

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

In re: )  
)  
Channel 56 of Orlando, Inc. )  
)  
For Modification of the ADI ) CSR-4784-A  
of Television Station WIRB(TV )  
Melbourne, Florida )

MEMORANDUM OPINION AND ORDER

Adopted: November 19, 1996

Released: November 26, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. On July 11, 1996, Channel 56 of Orlando, licensee of television broadcast station WIRB (Ind., Channel 56), Melbourne, Florida ("WIRB") filed the above-captioned petition for special relief requesting the Commission to modify WIRB's television market for purposes of the Commission's must carry rules to include the communities of Ft. Pierce and Vero Beach, Florida. The petition is opposed by TCI Cablevision of the Treasure Coast ("TCI-TC"), Malrite Communications Group, Inc. ("Malrite"), licensee of television broadcast station WFLX-TV, West Palm Beach, Florida, and Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of television broadcast station WPTV, West Palm Beach, Florida.<sup>1</sup> WIRB filed a reply.

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

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<sup>1</sup>Scripps Howard's opposition states that it has reviewed the opposition to this proceeding filed by Malrite and "[w]e associate ourselves with the arguments and, to the extent official notice can be taken by the Commission, the facts contained therein, and support the position, taken by Malrite, that the Petition should be dismissed or denied."

<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).

mandatory carriage rights on cable systems located within the station's market.<sup>4</sup> A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.<sup>5</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>6</sup>

3. Under the Act, however, the Commission is also directed to consider changes in ADI 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;

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

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<sup>4</sup>We note that 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), *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, the first day of the Court's 1996-1997 term.

<sup>5</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>6</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* for a more complete description of how counties are allocated.

(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.

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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.<sup>7</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* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that

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

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>8</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>9</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>10</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>11</sup>

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

<sup>9</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>10</sup>8 FCC Rcd 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., *RKZ Television, Inc.*, 8 FCC Rcd 8008, 8010 (1993).

<sup>11</sup>47 C.F.R. §76.59.

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**MODIFICATION ARGUMENTS**

8. WIRB, located in Melbourne, Florida, is situated in the southeastern portion of the Orlando-Daytona Beach-Melbourne ADI. WIRB requests that the Commission expand its television market to include the communities served by TCI-TC's Ft. Pierce and Vero Beach cable television systems. These communities are located in the adjoining West Palm Beach-Ft. Pierce-Vero Beach ADI located immediately to the south of the Orlando-Daytona Beach-Melbourne ADI. The communities of Vero Beach and Fort Pierce are located approximately 40 miles and 55 miles, respectively, to the south of WIRB.

9. In support of its petition, WIRB states that it began operation in 1986 and that its signal has been carried on the cable systems serving Ft. Pierce and Vero Beach for over seven years. According to WIRB, this history of carriage demonstrates that these cable systems and their subscribers value the station and the service that it provides. WIRB also states that it provides a Grade B contour to both communities. Reflecting this strong signal, WIRB notes that the station's signal is significantly viewed in St. Lucie County where one of the two communities involved, Ft. Pierce, is located. WIRB also points to the station's popularity and viewership by the mail that it states that it receives from viewers. WIRB also states that a substantial number of businesses advertise on the station in order to reach viewers in the communities.

10. In addition, WIRB contends that the communities should be added to its television market because the station provides substantial public service programming which it states is responsive to the local issues and concerns of the communities. As examples, WIRB states that it has provided live coverage of Vero Beach's Christmas parade, along with public service announcements to the communities that cover diverse issues ranging from summer youth employment, Salvation Army activities, and hurricane evacuations.

11. In opposition, TCI-TC argues that WIRB should not be allowed to expand its must carry rights outside the expansive Orlando-Daytona Beach-Melbourne ADI because more than a decade ago, another Melbourne licensee successfully argued to the Commission that the communities of Orlando, Daytona Beach and Melbourne "constitute a single television market."<sup>12</sup> According to TCI-TC, WIRB benefited from the resulting market hyphenation because its licensee changed its name to "Channel 56 of Orlando, Inc." TCI-TC argues that because WIRB sought to identify itself with Orlando, 55 miles to the northwest of Melbourne, the station should not now be eligible for additional must carry rights in two communities located in another television market to the south.

