

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

In the Matter of
Massillon Cable TV, Inc.
For Modification of the Cleveland, Ohio
DMA
CSR-7006-A

MEMORANDUM OPINION AND ORDER

Adopted: October 28, 2011

Released: October 31, 2011

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

I. INTRODUCTION

1. Massillon Cable TV, Inc. ("Massillon Cable"), filed the above-captioned petition for special relief seeking to modify the Cleveland, Ohio designated market area ("DMA") with respect to station WGGN-TV (Ind., Ch. 52), Sandusky, Ohio ("WGGN-TV"). Specifically, Massillon Cable requests that WGGN-TV be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the communities served by its Massillon, Ohio cable system.

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.

1Massillon Cable states that its system serves the following communities: Massillon, Bethlehem Township, Brewster, Canal Fulton, Jackson Township, Lawrence Township, Navarre, Richville, Sugar Creek Township and Tuscarawas Township, all located in Stark County, Ohio; the southwestern portions of Summit County, Ohio; and the eastern portions of Wayne County, Ohio. Although not expressly listed in its petition, Warren Publishing's 2010 Television & Cable Factbook also lists the community of Perry Township, in Stark County, as being served by the system.

2Implementation of the Cable Television Consumer Protection and Competition act of 1992, Broadcast Signal Carriage Issues, 8 FCC Rcd 2965, 2976-2977 (1992) ("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.

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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>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 television 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 –

- (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 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

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§534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by The Nielsen Company'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>4</sup>For a more complete description of how counties are allocated, see The Nielsen Company's (formerly Nielsen Media Research) *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>5</sup>47 U.S.C. §534(h)(1)(C).

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

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>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 modification petitions 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.

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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 at 2977, and n.139 (1993).

<sup>9</sup>Note to Paragraph (b)(2): Service 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.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience average over Sunday-Saturday, 7 a.m.-1a.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 with a filing fee. The *Modification Final Report and Order* provides that parties may submit additional evidence that they deem appropriate.

### III. DISCUSSION

5. The issue before us is whether to grant Massillon Cable's request to exclude WGGN-TV from its system communities for mandatory carriage purposes. The communities served by Massillon Cable are located in Stark, Summit and Wayne Counties, Ohio, all of which are located in the Cleveland, Ohio DMA. WGGN-TV, which is licensed to Sandusky, Ohio, is also considered to be part of the Cleveland DMA.

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 within such community."<sup>11</sup> Massillon Cable argues that WGGN-TV has no history of carriage in the subject communities.<sup>12</sup> In addition, Massillon Cable states that WGGN-TV is not currently, and has never been carried, by any other cable operator serving communities within 50 miles of the communities at issue.<sup>13</sup> In opposition, WGGN-TV concedes that while it has no history of carriage on Massillon Cable's system, it is currently carried on the Time Warner Cable system serving Medina and Wayne Counties, Ohio.<sup>14</sup> In any event, WGGN-TV argues that the Commission has long discounted lack of historic carriage when considering the carriage rights of religious stations, such as WGGN-TV, because they are considered "specialty stations" which consistently face carriage discrimination and lower ratings due to the specialized nature of their programming.<sup>15</sup> Indeed, WGGN-TV points out that in *Nationwide Communications, Inc.*, the Commission stated that "[w]e believe that the historical carriage factor is not controlling in these circumstances because the 1992 Cable Act would, in effect, prevent religious and other specialty stations which cable systems had previously declined to carry, from ever being carried."<sup>16</sup> Massillon Cable argues that while the Commission may discount lack of historical carriage when considering the rights of specialty stations, the factor is not totally eliminated in the Commission's overall analysis.<sup>17</sup> In this

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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 6; *see also* Exhibit F.

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

<sup>14</sup> Opposition at 3 and Exhibit B. Our records indicate that this is the Lodi, Ohio cable system.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*, citing 10 FCC Rcd 13040 at para. 16 (1995); *see also Family Stations, Inc.*, 18 FCC Rcd 22916 (2003) ("In analyzing a specialty station's request to modify it[s] television market, historical carriage and local viewership are not as important in the analysis.").

