

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

In re:	)	
	)	
Dynamic Cablevision of Florida, Ltd.	)	CSR-4722-A
and	)	
Continental Cablevision of Jacksonville,	)	CSR-4707-A
Inc., d/b/a Comcast of Broward County, Inc.	)	
and Continental Cablevision of	)	
Broward County, Inc.	)	
	)	
For Modification of the Miami-Ft.	)	
Lauderdale, Florida ADI	)	

### MEMORANDUM OPINION AND ORDER

**Adopted: August 9, 1996**

**Released: August 20, 1996**

By the Deputy Chief, Cable Services Bureau:

### INTRODUCTION

1. On March 29, 1996 and April 19, 1996, respectively, Continental Cablevision of Jacksonville, Inc. d/b/a Continental Cablevision of Broward County, Inc. and Comcast of Broward County, Inc. ("Continental/Comcast"), and Dynamic Cablevision of Florida, Ltd. ("Dynamic"), filed the above-captioned petitions for special relief seeking to modify the Miami-Ft. Lauderdale, Florida Area of Dominant Influence ("Miami ADI") of television broadcast station WEYS (CBC, Ch. 22), Key West, Florida. Specifically, Continental/Comcast and Dynamic request that WEYS be excluded from the Miami ADI relative to the communities served by their systems in Broward and Dade Counties, Florida,<sup>1</sup> for the purposes of the cable television mandatory broadcast signal carriage rules. WEYS filed oppositions to these petitions to which both Continental/Comcast and Dynamic replied.

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<sup>1</sup> Continental Cablevision serves the communities of Deerfield Beach, Hillsboro Beach, Lauderhill, Lazy Lake, Lighthouse Point, Oakland Park, Plantation, Pompano Beach, Sunrise, Tamarac, Wilton Manors and portions of Broward County, Florida. Comcast serves the communities of Ft. Lauderdale, Broward, Lauderdale-By-The-Sea, Oakland Park, Hallandale and Sea Ranch Lakes, Florida. Dynamic serves the communities of Coral Gables, Hialeah, Hialeah Gardens, Medley, Miami Springs, Sweetwater, Virginia Gardens, West Miami and portions of Dade County, Florida.

## BACKGROUND

2. Pursuant to §4 of the Cable Television Consumer Protection and Competition Act of 1992 ["1992 Cable Act"]<sup>2</sup> and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,<sup>3</sup> a commercial television broadcast station is entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.<sup>4</sup> An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 4 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.

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;

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<sup>2</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>3</sup> *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>4</sup> Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

<sup>5</sup> Certain counties are divided into more than one sampling unit because of the topography involved. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. Refer to Arbitron's *Description of Methodology* handbook for a more complete description of how counties are allocated.

(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; and

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

4. The legislative history of this provision indicates that:

where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI 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 areas 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.<sup>6</sup>

5. The Commission provided the following guidance in the *Report and Order* to aid decision making in these matters:

For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and*

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<sup>6</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess 97 (1992).

noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.<sup>7</sup>

6. As for deletions of communities from a station's market, the legislative history of this provision indicates that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.<sup>8</sup>

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.<sup>9</sup> The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.<sup>10</sup>

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<sup>7</sup> 8 FCC Rcd at 2977 (emphasis in original).

<sup>8</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>9</sup> 8 FCC Rcd at 2977 n. 139. Viewership information cited herein is county data, rather than community-specific data. However, absent evidence that such data is not fairly reflective of viewing in the actual communities in question, we accept such data as probative in cases of this type. See, e.g., *RKZ Television, Inc.*, 8 FCC Rcd 8008, 8010 (1993).

<sup>10</sup> 47 C.F.R. §76.59.

**MODIFICATION ARGUMENTS**

8. The communities served by Dynamic are located in Dade County, Florida, while the communities served by Continental/Comcast are located in Broward County, Florida. All are part of the Miami-Ft. Lauderdale, Florida ADI. Key West, the city of license of WEYS, is also considered to be part of the same ADI and is approximately 124 miles from the nearest affected cable community.

