

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

In the Matter of )  
 )  
Mapale LLC )  
 ) CSR-8082-A  
For Modification of the Miami, Florida )  
DMA )

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2009

Released: June 22, 2009

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

I. INTRODUCTION

1. Mapale, LLC, licensee of station WGEN-TV (Ind., Ch. 8), Key West, Florida (“WGEN-TV”), filed the above-captioned petition for special relief seeking to modify the Miami, Florida designated market area (“DMA”) to afford must carry status to WGEN-TV in all of the communities and unincorporated county areas in the Miami, Florida DMA from which it was excluded in several previous Commission decisions (the “cable communities”).<sup>1</sup> No opposition to this request has been received.<sup>2</sup> For the reasons stated below, we grant WGEN-TV’s request.<sup>3</sup>

<sup>1</sup>Modification at 1. The communities and cable systems at issue are the following: 1) Comcast – Ft. Lauderdale, Hallandale, Lauderdale by the Sea, Sea Ranch Lakes, Broward, Coral Gables, Deerfield Beach, Hialeah, Hialeah Gardens, Hillsboro Beach, Lauderdale, Lazy Lake, Lighthouse Point, Medley, Miami Springs, Oakland Park, Plantation, Pompano Beach, Sunrise, Sweetwater, Tamarac, Virginia Gardens, West Miami, Wilton Manors, unincorporated areas of Miami-Dade County, unincorporated areas of Broward County, Cooper City, Dania, Davie, Hollywood, Lauderdale Lakes, Pembroke Pines, Florida City, Homestead, Key Biscayne, South Miami-Dade County, and the unincorporated area of North Miami-Dade County known as Liberty City; 2) Advanced Cable – Westin, Coral Springs and the unincorporated areas of Broward County surrounding Coral Springs; 3) Atlantic Broadband – Bal Harbour, Bay Harbor Islands, Golden Beach, Miami Beach, North Bay Village, Surfside, unincorporated areas of Miami-Dade County, South Miami and adjacent unincorporated areas of Miami-Dade County.

<sup>2</sup>Comcast Cable Communications, the cable operator serving the majority of communities at issue, filed 9 motions for extension of time between November 10, 2008 through March 20, 2009, to respond to WGEN-TV’s request, but ultimately no opposition was received.

<sup>3</sup>We note that WGEN-TV simultaneously filed an “Emergency Petition for Declaratory Ruling, or, in the Alternative, For Special Relief to Maintain Cable Carriage of WGEN-TV” along with its market modification petition. However, in a Supplemental Request, filed March 30, 2009, WGEN-TV requested that its Emergency Petition be dismissed without prejudice. As such, we need not address the issues raised therein.

## II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>4</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>5</sup> 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.<sup>6</sup>

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

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.<sup>7</sup>

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as in -

- (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

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<sup>4</sup>*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

<sup>5</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

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

<sup>7</sup>47 U.S.C. § 534(h)(1)(C).

the areas served by the cable system or systems in such community.<sup>8</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[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.<sup>9</sup>

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.<sup>10</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.<sup>11</sup>

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<sup>8</sup>*Id.*

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

<sup>10</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>11</sup>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. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving

(continued....)

- (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.<sup>12</sup>

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

### III. DISCUSSION

5. The issue before us is whether to grant WGEN-TV's request to include the subject communities as part of its television market for mandatory carriage purposes. WGEN-TV, which is licensed to Key West, Florida, is part of the Miami, Florida DMA.<sup>13</sup> All of the communities at issue are located in Miami-Dade and Broward Counties, which are also part of the Miami DMA. WGEN-TV would ordinarily have must carry rights in the subject communities, but in five previous market modification decisions the Commission granted requests filed by Miami-Dade and Broward County cable

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mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>12</sup>47 C.F. R. § 76.59(b).

