

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

In re:)	
)	
BLACKSTAR OF ANN ARBOR, INC.)	CSR-4786-A
Ann Arbor, Michigan)	
)	
)	
)	
For Modification of Area of)	
Dominant Influence of WBSX(TV))	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 14, 1996

Released: November 22, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Blackstar of Ann Arbor, Inc., licensee of television broadcast station WBSX(TV), Channel 31, Ann Arbor, Michigan ("WBSX") has filed a petition for special relief seeking to redesignate its Area of Dominant Influence ("ADI") from the Lansing, Michigan ADI to the Detroit, Michigan ADI.¹ WBSX currently serves communities located in Washtenaw County, Michigan in the Lansing ADI. As an alternative to its ADI redesignation request, WBSX requests that 55 Michigan communities located outside Washtenaw County, Michigan be added to the television station's current ADI.² Comcast Cable Communications, Inc. ("Comcast") filed

¹ WBSX notes that it also has filed a petition for reconsideration of the Commission's ADI proceeding in *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, Report and Order and Further Notice of Proposed Rule Making*, FCC 96-197, CS Dkt. No. 95-178 (released May 24, 1996) ("*ADI Report and Order*").

²WBSX states that the following 55 Michigan communities historically have received carriage of its station on their cable television systems and should be added to its ADI: Bedford Township; City of Belleville; Village of Beverly Hills; City of Bingham Farms; City of Birmingham; City of Bloomfield Hills; Bloomfield Township; City of Brighton; Canton Township; Commerce Township; City of Dearborn; City of Dearborn Heights; City of Detroit; Village of Dundee; Village of Franklin; FrenchLown Township; Green Oak Township; Hamburg Township; City of Hamtramck; Hartland Township; City of Howell; Huron Township; City of Inkster; City of Keego Harbor; City of Lake Angelus; City of Lathrup Village; City of Livonia; Township of Lyon; Milford Township; Village of Milford; City of Monroe; Monroe Township; City of Northville; Township of Northville; City of Oak Park; Village of Orchard Lake; Village of Pinckney; City of Plymouth; Township of Plymouth; City of Pontiac; Township of Redford; Village of Romulus; Royal Oak Township; City of

an opposition to which WBSX replied.

BACKGROUND

2. Pursuant to §614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,³ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its ADI as defined by the Arbitron audience research organization.⁴ 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.⁵

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

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

In considering such requests, the Act provides that:

the Commission shall afford particular attention to the value of localism by taking

Southfield; City of South Lyon; Sumpter Township; City of Sylvan Lake; Unadilla Township; Van Buren Township; City of Walled Lake; Waterford Township; City of Westland; White Lake Township; City of Wixom; and Village of Wolverine Lake (collectively, the "Communities").

³ 8 FCC Rcd 2965, 2976-2977 (1993). We note the constitutionality of the 1992 Cable Act's must-carry provisions and the Commission's implementing rules were initially upheld by the U.S. District Court for the District of Columbia. The U.S. Supreme Court subsequently reviewed the lower court's decision and then vacated and remanded the case to the District Court for further fact-finding. *See Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, 819 F.Supp. 32 (D.D.C. 1993) ("*Turner*") vacated and remanded, 114 S. Ct. 2445 (1994), on remand, 910 F. Supp. 734 (D.D.C. 1995). The Supreme court heard oral arguments on the District Court's decision on remand in the *Turner* case on October 7, 1996.

⁴ 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*.

⁵ Because of the topography involved, certain counties are divided into more than one sampling unit. 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. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

into account such factors as --

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

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 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.⁷

5. The Commission provided guidance in its *Report and Order in MM Docket 92-259, supra*, to aid decision making in these matters, as follows:

⁶ Communications Act of 1934, as amended, §614(h)(1)(C)(ii), 47 U.S.C. §534(h)(1)(C)(ii).