9. In support of their petitions, both Dynamic and Continental/Comcast argue that WEYS should be excluded from carriage on their systems because the station does not satisfy any of the four statutory market modification factors. First, the station has no record of long-term historic carriage. While both Dynamic and Continental/Comcast admit that they are presently carrying the station,<sup>11</sup> they claim that such carriage cannot be termed "historic" since WEYS only went on-the-air in June of 1993. They state that the Commission has specifically recognized that carriage for such a short period of time does not represent long-term carriage for must carry purposes<sup>12</sup>

10. According to the cable operators, WEYS does not provide local coverage to the communities. First, WEYS is geographically remote; all three cable systems are in the northern part of the Miami ADI while WEYS is in the southwestern most tip.<sup>13</sup> Second, WEYS' Grade B contour is more than 100 miles from the closest community in either Dade or Broward County and the station is not generally viewable off-air in either cable or noncable homes. Moreover, WEYS offers "entirely foreign" programming from Argentina, Brazil, Venezuela, Bolivia and Peru between 7 p.m. to 11 p.m. (M-F) which highlights Central and South American news rather than news relevant to the cable communities.

11. The operators assert that the programming offered by WEYS is already being provided by the local Miami stations carried by the systems,<sup>14</sup> all of which provide local news, sports and

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<sup>11</sup> Dynamic states that it commenced carriage of WEYS on December 22, 1994, Continental commenced carriage of WEYS on December 1, 1994, and Comcast commenced carriage of WEYS on December 12, 1994. All three systems indicate that they commenced carriage after WEYS requested carriage pursuant to Section 614 of the 1992 Cable Act and the Commission's must-carry requirements.

<sup>12</sup> See *Northstar Television of Providence, Inc.*, 11 FCC Rcd 1736 (1996).

<sup>13</sup> For instance, Key West, WEYS' city of license, is more than 124 miles from Coral Gables, the closest community served by Dynamic, and it is more than 139 miles from Hallandale, the closest of the communities served by Continental/Comcast.

<sup>14</sup> The local stations carried by Dynamic include WPBT (PBS), WLTU (Ind.), WTVJ (NBC), WFOR (CBS), WSVN (FOX), WSCV (Ind.), WDZL (Ind.), WPLG (ABC), WBFS (Ind.), WLRN (PBS), WCTD (Ind.), and WHFT (TBN). The system states that it also offers local programming on Miavision (Variedad), Metro-Dade Television (MDTV), Cable TAP 36 and Cable TAP 37, a Local Information/City Access channel, the Sunshine Network, and the Sports Channel, both of which offer regional sports coverage, and Dynamic Illustrated, a television classified

community programming. In addition, all three systems already carry two 24-hour local Spanish-language stations, WSCV and WLTV, which include daily local news and programming relevant to the cable communities.<sup>15</sup>

12. Finally, the operators assert that the station has no audience in the cable communities. According to the 1995 *Nielsen Station Index*, WEYS is "reportable in the Daypart section only" with virtually no ratings in any of the other ratings sections. The fact that the station's viewership is too low to be reported is buttressed by its absence in the listings of the southern Florida edition of *TV Guide*. Continental/Comcast also state that WEYS' non-English format limits itself to a minority of local viewers in Broward County. They point out that the Hispanic population of Broward County is only 8.6% (or approximately 6.7% of the County's households).<sup>16</sup> In conclusion, both Dynamic and Continental/Comcast maintain that requiring carriage of WEYS on their systems would limit their ability to provide the programming and services desired by its customers.

13. In its oppositions to both petitions, WEYS states that it is located in Key West (Monroe County) which is legitimately a part of the Miami ADI.<sup>17</sup> It argues that no showing has been made that any of the cable systems would lose a local station already carried, or contemplated to be carried, in the event their requests are not granted or that there is insufficient channel capacity to accommodate WEYS' continued carriage.<sup>18</sup> WEYS maintains that the operators' attempts to limit must carry rights to specific coverage areas is misplaced given that Congress adopted an economic market approach, as designated by the ADI, rather than using distance or Grade B coverage to determine carriage rights.

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service. Subscribers in Coral Gables also receive University of Miami programming.

The local stations carried by both Continental and Comcast include WPBT (PBS), WFOR (CBS), WTVJ (NBC), WSVN (FOX), WBFS (Ind.), WPLG (ABC), WSCV (Ind.), WLTV (Ind.), WCTD (Ind.), WXEL (ETV), WYHS (Ind.), WLRN (ETV) and WHFT (TBN). Continental also offers WDZL (Ind.) and locally produced Community TV which provides public, educational and government access programming. Comcast also offers WPTV (NBC), WPEC (ETV), and WFLX (FOX) as well as local TV-3 and a government access channel.