<sup>13</sup>WGEN-TV has had three previous call signs: WWFD (May 3, 1991 – February 7, 2000); WWTU (February 8, 2000 – February 7, 2002); and WVIB (February 8, 2002 – June 30, 2004). It has been operating under its current call letters since July 1, 2004. *See* Modification at 1 n.1.

operators to exclude WGEN-TV from carriage.<sup>14</sup> In the instant petition, WGEN-TV is asking that we reinstate its must carry rights in these communities.<sup>15</sup>

6. In support of its request, WGEN-TV argues that it seeks to ensure mandatory carriage on cable systems throughout the Miami DMA, which serve approximately 67 percent of the market's households.<sup>16</sup> WGEN-TV states that the communities at issue, in particular, are located in the population centers of the market and comprise more than two-thirds of the market's cable households and nearly half of all households in the DMA.<sup>17</sup> WGEN-TV asserts that the fact that the Commission has previously excluded a station from being carried in certain communities in its market does not preclude the Commission from later reinstating those rights in the same communities in situations where the underlying facts have changed and, indeed, has done so in *WRNN License Company, LLC*.<sup>18</sup> WGEN-TV points out that in *WRNN-DT*, the station had moved its main studio, had obtained carriage on some cable systems where it had not been carried previously, had earned viewership ratings, and added programming of interest to viewers.<sup>19</sup> WGEN-TV maintains that many of the changes it has experienced since the earlier market modification exclusions are similar to those considered in *WRNN-DT*.<sup>20</sup> Indeed, WGEN-TV states that it now provides an important program service and has a close economic nexus to the communities at issue.<sup>21</sup> Moreover, it satisfies all of the statutory and regulatory factors required for must carry status and is precisely the kind of broadcast service for which Congress intended to assure carriage.<sup>22</sup> WGEN-TV argues that, given the number of households in the subject communities, its economic survival is at stake should it not obtain mandatory carriage rights.<sup>23</sup>

7. The first statutory factor is “whether the station, or other stations located in the same area have historically been carried on the cable system or systems within such community.”<sup>24</sup> WGEN-TV

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<sup>14</sup>See e.g., *Continental Cablevision of Jacksonville, Inc. d/b/a Continental Cablevision of Broward County, Inc., et al.*, 11 FCC Rcd 14909 (1996); *Rifkin/Narragansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996); *Cable TV Fund 14-A, Ltd., d/b/a Jones Intercable, Inc.*, 12 FCC Rcd 17398 (1997); *Gulf & Pacific Communications, L.P.*, 12 FCC Rcd 21986 (1997); *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298 (1998); *Adelphia Cable Partners, L.P. d/b/a Adelphia Cable Communications*, 16 FCC Rcd 5328 (2001).

<sup>15</sup>Modification at 1. WGEN-TV points out that its prior lack of carriage during the period in which the previous market modification requests were before the Commission is most likely due to the fact that the station's ownership changed 4 times and it repeatedly changed its format (the station's programming went from a mix of foreign-language, sports and general entertainment to English-language syndicated programming and then to English-language religious, music and children's programs).

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* at 3, citing 21 FCC Rcd 5952 (2006); *app. for rev. den.*, 22 FCC Rcd 21054 (2007) (“*WRNN-DT*”); *WRNN License Company, LLC*, 20 FCC Rcd 7904 (2005).

<sup>19</sup>*Id.* at 24.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at 3.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*, citing *Application of Hispanic Keys Broadcasting, Inc. and Sonia Broadcasting Company, LLC for Consent to the Assignment of License WVIB(TV), Key West, Florida*, 19 FCC Rcd 4603, 4605 n.15 & 4607 (2004).

