

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

In re:	)	
	)	
Corporation for General Trade	)	CSR-3999-A
Fort Wayne, Indiana	)	
	)	
Petition for Modification of Station	)	
WKJG-TV's ADI	)	

**MEMORANDUM OPINION AND ORDER**

Adopted: May 15, 1996

Released: May 28, 1996

By the Deputy Chief, Cable Services Bureau:

**INTRODUCTION**

1. The Corporation for General Trade, licensee of television broadcast station WKJG-TV (NBC, Channel 33), Fort Wayne, Indiana, has filed the above captioned petition requesting that the Commission expand the Fort Wayne, Indiana "area of dominant influence" ("ADI") for mandatory carriage purposes to include eleven additional communities and neighboring unincorporated areas located in the Indiana counties of Blackford and Lagrange, and twenty-eight additional communities and neighboring unincorporated areas located in the Ohio counties of Defiance, Mercer, and Williams.<sup>1</sup> The petition is unopposed.<sup>2</sup>

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<sup>1</sup> The Blackford County, Indiana communities include: Dunkirk, Montpelier, Hartford City, Shamrock, and unincorporated areas. The Lagrange County, Indiana communities include: Adams Lake, Howe, Lagrange, Wolcottville, Shipshewana, Topeka, Mongo, and unincorporated areas. The Defiance County, Ohio communities include: Brunersburg, Defiance, Ney, Hicksville, Sherwood, and unincorporated areas. The Mercer County, Ohio communities include: Celina, Mendon, Rockford, Fort Recovery, Butler Township, Coldwater, Granville Township, Montezuma, St. Henry, and unincorporated areas. The Williams County, Ohio communities include: Bryan, Center Township, Edgerton, Jefferson Township, Montpelier, Pulaski, Pulaski Township, Springfield Township, Stryker, West Jefferson, West Jefferson Township, West Unity, Edon, Pioneer, and unincorporated areas.

<sup>2</sup> Lima Communications Corporation, licensee of Station WLIO-TV, Lima, Ohio filed a letter stating that it had no objections to the grant of WKJG-TV's petition as long as it had no effect on WLIO-TV's own petition requesting must-carry rights on cable systems in Mercer County, Ohio. WKJG-TV replied. The Commission has since disposed of WLIO-TV's petition in *Lima Communications Corporation*, 9 FCC Rcd 274 (1994), and WLIO-TV's letter regarding WKJG-TV is, therefore, moot.

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**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*,<sup>3</sup> 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 "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 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 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

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<sup>3</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>4</sup> 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> 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*.

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.<sup>6</sup>

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.

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

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

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

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

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. In adopting rules to implement this provision, the Commission indicated that changes requested 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 Act, that a station not be deleted from carriage during the pendency of an market area change request.<sup>10</sup>

7. Adding communities to a station's market area 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 its 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, 3) indemnification may be required for any increase in copyright liability resulting from carriage, and 4) 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 signals 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 a single affiliate of a broadcast network, it is obliged to carry the affiliate from within the market whose city of license is closest to the principal headend of the cable system.<sup>11</sup> Accordingly, based on the specific circumstances involved, the addition of communities to a station's market area may guarantee it cable carriage and specific channel position rights; simply provide the system operator with an expanded list of must-carry signals from which to choose, *i.e.*, when it has used up its channel capacity mandated for broadcast signals carriage, or determined which of duplicating network affiliated stations are entitled to carriage priority.

#### MARKET FACTS AND ARGUMENTS OF THE PARTIES

8. The communities at issue are located in Blackford and Lagrange Counties in Indiana and in Defiance, Mercer, and Williams Counties in Ohio. Blackford County is in the Indianapolis, Indiana ADI and is located to the south of the Fort Wayne ADI. It is also surrounded on two sides by counties within the Fort Wayne ADI. Lagrange County is considered

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

<sup>9</sup> 8 FCC Rcd at 2977 n.139. Viewership data 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.

<sup>10</sup> 47 C.F.R. §76.59.

