

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

In the Matter of:
KAZN-TV Licensee, LLC
For Modification of the Television Market for
KILM, Barstow, California
MB Docket No. 15-82, CSR 8904-A

MEMORANDUM OPINION AND ORDER

Adopted: July 27, 2015

Released: July 27, 2015

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

I. INTRODUCTION

1. KAZN-TV Licensee, LLC, (the "Petitioner" or "KAZN-TV Licensee"), filed the above-captioned petition seeking to modify the Los Angeles Designated Television Market Area ("Los Angeles DMA") with respect to digital television station KILM, Barstow, California (Facility Id. No. 63865) ("KILM" or "Station"). Specifically, KAZN-TV Licensee requests that all of the cable communities located in the Los Angeles DMA in which KILM is not currently being carried on a mandatory must carry basis be included in KILM's market (the "Communities").1 The Petition is unopposed. For the reasons stated below, we grant KAZN-TV Licensee's request.

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 are entitled to assert mandatory carriage rights on cable systems located within the station's market.2 A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.3 A DMA is a geographic market designation that defines each television market exclusive of

1 See Petition at 1, Exhibit 1. KAZN-TV filed an amendment to its Petition on April 1, 2015 requesting that Exhibit 1 be amended to reflect the deletion of Santa Clarita and Stevenson Ranch from the list of Communities. Reflecting this amendment, the Communities are listed herein on Attachment 1.

28 FCC Rcd 2965, 2976-1977 (1993).

3Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see Definition of Markets for Purposes of the Cable (continued...)

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.⁴

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.⁵

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 system or systems in such community.⁶

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.

(...continued from previous page)

Television Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

⁴For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

* * * *

[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.⁷

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.⁸

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 B⁹ contour maps delineating the station's technical service area¹⁰ and showing the location of the cable system headends and communities in relation to the service areas.

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

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

⁹ Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹⁰ 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.”).

- (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.¹¹

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.¹² The Commission also clarified its framework for analyzing market modifications for digital television stations.¹³ It found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.¹⁴ 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.¹⁵ 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.¹⁶

¹¹ 47 C.F.R. §76.59(b).

¹² See 16 FCC Rcd 2598, 2606, 2610 (2001); 47 C.F.R. § 76.64(f)(4).

¹³ See 16 FCC Rcd at 2635-36. The Commission affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen market designations, publications, and assignments it used for analog signal carriage issues. See *id.* at 2636.

¹⁴ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

¹⁵ 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)).

¹⁶ See *id.*

III. DISCUSSION

6. The Petitioner states that KILM and the Communities are located within the Los Angeles DMA and the Communities are, therefore, presumptively part of KILM's market and KILM should enjoy mandatory cable carriage rights within the Communities.¹⁷ However, in a prior decision, the Commission granted the request of Time Warner Cable to delete the Communities from KILM's must-carry market.¹⁸ According to the Petitioner, the factual circumstances underlying the prior Commission decision are very different from the current facts and circumstances.¹⁹ The Petitioner notes that, most importantly, KILM did not provide a good quality signal to the cable system headends in the past.²⁰

7. The Petitioner explains that in the *2003 Order*, the Commission cited all of the following reasons for excluding the Communities from the station's market: i) no historical cable carriage; ii) no local service to the cable communities; iii) lack of signal coverage to the cable communities; iv) lack of a significant nexus to the communities in question; and v) no evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such communities.²¹ The Petitioner requests that the Commission review the current facts and circumstances under the statutory factors and revisit the question of KILM's must carry status in the Communities.²²

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."²³ The Petitioner asserts that KILM has been historically carried and is carried on systems within and adjacent to the Communities.²⁴ The Petitioner states that KILM is carried on cable systems operated by Charter, AT&T, Verizon, Mediacom and Cox.²⁵ According to the Petitioner, the only significant cable system in the Los Angeles DMA not carrying KILM is Time Warner.²⁶ The Petitioner argues that KILM's extensive current and historic carriage in the Los Angeles DMA on systems serving the Communities it seeks to add and to have included in its market and also serving other areas adjacent to the Communities, demonstrates KILM's strong connection to the Los Angeles DMA and supports the station's request to include the Communities in its market for purposes of must carry carriage.²⁷

¹⁷ Petition at 2.

¹⁸ See *Time Warner Cable Petition for Modification of the Television Market of Television Station KHIZ(TV), Barstow, California*, 18 FCC Rcd 20536 (2003), 2003 WL 22331721 ("2003 Order"). KHIZ(TV) is the former call sign for KILM.

