

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

In the Matter of
Comcast Cable Communications, LLC
For Modification of the San Francisco-Oakland-
San Jose, California DMA
CSR-8504-A

MEMORANDUM OPINION AND ORDER

Adopted: October 20, 2011

Released: October 21, 2011

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

I. INTRODUCTION

1. Comcast Cable Communications, LLC ("Comcast"), filed the above-captioned petition for special relief seeking to modify the San Francisco-Oakland-San Jose, California designated market area ("DMA") with respect to television broadcast station KQSL (Ch. 8), Fort Bragg, California ("KQSL"). Specifically, Comcast requests that KQSL be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from numerous communities it serves in the San Francisco DMA.1 An opposition to this petition was filed on behalf of Jeff Chang, licensee of KQSL, to which Comcast replied. For the reasons stated below, we grant Comcast's request.

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

1See Appendix A.

2Implementation 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").

3Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by 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").

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>4</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>5</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 the areas served by the cable system or systems in such community.<sup>6</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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<sup>4</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>5</sup>47 U.S.C. § 534(h)(1)(C).

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

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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>7</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>8</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>9</sup>
- (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

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

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

<sup>9</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 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.

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>10</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 Comcast's request to exclude KQSL from mandatory carriage on the subject cable systems. All of the communities at issue are located in the San Francisco DMA, as is KQSL, which is licensed to Fort Bragg, California. Considering all of the relevant factual circumstances in the record, we believe that the market modification petition is a legitimate request to redraw DMA boundaries to make them congruous with market realities.

6. The first statutory factor 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."<sup>11</sup> Comcast argues that KQSL has never been carried in any of the subject communities, despite being on-the-air for more than 20 years.<sup>12</sup> As a result, Comcast maintains that the removal of the communities from KQSL's market would cause no disruption to established viewing patterns and the requested action would not deprive KQSL of any existing cable audience.<sup>13</sup> Comcast asserts that KQSL's lack of historic carriage confirms that there is no nexus between the station and the communities at issue.<sup>14</sup>

7. The second statutory factor is "whether the television station provides coverage or other local service to such community."<sup>15</sup> Comcast argues that the Commission has stated that for purposes of market modification, an analog station's local coverage area "may be demonstrated by the presence of a predicted Grade B contour, or by proximity to the community or communities in question . . . ."<sup>16</sup> Since the digital transition on June 12, 2009, Comcast states that the Commission has accepted a digital station's "noise-limited" service contour as the functional equivalent of an analog station's Grade B contour.<sup>17</sup> Comcast argues that KQSL's Longley-Rice digital signal coverage map demonstrates that all

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<sup>10</sup>47 C.F.R. § 76.59(b).

<sup>11</sup>47 U.S.C. § 534(h)(1)(C).

<sup>12</sup>Modification at 5. Comcast notes that KQSL was initially licensed in 1987 under the call sign KDKJ and as recently as June 1, 2011, changed its call letters from KBQR to KQSL. *See id.* at Exhibit 4.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>47 U.S.C. § 534(h)(1)(C).

<sup>16</sup>Modification at 5, citing *Montgomery Cablevision, L.P. d/b/a Cable TV Montgomery*, 10 FCC Rcd 2732, 2735 (1995), citing *Must Carry Order*, 8 FCC Rcd at 2977 (1993); *see also* 47 C.F.R. § 76.59(b)(2).