⁷ H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

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* 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.⁸

6. 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.⁹ 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.¹⁰

7. Adding communities to a station's ADI generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of the system's activated channel capacity to compliance with the mandatory signal carriage obligations; 2) the station is responsible for delivering a good quality signal to the principal headend of the system; and 3) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried, or the signal of more than one local station affiliated with a particular broadcast network. If, pursuant to these requirements, a system operator elects to carry the signal of only one such duplicating signal, the operator is obliged to carry the station from the ADI whose city of license is closest to the principal headend

⁸ 8 FCC Red at 2977 (emphasis in original).

⁹ 8 FCC Red at 1977 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.*, *HKZ Television, Inc.*, 8 FCC Red 8008, 8010 (1993).

¹⁰ 47 C.F.R. § 76.59.

of the cable system.¹¹ Accordingly, depending upon the circumstances involved, the addition of communities to a station's market area may have the following consequences. It may guarantee that station's carriage in the subject communities. Should there be more must-carry stations than one-third of a system's channel capacity, it would provide the system operator with an expanded list of must-carry signals from which to choose. Should the station be a duplicating network station, it will determine which station has priority carriage in the subject communities added.

SUMMARY OF PLEADINGS

8. WBSX's city of license, Ann Arbor, Michigan, is located in the Detroit ADI although the station itself is assigned to the Lansing ADI. In its petition, WBSX states that, while Arbitron assigned the station to the Lansing ADI for purposes of Arbitron's 1991-1992 *Television Market Guide*, that assignment was meant to be temporary until WBSX increased its audience viewership shares, and that WBSX belongs in the Detroit ADI.¹² WBSX maintains that the Commission's decision to rely on the 1991-1992 Arbitron data for determining a television station's ADI prevented the station from correcting its ADI assignment in time for the initial must-carry elections in 1993. Following publication of the 1991-1992 Arbitron ADI assignments, WBSX obtained a letter from Arbitron in which Arbitron agreed that, effective for the 1993-1994 year, WBSX would be considered a "home station" to the Detroit ADI.¹³ WBSX argues that the Commission's decision to continue to rely upon the 1991-1992 Arbitron ADI assignments for the 1996 must-carry elections only frustrates the station's efforts to correct its ADI. WBSX points out that a note to Section 76.55(e) of the Commission's rules indicates that ADI assignments would be updated at three-year intervals.¹⁴ WBSX argues that additional support for its ADI redesignation request can be found in the fact that Nielsen Media Research, an organization which the Commission has recognized, has assigned WBSX to its Detroit Designated Market Area ("DMA").¹⁵

9. In the alternative, WBSX maintains that granting its request to modify its ADI comports with the four statutory criteria governing market modification proceedings.¹⁶ WBSX

¹¹8 FCC Rcd at 2981.

¹²Arbitron's *Television Market Guide* 1991-1992.

¹³Petition at Exhibit A. In the letter referred to by WBSX, Arbitron states that it will reassign WBSX to the Detroit ADI because that's where the station's city of license is located.

¹⁴See 47 C.F.R. § 76.55(e), Note (1994).

¹⁵WBSX states that the Commission has recognized DMA assignments in market modification proceedings, *citing Greenville Television, Inc.*, 10 FCC Rcd 6491, 6493, n.11 (Cab. Serv. Bur. 1995) and *Smith Television of New York, Inc.*, 10 FCC Rcd 7127, 7131 (Cab. Serv. Bur. 1995).

¹⁶See n. 2, *supra*, for list of specific communities.

asserts that all of the communities at issue lie within four northern and eastern counties immediately adjacent to Washtenaw County.¹⁷ WBSX maintains that it clearly meets the first statutory criterion because the station has a history of carriage in each of the 55 communities at issue. Specifically, WBSX states that, of the 55 communities at issue, it has been carried by the local cable systems serving: 16 communities since 1986;¹⁸ 5 communities since 1990;¹⁹ 2 communities since 1991;²⁰ and, the remaining 32 communities since 1993.²¹

10. With regard to the second statutory criterion, WBSX asserts that the station, either through its primary signal or through its translator station, provides full coverage to all but four of the Communities.²² WBSX maintains that it places a City Grade contour over 14 of the communities at issue;²³ a Grade A contour over 13 of those communities;²⁴ and, a Grade B contour over the remaining 22 communities, including the City of Detroit.²⁵ WBSX further

¹⁷WBSX lists those adjacent counties as: Livingston; Oakland; Wayne; and, Monroe Counties.

