

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

In the Matter of:)	
)	
CoxCom, LLC)	MB Docket No. 15-120, CSR 8909-A
)	
For Modification of the Market of WMDE, Dover,)	
Delaware)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 13, 2015

Released: October 14, 2015

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

I. INTRODUCTION

1. CoxCom, LLC, (the “Petitioner” or “Cox”), filed the above-captioned Petition seeking to modify the television market of WMDE (Channel 5) (Facility ID No. 189357), Dover, Delaware (“WMDE” or the “Station”) and exclude the cable communities that Cox serves in Fairfax County, Virginia (the “Communities”).¹ The Petitioner states that Nielsen recently assigned the Station, but not its city of license, to the Washington, DC (Hagerstown, MD) Designated Market Area (“DMA”) at the Station’s request.² The Petition is opposed by Western Pacific Broadcast, LLC (“Western Pacific”), the licensee of WMDE. Cox filed a Reply. Western Pacific later filed a Submission for the Record. Cox filed a Motion for Leave to File Reply to Unauthorized Pleading and a Reply to Unauthorized Pleading.³ For the reasons stated below, we grant Cox’s Petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations

¹ The Communities are Fairfax County (VA0301), Vienna (VA0318), Fairfax City (VA0326), Falls Church (VA0327), Herndon (VA0346), and Clifton (VA0630). Petition, Exhibit 1.

² Petition at 1.

³ We grant Cox’s Motion to file its Reply to Unauthorized Pleading. Cox correctly maintains that our rules prohibit the filing of additional motions or pleadings such as Western Pacific’s Submission for the Record absent extraordinary circumstances. See 47 C.F.R. § 76.7(d). Cox filed its Reply to Unauthorized Pleading to respond to Western Pacific’s additional pleading. We will accept the additional pleadings filed in this matter for the purposes of a more complete record because the pleadings, in part, address facts that occurred after the close of the pleading cycle in this proceeding.

are entitled to assert mandatory carriage rights on cable systems located within the station's market.⁴ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.⁵ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁶

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

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

In considering such requests, the Communications 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 modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence.⁸

(IV) 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

⁴8 FCC Rcd 2965, 2976-1977 (1993).

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

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

⁷47 U.S.C. §534(h)(1)(C).

⁸ The STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014, added a new statutory factor, denominated as factor III above. See also *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, Report and Order*, FCC 15-111, released September 2, 2015.

provides carriage or coverage of sporting and other events of interest to the community;

(V) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁹

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.

* * * *

[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.¹⁰

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.¹¹

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 B¹² contour maps delineating the station's technical service

⁹47 U.S.C. §534(h)(1)(C)(ii)(I)-(V).

¹⁰H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

¹¹*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

¹² 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

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area¹³ and showing the location of the cable system headends and communities in relation to the service areas.

- (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.¹⁴

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.

5. In the *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, digital-only television stations had mandatory carriage rights, and amended its rules to reflect this revision.¹⁵ The Commission also clarified its framework for analyzing market modifications for digital television stations.¹⁶ It found that the statutory factors in Section 614(h), the current process for requesting market

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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.

¹³ While the Grade B contour defined an analog television station’s service area, see 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station’s DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited contour service level – which for UHF stations is 41 dBu. See 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station’s noise-limited contour as the functional equivalent of an analog station’s Grade B contour. See *Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, ¶ 3, 19554, ¶ 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act, Report and Order*, 20 FCC Rcd 17278, 17292, ¶ 31 (2005). See also *Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974, ¶ 7 n.27 (2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of analog station’s Grade B contour.”).

¹⁴47 C.F.R. §76.59(b).

¹⁵ See 16 FCC Rcd 2598, 2606, 2610 (2001); 47 C.F.R. § 76.64(f)(4).

¹⁶ See 16 FCC Rcd at 2635-36. The Commission affirmed that for digital signal carriage issues, it would continue to
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modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.¹⁷ While the Commission presumed the market of a station's digital signal would be coterminous with that station's market area for its prior analog signal, it recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal.¹⁸ Therefore, in deciding DTV market modifications, the Commission would take changes in signal strength and technical coverage into consideration, on a case-by-case basis.¹⁹

III. DISCUSSION

6. Cox asserts that although Nielsen recently assigned WMDE, but not its city of license, Dover, Delaware, to the Washington, DC (Hagerstown) DMA at the Station's request, the Station's city of license and the Communities are located an average of 98 miles apart, which thereby precludes any market nexus between them.²⁰ Cox further asserts that the Communities also are separated from WMDE by substantial political, geographic, and economic barriers.²¹ Cox states that these barriers include, but are not limited to, the states of Virginia, Maryland, and Delaware, the congested Washington DC metropolitan area, the Chesapeake Bay, the Potomac river, and both the Philadelphia DMA and the Baltimore DMA (where the Station's transmitter is situated).²²

7. Cox further contends that the Station's history also demonstrates that it has no legitimate connection to the Washington DMA.²³ Cox explains that in 2009, the Media Bureau initiated a proceeding to allot Channel 5 to Seaford, Delaware pursuant to Section 331(a) of the Communications Act because Delaware did not then have a VHF commercial channel allotment.²⁴ Cox notes that the Bureau adopted the proposal in 2010,²⁵ and one year later, the Commission auctioned television station construction permits for Channel 5 (Seaford, Delaware, in the Salisbury DMA), as well as Channel 4 (Atlantic City, New Jersey, in the Philadelphia DMA).²⁶ Cox notes that Western Pacific won both

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rely on the Nielsen market designations, publications, and assignments it used for analog signal carriage issues. *See id.* at 2636.

¹⁷ *See DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

¹⁸ *See id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station's digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. *See id.* at 2636, n.254 (citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997)).

¹⁹ *See id.*

²⁰ Petition at 1.

²¹ *Id.* at 2

²² *Id.*

²³ *Id.* at 4.

²⁴ *Id.* and n.8, citing *Seaford, Delaware, Notice of Proposed Rulemaking*, 24 FCC Rcd 14596 (2009); 47 U.S.C. § 331(a) ("It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible.").

²⁵ *Id.* and n.9, citing *Seaford Delaware, Report and Order*, 25 FCC Rcd 4466 (2010).

²⁶ *Id.* and n.10, citing *Auction of VHF Commercial Television Station Construction Permits Close, Public Notice*, 26 FCC Rcd 1916 (2011); *FCC Release Feb. 15 DTV License Auction Details*, TVTechnology, available at (continued...)

construction permits.²⁷ Cox goes on to state that for the Seaford, Delaware station, which was assigned the call sign WMDE, Western Pacific was able to obtain the Commission's approval to move the Station's city of license from Seaford to Dover, Delaware; thus moving from the Salisbury DMA to the Philadelphia DMA (where Western Pacific had also acquired Channel 4).²⁸ Thereafter, Cox states that Western Pacific requested Nielsen to reassign WMDE to the Washington DMA, which it did.²⁹ Cox notes, however, that Nielsen did not reassign WMDE's city of license, Dover, Delaware, which currently remains in the Philadelphia DMA.³⁰ Cox states that Western Pacific began broadcasting from WMDE on September 22, 2014.³¹ Cox argues, however, that as the Commission previously has stated, DMA reassignment made at a station's request does not create a market nexus.³² Cox contends that all of these factors in conjunction with the relevant statutory factors that are to be examined in this proceeding demonstrate that WMDE operates in and serves a different local market than that of the Communities.³³

8. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."³⁴ Cox asserts that neither WMDE nor any other Delaware stations have been historically carried in the Communities.³⁵ Cox states that of the seven MVPDs operating in Fairfax County, Virginia, only Verizon FiOS and Comcast have briefly carried WMDE pursuant to the must-carry mandates of the Communications Act and the Commission's rules.³⁶ Cox argues that the Commission has repeatedly held that a brief period of carriage pursuant to the must-carry rules does not satisfy the historic carriage factor.³⁷ Cox argues that no other Fairfax, Virginia-area MVPDs carry WMDE or any other stations

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<http://www.tvtechnology.com/feature-box/0124/fcc-releases-feb-dtv-license-auction-details/207975>.