<sup>17</sup>Modification at 5-6, citing *Tennessee Broadcasting Partners*, 25 FCC Rcd 4857, 4859 (2010), *Commonwealth Broadcasting Group, Inc.*, 25 FCC Rcd 213, 217 (2010).

of the cable communities are located beyond the station's 36 dBu service area contour reach.<sup>18</sup> Comcast also argues that signal strength studies taken at the principal headends serving the various communities demonstrate that KQSL does not provide an actual off-air signal of adequate strength.<sup>19</sup> Comcast maintains that, given KQSL's failure to deliver a good quality signal to the respective cable system headends, it is reasonable to conclude that KQSL does not deliver a good quality off-air signal to individual households in the subject communities.<sup>20</sup> Comcast argues that this lack of signal coverage is not surprising since KQSL's city of license, Fort Bragg, is surrounded by mountains and the average distance between Fort Bragg and the communities at issue is approximately 140 miles.<sup>21</sup> Moreover, Comcast states, KQSL's main transmitter is located to the northeast of Fort Bragg, even farther from the subject communities.<sup>22</sup> Comcast asserts that these distances are similar to, or exceed, those found to justify the grant of previous market modification requests by the Commission.<sup>23</sup> Comcast argues that the lack of nexus between KQSL and the communities is also demonstrated by the fact that there is no single Interstate highway directly connecting Fort Bragg to the communities.<sup>24</sup> Indeed, Comcast states that commuting patterns obtained from the 2000 Census show that a *de minimis* number of residents from the various counties in which the communities are located work in KQSL's home county of Mendocino.<sup>25</sup> Finally, Comcast argues that KQSL does not appear to provide any significant local programming to the communities at issue.<sup>26</sup> While no local program listings identifying KQSL's programming schedule could be found, Comcast states that it appears that the station is an affiliate of Retro Television Network ("RTN").<sup>27</sup> As a result, Comcast argues, KQSL's programming is the same or similar to that of numerous other affiliated stations across the country with little or no programming targeting residents in particular communities.<sup>28</sup> In any event, Comcast points out that San Francisco station KCNS, currently carried in the communities, also broadcasts RTN programming.<sup>29</sup>

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<sup>18</sup>*Id.* at Exhibit 3. Comcast notes that, pursuant to 47 C.F.R. § 73.622(e)(1), the noise-limited service contour for KQSL is 36 dBu. *Id.* at 6 n.17.

<sup>19</sup>*Id.* at Exhibit 6.

<sup>20</sup>*Id.* at 6. Comcast states that KQSL does not even provide a signal of adequate strength to Comcast's principal headends located in the station's home county of Mendocino, even one as close as 18 miles from the station's main transmitter. *See id.* at Exhibits 6 and 10.

<sup>21</sup>*Id.* at Exhibit 8. Comcast notes that Fort Bragg is located 132 miles, 143 miles and 182 miles, respectively from the core-market communities of San Francisco, Oakland and San Jose.

<sup>22</sup>*Id.* at Exhibit 12.

<sup>23</sup>*Id.* at 7, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-70 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997) (38-61 miles); *Time Warner Cable*, 12 FCC Rcd 23249 (1997) (42-58 miles); *Time Warner Cable*, 11 FCC Rcd 13149 (1996) (45 miles); *Cablevision of Cleveland, L.P. and V Cable, Inc., d/b/a Cablevision of Ohio*, 11 FCC Rcd 18034 (1996) (41 miles).

<sup>24</sup>*Id.* at Exhibit 2.

<sup>25</sup>*Id.* at Exhibit 15.

<sup>26</sup>*Id.* at 9.

<sup>27</sup>*Id.* at 9 n.30 and Exhibit 9.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

8. 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>30</sup> Comcast maintains that the subject communities already receive an unusually high number of truly local stations, which provide digital contour coverage or an actual off-air signal and all of which provide substantial coverage of local interests and concerns for the residents.<sup>31</sup> Comcast maintains that even if KQSL were to provide significant or unique programming specifically targeting the communities herein, the coverage provided by the other stations carried on the cable systems would undermine any special benefits associated with KQSL.<sup>32</sup>

9. 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>33</sup> Comcast argues that, as demonstrated by Nielsen Media’s 2010 *County/Coverage Survey* data, KQSL has no reported ratings in either cable or non-cable households in any of the counties in which the communities are located.<sup>34</sup> Comcast asserts that this complete lack of ratings for KQSL weighs heavily in favor of granting the instant petition.