<sup>17</sup> Reply at 3, citing *Norwell Television, LLC*, 17 FCC Rcd 35 (2001) (while lack of historic carriage and viewership "are not controlling" in the case of specialty stations, nor can the Commission "totally disregard their (continued...)

instance, Massillon Cable maintains that WGGN-TV's failure to meet the other market modification factors overwhelm WGGN-TV's specialty station status and, therefore, its lack of historic carriage should be given evidentiary weight.<sup>18</sup>

7. The second statutory factor is "whether the television station provides coverage or other local service to such community."<sup>19</sup> Massillon Cable asserts that WGGN-TV fails to provide Grade B coverage to the communities.<sup>20</sup> Massillon Cable states that the closest community to WGGN-TV's Grade B contour is Huntington, Ohio, which is over 43 miles from the subject communities.<sup>21</sup> Massillon Cable estimates that the cable communities are between 71 and 80 miles from Sandusky, WGGN-TV's city of license, and are located at the opposite edge of the Cleveland DMA.<sup>22</sup> Massillon Cable maintains that such distance not only attenuates any local ties WGGN-TV may have to the communities, but are well within the distances previously found by the Commission to justify market modification.<sup>23</sup> Massillon Cable argues further that WGGN-TV's programming offers nothing of unique value to its subscribers nor does it air any local news, public affairs or public service programming of relevance to the communities.<sup>24</sup> Given the lack of a local programming connection, Massillon Cable argues that WGGN-TV cannot claim to serve the communities at issue or that the communities are within the station's economic market.<sup>25</sup> Massillon Cable points out that further proof of a lack of nexus between WGGN-TV and the communities is the fact that neither of the local papers serving the communities includes WGGN-TV in their television guide listings.<sup>26</sup>

8. Massillon Cable states further that the Cleveland DMA, which is the nation's sixth largest television market, encompasses 17 counties and is approximately 125 miles long and over 120 miles wide.<sup>27</sup> Sandusky, WGGN-TV's city of license, is located at the far north-western edge of the DMA,

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presence as urged by WWDP"); *Time Warner Cable*, 17 FCC Rcd 9542, 9546 (2000) (station was not historically carried because it is not in geographic proximity to the TWC communities).

<sup>18</sup>*Id.* at 4, citing *Cablevision Systems Corp.*, 11 FCC Rcd 6453, 6478 (1996); *Frontier, A Citizens Communications Company*, 18 FCC Rcd 9589, 9596 (2003).

<sup>19</sup>47 U.S.C. § 534(h)(1)(C).

<sup>20</sup>Modification at 7 and Exhibits G, H and I.

<sup>21</sup>*Id.* at 7 n.18.

<sup>22</sup>*Id.* at 5, 8 and Exhibit B.

<sup>23</sup>*Id.* at 8, citing *Time Warner Entertainment-Advance/Newhouse Partnership, d/b/a Time Warner Cable*, 18 FCC Rcd 4969 (2003) (84-95 miles); *Paxson Portland License, Inc.*, 17 FCC Rcd 18332 (2002) (79-95 miles); *Time Warner Cable*, 17 FCC Rcd 9542 (2002) (53-75 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997), *rev. denied*, 16 FCC Rcd 4942 (2001) (38-61 miles); *Cablevision Systems Corporation*, 11 FCC Rcd 6453 (1996) (40-45 miles); *Continental Cablevision of Western New England, Inc.*, 11 FCC Rcd 6488 (1996) (45-69 miles); *Time Warner Cable*, 12 FCC Rcd 23249 (1996) (42-58 miles); *TKR Cable Company*, 12 FCC Rcd 3525 (1997) (42-75 miles); *Cablevision of Cleveland, L.P. and V Cable, Inc.*, 11 FCC Rcd 18034 (1996) (41-85 miles).

