

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

In the Matter of )
One Ministries, Inc. ) MB Docket No. 21-142
For Modification of the Television Market of ) CSR 8997-A
Station KQSL, Fort Bragg, California )

MEMORANDUM OPINION AND ORDER

Adopted: August 6, 2021

Released: August 6, 2021

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

I. INTRODUCTION

1. One Ministries, Inc., (One Ministries or Petitioner),<sup>1</sup> licensee of television station KQSL(DT), Fort Bragg, California (Facility ID No. 8378) (KQSL or Station) filed the above-captioned Petition<sup>2</sup> requesting modification of the Station’s television market to include Cloverdale and certain communities in Contra Costa, San Mateo, and San Francisco Counties located within the San Francisco-Oakland-San Jose Designated Market Area (DMA).<sup>3</sup> These communities are served by Comcast systems (Comcast),<sup>4</sup> on which KQSL is not being carried on a mandatory basis (Communities). The Petitioner states that all of the Communities are located within the DMA and, therefore, are presumptively part of KQSL’s market.<sup>5</sup> The Petition is opposed by Comcast, with the exception of the community of

<sup>1</sup> The Petitioner states that One Ministries is a 501(c)(3) non-profit. Petition at n.1.

<sup>2</sup> One Ministries, Inc. Petition for Special Relief for Modification of the Television Market for Station KQSL, MB Docket No. 21-142 (filed Apr. 7, 2021), [https://ecfsapi.fcc.gov/file/104071388910299/One%20Ministries%20-%20KQSL%20Market%20Mod%20Petition%20\(Comcast\).pdf](https://ecfsapi.fcc.gov/file/104071388910299/One%20Ministries%20-%20KQSL%20Market%20Mod%20Petition%20(Comcast).pdf) (KQSL Petition). The Media Bureau placed the Petition on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0498 (MB Apr. 13, 2021).

<sup>3</sup> Specifically, the Petitioner is seeking to add: Cloverdale (CA0110); Concord (CA0063); Contra Costa County (CA0062, CA0070, CA0075, CA0243, CA0289, CA0346, CA0354, CA0365, CA0576, CA0747, CA0924, CA1233, CA1507); Walnut Creek (CA0293, CA1395, CA1654); Martinez (CA0241); Pleasant Hill (CA0244); Berlingame (CA0925); Daly City (CA0280, CA1337); San Francisco (CA0245); San Mateo City (CA0206, CA1374); Redwood City (CA0205, CA1569); San Mateo County (CA0074, CA0076, CA0078, CA0079, CA0573, CA0575, CA0859, CA0860, CA0967, CA1377, CA1461, CA1501, CA1502, CA1523); and South San Francisco (CA0282). Petition at n.3.

<sup>4</sup> The Petitioner states that according to the Commission’s Cable Operations and Licensing systems (COALS) database, Comcast does business in the communities at issue under various names, including Comcast of California III, Inc. and Comcast Cable Holdings, LLC. For ease of reference, the Petitioner states that it refers to the relevant cable systems as “Comcast” throughout its pleading. Petition at n.2. We do the same herein.

<sup>5</sup> *Id.* at 1-2.

Cloverdale.<sup>6</sup> One Ministries filed a Reply, and Comcast filed a Surreply.<sup>7</sup> For the reasons stated below, the Petition is granted in part and denied in part.

## II. BACKGROUND

### A. Market Modification Procedures

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 broadcast television stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>8</sup> A station's default market for this purpose is its DMA as defined by Nielsen Media Research.<sup>9</sup> 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 continental United States is allocated to a market based on which stations receive a preponderance of total viewing hours in the county.<sup>10</sup>

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

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>11</sup>

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

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<sup>6</sup> Opposition to One Ministries, Inc. Petition for Special Relief for Modification of the Television Market for Station KQSL, MB Docket No. 21-142 (filed May 24, 2021) (Comcast Opposition). Comcast requested an extension of time to file its Opposition to which One Ministries consented. The Media Bureau granted Comcast's extension as requested. See Email from Steven Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau to Steven Horvitz, MB Docket No. 21-142 (Apr. 21, 2021).

<sup>7</sup> Reply to Opposition to Petition for Special Relief for Modification of the Television Market for Station KQSL, MB Docket No. 21-142 (filed June 7, 2021) (Reply). Comcast also filed a Motion for Leave to File Surreply (*Comcast Motion to File Surreply*) and Surreply to Petition for Special Relief (Comcast Surreply), MB Docket No. 21-142 (filed June 21, 2021). Comcast states in its *Motion to File Surreply* that it understands that the Commission's procedural rules do not provide for the filing of an additional pleading in this proceeding. In this case, however, Comcast asserts that the Petitioner submitted new evidentiary statements and exhibits for the first time on Reply and that it should be afforded an opportunity to respond. We grant the *Motion to File Surreply* in the interest of a full and complete record in this matter and to the extent that we deem the *Surreply* salient to the resolution of the matters raised herein.

<sup>8</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket Nos. 90-4, 92-259, 92-295, Report and Order, 8 FCC Rcd 2965, 2976-77, paras. 42-47 (1993) (*Must Carry Order*).

<sup>9</sup> 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. 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 CFR § 76.55(e). See also *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999).

<sup>10</sup> See *Measurement and Reporting Geographies* (Nielsen Local Reference Supplement 2007-2008), <https://ecfsapi.fcc.gov/file/6519864809.pdf>.

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

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;<sup>12</sup>

(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.<sup>13</sup>

4. In order to establish a station's relationship to the community at issue as required by the Act, section 76.59(b) of the Commission's rules requires requests for market modification to be supported by the following evidence:

(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) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;<sup>14</sup>

<sup>12</sup> 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*, MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Mod. Order*).

<sup>13</sup> 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 station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[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.

<sup>14</sup> *See also* 47 CFR § 76.59, Note to Paragraph (b)(2) ("Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit").