12. Regarding historic carriage, TCI-TC argues that when it launched WIRB on its systems, the station had a very different format than it does today. According to TCI-TC, the station provided programming that included coverage of local news and events. TCI-TC states that in January 1995, the station replaced this programming with a format primarily devoted to

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<sup>12</sup>See *Amendment of Section 76.1*, 102 FCC 2d 1062 (1985).

"infomercials" and religious programming. TCI-TC states that according to a local newspaper article, the format was changed because the previous programming did not have high viewership and was not financially feasible but, most importantly, did not fit into the station's overall plan.<sup>13</sup> Therefore, TCI-TC argues that any significance associated with WIRB's historic carriage on its systems effectively ended when WIRB changed its programming.

13. With regard to local coverage, TCI-TC argues that notwithstanding the fact that WIRB appears to place a Grade B signal over most of the area of the communities, the station does not provide any significant amount of local programming. According to TCI-TC, approximately 60% of WIRB's broadcasts consist of "paid programming" or "infomercials." TCI-TC states that another 23% of the station's broadcasts consist of a program entitled "InTV," which TCI-TC also believes to be paid programming.<sup>14</sup> TCI-TC argues that this kind of programming has no nexus to news or coverage of local events. TCI-TC also contends that the few letters from viewers selected by WIRB to support its argument that the station is popular and appealing to local viewers is unavailing because the letters say nothing about whether the programming addresses matters of local concern. Finally, TCI-TC argues that the lack of local programming by the station is highlighted by the absence of detailed program descriptions in its petition. TCI-TC states that the one local event that was listed as covered by the station, the Vero Beach Christmas parade, is no longer part of the station's coverage since its recent change in format.

14. Regarding coverage by other qualified stations, TCI-TC states that the communities receive service from many stations licensed within the West Palm Beach-Ft. Pierce-Vero Beach ADI, which provide extensive coverage of local news and sporting events. In addition, TCI-TC states that the communities are also serviced by a local government channel which covers local city and county council meetings, school board meetings, as well as providing hurricane warnings and information about evacuations. TCI-TC also explains that it is replacing WIRB with a new low power station licensed to Vero Beach that promises to deliver truly local programming.

15. Finally, with regard to local viewing, TCI-TC states that WIRB has presented no evidence of current viewing patterns for cable and/or non-cable households. TCI-TC notes that WIRB does refer to its "significantly viewed" status in St. Lucie County, where Ft. Pierce is located, but argues that such status was based on a prior format and different market conditions. TCI-TC notes that WIRB says very little about current viewership in St. Lucie County and nothing about current viewership in Indian River County, where Vero Beach is located.

16. In its opposition, Malrite argues that WIRB's petition is procedurally defective. Malrite states that the only affidavit or declaration submitted to support its petition is a

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<sup>13</sup>TCI-TC Opposition, Exhibit 1, *Brevard TV Station Nixes News*, Vero Beach Press Journal (1/19/95).

<sup>14</sup>TCI-TC cites a summer 1996 copy of a local television guide published in WIRB's home county as support for its assertions.

declaration by Mr. John Robinson, who merely alleges that he is the Station Manager and that the facts alleged in the petition and its exhibits are true and correct to the best of his knowledge and belief. According to Malrite, this declaration is deficient because it provides no supporting information or details concerning the alleged public affairs programming of the station and provides no information concerning any of the other elements of the statutory showing that WIRB is required to make in this case.

17. Malrite also argues that WIRB has failed to demonstrate a clear public interest need for the grant of its petition. Malrite contends that if WIRB were indeed "significantly viewed" in St. Lucie County, then carriage of the station there would not result in any increased copyright royalty fee payments under Section 111 of the Copyright Act of 1976, 17 U.S.C. §101 *et seq.* (1976), as amended.<sup>15</sup> Thus, according to Malrite, if WIRB's broadcasts were of immense interest to residents of Ft. Pierce and Vero Beach, then a cable operator that historically carried its signal would continue to carry it, regardless of whether the station prevailed on the merits of the instant petition and qualified for must carry status in these communities. However, Malrite states that such continued carriage would necessitate the grant by WIRB of retransmission consent, pursuant to Section 325(b) of the Communications Act. According to Malrite's reasoning, if WIRB refused to grant such consent, then the station cannot be heard to complain if its own actions resulted in the deletion of the stations from the cable systems in Ft. Pierce and Vero Beach.