10. In its opposition, KQSL argues that the Comcast market modification request ignores the historical context of the station.<sup>35</sup> KQSL states that, before being acquired by the present owner, the station operated as a satellite station for several years and then was taken off-air entirely for nearly a year by its previous owner.<sup>36</sup> KQSL asserts that, as an essentially “new” station, it should not have its market unreasonably restricted before it is even able to establish itself, particularly as significant resources have been invested to improve the station’s technical service, including the use of translators, and development of a new, locally-focused programming service targeting Asian and Asian-American viewers.<sup>37</sup> KQSL argues that Comcast mischaracterizes the station’s history and programming and ignores the cultural, social and economic links between Fort Bragg and the communities at issue that demonstrate that they constitute a single market.<sup>38</sup> Moreover, KQSL maintains that Comcast’s rush to eliminate its cable communities from KQSL’s market is premature given that station ownership has withdrawn any demand for carriage on Comcast’s systems until such time as upgrades to the station’s facilities and programming

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<sup>30</sup>47 U.S.C. § 534(h)(1)(C).

<sup>31</sup>Modification at 10 and Exhibits 18 and 20.

<sup>32</sup>*Id.* at 11.

<sup>33</sup>47 U.S.C. § 534(h)(1)(C).

<sup>34</sup>Modification at Exhibit 21.

<sup>35</sup>Opposition at 1.

<sup>36</sup>*Id.* KQSL states that throughout most of its history, the station was operated in a parent/satellite relationship under two different call signs – KFWU and KUNO-TV. It only operated as a stand-alone station for a brief time in 1997. In 2008, the station’s licensee declared bankruptcy and in 2009 was sold to a new licensee, TTBG/KUNO License Sub, LLC. Only weeks after acquiring the station, however, TTBG/KUNO License suspended operations for financial reasons. KQSL only resumed operations in October 2010 when it was acquired by the current licensee. *See id.* at 4.

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

<sup>38</sup>*Id.* at 1-2.

can be completed.<sup>39</sup> KQSL also asserts that Comcast's apparent desire to deny KQSL carriage throughout most of the DMA appears contrary to the spirit of the "Memorandum of Understanding" ("MOU") entered into between Comcast, NBC Universal and certain Asian American Leadership organizations as a condition of the merger of Comcast and NBC.<sup>40</sup> KQSL states that Comcast pledged to work to enhance the distribution of programming owned by and/or operated by Asian-Americans.<sup>41</sup> KQSL states that, to its knowledge, it is the only full-power television station in the United States wholly owned by a Chinese-American and one of only two minority-owned stations in the San Francisco DMA.<sup>42</sup> As a result, grant of Comcast's request would be contrary to the spirit of the MOU and Comcast's assurances to the Asian-American community.

11. With regard to the market modification factors, KQSL argues that the Commission has previously held that lack of historical carriage is not determinative, particularly when there has been a fundamental change in a station's ownership or programming.<sup>43</sup> KQSL states that the Commission has specifically noted that "if [historical carriage] were found to be controlling that would, in effect, prevent newer or weaker stations from ever being entitled to carriage, contrary to the policy of the statute."<sup>44</sup> In this instance, KQSL asserts, it is for all intents and purposes a new station.<sup>45</sup> Indeed, KQSL states that while it initially operated one of the station's digital multicast channels as an affiliate of the RTN, that affiliation has now been terminated.<sup>46</sup> Instead, KQSL states that it is developing a new, unique local programming service devoted to issues of importance to Bay Area residents, with a particular focus on the technology sector and on programming serving the Asian and Asian-American residents of the market.<sup>47</sup> As a result, KQSL argues, Comcast's claim that KQSL is an affiliate of RTN and that its programming is duplicated by a station already carried by the system, KCNS, is in error.<sup>48</sup> KQSL points out that KCNS only started carrying RTN programming when KQSL severed its affiliation.<sup>49</sup> Moreover, KCNS, which Comcast apparently relies on as a source of "Asian language/targeted" programming has now dropped its primary Chinese language programming in favor of the same RTN programming that Comcast does not consider local.<sup>50</sup> In any event, KQSL argues that the existence of other stations that may provide local

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<sup>39</sup>*Id.* at 2.

