

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

In the Matter of)	
)	
Woods Communications Corporation)	MB Docket No. 17-102, CSR 8934-A
)	
For Modification of the Television Market for)	
WCOV-TV, Montgomery, Alabama)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 16, 2017

Released: August 16, 2017

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

I. INTRODUCTION

1. Woods Communications Corporation (Woods or the Petitioner) filed the above-captioned Petition seeking to modify the television market of WCOV-TV (Facility ID No. 73642), Montgomery, Alabama (WCOV or the Station) to include the communities comprising Lee County, Alabama (Lee County or the Communities).¹ The Petitioner states that the Station meets all requirements applicable to including Lee County in its market, and that doing so would serve the public interest.² No opposition to the Petition has been filed.³ For the reasons stated below, we grant the Petition.

II. BACKGROUND

2. Pursuant to section 614 of the Communications Act of 1934, as amended (the Act), and implementing rules adopted by the Commission in its *Must Carry Order*, commercial television broadcast stations 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

¹ See Petition at 1. The Communities are Auburn, Loachapoka, Notasulga, Opelika (unincorporated), Phenix City (unincorporated), Smiths Station, and Waverly. See Further Supplement to Petition for Special Relief at 1 (filed July 24, 2017) (Further Supplement).

² Petition at 1.

³ We note that the Petitioner filed both a supplement and a further supplement at the request of Commission staff to provide additional information needed to resolve the Petition. See Supplement to Petition for Special Relief (filed Apr. 11, 2017) (Supplement); Further Supplement.

⁴ *Implementation of the Cable Television Consumer Prot. & Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2976-77, paras. 42-47 (1993) (*Must Carry Order*).

⁵ Section 614(h)(1)(C) of the 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

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. In addition, the Act directs the Commission to consider changes to DMA-based television markets for purposes of a station's mandatory carriage rights. 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 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 provides carriage or coverage of sporting and other events of interest to the community; and

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

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76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 CFR § 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*).

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

⁷ 47 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 Mkt. Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Mod. Order*).

⁹ 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V). 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

4. In the *Modification Final Report and Order*,¹⁰ 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 B¹¹ contour maps delineating the station's technical service area¹² 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;

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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.

H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992). In adopting rules to implement Section 614(h)(1)(C), 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. *Must Carry Order*, 8 FCC Rcd at 2977 n.139.

¹⁰ *Modification Final Report and Order*, 14 FCC Rcd at 8406-07, Appx. C (Rule Changes).

¹¹ 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.

¹² While the Grade B contour defined an analog television station's service area, *see* 47 CFR § 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 CFR § 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, para. 3, 19554, para. 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communic'ns Act*, Report and Order, 20 FCC Rcd 17278, 17292, para. 31 (2005). *See also Lenfest Broad., LLC Petition for Modification of the Television Mkt. of Television Station WMCN-DT, Atlantic City, New Jersey*, Memorandum Opinion and Order, 19 FCC Rcd 8970, 8974, para. 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.”).

- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings; and
- (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.¹³

III. DISCUSSION

5. Fox television network affiliate WCOV, Montgomery, Alabama, is petitioning to expand its market to include the Lee County Communities,¹⁴ which are located in Alabama on the Alabama-Georgia state border. Lee County is part of the Columbus, Georgia (Opelika, Alabama) DMA, and not the Montgomery, Alabama DMA.¹⁵ The Petitioner asserts that WCOV offers local, in-state programming relevant to Lee County. Specifically, the Petitioner emphasizes WCOV's sports coverage of Auburn University, which is based in Lee County.¹⁶ The Petitioner also asserts that the Station's local news programming is more relevant to residents of Lee County than the programming provided by the Fox affiliate that currently serves Lee County, which is licensed across the state border in Columbus, Georgia.¹⁷ For the reasons discussed below, we find that the television market of WCOV should be modified to include Lee County.

6. 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."¹⁸ Even when a station has no history of carriage in a community, the Commission has given weight to this factor when another station based in the same area has been carried in the community.¹⁹ The Petitioner concedes that cable operators in Lee County have never carried WCOV in the past.²⁰ However, the Petitioner notes that television station WSFA, which is also licensed to Montgomery, Alabama, is carried on systems in Lee County.²¹ Because of the historic carriage of WSFA in Lee County, we conclude that the first statutory factor weighs in favor of the requested modification.