<sup>24</sup>47 U.S.C. § 534(h)(1)(C).

states that, unlike the situation in the prior decisions, it now has a record of cable carriage in the majority of the communities.<sup>25</sup> Indeed, WGEN-TV notes that it is currently carried in 41 of the subject communities.<sup>26</sup> WGEN-TV points out that the Commission has found a history of carriage, even by retransmission consent, to be significant in determining that the addition of communities is appropriate.<sup>27</sup> In the instant case, WGEN-TV argues that voluntary carriage of its signal by the various cable operators serving the communities is particularly strong evidence that WGEN-TV has a market nexus with the communities since WGEN-TV had previously been excluded by these same cable operators.<sup>28</sup> In addition, WGEN-TV notes that WSBS-TV, the only other full-power television station licensed to Key West, is also currently carried on cable systems throughout the DMA, and particularly in the communities at issue.<sup>29</sup> WGEN-TV states the two stations' transmission facilities are co-located; they both offer Spanish-language programming (albeit different programs); both are located over 100 miles from the communities; and neither station provides a Grade B signal to the communities.<sup>30</sup> Despite this, WGEN-TV asserts, cable systems in the Miami DMA have afforded more extensive carriage to WSBS-TV than to WGEN-TV resulting in WSBS-TV being available to 65,000 more cable subscribers.<sup>31</sup> WGEN-TV argues that, given this fact, there is no basis for the continued exclusion of the subject communities.<sup>32</sup> WGEN-TV maintains that grant of its petition will terminate any discriminatory treatment of WGEN-TV vis-à-vis WSBS-TV that exists in the Miami DMA.<sup>33</sup>

8. The second statutory factor is “whether the television station provides coverage or other local service to such community.”<sup>34</sup> WGEN-TV argues that the most significant change in the station's circumstances is its change in programming.<sup>35</sup> WGEN-TV states that the programming it currently offers

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<sup>25</sup>Modification at 4.

<sup>26</sup>*Id.* at 16.

<sup>27</sup>*Id.*, citing *Blackstar of Ann Arbor, Inc.*, 11 FCC Rcd 14992 (1996); *Modification of the Television Market of Television Station WFSB*, 10 FCC Rcd 4939 (1995); *Diversified Broadcasting, Inc.*, 13 FCC Rcd 22331, 22338 (1998) (“WCJB has a history of long-term carriage in the various communities due to retransmission consent agreements. Clearly, this is an indication that residents have an interest in receiving WCJB's signal.”); *Bay Television, Inc.*, 13 FCC Rcd 7209, 7215 (1998) (“A pattern of carriage, in the absence of any carriage obligation, is a strong indication of interest in a signal and of the signal's market connection to the communities in question.”).

<sup>28</sup>*Id.* at 17 and Exhibit 1. WGEN-TV states that it is carried by several cable operators in communities that are farther away from Key West than the communities at issue.

<sup>29</sup>*Id.* at Exhibit 2.

<sup>30</sup>*Id.* at 20.

<sup>31</sup>*Id.* at Exhibit 2.

<sup>32</sup>*Id.* at 21, citing *Ackerley Media Group, Inc.*, 18 FCC Rcd 16199, 16203 (2003) (“We also noted that [cable system] Falcon carries KSMS which is licensed to Monterey, KION's city of license. Carriage by a cable system of a collocated station is frequently a reflection that these stations are part of the cable system's market.”); *Seal Rock Broadcasters, LLC*, 18 FCC Rcd 16262 (2003); *G Force, L.L.C.*, 13 FCC Rcd 10386, 10390 (1998) (“Carriage of the other Honolulu stations is indicative of the interest on Kauai in programming of Honolulu stations and is evidence of a market nexus between Honolulu and the cable communities on Kauai; the exclusion of these two stations from the Kauai cable communities would “impact on the ability of KWHE and KIKU to compete with the other Honolulu stations.”).

<sup>33</sup>*Id.* at 23.

<sup>34</sup>47 U.S.C. § 534(h)(1)(C).

<sup>35</sup>Modification at 5.

is responsive to the interests and needs of the non-Mexican Latin American Hispanic population specifically in the subject communities, but throughout the DMA as well.<sup>36</sup> WGEN-TV states that it airs primarily Latin American-based Spanish-language programs, locally produced nightly news, news specials, and local public affairs, opinion and entertainment programs, all of which focus on issues important to the communities' residents with origins in and connections to various Latin American countries.<sup>37</sup> WGEN-TV argues that viewing interests of this group of subscribers is underserved by the other local broadcast stations currently carried by the various cable system serving the communities.<sup>38</sup> Some examples of its programming include: *Noticias GenTV*, a locally-produced nightly news program; *Ultima Palabra*, a live, local public affairs and opinion program; locally produced entertainment programming; and community calendars and public service announcements.<sup>39</sup> WGEN-TV asserts that the significant cost of its locally directed programming could not be sustained without cable carriage.<sup>40</sup> WGEN-TV argues that, as a specialty station licensed to a community at the southern end of the Miami DMA committed to serving the needs of the Hispanic population throughout the entire DMA, it needs to be able to reach its potential audience in order to generate sufficient revenue and to preserve the value of the station.<sup>41</sup> Indeed, WGEN-TV maintains, the purposes underlying the statutory must carry requirement would be undermined if WGEN-TV is not determined to have must carry rights throughout the entire Miami DMA.<sup>42</sup>

9. WGEN-TV states further that its city of license, Key West, is the southernmost city in Monroe County and in the Miami DMA.<sup>43</sup> However, WGEN-TV points out that Monroe County is unique in that virtually none of its population resides on mainland Florida due to the fact that the portion of Monroe County located on the mainland is part of the Everglades National Park and Big Cypress National Preserve – an area which is largely protected and sparsely inhabited.<sup>44</sup> Similarly, approximately one-third of Miami-Dade County's landmass is located in the Everglades National Park as well as two-thirds of Broward County.<sup>45</sup> As a result of these unique geographical features, WGEN-TV states that the Miami DMA's principal economic activity is concentrated in the population centers of Miami-Dade and Broward Counties and all of the subject communities are located in and adjacent to these areas.<sup>46</sup> WGEN-TV argues that while Key West may be geographically distant from many of the communities at issue, the populated portion of Monroe County bears a strong nexus to neighboring Miami-Dade and Broward

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<sup>36</sup>*Id.* at 6.

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* at 25-26. WGEN-TV states that its community-specific programming takes two forms: 1) First, the station airs programming that treats issues and events relevant to specific communities; 2) Second, the station airs programming that is of interest more generally to the non-Mexican, Latin American population in Miami-Dade and Broward Counties.

<sup>39</sup>*Id.* at 29-41.

<sup>40</sup>*Id.* at 6.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.* at 6-7, citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994).

<sup>43</sup>*Id.* at 10.

<sup>44</sup>*Id.* at Exhibit 6.

<sup>45</sup>*Id.*

<sup>46</sup>*Id.* at 11.

Counties and shares substantial economic, cultural, political, and social connections with viewers throughout the mainland portion of the DMA.<sup>47</sup> WGEN-TV maintains that the Commission has encountered similarly distinctive geography in *G Force, L.L.C.*, a market modification petition in which the cable operator sought to exclude two television stations licensed to Honolulu from all cable communities on the island of Kauai.<sup>48</sup> WGEN-TV argues that in *G Force, L.L.C.* the Commission ultimately determined that the stations should retain their must carry status because they both provided some programming directed to the Kauai audience and other stations licensed to Honolulu were also carried in the communities.<sup>49</sup> WGEN-TV asserts that the Commission should similarly grant its request for must carry status in the communities herein. In any event, WGEN-TV states that, while it broadcasts both an analog and digital signal from its transmitter at Key West, it also retransmits the analog signal via licensed translators from various locations throughout the Miami DMA.<sup>50</sup> WGEN-TV argues that not only do these translators provide a Grade B signal contour over the communities at issue, but it has installed fiber optic transmission facilities at its own expense to ensure that it delivers a clear signal from its Key West and Miami studios to several cable headends and will take all reasonable steps necessary to ensure continued delivery of an adequate signal to all cable headends.<sup>51</sup>