<sup>40</sup>*Id.*, citing *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, 26 FCC Rcd 4238, 4477, Appendix G (2011).

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

<sup>42</sup>*Id.* at Attachment A.

<sup>43</sup>*Id.* at 3, citing *CoxCom, Inc.*, 17 FCC Rcd 17192, 17195 (2002), *Comcast Cablevision of Danbury, Inc.*, 18 FCC Rcd 274, 278 (2003).

<sup>44</sup>*Id.*, citing *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17525 (1997).

<sup>45</sup>*Id.* at Attachment A.

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

<sup>47</sup>*Id.* KQSL states that it has acquired hyper-local news and information programs such as *Silicon Valley Entrepreneurs*, *California Life (Bay Area Edition)*, *Future Talk*, and *The Ventures Program from Stanford University*. It is also working to produce documentaries such as *Silicon Valley Stories* and *San Francisco Flashback*. We note that in a supplement to its opposition, KQSL states that it has begun broadcasts of two of these programs and will shortly begin airing others. See Supplement to Opposition at 2.

<sup>48</sup>*Id.* at 8.

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

service to the cable communities herein should not serve as a bar to the continued inclusion of those same communities in KQSL's market.<sup>51</sup> KQSL asserts its unique targeted programming should enhance its claim for inclusion.<sup>52</sup> KQSL also argues that, just as with historic carriage, the station's lack of viewership should be discounted in view of the station's history and its status as a "new" station with specialized programming.<sup>53</sup>

12. KQSL argues that although it is true that most of the communities at issue are beyond the 36 dBu contour of the station, many of those same communities are still closely linked with the Fort Bragg area politically, socially and economically.<sup>54</sup> Fort Bragg is included in California's First Congressional District as is Mendocino County and significant portions of Sonoma and Napa counties, including the communities of Napa, Yountville, Calistoga, Cloverdale, Windsor, Healdsburg and Sonoma.<sup>55</sup> KQSL states that Fort Bragg is also physically connected to the communities through numerous transportation routes – California State Route 1 provides a direct link down the coast from Fort Bragg to San Francisco; State Route 20 provides a direct link from Fort Bragg to Route 101 which connects to many of the communities at issue.<sup>56</sup> KQSL argues that such access benefits travel, tourism and commercial interests between Fort Bragg and the communities.<sup>57</sup> Further demonstrating this economic nexus, states KQSL is the availability of the *Fort Bragg Advocate News* to residents in San Jose, Oakland and throughout the market.<sup>58</sup>

13. In reply, Comcast argues that all four market modification factors support the exclusion of the subject communities from KQSL's market.<sup>59</sup> Comcast states that there is no dispute that KQSL fails to provide a "noise-limited" service coverage of 36 dBu over the communities.<sup>60</sup> While KQSL stated that it was exploring the use of translators "for maximizing the Station's service potential," Comcast points out that the Commission has stated that stations cannot rely on translators to establish a "local presence" for purposes of the "coverage" prong of the market modification test.<sup>61</sup> While KQSL

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<sup>51</sup>*Id.* at 8-9.

<sup>52</sup>*Id.* at 9.

<sup>53</sup>*Id.*

<sup>54</sup>*Id.* at 6. We note that Comcast provided a map of KQSL's 36 dBu contour which demonstrates that all of the communities lie outside the contour's reach. *See* Modification at Exhibit 6.

<sup>55</sup>*Id.*

<sup>56</sup>*Id.* KQSL points out that the Mendocino Transit Authority uses these routes to provide transportation service between Fort Bragg and Sonoma County, including the communities of Windsor and Santa Rosa and connecting daily public transportation service is available through Marin County to downtown San Francisco and the communities of Novato, Petaluma and Rohnert Park.