²⁷ *Id.* and n.11, citing *Richland Tower-formed Company Wins New VHF TV Station Licenses for \$4 Million*, TVTechnology, available at <http://www.tvtechnology.com/feature-box/0124/richland-tower-formed-company-wins-new-vhf-tv-station-licenses-for-millions/208385>; Brian Ianieri, *Florida Company Buys Station to Broadcast Television in Atlantic City Area*, Press of Atlantic City, available at http://www.pressofatlanticcity.com/business/fla-company-buys-station-tobroadcast-television-in-atlantic-city/article_13e42cf5-5663-5701-a9c4-e4a69b877c3e.html.

²⁸ *Id.* at 5 and n.12, citing *Western Pacific, LLC, (Seaford, Delaware and Dover, Delaware), Report and Order*, 29 FCC Rcd 4773 (2014) (reallocating Channel 5 from Seaford, Delaware to Dover, Delaware, and modifying the construction permit for WMDE).

²⁹ Petition at 5 and Exhibit 4 (Letter from Robert Lich (The Nielsen Company) to Matt Bray (Western Pacific Broadcast, LLC), September 22, 2014).

³⁰ Petition at 5.

³¹ *Id.* and n.14, citing Program Tests Notification, WMDE(TV), Facility ID No. 189357, File No. BNPCDT-20110330AAY (filed Sept. 22, 2014).

³² *Id.* and n.15, citing *TCI of Illinois, Inc.*, 12 FCC Rcd 23231, 23242, n.34 (1997) ("It appears that this [DMA reassignment] change was made at the request of the station. This does not persuade us, however, that the station is specifically local to the cable communities at issue here."); *Charter Communications*, 12 FCC Rcd 12173, 12184, ¶ 27 (1997); *Market Modification and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12271-72, ¶ 19 (1997) ("*New York ADI Order*").

³³ Petition at 2-5.

³⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

³⁵ Petition at 5.

³⁶ *Id.* at 7.

³⁷ *Id.*, citing *Biltmore Broadcasting, L.L.C.*, 17 FCC Rcd 7984, 7989-90 at ¶ 10 (2002); *Comcast Cablevision of* (continued...)

located near WMDE, such as stations licensed to Dover or anywhere else in Delaware or nearby eastern Maryland.³⁸ Cox concludes that the near uniform absence of Dover, Delaware-area stations from MVPD channel line-ups in Virginia reflects the common sense recognition that a station licensed to Dover, Delaware cannot realistically be part of the Fairfax, Virginia television market.³⁹

9. Western Pacific responds by saying that even though WMDE is a brand new station, it is carried on other systems throughout Fairfax County and the entire Washington DC DMA.⁴⁰ According to Western Pacific, Cox has refused to carry WMDE in the Communities ever since WMDE went on the air and, therefore, historical carriage of the Station in the Communities is simply not possible.⁴¹ Western Pacific asserts that Cox stands alone in its refusal to carry WMDE, as Verizon and Comcast carry WMDE in the Communities and surrounding communities in the area.⁴² Moreover, Western Pacific asserts that both DirecTV and Dish provide service in and around the Communities and both have agreed to carry WMDE throughout the Washington DC DMA in the near future.⁴³ In a late-filed supplement in this proceeding, Western Pacific states that WMDE is now carried on the Dish Network's direct broadcast satellite system throughout the Washington DC DMA and in each of the Communities.⁴⁴ Western Pacific also states that it can now confirm that all of DirecTV's technical requirements have been satisfied and it has been told that DirecTV tentatively anticipates a launch of WMDE on their system in early October, or possibly earlier.⁴⁵ Western Pacific argues that WMDE's carriage on cable and satellite systems that overlap with or that are proximate to the Communities demonstrate that WMDE's market includes Cox's Fairfax County systems.⁴⁶

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Santa Maria, Inc., 13 FCC Rcd 24192, 24197 at ¶ 13 (1998) (“KADY has only a brief history of carriage on Comcast's systems, and the station has been carried under mandates of the Act and the Commission's mandatory carriage rules. The Commission has held that such carriage does not rise to the level of historic carriage in analyzing a cable operator's market modification petition.”); *Dynamic Cablevision of Florida, Ltd.*, 11 FCC Rcd 9880, 9889 at ¶ 20 (1996) (“With regard to historic carriage, we do not believe that the station has satisfied this prong as WEYS has had only a brief history of carriage on the systems and the operators have carried the station under the mandate of the 1992 Cable Act.”).

³⁸ Petition at 7.

³⁹ *Id.*

⁴⁰ Western Pacific Opposition at 4.

⁴¹ *Id.* Western Pacific states that WMDE's first license application was filed with the Commission on October 1, 2014. *Id.*

⁴² Western Pacific Opposition at 4-5.

⁴³ *Id.* at 5-6.

⁴⁴ Western Pacific Submission for the Record at 2, Exhibit A.

⁴⁵ *Id.* at 2. Cox responds to the carriage of WMDE by Dish and the future carriage of the Station by DirecTV by stating that these DBS carriers did not have any alternative to carrying WMDE because they do not yet have the ability to seek modification of WMDE's must-carry market. Cox states that under the currently effective rule, DBS operators are required to carry all broadcasters assigned by Nielsen to a DMA if they carry any such broadcasters (know as “carry one, carry all”). Cox notes that the new satellite carrier market modification rules adopted by the Commission have not yet become effective. See *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, Report and Order*, FCC 15-111, released September 2, 2015. Cox Reply to Unauthorized Pleading at 2 and n.2.

⁴⁶ Western Pacific Opposition at 6, citing *CoxCom, Inc.*, 24 FCC red 1487, 1490 at ¶ 8 (2009); *Paxson Atlanta* (continued...)

10. In its reply, Cox argues that despite Western Pacific's portrayal of Cox as a carrier who has refused to work with Western Pacific, there were several months of productive communications between the parties regarding carriage of WMDE.⁴⁷ Cox adds that these months of discussion included multiple signal tests, all of which undeniably confirmed that neither WMDE nor an unaffiliated low-power station in Washington, DC that apparently rebroadcasts some WMDE programming, could provide an actual over-the-air signal of good quality to Cox's principal headend or anywhere else in the Communities.⁴⁸ Cox states that Western Pacific has never denied this fact.⁴⁹ Cox reiterates its statement that of the seven MVPDs operating in Fairfax County, Virginia, only Verizon and Comcast have carried WMDE for a brief time and their carriage of the station pursuant to must-carry fails to satisfy the historic carriage factor under Commission precedent.⁵⁰ Cox further asserts that Western Pacific claims without support that Comcast carries WMDE on nearly all of its cable systems in the Washington DMA.⁵¹ Cox states that what Western Pacific fails to point out is that Comcast declined to carry WMDE on any cable system where the Station failed to deliver a good quality over-the-air signal.⁵² Cox argues that is the case in this matter as WMDE cannot provide a good quality over-the-air signal to its headend or to any broadcast television viewers in the Communities.⁵³

11. Second, we consider "whether the television station provides coverage or other local service to such community."⁵⁴ Cox asserts that WMDE fails to provide either a significant service contour or a viewable signal to the Communities, the Station is located approximately 100 miles from each of the Communities, and it provides no local programming directed to the Communities.⁵⁵ Cox states that the Commission has long recognized that Grade B contour coverage, in the absence of other determinative market facts, is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal.⁵⁶ As Cox states, in other words, unless other factors confirm market separations, the Commission logically views the economic market of a broadcast station to be the area in which consumers receive the station using a home antenna.⁵⁷ Cox further notes, however, that the Commission also has held that *de minimis* predicted coverage, such as the

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License, Inc., 13 FCC Rcd 20087, 20092 (1998).

⁴⁷ Cox Reply at 2. Cox points to Western Pacific's Opposition at n.5 which describes these discussions.

⁴⁸ Cox Reply at 2.

⁴⁹ *Id.*

⁵⁰ *Id.* at 7. See also *supra*, n.37.

⁵¹ *Id.* at 8, citing Western Pacific's Opposition at 5.

⁵² *Id.* and n.34, citing Western Pacific's Opposition at Exhibit 4.

⁵³ Cox Reply at 8.

⁵⁴ 47 U.S.C. §534(h)(1)(C)(ii)(II).

⁵⁵ Petition at 8.

⁵⁶ *Id.* at 9, citing *New York ADI Order*, 12 FCC Rcd at 12271, ¶ 17 (1997); *Red River Broadcasting Corp.*, 12 FCC Rcd 6090, 6095 at ¶ 14 (1997).