7. Second, we consider "whether the television station provides coverage or other local

¹³ 47 CFR § 76.59(b). 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. *Id.* § 76.59(c). The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant. *Modification Final Report and Order*, 14 FCC Rcd at 8389, para. 52.

¹⁴ Petition at 1, 12.

¹⁵ Supplement at 2.

¹⁶ Petition at 9.

¹⁷ *Id.* at 12.

¹⁸ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

¹⁹ *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3934, para. 10 (MB 2008) (*Jackson Tennessee Order*) (finding that carriage of a competing station in the same community provides evidence to support market modification).

²⁰ Petition at 7.

²¹ *Id.*

service to such community.”²² This factor can be demonstrated using such evidence as signal contour coverage maps and television station programming with a distinct nexus to the community.²³ The Petitioner notes that WCOV provides a predicted signal strength of at least 61 dBm “to a wide geographical area in Lee County and to each of the three cable headends.”²⁴ The Station’s predicted 41 dBu F contour covers 59 percent of the area of Lee County and 69 percent of its population, and each of the three headends fall within WCOV’s predicted 41 dBu F contour.²⁵

8. Additionally, the Petitioner explains that WCOV “provides programming directed to the interests of the residents of Lee County,” including coverage of Auburn University.²⁶ WCOV airs three seasonal programs dedicated to Auburn University football and basketball.²⁷ In total, these programs air 35 times per year, with nine basketball-related airings running from January through February and 26 football-related airings running from September through November.²⁸ The Petitioner also explains that WCOV airs a nightly news program that covers Auburn University sports, Lee County weather, and news segments that are “often” based in Lee County.²⁹ Finally, the Petitioner highlights a weekly program produced in collaboration with the Montgomery Police department that may involve crimes “occurring in or impacting Lee County.”³⁰ Overall, the Petitioner states that the Station “broadcasts programs, including children’s programs, nightly news, news, news specials, and local public affairs and opinion programs, that are focused on issues important to residents of Lee County.”³¹ For all of the above reasons, we find that this second statutory factor weighs in favor of the requested modification.

9. The third statutory factor 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.”³² This factor is intended to ensure that multichannel video programming distributor (MVPD) subscribers are “receiving news, politics, sports, emergency information, and other television programming relevant to their home state” and “relevant to their everyday lives.”³³ A petitioner is considered to satisfy this factor if the involved station is licensed to a community within the same state as the new community.³⁴ The Commission may give this factor increased weight if the station provides programming specifically related to subscribers’ state of residence, and may give it even more weight if

²² 47 U.S.C. § 534(h)(1)(C)(ii)(II).

²³ *See Petition of Tobacco Valley Communic’ns to Exclude Eureka & Communities in N. Lincoln County from the Local Mkt. of Several Spokane, Washington Broadcasters & Include It in the Local Mkt. of Several Missoula, Montana Broadcasters*, Memorandum Opinion and Order, 31 FCC Rcd 8972, 8977-78, para. 11 (MB 2016).

²⁴ *See* Petition at 7 and Ex. 7.

²⁵ *Id.*

²⁶ *Id.* at 8-9.

²⁷ *Id.* at 9.

²⁸ *Id.*

²⁹ *Id.* at 8-9.

³⁰ *Id.* at 9-10.

³¹ *Id.* at 2.

³² 47 U.S.C. § 534(h)(1)(C)(ii)(III).

³³ *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, para. 1, 10420, para. 18 (2015) (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)).

³⁴ *Id.* at 10420, para. 18.

subscribers in the existing market have little or no access to such in-state programming.³⁵ The Petitioner asserts that it has satisfied this factor because granting the Petition would promote Lee County residents' access to WCOV, which broadcasts out of the same state (Alabama) in which Lee County is located.³⁶ Separately, the Petitioner asserts that although the community is served by at least one other Alabama-based broadcaster,³⁷ WCOV "offers unique local programming that is not available on other stations serving Lee County."³⁸ The Petitioner notes that the Fox affiliate that currently serves Lee County, WXTX, is licensed across the state's border in Georgia and in a different time zone, and that station emphasizes news coverage of "matters pertaining to Georgia, rather than Alabama."³⁹ The Petitioner has provided evidence that modifying WCOV's market would promote subscribers' access to otherwise unavailable in-state programming provided by an in-state broadcast station. Accordingly, we find that this factor weighs substantially in favor of the requested modification.