<sup>57</sup>*Id.* at 7. KQSL states that the wine-making industry links Fort Bragg and Mendocino County with many of the cable communities and multiple Fort Bragg restaurants are listed in the San Francisco guide to Bay Area restaurants.

<sup>58</sup>*Id.*

<sup>59</sup>Reply at 1.

<sup>60</sup>*Id.* at 3.

<sup>61</sup>*Id.*, citing Opposition at 4; *see also e.g., Time Warner New York City Cable Group*, 11 FCC Rcd 6528, 6539 (1996) ("[S]uch [translator] coverage does not lessen the relevance of the parent's failure to place a Grade B (continued....)

emphasizes future programming coverage, Comcast notes that it is silent regarding any current local programming now being aired.<sup>62</sup> Such absence, Comcast contends, only reinforces the station's lack of a nexus with the communities.<sup>63</sup> Comcast argues that the failure of KQSL's signal to cover the communities is merely a reflection of the substantial distances and geographic barriers that separate KQSL from the communities.<sup>64</sup> Comcast argues that although KQSL attempts to minimize the distance separating it from the communities by its reference to the fact that California's State Route 1 provides a direct link from Fort Bragg to San Francisco, it fails to mention that the drive along Route 1 covers nearly 180 miles and would take approximately 4 ½ hours to complete.<sup>65</sup> Comcast states that KQSL's claims that it is politically linked because it is located in the same Congressional District as a few of the communities is also unavailing.<sup>66</sup> Comcast notes that this particular Congressional District also includes a large swath of California outside of the communities at issue, including portions of two other DMAs and an area extending more than 285 miles north of San Francisco near the California-Oregon border.<sup>67</sup>

14. While KQSL concedes that it has never been carried on Comcast's systems, it asks that this factor be discounted because, due to its 2010 change of ownership, it is essentially a "new" station which has not yet had the opportunity to build a history of cable carriage.<sup>68</sup> Comcast contends however that historic carriage is probative evidence of the nexus between a broadcast station and particular cable systems.<sup>69</sup> Moreover, Comcast argues, an ownership change does not automatically transform KQSL into a "new" station for the purposes of a market modification analysis any more than an ownership change in a broadcast station that was historically carried would render that historic carriage moot.<sup>70</sup> Therefore, Comcast argues, KQSL is essentially the same broadcast signal that has been licensed to Fort Bragg as a full power station for more than 20 years.<sup>71</sup> Comcast asserts that KQSL's claim that its lack of viewership should also be discounted because it is a "new" station should also be discounted.<sup>72</sup> In addition, Comcast argues, KQSL's claim that it qualifies as "specialty" station is not supported by any evidence.<sup>73</sup> Further,

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contour over the subject cable communities as Grade B coverage is indicative of the station's natural market."); *Dynamic Cablevision of Florida Ltd., et al.*, 12 FCC Rcd 9952, 9958 (1997).

<sup>62</sup>*Id.* at 4.

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

<sup>64</sup>*Id.*

<sup>65</sup>*Id.* at Exhibit 1.

<sup>66</sup>*Id.* at 5. Comcast states that, in any case, the majority of the communities herein are located outside of the First Congressional District which only serves to undermine KQSL's claimed political connection.

<sup>67</sup>*Id.* at 5 n.16.

<sup>68</sup>*Id.* at 6.

<sup>69</sup>*Id.*

<sup>70</sup>*Id.* Comcast maintains that the fact that the Fort Bragg station was historically operated as a satellite of another Bay Area station argues against extending KQSL's must carry rights because such satellite operation presumably arose because the Fort Bragg station covers a different geographic area than broadcast stations licensed to the Bay Area itself. *See id.* at n.20.

<sup>71</sup>*Id.* at 7, citing Modification at Exhibit 4.