¹⁹ Petition at 2.

²⁰ *Id.*

²¹ *Id.* at 3; see also the *2003 Order*, 18 FCC Rcd 20536 (2003), 2003 WL 22331721.

²² Petition at 2-3.

²³ 47 U.S.C. § 534(h)(1)(C).

²⁴ Petition at 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, citing *Petition of Paxon Communications Corporation for Modification of Television Market of Station WPXD(TV), Ann Arbor, Michigan*, 13 FCC Rcd 17869, 17874 (1998) (the Petitioner notes that the Commission has held that carriage on systems that serve "communities adjacent to and near the Communities at issue is indicative of the interest in the programming of [a station])."

9. Second, we consider “whether the television station provides coverage or other local service to such community.”²⁸ The Petitioner asserts that in this case KILM provides both coverage and local service to the Communities.²⁹ With regard to providing a signal to the Communities, the Petitioner states that as a result of a three site Distributed Transmission System (“DTS”) facility activated by KILM, the Communities receive KILM coverage.³⁰ The Petitioner explains that KILM broadcasts a digital signal from its transmitter and retransmits those signals in various locations throughout the Los Angeles DMA.³¹ Therefore, the Petitioner asserts that KILM’s main transmitter and DTS facilities provide a good quality signal to the Communities.³²

10. The Petitioner further explains that KILM leases fiber capacity from LATV Networks in Los Angeles.³³ LATV transports TV program content to companies for distribution on their cable, satellite and fiber systems to subscribers in the Los Angeles market.³⁴ LATV Networks is co-owned with KJLA-TV in Los Angeles.³⁵ The Petitioner states that by virtue of its lease of LATV fiber capacity, KILM can provide broadcast quality program content to Time Warner distribution locations and fully duplicate the service to all communities served by Time Warner that are provided to KJLA program content.³⁶ Petitioner asserts that KILM utilizes DTS facilities to provide a signal contour that covers the entire Los Angeles DMA.³⁷ In addition, the Petitioner states that, at its own expense, KILM has installed fiber optic transmission facilities to ensure that it delivers a clear signal to several cable headends.³⁸

11. The Petitioner further asserts that while the Commission does consider a station’s Grade B signal contour over communities and the distance between a station and the communities as factors that indicate a station’s local market, such factors are not themselves dispositive, especially in a situation such as KILM’s situation.³⁹ The Petitioner states that the Commission has denied several requests by cable operators to exclude communities from a station’s market for must carry purposes when the station did not provide a Grade B signal contour over the communities and the station was distantly located from the communities.⁴⁰ In such cases, the Petitioner states that the Commission made the determination that a

²⁸47 U.S.C. §534(h)(1)(C).

²⁹ Petition at 8-10.

³⁰ *Id.* at 9. *See also* Exhibit 2 (Engineering Statement of Clarence M. Beverage, Communications Technology, Inc., December 18, 2014).

³¹ Petition at 9.

³² *Id.* The KILM main site is located in San Bernardino, County. DTS site #2 is located on Mt. Harvard in Los Angeles County. DTS site #3 is located on Snow Peak, north of Banning, California just inside the San Bernardino County line adjacent to Riverside County. *See* Exhibit 2.

³³ Petition at 9.

³⁴ *Id.* The Petitioner lists these companies as: AT&T Universe, Verizon, Time Warner, Dish, DirecTV, Mediacom, Cox and Charter. *Id.*

³⁵ *Id.* at 10 and Exhibit 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*, citing *Brenmor Cable Partners, L.P. d/b/a Intermedia Partners: For Modification of the Atlanta, Georgia ADI, et al.*, 14 FCC Rcd 11742 (1999); *Petition of G Force, LLC: For Modification of the Television Markets of* (continued...)

cable operator's carriage of similarly situated stations undermined its claim that the communities were not part of the same economic market for television broadcast purposes.⁴¹ According to the Petitioner, by granting the market modification requested in the instant case, the Commission will terminate the "discriminatory treatment" of KILM within the Los Angeles DMA.⁴²

12. The Petitioner states that the Commission's refusal to exclude communities from a television's market even when that station did not provide a Grade B signal to those communities indicates that the Commission can apply the relevant statutory factors in a fair manner.⁴³ Further, the Petitioner states that that Commission's denial of requests to exclude communities outside of a station's Grade B contour shows that while the Commission's rules require market modification petitions to include Grade B contour maps showing the location of the cable system headends and communities,⁴⁴ there is no absolute requirement that a station provide a Grade B signal over a specific community within the station's local market.⁴⁵