<sup>15</sup> Among the daily local news shows provided on these two stations is "Noticias" which is broadcast from 7-7:30 a.m., 6-6:30 p.m. and 11-11:30 p.m. Monday-Friday. In addition, Dynamic states that it offers Spanish-language programming on its locally-produced "Miavision" and "Galavision", a Spanish-language premium channel.

<sup>16</sup> Continental/Comcast continue that for individual cities in the county, the percentages are even less. For example, Hillsborough Beach has only a 1.2% Hispanic population (1.2% households).

<sup>17</sup> WEYS states that not only is it included in the Miami ADI by Arbitron, but it is also included by Nielsen in the Miami DMA.

<sup>18</sup> WEYS points out on in reference to Continental/Comcast filing that Continental carries 2 adult channels programming (Spice and Playboy) while Comcast carries the same 2 channels plus the following duplicate channels: 2 CBS, 2 Fox, 2 PBS and 2 NBC. WEYS submits that its Spanish-language news and information should not be deleted to accommodate such channels.

14. To demonstrate that Dade and Broward Counties are part of WEYS' economic market, the station points out that it airs advertisements placed by Dade and Broward Counties' businesses and has been carried on the systems since December 1994. As a percentage of its total time on the air,<sup>19</sup> WEYS argues that it can be said to have a long history of carriage. In a technical report on WEYS' coverage area,<sup>20</sup> it was noted that out of the total population of the Miami ADI<sup>21</sup> the combined Grade B contours of WEYS and its associated translators<sup>22</sup> cover a total population of 1,527,941.<sup>23</sup> Out of this number, WEYS reaches approximately 841,391 subscribers, 682,086<sup>24</sup> of whom are Hispanic.

15. WEYS further argues that the cable operators mischaracterize the relevance of the ADI's Hispanic population and ignores the ties the station has with this group. WEYS asserts that its programming cannot be considered "foreign" because Hispanics make up a significant percentage of the overall population in the Miami ADI, and the station serves these Hispanics with exclusive Latin American programming 24-hours a day.<sup>25</sup> With regard to audience share, WEYS states that it garners significant ratings during the period when locally-produced programming is being

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<sup>19</sup> Out of the approximately 36 months in which WEYS has been on the air, it has been carried on the subject cable systems for approximately 19 months.

<sup>20</sup> WEYS commissioned its technical report from the engineering firm of DuTreil, Lundin & Rackley. This report examined the signal of WEYS plus the signal of the two translator stations owned by the related corporation of Cayo Hueso Television -- Station W21BD, Channel 21, Pompano Beach, Florida (Broward County), and Station W55BV, Channel 55, Miami, Florida (Dade County). These translator stations are licensed to a separate company but by agreement between WEYS, the translator company and the program supplier, WEYS' signal is broadcast throughout the ADI/DMA. While WEYS states that it is not seeking must carry status for these translators, it argues that §74.731(a) of the Commission's Rules authorizes the use of translators as an acceptable method to provide service.

<sup>21</sup> According to the 1990 Census, the total population of the Miami ADI is 3,270,541, 1,071,414 of which is Hispanic.

<sup>22</sup> See footnote 19 above.

<sup>23</sup> According to the technical report supplied by WEYS, after FCC approval of translators W21BD and W55BV's switch from a non-directional antenna system to a circularly polarized directional antenna system, WEYS' signal can be expected to cover a total population of 3,270,541, 731,793 of whom are Hispanic.

<sup>24</sup> This equals 46.7% of the entire ADI, 63.7% of the Hispanic population, with off-air reception of WEYS' signal in all three counties. The expected coverage after the translator upgrades (see footnote 23 above) will equal 65% of the total ADI and 68.3% of the Hispanic population.

<sup>25</sup> WEYS states that it broadcasts programming by SUR Corporation (a Hispanic network). SUR re-transmits live daily newscasts and the most popular showing from the leading networks from South and Central America. Its programming also includes public opinion, talk shows, comedy, children and sports programs. Two programs, "Jaime Bayly en Vivo" and "Viva La Comedia" are produced in Miami.

shown.<sup>26</sup> The fact that its viewership is not as significant as those of the traditional networks or independents should not diminish its importance since, as a foreign-language specialty station, it is "capable of offer[ing] desirable diversity of programming" yet typically attracts limited audiences. Finally, WEYS argues that the licensee regulatory fee assessed by the Commission is an additional factor that weighs against granting the deletion requests.<sup>27</sup> It avers that since it is required to pay a fee in the amount of \$15,950 as part of the Miami ADI, it would be unfair and inappropriate to remove it as a must carry station in part of that same ADI.

16. In reply, both Dynamic and Continental/Comcast state that WEYS offers little evidence to counter their petitions' arguments. While the cable systems argue that nowhere do they claim that WEYS is not part of the Miami ADI, they contend that such a common link does not justify compelling the cable systems herein to carry a station on the opposite side of an ADI, particularly when that station does not even claim a local nexus to the systems' communities. The cable operators discount WEYS' argument that a community can never be excluded from an ADI unless doing so leads to the additional carriage of more local stations. They argue that the 1992 Cable Act provides that market modifications may "reflect a recognition that . . . a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market."<sup>28</sup> They also add that a cable operator's must carry obligation may be excused where a cable system "can point to particularized evidence that its community is not part of one station's market . . . ."<sup>29</sup>

17. Dynamic and the Continental/Comcast re-state that WEYS fares poorly under the four statutory criteria. First, WEYS provides no evidence of long-term carriage other than its novel claim of a history of carriage when compared to its time on air. Second, WEYS' use of translators to deliver its signal in certain areas cannot overcome its geographic remoteness since its coverage must be determined solely by its own location and signal transmission.<sup>30</sup> According to the cable operators, translators have no independent carriage rights so they cannot be used to establish a "local presence" for purposes of local coverage.<sup>31</sup> Third, while WEYS' programming may be of general interest to both Hispanic and non-Hispanic alike, the fact remains that its "local coverage" consists of only one locally-produced talk show. Fourth, WEYS' list of advertisers

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<sup>26</sup> The referenced Nielsen data shows that between 8 p.m. to 11 p.m. WEYS is viewed by 2% of the households and during 10 p.m. to 11 p.m. it is viewed 4% of the households.

<sup>27</sup> Section 1.1153 of the Commission's Rules requires that commercial television stations are assessed a fee based upon the size of the Arbitron market in which they are listed.

<sup>28</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

<sup>29</sup> *Id.* at 98.

<sup>30</sup> Dynamic and Continental/Comcast point out that WEYS is silent regarding its own over-the-air coverage independent of the translators.

<sup>31</sup> See, e.g., *Time Warner New York City Cable Group*, 11 FCC Rcd 6528 (1996).



is meaningless for purposes of establishing local coverage as the station not only accommodates advertisers from Miami, but also from Alabama, California, New Jersey and New York. There is also no evidence from those advertisers who are from the Miami ADI that they reach or expect to reach the systems' residents. Fifth, WEYS ignores the fact that all three cable systems carry two local Spanish-language channels; this evidence rebuts WEYS' statement that the cable operator's do not provide programming for the market's Hispanic population and contradicts the station's statement that it is the only 24-hour source for Spanish-language programming in the ADI. Sixth, while WEYS attacks the operators' use of Nielsen data for the entire ADI, it uses that same data to support its claim that it has "[v]ery significant viewing throughout the ADI . . . ." However, the station does not state that it has any appreciable viewership in the specific cable communities herein. Finally, Dynamic and Continental/Comcast argue that the existence of regulatory fees is irrelevant in the market modification analysis; if WEYS feels it is saddled with an unfair fee, it should seek a waiver of that requirement.

### DISCUSSION

18. We will grant Dynamic's and Continental/Comcast's requests. Based on geography and other relevant information, we believe that the systems' communities are sufficiently removed from WEYS that they ought not be deemed part of the station's market for mandatory carriage purposes.<sup>32</sup>

19. As an initial matter, we note that, according to the legislative history of the 1992 Cable Act, the use of ADI market areas is intended "to ensure that television stations be carried in the areas which they service and which form their economic market."<sup>33</sup> Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements.<sup>34</sup> The market change process incorporated into the Communications Act, however, is not intended to be a process whereby cable operators may seek relief from the mandatory signal carriage obligations apart from the question of whether a change in the market area involved is warranted. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that the instant operators' deletion petitions appear to be a legitimate request to redraw ADI boundaries to make them congruous with market realities. Dynamic's and Continental/Comcast's actions do not reflect an intention to skirt their signal carriage responsibilities under the 1992 Cable Act<sup>35</sup> and the Commission's Rules nor do they evidence a pattern of discriminatory conduct against the station.

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<sup>32</sup> H.R. Rep. 102-628, at 97-98.