<sup>24</sup>*Id.* at 9.

<sup>25</sup>*Id.* at 9 and Exhibit J.

<sup>26</sup>*Id.* at Exhibit E.

<sup>27</sup>*Id.* at 4. Massillon Cable states that the Cleveland DMA includes 1,556,670 households and 12 commercial television stations. *See id.* at Exhibit B.

while the communities served by Massillon Cable are located in the far south-eastern edge of the DMA.<sup>28</sup> Massillon Cable states that, according to the relevant transportation routes, 105 road miles stand between Sandusky and Massillon.<sup>29</sup> Massillon Cable points out that the average commuting distance for residents in the Canton/Massillon area is only 19 miles, which is far less than the 105 miles that separates Massillon from Sandusky.<sup>30</sup> Massillon Cable maintains that these distances demonstrate that the subject communities and Sandusky are not part of the same labor or shopping market and further supports the assertion that there is no discernible economic, cultural, social, or demographic nexus between WGGN-TV and the communities.

9. In opposition, WGGN-TV argues that Massillon Cable's attempt to claim that Massillon and Sandusky are not part of the same market due to commuting patterns is misplaced.<sup>31</sup> WGGN-TV notes that Massillon Cable carries several stations licensed to Cleveland, Ohio, which is nearly 50 miles from Massillon, and also carries another station licensed to Lorain, Ohio, which is 57 miles distant.<sup>32</sup> WGGN-TV maintains that the Commission simply cannot credit Massillon Cable's reliance on commuting patterns when the majority of the stations carried by the system originate far outside the petitioner's artificial 19 mile boundary.<sup>33</sup> Moreover, WGGN-TV argues that the 70 to 80 mile distance between Massillon and Sandusky does not, in itself, compel grant of the petition because the Commission has repeatedly refused to exclude communities even more distant.<sup>34</sup> In addition, WGGN-TV states that while Massillon Cable is correct that WGGN-TV's predicted Grade B contour does not encompass the communities, a Longley-Rice signal coverage map demonstrates that WGGN-TV does provide a Grade B signal into Wayne County.<sup>35</sup> WGGN-TV argues further that, despite Massillon Cable's assertions, the subject communities and Sandusky are classified as part of the same "Major Trading Area," as defined by Rand McNally – an area defined by geography and economic activity, made up of two or more "Basic Trading Areas" in which residents make the bulk of their shopping purchases.<sup>36</sup> Finally, WGGN-TV maintains that it broadcasts approximately 150 hours per week of religious and values-based programming, with one locally-produced program targeted specifically to Wayne County.<sup>37</sup> WGGN-TV

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<sup>28</sup>*Id.* at 5.

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

<sup>30</sup>*Id.* at Exhibit D.

<sup>31</sup>Opposition at 4.

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

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

<sup>34</sup>*Id.* at 5, citing *Time Warner Entertainment-Advance/Newhouse Partnership*, 13 FCC Rcd 5900 (1997) (75 miles); *Rifkin & Associates, Inc.*, 12 FCC Rcd 22080 (1997) (45-71 miles); *TWI Cable, Inc.*, 12 FCC Rcd 13187 (1997) (85 miles); *Panhandle Telecasting Co.*, 12 FCC Rcd 884 (1997) (adding a community 108 miles distant).

<sup>35</sup>*Id.* at Exhibit C. WGGN-TV states that its signal coverage area has been artificially constrained by local community concerns that have limited the potential height of its tower. WGGN-TV states that it has received approval from the FAA for a tower height of 1000 feet, but local authorities would only approve a tower height of 680 feet. *See id.* at Exhibit D. In reply, Massillon Cable argues that any coverage the station might have in the future is not relevant in a market modification proceeding. *See Reply* at 12.

<sup>36</sup>*Id.* at 5-6 n.14.