⁵⁷ *Id.* and n.29, citing 47 C.F.R. § 73.686(e)(2)(iii). Cox notes that since the digital transition on June 12, 2009, the Commission has accepted a digital station's noise-limited service contour (NLSC) as the functional equivalent of an analog station's Grade B contour. Cox states that as set forth in 47 C.F.R. § 73.622(e), a full-power station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. *Id.* at n.29.

de minimis portion of eastern Fairfax County predicted to be covered by WMDE's 28 dBu noise-limited contour, is insufficient to demonstrate a market nexus.⁵⁸

12. Cox asserts that WMDE's 28 dBu noise-limited service contour ("NLSC") not only fails to cover all but a *de minimis* portion of either the Communities or the Washington DMA, but "there is . . . [also] clear proof that the contour fails to reflect actual coverage."⁵⁹ Cox states that WMDE's 28 dBu NLSC fails to reach four of the Communities at all (Vienna, Fairfax City, Herndon, and Clifton).⁶⁰ With regard to Falls Church, Cox states that there is only 11.5 percent coverage, only 10.9 percent overall of the Cox system in Fairfax County, Virginia, and only 13 percent of the Washington DC (Hagerstown) DMA.⁶¹ By contrast, Cox asserts that the Station's 28 dBu NLSC covers 87.4 percent, or nearly all, of the Baltimore DMA and 14.9 percent of the Philadelphia DMA.⁶²

13. Cox further asserts that a more realistic 40 dBu service contour for WMDE fails to reach either the Communities or Fairfax County, Virginia.⁶³ Regardless, Cox argues, WMDE's signal cannot be received by Fairfax County broadcast television viewers inside or outside the Station's NLSC even where Longley-Rice predicts 28 dBu or greater field strength.⁶⁴ Cox points to more than fifteen signal strength tests conducted by both Cox engineers and an independent engineering firm to confirm that WMDE cannot actually provide any broadcast signal to its headend or anywhere else in the Communities.⁶⁵ Cox asserts that this total absence of actual technical coverage, includes areas both inside and outside the Station's NLSC where Longley-Rice predicts field strength levels as strong as 38-48 dBu.⁶⁶ Furthermore, Cox submits that WMDE acknowledged its inability to provide a broadcast signal to Fairfax County by offering to deliver its programming by means of WWTD-LD, a low power television station unaffiliated with Western Pacific that rebroadcasts WMDE's programming.⁶⁷

14. Cox further states that the Commission has encouraged the use of the Longley-Rice

⁵⁸ Petition at 9, citing *Mountain Broadcasting Corp.*, 27 FCC Rcd 2231, 2241 at ¶ 23 (2012); *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928, 3956 at ¶ 74 (2008).

⁵⁹ *Id.*, citing *New York ADI Order*, 12 FCC Rcd at 12271, ¶ 17 and Exhibit 2 (Engineering Statement of Chesapeake RF Consultants, LLC).

⁶⁰ *Id.* at 10 and Exhibit 2.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*; see also Exhibit 5 (Cox Signal Strength Tests) and Exhibit 6 (Meintel, Sgrignoli & Wallace, LLC Signal Tests).

⁶⁵ Petition at 10, n.37 and Exhibits 5 and 6.

⁶⁶ *Id.*

⁶⁷ Petition at 10-11 and n.38. Cox states that its signal tests also confirmed that low-power station WWTD-LD similarly failed to provide a good quality signal to Cox's principal headend. Moreover, Cox states that even if WWTD-LD could deliver a good quality WMDE signal to its headend, that would have no effect on the market modification analysis in this matter because Commission precedents would prohibit WMDE from enlarging its technical service area by including the coverage area of a related low-power television station. See, e.g., *TCI of Illinois, Inc.*, 12 FCC Rcd at 23231, 23243 at ¶ 27 (1997); *Charter Communications*, 12 FCC Rcd at 12184, n.44 (1997); *New York ADI Order*, 12 FCC Rcd at 12269-70, ¶¶ 14-15; *Comcast Cable Communications, LLC*, 30 FCC Rcd 2048 at ¶ 17 (2015). *Id.* at n.38.

prediction methodology in situations involving geographical barriers, such as mountains, valleys or any other unusual terrain that might block signal reception because those factors are not specifically reflected in a traditional Grade B analysis.⁶⁸ As Cox states, the Commission will consider these studies in determining whether or not a television station actually provides local service to a community.⁶⁹ In this case, Cox argues that the terrain between WMDE's facilities in eastern Maryland and the Communities in Fairfax, Virginia is devoid of any such signal-blocking terrain features as the terrain is almost entirely flat.⁷⁰ Accordingly, Cox argues that Longley-Rice predictions alone are not in and of themselves determinative of a station's technical coverage.⁷¹

15. Cox states that in this case, even though the Longley-Rice study predicts some marginal and sporadic 28 dBu coverage in portions of the Communities, the Station's broadcast signal cannot actually be received in those areas because low-band VHF stations such as WMDE (Channel 5) frequently suffer from serious reception problems.⁷² Cox states that the Commission previously has observed that television operations on the lower VHF channels 2-6 are subject to a number of technical penalties, including higher ambient noise levels due to leaky power lines, vehicle ignition systems, and other impulse noise sources and interference to and from FM radio service.⁷³ Cox states that the Commission went so far as to assess that the low VHF channels are less suitable for DTV service because of atmospheric and man-made noise.⁷⁴ Cox asserts that given these circumstances, the actual coverage area of WMDE's Channel 5 is less than both its 28 dBu NLSC and Longley-Rice analyses suggest, which Cox's multiple signal strength tests and Engineering Statement indisputably demonstrate.⁷⁵ According to its Engineering Statement, Cox asserts that a 40 dBu signal contour more accurately reflects the coverage of low VHF station WMDE and verifies that the Station provides no technical coverage to Fairfax County.⁷⁶ Cox contends that given the "clear proof" presented that WMDE's 28 dBu contour "fails to reflect actual coverage,"⁷⁷ the Commission should disregard the Station's sporadic and marginal predicted 28 dBu coverage.⁷⁸ According to Cox, WMDE's broadcast

⁶⁸ Petition at 11.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 11-12.

⁷² *Id.* at 12 and n.43. Cox refers to the Statement of John E. Hidle in Support of WPVI-TV Application for Construction Permit, FCC File No. BPCDT-20120604AEC (filed June 4, 2012) at 1-2 ("A very substantial body of serious reception problems suffered by digital television stations broadcasting on the VHF channels is well-documented The most serious of the documented reception problems appears to be suffered by the digital television stations that are broadcasting on any one of the low-VHF channels."). Cox states that WPVI-TV, a VHF station (Channel 6, Philadelphia), sought FCC approval to increase its station power to 62.9kW because of "serious reception problems," even though the station has twice increased its power already: first from 7.56kW to 30.2kW, and then from 30.2kW to 34.0kW. *See id.*

⁷³ Petition at 12 and n.44, citing *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588, 14627 at ¶ 82 (1997) ("ATV Order").

⁷⁴ *Id.* and n.45, citing *ATV Order* at 14615 at ¶ 50.

⁷⁵ *Id.* at 13 and Exhibits 6 and 2.

⁷⁶ *Id.* and Exhibit 2.

⁷⁷ *Id.* and n.48, citing *New York ADI Order*, 12 FCC Rcd 12271 at ¶ 17.

⁷⁸ Petition at 13.

signal cannot in fact be received anywhere in the Communities.⁷⁹

16. In response, Western Pacific asserts that WMDE provides coverage to the Communities.⁸⁰ Western Pacific states that WMDE's main studio is located in downtown Washington, DC, and although the Station takes its commitment to serve its community of license, Dover, Delaware, very seriously, WMDE has been assigned by Nielsen to the Washington DC DMA and WMDE therefore also serves the broader DMA, and all the communities located in the DMA.⁸¹ Western Pacific asserts that by using Longley-Rice propagation curves to represent WMDE's technical coverage area, WMDE provides geographic coverage to virtually all of the Communities.⁸² Western Pacific asserts that WMDE's signal provides coverage to 98.8 percent of the population in Falls Church, 76.6 percent of the population in Fairfax City and 71.9 percent of the population throughout the rest of Fairfax County.⁸³

17. Western Pacific asserts that to the extent that Cox would rather have the Commission evaluate technical coverage using a 40 dBu contour, Cox should file a Petition for Rulemaking.⁸⁴ Western Pacific states that, as Cox knows, a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for VHF stations is 28 dBu.⁸⁵ Moreover, Western Pacific asserts, that by Cox's own admission, WMDE's signal strength at Cox's headend is 30.4 dBu.⁸⁶

18. Western Pacific also states that WMDE has conducted its Longley-Rice study using a 2 km cell size, as indicated in OET Bulletin No. 69.⁸⁷ Western Pacific asserts that, if for some reason, Cox conducted its Longley-Rice study using a cell size at variance from the guidance set out in OET Bulletin 69, Cox should not be allowed to impose reliance on a nonstandard study without any justification whatsoever.⁸⁸ Western Pacific contends that WMDE has shown, using standard Longley-Rice parameters, that its predicted coverage is more than adequate under the second statutory factor.⁸⁹

19. Cox replies that Western Pacific does not deny, and therefore admits, that WMDE fails

⁷⁹ *Id.*

⁸⁰ Western Pacific Opposition at 6.

⁸¹ *Id.*

⁸² *Id.* and Exhibit 6 (Lohnes and Culver Technical Exhibit and Longley-Rice Contour Study). Western Pacific also cites *Time Warner Cable Inc.*, 24 FCC Rcd 4423, 4433 ¶ 14 (2009) (Longley-Rice methodology showing “pockets” of coverage in the cable communities is sufficient). *Id.* at n.18.

⁸³ Western Pacific Opposition at 7 and Exhibit 6.

⁸⁴ Western Pacific Opposition at 7.

⁸⁵ *Id.*; see 47 C.F.R. § 73.622(e).

⁸⁶ Western Pacific Opposition at 7, referring to Petition, Exhibit 2.

⁸⁷ *Id.* at 8; OET Bulletin No. 69: Longley-Rice Methodology for Evaluating TV Coverage and Interference at 5.

⁸⁸ Western Pacific Opposition at 8 and n.22. Western Pacific asserts that even using the improper nonstandard cell size, Cox's Longley-Rice study shows that WMDE's 28 dBu contour provides service to 48.8% of the Communities. See Petition at Exhibit 2, Figure 6. However, Western Pacific argues that what this masks is that most of the unserved area is limited to the western most portion of Fairfax County, which is farthest away from Washington, DC and contains significantly less population. *Id.* at n.22.

⁸⁹ Western Pacific Opposition at 8.

to provide an actual broadcast signal to any location in the Communities, and its comments regarding WMDE's theoretical signal coverage either are simply wrong or are irrelevant.⁹⁰ Cox argues that its Petition went far beyond simply offering evidence that the Station's predicted 28 dBu NLSC fails to cover all but a *de minimis* portion of either the Communities or the Washington DMA, it also provided additional and extensive actual signal measurements, which as a factual matter verified the accuracy of the Engineering Statement's corrected 40 dBu predicted contour for WMDE.⁹¹ Cox argues that these additional actual signal measurements provide clear proof that the 28 dBu contour fails to reflect actual coverage and confirms that WMDE's predicted 28 dBu NLSC and predicted 28 dBu Longley-Rice signal threshold do not reliably reflect the Station's actual technical service.⁹² Cox contends that no reasonable doubt is possible that WMDE's signal cannot actually be received by Fairfax County broadcast television viewers inside or outside the Station's NLSC, even where Longley-Rice may predict 28 dBu or greater field strength.⁹³

20. Cox states that Western Pacific neither addresses, disputes, nor attempts to rebut Cox's actual signal measurement evidence confirming the absence of WMDE's signal in the Communities.⁹⁴ Cox also asserts that Western Pacific either repeats irrelevant data regarding WMDE's predicted coverage that Cox states that it addressed and disproved, or Western Pacific affirmatively misstates the relevance and application of WMDE's predicted coverage to this proceeding.⁹⁵ As an example, Cox points to Western Pacific's assertion that Cox may have conducted its Longley-Rice study using a cell size at variance from OET guidelines.⁹⁶ First, Cox addresses this assertion, by stating that inasmuch as Longley-Rice is a point-to-point methodology, decreasing the cell size increases the number of test points and correspondingly increases the resolution and accuracy of the predicted coverage.⁹⁷ Second, Cox states that Western Pacific's speculation regarding the cell size used in the study is inappropriate because Cox's Engineering Statement explicitly reported its predicted signal levels "were computed for a 0.1km grid size using a terrain increment of 0.1km with NED 3 arc-second digitized terrain data" (*i.e.*, twenty times more accurate than that suggested in OET 69).⁹⁸ Third, Cox notes that the Commission has explicitly stated that an OET 69 analysis "may be based on a finer resolution than that used in creating Appendix B of the *Order* and described in OET Bulletin No. 69 (cell size may be smaller than 2 km on a side)."⁹⁹ Fourth, Cox states that nothing in the Commission's rules requires adherence to OET 69 in market modification proceedings.¹⁰⁰ Fifth, Cox states that if Western Pacific prefers to restrict the analysis here to that specified in OET 69, it must also accept the limited Longley-Rice study area specified in OET 69, which is the Station's 28 dBu NLSC.¹⁰¹ Cox states that this means that OET

⁹⁰ Cox Reply at 8.

⁹¹ *Id.* at 9.

⁹² *Id.* at 9-10.

⁹³ *Id.* at 10.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 11.

⁹⁸ *Id.*; Petition, Exhibit 2 at 3.

⁹⁹ *Id.*; Public Notice, *Additional Application Processing Guidelines for Digital Television (DTV)*, August 10, 1998.

¹⁰⁰ Petition at 11.

¹⁰¹ *Id.*

Bulletin No. 69 would exclude from consideration all but a *de minimis* portion of the Communities.¹⁰²

21. Cox further elaborates with regard to the second statutory factor that enormous distances preclude any market nexus between the Station and the Communities and it is, therefore, unsurprising that WMDE is unable to provide the Communities with broadcast signal coverage.¹⁰³ Cox states that WMDE's city of license in Dover, Delaware and the Communities in Fairfax City, Virginia are separated by between 86 and 109 miles.¹⁰⁴ Specifically, Cox states that the incorporated Communities of Fairfax City, Vienna, Falls Church, Herndon, and Clifton, Virginia are 98, 95, 91, 101, and 104 miles, respectively, and average 97.8 miles from Dover, Delaware (which Cox states is the approximate distance between New York City and Wilmington, Delaware).¹⁰⁵ Cox asserts that these distances far exceed those found to justify other market modification decisions.¹⁰⁶ Cox also notes that WMDE's transmitter is located in Queen Anne County, Maryland (in the Baltimore DMA) and is 62 miles from Cox's Fairfax, Virginia headend.¹⁰⁷ Cox argues that these distances are so great that they preclude any market nexus between the Station and the Communities.¹⁰⁸ As an example, Cox states that the driving distance between Dover, Delaware and the nearest Community, which is Falls Church, Virginia, is approximately 104 miles and takes 2 hours and 11 minutes, even without accounting for the delays imposed by the congested traffic patterns of the Washington, DC area.¹⁰⁹

22. Western Pacific does not respond to Cox's assertion that a market nexus does not exist between WMDE and the Communities because of the large distances involved. As Cox states, Western Pacific does not deny, and indeed fails to address in any manner, the issue of the distances between the city of license and Cox's cable system in Fairfax, Virginia.¹¹⁰ In that regard, Cox asserts that Western Pacific has admitted that WMDE and the Communities are not in the same market.¹¹¹

23. In addressing the second statutory factor, Cox also asserts that WMDE fails to provide any programming directed specifically to the Communities.¹¹² Cox notes that WMDE is an affiliate of Soul of the South ("SSN"), a national network targeting an African-American audience.¹¹³ According to Cox, the Station's program schedule apparently is common to all SSN-affiliated stations across the

¹⁰² *Id.*; Exhibit A, OET Bulletin No. 69 (Feb. 6, 2004) at 2 and Table 2.

¹⁰³ Petition at 13.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 13-14, Exhibit 7, Distance Calculations; *see also* Exhibit 2, Chesapeake RF Consultants, LLC Engineering Statement.

¹⁰⁶ Petition at 14, citing *Massillon Cable TV, Inc.*, 26 FCC Rcd 15221, 15225 at ¶ 7 (2011) (71 to 80 miles); *Armstrong Utilities, Inc.*, 21 FCC Rcd 13475, 13479 at ¶ 6 (2006) (51.4 miles); *Time Warner Cable*, 17 FCC Rcd 9542, 9545 at ¶ 6 (2002) (63 miles); *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220, 22223 at ¶ 8 (1998) (39 to 70 miles).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* and n. 51.