- (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; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.<sup>15</sup>

## B. KQSL

5. KQSL is licensed to Fort Bragg, California, a community located in Mendocino, California.<sup>16</sup> Its primary broadcast location is a site on top of Cahto Peak, near Laytonville, California using a directional antenna at 1.3 kW ERP that transmits the Station's signal north toward Eureka, east toward Red Bluff and south over a portion of Sonoma County.<sup>17</sup> In 2011, Comcast successfully petitioned to modify KQSL's market to exclude the Communities, as well as others outside the scope of the instant proceeding.<sup>18</sup> In granting Comcast's petition, the Media Bureau (Bureau) found that KQSL had "no history of carriage and no discernable viewership in the communities at issue."<sup>19</sup> It also found that the Station's noise-limited service contour did not cover the communities, that it was geographically distant from the communities at an average distance of 140 miles, and that it was separated from those communities by mountainous terrain.<sup>20</sup> Finally, although KQSL stated that it "intended" to "provide Asian language programming targeted to Bay Area residents," the Bureau did not consider this expressed intention a sufficient basis for treating KQSL as a specialty station.<sup>21</sup>

## C. The Petition

6. One Ministries asserts that the factors that previously caused the deletion of the

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<sup>15</sup> 47 CFR § 76.59(b). Petitions for special relief to modify television markets that do not include all of the above evidence, or reflect at least an effort to obtain the evidence, must be dismissed without prejudice at the outset of the proceeding, but may be re-filed at a later date with the appropriate filing fee. *La Plata County, Colorado Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, MB Docket Nos. 16-366, 16-367, 16-368, 16-369, Memorandum Opinion and Order, 34 FCC Rcd 5030, 5038, para. 16 (2019). See also *STELAR Market Mod Order*, 30 FCC Rcd at 10424, para. 22. Parties may submit whatever additional evidence they deem appropriate and relevant. *Petition of Tobacco Valley Communications to Exclude Eureka and Communities in North Lincoln County from the Local Market of Several Spokane, Washington Broadcasters and Include it [sic] in the Local Market of Several Missoula, Montana Broadcasters*, MB Docket No. 15-152, Memorandum Opinion and Order, 31 FCC Rcd 8972, 8976, n.22 (MB 2016).

<sup>16</sup> KQSL, *TV Station Information*, FCC Online Public Inspection File, <https://publicfiles.fcc.gov/tv-profile/kqsl> (last visited July 27, 2021).

<sup>17</sup> FCC File No. BLCDDT-20090610AAS.

<sup>18</sup> *In re Comcast Cable Communications, LLC for Modification of the San Francisco-Oakland-San Jose, California DMA*, Memorandum Opinion and Order, 26 FCC Rcd 14453 (2011) (*2011 Market Modification Order*).

<sup>19</sup> *Id.* at 14463, para. 15.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Communities from KQSL's market no longer apply.<sup>22</sup> KQSL has constructed a distributed transmission system (DTS) that supplements KQSL's original transmitter atop Cahto Peak with a separate transmitter in Cloverdale.<sup>23</sup> The Petitioner admits that "[t]he DTS does not expand KQSL's contour, but rather serves to improve signal coverage in Cloverdale, which is now squarely encompassed by KQSL's 36 dBu contour and receives a good quality signal."<sup>24</sup> The Petitioner asserts that because the location of the DTS transmitter site is geographically proximate to all of the Communities, this supports their inclusion in KQSL's market.<sup>25</sup> According to One Ministries, the Station now has a history of carriage in all of the Communities not encompassed by KQSL's contour.<sup>26</sup> One Ministries describes KQSL as an independent, Christian television station that has served the San Francisco-Oakland-San Jose DMA for decades,<sup>27</sup> and states that it now broadcasts "locally targeted and produced religious programming, including Spanish language programming, as well as Chinese-language news, finance, and lifestyle programming."<sup>28</sup> The Petitioner therefore contends that KQSL's mix of religious and foreign language programming now qualifies it as a "specialty station" for the purposes of this proceeding.<sup>29</sup>

7. The Petitioner notes that the Bureau has previously considered the effect of deploying a DTS on a station's market. Like KQSL, California station KILM had been the subject of a market modification that resulted in the deletion of a number of communities from its market.<sup>30</sup> Following the issuance of that decision, KAZN Licensee, the licensee of KILM, constructed a DTS that enabled it to deliver a good quality signal to the communities that had been removed from its market.<sup>31</sup> Although finding it to be a "very close case," the Bureau granted KILM's petition to add the deleted communities back to its market.<sup>32</sup> The Bureau found that KILM was able to provide signal coverage to every community it sought to add after it "invested to improve its over-the-air signal coverage" by deploying the DTS, and had developed a history of carriage in the communities at issue and surrounding communities.<sup>33</sup> Similarly, the Petitioner notes that California station KVMD had been the subject of a petition that resulted in the deletion of a number of communities from the station's market.<sup>34</sup> KVMD later constructed a DTS that supplemented its original transmitter, bringing it closer to all of the deleted

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<sup>22</sup> Petition at 4.

<sup>23</sup> LMS File No. 0000058621.

<sup>24</sup> Petition at 4.

<sup>25</sup> *Id.*

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

<sup>27</sup> *Id.* at 2. Petitioner states that KQSL, then licensed to another broadcaster, signed on the air as KFWU in 1990. *Id.* at n.5.

<sup>28</sup> *Id.* at 2-3.

<sup>29</sup> *Id.* at 3 and n.20 (citing *Mountain Broad. Corp.*, Memorandum Opinion and Order, 27 FCC Rcd 2231, 2234-35, para. 8 (2012) (*Mountain Broadcasting Order*)).

<sup>30</sup> *Time Warner Cable Petition for Modification of the Television Market of Television Station KHIZ(TV), Barstow, California*, 18 FCC Rcd 20536 (MB 2003) (*KILM Order*). The Petitioner notes that at the time of the initial market modification order, the station's call sign was KHIZ. For clarity, the Petitioner refers to the station in this petition as KILM, and we do the same. Petition at n.16.