<sup>37</sup>*Id.* at 6.



contends that such a substantial amount of family-friendly, positive-programming is of great benefit to the communities at issue.<sup>38</sup>

10. In reply, Massillon Cable argues that it demonstrated that each of the communities at issue are located a substantial distance from Sandusky and that no community is closer than 71 miles.<sup>39</sup> Massillon Cable states that the cases cited by WGGN-TV in support of its contention that “the Commission has repeatedly refused to exclude communities even more distant than in the instant case,” are misplaced.<sup>40</sup> In each case, Massillon Cable states, there were circumstances, non-existent in this case, which served to override the distance between the station and the subject communities.<sup>41</sup> In one instance, the station had a demonstrated history of carriage and viewership in the communities.<sup>42</sup> In another, the station provided live coverage of local college and high-school sports including those in the respective communities and carried five other stations licensed to the same community as the station.<sup>43</sup> In the last case, the station’s contour maps demonstrated that the communities were not only within the station’s Grade B contour, but within its Grade A contour as well.<sup>44</sup> Further, Massillon Cable argues that, while the Longley-Rice evidence provided by WGGN-TV demonstrates some Grade B coverage into Wayne County, WGGN-TV fails to claim that its Grade B encompasses any of the communities at issue.<sup>45</sup> Massillon Cable states that WGGN-TV’s showing demonstrates only that its Grade B extends only so far as the Time Warner headend in Lodi, Ohio and not into the far eastern portions of Wayne County where the majority of the communities are located.<sup>46</sup> Moreover, Massillon Cable states, while WGGN-TV may have recently been added to Time Warner’s Lodi cable system,<sup>47</sup> it is not carried by any intervening cable systems and the Commission has previously excluded WGGN-TV from a system in Wooster, Ohio, a community far closer to WGGN-TV’s Grade B than any of the subject communities.<sup>48</sup>

11. Massillon Cable argues further that Rand McNally’s decision to classify Sandusky and the communities as part of the same “Major Trading Area” has no more evidentiary value than Nielsen’s inclusion of Erie, Wayne and Stark Counties as being located in the Cleveland DMA.<sup>49</sup> Massillon Cable maintains that the relevant issue is the relationship between the station and the communities and whether a nexus exists between them.<sup>50</sup> Massillon Cable notes that the Commission has explained that where a

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<sup>38</sup>*Id.*

<sup>39</sup>Reply at 5.

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

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

<sup>42</sup>*Id.*, citing *Panhandle Telecasting Co.*, 12 FCC Rcd 884 (1997).

<sup>43</sup>*Id.*, citing *TWI Cable, Inc.*, 12 FCC Rcd 13187 (1997).

<sup>44</sup>*Id.*, citing *Time Warner Entertainment-Advance/Newhouse Partnership*, 13 FCC Rcd 5900 (1997).

<sup>45</sup>*Id.* at 7.

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

<sup>47</sup>*Id.* Massillon Cable states that the closest Time Warner community is over 12 miles from the nearest Massillon community and is served by a headend over 45 miles from the Massillon system.

<sup>48</sup>*Id.* at 7-8, citing *Clear Pictures, Inc.*, 18 FCC Rcd 20271 (2003).

<sup>49</sup>*Id.* at 8.

<sup>50</sup>*Id.* at 8-9.

DMA covers a large geographic area, the mandatory broadcast signal carriage rules do not transform a station serving a portion of the DMA's market and service area into a regional 'super station' that must be carried by cable systems throughout the DMA.<sup>51</sup> Massillon Cable states that such a holding applies here. In addition, Massillon Cable argues that, while WGGN-TV claims that much of its programming is locally produced, including one program specifically targeted to Wayne County, it fails to provide any details supporting this claim.<sup>52</sup> Massillon Cable maintains that just because a program is produced in Ohio does not necessarily establish localism.<sup>53</sup> Without any evidence as to how this programming is targeted, Massillon Cable asserts that WGGN-TV's program offerings can be considered as nothing more than programming of general interest to the DMA at large and the Commission has consistently found such programming insufficient to demonstrate local service to communities.<sup>54</sup>