¹¹⁰ Cox Reply at 12.

¹¹¹ *Id.*

¹¹² Petition at 14.

¹¹³ *Id.*

country.¹¹⁴ Cox asserts that WMDE offers no local programming through SSN, and only offers general interest programming.¹¹⁵ Cox notes that the Commission has consistently held that general interest programming neither targets nor serves the informational needs of local residents and fails to satisfy the local programming prong of the statutory market modification test.¹¹⁶ Cox states that WMDE's affiliation with a national network seeking to become the "primary source for Black American news, information, entertainment and culture"¹¹⁷ cannot demonstrate any specific market nexus to the Communities in suburban Virginia.¹¹⁸ Cox states that the Commission has held that, without more, programming tailored to specific ethnic groups, such as Hispanics or African-Americans, is general interest programming and it has declined to credit such programming which may be minority-owned and culturally diverse as local programming that can establish a specific market connection.¹¹⁹

24. Cox further states that while none of WMDE's programming is directed to the Communities, two programs appear to suggest a local focus by their titles, yet SNN's description of the programs does not support that suggestion.¹²⁰ Cox states that SNN describes DC Breakdown as a general political talk show concerning the federal government targeting those who want to know the policies and people who shape the government.¹²¹ Cox states that the topics covered in the last two quarters include, for example: immigration, California death penalty, gun violence, the Affordable Care Act, Taliban resurgence, STEM education, and drug sentence reduction.¹²² Cox asserts that none of these are issues of

¹¹⁴ *Id.* Cox states that the "Program Schedule" section of WMDE's website links directly to the program schedule page of SSN's website. Cox also states that WMDE's programming schedule does not appear in *The Washington Post's* local television guide. *Id.* at n.52. Cox also notes that the Commission recently reviewed SSN's programming in a market modification case involving another SSN affiliate, WFXU, and concluded that the station did not offer any significant local programming and deleted the involved cable communities from WFXU's market. *See Comcast Cable Communications, LLC*, 30 FCC Rcd at 2048 at ¶ 16 (2015). *Id.* at 14-15, n.53.

¹¹⁵ Petition at 15 and Exhibit 9. Cox lists WMDE's May 2015 Programming schedule which includes: Great Gospel Morning ("television magazine that combines joyous gospel music, inspiring feature stories and interviews"); The Daily Buzz (national syndicated morning show); Emotional Mojo (national syndicated motivational show); Real Life 101 (career education show that "introduces [viewers] to real people doing real jobs"); The Real Winning Edge ("TV series that features three young achievers per episode who have overcome obstacles in their lives"); Blacktree on TV (Black entertainment news); Soul Cinema Primetime (Hollywood movies); DC Breakdown (political talk show) and SNN Evening News (national and Southern regional news). *Id.* at Exhibit 9.

¹¹⁶ Petition at 15-16, citing *Frontiervision Operating Partners, L.P.*, 17 FCC Rcd 9332, 9342 at ¶ 24 (2002); *Adelphia Cable Partners, L.P.*, 16 FCC Rcd 5328, 5337 at ¶ 24 (2001); *Hispanic Broadcasters of Philadelphia, LLC v. Service Electric Cable TV, Inc.*, 19 FCC Rcd 2609, 2613 at ¶ 12 (2004); *Comcast of California/Idaho, Inc.*, 19 FCC Rcd 8642, 8648 at ¶ 11 (2004); *KTNC License, LLC*, 18 FCC Rcd 16269, 16275 at ¶¶ 10-15 (2003).

¹¹⁷ Petition, quoting from Exhibit 10 (SSN WMDE Presentation and Programming Description).

¹¹⁸ Petition at 16.

¹¹⁹ *Id.*, citing *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd at 19398, ¶ 29 (2000); *Comcast Cable Communications, LLC*, 30 FCC Rcd 2048 at ¶ 16; *Hispanic Broadcasters of Philadelphia, LLC*, 19 FCC Rcd at 2613, ¶ 12; *KTNC License, LLC*, 18 FCC Rcd at 16275, ¶ 15 ("[O]ther than generalized statements about its Spanish-language programming, KTNC-TV has not shown that any of its programming has a local nexus to the communities."); *Metrocast Cablevision of New Hampshire, LLC*, 16 FCC Rcd at 5244, 5251 at ¶ 19 (2001).

¹²⁰ *Id.*

¹²¹ *Id.*, Exhibit 10 (DC Breakdown Program Description).

¹²² Petition at 16-17, Exhibit 11 (WMDE Most Significant Issues Programs Lists, Q4 & Q1 2015).

specific interest or concern to Fairfax County viewers.¹²³

25. Similarly, Cox asserts that SSN Evening News is just another general interest program, which also is broadcast on all other SSN affiliates.¹²⁴ Cox states that SSN Network News is a nightly news program covering national news and news regional to the South as a whole and is not directed to the needs and interests of residents in the Communities.¹²⁵ Cox argues that to the extent that the program could even be considered local in this context, the Commission has held that such a *de minimis* level of local programming is insufficient to satisfy this factor or overcome the absence of technical service to the Communities.¹²⁶

26. Western Pacific's only statement with regard to WMDE's programming is that it "is geared toward viewers throughout the DMA, including viewers in Fairfax County located at the core of the DMA."¹²⁷ Cox responds that Western Pacific fails to deny, provide any evidence to rebut, or otherwise address Cox's assertions regarding the Station's lack of local programming.¹²⁸ Accordingly, Cox contends that Western Pacific admits that WMDE provides no programming specifically geared to the Communities.¹²⁹

27. The third statutory factor we must consider is "whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence."¹³⁰ This third statutory factor was recently added by the STELA Reauthorization Act of 2014.¹³¹ Cox states that the legislative history reflects the concern of Congress that consumers who may reside in DMAs that cross State lines or cover vast geographic distances may lack access to local programming that is relevant to their everyday lives.¹³² Cox asserts that modifying the market of Delaware's WMDE will promote consumer access to Virginia broadcasters by providing Cox with additional bandwidth to help promote and support in-state local broadcast stations that serve Fairfax viewers.¹³³ Cox argues that by allowing a distant Delaware broadcast station to assert must-carry-status in Virginia will only disserve the viewers of Fairfax County by limiting Cox's resources to support

¹²³ Petition at 17.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*, citing *CoxCom, Inc.*, 20 FCC Rcd 13483-84 at ¶ 27 (2005); *Adelphia Cable Partners*, 16 FCC Rcd at 5337-38, ¶ 24 (2001); *CoxCom, Inc.*, 19 FCC Rcd 4509, 4515 at ¶ 11, 4517, ¶ 16 (2004); *Altrio Communications*, 18 FCC Rcd 23832, 23839 at ¶ 17 (2003).

¹²⁷ Western Pacific Opposition at 6.

¹²⁸ Cox Reply at 13.

¹²⁹ *Id.*

¹³⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(III).

¹³¹ See STELAR, Pub. L. No. 113-200, 128 Stat. 2059. See also *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, Report and Order*, FCC 15-111, released September 2, 2015.

¹³² Petition at 18, citing *Amendment to the Commission's Rules Concerning Market Modification, Notice of Proposed Rulemaking*, 30 FCC Rcd 3039, ¶ 11 (citing Senate Commerce, Science, and Transportation Committee Report accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 at 11 (2014) ("*Market Modification NPRM*").