<sup>11</sup> 8 FCC Rcd at 2981.

to be part of the South Bend-Elkhart, Indiana ADI. It is located to the north of the Fort Wayne ADI and is surrounded on two sides by Fort Wayne ADI counties. Defiance County is part of the Toledo, Ohio ADI. It is located to the northeast of the Fort Wayne ADI and shares a small portion of its border with Allen County, where Fort Wayne, WKJG-TV's city of license is located. Williams County is also considered to be part of the Toledo, Ohio ADI, and it is located to the northeast of the Fort Wayne ADI. Mercer County located to the southeast of the Fort Wayne ADI and is considered to be part of the Dayton ADI.

#### ***BLACKFORD COUNTY, INDIANA COMMUNITIES***

9. In support of its petition, WKJG-TV states that it has been historically carried on all three of the cable systems serving all of the named communities in Blackford County since 1984. With regard to Grade B coverage, WKJG-TV reports that only Montpelier and certain portions of the unincorporated areas of Blackford County are encompassed by its Grade B contour. However, WKJG-TV adds that the station also broadcasts local news stories and PSAs regarding the county to the communities. Moreover, WKJG-TV notes that under the old must-carry rules, and for purposes of the current copyright compulsory license, WKJG-TV is local for copyright purposes to all of the cable systems serving the specified communities in Blackford County.<sup>12</sup> In addition, WKJG-TV notes that the county is located approximately 35 miles from Fort Wayne, in contrast to 60 miles from the city of Indianapolis in its own ADI.

10. Regarding other station coverage in the area, WKJG-TV contends that Indianapolis stations do not cover news of local importance to Blackford County, due to the geographic distance involved and the multiplicity of areas serviced by the more urban stations. With regard to local viewing patterns, WKJG-TV states that, according to Arbitron's report, *Television County Coverage: Ohio* (Standard/Fringe), 1992, it had a 4% share and a 50% net weekly circulation in combined cable and non-cable households in the county.

#### ***LAGRANGE COUNTY, INDIANA COMMUNITIES***

11. In Lagrange County, WKJG-TV represents that one cable system has historically carried its signal in the communities of Adams Lake, Howe, Lagrange, Wolcottville, and other unincorporated areas since 1984. Another system in the area has carried its signal in Shipshewana since 1991. The station has not, however, been carried in the communities of Topeka and Mongo. WKJG-TV adds that it places a Grade B contour over approximately half of Lagrange County. This contour encompasses Adams Lake, Wolcottville, Topeka, and portions of Lagrange and unincorporated areas, but it does not cover Howe, Shipshewana, or Mongo. WKJG-TV also makes the same argument as it does with regard to Blackford County that under the old must-carry rules and for copyright purposes, the station is local to all of the relevant cable systems in the county. In addition, WKJG-TV states that the station provides coverage of local news stories and does PSAs for most of the Lagrange communities.

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<sup>12</sup> See former §§76.57(a)(1), 76.57(a)(4) of the Commission's Rules.

12. With regard to coverage of the area by other stations, WKJG-TV points out that Lagrange, the largest city in the county, is closer to Fort Wayne than it is to South Bend, Indiana in its own ADI. According to WKJG-TV, approximately one-fourth of Lagrange County falls outside the Grade B contour of Station WNDU-TV (NBC, Channel 16), South Bend, Indiana, the network affiliate in the South Bend-Elkhart, Indiana ADI, to which Lagrange County is presently assigned. Regarding viewing patterns, WKJG-TV states that according to the above Arbitron report, in combined non-cable and cable homes, WKJG-TV received a 5% share and a 35% net weekly circulation in Lagrange County.

#### *DEFIANCE COUNTY, OHIO COMMUNITIES*

13. In Defiance County, WKJG-TV states that its signal has been carried in Brunersburg, Defiance, Ney, and Hicksville since 1984. The station adds that it has also been carried in Sherwood and unincorporated areas in the county since at least 1991. With regard to coverage of the county, WKJG-TV states that it places a Grade B contour over half of Defiance County, which includes the communities of Ney, Hicksville, Sherwood, and portions of unincorporated areas; but it does not include Brunersburg or Defiance. WKJG-TV also contends that under the old must-carry rules and for copyright purposes, it is local to all of the relevant cable systems in the county. Moreover, the station states that it has focused on local news stories and provided PSAs for Defiance, Hicksville, and unincorporated areas in the county. Defiance County, which is part of the Toledo ADI, is only about 20 miles away from Fort Wayne, WKJG-TV's city of license, while Toledo is about 40 miles from the nearest point in the county.