12. 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>55</sup> Massillon Cable states that it carries twelve stations that provide local programming and which provide its subscribers with a wide variety of news and public affairs programming.<sup>56</sup> In opposition, WGGN-TV argues that Massillon Cable provides no specific evidence of programming carried by other stations which is specifically targeted to the subject communities.<sup>57</sup> In any event, WGGN-TV states, the fact that certain stations in the market provide service to the communities should not exclude new stations that would provide additional service.<sup>58</sup> WGGN-TV notes that the Commission has stated that "[w]e do not believe that Congress intended this criterion to operate as a bar to a station's [DMA] claim whenever other stations could also be shown to serve the communities at issue, but rather that this criterion was intended to enhance a station's claim where it could be shown that other stations do not service the communities at issue."<sup>59</sup> Massillon Cable argues that WGGN-TV's attempt to diminish this factor by its contention that it can only be used in favor of a station to enhance its claim is misplaced.<sup>60</sup> Massillon Cable points out that "[w]here a cable operator is seeking to delete a station's mandatory carriage rights in certain communities, the issue of local

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<sup>51</sup>*Id.* at 9, citing *Time Warner Cable*, 18 FCC Rcd 20536, 20542 (2003) (rejecting the contention that the "Los Angeles area is a single market"), citing *Frontier, A Citizens Communications Company*, 18 FCC Rcd 9589, 9594 (2003).

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

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

<sup>54</sup>*Id.*, citing *Adelphia Cable Partners, L.P. d/b/a Adelphia Cable Communications*, 13 FCC Rcd 4047, 4057 (1997); *Greater Worcester Cablevision*, 12 FCC Rcd 17347 (1997); *TKR Cable Company*, 12 FCC Rcd 8414 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999); *Home Link Communications of Princeton, L.P.*, 13 FCC Rcd 1578 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999).

<sup>55</sup>47 U.S.C. § 534(h)(1)(C).

<sup>56</sup>Modification at 8-9. Massillon Cable states that the stations carried are WBNX(TV), Akron/Cleveland, Ohio; WDLI(TV) and WOAC(TV), both Canton, Ohio; WVPX(TV), Akron, Ohio; and WEWS(TV), WJW(TV), WKYC(TV), WNEO(TV), WOIO(TV), WQHS(TV), WUAB(TV), and WVIZ(TV), all Cleveland, Ohio.

<sup>57</sup>Opposition at 6.

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

<sup>59</sup>*Id.*, citing *Paragon Cable*, 10 FCC Rcd 13133, n.24 (1995).

<sup>60</sup>*Id.* at 11.



coverage by other stations becomes a factor to which [the Commission] gives greater weight than in cases where a party is seeking to add communities.”<sup>61</sup>

13. 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>62</sup> Massillon Cable argues that because WGGN-TV fails to place a predicted Grade B contour over the communities and is not considered to be significantly viewed, it likely has no significant viewing levels in the areas served by the cable system.<sup>63</sup> As a result, Massillon Cable contends that the requested modification would not disrupt any established viewing patterns.<sup>64</sup> WGGN-TV argues in opposition that, just as the Commission will not consider the historic carriage factor as controlling against a specialty station, lack of ratings cannot be given substantial consideration by the Commission in its analysis.<sup>65</sup> Massillon Cable argues that while viewership is generally not relevant to specialty stations, the dearth of viewership is of evidentiary significance when tied with WGGN-TV’s failure to meet the other modification factors.<sup>66</sup>

14. Massillon Cable argues that of particular relevance to this proceeding is the Commission’s prior decision in *Clear Pictures, Inc.*, in which market modification was granted to exclude WGGN-TV from carriage because, as in this instance, the station met none of the market modification factors.<sup>67</sup> Massillon Cable contends that the need for modification in this case is even more compelling because WGGN-TV’s city of license is even farther away from Massillon Cable’s system.<sup>68</sup> WGGN-TV argues that grant of the petition would frustrate Congressional intent by excluding a small independent broadcaster from a substantial portion of its rightful market.<sup>69</sup> Massillon Cable argues in reply that WGGN-TV’s contention that grant of the instant waiver would “frustrate the intentions of the 1992 Cable Act” is unsubstantiated and should be rejected.<sup>70</sup> Massillon Cable points out that Congress explicitly granted the Commission the authority and discretion to modify a station’s market where the