<sup>72</sup>*Id.*

<sup>73</sup>*Id.*

Comcast argues that KQSL does not dispute that the cable systems already carry a high number of broadcast stations licensed to the San Francisco Bay Area, at least three of which – KTSF, KCNS and KICU – provide up to 6 feeds of Asian language/targeted programming and an additional 23 available cable channels with Asian language programming.<sup>74</sup> Comcast maintains that, even if KQSL did provide a significant amount of programming specifically targeting the communities at issue, the coverage by the systems’ truly local stations would undermine any special benefits associated with KQSL.<sup>75</sup> Comcast asserts that, despite KQSL’s claims to the contrary, it has diligently complied with the MOU in both letter and spirit, including recently announcing plans to expand carriage of Mnet, an English-language Asian channel, by over 2 million subscribers.<sup>76</sup> Finally, with regard to KQSL’s promises of further locally-targeted programming, Comcast points out that the Commission has specifically rejected similar speculative programming arguments.<sup>77</sup>

15. We agree with Comcast and will grant its request for market modification. 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>78</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>79</sup> The record unambiguously demonstrates that KQSL has no history of carriage and no discernable viewership in the communities at issue. While KQSL has argued that we should overlook its failure to meet these factors because it is both a “new” station and a “specialty” station, we disagree. KQSL has been on-the-air for over 20 years. A change in ownership or operations, therefore, does not automatically reclassify it as a new station. Moreover, while KQSL states its intention to provide Asian language programming targeted to Bay Area residents, such intention is, at best, premature nor is there any substantiation that such programming would be classified as “specialty” programming. We also disagree with KQSL’s reliance on the “Memorandum of Understanding” between Comcast, NBC Universal and Asian American Leadership organizations. It has no relevance in a petition seeking market modification, particularly so in this case where the station in question has yet to fully provide the type of locally-focused programming that the MOU purports to support. In any event, Comcast has provided sufficient information to demonstrate that its subscribers already receive an abundance of Asian-targeted and Asian language programming. As such, we will take KQSL’s failure to meet these factors into account. In addition, KQSL has specifically stated that its digital service contour does not cover the subject communities. It is also clear that KQSL is geographically distant from the from the communities at an average distance of 140 miles and that KQSL and the communities are separated by mountainous terrain. For the subject communities, therefore, the factors weigh in favor of granting Comcast’s request. In light of this, we find

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<sup>74</sup>*Id.* at 8, citing Modification at Exhibits 9 and 19.

<sup>75</sup>*Id.*

<sup>76</sup>*Id.* at 8 n.26.

<sup>77</sup>*Id.* at 9, citing *TCI of Illinois, Inc.*, 12 FCC Rcd 23231, 23241 (1997) (“WCEE asks that we take into consideration its future programming commitments. For the purposes of determining whether a station is local to a specific market at a given point in time, our focus is on the programming actually being aired. We are unable to base our market modification decision on programming that may or may not be aired at some future date. The lack of actual, targeted programming in this case weighs against WCEE in our analysis.”).

<sup>78</sup>47 U.S.C. § 534(h)(1)(C).

<sup>79</sup>47 U.S.C. § 534(h)(1)(C)(i).

that a grant of Comcast's request to exclude KQSL from carriage in the communities listed in Appendix A of this order to be in the public interest.

#### IV. ORDERING CLAUSES

16. 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-8504-A), filed by Comcast Cable Communications, LLC **IS GRANTED** for the communities set forth in Appendix A below.