14. Regarding coverage of the area by other stations, WKJG-TV reports that one-half of the county falls outside of the Grade B contour of the NBC affiliate in Toledo. In addition, one of the cable systems serving the county does not carry that affiliate. With regard to viewing patterns in the county, WKJG-TV notes that for combined cable and non-cable households, it captured a 8% share and a 49% net weekly circulation, according to Arbitron's report.

#### *MERCER COUNTY, OHIO COMMUNITIES*

15. According to WKJG-TV, it has been carried in Celina, Butler Township, Coldwater, Granville Township, Montezuma, St Henry, and unincorporated areas in the county since at least 1984. In addition, the station has been carried in Mendon and Rockford since at least 1989, and in Fort Recovery since at least 1991. Regarding station coverage, WKJG-TV states that it places a Grade B contour over approximately one-quarter of the county. This means that Mendon and certain unincorporated areas of the county are encompassed by this contour, while the remainder of the communities are not covered by the contour. As with the other counties, WKJG-TV makes the argument that under the old must-carry rules and for copyright purposes, the station is local to all of the cable systems serving the communities in Mercer County.

16. With regard to other station coverage of the area, WKJG-TV states that the local Dayton NBC affiliate covers only a small portion of the county with its Grade B contour, while one-fifth of Mercer County falls outside of the Grade B contour of the Lima NBC affiliate.

Regarding local viewing patterns, WKJG-TV states that, according to Arbitron's 1992 data, it received a 4% share and 42% net weekly circulation in total cable and non-cable households the county. WKJG-TV adds that, by contrast, Television Broadcast Station WKEF (NBC, Channel 22), Dayton, Ohio, the network affiliate in the Dayton, Ohio ADI, where Mercer County is currently assigned, received a 4% share and a 17% net weekly circulation in total cable and non-cable households.

#### *WILLIAMS COUNTY, OHIO COMMUNITIES*

17. According to WKJG-TV, in Williams County, the majority of communities at issue have been carried on local cable companies since 1984. The remaining communities of Edon, Pioneer and various unincorporated areas have been carried since 1989. With regard to coverage area, WKJG-TV states that the station places a Grade B contour over approximately one-third of the county. This means that the communities of Edgerton and Edon and also various portions of Bryan and unincorporated areas of the county are covered by the contour, but that the remainder of the communities at issue in the county are not within the Grade B contour. WKJG-TV also reiterates its argument that under the old must-carry rules and for copyright purposes, the station is local to all of the relevant cable companies at issue in the county. The station also broadcasts some local news stories as well as some PSAs relevant to Williams County.

18. Regarding other station coverage of the area, WKJG-TV states that 50% of the county falls outside of the Grade B contour of the Toledo NBC affiliate. In addition, according to the station, two of the local cable companies serving the county traditionally have not carried that affiliate. With regard to local viewing patterns, the same Arbitron report used for all the counties involved indicates that the station had a 3% share and a 43% net weekly circulation for total cable and non-cable households in the county.

#### **ANALYSIS AND DECISION**

19. WKJG-TV has demonstrated in its petition that some of the specified communities located in the designated counties are logically part of its ADI market under the factors specified in the 1992 Cable Act, and its petition will accordingly be granted in part and denied in part.

#### *BLACKFORD COUNTY, INDIANA COMMUNITIES*

20. WKJG-TV has demonstrated historic carriage on all of the subject cable systems serving the communities in Blackford County. WKJG-TV has also established that its Grade B signal encompasses all of the communities in Blackford County, save for three--Dunkirk, Hartford City, and Shamrock--all of which are located on the fringe of WKJG-TV's Grade B contour. With regard to Hartford City, WKJG-TV has provided several examples of public service announcements primarily affecting this community. Despite the fact that WKJG-TV has not demonstrated Grade B coverage or local programming to Dunkirk and Shamrock, we note that these communities, along with the others named in the county, are in close proximity,

approximately 35 miles, to Fort Wayne, WKJG-TV's city of license.<sup>13</sup> In contrast, television broadcast station WTHR (NBC, Channel 13), Indianapolis, Indiana, the network affiliate in the Indianapolis, Indiana ADI where Blackford County is presently assigned, is located over 60 miles away from the designated communities.