10. Fourth, we consider "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."⁴⁰ In general, the Commission has interpreted this factor as enhancing a station's market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations' service to the communities rarely has counted against a petition.⁴¹ The Petitioner identifies at least two stations that currently serve Lee County cable subscribers, WSFA and WXTX.⁴² While the Petitioner asserts that WCOV would offer "unique local programming,"⁴³ the record does not show that the broadcast stations currently serving subscribers in the Communities do not provide news and sports/events coverage of Lee County. Absent such a demonstration, and consistent with our precedent, we accord no weight to this factor.

11. The fifth statutory factor focuses on "evidence of viewing patterns" in cable and noncable households "within the areas served by" the cable system or systems in such community.⁴⁴ The Petitioner notes that WCOV has no cable viewership in Lee County because the Station is not carried on any cable system there.⁴⁵ The Petitioner explains, however, that WCOV receives some over-the-air viewers in Lee County. According to the evidence presented, 9 percent of WCOV's audience from 9-10 p.m. Monday through Friday comes from the Columbus, Georgia DMA in which Lee County is located.⁴⁶ Similarly,

³⁵ *Id.*

³⁶ Supplement at 2-3.

³⁷ Petition at 7.

³⁸ *Id.* at 12.

³⁹ *Id.*

⁴⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

⁴¹ See, e.g., *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); see also, e.g., *Jackson Tennessee Broadcasting Order*, 23 FCC Rcd at 3947, para. 49.

⁴² Petition at 7, 12 (noting that Lee County is served by WSFA licensed to Montgomery, Alabama, and WXTX licensed to Columbus, Georgia).

⁴³ *Id.* at 12.

⁴⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(V).

⁴⁵ Supplement at 2, n. 1.

⁴⁶ *Id.* at 2 and Attach. B. The WCOV local news airs from 9-9:35 p.m.

five percent of WCOV's audience from 6:30-7 p.m. Monday through Friday comes from the Columbus DMA.⁴⁷ The Petitioner speculates that "[t]his viewing is most likely from Lee County" because residents likely prefer a newscast from in-state and because the WCOV signal does not extend across the Georgia border into the city of Columbus.⁴⁸ This portion of viewers did not register as television household ratings for WCOV in Lee County.⁴⁹ Moreover, the Petitioner concedes that its viewership estimates for Lee County are speculative.⁵⁰ Accordingly, we assign only marginal weight in favor of the requested modification to this fifth factor.

12. In addition to the enumerated statutory factors, the Petitioner points to other factors that it states demonstrate a relationship between Montgomery County and Lee County.⁵¹ The Petitioner notes that Lee County and part of Montgomery County are in the same congressional district, and the two counties share a common electric company and various community projects.⁵² It also notes that Auburn University has a branch campus in Montgomery and that a Montgomery-based newspaper hosts online advertising for Lee County properties.⁵³ According to the Petitioner, these facts further demonstrate a connection between the Station and the Communities.

13. We conclude that the facts support the grant of the Petitioner's request to modify the market of the Station to include Lee County. Section 614(h)(1)(C) of the 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.⁵⁴ Section 614(h)(1)(C)(ii) directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking certain specific factors into account.⁵⁵ We have considered those factors and find that, with the exception of the fourth statutory factor to which we assign no weight, all of the other factors in varying degrees weigh in favor of granting the Petition. We emphasize the Station provides local programming relevant to the Communities and that it originates within the same state as the Communities. For the reasons discussed herein, we grant the Petition.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED**, pursuant to section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 17-102, CSR 8934-A) filed by Woods Communications Corporation **IS GRANTED**.

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

⁴⁷ *Id.*

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at Attach. B.

⁵⁰ *Id.* at 2.

⁵¹ Petition at 6.

⁵² *Id.* See also *Mapale LLC for Modification of the Miami, Florida DMA*, Memorandum Opinion and Order, 24 FCC Rcd 8366, 8375, para. 12 (MB 2009) (determining that an overlap of congressional districts can "confirm the commonality of interest" between a station and communities at issue).

⁵³ Petition at 6.

⁵⁴ 47 U.S.C. § 534(h)(1)(C).

⁵⁵ *Id.* § 534(h)(1)(C)(ii).

rules.⁵⁶

FEDERAL COMMUNICATIONS COMMISSION

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⁵⁶ 47 CFR § 0.283.