<sup>31</sup> *KAZN-TV Licensee, LLC for Modification of the Television Market for KILM, Barstow, California*, Memorandum Opinion and Order, 30 FCC Rcd 8126, 8131, para. 9, n.32 (MB 2015) (*KAZN Order*).

<sup>32</sup> *Id.* at 8137, para. 25.

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

<sup>34</sup> *Time Warner Cable Petition for Special Relief*, Memorandum Opinion and Order, 18 FCC Rcd 21384 (2003) (finding that KVMD was geographically distant from the communities, that its digital signal fell short of the communities, and that the station was separated from the removed communities by mountain ranges, desert plateaus, and political boundaries).

communities and allowing it to deliver a good quality signal to most. On the basis of this new coverage, KVMD successfully petitioned to return the deleted communities to its market.<sup>35</sup>

8. As noted above, Comcast opposes the Petition to add the communities back into KQSL's market, with the exception of the community of Cloverdale.<sup>36</sup> Comcast argues that the decisions cited by the Petitioner undermine, rather than support, its Petition, because in each case the analysis centered on new DTS operations that allowed the stations to deliver a good signal to all – or almost all – of the communities at issue.<sup>37</sup> Here, Comcast argues, the new DTS is limited in scope and its effect is minimal, merely serving to improve signal coverage in a single community.<sup>38</sup> As Petitioner concedes, the Contested Communities all remain well outside of KQSL's DTS noise-limited contour.<sup>39</sup> Comcast asserts that where expanded over-the-air coverage was a positive factor in the Bureau's previous DTS-related market modification decisions, KQSL's continuing lack of over-the-air coverage even after its DTS construction must be considered a negative factor in this case.<sup>40</sup>

### III. DISCUSSION

9. After evaluation of the five market modification factors enumerated below, we find support for the addition of Cloverdale to KQSL's market, but not for the addition of the Contested Communities. Accordingly, the Petition is granted in part and denied in part.

#### A. Statutory Factors

##### 1. Historical Carriage

10. 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.”<sup>41</sup> When analyzing a station's historic carriage, consideration is given not only to carriage by the operator that is the subject of the request, but also to whether the station is carried by competitors in the relevant communities.<sup>42</sup>

11. The Petitioner asserts that KQSL is currently and has previously been carried within the

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<sup>35</sup> *KVMD Licensee Company, LLC for Modification of the Television Market of Station KVMD(TV), Twentynine Palms, CA*, Memorandum Opinion and Order, 36 FCC Rcd 2349 (MB 2020) (*KVMD Order*).

<sup>36</sup> We refer to all of the Communities with the exception of Cloverdale as the “Contested Communities.”

<sup>37</sup> Comcast Opposition at 2 (citing *KAZN Order*, 30 FCC Rcd at 8135-36, para. 21 (“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.”); also citing *KVMD Order*, 36 FCC Rcd at para. 9 (“According to the Petitioner, KVMD now places a noise limited service contour over almost all of the Communities and the Station is geographically proximate to those Communities.”)).

<sup>38</sup> Comcast Opposition at 2-3.

<sup>39</sup> *Id.* at 3. Referring to Petitioner's Exhibit B, Comcast notes that the contour maps show virtually no coverage south of Cloverdale. In addition, Comcast states that the Commission's online DTV Reception Map tool shows that KQSL cannot be received over-the-air in any of the Contested Communities. *See id.* at n.7; <https://www.fcc.gov/media/-engineering/dtvmaps>.

<sup>40</sup> *Id.* Comcast further notes that KSBW, Salinas, California broadcasts on the same channel as KQSL and is significantly closer to San Francisco (and the other Contested Communities) than KQSL. *See* <https://publicfiles.fcc.gov/tv-profile/ksbw/contour-maps/>. Therefore, Comcast observes, the Commission's DTS rules, including prohibitions against any potential interference with KSBW, limit KQSL's ability to ever extend its noise-limited service contour in the Bay Area. Comcast Opposition at n.9.

<sup>41</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>42</sup> *Petition for Modification of Philadelphia, PA Designated Market Area with Regard to Station WACP, Atlantic City, NJ*, Memorandum Opinion and Order, 29 FCC Rcd 1835, 1845, para. 19, n.77 (MB 2014).

Communities by a number of MVPDs.<sup>43</sup> Today, the Station is carried in all of the Communities on systems operated by AT&T U-verse, DirecTV, DISH Network, and Wave Broadband, but Petitioner acknowledges that KQSL has been carried for fewer than ten years on each system.<sup>44</sup> In opposition, Comcast argues that we should give little weight to Petitioner's relatively short history of carriage, given its decades of operation, and notes that no Comcast system has ever carried the station in the communities.<sup>45</sup> Comcast further argues that given DBS service is generally DMA-wide, voluntary DBS carriage in a particular community within the DMA is of little significance when analyzing historic carriage in an individual community.<sup>46</sup> Additionally, Comcast observes that the carriage agreement with Wave Broadband commenced only last year,<sup>47</sup> and argues that KQSL's limited history of carriage in the communities is insufficient to demonstrate a nexus to the Contested Communities.<sup>48</sup>

12. Comcast also argues that One Ministries' historic carriage arguments are further undermined because KQSL lacks historic carriage in a number of cable communities that are either: "(a) adjacent to or nearby the Contested Communities; or (b) much closer to Fort Bragg[, KQSL's community of license]."<sup>49</sup> Comcast asserts that in focusing on KQSL's recent carriage by certain MVPDs in the Contested Communities, and ignoring gaps in its cable carriage outside those Contested Communities, the Petitioner "advances an unprecedented market modification request that illogically leapfrogs across a vast expanse of Northern California and nonsensically asserts a local nexus to a scattershot collection of Bay Area communities."<sup>50</sup> Comcast argues that the only common characteristic of the Contested Communities is KQSL's voluntary carriage by other MVPDs, and that there is "no single, integrated television market" that includes Fort Bragg and the Contested Communities.<sup>51</sup>

13. In reply, the Petitioner argues that KQSL's years of carriage by U-verse, DirecTV, and

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<sup>43</sup> Petition at 9.