¹³³ *Id.* For example, Cox states that it carries WPXW-TV, licensed to Manassas, Virginia. *Id.* at n.68.

in-state broadcasters.¹³⁴ Western Pacific responds that this factor is inapplicable in this proceeding as the Commission intends that the new statutory factor should operate in a way that it only enhances a station's market modification petition seeking to add a community to its market.¹³⁵

28. The fourth statutory factor we must consider is “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting events of interest to the community.”¹³⁶ With regard to this factor, Cox asserts that other stations that it carries provide abundant coverage of local news, issues of concern, and sporting events of interest to viewers in the Communities.¹³⁷ Cox states that it carries at least six local broadcast television stations: WMDO (UniMas), WRC (NBC), WTTG (FOX), WJLA (ABC), WUSA (CBS), and WFDC (Univision).¹³⁸ As an example of its local programming, Cox states that during the week of April 3 through April 9, 2015, its cable customers in Fairfax, Virginia had access to at least 181 hours of local news, sports, and public affairs programming provided by these local broadcasters on morning, mid-day, evening, late night, and weekend local news shows.¹³⁹ Cox also notes that it carries News Channel 8, a 24-hour cable news channel provided in conjunction with WJLA that is focused particularly on local news, sports, and public affairs.¹⁴⁰ Cox also states that its Fairfax cable system also provides local non-broadcast programming on the fifteen (15) government, educational, and public access channels that it carries in the Communities, including, among others, channels dedicated exclusively to the Communities of Falls Church, Herndon, Vienna, Fairfax City, and Fairfax County.¹⁴¹

29. In response, Western Pacific states that this factor does not apply in this proceeding.¹⁴² Western Pacific argues that the Commission has consistently indicated that Congress intended that this factor serve only as an enhancement factor for a television station seeking to add communities to its market where it can be shown that other stations do not serve the communities at issue.¹⁴³ According to Western Pacific because this proceeding involves Cox seeking to delete communities from WMDE's market, this factor does not apply.¹⁴⁴

30. Cox replies that Western Pacific is wrong and its claim is misleading that this factor was

¹³⁴ Petition at 18-19.

¹³⁵ Western Pacific Opposition at n.25, citing *Market Modification NPRM* at 3048, n.60.

¹³⁶ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

¹³⁷ Petition at 19.

¹³⁸ *Id.* and Exhibit 12 (Cox Fairfax County, Falls Church, Fairfax, Clifton, Herndon, and Vienna Channel Guide).

¹³⁹ *Id.* and Exhibit 13 (sample of local broadcast news programming carried on the Cox Fairfax cable system from April 3-9, 2015).

¹⁴⁰ *Id.* at 20.

¹⁴¹ *Id.* and Exhibit 12.

¹⁴² Western Pacific Opposition at 8.

¹⁴³ *Id.*, citing *California-Oregon Broadcasting, Inc.*, 29 FCC Rcd 3833, 3843-44 at ¶ 20 (2014); *Petition for Modification of Dayton, OH, Designated Market Area*, 28 FCC Rcd 16011, 16019 at ¶ 22 (2013); *Mountain Broadcasting Corp.*, 27 FCC Rcd 2231, 2238 at ¶ 15 (2012); *WTNH Broadcasting, Inc.*, 22 FCC Rcd 19761, 19768 at ¶ 13 (2007).

¹⁴⁴ *Id.* at 9.

intended to serve only as an enhancement for a television station seeking to add communities to its market.¹⁴⁵ Cox asserts that the Commission uniformly has held that “when considering the exclusion of a station from a market, the Commission reviews whether other stations offer local programming” and has found the carriage of other “television stations [that are] more proximate and provide local service to the cable communities” to be a factor weighing in favor of a market modification deleting cable communities from a station’s market.¹⁴⁶ Cox argues that this factor further confirms that the deletion of the Communities from WMDE’s must-carry market will allow the Commission to follow the directive of Congress to “afford particular attention to the value of localism” in market modification cases.¹⁴⁷

31. The fifth statutory factor we must consider is the “evidence of viewing patterns in cable and noncable households served by the cable system or systems in such community.”¹⁴⁸ Cox asserts that, as demonstrated by Nielson Media ratings, WMDE had no reportable viewing for either MVPD or non-MVPD households in Fairfax County in the year 2014, or in either the November 2014 or February 2015 sweeps.¹⁴⁹ Cox also notes that WMDE is not included in the television program listings for the area’s major newspaper, the Washington Post.¹⁵⁰ Cox asserts that the lack of viewership is unsurprising given WMDE’s failure to provide any broadcast signal or any programming directed to the Communities.¹⁵¹ Western Pacific responds that as a brand new station, WMDE cannot be expected to have significant viewership.¹⁵² Western Pacific asserts that the Commission has declined to give substantial consideration with regard to this factor in market modification proceedings involving new stations.¹⁵³

32. Cox further argues that in addition to the enumerated statutory factors, all available geographic, economic, and political factors confirm that WMDE does not operate in the same market as the Communities.¹⁵⁴ In terms of geographic factors, Cox argues that not only does the expansive

¹⁴⁵ Cox Reply at 14. Cox asserts that the cases cited by Western Pacific don’t support its claim. As an example, Cox refers to one Ohio case cited, where the Commission states that “we believe Congress intended for this third statutory criterion to enhance a station’s market modification claim where it could be shown that other stations did not serve the communities at issue. Because other stations do serve the communities, this factor neither weighs against nor in favor of WHIO’s modification request.” *Petition for Modification of Dayton, OH Designated Market Area*, 28 FCC Rcd 16019, ¶ 22. Cox states that, in other words, where a station is seeking to add communities to its market, the absence of service to those communities by other broadcasters militates in favor of the station’s request. Cox argues that contrary to Western Pacific’s claim, this does not in any way limit the applicability of this factor in considering the deletion of communities from a station’s market. *Id.* at n.61.

¹⁴⁶ Cox Reply at 14-15, citing *Massillon Cable TV, Inc.*, 26 FCC Rcd 15221, 15231 at ¶ 16 (2011); *see also U.S. Cablevision Corp.*, 12 FCC Rcd 2114, 21152 (1997) (another factor to consider could be the availability of other more local television stations in the relevant communities).

¹⁴⁷ Cox Reply at 15; 47 U.S.C. § 534(h)(1)(C)(ii).

¹⁴⁸ 47 U.S.C. § 543(h)(1)(C)(ii)(V).

¹⁴⁹ Petition at 21, Exhibit 14.

¹⁵⁰ *Id.*, Exhibit 15.

¹⁵¹ *Id.*

¹⁵² Western Pacific Opposition at 9.

¹⁵³ *Id.*, citing *Western Pacific Broadcast, LLC*, 29 FCC Rcd 1835, 1848 at ¶ 25 (2014); *Erie County Cablevision, Inc.*, 13 FCC Rcd 6403, 6411 (1998).

¹⁵⁴ Petition at 21.

Washington DC (Hagerstown) DMA include four states and the District of Columbia,¹⁵⁵ but terrain features such as the Chesapeake Bay and the Potomac River also divide the DMA into smaller localized regions.¹⁵⁶ Cox argues that the Chesapeake Bay and the Potomac River are logical and natural barriers separating the Communities from WMDE.¹⁵⁷ Cox further notes that the congested traffic patterns in the Washington, DC metropolitan area also act as a natural boundary making it difficult for residents at one end of the DMA to access communities at the other end.¹⁵⁸ Therefore, Cox asserts that the DMA has an obvious tendency to break itself up into smaller divisions reflecting localized regions.¹⁵⁹ Cox contends that these geographic barriers separating the markets make it more difficult for residents in the Communities to travel to businesses that may advertise on the Station and are located in Dover.¹⁶⁰ Accordingly, Cox maintains that congested Washington, DC traffic and driving time to Dover, Delaware deters Fairfax, Virginia area residents from traveling there for shopping, dining, movie-going, or patronizing other businesses that might advertise on a local Delaware station.¹⁶¹

33. In terms of economic factors, Cox states that the U.S. Census workforce data confirms that a *de minimis* number of residents from the Communities work in WMDE's city of license, and vice versa, which further highlights the non-existent nexus between WMDE and the Communities.¹⁶² Cox states that of the 30,099 jobs reported for Dover workers, only nine are occupied by residents of Fairfax County, Virginia.¹⁶³ With regard to the county-to-county analysis, Cox states that just twenty-three of 55,580 jobs (0.04 percent) reported for Kent County, Delaware are occupied by Fairfax County residents.¹⁶⁴ Cox notes that, in addition, only ninety-three of 558,664 jobs (0.02 percent) reported for Fairfax County, Virginia are occupied by Kent County, Delaware residents.¹⁶⁵

34. Cox further argues that several nationally recognized, objective market classifications place the Communities and WMDE's community of license in separate markets.¹⁶⁶ Cox states that Rand-McNally's Ranally Metro Area ("RMA") standard identifies developed areas around each major city without regard to county boundaries.¹⁶⁷ Cox states that Rand-McNally places all of the Communities in

¹⁵⁵ *Id.*, Exhibit 16 (The DMA includes portions of Maryland, Pennsylvania, Virginia, and West Virginia). *See also* Exhibit 2, Figure 2.

¹⁵⁶ *Id.* at 22-23.