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<sup>61</sup>*Id.*, citing *Frontiersvision Operating Partners, L.P.*, 17 FCC Rcd 9332, 9343 (2002) (In market addition cases, the Commission use this criterion not “as a bar” but “to enhance a station’s claim where it could be shown that other station do not serve the communities at issue.”); *Paxson Communications Corporation*, 14 FCC Rcd 17700 (1999); *WRNN-TV Associates Limited Partnership*, 14 FCC Rcd 13453 (1999); *Agape Church, Inc.*, 14 FCC Rcd 2309 (1999).

<sup>62</sup>47 U.S.C. § 534(h)(1)(C).

<sup>63</sup>Modification at 10.

<sup>64</sup>*Id.* Massillon Cable states that failure to grant its petition would require the system to delete broadcast or non-broadcast signals to which its subscribers have become accustomed in order to accommodate carriage of WGGN-TV.

<sup>65</sup>Opposition at 6-7, citing *Erie County Cablevision, Inc.*, 13 FCC Rcd 6403, 6411 (1998) (citing First Report and Order in Docket 20553, 58 FCC 2d 442, 452 (1976)).

<sup>66</sup>Reply at 11.

<sup>67</sup>*Id.* at 10, citing 18 FCC Rcd 20271 (2003) (“*Clear Picture*”).

<sup>68</sup>*Id.* at 11. Massillon Cable notes that in *Clear Picture* WGGN-TV was 45-60 miles from Sandusky and in the instant case the station is an additional 22 miles distant.

<sup>69</sup>Opposition at 7.

<sup>70</sup>Reply at 1.

circumstances warranted.<sup>71</sup> Massillon Cable contends that it has fully demonstrated that WGGN-TV is so far removed that it cannot be deemed part of the market for the subject communities.<sup>72</sup>

15. We agree with Massillon Cable and will grant the requested 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>73</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>74</sup> The record unambiguously demonstrates that WGGN-TV has no history of carriage on Massillon Cable's system. While the first statutory factor allows for carriage by another cable operator in the same area, we do not find that WGGN-TV's carriage on Time Warner's Lodi, Ohio, cable system satisfies this criterion. The Lodi cable system is an average of 50 miles from Sandusky, WGGN-TV's city of license, while the communities served by Massillon cable are an average of 78 miles distant. Clearly, they cannot be considered to be in the same area. With regard to viewership, Nielsen's 2009 County Coverage Study confirms that WGGN-TV has no viewership in Stark, Summit and Wayne Counties, Ohio, where the communities are located. We recognize that specialty stations, such as WGGN-TV, often have a limited audience and we therefore do not assign much weight to WGGN-TV's lack of historic carriage and lack of viewership. However, while these factors are not controlling, we cannot totally disregard them in our determination.

16. It is also clear that, at an average distance of 78 miles, the subject communities are geographically distant from WGGN-TV. Moreover, while a Longley-Rice study demonstrates that WGGN-TV's Grade B coverage extends into the western edge of Wayne County, the majority of Massillon Cable's communities are located in Stark County which is to the east of Wayne County. Only portions of the eastern side of Wayne County are served by Massillon Cable. In addition, we do not find that WGGN-TV provides any locally-focused programming to the communities at issue. In the *Must Carry Order*, it is stated that "the Commission shall afford particular attention to the value of localism by taking into account such factors as . . . local service to the community" and that "local service . . . could be demonstrated by program logs or other descriptions of local program offerings."<sup>75</sup> In other words, a station's broadcast of local programming, namely, programming that has a distinct nexus to a cable community; such as programming covering local news, events, religious services and sports, is evidence of local service.<sup>76</sup> In this instance, other than pointing to its religious and family-friendly programming, WGGN-TV provides no specific information and mentions only one locally-produced program which it contends is targeted to Wayne County.<sup>77</sup> No specific programming is delineated with regard to the

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<sup>71</sup>*Id.* at 1-2, citing *Must Carry Order*, 8 FCC Rcd at 2977.