17. 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

Appendix A

Alameda County:

Alameda City (CA1684)  
Alameda County (CA0185, CA0238, CA0364, CA1334, CA1537)  
Albany (CA0014)  
Berkeley (CA0006)  
Dublin (CA0353, CA1560)  
Emeryville (CA0852)  
Fremont (CA0100)  
Hayward (CA0379)  
Livermore (CA0356)  
Novato (CA0107)  
Oakley (CA1607)  
Pinole (CA0069)  
Pleasanton (CA0360, CA1559)  
San Leandro (CA0416)  
Union City (CA0901)

Napa County:

American Canyon (CA1339)  
Calistoga (CA0305)  
Napa City (CA0407)  
Napa County (CA0314, CA0408, CA1586)  
St. Helena (CA0319)  
Yountville (CA0326)

Contra Costa County:

Antioch (CA0351)  
Clayton (CA0061)  
Concord (CA0063)  
Concord Naval Weapons Station (CA1351)  
Contra Costa County (CA0062, CA0070, CA0075, CA0243, CA0289, CA0346, CA0354, CA0365, CA0576, CA0747, CA0924, CA1233, CA1507)  
Danville (CA0288)  
El Cerrito (CA0574)  
Hercules (CA0769)  
Lafayette (CA0239)  
Martinez (CA0241)  
Moraga (CA0292)  
Oakley (CA1607)  
Orinda (CA0291)  
Pinole (CA0069)  
Pittsburg (CA0359)  
Pleasant Hill (CA0244)  
Richmond (CA0487, CA1373)  
San Pablo (CA0021)  
San Ramon (CA1115)  
Walnut Creek (CA0293, CA1395, CA1654)

San Mateo County:

Atherton (CA1435)  
Belmont (CA0007, CA1370)  
Brisbane (CA0440)  
Burlingame (CA0925)  
Colma (CA1200, CA1471)  
Daly City (CA0280, CA1337)  
East Palo Alto (CA1434)  
Foster City (CA0099)  
Half Moon Bay (CA0077)  
Hillsborough (CA1270)  
Menlo Park (CA1433)  
Millbrae (CA0578)  
Pacifica (CA0197)  
Portola Valley (CA1464)  
Redwood City (CA0205, CA1569)  
Redwood Mobile Estate (CA1462)  
San Carlos (CA0207, CA1470)  
San Mateo City (CA0206, CA1374)  
San Mateo County (CA0074, CA0076, CA0078, CA0079, CA0573, CA0575, CA0859, CA0860,  
CA0967, CA1377, CA1461, CA1501, CA1502, CA1523)  
South San Francisco (CA0282)  
Woodside (CA1463)

Marin County:

Belvedere (CA0527)  
Corte Madera (CA0352, CA1558)  
Fairfax (CA0050)  
Larkspur (CA0355)  
Marin County (CA0363, CA0602)  
Mill Valley (CA0051)  
Novato (CA0107)  
Ross (CA0361)  
San Anselmo (CA0052)  
San Rafael (CA0362)  
Sausalito (CA0166)  
Tiburon (CA0054, CA1518)

Solano County:

Benicia (CA0015)  
Rio Vista (CA0611)  
Solano County (CA0480, CA0580, CA1466)  
Vallejo (CA0388)

Sonoma County:

Brentwood (CA0556)  
Cloverdale (CA0110)  
Cotati (CA0306)  
Glen Ellen (CA1771)  
Healdsburg (CA0111)

Petaluma (CA0358)  
Rohnert Park (CA0318)  
Santa Rosa (CA0255, CA1612)  
Sebastopol (CA0324)  
Sonoma City (CA0325)  
Sonoma County (CA0112, CA0317, CA0357, CA0443, CA0444, CA0618, CA0619, CA0658)  
Windsor (CA1513)

Santa Clara County:

Campbell (CA0386)  
Cupertino (CA0492, CA0843)  
Los Altos (CA1228)  
Los Altos Hills (CA1439)  
Los Gatos (CA0240)  
Milpitas (CA0169)  
Monte Sereno (CA0514)  
Mountain View (CA0906)  
Palo Alto (CA1437, CA1631)  
San Jose (CA0213)  
Santa Clara County (CA0212, CA0379, CA1333, CA1436, CA1438)  
Santa Clara (CA0455)  
Saratoga (CA0771)  
Sunnyvale (CA0208)

San Francisco County:

San Francisco (CA0245)  
The Presidio (CA1202)  
Treasure Island Naval Base (CA1259)