¹⁵⁷ *Id.* at 23. In referring to *WLNY-TV, Inc. v. FCC*, 163 F.3d at 145 (1998), Cox notes that the Commission and the Second Circuit Court of Appeals considered Long Island Sound and the Hudson River in New York to be an "intervention" and a "logical boundary" separating markets. Cox asserts that the Chesapeake Bay, which is wider than Long Island Sound at its widest point, and the Potomac River are therefore logical and natural barriers separating the Communities from WMDE. *Id.*

¹⁵⁸ *Id.* at 23; *WLNY-TV, INC. v. FCC*, 163 F.3d at 144.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 23.

¹⁶¹ *Id.*

¹⁶² *Id.* at 24, Exhibit 17.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 25.

¹⁶⁷ *Id.*, Exhibit 18.

the Washington, DC-MD-VA RMA and places Dover in the Dover, DE RMA.¹⁶⁸ Cox explains that Rand-McNally therefore places all of the Communities in a single distinct metropolitan area separate from that of Dover, Delaware.¹⁶⁹

35. Similarly, Cox asserts that the U.S. Office of Management and Budget's ("OMB") Metropolitan Statistical Area ("MSA") classification standard confirms that the Communities are not part of WMDE's natural market.¹⁷⁰ Cox notes that OMB defines an MSA as a geographic area consisting of a large population center, along with adjacent communities and areas having strong economic and social ties to that population center.¹⁷¹ Cox states that the classification process includes an analysis of commuting trends between communities in different counties and MSAs.¹⁷² Cox explains that if a sizable number of residents commute to a given location in another MSA, the two areas are combined into a single MSA.¹⁷³ Cox states that OMB has concluded that WMDE's city of license in Dover, Delaware is in the Dover MSA and the Communities are all in the DC-VA-MD-WV MSA.¹⁷⁴ Western Pacific does not respond to any of Cox's assertions regarding these geographic, economic, and political factors.

36. Finally, Cox asserts that Western Pacific's unsupported and unverified Opposition should be rejected.¹⁷⁵ Cox asserts that under both the Commission's rules and its precedents, Western Pacific's failure to deny the substantive factual bases of Cox's Petition constitutes an admission that WMDE and the Communities operate in different markets.¹⁷⁶ Cox further states that the Commission routinely rejects unsupported assertions, such as Western Pacific's, that are countered by documentary evidence, verified statements, or affidavits, such as the ones that Cox has submitted.¹⁷⁷ Cox also refers to the Commission's general pleading requirements and submits the Western Pacific is not in compliance.¹⁷⁸ Cox asserts that in light of these requirements and Western Pacific's failure to abide by them, Western

¹⁶⁸ *Id.* at 25.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*, Exhibit 19.

¹⁷⁵ Cox Reply at 16.

¹⁷⁶ *Id.* and n.70, citing 47 C.F.R. §§ 76.7(b)(2)(v), 1.724(d) (averments in a complaint are deemed to be admitted when not denied in the answer); *Star Broadcasting Limited v. Brownwood Cable*, 18 FCC Rcd 16446, 16447 (2003); *APCC Services, Inc. v. Intelco*, 28 FCC Rcd 1911, 1915 (2013); *APCC Services, Inc. v. TS Interactive*, 17 FCC Rcd 25523, 25526 (2002).

¹⁷⁷ Cox Reply at 16-17 and n.71, citing *Mid-Maine Community Broadcasting*, 13 FCC Rcd 20324 at n.8 (1998) (representations in opposition supported only by general declaration without further evidence not credited); *International Telecharge Inc. v. Southwestern Bell Telephone Company, et al.*, 11 FCC Rcd 10061, 10076 (1996) (rejecting "unverified chart" because "counsel's argument cannot substitute for evidence"); *Comcast Cablevision of Philadelphia, Inc.*, 18 FCC Rcd 22020, 22024 at n.19(2003) ("no evidentiary value may be given to the unverified "Longley-Rice" contour provided by Comcast"); *Engle Broadcasting v. Comcast of Southern New Jersey*, 16 FCC Rcd 17650, 17652 (2001) ("We resolve this evidentiary conflict by accepting the verified statement offered by Comcast.").

¹⁷⁸ *Id.* at 17, citing 47 C.F.R. § 76.6(a)(3)(4).

Pacific's unsupported and unverified assertions should be rejected and credit should be given to Cox's fully supported and verified demonstrations that the Communities and WMDE operate in separate markets.¹⁷⁹

37. Western Pacific responds that the Commission should not take its decision to not respond to certain Cox allegations as an admission, and asserts that Cox's argument relies on Section 76.7(b)(2)(v) of the Rules, which it contends only applies in Complaint proceedings.¹⁸⁰ Western Pacific asserts that this proceeding is not covered by this rule, but instead by Section 76.7(b)(1) of the rules, which it claims contains no such presumption.¹⁸¹ Western Pacific argues that Cox attempts to shift the burden of proof onto Western Pacific.¹⁸²

38. The issue before us is whether to grant Petitioner's request to modify the market of WMDE, Dover, Delaware, by excluding the Communities served by Cox in Fairfax County, Virginia. 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.¹⁸³ Section 614(h)(1)(C)(ii) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.¹⁸⁴

39. In the matter before us, the facts are that pursuant to Western Pacific's petition,¹⁸⁵ the Nielson Company assigned WMDE to the Washington, DC (Hagerstown, MD) DMA. However, despite this assignment, Nielson did not change the DMA assignment of Kent County, Delaware (Dover's home county), which remains in the Philadelphia DMA and which is also separated from the Communities by the intervening Baltimore DMA. Initially, we note that we agree with Cox, and supported by Commission precedent, that a DMA reassignment made at a station's request does not by itself create a market nexus.¹⁸⁶ This DMA change was made at the Station's request and it does not persuade us that WMDE is specifically local to the Communities at issue here. In addition, we also note that nationally-recognized sources, such as Rand-McNally and OMB, assign the Communities and the Station's community of license, Dover, Delaware to different markets.

40. The evidence before us confirms that no market nexus exists between this distant Delaware Station and the Communities based on the relevant statutory factors and other determinative

¹⁷⁹ *Id.* at 17.

¹⁸⁰ Western Pacific Submission for the Record at n.3, citing 47 C.F.R. § 76.7(b)(2)(v).

¹⁸¹ *Id.*, citing 47 C.F.R. § 76.7(b)(1).

¹⁸² *Id.* at n.3.

¹⁸³ 47 U.S.C. § 534(h)(1)(C).

¹⁸⁴ 47 U.S.C. § 534(h)(1)(C)(ii).

¹⁸⁵ Western Pacific Opposition, Exhibit 1 (Letter from Robert Lich, Vice President, Account Director, The Nielsen Company to Matt Bray, President, Western Pacific Broadcast dated September 14, 2014) ("As discussed, WMDE's petition has been reviewed by Robert Paine, VP, Policies and Procedures and approved for the 2014-15 Television season based on the qualifying Market of Origin criteria described in WMDE (TV)'s license agreement with the Nielsen Company (US), LLC dated August 12th 2014."). *Id.*

¹⁸⁶ *See supra*, ¶ 7 and n.32.

market facts. Most significantly, Cox has demonstrated that WMDE fails to provide any actual signal coverage or any local programming specifically directed to the Communities. In addition, it is clear that an abundant amount of local programming is provided by other broadcast stations carried in the Communities. Moreover, the large distances between Dover and the Communities, as well as geographic, political, economic, and commercial barriers prevent a market nexus in this case.¹⁸⁷

41. With regard to the first and fifth statutory factors, WMDE has no significant historic carriage and no measurable viewership in the Communities. The Commission generally gives less weight to the historic carriage and viewing pattern factors in considering new stations, but historic carriage is not entirely discounted for new stations, nor are such stations exempt from the market modification process.¹⁸⁸ In such cases, the Commission typically relies more on a station's Grade B contour to delineate its market.¹⁸⁹ We note that lack of historical carriage and dearth of audience shares is of evidential significance when linked with other information regarding the market, including lack of Grade B coverage, geographic distance, and the absence of noncable audience share in relevant communities.¹⁹⁰