<sup>72</sup>*Id.* at 2.

<sup>73</sup>47 U.S.C. § 534(h)(1)(C).

<sup>74</sup>47 U.S.C. § 534(h)(1)(C)(i).

<sup>75</sup>*Must Carry Order*, 8 FCC Rcd at 2976-2977.

<sup>76</sup>*See Mid-State Television, Inc.*, 16 FCC Rcd 5525, 5530 (2001).

<sup>77</sup>For example, WGGN-TV's program schedule lists such programs as Shepherd's Chapel, Life Anew, Beverly Exercise, and Praise the Lord without indicating how these programs might relate to local events or news in the cable communities. *See* Opposition at Exhibit A. WGGN-TV claims that one program, "Narrow Road," is specifically targeted to Wayne County (where Massillon Cable provides some cable service in the eastern part of the

(continued...)

communities in Stark County, where the majority of the system is located. As a result, we can only conclude that WGGN-TV's programming appears to be primarily of general interest and is not specifically focused on the cable communities. With regard to the third statutory factor, when considering the exclusion of a station from a market, the Commission reviews whether other stations offer local programming. In this case, it appears that a number of television stations are more proximate and provide local service to the cable communities.

17. Finally, we note that in *Clear Pictures*, the Commission previously excluded Wooster, Ohio from WGGN-TV's television market.<sup>78</sup> Wooster is located approximately 20 miles west of Massillon in central Wayne County and is closer to WGGN-TV. The facts in these two cases appear similar. In the Wooster case, the Commission accepted the cable company's argument that WGGN-TV's Grade B contour did not cover Wooster, that Sandusky and Wooster had no economic or business connection, that WGGN-TV did not offer programming local to Wooster, that thirteen television stations provided local programming, and that WGGN-TV had no viewership in Wooster. The decision also noted that the Commission in a prior decision had excluded areas closer to Sandusky, namely Ashland and Medina, Ohio from WGGN-TV's market.<sup>79</sup>

18. For the subject communities, therefore, the market modification factors weigh strongly in favor of granting Massillon Cable's request. In light of this, we find that a grant of Massillon Cable's request to exclude WGGN-TV from carriage in the communities of Massillon, Bethlehem Township, Brewster, Canal Fulton, Jackson Township, Lawrence Township, Navarre, Richville, Sugar Creek Township, Tuscarawas Township, southwestern portions of Summit County, and eastern portions of Wayne County, Ohio, to be in the public interest.

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county), but this is only a thirty-minute program broadcast once a week. This limited amount of possibly local programming contained in one thirty-minute television show cannot outweigh WGGN-TV's considerable shortcoming in failing to provide Grade B coverage to establish local service. *See, e.g., CoxCom, Inc. d/b/a Cox Communications Phoenix*, 20 FCC Rcd 13474, 13482-3 (2005).

<sup>78</sup>18 FCC Rcd 20271 (2003).

<sup>79</sup>*Id.* at 20274, citing *Armstrong Utilites, Inc.*, 12 FCC Rcd 2498 (1997), *review denied*, 16 FCC Rcd 18118 (2001). In *Armstrong*, the Commission, upon review, affirmed the Bureau's decision and held that there was no economic nexus between Sandusky and Ashland and Medina, which were approximately 50 miles apart, with no significant Grade B coverage of the Ashland and Medina areas. *Id.* at 18121.

**IV. ORDERING CLAUSES**

19. 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 petition for market modification filed by Massillon Cable TV, Inc., **IS GRANTED**.

20. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>80</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>80</sup>47 C.F.R. § 0.283.