<sup>44</sup> *Id.* and Exhibit A (Cable Provider Channel Lineups). The Petitioner states that Astound Broadband, LLC (d/b/a Wave Broadband) has two systems. The first covers Concord, Martinez, Pleasant Hill, Walnut Creek, and Contra Costa. The second, which Wave refers to as the "Peninsula/San Francisco" system, covers San Francisco, South San Francisco, Daly City, Burlingame, San Mateo City, Redwood City, and San Mateo County. Wave Broadband does not provide service in Cloverdale. *Id.* at n.31.

<sup>45</sup> Comcast Opposition at 4. *See also 2011 Market Modification Order* at 14463, para. 15 ("The record unambiguously demonstrates that KQSL has no history of carriage and no discernable viewership in the communities at issue . . . [even though] KQSL has been on-the-air for over 20 years.").

<sup>46</sup> Comcast Opposition at 4.

<sup>47</sup> *Id.* and n.13. Although Comcast also appears to argue that the carriage of KQSL's by its competitors is not relevant to the first factor because it is voluntary, we disagree. *Id.* at n.13. Our precedent makes no distinction between voluntary and mandatory carriage when analyzing a petition under this factor.

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

<sup>49</sup> *Id.* at 5. For example, Comcast states that the Petitioner seeks carriage in San Francisco and Walnut Creek, but excludes Oakland and Berkeley, even though they lie between San Francisco and Walnut Creek. Similarly, Comcast points out that the Petitioner seeks carriage in the Communities, but not in the cities of San Rafael, Petaluma, and Santa Rosa, even though they lie between the Communities and Fort Bragg. Further, it is noted that One Ministries does not seek carriage in any community within Napa and Marin Counties, and seeks carriage only in Cloverdale among Sonoma County's many communities. *Id.* at n.14. Comcast submits a list of its San Francisco DMA communities, indicating those communities on which KQSL seeks carriage and those communities the Petitioner excluded from its Petition. *See id.* at Exhibit 1.

<sup>50</sup> *Id.* at Exhibit 1 "showing that KQSL does not seek carriage in 19 Alameda County communities served by Comcast, 16 Contra Costa County communities served by Comcast, 13 Marin County communities served by Comcast, and 6 Napa County communities served by Comcast. [The Petitioner] seeks carriage in Cloverdale within Sonoma County, but ignores another 16 Sonoma County communities Comcast serves, including Santa Rosa, the largest community in the county." *Id.* at n.16

<sup>51</sup> *Id.* at 6.

Dish are more relevant than its limited period of carriage by Wave.<sup>52</sup> It also argues that carriage pursuant to retransmission consent may evidence stronger MVPD interest in KQSL's programming because they are voluntarily carrying the station, rather than doing so to comply with a Commission mandate.<sup>53</sup> Further, the Petitioner argues that Comcast can point to no authority where it is specified how long carriage must be in order to be "historic" and that the word itself is not associated with any particular length of time.<sup>54</sup> The Petitioner states that this is consistent with precedent recognizing present carriage by competitors as historic carriage.<sup>55</sup>

14. Finally, the Petitioner disputes Comcast's contention that, in seeking to add the Communities to its market, the Petitioner focuses on historic and existing carriage in the Communities and ignores obvious gaps in cable carriage outside the Communities.<sup>56</sup> The Petitioner argues that it need not discuss carriage in cable communities "adjacent to or nearby" the Communities or "much closer to Fort Bragg" because the station has carriage in the Communities themselves.<sup>57</sup>

15. Comcast is correct that DMA-wide DBS carriage is of limited relevance to the question of historic carriage in a given community, and that KQSL has not had any carriage in or around the Contested Communities, or communities between Fort Bragg and the Contest Communities, for most of its decades of operation. Nonetheless, the Station is being voluntarily carried by cable systems in the Contested Communities today, and has been for several years, notwithstanding Comcast's own decision not to carry the stations. We therefore find that this first statutory factor weighs slightly in favor of the requested modification.

## 2. Local Service

16. Second, we consider "whether the television station provides coverage or other local service to such community."<sup>58</sup> This statutory factor can be satisfied by demonstrating the Station's signal coverage, its geographic proximity to the Communities, its shopping and labor patterns between the Station and the Communities, as well as locally-focused programming broadcast by the Station.

17. With respect to signal coverage, Petitioner states that KQSL recently began broadcasting using a DTS from a second transmitter site located in Cloverdale.<sup>59</sup> This DTS, the Petitioner asserts, improved KQSL's coverage of Cloverdale, which received a weak signal in the past due to mountainous terrain.<sup>60</sup> The Petitioner also provides two maps showing KQSL's current signal contour in relation to Cloverdale and the other Communities and the relevant headends for the systems serving the

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<sup>52</sup> Reply at 4.

<sup>53</sup> *Id.* at 4-5. The Petitioner also states that Wave Broadband voluntarily upgraded KQSL to HD from SD on its systems. *Id.* at n.13.

<sup>54</sup> *Id.* at 5. The Petitioner points to the Merriam-Webster online dictionary to note that "historic" means "known or established in the past." See <https://merriam-webster.com/dictionary/historic>. Therefore, according to the Petitioner, because KQSL was carried in the past, its carriage is historic. Reply at n.14.