21. With respect to the third criterion, WKJG-TV has not provided sufficient information regarding whether other stations eligible to be carried by the system fail to provide adequate news coverage or other local programming of interest to the community. However, WKJG-TV states generally that the Indianapolis stations do not cover news of local importance to Blackford County, because of the geographic distance and the multiplicity of areas serviced by the more urban stations in the Indianapolis ADI. In reaching our decision, we will consider the fact that the current local ADI NBC affiliate, WTHR, is nearly twice as far from the communities as is the petitioning station. In any event, we do not believe that Congress intended the third criterion to act as a bar to a station's ADI claim even if it were to be shown that other stations serve the communities at issue. Rather, we believe that this criterion was intended to enhance a station's claim where it could be shown that other stations *do not* serve the communities at issue.

22. With regard to the fourth factor, WKJG-TV has submitted evidence that according to 1992 Arbitron data, the station received a 4% total share. However, the 1995 Nielsen Study reveals that during the time period Sunday-Saturday, 7:00am-1:00am, WKJG-TV received only a total average quarter hour share of 2%. By comparison, in the same study, the Indianapolis NBC affiliate, WTHR, received a total share of 17% in Blackford County.

23. Despite the disparity in audience share, we will grant WKJG-TV's waiver request for the subject communities in Blackford County. In addition to having a history of long term carriage since 1984, all of the subject communities, save for Hartford City, Dunkirk, and Shamrock are encompassed by WKJG-TV's Grade B contour. Furthermore, the subject communities are appreciably closer to WKJG-TV than they are to the current ADI NBC affiliate, WTHR. While WKJG-TV has not demonstrated that Hartford City, Dunkirk, or Shamrock are within its Grade B contour, they nevertheless are located within 35 miles of WKJG-TV and lie on the fringe of the station's Grade B contour. WKJG-TV has also provided some evidence of programming directed to Hartford City. In view of the totality of circumstances set out above, we will grant WKJG-TV's requested waiver as it relates to Blackford County.

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<sup>13</sup> In an effort to bolster its argument regarding the second statutory factor, WKJG-TV notes that the station is significantly viewed in this county and in all of the other counties at issue here. For a network station to be deemed significantly viewed in a community or a county, it must achieve in non-cable homes a share of viewing hours of at least 3 percent (total week hours) and a net weekly circulation of at least 25 percent. 47 C.F.R. §76.5(i). Thus, WKJG-TV argues that under the old must-carry rules and for copyright purposes, the station is local to all of the cable systems relevant to this county and to all of the other counties in question. See former §§76.57(a)(1), 76.57(a)(4) of the Commission's Rules. We note that while, this information is probative, it is not of decisional significance herein.



*LAGRANGE COUNTY, INDIANA COMMUNITIES*

24. With regard to Lagrange County, we note at the outset that each of the applicable standards do not apply to each of the communities equally. WKJG-TV has not demonstrated historic carriage of its signal in the communities of Topeka and Mongo. In addition, the station has not demonstrated Grade B coverage for the communities of Mongo, Howe, and Shipshewana, and it has only demonstrated that portions of Lagrange and unincorporated parts of the county are covered. However, with the exception of Mongo and Adams Lake, WKJG-TV has provided examples of local news stories and PSAs that it has aired regarding the communities.

25. With regard to the third criterion, WKJG-TV has not provided sufficient information regarding whether other stations eligible to be carried by the system fail to provide adequate news coverage or other local programming of interest to the community. As support in this regard, WKJG-TV notes that only about one-fourth of the county falls outside the Grade B contour of the current ADI NBC affiliate, WNDU-TV.<sup>14</sup> With respect to the fourth factor, WKJG-TV has submitted evidence that it generally receives substantial viewership in the county. Arbitron's 1992 data reveals that WKJG-TV received a 5% share of total viewing hours in Lagrange. In addition, the 1995 Nielsen Study reveals that in the Sunday.-Saturday, 7:00am-1:00am daypart, the station received a total share of 6%, with an 8% share for cable viewing, and a 5% share for non-cable viewing. In contrast, the current local ADI NBC affiliate, WNDU-TV, according to the same study, captured a 13% total audience share, with a 7% share in cable homes and a 16% share in noncable homes. We will grant the requested waiver for Lagrange, with the exception of the community of Mongo, for which the station has not demonstrated historic carriage or service to the community. We believe that a waiver is appropriate, because while not as extensively viewed as WNDU-TV, WKJG-TV is widely viewed in Lagrange. Furthermore, we note that WKJG-TV captures a relatively large over-the-air noncable share in Lagrange. Moreover, apart from Mongo, in addition to being widely viewed, the communities are either within WKJG-TV's Grade B contour or the station has historic carriage in the communities.