13. In addition, the Petitioner also argues that neither is there a prohibition against stations utilizing such mechanisms as fiber to deliver Grade B signals to distant communities within the DMAs.⁴⁶ The Petitioner argues that it is incontrovertible that KILM places a Grade B signal over all the Communities, albeit through use of DTS transmission facilities and fiber capacity.⁴⁷ The Petitioner advocates that so long as the cable headends located in the Communities receive a Grade B signal, it should not matter whether that signal is achieved through use of licensed DTS facilities and fiber capacity.⁴⁸

14. The Petitioner also states that KILM provides local programming focused on the Communities.⁴⁹ The Petitioner states that KILM's local news is broadcast through California Life, which

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Stations KWHE-TV and KIKU-TV, Honolulu, Hawaii, 13 FCC Rcd 10386 (1998).

⁴¹ *Id.* at 10-11, citing *Brenmor Cable Partners, L.P. d/b/a Intermedia Partners: For Modification of the Atlanta, Georgia ADI, et. al.*, 14 FCC Rcd 11742, ¶ 32 (1999) ("the significance of geographic distance can be mitigated by other factors such as the carriage of similarly-situated television stations"). The Petitioner also cites *Petition of G Force*, where a cable operator on the Island of Kauai, Hawaii sought to exclude communities on Kauai from the market of two television stations located in the Honolulu, Hawaii DMA. The Petitioner states that the stations did not provide a Grade B signal because of the distance from Kauai and the Commission gave consideration to the geographic factors that formed a natural separation between the stations and the communities. In addition, the Petitioner notes that the Commission observed that the Kauai cable operator carried other Honolulu stations and that this impacted the stations at issue from reaching viewers on Kauai that other Honolulu stations were able to reach. The Petitioner states that the Commission concluded that there was no basis to treat the stations at issue differently than other Honolulu stations. See *Petition of G Force, LLC: For Modification of the Television Markets of Stations KWHE-TV and KIKU-TV, Honolulu, Hawaii*, 13 FCC Rcd 10386, ¶¶ 7-11 (1998).

⁴² *Petition* at 11.

⁴³ *Id.* at 12.

⁴⁴ See 47 C.F.R. § 76.59(b)(2).

⁴⁵ *Petition* at 12.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 13.

is a program that puts a positive twist on local news.⁵⁰ According to the Petitioner, California Life's coverage is of local stories and it is broadcast 32 times per week.⁵¹ The Petitioner states that the programming is locally-produced and addresses the local needs and interests of the Communities.⁵² The Petitioner also states that KILM broadcasts the SonLife Broadcasting Network and that this network offers a variety of live and prerecorded programs specializing in music and teaching that appeal to a variety of audiences.⁵³ The Petitioner notes that the line-up is comprised of music, talk shows, live church services, studio programs, youth programs and children's programs.⁵⁴ The Petitioner asserts that it is committed to providing local news and information to the Communities through daily news programs, local opinion programs, and special news programs.⁵⁵ According to the Petitioner, in the past, the Commission has refused to delete communities from a station's local market when the station has broadcast significantly less local programming than that broadcast by KILM.⁵⁶

15. The third statutory factor we must consider is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."⁵⁷ As Petitioner states, the Commission has "consistently applied the third statutory factor as an 'enhancement criterion' where a television station could show that it provides a service that other local stations do not provide. In cases where stations provide similar programming, [the Commission] has stated that the mere 'fact that two or more stations share the same format is not grounds for concluding that their programming is duplicative for purposes of the Commission's must-carry rules.'"⁵⁸ The Petitioner states that while cable operators carry other stations airing family oriented programming in the Los Angeles DMA, it believes that KILM offers unique local programming that is not available on other stations serving the Communities.⁵⁹

16. 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."⁶⁰ The Petitioner states that KILM is a broadcaster of religious and family programming and is considered a specialty station

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 14 and Exhibit 3.

⁵² *Id.* at 14.

⁵³ *Id.*

⁵⁴ *Id.* and Exhibit 4.

⁵⁵ *Id.* at 14.