18. Regarding the four statutory factors, Malrite argues that although WIRB contends that it has been carried since 1989 on TCI-TC's cable systems in Ft. Pierce and Vero Beach, the station has failed to supply any documentation that it has been consistently carried on the systems throughout that period. In regard to coverage or local service to the community, Malrite contends that although WIRB claims that it places a theoretically predicted Grade B contour over Ft. Pierce and Vero Beach, it appears that Ft. Pierce is at the southern-most edge of WIRB's theoretically predicted Grade B contour.

19. Malrite also argues that with respect to the coverage of news or other programming of local interest, WIRB has provided no particularized factual information which could properly form the basis for the conclusion that the station has provided, on a consistent basis, the kind of local service that addresses the problems, issues, and needs facing the residents of the communities. Malrite states that its station, WFLX-TV, as well as other stations in the West Palm Beach-Ft. Pierce-Vero Beach ADI, are providing broadcast service which is more

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<sup>15</sup>According to Malrite, under these provisions of the Copyright Act, the general theory of payment is that cable systems pay copyright royalty fees only for carriage of *distant* non-network broadcast programming and not for carriage of "local" signals. In this regard, under Section 111(f) of the Copyright Act, a television station's signal is considered to be "local" within its ADI or within the area in which the station was entitled to must carry status under the Commission's former must-carry rules as in effect on April 15, 1976. Under these former rules, the signals of commercial television stations that were "significantly viewed" in the community of the cable system were entitled to must carry status on the cable system in question, regardless of size of the market in which the cable community is located.

specifically attuned to the local needs and interests of the residents of Ft. Pierce and Vero Beach. For instance, Malrite points out that WFLX-TV presents a nightly one-hour newscast every night of the week directed to the residents of the communities at issue, as well as to the other residents located in those counties.

20. According to Malrite, WIRB has no measurable viewing audience in the communities at issue. Specifically, Malrite argues that, according to its review of the Nielsen audience survey data for the last four audience ratings periods, at no time during those ratings periods did WIRB show up in these reports as having any audience in the West Palm Beach-Ft. Pierce Designated Market Area ("DMA"). Furthermore, Malrite attests to the fact that WIRB has never been listed as having attained any measurable audience in any Arbitron or Nielsen audience survey report for the West Palm Beach-Ft. Pierce-Vero Beach or the West Palm Beach-Ft. Pierce DMA.<sup>16</sup>

21. In reply, WIRB argues that TCI-TC and its predecessor, Florida Cablevision, have carried WIRB and its predecessor, WAYK-TV, in the communities in question, without interruption, since 1989. WIRB contends that TCI-TC is incorrect when it argues that because the station changed its format in 1995, the station's showing of historical carriage no longer holds any significance. WIRB argues that the Commission has stated in the past that change in ownership and programming format of a station does not negate historical carriage, particularly when the cable systems did not drop the station when it first changed ownership and format.<sup>17</sup> WIRB argues that it was not until a year after it decided to change its format that TCI-TC decided to delete the station, and only then, because TCI-TC claimed that the deletion was necessary to accommodate a new station on its Vero Beach system. WIRB notes that in the same letter by TCI-TC that deletes carriage of WIRB in Vero Beach, TCI-TC states that the system planned to continue to carry WIRB in Fort Pierce just "as we have for the past few decades."<sup>18</sup>

22. WIRB also disputes Malrite's assertion that it has not demonstrated a need for the relief requested because the station should have an expectation that TCI-TC will continue to carry WIRB. The station points out, however, that TCI-TC has already notified WIRB of its intention to delete the signal from its system.<sup>19</sup> WIRB argues that a station need not demonstrate that it will be deleted from a system in order to request that the Commission modify its ADI. Moreover, WIRB argues that Malrite's argument is misplaced when it states that there is no need for the modification request because, if WIRB is significantly viewed in St. Lucie County, carriage of the station in that county would not incur copyright costs. WIRB contends that the cable systems in St. Lucie County are not obligated to carry the station, even though it is

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<sup>16</sup>Malrite Opposition, Exhibit 1.

<sup>17</sup>*Counterpoint Communications, Inc.*, 10 FCC Rcd 4932, 4935 (1995).

<sup>18</sup>TCI opposition, Exhibit 4.