<sup>55</sup> *Id.* (citing *Mountain Broadcasting Order*, 27 FCC Red at 2235, 2240, paras. 9, 21) (accepting for the purpose of historical carriage that Verizon "presently carries" the station in the communities); also citing *Petition of WRNN License Co. LLC v. Cablevision Sys. Corp.*, Memorandum Opinion and Order, 22 FCC Red 21054, 21056, para. 4 and n.15 (2007) (finding that "the justification of modifying WRNN-DT's market has strengthened since the WRNN-DT Modification Order, as WRNN-DT is now carried on competitive cable systems in Nassau and Suffolk Counties").

<sup>56</sup> Reply at 5.

<sup>57</sup> *Id.*

<sup>58</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(II).

<sup>59</sup> Petition at 11.

<sup>60</sup> *Id.* at Exhibit B (Longley-Rice Maps).



Communities.<sup>61</sup> The Petitioner asserts that KQSL's signal contour supports inclusion of Cloverdale in the Station's market.<sup>62</sup>

18. The Petitioner further asserts that although Cloverdale is the only Community covered by the Station's contour, KQSL provides local service to the Communities through translator stations KQTA-LD, San Francisco, California (Facility ID No. 182960); KUKR-LD, Santa Rosa, California (Facility ID No. 182689); and KZHD-LD, Cotati, California (Facility ID No. 126508).<sup>63</sup> Further, the Petitioner states that the Bureau previously granted a market modification request where the petitioning station's translators "'provide a Grade B signal contour over the communities at issue . . . .'"<sup>64</sup> The Petitioner asserts that the Comcast headends serving the Communities are within the contours of these three translator stations.<sup>65</sup> Moreover, the Petitioner notes that fiber optic transmission facilities ensure that the Station delivers a clear signal from its Santa Rosa studios to Comcast's headend in Ukiah, California, which in turn feeds other headends serving the Communities.<sup>66</sup> The Petitioner pledges that the Station will take all steps necessary to ensure that an adequate signal is delivered to all Comcast headends.<sup>67</sup>

19. In Opposition, Comcast notes that One Ministries' Petition makes clear that as a result of DTS, Cloverdale is the only Community that now falls within KQSL's contour coverage area.<sup>68</sup> Comcast argues that coverage of Cloverdale cannot somehow weigh in favor of the Petitioner's market modification request for the Contested Communities, especially considering the distance of many of those Communities from Cloverdale.<sup>69</sup> Furthermore, Comcast contends that market modification precedent does not support relying on translator coverage to compensate for a lack of over-the-air coverage by the

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<sup>61</sup> *Id.* at Exhibit C (Contour Maps). The Petitioner states that the location of Comcast's headends are plotted on Maps #1 and #2 in Exhibit C and the address for each headend is also provided in a table in the Exhibit. One Ministries states that it obtained the addresses of the Comcast headends from its programming partner, Total Living Network, which "knows the location of the headends pursuant to its relationship with another station." *Id.* at n.41.

<sup>62</sup> *Id.* at 11 (citing *Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, Memorandum Opinion and Order, 29 FCC Rcd 1835, 1847, paras. 22-23 (2014) (finding that WJLA's contour, covering "a substantial portion of the communities" at issue supported the station's requested market modification) (*Entravision Order*)).

<sup>63</sup> Petition at Exhibit D (Translator Contours).

<sup>64</sup> Petition at 12 (citing *In the Matter of Mapale LLC for Modification of the Miami, Florida DMA*, Memorandum Opinion and Order, 24 FCC Rcd 8366, para. 9 (2009)).

<sup>65</sup> *Id.* More specifically, the Petitioner states that Comcast's San Francisco, Hayward, Pleasanton, Santa Clara, and Rohnert Park headends are encompassed. Petition at n.46 and Exhibit D (Translator Contours).

<sup>66</sup> *Id.* at 12.

<sup>67</sup> *Id.* The Petitioner cites: *Cf. In re WSBS Licensing, Inc. for Modification of the Television Market for WSBS-TV, Key West, Florida*, Memorandum Opinion and Order, 32 FCC Rcd 4159, 4163, para. 8 (2017) ("noting that WSBS lacks signal coverage of the communities at issue but nonetheless finding that the second statutory factor weighed in favor of granting the market modification where: WSBS's co-owned Class A station 'covers each of the cable headends of the major cable systems in the market and 39 of the 41 Communities;' WSBS 'has installed fiber optic transmission facilities to ensure that it delivers a clear signal from its Key West and Miami studios to several cable headends;' and the petitioner 'states that it will continue to take all steps needed to ensure that the Station delivers an adequate signal to all cable headends.'"). Petition at n.47.

<sup>68</sup> Comcast Opposition at 6.

<sup>69</sup> *Id.* Comcast states that this is not a case where the Communities are "immediately proximate to [the] southernmost edge of KQSL's noise-limited contour." *Id.* at n.18. Citing One Ministries' Petition, Comcast points out that distances from the noise-limited contour near Cloverdale to various Communities include: San Francisco – 72.8 miles; Concord – 78.6 miles; Daly City – 82.3 miles; Martinez – 72.3; Pleasant Hill – 78.7 miles; Redwood City – 100.6 miles; San Mateo – 93.7 miles; South San Francisco – 83 miles; and Walnut Creek – 80.7 miles. *See* Petition at 14.

primary signal. It argues that the Bureau already addressed and rejected this argument by KQSL in the *2011 Market Modification Order*.<sup>70</sup> Finally, Comcast asserts that the Petitioner's claim that it has fiber optic facilities to ensure that an adequate signal is delivered to Comcast is irrelevant under this factor.<sup>71</sup>

20. The Petitioner responds by reiterating that it provides local service to all of the Communities either through KQSL's recently licensed DTS or through translators.<sup>72</sup> It also argues that, notwithstanding prior Commission precedent, in large markets translators may be of increased relevance for determining coverage because no station can place a contour over the entire market.<sup>73</sup> The Petitioner further contends that KQSL is geographically proximate to the Communities.<sup>74</sup> According to the Petitioner, the DTS transmitter site in Cloverdale is connected to the other Communities via major transportation routes, including U.S. Highway 101,<sup>75</sup> and by public transportation.<sup>76</sup> In terms of the Cloverdale transmitter site, the furthest Community, Redwood City, is 100.6 miles as the crow flies and 109 miles driving, while the closest Community, Cloverdale, is 0 miles both as the crow flies and driving.<sup>77</sup> The Petitioner asserts that the distances between KQSL's DTS transmitter site and the Communities are comparable to distances that were previously found geographically proximate.<sup>78</sup>

21. In response, Comcast argues that One Ministries' discussion of geographic proximity in this matter erroneously emphasizes the distance between its secondary DTS in Cloverdale and the Contested Communities, rather than the distance from its remote primary transmitter or, more importantly, KQSL's city of license, Fort Bragg.<sup>79</sup> Comcast points to the *2011 Market Modification Order* which noted that Fort Bragg is geographically distant from the communities and that the communities are separated by mountainous terrain.<sup>80</sup> Comcast also adds that all of the Contested

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<sup>70</sup> *2011 Market Modification Order*, 26 FCC Rcd at 14460-61, para 13.

<sup>71</sup> Comcast Opposition at 8.

<sup>72</sup> Reply at 6.

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

<sup>74</sup> Petition at 13 (arguing that the Bureau has, in the past, considered "the distance between the DTS transmitter site [not just the primary transmitter site] and the relevant communities" (citing *KVMD Order* at 2357, 2360, paras. 18, 25)).

<sup>75</sup> Petition at Exhibit E (Major Transportation Routes). The Petitioner further submits that Fort Bragg is connected to the Communities through major transportation routes, including U.S. Highway 1, State Highway 20, and U.S. Highway 101. *Id.* at n.49.

<sup>76</sup> *Id.* at Exhibit F (Cloverdale Public Transportation Routes). The Petitioner also submits that Fort Bragg is accessible to the Communities by public transportation. *Id.* at Exhibit G (Fort Bragg Public Transportation Routes). The Petitioner states that Exhibits F and G include maps for (1) Martinez, which in addition to being one of the Communities, is also the county seat of Contra Costa County, and (2) Redwood City, which in addition to being one of the Communities, is also the county seat of San Mateo County. *Id.* at n.50.

<sup>77</sup> *Id.* at 14. The Petition offers a Table showing the distances between the DTS transmitter site and the Communities. *Id.*

<sup>78</sup> *Id.* at 13 (citing *Petition of WRNN License Company, LLC for Modification of the Television Market of WRNN-TV, New Rochelle, New York*, Memorandum Opinion and Order, 35 FCC Rcd 1838 (2020) (*WRNN-Altice Order*) (adding a community that was 101.7 miles away from the petitioning station's community of license)). The Petitioner does not offer a Table, as it does for the DTS transmitter site and the Communities, showing the distances between Fort Bragg, KQSL's community of license, and the Communities, but it does state that distances are generally longer "averaging 172.5 miles driving and 139.7 miles as the crow flies." Petition at n.51.

<sup>79</sup> Comcast Opposition at 8. Comcast states that KQSL's primary transmitter is located some 70 miles to the north of Cloverdale, near Laytonville, CA. *Id.*

<sup>80</sup> *2011 Market Modification Order*, 26 FCC Rcd at 14463, para. 15.

Communities are naturally separated from Fort Bragg and Cloverdale by the San Francisco Bay.<sup>81</sup> Comcast notes that Fort Bragg is approximately 132 miles as the crow flies from San Francisco, the closest Contested Community, and approximately 159 miles from Redwood City, the farthest Contested Community.<sup>82</sup> Finally, Comcast asserts that while it is theoretically possible to take public transportation between Cloverdale or Fort Bragg and the Contested Communities, the several hours it would take means it is not a realistic commuting option.<sup>83</sup>

22. The Petitioner responds that Comcast ignores precedent for reliance on the distance between KQSL's DTS transmitter and the Communities to demonstrate geographic proximity.<sup>84</sup> Referring to the *KVMD Order*, the Petitioner argues that in granting the Petition the Bureau relied, in part, on the geographic proximity of the DTS transmitter site to the communities, notwithstanding the fact that the station's community of license was over 180 miles from the farthest community.<sup>85</sup> The Petitioner further argues that "given the vastness of the San Francisco-Oakland-San Jose DMA, comparisons to distances found acceptable in other markets may not be entirely apt."<sup>86</sup> Regardless, the Petitioner asserts that "to the extent that some of the Communities are farther away, other factors . . . demonstrate that the subset of Communities in question are still part of the same economic market."<sup>87</sup> Specifically, Petitioner maintains that Fort Bragg, KQSL's community of license, shares strong economic connections with the Communities because it is a tourist destination.<sup>88</sup> It also asserts that Fort Bragg and the Communities share many of the same demographic characteristics.<sup>89</sup> Additionally, the Petitioner argues that labor patterns also connect Fort Bragg to the Communities, but provides only circumstantial evidence in favor of this theory.<sup>90</sup>

23. Comcast argues that Petitioner's assertions regarding Fort Bragg's status as a tourist destination and its demographic makeup are irrelevant,<sup>91</sup> and that no Census data or other data is presented that supports the Petitioner's assertions of economic or labor connections.<sup>92</sup> Comcast argues that no evidence is presented to show that residents of the Contested Communities regularly commute to Fort Bragg, shop there, or are connected to Fort Bragg in any meaningful way.<sup>93</sup>

24. The Petitioner responds that residents of the Communities travelling to Fort Bragg as a tourist destination would be evidence of a strong economic connection.<sup>94</sup> Petitioner also notes that as

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<sup>81</sup> Comcast Opposition at 8.

<sup>82</sup> See *id.* at Exhibit 2 (calculation of miles from Fort Bragg to each Community obtained from <http://www.indo.com/distance>).

<sup>83</sup> *Id.* at 10, referencing Petitioner's Exhibit F.

<sup>84</sup> Reply at 6-7.

<sup>85</sup> *KVMD Order*, 36 FCC Rcd 2349, 2358, para. 19, n.63 ("[t]he average Community distance to Twentynine Palms in the nine systems ranges from 74.8 miles to 185.04 miles.").

<sup>86</sup> Reply at 6-7.

<sup>87</sup> *Id.* at 8.

<sup>88</sup> Petition at 15.

<sup>89</sup> *Id.* at 16.

<sup>90</sup> Petition at 16 (noting that, according to U.S. Census data, 2.95 percent of the workforce in Fort Bragg have what it terms "super commutes" in excess of 90 minutes, and asserts without supporting evidence that some of them probably work in the Communities).

<sup>91</sup> Comcast Opposition at 11.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 12.

<sup>94</sup> Reply at 8-9.

Comcast carries a number of San Francisco stations on its Fort Bragg system, Comcast appears to recognize that Fort Bragg is part of the same economic market as the Communities.<sup>95</sup>

25. Regarding locally-focused programming offered by KQSL, the Petitioner states that the Station “airs foreign language and multicultural programming, regional and international news, and religious programming.”<sup>96</sup> The Petitioner further asserts that the Station airs programs produced by local churches and ministries within the Communities.<sup>97</sup> Comcast argues that given the rejection of the Station’s programming claims in the *2011 Market Modification Order*,<sup>98</sup> the Petitioner should have submitted a detailed log of its coverage of specific local news and events in each of the Contested Communities over an extended period of time in this proceeding.<sup>99</sup> Instead, according to Comcast, the Petitioner acknowledges that it airs Total Living Network (TLN) network programming during the vast majority of its broadcast week, and it references only a small amount of local programming but provides few details.<sup>100</sup>

26. We find that the second statutory factor weighs in favor of KQSL’s Petition with regard to Cloverdale, but that it weighs strongly against the Petition with respect to the Contested Communities. As acknowledged by the Petitioner, Cloverdale is the only Community covered by the Station’s contour as a result of the construction of a DTS. With regard to the Contested Communities, relying on translator coverage does not compensate for a lack of over-the-air coverage by the primary signal even after construction of the new DTS transmitter. Petitioner acknowledges that there is no geographic proximity between the Communities and its Community of License, and we find neither the narrowly-focused DTS transmitter in Cloverdale nor the size of the DMA sufficient basis to ignore the distances involved. We also agree with Comcast that One Ministries has failed to demonstrate meaningful economic connections between Fort Bragg and any of the Communities. Finally, although Petitioner has referenced some locally-produced and locally-focused programming aired by the KQSL, we find the record on this programming insufficient, standing alone, to demonstrate that the Station provides “local service” to any of the Contested Communities.

### 3. Promoting Consumer Access to Local Stations

27. The third statutory factor we 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.”<sup>101</sup> This factor is intended to ensure that MVPD subscribers are “receiving news, politics, sports, emergency information, and other television programing relevant to their home state” and

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<sup>95</sup> *Id.* at 9. These stations include KPIX-TV, KGO-TV, and KRON-TV, all in San Francisco. *Id.* and Exhibit L (Comcast Channel Lineup for Fort Bragg). Comcast responds that carriage of San Francisco network affiliates on its Fort Bragg system proves nothing about the Contested Communities’ own connection to Fort Bragg or KQSL. Comcast asserts that to the extent that Fort Bragg residents might enjoy a connection to San Francisco, a highly populated city at the center of the DMA, this would not prove that residents of the Contested Communities have a similar connection to Fort Bragg, a small community at the remote northern end of the DMA, or KQSL. *Comcast Surreply* at 2.

<sup>96</sup> Petition at 16.

<sup>97</sup> *Id.* Petitioner claims that KQSL broadcasts 10 hours of local news per week, as well as programming produced by local churches and ministries located in and near the Communities.

<sup>98</sup> *2011 Market Modification Order*, 26 FCC Rcd at 14453, para. 15 (finding that while KQSL stated its intention to provide Asian language programming, such intention was premature at best, and that Comcast provided sufficient information to demonstrate that its subscribers already received an abundance of Asian targeted and Asian language programming).

<sup>99</sup> Comcast Opposition at 12.

<sup>100</sup> *Id.*

<sup>101</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(III).

“relevant to their everyday lives.”<sup>102</sup> 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.<sup>103</sup> This factor may be given increased weight if the station provides programming specifically related to the subscribers’ state of residence, and may be given even more weight if subscribers in the existing market have little or no access to such in-state programming.<sup>104</sup>

28. In support of this factor, the Petitioner states that KQSL is licensed to Fort Bragg, California and broadcasts from two transmitters located in California, which is the state in which the Communities are located.<sup>105</sup> Comcast argues that KQSL does not merit special credit for its in-state location because this factor was intended to promote access to some in-state broadcasting to subscribers in “border” areas (i.e., “Orphan Counties”).<sup>106</sup> Comcast is incorrect. KQSL is a licensed California station that broadcasts from transmitters in California, which is where the Communities at issue are located. We therefore find that this factor weighs in favor of the modification, but do not find sufficient evidence in the record to give this factor increased weight.

#### 4. Carriage of Other Eligible Stations

29. 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.”<sup>107</sup> In general, this factor is interpreted 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.<sup>108</sup>

30. The Petitioner states that “[u]pon information and belief, the Comcast systems serving the Communities carry other television stations that provide coverage of news, sports, and other issues of interest to the Communities.”<sup>109</sup> Accordingly, consistent with our precedent, we assign no weight to this factor.

#### 5. Viewing Patterns

31. 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.<sup>110</sup> The Bureau has explained that, with respect to a specialty station like KQSL, this factor is generally given less weight.<sup>111</sup> The Petitioner states that KQSL does not subscribe to Nielsen or any other ratings service.<sup>112</sup>

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<sup>102</sup> *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, 10420, paras. 1, 18 (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)).

<sup>103</sup> *STELAR Market Mod. Order*, 30 FCC Rcd at 10420, para. 18.

<sup>104</sup> *Id.*

<sup>105</sup> Petition at 18.

<sup>106</sup> Comcast Opposition at 16 (citing *STELAR Market Mod. Order*, 30 FCC Rcd 10406, 10408, para. 3, nn.5-6 (2015)).

<sup>107</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

<sup>108</sup> *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 Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947, para. 49.

<sup>109</sup> Petition at 19.

<sup>110</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(V).

<sup>111</sup> *KAZN Order*, 30 FCC Rcd at 8137, para. 24.

<sup>112</sup> Petition at 19.

However, the Petitioner states that it “contacted Nielsen to discuss the possibility of obtaining the audience data specified in section 76.59(b) of the Commission’s rules, but because KQSL does not have a Nielsen encoder, Nielsen does not have any ratings information on KQSL that could be used for the purposes of the instant petition.”<sup>113</sup>

32. The Petitioner concedes it is reasonable to presume that KQSL’s viewership in the Communities is lower than that of other stations with the right to demand cable carriage, but that the Bureau should consider that level of viewership to be unsurprising.<sup>114</sup> KQSL does maintain a sales log from its infomercial programming, which demonstrates that in 2020, viewers from some of the Communities purchased goods after viewing KQSL programming.<sup>115</sup> In addition, the Petitioner states that KQSL has received prayer requests from viewers located in the Communities.<sup>116</sup>

33. In opposition, Comcast argues that One Ministries provides no formal evidence of viewing patterns in the record while conceding that the Station’s viewership is low and, therefore, the Bureau should find that this factor weighs against the market modification request.<sup>117</sup> Comcast argues that KQSL’s sales logs “include only a few dozen purchases from the Contested Communities (which encompass millions of residents) over an extensive time period, and only a small handful of sales from multiple communities.”<sup>118</sup> Additionally, Comcast asserts that there is nothing that suggests that these “very limited sales (which might include multiple sales from a single household) resulted from the over-the-air viewership (the relevant test here) rather than MVPD viewership.”<sup>119</sup> Similarly, Comcast argues that the submission by the Petitioner of 22 prayer requests from July 25, 2018 through the filing date of the Petition proves nothing positive about KQSL viewership in the Contested Communities, which collectively have millions of potential viewers.<sup>120</sup>

34. With regard to our evidentiary requirements, section 76.59(b)(6) of our rules requires published audience data for the relevant station “or other specific audience indicia, such as station advertising and sales data or viewership contribution records.”<sup>121</sup> The “specific audience indicia” submitted by the Petitioner includes some entries from an infomercial sales log and a few prayer requests, some received by the Station itself, as highlighted above. While we recognize the Petitioner’s efforts to demonstrate the desire for KQSL’s programming through these infomercial sales logs and prayer requests, this evidentiary submission is not indicative of significant viewership. While this factor is given less weight with respect to a specialty station like KQSL, we nonetheless find that it weighs against

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<sup>113</sup> *Id.* The Petitioner has requested a waiver of the requirement of 47 CFR § 76.59(b)(6) to provide published audience data for the Station. We waive this rule to the extent necessary because the Petitioner, although unsuccessful, made the effort to secure such published audience data and submitted in the alternative a sales log from its infomercial programming and prayer requests as evidence of viewership. *See supra* note 15.

<sup>114</sup> *Id.* at 20 (citing *Entravision Order*, 29 FCC Rcd at 1848, para. 27); *WRNN-Spectrum Order* at 6456, para. 23.

<sup>115</sup> Petition at 20 and Exhibit I (Infomercial Sales).

<sup>116</sup> *Id.* at Exhibit J (Prayer Requests).

<sup>117</sup> Comcast Opposition at 18 (citing *Franklin County, Georgia, Petitioners for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA, and WGCL, Atlanta, Georgia*, Memorandum Opinion and Order, 33 FCC Rcd 8742, 8749, para. 28 (2018) (“Although there is no evidence of viewing patterns in the record, Petitioner concedes that ‘audience data would not be helpful’ to its case even if it had been provided. We therefore hold that this factor weighs *against* the market modification request.”) (*emphasis added*); also citing *La Plata County, Colorado*, Memorandum Opinion and Order, 34 FCC Rcd 5030, para. 28 (2019) (“[I]n the absence of any evidence of household viewing patterns . . . this factor should have weighed against modification of the markets at issue.”)).

<sup>118</sup> Comcast Opposition at 19.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> 47 CFR § 76.59(b)(6).

modification of KQSL's market.

#### 6. Conclusion

35. We conclude that the facts support the grant of the Petition to modify the market of KQSL, Fort Bragg, California, to include the Comcast system serving the Community of Cloverdale. The first factor weighs slightly in favor and the second and third statutory factors weigh in favor of the request with respect to Cloverdale, while only the fifth factor weighs against the request, and we assign no weight to the fourth factor. KQSL's new DTS transmitter provides over-the-air coverage to Cloverdale, and the record demonstrates a commitment to serve this community. We also conclude, however, that we must deny the remainder of the petition. Only the first and third factors weigh at all in favor of the market modification request with respect to the Contested Communities, while the fifth factor weighs against the request and we are unable to give any weight to the fourth statutory factor. The second factor, on the other hand, weighs strongly against the request, tipping the scales firmly against a grant. For the reasons discussed herein, we grant the Petition with regard to Cloverdale and deny the Petition with regard to the Contested Communities.<sup>122</sup>

#### IV. ORDERING CLAUSES

36. 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. 21-142, CSR 8997-A) filed by One Ministries, Inc., LLC **IS GRANTED** with regard to Cloverdale and **IS OTHERWISE DENIED**.

37. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.<sup>123</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>122</sup> See *supra* note 3.

<sup>123</sup> 47 CFR § 0.283.