<sup>33</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>34</sup> 47 U.S.C. §534(h).

<sup>35</sup> As noted previously, all three systems commenced carriage of WEYS when presented with mandatory carriage requests from the station.

20. We now turn to the market modification analysis. With regard to historic carriage, we do not believe that the station has satisfied this prong as WEYS has had only a brief history of carriage on the systems and the operators have carried the station under mandate of the 1992 Cable Act. Moreover, as Dynamic indicates, until recently the signal in question was not actually that of WEYS but rather was a signal originating in South America that was transmitted via satellite to a downlink facility in Dade County and microwaved to the cable system headend. Even if the station's carriage history was more directly relevant as evidence of the scope of the WEYS economic market, this factor alone would not outweigh the station's inability to meet the other three criteria. Here, the cable operators have also shown that WEYS does not provide local service to the communities in question. WEYS is geographically distant from the subject cable communities with Hialeah, site of the closest cable headend, 126 miles away.<sup>36</sup> WEYS does not place either a Grade A or Grade B contour over the cable communities.<sup>37</sup> While we recognize that the translators which retransmit WEYS' signal may encompass some of the cable communities in question, translators do not have carriage rights under Section 614 and given all the circumstances here do not evidence that the cable communities are within the station's natural market. We also note that the two translators that retransmit WEYS' programming, are by WEYS' own admission, owned by another entity and not by WEYS itself. Therefore, in this instance, WEYS and translators W21BD and W55BV cannot even be viewed as a regular parent/satellite situation. We also do not find that WEYS currently provides local programming specifically directed to the subject communities. While the programming that it does offer can be considered to be of general interest to the ADI's Hispanic population as a whole, neither it nor the locally-produced programming WEYS cites in its opposition, is claimed to be specifically relevant to the Dynamic or Continental/Comcast communities.

21. We also believe that Dynamic's and Continental/Comcast's carriage of other local television stations provides support for the action requested in this particular case. Where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities, the issue of local coverage by other stations becomes a factor which we will give greater weight than in cases where a party is seeking to add communities. Here, all three systems carry two other Hispanic stations, WLTV (Ch. 23), Miami, Florida, and WSCV (Ch. 51), Ft. Lauderdale, Florida, which have a closer economic nexus, cast a City Grade signal over the cable communities, and provide more focused local programming, than WEYS. Their carriage also belies WEYS' contention that one of the cable systems' motives in requesting deletion was a bias against its Hispanic programming. These market facts, coupled with the distance between the cable communities and WEYS, supports the cable systems' arguments under the third factor.

22. Dynamic and Continental/Comcast also show that WEYS has negligible audience share. While WEYS may have reportable ratings during certain dayparts, we do not find such evidence

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<sup>36</sup> WEYS is 153 miles from Continental's Pompano Beach headend and 150 miles from Comcast's Ft. Lauderdale headend.

<sup>37</sup> We have held that the local service requirement is satisfied if the station's Grade B contour covers the community. See 8 FCC Rcd at 2981.

risers to a level sufficient to satisfy the fourth market modification factor. Moreover, WEYS' reliance on its "specialty station" status as an explanation of its failure to evince higher ratings is contradicted by the high ratings achieved by the other two Spanish language stations, WLTV and WSCV, which show considerably higher ratings in the ADI.<sup>38</sup> In any event, to the extent an area is involved that has a high proportion of Hispanic residents, the logic of the "specialty station" analysis is questionable.

23. Finally, WEYS' payment of a regulatory pursuant to §1.1153 of the Commission's rules is irrelevant in this context. We agree with the cable operators that WEYS should seek relief under the fee rules if such payment is believed to be unfair or unduly burdensome.

### ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED**, pursuant to §614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and §76.59 of the Commission's Rules, 47 C.F.R. §76.59, that the petitions for special relief filed on behalf of Dynamic Cablevision of Florida, Ltd. (CSR-4722-A) and Continental Cablevision of Jacksonville, Inc. and Comcast of Broward County, Inc. (CSR-4707-A) **ARE GRANTED**.

25. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules, 47 C.F.R. §0.321.

### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>38</sup> According to the 1996 *Nielsen Station Index*, WSCV achieves a 7 share and a 27 net weekly circulation in Dade County and an unreported share and a 3 net weekly circulation in Broward County. WLTV garners a 13 share and 35 net weekly circulation in Dade County and a 1 share and 5 net weekly circulation in Broward County.