where Dyersburg and Newbern are located.¹⁸⁹

56. Clear Channel also argues the Nielsen data does not substantiate the claim that WBBJ earns significant viewership levels in cable and non-cable households in the Memphis Communities.¹⁹⁰ With the exception of Dyer County, Clear Channel argues, WBBJ's all-day audience share for over-the-air viewing falls below the three percent significant-viewing minimum level, and both over-the-air and cable viewing were relatively low in the counties where the Memphis Communities are located.¹⁹¹

57. WBBJ responds to Clear Channel that WBBJ's total weekly share and average weekly cume in Alcorn County are equal to or higher than three in-market stations, including Clear Channel's own ABC-affiliated WPTY.¹⁹² Likewise in Lauderdale County, WBBJ's total share and cume exceed those of

¹⁸¹ *Id.* at 8.

¹⁸² *Id.* at 8-9.

¹⁸³ *Id.* at 9.

¹⁸⁴ WBBJ Reply at 21.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 22 and n.56 (citing Appendix N-8).

¹⁸⁸ Clear Channel Opposition at 4.

¹⁸⁹ *Id.* at 4 n.12.

¹⁹⁰ *Id.* at 4 (citing Petition at Exhibit F).

¹⁹¹ *Id.* at 4-5.

¹⁹² WBBJ Reply at 21.

in-market broadcaster WPXX.¹⁹³ In Tipton County, WBBJ's total cume exceeds that of WBUY, and in Dyer County, WBBJ's total weekly share is double that of Clear Channel's WPTY, and its share and cume are greater than in-market broadcasters WKMO, WLMT, and WPXX.¹⁹⁴ Contrary to Clear Channel's assertions, WBBJ argues that its ratings are therefore sufficient to satisfy the fourth factor.

58. WSIL argues that WBBJ is not "significantly viewed" in any of the Kentucky Communities and therefore does not have over-the-air viewership, and furthermore, it argues the ratings information provided proves viewers in the Kentucky Communities do not have a marked preference for WBBJ over WSIL.¹⁹⁵ In Calloway County (Hazel and Murray), WBBJ has a 0 share in non-cable households and no net weekly circulation in non-cable households while registering a total of 2/17 in cable and non-cable households, whereas WSIL has 4/30 in non-cable households and a 3/32 in total households. In Fulton County (Fulton and Hickman), WBBJ has no measurable share or net weekly circulation in non-cable or cable households, while its total households is 1/19; in comparison, WSIL maintains 1/23 for total households.¹⁹⁶ For Graves County, WBBJ does not even appear in the Nielsen study, according to WSIL.¹⁹⁷

59. WBBJ responds that the station's average weekly rating and cume equal or exceed those of four stations in Calloway County (WKDA, WKMU, WKPD, and WQWQ) and are nearly equal to those of three other stations in Fulton County, including WSIL itself.¹⁹⁸

60. Furthermore, WBBJ argues in its Reply that the oppositions miss the point of such comparisons because the Commission analyzes over-the-air viewership to determine whether viewers turn to the out-of-market station for local coverage and WBBJ has indeed demonstrated this.¹⁹⁹ WBBJ argues that the fact that WBBJ may not be "significantly viewed" in some communities is irrelevant because a station can satisfy the fourth statutory factor without achieving "significantly viewed" status, which is based solely on over-the-air viewership, whereas a relevant study, for purposes of the "viewership" factor, properly looks to cable and non-cable households.²⁰⁰ Furthermore, WBBJ argues there is no rule that if a petitioning station is less viewed than the in-market affiliate, it fails the test, or that a station must establish that its ratings exceed the in-market affiliate's to establish significant viewership.²⁰¹ Instead, the Commission has required broadcasters to explain how granting a market modification would undermine the in-market affiliate's position and has granted market modifications when the evidence shows the petitioning station would not harm that position.²⁰² Nor will the Commission deny a market modification petition due to a potential threat to an in-market affiliate's

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ WSIL Opposition at 3.

¹⁹⁶ WSIL Opposition at 3-4.

¹⁹⁷ *Id.* at 4.

¹⁹⁸ *Id.* at 22.

¹⁹⁹ WBBJ Reply at 16-17.

²⁰⁰ *Id.* at 17-18.

²⁰¹ *Id.* at 18.

²⁰² *Id.* at 18-19.

position unless the in market affiliate shows that an actual threat exists.²⁰³ WBBJ argues Young and WSIL have made no such showing. Furthermore, if in-market affiliates actually have higher ratings, that is evidence that the market can be modified without causing harm to those affiliates.

IV. SUMMARY AND ANALYSIS

61. Based upon the facts presented we will grant in part WBBJ's request for market modification.

62. In this regard, we note that the addition of Alamo, Brownsville, Bolivar, Selmer, Dresden, and Martin are all unopposed by the objectors,²⁰⁴ whereas the unincorporated portions of McNairy County are opposed. We find that all of the preceding communities have been carried on cable systems since 1992, are predicted to receive Grade B coverage under Longley-Rice analysis, fall well within WBBJ's Grade B contour, and are counties located adjacent to the Jackson DMA at distances of 19, 24, 27, 35, 45, 49, and 25 miles from Jackson, TN.²⁰⁵ These communities have also received a significant number of locally focused programs directed to them, demonstrating a nexus to Jackson. Each of the counties has exhibited substantial total viewership share and cume values:²⁰⁶ 12/53 for Crocket (Alamo), 5/21 for Haywood (Brownsville), 6/26 for Hardeman (Bolivar), 17/43 for McNairy (Selmer and the unincorporated portions of McNairy County), and 11/49 for Weakley (Martin and Dresden). As we noted previously, the third factor is not applicable to the instant analysis. Taken as a whole, the above evidence demonstrates that the specified communities should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.²⁰⁷

63. Dyersburg and Newbern are in Dyer County adjacent to Gibson County in the Jackson DMA, have carried WBBJ since 1992, are predicted to receive Grade B coverage under Longley-Rice analysis, fall well within WBBJ's Grade B contour, and are located 42 and 41 miles from Jackson but 73 and 81 miles from Memphis, respectively. Furthermore, Dyer County has been the subject of a significant amount of WBBJ news, weather, community events, and high school football programming. WBBJ's total share/cume value in Dyer County is 6/30 in comparison to the Memphis ABC-affiliate, WPTY's total share/cume value of 4/40. As WBBJ has pointed out, U.S. Census Bureau information shows that more people commute from Dyer County to Madison County than to Shelby County (where Memphis is

²⁰³ *Id.* at 19.

²⁰⁴ See *Busse Broad. Corp.*, 11 FCC Rcd 6408, 6420, ¶ 24 (1996) (noting that non-opposition of a petition to add communities to a market is one consideration among several factors in favor of granting the petition as to those communities).

²⁰⁵ See *Cablevision of Cleveland, L.P.* 11 FCC Rcd 18034, 18041, ¶ 16 (1996) (allowing retention of communities in a station's market that are located in a county immediately adjacent to the home county of the station, that are geographically proximate – lying within 31, 32, 35 miles of station's community of license, and falling within apparent Grade B contour coverage of station, even if located at the fringe).

²⁰⁶ See *KSBW License, Inc.*, 11 FCC Rcd 2368, 2371, ¶ 15 (1996) (finding that cable, non-cable, and total shares of 2, 6, and 3 percent and a cume of 22 were moderate, whereas values of 13, 12, and 12 percent and a cume of 75 were significant; also finding that the moderate values were also sufficient to grant the petition in conjunction with historic carriage, Grade A coverage, and proof that local programming was provided – even though objecting stations also provided proof of their local programming, which did not occur in the instant case.) All citations in the instant case are to Nielsen's County Summaries in its *2006 County Coverage Study*.

²⁰⁷ This decision is also logical because as noted *supra*, Alamo, Selmer, Dyersburg and Newbern had been added to WBBJ's in-market competitor, WJKY, in 1995.

located). Furthermore, Tennessee's 8th Congressional District also includes Dyersburg and Newbern together with Jackson but omits Memphis, and Jackson based realtors and the *Jackson Sun* list properties for sale in Dyersburg and Newbern. Jackson high schools also compete with schools in Dyersburg, and Jackson State Community College competes with schools in Dyersburg. As we noted previously, the third factor is not applicable to the instant analysis. However, even absent any additional enhancement under the third factor, the other three factors, taken as a whole, are sufficient to demonstrate that the specified communities should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

64. Covington in Tipton County, TN, has carried WBBJ on cable systems since 1992, is predicted to receive Grade B coverage under Longley-Rice analysis, and falls well within WBBJ's Grade B contour. However, Covington is actually closer to Memphis than to Jackson - located 38 miles from Memphis and 46 miles from Jackson - and over the course of four years, Covington received coverage in only 8 news stories, in addition to some high school football and weather coverage – a *de minimis* level of programming. The cable systems serving Covington also serve communities just north of Memphis and this provides a strong point of connection to the Memphis area. In addition, WBBJ's total share/cume value is 1/5 in Covington, much lower than that of Clear Channel's Memphis ABC-affiliate, WPTY - 6/54. Finally, Tipton County is adjacent to Shelby County and forms part of the core, or hub, of the Memphis DMA.²⁰⁸ Therefore, we decline to add Covington to WBBJ's market.

65. Similarly, although Ripley in Lauderdale County, TN, has carried WBBJ on cable systems since 1992 and is predicted to receive Grade B coverage under Longley-Rice analysis and falls well within WBBJ's Grade B contour, it should also not be added to WBBJ's market. Ripley has been the subject of seven WBBJ news stories from June 2006 through April 2007, in addition to some high school football coverage. WBBJ does not submit evidence that it provided news coverage to Ripley stretching back for several years, as it does for some communities. Furthermore, WBBJ's total share/cume value in Lauderdale County is 2/14 and much weaker than that of Clear Channel's ABC-affiliate, WPTY, which received 7/85.²⁰⁹ Finally, Ripley appears to lie on a cable system containing communities which, taken together with the communities on Covington's cable system, form a corridor angling toward Memphis. Ripley is located 40 miles from Jackson and 52 miles from Memphis, and given that Ripley is one county removed from Memphis' Shelby County, WBBJ could replace the far more-popular ABC-affiliate on the surrounding cable systems.²¹⁰ Taken as a whole, these factors are sufficient to demonstrate that Ripley should not be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

66. WBBJ's petition as to Tiptonville in Lake County is unopposed. Tiptonville has carried

²⁰⁸ See *Agape Church, Inc.*, 14 FCC Rcd 2309, 2317-18, ¶¶ 28, 30 (1999) (denying a station must-carry status for communities in the counties of Crittenden, Shelby, and Tipton, which were located within the station's Grade B contour, but which nevertheless formed the core or "hub" of the Memphis DMA); see also *Channel 33, Inc.*, 11 FCC Rcd 3579, 3582, ¶ 17 (1996) (Refusing to add a community in another ADI to the petitioning station's market when that community was a "core community" of that ADI, and stating "we do not believe that the authority given us by the 1992 Cable Act should generally be used to modify one ADI to include within it a core community of another ADI.").

²⁰⁹ See *BBC License Subsidiary, L.P.*, 16 FCC Rcd 18756, 18761, ¶ 14 (2001) (noting that petitioning ABC-affiliate station's 2 percent share of total viewing hours and net weekly circulation of 22 percent in comparison to another ABC-affiliate in the market with values of 12/63 made clear that the petitioning station did not have viewership establishing that the communities in question formed part of that station's marketplace).

²¹⁰ See *Guy Gannett Comms., Inc.*, 13 FCC Rcd 23470, 23478, ¶ 22 (1998).

WBBJ on cable systems since 1992, though the community is predicted to receive little to no Grade B coverage under Longley-Rice analysis, falls outside WBBJ's Grade B contour, and is located 63 miles from Jackson, 107 miles from Harrisburg, IL (WSIL's community of license), and 93 miles from Memphis, TN. WBBJ has provided Tiptonville a moderate amount of news story coverage, though its weather coverage has been strongly praised. In Tiptonville, WBBJ exhibited a larger total share/cume value, 6/51, than either ABC-affiliates from the surrounding DMAs of Paducah and Memphis. WSIL from the Paducah DMA earned 1/15, and WPTY from the Memphis DMA earned 2/18. In the past, communities outside a station's Grade B contour have been added onto a station's market when historical carriage and viewership ratings argued for such inclusion. As we noted previously, the third factor is not applicable to the instant analysis. Accordingly, after weighing all the factors, Tiptonville will be added to WBBJ's market, even absent any additional enhancement under the third factor.

67. WBBJ's petition as to Union City in Obion County is unopposed. Union City has historically carried WBBJ since 1992, it is predicted to receive Grade B coverage under Longley-Rice analysis and falls within WBBJ's Grade B contour at a distance of 56 miles from Jackson, 105 miles from Memphis, and 95 miles from Harrisburg, IL, and, it has garnered moderate total share/cume values of 7/27. The Nielsen County Summary shows that the in-market ABC-affiliate, WSIL, earned values of 2/19, whereas the out-of-market ABC-affiliate from Memphis, WPTY, earned 1/8. Union City has received moderately low programming targeted to it from WBBJ. As we noted previously, the third factor is not applicable to the instant analysis. Nevertheless, given the totality of factors including WBBJ's history of carriage, its Longley-Rice Grade B coverage, Union City's greater proximity to Jackson, and its comparatively high viewership ratings, we will grant the addition of this community to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

68. In Henry County, TN, in the Nashville DMA, out of the five communities at issue, WBBJ has had cable carriage since 1992 in McKenzie, Henry, and Paris. In the two remaining communities in Henry County, namely Puryear and Cottage Grove, WBBJ has had cable carriage since 2003 in Puryear – a sufficient level of historic carriage, but has never had carriage in Cottage Grove.²¹¹ McKenzie, Henry, and Cottage Grove are predicted to receive clear Grade B coverage under Longley-Rice analysis and all of them, including Paris, fall inside WBBJ's Grade B contour line. Puryear and Paris appear to receive partial Grade B coverage under Longley-Rice analysis and Puryear falls right on WBBJ's Grade B contour line. McKenzie, Henry, Paris, Cottage Grove, and Puryear are located 39, 46, 54, 55, and 62 miles from Jackson, and 97, 91, 86, 96, and 89 miles from Nashville, respectively (with McKenzie lying on the boundary of the Jackson DMA). WBBJ has provided weather, high school sports, and local interest coverage to these communities, but the news coverage received by the communities varies. Over the course of 5½ years WBBJ produced 60 stories for the community of Paris alone, but only one story for McKenzie, three for Puryear, and none for Henry or Cottage Grove. Henry County as a whole received a greater total number of news stories, 84 stories, than any other group of communities under consideration. WBBJ garners a substantial total share/cume viewership value of 6/35 in Henry County, whereas Nashville's ABC-affiliate, WKRN, earns a comparable value of 6/43. Finally, McKenzie, Henry, and Paris share the same cable system with communities in the heart of the Jackson DMA, including communities from Carroll and Gibson Counties, as well as the communities of Camden, Newbern, Union City, and Martin. As we noted previously, the third factor is not applicable to the

²¹¹ As noted *supra*, WBBJ has asserted that it had a retransmission consent agreement with West Kentucky Rural Telephone Cooperative Corp. for carriage in Cottage Grove, and should have been carried there since 2006 – a mistake the operator is correcting. See WBBJ Reply at 6. This document is not attached to WBBJ's petition. Regardless, if WBBJ did not have carriage historically, and *still* did not have carriage at the time of this petition, the Commission cannot consider the possible future correction of this error as proof of WBBJ's historic carriage.

instant analysis. Given the history of carriage held by the majority of these communities – excluding Cottage Grove, their coverage under Longley-Rice or location on or inside the Grade B contour line, their vastly greater proximity to Jackson and the substantial viewership shares garnered by WBBJ in these communities, we will grant the addition of these communities to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

69. Camden in Benton County has carried WBBJ since 1992, lies in the Nashville DMA but adjacent to the Jackson DMA's Carroll County, and is located at a distance of 50 miles from Jackson and 74 miles from Nashville. Although Camden is predicted to receive partial Grade B coverage under Longley-Rice analysis, the majority of this community appears to receive such coverage and the entire community falls within WBBJ's Grade B contour line. WBBJ has broadcast a substantial number of news stories into Camden - 37 stories from June 2004 through October 2007, in addition to providing high school sports, community, and local interest segments to this community. WBBJ exhibits weaker total share and cume values in Camden, 6/22, than Young's ABC-affiliate from Nashville, WKRN, which has total share and cume values of 21/59. The Mayor of Benton County also supports WBBJ carriage and finds its coverage more accurate and valuable to Benton County than that from Nashville stations, and notes the reliance of residents on WBBJ for news and severe weather warnings. Camden is included in Tennessee's 8th Congressional District, Camden is included in the Jackson Retail Trade Area, and residents of Camden are more than four times as likely to commute to work in Jackson's Madison County than to Davidson County, where WKRN is located. Finally, Camden shares the same cable system with communities in the heart of the Jackson DMA, including communities from Carroll and Gibson Counties, as well as the communities of McKenzie, Newbern, Paris, Henry, Union City, and Martin. As we noted previously, the third factor is not applicable to the instant analysis. Taken as a whole, the other factors present are sufficient to demonstrate that Camden should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

70. In Decatur County, TN, in the Nashville, DMA, Parsons, Scotts Hill, and Perryville have carried WBBJ since 1992 on cable systems. Decatur County is adjacent to Henderson County in the Jackson DMA, Scotts Hill sits right on the edge of the Jackson DMA, and Parsons and Scotts Hill are predicted to receive Grade B coverage under Longley-Rice analysis, while Perryville receives partial Grade B coverage and fall well within WBBJ's Grade B contour. Parsons, Perryville, and Scotts Hill are 40, 44, and 34 miles from Jackson and 83, 94, and 80 miles from Nashville, respectively. WBBJ has covered Decatur County in a substantial number of news stories and local interest segments in addition to airing a weekly 15-minute segment produced in Perryville that often features these communities. WBBJ's total share/cume in Benton County is 13/47, whereas Young's WKRN had totals of 7/34. Finally, while Scotts Hill and Perryville lie on their own individual, separate cable systems, Parsons shares the same cable system with communities in the heart of the Jackson DMA, including communities from Madison, Henderson, Hardin, and Chester Counties as well as the communities of Alamo, Selmer, the unincorporated portions of McNairy County, Waynesboro, Collinwood, and Clifton. As we noted previously, the third factor is not applicable to the instant analysis. However, even absent any additional enhancement under the third factor, the other three factors, taken as a whole, are sufficient to demonstrate that the specified communities should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

71. Linden and Lobelville have carried WBBJ on cable systems in Perry County since 1992 and though their coverage as predicted under Longley-Rice analysis is *de minimis* at best, they lie inside WBBJ's Grade B contour line. Linden and Lobelville are 55 and 59 miles from Jackson, and 71 and 64 miles from Nashville, respectively. These communities have received a moderate amount of WBBJ news, high school sports, arts, and community coverage. The 2007 Nielsen County Coverage Study shows that WBBJ ties WKRN of Nashville in total viewership share; the study allocates WBBJ a total

share/cume of 13/9 in Perry County, whereas Young's WKRN has 13/50. The Study also places WBBJ ahead of four out of six Nashville stations based on total share values for Perry County. The Mayor of Lobelville, Perry County, also noted that many residents of Lobelville work or have family in the Jackson DMA. WBBJ's history of carriage in Perry County is evidence that viewers in these communities have an interest in receiving WBBJ's signal, and these communities also sit on their own independent cable systems, existing at the fringes of both the Jackson and the Nashville markets. Therefore, combined with the identical total viewership shares received by the two ABC-affiliates in these communities, and the relatively long distances from both Jackson and Nashville to these communities, we find that both stations should receive equal treatment in these small communities, and that Linden and Lobelville should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

72. Clifton, Collinwood, and Waynesboro, in Wayne County, TN, have provided carriage to WBBJ since 1992. Clifton, Collinwood, and Waynesboro are predicted to receive partial Grade B coverage under Longley-Rice analysis, and Clifton and Collinwood are located inside WBBJ's Grade B contour line, whereas Collinwood lies at the fringe or just outside of the contour line. Clifton, Waynesboro, and Collinwood are at distances of 50, 64, and 69 miles from Jackson, but sit 87, 80, and 87 miles from Nashville. These communities have received a small amount of WBBJ news coverage targeted at them, but WBBJ has also provided weather, high school sports, and art segments and programs to these communities. WBBJ's viewership in Wayne County consists of a total share/cume of 3/23, whereas Young's WKRN out of Nashville has a total share/cume value of 9/53. Though WBBJ's viewership figures are therefore smaller in comparison to the Nashville station, WBBJ argues that its total share and cume exceed those of other in-market stations WNAB and WUXP, and are comparable to those of WNPT. We also note in particular that these three communities share the same cable system with communities in the heart of the Jackson DMA, including communities in Madison, Henderson, Hardin, and Chester Counties, as well as the communities of Alamo, Selmer, the unincorporated portions of McNairy County, and Parsons. As we noted previously, the third factor is not applicable to the instant analysis. However, even absent any additional enhancement under the third factor, we have determined that Clifton, Collinwood, and Waynesboro should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

73. WBBJ has received cable carriage since 1992 in Corinth, Alcorn County, MS, and Corinth is predicted to receive strong Grade B coverage under Longley-Rice analysis and lies inside WBBJ's Grade B contour. Corinth is located in the Memphis DMA, but is 51 miles from Jackson and 85 miles from Memphis, TN. In contrast, the other community in Alcorn County – Rienzi, has apparently received cable carriage only since 2004, but the Commission's records indicate that Rienzi was dropped from cable coverage on December 31, 2005.²¹² WBBJ argues that 74 percent of the area and 84 percent of the population of Rienzi is inside its Grade B contour, though Rienzi falls on the fringe of WBBJ's Grade B contour line. Rienzi is 62 miles from Jackson and 87 miles from Memphis. WBBJ has broadcast a moderate number of stories concerning Alcorn County and Corinth, but WBBJ has noted that that Rienzi likely did not receive any news reports because it has a population of 330 residents as of the 2000 census. WBBJ has garnered a total share/cume value of a 3/27 in the county, whereas the Memphis ABC-affiliate, WPTY, has values of 3/31.²¹³ Although there is some minor commuting between Alcorn

²¹² As noted previously, the Commission's records indicate that WBBJ (and WPTY) may presently receive cable carriage in Rienzi from Time Warner Cable out of Kossuth, MS.

²¹³ See *Diversified Broad., Inc.*, 13 FCC Rcd 22331, 22335, 22338, ¶¶ 9, 23 (1998) (finding a viewership value of 3/32 for a station to be "substantial" enough to warrant addition of a market to that station even though the market lay outside the station's Grade B contour when the station provided over 72 stories a year to that market).

County and the Jackson DMA, it appears to be much less than commuting to Memphis from this area. Due to the fact that Corinth has had a long history of carriage, combined with the fact that Corinth clearly receives Grade B predicted coverage, and because of the comparatively substantial viewership levels that WBBJ garners in Corinth, even without analysis under the third factor, Corinth will be added to WBBJ's market. On the other hand, Rienzi is a small community receiving partial Grade B coverage, it lacks a long and stable history of carriage, and it has received no news coverage. Consequently, taking all factors into account, Rienzi will not be added to WBBJ's market.

74. WBBJ has received cable carriage since 1992 in Belmont, Burnsville, and Iuka, Tishomingo County, MS. The Longley-Rice predictive contour map provided shows these communities receive no coverage, or at most coverage that is *de minimis*, and WBBJ concedes that Belmont and Iuka also fall outside of its Grade B contour line, whereas Burnsville falls on its Grade B contour line. Belmont, Burnsville, and Iuka are 85, 62, and 67 miles from Jackson, respectively. WKDH, an ABC-affiliate also listed by Nielsen in the Columbus-Tupelo DMA is licensed out of Houston, MS, and lies 62, 76, and 78 miles from Belmont, Burnsville, and Iuka, respectively. In these Tishomingo communities, WBBJ receives a total share and come of 2/22, and ABC-affiliate WKDH garners a similarly low value of 1/17. No other stations from Jackson have viewership ratings in these areas. However, WBBJ has made virtually no showing that it provides programming specific to these communities, nor that other stations *do not* provide local programming.²¹⁴ In *Diversified Broadcasting, Inc.*, the Commission allowed one ABC affiliate to add two communities to its market over the objections of an in-market, though more distant ABC-affiliate, even though these communities were located five and 15 miles outside the station's Grade B contour and located in another market.²¹⁵ However, in that case, the petitioning station, in addition to having historic carriage, had provided 72 news stories per year to one county and 50 per year to the other, and had viewership figures of 3/32 and 8/41, respectively, while the other station had no such figures.²¹⁶ In the instant action, the slight level of programming WBBJ provides to these communities lying in areas where they receive little or no Grade B coverage, argues against expansion of WBBJ's market into Belmont, Iuka, and Burnsville, and WBBJ's Petition as to these communities should therefore be denied.

75. We have determined that the Paducah Communities of Hazel and Murray in Calloway County, KY, Fulton and Hickman in Fulton County, KY, and Mayfield in Graves County, KY will not be added to WBBJ's market. Though all of these communities have carried WBBJ on their cable systems since 1992, all are predicted to receive no coverage under Longley-Rice analysis – with the exception of Fulton, and all lie outside of WBBJ's Grade B contour. Fulton, Hazel, Hickman, Murray, and Mayfield are also 61, 66, 67, 73, and 77 miles from Jackson, and 86, 86, 88, 79, and 69 miles from WSIL's community of license in Harrisburg, IL, respectively. WBBJ has had lower total shares than the in-market ABC-affiliate, WSIL, in these communities. WBBJ garners total share/cume values of 2/17 in Calloway County, 1/19 in Fulton County, and no values for Graves County.²¹⁷ Meanwhile, WSIL earns 3/32 in total households in Calloway County, 1/23 in Fulton County, and 3/42 in Graves County. While it may provide weather coverage to the Paducah Communities, WBBJ has not provided any news coverage to Hickman, no news to Mayfield apart from one or two segments, and WBBJ provided less than one news story per year over seven years to Hazel and Murray. WBBJ does not specify the amount

²¹⁴ See *Harron Comms. Corp.*, 14 FCC Rcd 4547, 4556, ¶ 27 (1999).

²¹⁵ See *Diversified Broad., Inc.*, 13 FCC Rcd at 22339, ¶ 28.

²¹⁶ See *id.* at 22335, ¶ 9 and 22338, ¶ 23.

²¹⁷ *Id.* at 15-16 (citing Appendices G-1, G-2, N-4, and WBBJ Petition at Exhibit D-15).

of programming WSIL provides to these communities. With respect to shopping and labor patterns, WBBJ admits that there is not as much commuting between the Paducah Communities and Jackson as there is between the communities in Memphis and Nashville. Finally, according to the Commission's records, Fulton, Murray, and Mayfield exist on a cable system stretching further north into the Paducah DMA, Hazel and Puryear lie on a small, separate cable system of their own, and Hickman also has its own system. As we noted previously, the third factor is not relevant to the instant analysis. However, even absent any additional enhancement under the third factor, the other factors, taken as a whole, are insufficient to demonstrate that the specified Paducah Communities should be added to the Jackson DMA for mandatory carriage purposes with respect to WBBJ.

V. ORDERING CLAUSES

76. 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-7596-A), filed by Tennessee Broadcasting Partners, a wholly-owned subsidiary of Bahakel Communications and licensee of WBBJ-TV/DT, Jackson, Tennessee, **IS GRANTED IN PART** for the following communities in the Nashville DMA: Camden (Benton County, TN), Parsons, Perryville and Scotts Hill (Decatur County, TN), Henry, McKenzie, Paris, Cottage Grove, and Puryear (Henry County, TN), Linden and Lobelville (Perry County, TN), and Clifton, Collinwood, and Waynesboro (Wayne County, TN); in the Memphis DMA: Corinth (Alcorn County, MS), Alamo (Crockett County, TN), Dyersburg and Newbern (Dyer County, TN), Bolivar (Hardeman County, TN), Brownsville (Haywood, TN), Selmer (McNairy County, TN), and the unincorporated portions of McNairy County itself; in the Paducah-Cape Girardeau-Harrisburg DMA: Tiptonville (Lake County, TN), Union City (Obion County, TN), and Dresden and Martin (Weakley, TN). In all other respects, Tennessee Broadcasting Partners' petition **IS DENIED**.

77. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau

²¹⁸47 C.F.R. §0.283.

APPENDIX

No.	DMA	County	Community
1	Columbus-Tupelo	Tishomingo	Belmont, MS
2	Columbus-Tupelo	Tishomingo	Burnsville, MS
3	Columbus-Tupelo	Tishomingo	Iuka, MS
4	Memphis	Alcorn	Corinth, MS
5	Memphis	Alcorn	Rienzi, MS
6	Memphis	Crocket	Alamo, TN
7	Memphis	Dyer	Dyersburg, TN
8	Memphis	Dyer	Newbern, TN
9	Memphis	Hardeman	Bolivar, TN
10	Memphis	Haywood	Brownsville, TN
11	Memphis	Lauderdale	Ripley, TN
12	Memphis	McNairy	McNairy County, TN
13	Memphis	McNairy	Selmer, TN
14	Memphis	Tipton	Covington, TN
15	Nashville	Benton	Camden, TN
16	Nashville	Decatur	Parsons, TN
17	Nashville	Decatur	Perryville, TN
18	Nashville	Decatur	Scotts Hill, TN
19	Nashville	Henry	Cottage Grove, TN
20	Nashville	Henry	Henry, TN
21	Nashville	Henry	McKenzie, TN
22	Nashville	Henry	Paris, TN
23	Nashville	Henry	Puryear, TN
24	Nashville	Perry	Linden, TN
25	Nashville	Perry	Lobelville, TN
26	Nashville	Wayne	Clifton, TN
27	Nashville	Wayne	Collinwood, TN
28	Nashville	Wayne	Waynesboro, TN
29	Paducah	Calloway	Hazel, KY
30	Paducah	Calloway	Murray, KY
31	Paducah	Fulton	Fulton, KY
32	Paducah	Fulton	Hickman, KY
33	Paducah	Graves	Mayfield, KY
34	Paducah	Lake	Tiptonville, TN
35	Paducah	Obion	Union City, TN
36	Paducah	Weakley	Dresden, TN
37	Paducah	Weakley	Martin, TN