*DEFIANCE COUNTY, OHIO COMMUNITIES*

26. With regard to Defiance County, WKJG-TV has demonstrated that it has historically been carried by local cable systems in all of the relevant communities in the county. In the majority of communities, the station has had historic carriage since 1984, with the exception of Sherwood and unincorporated areas of the county, where it has been carried since 1991. With regard to the second statutory factor, WKJG-TV has not demonstrated either Grade B coverage or local news coverage of events in Brunersburg. Similarly, the station has not demonstrated Grade B coverage for Defiance, but it has provided evidence of some coverage of local events. WKJG-TV has also represented that not all portions of unincorporated areas of the county are

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<sup>14</sup> WKJG-TV also notes that Lagrange, the largest city in the county, is 38 miles from Fort Wayne, while South Bend, which is 42 miles away, is farther.

covered by its Grade B contour, but it has submitted some evidence of local news coverage for these areas.

27. In terms of the third criterion, WKJG-TV has not supported its claim that other stations eligible to be carried by cable systems in the communities have failed to provide local news coverage, or coverage of sporting events and other events of interest to the communities. WKJG-TV only states that the competing Toledo NBC affiliate, WTVG, does not cover at least one-half of the county with its Grade B contour. In addition, WKJG-TV states that, traditionally, one of the cable systems serving the county does not carry the station. With respect to the fourth factor, according to the 1992 Arbitron data it submitted, WKJG-TV achieved a 8% share of total viewing hours. The 1995 Nielsen data show that WKJG-TV received a total quarter hour share of 5%, Sunday-Saturday, 7:00am-1:00am. This is in comparison to a 13% share for the Toledo NBC affiliate, WTVG. However, WKJG-TV received a 9% share for over-the-air noncable viewing, as compared to WTVG's share of 13%. From these statistics, we believe that, while not evidence of an overwhelming viewing audience, the station has shown a respectable viewing pattern in the county. Of particular importance is WKJG-TV's high over-the-air total audience share demonstrating a nexus between it and the communities in Defiance.

28. While we recognize that WKJG-TV has not demonstrated Grade B coverage or other local service to the community for Brunersburg and has only provided general evidence of local story coverage for the community of Defiance, we nonetheless believe that all of the designated communities in Defiance County should be added to the Fort Wayne ADI. We base this decision on the widespread audience share that WKJG-TV captures in Defiance County, as described above, and the fact that the station has historic carriage on all of the cable systems serving the communities.

#### *MERCER COUNTY, OHIO COMMUNITIES*

29. WKJG-TV is carried on cable systems in all of the relevant communities in the county, and most have done so since 1984. With regard to the second factor, however, most of the communities in Mercer County are not encompassed by the station's Grade B contour, nor has WKJG-TV provided examples of local stories that it covered for most of the designated communities.

30. Regarding the third criterion, WKJG-TV again has not provided sufficient information regarding whether other stations eligible to be carried by the system fail to provide adequate news coverage or other local programming of interest to the communities. WKJG-TV only states that the local Dayton NBC affiliate, WKEF, covers a small portion of the county with its Grade B contour, and that one-fifth of the county falls outside the Grade B of television broadcast station WLIO (NBC, Channel 35), Lima, Ohio. Thus, WKJG-TV concludes that the county may not be well served by other stations in the area. With regard to the fourth criterion, according to the Arbitron data submitted, WKJG captured a 4% total share in 1992 in Mercer County, in contrast to television broadcast station WKEF (NBC, Channel 22), Dayton, Ohio, the network affiliate in the Dayton, Ohio ADI where Mercer County is presently located, which received a

total share of 2%. However, the Lima NBC affiliate, WLIO, captured a total share of 13%. This general pattern is confirmed by Nielsen's 1995 data, Sunday-Saturday, 7:00 am-1:00am, which shows that WKJG had a 5% share; WKEF, the current local ADI affiliate received a 2% share; and WLIO, the Lima ADI NBC affiliate had a 10% share. In noncable homes, WKJG had an 8% total share; WKEF captured a 6% total audience share; and WLIO received an 11% share.