⁵⁶ *Id.*, citing *Paxon New York License, Inc.*, 14 FCC Rcd 7715, 7721 (1999) (station's production of a single weekly public affairs program that sometimes focused on the communities it sought to add was sufficient to warrant a finding of local service), *rev'd on other grounds sub nom., Petition of Community Television Systems, Inc.*, 15 FCC Rcd 7275 (2000); *Petition of G Force, L.L.C.*, 13 FCC Rcd at 10389-91 (1998) (denying cable operator's request to delete communities from station's market when the station provided two and one half hours of local programming per week).

⁵⁷ 47 U.S.C. §534(h)(1)(C).

⁵⁸ Petition at 15, citing *Avenue TV Cable Services, Inc., For Modification of the ADI Market of KWHY-TV and KZKI(TV)*, 11 FCC Rcd 4803, ¶ 21 (1996) (quoting *ML Media Partners, L.P.*, 10 FCC Rcd 9456, 9461, ¶ 12 (1995)).

⁵⁹ *Id.* at 15.

⁶⁰ 47 U.S.C. §534(h)(1)(C).

because it attracts a limited audience.⁶¹ Nonetheless, the Petitioner notes that “[d]espite their lack of general appeal, the Commission has recognized that specialty stations are nevertheless able to ‘offer a diversity of programming.’”⁶² The Petitioner further notes that, as such, the Commission does not weigh heavily a specialty station’s lack of audience share.⁶³ The Petitioner also argues that “[e]vidence of historic carriage is especially persuasive where the station . . . [for which deletion from a market is sought] captures low audience ratings throughout the ADI.”⁶⁴ The Petitioner states that cable operators and other MVPDs historically have carried and currently are carrying KILM throughout the DMA.⁶⁵ Therefore, the Petitioner asserts that KILM’s low audience ratings are not determinative of whether KILM’s market for must carry purposes should include the Communities.⁶⁶

17. Additionally, the Petitioner asserts that there is a commonality of interest between Barstow and the Communities.⁶⁷ First, the Petitioner states that Barstow and several of the Communities share similar Congressional representation and, therefore, residents of Barstow and these Communities share a common interest in the legislative affairs that affect their district.⁶⁸ Second, the Petitioner states that the residents of Barstow obtain goods and services from businesses located in the Communities.⁶⁹ The Petitioner also states that there is extensive interaction between the Communities and Barstow.⁷⁰ In this regard, the Petitioner points out that the water company that services Barstow also serves several of the Communities, including El Segundo, Gardena, Hawthorne and Torrance.⁷¹ In addition, the Petitioner states that the local Barstow High School competes against certain high schools in the Communities.⁷² Finally, the Petitioner adds that the San Bernardino County Long Range Transit Plan illustrates how San Bernardino County, where Barstow is located, is linked through current and future transportation to Los Angeles, Orange, and S. Pasadena Counties.⁷³

18. The issue before us is whether to grant the Petitioner’s unopposed request to include 33 Communities located in the Los Angeles DMA, that were previously excluded from KILM’s market, back into KILM’s market.⁷⁴ 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

⁶¹ Petition at 15.

⁶² *Id.*, citing *Avenue TV Cable Service, Inc. For Modification of the ADI Market of KWHY-TV and KZKI(TV)*, 11 FCC Rcd 4803, ¶ 21 (1996).

⁶³ *Id.*

⁶⁴ *Id.* at 16, citing *Brenmor Cable Partners, L.P., d/b/a InterMedia Partners; For Modification of the Atlanta, Georgia ADI, et al.*, 14 FCC Rcd 11742, ¶ 31 (1999).

⁶⁵ *Id.* at 16.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* and Exhibit 5.

⁷² *Id.* and Exhibits 6,7.

⁷³ *Id.* and Exhibit 8.

⁷⁴ *See supra*, n.1 and Attachment A herein (list of the Communities).

purposes of ensuring that a television station is carried in the areas which it serves and which form its economic market.⁷⁵ 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 such matters into account.⁷⁶

19. Initially, we note that while KILM does have a record of historic carriage in the Communities, it garners low audience ratings as a specialty station. With specialty stations, failure to establish either historic carriage or significant viewership is given lesser weight, and we typically rely more on a station's Grade B contour to delineate its market.⁷⁷ However, the historic carriage and significant viewership factors are not to be entirely discounted,⁷⁸ nor are specialty stations exempt from the market modification process.⁷⁹

20. As discussed above, pursuant to the *2003 Order*, the Commission found that KILM met none of the statutory factors and the Communities were excluded from the station's must-carry market by the request of Time Warner.⁸⁰ The Commission noted in the *2003 Order* that the Communities are located 79 to 102 miles from Barstow, mountain ranges exist between the station and the Communities, and a service area map using Longley-Rice propagation curves demonstrated that the station did not provide Grade B service to any of the Communities.⁸¹ In the *2003 Order*, the Commission described the Los Angeles DMA in terms of territory and population as vast and varied and explained that where a 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.⁸²

21. Since the *2003 Order*, and in conjunction with the second statutory factor, the range of KILM's signal has expanded as a result of the three site DTS transmission facility activated by KILM in

⁷⁵ 47 U.S.C. § 534(h)(1)(C).

⁷⁶ 47 U.S.C. § 534(h)(1)(C)(i).

⁷⁷ *Market Modifications and the New York Area of Dominant Influence Petitions for Reconsideration and Applications for Review*, 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 television station's signal.”); see also *Mountain Broadcasting Corporation*, 2012 WL 698273, ¶ 18; *WRNN II*, 21 FCC Rcd at 5959, ¶ 14 & n.49 (2006).

⁷⁸ 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. *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) (emphasis added); see also *U.S. Cablevision Corp. for Modification of the ADI Market for Stations 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).

⁷⁹ The fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process. Signal coverage does not in and of itself necessarily entitle a specialty station to carriage. *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 ¶ 17 (2003).

⁸⁰ See *2003 Order*, 18 FCC Rcd 20536, 20539 at ¶ 5.

⁸¹ *Id.* at ¶¶ 6, 12.

⁸² *Id.* at ¶ 13.

2014.⁸³ With the completion of the full power digital television transition in 2009, a station's DTV service area is defined as the area within its noise-limited service contour (NLSC) where its signal strength is predicted to exceed the noise-limited service level – which for UHF stations is 41 dBu.⁸⁴ Accordingly, the Commission has treated a digital station's NLSC as the functional equivalent of an analog station's Grade B contour.⁸⁵ KILM has submitted the supporting data to demonstrate that all of the Communities at issue here are within the KILM NLSC, are predicted to receive signals stronger than 41 dBu, and therefore now have over-the-air coverage.⁸⁶

22. In the *2003 Order*, the Commission did not find that KILM provided local programming focused on the Communities.⁸⁷ In the instant case, the Petitioner seems to recognize that it provides an insufficient amount of local programming when it states that “in the past, the Commission has refused to delete communities from a station's local market when the station has broadcast significantly less local programming than broadcast by KILM.”⁸⁸ The Petitioner submits that KILM broadcasts California Life, which provides coverage of local stories. The examples of programming for California Life submitted by the Petitioner appear to be generic in nature and designed to appeal to a general California audience or any general audience.⁸⁹ There are no example of stories submitted by the Petitioner, whether news stories or otherwise, that appear to be specifically geared to the needs and interests of the Communities at issue. The Petitioner also states that KILM carries SonLife Broadcasting Network, which offers live and prerecorded programming specializing in music and teaching. Again, this programming appears to be generic in nature and does not include any programming that is specifically directed to the Communities.⁹⁰ The Petitioner also states that it is committed to providing more local programming to the Communities. However, as the Commission previously stated in the *2003 Order*, market

⁸³ See Petition at Exhibit 2 (Engineering Statement of Clarence M. Beverage, Communications Technology, Inc., December 18, 2014). The Commission has previously recognized that a DTS system has the ability to expand the scope of a station's over-the-air coverage and how this can affect our analysis of the second statutory factor. See *Mountain Broadcasting Corporation*, 2012 WL 698273, ¶¶ 10, 19 & 20.

⁸⁴ See *supra*, n.10 and 47 C.F.R. § 73.622(e).

⁸⁵ See *supra*, n.10.

⁸⁶ See Petition at Exhibit 2 (Engineering Statement of Clarence M. Beverage, Communications Technology, Inc., December 18, 2014). The two Communities that did not – Santa Clarita and Stevenson Ranch – were deleted from this proceeding by amendment. See *supra*, n.1. See also Exhibit 2, Table 1 (Santa Clarita – approximately 5% over-the-air coverage of populated area and Stevenson Ranch – approximately 0% over-the-air coverage of populated area).

⁸⁷ *2003 Order*, 18 FCC Rcd at 20541, ¶ 11. The station submitted as local programming a general interest financial advice program and a weekly horror movie. In addition, a community calendar was broadcast several times a day. The station also committed to increase local programming in the future, but the Commission stated that it based “its market modification decisions on whether a station provides local service to a community and not on promises of future programming.” *Id.*

⁸⁸ See Petition at 14.

⁸⁹ See Exhibit 3. Some examples of California Life programming submitted include: “What's better than a beautiful beach? CLHD Episode #256”; “Who doesn't like jewelry and flowers? Episode #258”; “California Life Celebrates Country Music's Biggest Night!”; and, “Cruises, Celebrities, Wine, and Disneyland.”

⁹⁰ See Exhibit 4 (“The SonLife Broadcasting Network is a Christian multi-media network, which includes Television, Radio and Internet broadcasts. An outreach of Jimmy Swaggart Ministries, the network offers a variety of live and prerecorded programs, specializing in music and teaching, that appeals to audiences of all generations and backgrounds.”).

modification decisions must be made on current programming and not on promises of future programming.⁹¹ The Commission also has consistently held that general interest programming, such as the programming carried on KILM, neither specifically targets nor serves the informational needs of local residents and therefore fails to satisfy the local programming prong of the market modification test.⁹² Based on the record provided by KILM, we cannot conclude that KILM provides local programming about and targeted to the Communities.

23. With regard to the third statutory factor, this criterion was not intended to be a bar to a request to modify a DMA when other stations could be shown to serve the communities at issue. Rather it was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue.⁹³ In this case, as Petitioner notes, cable operators carry other stations airing family oriented programming in the Los Angeles DMA. However, Petitioner asserts that because KILM offers the program California Life, which it contends is unique and is not carried by other stations in the DMA, the enhancement criterion should apply. We do not believe that the carriage of California Life sets KILM apart and because other like stations serve the Communities, this enhancement factor is not applicable.

24. With regard to the fourth statutory factor, it has already been established that KILM is a specialty station that attracts a limited audience and this factor regarding viewing patterns is generally given less weight with a specialty station.⁹⁴ While we do not disregard the fact that KILM does not have significant viewership, we assign a lesser weight to this factor in our analysis. In the *2003 Order*, it was determined that the station did not have a history of carriage and this was attributed, in part, to the fact that the station did not have any significant off air viewership in the Communities.⁹⁵

25. KILM's unopposed market modification Petition presents a very close case. KILM has provided no evidence that it provides local programming about and targeted to the Communities at issue. KILM states that it will provide such programming in the future and we encourage them to do so. As noted however, pursuant to the first statutory factor, KILM now does have a history of carriage in the Communities and surrounding communities and KILM has demonstrated by providing a Longley-Rice analysis of KILM's digital coverage that the Station now provides signal coverage to all of the Communities. This history of carriage coupled with the fact that KILM has invested to improve its over-the-air signal coverage through the implementation of a three site DTS transmission facility demonstrates a sincere desire to serve the Communities and narrowly supports a grant of the Petition.

⁹¹ See *2003 Order*, 18 FCC Rcd at 20541, ¶ 11.

⁹² See, e.g., *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).

⁹³ See, e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxon San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

⁹⁴ In order to further bolster its arguments in this matter, the Petitioner also lists a number of examples of situations and events that it believes demonstrate that there is a commonality of interest between Barstow and the Communities. We believe that these examples support, rather than detract from grant of the Petition, but they are not a determining factor in our analysis. See *supra* ¶ 17.

⁹⁵ See *2003 Order*, 18 FCC Rcd at 20543, ¶ 15.

IV. ORDERING CLAUSES

26. 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. 15-82, CSR 8904-A) filed by KAZN-TV Licensee, LLC **IS GRANTED**.

27. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁹⁶

FEDERAL COMMUNICATIONS COMMISSION

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

⁹⁶ 47 C.F.R. § 0.283.

Attachment A

San Fernando
Unincorporated Areas of Los Angeles County
Canoga Park
Chatsworth
Encino
Granada Hills
Northridge
Reseda
Sepulveda
Sherman Oaks
Tarzana
Van Nuys
West Hills
Woodland Hills
Gardena
Hawthorne
El Segundo
Lawndale
Torrance
North Torrance
South Pasadena
San Marino
Orange
Orange County
Garden Grove
Los Alamitos
Huntington Beach
Westminster
Stanton
Fountain Valley
Rossmore
Midway City
Cypress