¹⁸Commerce Township; City of Detroit; Frenchtown Township; Hamburg Township; City of Keego Harbor; Milford Township; Village of Milford; City of Monroe; Monroe Township; Township of Northville; Village of Pinckney; Unadilla Township; City of Walled Lake; White Lake Township; City of Wixom and, Village of Wolverine Lake.

¹⁹City of Belleville and Hartland, Huron, Sumpter, and Van Buren Townships.

²⁰ Brighton City and Howell City.

²¹Bedford Township; Village of Beverly Hills; City of Bingham Farms; City of Birmingham; City of Bloomfield Hills; Bloomfield Township; Canton Township; City of Dearborn; City of Dearborn Heights; Village of Dundee; Village of Franklin; Green Oak Township; City of Hamtramck; City of Inkster; City of Lake Angelus; City of Lathrup; City of Livonia; Township of Lyon; City of Northville; City of Oak Park; Village of Orchard Lake; City of Plymouth; Township of Plymouth; City of Pontiac; Township of Redford; Village of Romulus; Royal Oak Township; City of Southfield; City of South Lyon; City of Sylvan Lake; Waterford Township; and, City of Westland.

²²In support of its petition, WBSX submits an Engineering Statement, prepared by Mark B. Peabody of Suffa and Cavell, Inc., which classifies each community at issue according to whether the station provides City Grade, Grade A, or Grade B coverage. WBSX states that, with regard to the following four communities located on the periphery of its Grade B contour, it provides limited coverage: Bedford Township; Frenchtown Township; Monroe Township; and, the City of Monroe. WBSX further states that those four communities are within close proximity as they are located approximately 35 miles from Ann Arbor, the station's city of license. See Petition at Exhibit B.

²³City of Brighton, Canton Township; Green Oak Township; Hamburg Township; Hartland Township; City of Howell; Township of Lyon; Milford Township; Village of Milford; Township of Northville; Village of Pinckney; City of South Lyon; Unadilla Township; and City of Wixom.

²⁴City of Belleville; Commerce Township; Village of Dundee; City of Livonia; City of Northville; City of Plymouth; Township of Plymouth; Sumpter Township; Van Buren Township; City of Walled Lake; City of Westland; White Lake Township; and, Village of Wolverine Lake.

²⁵Village of Beverly Hills; City of Bingham Farms; City of Birmingham; City of Bloomfield Hills; Bloomfield Township; City of Dearborn; City of Dearborn Heights; City of Detroit; Village of Franklin; Huron Township; City of Inkster; City of Keego Harbor; City of Lake Angelus; City of Lathrup Village; Village of Orchard Lake; City of Pontiac;

maintains that its translator station, W48AV, provides Grade A coverage to 2 communities,²⁶ both of which lie outside of WBSX's primary Grade B contour but are closely proximate to WBSX's city of license in that they are located approximately 30 miles away. Finally, WBSX states that it provides limited Grade B coverage over the communities of Bedford Township, Frenchtown Township, Monroe Township and the City of Monroe. WBSX argues that those four communities should be included in its ADI because, under an alternative propagation prediction method, a method which is different from the method for predicting signal coverage prescribed in the Commission's rules, they are more likely than not to receive service.²⁷

11. WBSX maintains that, with regard to the third statutory factor, it is unaware of any other television station eligible to be carried in the Communities which provides local news, sports or public affairs programming. Further, WBSX states that, while its home shopping format limits the amount of the station's local interest programming, it has broadcast some programs on local issues of general interest to subscribers residing in the Communities. WBSX notes however that the Commission has stated that the third factor is not to be used as a bar to an otherwise meritorious ADI modification claim.

12. With regard to the fourth factor, WBSX states that, because of its home shopping format, it no longer subscribes to a commercial ratings service to assess audience viewing patterns. WBSX notes that it is the only station in the area with a home shopping format and that the Commission has recognized home shopping networks and other specialty stations as enhancing the diversity of programming. Moreover, WBSX notes that the Commission has afforded must-carry rights to home shopping networks regardless of their low viewership levels.²⁸ For the foregoing reasons, WBSX requests that its ADI be modified by adding the communities at issue to the station's current ADI.