10. The third statutory factor is “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>52</sup> WGEN-TV states that, as of the 2000 Census, 40 percent of the residents of Broward and Miami-Dade Counties are Hispanic and, unlike other Hispanic demographics, the majority of Hispanic viewers in the Miami DMA have origins in Cuba and other non-Mexican Latin American countries, including Columbia, Venezuela, and others.<sup>53</sup> WGEN-TV states that its programming is intended primarily to serve these specific Hispanic viewers.<sup>54</sup> WGEN-TV points out that the program focus of four of the Spanish-language stations serving the subject communities – WLTV, WSCV, WAMI, and WPMF - is strictly of Mexican origin.<sup>55</sup> Further, while three other stations – WSBS, WJAN and WFUN – do provide some Hispanic programming for the non-Mexican Latin American audience, this programming is primarily Cuban.<sup>56</sup> WGEN-TV asserts that it is the only station in the market whose programming fully targets the broader non-Mexican, non-Cuban Latin American audience.

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<sup>47</sup>*Id.*

<sup>48</sup>*Id.*, citing 13 FCC Rcd 10386 (1998). WGEN-TV states that neither station provided Grade B coverage, had any viewership in the Kauai communities, had no history of carriage and were both located well over 100 miles from the communities. *See id.* at 12.

<sup>49</sup>*Id.*, citing *G Force L.L.C.*, 13 FCC Rcd at 10389-10390.

<sup>50</sup>*Id.* at 46 and Exhibit 26.

<sup>51</sup>*Id.*

<sup>52</sup>47 U.S.C. § 534(h)(1)(C).

<sup>53</sup>Modification at Exhibit 11. WGEN-TV points out that the 2000 Census indicates that only 2.9 percent of the Hispanics in Miami-Dade County and 7 percent in Broward County are of Mexican origin. Cuban residents comprise the largest percentage of Hispanics in both counties (nearly 45 percent).

<sup>54</sup>*Id.* at 8.

<sup>55</sup>*Id.*, citing Declaration of Roberto Vizcon, General Manager of WGEN-TV.

<sup>56</sup>*Id.*

11. 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.”<sup>57</sup> WGEN-TV states that as a Spanish-language broadcaster it is a specialty station which the Commission has recognized that “[d]espite their lack of general audience appeal . . . are nevertheless able to ‘offer a desirable diversity of programming.’”<sup>58</sup> As a result, WGEN-TV states, the Commission does not weigh heavily a specialty station’s lack of audience shares.<sup>59</sup> WGEN-TV argues, therefore, that while its audience ratings should not be determinative of whether its request should be granted, its ratings are sufficient to support the addition of the communities to its market.<sup>60</sup>

12. In addition to the four statutory factors, WGEN-TV argues that its strong nexus to the communities is demonstrated by the amount of advertising aired on its station by businesses located in Miami-Dade and Broward Counties.<sup>61</sup> WGEN-TV states that these advertisers include doctors, lawyers, car dealers, restaurants, local radio stations, sports teams, and Miami-Dade Community College.<sup>62</sup> WGEN-TV states further that, in addition to its main studio in Key West, it maintains a studio in Miami where much of its local programming is produced.<sup>63</sup> WGEN-TV points out that in *Time Warner New York City Group*, the Commission held that the presence of a television station’s office in a cable community was evidence of that station’s market connection to that community.<sup>64</sup> WGEN-TV asserts that because its Miami studio is staffed by local residents, its reporters can more easily provide coverage of news and other local issues that are of great importance to viewers in the subject communities.<sup>65</sup> WGEN-TV states that it also sponsors countless events in the communities including Carnival Miami, the 2008 Hispanic Health Fair in Hialeah, Columbia BeLive in Miami, International Ballet Festival of Miami, Miss Columbia 2008 Pageant in Miami, and the FAMA Awards in South Beach.<sup>66</sup> WGEN-TV states further that its programming is listed in various editions of *TV Guide*, as well as the *Miami Herald*, and Miami’s Spanish-language daily *El Nuevo Herald*.<sup>67</sup> In addition to program listings, WGEN-TV notes that the aforementioned newspapers, as well as *El Venezolano*, publish stories about WGEN-TV and its

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<sup>57</sup>47 U.S.C. § 534(h)(1)(C).