<sup>19</sup>*Id.*

significantly viewed and does not incur copyright costs. Without the requested relief, WIRB argues that TCI-TC could delete the station at any time.

23. WIRB also counters Malrite's assertions about its Grade B contour covering the communities. WIRB states that its own engineering data shows that Vero Beach is well within WIRB's Grade A contour, and Ft. Pierce is just outside the Grade A and well within the station's Grade B contour.<sup>20</sup> In addition, WIRB also asserts that the station is not geographically remote from the communities. By comparison, WIRB notes that WFLX-TV, licensed to Malrite, is located in West Palm Beach, which is further away from the communities than WIRB. According to WIRB, West Palm Beach is approximately 60 miles from Ft. Pierce and is approximately 75 miles from Vero Beach. Despite these distances, however, WIRB notes that WFLX-TV is still considered to be local to the communities for must carry purposes.<sup>21</sup>

24. WIRB also argues that its programming is of local interest to residents of the communities. The station argues that the Commission has consistently held that home shopping formats are not incompatible with local appeal.<sup>22</sup> WIRB also states that it provides three hours a week of children's educational/informational programming, and two hours a week of public affairs programming. WIRB notes that it also provides some religious programming, which the Commission has also determined to be of local interest.<sup>23</sup>

25. Regarding other stations serving the communities, WIRB argues that TCI-TC misconstrues the relevance of this statutory factor in the ADI modification analysis because TCI-TC implies that WIRB has failed to meet its burden thereunder because it is not the only station that provides local coverage to the communities. WIRB notes that the Commission has consistently held that this is an enhancement factor and the fact that other stations may provide local service to the communities at issue is not a bar to a station's ADI modification claim.<sup>24</sup>

26. In response to TCI-TC and Malrite's contention that there is minimal viewership of WIRB in the communities at issue, WIRB states that the Commission has repeatedly found such arguments unpersuasive with respect to home shopping stations and religious programming stations. WIRB states that the Commission has taken into consideration the fact that such stations

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<sup>20</sup>WIRB's Petition, Exhibit B.

<sup>21</sup>WIRB notes that TCI argues that because the station is in a hyphenated market (Orlando-Dayton-Melbourne), it should not be allowed to modify its ADI. In response, WIRB notes that there is no prohibition against seeking to modify an ADI solely because the ADI is a hyphenated market.

<sup>22</sup>*Counterpoint Communications, Inc.*, 10 FCC Rcd 4932, 4935 (1995); *ML Media Partners, L.P.*, 10 FCC Rcd 9456, 9460 (1995).

<sup>23</sup>*See Time Warner Cable*, 11 FCC Rcd 3510, 3513 (1996).

<sup>24</sup>*Counterpoint Communications, Inc.* at 4935; *Pappas Telecasting Inc.*, 11 FCC Rcd 6102, 6107 (1996).

attract limited audiences and this is taken into account in determining the equities concerning a station's right to cable carriage.<sup>25</sup>

## DISCUSSION

27. WIRB has provided sufficient evidence to justify its market modification request and its petition will, therefore, be granted.<sup>26</sup> WIRB has sufficiently demonstrated a history of carriage on the cable systems serving Ft. Pierce and Vero Beach. We disagree with TCI-TC that any significance associated with WIRB's historic carriage ended when WIRB changed its programming in 1995. We have stated in the past that a change in ownership and programming format of a station does not negate the fact that the station has been traditionally carried by cable operators, especially if the cable systems did not drop the station when these changes first occurred.<sup>27</sup> We note pursuant to the May 28, 1996 letter from TCI-TC to WIRB that TCI-TC waited a year after WIRB changed its format before it decided to drop the station from its Vero Beach system.<sup>28</sup> In addition, TCI-TC's decision to delete WIRB from its system was prompted not by the station's change in format, but rather by its decision to accommodate a new local station.<sup>29</sup> While disputing WIRB's history of carriage on its system, we find it significant that at the same time TCI-TC notified WIRB of its decision to delete the station in Vero Beach, it decided to retain carriage of the station's signal in Fort Pierce just as it had been doing "for the past few decades."<sup>30</sup>

28. We also find that WIRB has demonstrated that the station provides coverage or other local service to the communities. WIRB has submitted evidence sufficient to show that Vero Beach is well within WIRB's Grade A contour, and Ft. Pierce is just outside the Grade A

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<sup>25</sup>*Counterpoint Communications, Inc.* at 4935; *Paragon Cable*, 10 FCC Rcd 9462, 9466 (1995); *ML Media Partners, L.P.*, 10 FCC Rcd 9456, 9460 (1995).

<sup>26</sup>We disagree with Malrite that WIRB's petition is procedurally defective. Section 76.7(c)(1) of the Commission's rules states that the factual allegations contained in a petition for relief shall be supported by an affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by a person who prepares them. Malrite has not submitted any evidence to support its allegation that the declaration of Mr. John Robinson is invalid because he may not be the Station Manager of WIRB and, therefore, cannot attest that the facts contained in the petition and the accompanying exhibits thereto, are true and correct to the best of his knowledge. We will accept the declarations submitted in both WIRB's petition and reply in this proceeding consistent with our procedures pursuant to Section 1.16 of the Commission's rules relating to unsworn declarations under penalty of perjury in lieu of affidavits.

<sup>27</sup>*Counterpoint Communications, Inc.* at 4935.

<sup>28</sup>TCI Opposition, Exhibit 4. In this letter from TCI-TC to WIRB, TCI-TC informed WIRB that it planned to remove WIRB from its Vero Beach line-up while it planned to continue to carry the station in Ft. Pierce.

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

<sup>30</sup>*Id.*

and well within the station's Grade B contour. The Commission has stated that it is sufficient to demonstrate coverage or other local service to the community if a station can show that it places at least a Grade B coverage contour over the cable community.<sup>31</sup> Moreover, we note that home shopping formats are not incompatible with local appeal and we recognize that such specialty programming traditionally has drawn smaller audiences. The Commission has specifically noted that home shopping stations may serve the public interest because, among other things, they provide "an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner."<sup>32</sup> Also, as we have previously stated, when it comes to resolving signal carriage complaints or modifying television markets under our special relief process, we are not in a position to weigh the merits of a particular station's format.<sup>33</sup>

29. In addition, the fact that there are other qualified stations licensed within the West Palm Beach-Ft. Pierce-Vero Beach ADI that provide service to the communities does not act as a bar to WIRB's ADI claim. Rather, we believe that this third statutory criterion was intended to enhance a station's claim where it could be shown that other stations *do not* serve the communities at issue.

30. Finally, it is undisputed that WIRB currently has no measurable viewing audience in the communities.<sup>34</sup> However, we are not convinced in this instance that negligible ratings alone provide reason enough to deny WIRB's modification request. We recognize that home shopping stations, like religious or foreign language stations ("specialty stations"), are capable of "offer[ing] desirable diversity of programming . . . ," yet typically attract limited audiences.<sup>35</sup> We continue to believe, as the Commission did in its specialty station rules, that the fact that such stations attract a smaller audience share must be taken into account in determining the equities concerning a station's right to cable carriage. Thus, considering the totality of facts and circumstances in this case, we are convinced that WIRB's television market should be modified to include the communities of Ft. Pierce and Vero Beach, Florida.

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<sup>31</sup>See ¶ 5, *supra*.

<sup>32</sup>*Report and Order* in MM Docket No. 93-8, 8 FCC Rcd 5327 (1993).

<sup>33</sup>*Paragon Cable* at 9466.

<sup>34</sup>We note that significantly viewed status may be useful as a factor to be considered in evaluating viewing in noncable homes. However, because the fourth criterion used to evaluate market modification requests also requires information concerning viewing in cable homes, we note that such information must be supplemented. See ¶ 5, *supra*.

<sup>35</sup>*First Report and Order in Docket No. 20553*, 58 FCC 2d 442, 452 (1976), *recon. denied*, 60 FCC 2d 661 (1976).

**ORDER**

31. Accordingly, IT IS ORDERED, pursuant to §614(h)(1)(C) of the Communications Act of 1934, as amended (47 U.S.C. §534(h)(1)(C) ) and §76.59 of the Commission's Rules (47 C.F.R. §76.59), That the petition for relief (CSR-4784-A) filed July 11, 1996 by Channel 56 of Orlando for modification of the ADI of Television Station WIRB(TV), Melbourne, Florida to include the communities of Ft. Pierce and Vero Beach, Florida IS GRANTED.

32. 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