13. In its opposition, Comcast argues against the redesignation of WBSX's ADI assignment but does not oppose WBSX's alternative request to modify its current ADI by adding

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Township of Redford; Village of Romulus; Royal Oak Township; City of Southfield; City of Sylvan Lake; and Waterford Township.

²⁶Hamtramck City and Oak Park City.

²⁷The standard method for predicting signal coverage is described in 47 C.F.R. § 73.684. WBSX however relies on the Engineering Statement submitted with its petition which states that, with regard to those four communities, "the local terrain and physical geography of the region warrants an alternative propagation prediction method to accurately report the location of the expected Grade B service from WBSX. Application of the stayed correction roughness factor [47 C.F.R. § 73.684(L)] bears this out." Petition at Exhibit 1. WBSX states that the most accepted alternative propagation method is the U.S. Department of Commerce, TA Service, ITS Irregular Terrain Model. WBSX maintains that application of that alternative method demonstrates that those communities which lie at the periphery of the station's Grade B contour are likely to receive service and should be included in WBSX's ADI.

²⁸*Citing Time Warner-Advance/Newhouse Partnership*, DA 96-830 (Cab. Serv. Bur., released May 31, 1996) and *Continental Cablevision of Western New England, Inc.*, DA 96-827 (Cab. Serv. Bur., released May 31, 1996).

the communities at issue. Comcast adds that, with regard to WBSX's alternative request, only those communities which lie within the station's Grade B contour and which have a history of carriage should be added to WBSX's television market. Comcast acknowledges that it already carries WBSX in certain of the communities at issue.²⁹ Comcast argues however that WBSX has not met its statutory burden to justify granting its request to redesignate its ADI assignment from Lansing to Detroit. Comcast adds that WBSX's contention that both it and Arbitron intended its Lansing ADI assignment to be temporary is without merit.³⁰ Comcast maintains that Arbitron's current intent to assign the station to the Detroit ADI is largely based on the fact that the station's city of license is located within the Detroit ADI and not on any record of service by the station to the viewers throughout the entire Detroit ADI.

14. With regard to WBSX's request that it be reassigned to the Detroit ADI, Comcast maintains that WBSX has failed to establish that it meets the four statutory criteria throughout the Detroit ADI. Comcast states that, with regard to the first statutory factor of historic carriage, it has never carried WBSX on its systems serving certain communities located in the eastern portion of the Detroit ADI (the "Eastern Communities").³¹ Comcast maintains that WBSX's lack of historic carriage in the Eastern Communities means that it has failed to achieve an ADI-wide presence necessary to justify an ADI redesignation. Further, Comcast asserts that WBSX fails to place a Grade B contour over the Eastern Communities and, because of its home shopping format, provides no significant local programming to those communities. As a result, Comcast argues that WBSX has failed to meet the requirements of the second statutory factor.

15. Comcast further states that there are an abundance of broadcast stations, carried on its cable system serving the Eastern Communities, which provide local coverage superior to that of WBSX. Thus Comcast asserts that WBSX does not provide a service that other local stations do not provide and the station therefore can not rely upon the third factor as an enhancement criterion. Finally, with regard to the fourth factor, Comcast asserts that WBSX has failed to introduce evidence to demonstrate a substantial level of local viewing for cable and non-cable households located in the Detroit ADI. For the foregoing reasons, Comcast maintains that WBSX's request to redesignate its ADI must be denied.

²⁹Comcast states that it carries WBSX on its cable systems serving the City of Inkster, City of Lake Angelus, City of Pontiac and Waterford Township.

³⁰*Ciling Costa De Oro Television, Inc.*, DA 95-1828, 10 FCC Rcd 9468 (1995) at ¶ 13. In this case, the Commission found that a television station can be physically located in one ADI while it is assigned to another ADI. Further, the Commission found that no evidence had been introduced in this case to show that Arbitron had erred in making its ADI assignment of the station at issue.

³¹Comcast attaches a list of 31 communities located in the eastern portion of the Detroit ADI which do not receive WBSX over its local cable systems. Opposition at Exhibit 1.

16. In its reply, WBSX notes that, while it has filed a petition for reconsideration in the Commission's ADI rulemaking proceeding,³² it chose to initiate this market modification proceeding in order to preserve its carriage in the Detroit ADI. WBSX notes that Comcast, in its opposition, only objects to the station's request that the Commission redesignate its ADI according to Arbitron's most recent ADI assignments but that Comcast does not raise objections to any of the 55 communities identified by WBSX to be included in the station's current ADI. WBSX asserts that Comcast ignored its arguments regarding a television station's right, pursuant to the Commission's rules, to update its ADI assignments every three years.³³ WBSX states that the Commission, under its own rules, is required to recognize the updated ADI assignment for the 1996-1999 must-carry election period and maintains that it would be arbitrary and capricious for the Commission to deny WBSX's request to update its ADI assignment.

17. WBSX further replies that Comcast has not shown that the station's request to be assigned to the Detroit ADI fails to meet the requirements of the ADI statute. First, WBSX states that Comcast's argument that WBSX lacks a history of carriage in the Eastern Communities is disingenuous because Comcast knows WBSX was denied carriage in those communities because of its current ADI assignment. WBSX adds that, in market modification proceedings, the first statutory factor should be given less weight in cases such as this where a television station has been denied carriage based on an anomalous ADI assignment. Second, WBSX maintains that Comcast's assertion that the station does not provide Grade B coverage to the Eastern Communities is inaccurate. WBSX notes that it provides predicted Grade B service to a significant number of those communities and that it is closely proximate to most of the remaining communities.³⁴ In fact, WBSX calculates that it provides service to 77 percent of the Eastern Communities identified by Comcast.³⁵ Third, WBSX states that the fact that other stations may be providing local service to the Eastern Communities does not act as a bar to its must-carry rights.³⁶ Finally, WBSX maintains that Comcast's argument that other local broadcast

³² *See* n. 1, *supra*.

³³ *Citing* 47 C.F.R. § 76.55(e), Note (1994) and *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976 (1993).

³⁴ WBSX refers to its Engineering Statement to demonstrate its coverage of the Eastern Communities. *See* Reply at Exhibit A.

³⁵ WBSX disputes the number of communities which Comcast designates as encompassing the eastern portion of the Detroit ADI. Specifically, WBSX excludes one community, Eastpointe, because, although the community appears on an atlas of Detroit, MI, WBSX did not find census designated boundaries for this community in the U.S. TIGER database. In any case, WBSX states that the community of Eastpointe would receive predicted Grade B service by its translator station, W48AV.

³⁶ *Citing* *Busse Broadcasting Corporation*, DA 96-809 (released May 31, 1996); *Nationwide Communications, Inc.*, 10 FCC Rcd 13090 (1995); and *KTTV Television, Inc.*, 10 FCC Rcd 12078 (1995). WBSX further states that those cases stand for the proposition that the third factor operates as an enhancement where other local stations do not serve the communities in question.

stations are providing service to the Communities is inapposite here because the Commission has stated that, where a station seeks to add communities, the existence of other stations serving the same communities does not act as a bar to the petitioning station's market modification claim.

DISCUSSION

18. We decline to grant WBSX's request to redesignate its current ADI assignment and assign the station to the Detroit ADI. We first note that the ADI statute permits the Commission to modify the ADI of a television station but does not grant it authority to redesignate a television station from one ADI to another ADI.³⁷ We further note that, in the *ADI Report and Order*, the Commission amended Section 76.55 of its rules to provide that "local markets for signal carriage purposes will be determined on the basis of the ADI designations specified in Arbitron's 1991-1992 *Television Market Guide* for the 1996 must-carry/retransmission consent election."³⁸ Therefore, for purposes of the must-carry elections, Arbitron's 1991-1992 assignment of WBSX to the Lansing ADI is controlling. With regard to WBSX's assignment to an ADI which is different from the ADI in which its city of license is located, the Commission has resolved that issue by adopting a "home county" exception.³⁹ Under the "home county" exception, a television station is entitled to treat the county in which the station's city of license is located as within its market regardless of the ADI to which the station is assigned.⁴⁰ In the instant case, WBSX is afforded must-carry rights in the Detroit ADI for the county in which its city of license is located. We also agree with WBSX that this market modification proceeding is not the proper forum in which to address the Commission's continued reliance on Arbitron's 1991-1992 ADI designations for must-carry purposes.

19. We grant WBSX's alternative request to modify its current ADI to include the communities at issue. No objection has been raised to WBSX's alternative request. We find that WBSX has a history of carriage by the local cable system in each of the Communities which is, in some cases, as long as ten years. We further find that the evidence submitted in this proceeding indicates that WBSX provides local service to an overwhelming majority of the Communities with either a City Grade, Grade A or Grade B contour.⁴¹ WBSX states that its Grade B contour provides limited coverage over the communities of Bedford Township,

³⁷ *See* n. 6, *supra*.

³⁸ *ADI Report and Order* at ¶ 48. The Commission also concluded that Nielsen's DMAs found in its *Market and Demographic Rank Report* will be the basis for 1999 must-carry/retransmission consent election.

³⁹ *Report and Order* in Docket 92-259, 8 FCC Rcd 2965 (1993); *see also Memorandum Opinion and Order* in Docket 92-259, 9 FCC Rcd 6723 (1994).

⁴⁰ 47 C.F.R. § 76.55(e)(3).

⁴¹ *See* ¶ 10, *supra*.

Frenchtown Township, Monroe Township and the City of Monroe. We are persuaded to include those communities by WBSX's argument that they are located on the periphery of the station's Grade B contour and because of their historic carriage by local cable systems serving the Communities.⁴²

20. With regard to WBSX's presumed low viewership levels, we note that specialty stations such as WBSX have been generally found to have low audience shares. The Commission however has recognized that specialty stations such as WBSX are able to "offer a desirable diversity of programming."⁴³ In addition, WBSX has stated that, even though it has a home shopping format, the station broadcasts public affairs programming of interest to subscribers in the Communities.

21. Based upon the strength of WBSX's showing with regard to the statutory criteria of historic carriage and the provision of local service, and in the absence of any opposition, we grant WBSX's alternative request to add the 55 communities at issue to its current ADI.

ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to § 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534 and §§ 76.56 and 76.59 of the Commission's rules, 47 C.F.R. §§ 76.56 and 76.59, that the Petition for Special Relief (CSR-4786-A) filed by Blackstar of Ann Arbor, Inc. IS DENIED with regard to its request to redesignate its current ADI for purposes of the triennial must-carry election.

23. IT IS FURTHER ORDERED that the Petition for Special Relief (CSR-4786-A) IS GRANTED with regard to Blackstar of Ann Arbor, Inc.'s alternative request to modify its current ADI by adding the communities of Bedford Township; City of Belleville; Village of Beverly Hills; City of Bingham Farms; City of Birmingham; City of Bloomfield Hills; Bloomfield Township; City of Brighton; Canton Township; Commerce Township; City of Dearborn; City of Dearborn Heights; City of Detroit; Village of Dundee; Village of Franklin; Frenchtown Township; Green Oak Township; Hamburg Township; City of Hamtramck; Hartland Township; City of Howell; Huron Township; City of Inkster; City of Keego Harbor; City of Lake Angelus; City of Lathrup Village; City of Livonia; Township of Lyon; Milford Township; Village of Milford; City of Monroe; Monroe Township; City of Northville; Township of Northville; City of Oak Park; Village of Orchard Lake; Village of Pinckney; City of Plymouth; Township of Plymouth; City of Pontiac; Township of Redford; Village of Romulus; Royal Oak Township; City of Southfield; City of South Lyon; Sumpter Township; City of Sylvan Lake; Unadilla Township; Van Buren Township; City of Walled Lake; Waterford Township; City of Westland; White Lake Township; City of Wixom; and Village of Wolverine Lake.

⁴² *See* n. 27, *supra*.

⁴³ *First Report and Order*, 58 FCC 2d 442, 452 (1976), *recon. denied*, 60 FCC 2d 661 (1976).

24. 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