<sup>58</sup>Modification at 47, citing *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803, 4811 (1996).

<sup>59</sup>*Id.*

<sup>60</sup>*Id.* at 48. WGEN-TV states that, according to Nielsen data, during the period of October 2006 through July 2008, its programming earned an average rating of .325 and an average share of .733 in the communities (Monday through Sunday 7 a.m. – 1 a.m.). From 4 p.m. through 11 p.m. (Monday through Sunday), WGEN-TV states its programming earned an average rating of .725 and an average share of 1.216. Indeed, in various time periods, WGEN-TV states that it outperformed Miami’s CBS affiliate, WFOR-TV, NBC affiliate WTVJ, and CW affiliate WSFL-TV. *See Id.* at Exhibit 27.

<sup>61</sup>*Id.* at Exhibit 29.

<sup>62</sup>*Id.* at 51. WGEN-TV states that sales activity is also generated from long-form commercial programming.

<sup>63</sup>*Id.* at 52.

<sup>64</sup>*Id.*, citing 11 FCC Rcd 6514 (1996).

<sup>65</sup>*Id.* at Exhibit 31.

<sup>66</sup>*Id.* at Exhibit 32.

<sup>67</sup>*Id.* at Exhibit 5. WGEN-TV states further that it also advertises its programming via several local radio stations in the Miami area, local magazines, and on local buses. *See id.* at 55-56.

relevance, both economically and culturally, to the residents in the communities.<sup>68</sup> Finally, WGEN-TV argues that not only labor and shopping data, but Congressional districts, confirm the commonality of interest shared between WGEN-TV and the communities at issue.<sup>69</sup>

13. We agree with WGEN-TV and will grant its request. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purposes of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>70</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking four statutory factors into account.<sup>71</sup> WGEN-TV has demonstrated that it has overcome the deficiencies that mandated exclusion of its signal in the subject communities in prior market modification decisions. First, WGEN-TV has demonstrated a history of widespread carriage in the subject communities. While WGEN-TV has been carried through retransmission consent agreements, the Commission has stated repeatedly that such carriage is a clear indication that residents have an interest in receiving a station's signal.<sup>72</sup> Moreover, we note that WGEN-TV's co-located Key West station, WSBS-TV, is also carried in the subject communities. Second, WGEN-TV has shown that it now provides an extensive array of programming directed specifically at the non-Mexican, Latin American residents in the communities; programming that is not apparently readily supplied by the other Spanish-language stations serving the communities. In addition, WGEN-TV has also demonstrated that numerous local advertisers in the subject communities purchase advertising time on the station. Finally, we note that, as a specialty station, WGEN-TV attains minimal, but not significant viewership in the communities, but the inability to meet this criterion weighs less in situations where specialty stations are involved. Given the factors enumerated above, and the fact that no opposition to this request was filed, we find that grant of WGEN-TV's request for market modification to include the cable communities is in the public interest.<sup>73</sup>

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<sup>68</sup>*Id.* at Exhibit 33.

<sup>69</sup>*Id.* at Exhibits 34 and 12.

<sup>70</sup>47 U.S.C. § 534(h)(1)(C).

<sup>71</sup>47 U.S.C. § 534(h)(1)(C)(i).

<sup>72</sup>*See supra* n. 27.

<sup>73</sup>*See supra* n.1.

**IV. ORDERING CLAUSES**

14. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-8082-A), filed by Mapale LLC **IS GRANTED** for the cable communities.<sup>74</sup>

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

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>74</sup>*Id.*