¹⁸⁷ We also note that Western Pacific's pleadings failed to address many of the arguments and evidence submitted by Cox. Cox contends that Western Pacific's failure to deny the substantive factual bases of its Petition constitutes an admission that WMDE and the Communities operate in different markets. As a general rule, we agree that averments in a complaint are deemed admitted when not denied in the answer. *See* 47 C.F.R. § 76.7(b)(2)(v) (Answers to complaints regarding multichannel video and cable television service); 47 C.F.R. § 1.724(d) (Answers to complaints involving common carriers); *see also supra*, n.176. Western Pacific responds, however, that the Commission should not take its failure to respond to certain Cox allegations as an admission and argues that Cox relies on the wrong rule because Western Pacific filed an Opposition to Cox's Petition rather than an Answer to a Complaint and a different rule section applies. Western Pacific argues that Section 76.7(b)(1) of the rules is applicable and this rule does not contain a presumption that averments in a petition are deemed admitted when not denied in an opposition. 47 C.F.R. § 76.7(b)(1). We agree with Western Pacific that the sufficiency of its Opposition to Cox's Petition should be examined under Section 76.7(b)(1). However, Section 76.7(b)(1) is not silent on this issue and states that comments or oppositions to petitions "shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on." *Id.* In addition, Cox further argues that Western Pacific's unsupported and unverified assertions are not in compliance with our general pleading requirements. These requirements are that facts in pleadings must be supported by relevant documentation or affidavit. *See* 47 C.F.R. § 76.6(a)(3). Further, each submission must contain a written verification that the signatory has read the submission and attested to the contents and veracity of the pleading. *See* 47 C.F.R. § 76.6(a)(4). In this case, Western Pacific did submit a general Declaration with its Opposition. *See* Western Pacific Opposition and attached Declaration of John C. Troutman, Vice President, Western Pacific Broadcast, LLC (June 25, 2015). The Declaration states in part, under penalty of perjury: "I have read the foregoing Opposition to Petition for Special Relief, and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law." *Id.* Even given the seeming non-compliance with our general pleading requirements, we cannot apply the "admitted when not denied" standard of Section 76.7(b)(2)(v) to an Opposition filed pursuant to Section 76.7(b)(1). Instead, we will give Western Pacific's failure to respond to a number of the arguments and evidence submitted by Cox with the evidentiary weight such omissions deserve. In other words, Cox put forth on the record relevant arguments and evidence to which Western Pacific utterly failed to respond.

¹⁸⁸ *Western Pacific Broadcast, LLC*, 29 FCC Rcd 1835, 1845 at ¶ 19 (2014).

¹⁸⁹ *New York ADI Order*, 12 FCC Rcd 12262, 12267, ¶ 10 & 12271, ¶ 17 (1997) ("[G]rade B coverage, in the absence of other determinative market facts . . . is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular station's signal."); *see also Mountain Broadcasting Corporation*, 2012 WL 698273, ¶ 18; *WRNN II*, 21 FCC Rcd at 5959, ¶ 14 & n.49 (2006).

¹⁹⁰ *In re Cablevision of Monmouth, Inc. for Modification of the ADI Market for Station WMBC-TV, Newton, NJ*, 11 FCC Rcd 9314, 9322-23 (1996); *see also U.S. Cablevision Corp. for Modification of the ADI Market for Stations* (continued...)

42. We recognize that of the seven MVPDs operating in Fairfax County, Virginia, Verizon, Comcast, and now Dish Network, have briefly carried WMDE pursuant to the must-carry mandate. We agree with Cox, however, that a brief period of carriage pursuant to must-carry, as the Commission has previously maintained, does not satisfy the historic carriage factor.¹⁹¹ We also note that no information has been presented to us to show that any MVPD serving Fairfax County, Virginia carries any other stations licensed to Dover or anywhere else in Delaware or nearby eastern Maryland.

43. With regard to the second statutory factor and technical service to the Communities, Cox has demonstrated that WMDE fails to place a 28 dBu noise-limited service contour over all but a *de minimis* portion of either the Communities or the Washington, DC (Hagerstown) DMA. In addition, Cox has conducted numerous signal tests to demonstrate that WMDE does not provide a broadcast signal anywhere in the Cox Communities. Western Pacific does not deny that WMDE fails to provide an actual broadcast signal to any location in the Communities.

44. In addition, Cox's actual signal measurements provide that WMDE's 28 dBu contour fails to reflect actual coverage and provides support to show that the Station's predicted 28 dBu NLSC does not encompass the principal headend. Further, Cox provided a 30.4 dBu¹⁹² level in their accompanying Longley-Rice study while the calculations by the Media Bureau's engineering staff produced a -79.0 dBm, both of which are below the -61 dBm required level for carriage at the principal headend.

45. Cox also has demonstrated that very substantial distances preclude any market nexus between that Station and the Communities. Western Pacific does not challenge this assertion. In the same manner, Western Pacific does not respond to Cox's assertion that WMDE provides no programming directed specifically to the Communities except to say that its programming is geared toward viewers throughout the Washington DMA. The general interest programming offered by WMDE as an affiliate of SNN does not target or serve the informational needs of the local residents of the Communities and fails to satisfy the local programming prong of our statutory market modification test. As Cox has stated that, without more, programming tailored to specific ethnic groups, is general interest programming and we decline to credit such programming which may be minority-owned and culturally diverse as local programming that can establish a specific market nexus.¹⁹³ WMDE's programming is neither geared toward the Communities nor any community in particular, including WMDE's city of license, Dover, Delaware, which is located in the Philadelphia DMA and not the Washington DMA. While Western Pacific states that it takes its commitment to serve its city of license very seriously,¹⁹⁴ it is not clear how this is done when its programming is not geared to any specific set of viewers.

46. We find that the new third statutory factor is not applicable in this case because the proposed modification to delete WMDE from the market would not directly result in carriage for an in-state-station (by operation of law). The mere possibility that a cable system might carry in-state

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WMBC-TV, Newton, NJ and WHAI-TV, Bridgeport, CT, 12 FCC Rcd 21144, 21152 (1997) (another factor to consider could be the availability of other more local television stations in the relevant communities).

¹⁹¹ See *supra*, ¶ 8, n.37.

¹⁹² 30.4 dBu is equivalent to -82.6 dBm.

¹⁹³ See *supra*, ¶ 23, n.119.

¹⁹⁴ Western Pacific Opposition at 6; see also *supra*, ¶ 16.

programming in place of the deleted station is not sufficient to make use of the in-state enhancement factor. With regard to the fourth factor, Cox has demonstrated that in contrast to WMDE, which provides no local programming, there are many local broadcast stations and programming services that Cox already carries, which offer extensive news coverage regarding issues of concern to the Communities and provide carriage and coverage of sporting and other events of interest to viewers in the Communities.

47. As discussed above, after reviewing the record with regard to each of the five statutory market modification factors, we conclude that four of the five factors weigh decisively in favor of the grant of Cox's requested modification and the third factor (carriage of in-state broadcasters) is inapposite under the specific facts of this proceeding. We conclude that by grant of this request for market modification, we uphold our directive to pay particular attention to the value of localism. In this case, but for the request of Western Pacific to Nielsen to assign this distant Delaware station to the Washington, DC (Hagerstown, MD) DMA, WMDE would not be assigned to the same DMA as the Cox Communities.¹⁹⁵ As the Commission has stated, the broadcast carriage rules were not intended to transform an otherwise local station into a regional "super-station" that must be automatically carried in every single community in a DMA.¹⁹⁶ By grant of Cox's request, the Communities are excluded from WMDE's must-carry market.

IV. ORDERING CLAUSES

48. 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 (MB Docket No. 15-120, CSR 8909-A) filed by CoxCom, LLC **IS GRANTED**.

49. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁹⁷

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁹⁵ We are puzzled by Nielsen's seemingly inexplicable decision to approve WMDE's request to be reassigned to the Washington DMA thereby leap-frogging WMDE from its Dover, DE city of license over significant intervening geographic boundaries such as the Chesapeake Bay and the entire Baltimore DMA. It is for precisely such circumstances that Congress empowered the Commission to modify a station's market to more correctly reflect market realities.

¹⁹⁶ *Time Warner Entertainment-Advance/Newhouse Partnership*, 11 FCC Rcd 6541, 6554 at ¶ 25 (1996); *Metrocast Cablevision of New Hampshire, LLC*, 16 FCC Rcd at 5244, 5251 at ¶ 18 (2001); *Frontiervision Operating Partners, L.P.*, 17 FCC Rcd 9332, 9340 at ¶ 17 (2002).

¹⁹⁷ 47 C.F.R. § 0.283.