This demonstrates that the subject communities are located on the fringe of three ADI's: the Dayton, Ohio ADI; the Fort Wayne, Indiana ADI; and the Lima, Ohio ADI.

31. Although WKJG-TV has not demonstrated that it fulfills the second statutory factor for most of the communities in Mercer County, the station has demonstrated a history of carriage on local cable systems since 1984. In addition while not having as large a viewership in the county as WLIO, WHJG-TV nevertheless has widespread viewership as well in Mercer County. In this regard, we note that WKJG-TV captured a total share of 8% in over-the-air noncable homes in Mercer County; thus, demonstrating a nexus between itself and Mercer county residents. Also, WKJG-TV's viewership levels are better than those of the current ADI NBC affiliate, WHJG-TV, and as noted above are approximately equal to WLIO in noncable homes. Consequently, we will grant WKJG-TV's requested waiver to include the subject communities in the Fort Wayne ADI, as well as in the Dayton ADI.

#### *WILLIAMS COUNTY, OHIO COMMUNITIES*

32. WKJG-TV has demonstrated that there has been historic carriage of its signal in most of the specified communities in Williams County since 1984, and for the remainder of the communities since 1989. However, with regard to the second criterion, the communities are not covered by its Grade B contour except for three: Edgerton, Edon and, Bryan. Moreover, WKJG-TV has introduced only scattered examples of public service announcements. We further note that WKJG-TV's Grade B contour only encompasses a small portion of Williams County where, as the current ADI network affiliate, WTVG's Grade B contour encompasses a large part of the county. Furthermore, the specified communities are equally distant from television broadcast station WTVG (NBC, Channel 13), Toledo, Ohio, the network affiliate in the Toledo, Ohio ADI where Williams County is presently assigned, and from WKJG-TV.

33. With regard to the third criterion, as with the communities named above, WKJG-TV has not provided a sufficient showing whether the other stations eligible to be carried by the system fail to provide adequate news coverage or other local programming of interest to the communities. With regard to viewing patterns in the county, 1992 Arbitron data shows that WKJG-TV captured a 3% total audience share in Williams County, in contrast to WTVG's 13% share. A review of 1995 Nielsen data Sunday-Saturday, 7:00 am-1:00am, shows that WKJG-TV received a total share of 3%, with a 2% share for cable viewing and a 4% share for non-cable viewing. This is in contrast to the Toledo NBC affiliate, WTVG, which received a total share of 14%, with a 13% share for cable viewing and a 16% share for non-cable viewing in the county.

34. Based upon the totality of factors set out above, we cannot find that a grant of the requested waiver for the subject communities in Williams County is warranted. Apart from historic carriage in all the communities and Grade B coverage in 3 out of 14 communities for which a waiver is sought, WKJG-TV has failed to introduce evidence which overwhelms the dominant audience shares that WTVG captures in Williams County. Nor does proximity of the subject communities play an important role in this instance, since the communities are approximately equally distant from the relevant stations. We also note that, while WKJG-TV's Grade B contour only encompasses a small portion of Williams County, WTVG's Grade B contour encompasses a large part of the county in which the communities are located.

35. Therefore, for the purposes of determining mandatory signal carriage obligations, we shall consider the communities previously specified by WKJG-TV in the Indiana counties of Blackford and Lagrange, except for Mongo, and in the Ohio counties of Defiance and Mercer to be part of the Fort Wayne, Indiana ADI with respect to carriage of WKJG-TV, but we shall still consider the designated communities in Williams County, Ohio as part of the Toledo, Ohio ADI only for purposes of mandatory signal carriage.

#### ORDER

36. Accordingly, IT IS ORDERED, pursuant to §614 (h) 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-3999-A) filed July 30, 1993 by the Corporation for General Trade IS GRANTED to the extent indicated above, and in all other respects IS DENIED.

37. IT IS FURTHER ORDERED, that this change shall be effective in accordance with the following schedule: WKJG-TV shall notify the cable systems in question in writing of its carriage and channel position elections (§§76.56, 76.57 and 76.64(f) of the Commission's Rules) within 30 days of the release date of this *Memorandum Opinion and Order*. The cable systems shall come into compliance with the applicable rules within 60 days of such notification.

38. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau