

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

In the Matter of:)	
)	
Frontier, A Citizens Communications Company)	CSR-6117-A
)	
For Modification of the Los Angeles, California DMA)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	CSR-6069-M
v.)	
Frontier, A Citizens Communications Company)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 2003

Released: May 12, 2003

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Frontier, A Citizens Communications Company (“Frontier”) filed the above-captioned petition for special relief seeking to modify the Los Angeles, California designated market area (“DMA”) with respect to television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California (“KXLA”). Specifically, Frontier requests that KXLA be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable system serving Needles, California.¹ Rancho Palos Verdes Broadcasters, Inc., licensee of KXLA, filed an opposition to the petition to which Frontier replied. In an associated filing, KXLA filed a must carry complaint against Frontier for its failure to carry its signal on the Needles cable system. An opposition to this petition was filed on behalf of Frontier to which KXLA replied. We are consolidating these cases in order to determine the signal carriage rights of KXLA on the cable system in question. For the reasons stated below, we grant Frontier’s request for modification and dismiss KXLA’s complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of*

¹Frontier notes that KXLA’s must carry complaint also listed the community of Lower Mojave Valley, California. Frontier states that while it does serve Lower Mojave Valley, Arizona, that community is located outside the Los Angeles DMA and, as such, not relevant to either of the instant proceedings.

1992, *Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the 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.⁴

3. Under the Act, however, the Commission is also directed to consider changes in market 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.⁵

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;

(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;

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

²8 FCC Rcd 2965, 2976-1977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

⁴For a more complete description of how counties are allocated, see Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[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

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.⁸

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁹

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

⁸*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

⁹The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local
(continued...)

- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁰

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant Frontier's request to exclude KXLA from mandatory carriage on its cable system serving Needles, California. Needles is located in San Bernardino County, California which is considered part of the Los Angeles DMA. KXLA is licensed to Rancho Palos Verdes, which is also located in the Los Angeles DMA. Considering all of the relevant factual circumstances in the record, we believe that the market modification petition is a legitimate request to redraw DMA boundaries to make them congruous with market realities.

6. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."¹¹ Frontier states that it has never carried KXLA on its Needles cable system.¹² Frontier states that KXLA has been historically unable to deliver a good quality signal to the Needles cable system and thus has never been a qualified local station for must carry purposes.¹³ Frontier states further that, according to the 2002 edition of Television and Cable Factbook, KXLA is not carried by any other nearby cable systems.¹⁴ In response, KXLA states that it has only been operating for approximately two years and the Commission has repeatedly held with respect to new stations that lack of historical carriage is of

(...continued from previous page)

service to a community under factor two of the market modification test.

¹⁰47 C.F.R. §76.59(b).

¹¹47 U.S.C. §534(h)(1)(C).

¹²Modification Petition at Exhibit A.

¹³*Id.* at 3, citing 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁴*Id.* at Exhibit C.

little or no relevance in modification cases because, otherwise, such stations would be prevented from ever gaining carriage.¹⁵ KXLA states that the Commission has also recognized that “because of their limited audience,” specialty stations, such as KXLA, “have not been widely carried by cable operators absent must carry obligations.”¹⁶ Frontier argues that, although KXLA claims that its specialty station status should mitigate the historic carriage factor, the Commission has stated repeatedly that the “fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process.”¹⁷

7. Second, we consider “whether the television station provides coverage or other local service to such community.”¹⁸ Frontier argues that KXLA does not provide any local programming to the community at issue.¹⁹ According to the evidence, KXLA offers programming which is general in nature and not geared to a specific community.²⁰ Frontier points out that the Commission has stated that general interest programming is insufficient to satisfy the local programming factor in modification cases.²¹ Frontier notes that, as evidenced by the system’s channel line-up information, it carries broadcast stations licensed to Las Vegas, Nevada and Prescott and Phoenix, Arizona; stations that have a more direct connection to Needles than does KXLA.²² Frontier states that not only is KXLA’s city of license geographically distant at 228 miles, but it fails to provide a Grade B signal to the system.²³ Frontier states that such a distance precludes any commercial ties between the two areas.²⁴ Moreover, this distance is greater than that found in almost every market modification petition brought before the Commission where the Bureau determined that a station was not local to the communities in question.²⁵ Frontier states that, in addition to distance, Needles and KXLA are separated by geographic features such as the Mojave Desert, several mountain ranges and the San Bernardino National Forest as well as political boundaries.²⁶ Frontier notes that the Commission has repeatedly stated that political and natural boundaries can act to

¹⁵Opposition at 4, citing *Time Warner Entertainment Co., L.P.*, 12 FCC Rcd 22069, 22077 (1997); *Horizon Broadcasting Corporation*, 12 FCC Rcd 11634, 11638 (1997); *Time Warner Cable*, 11 FCC Rcd 8047, 8053-54 (1996).

¹⁶*Id.*, citing *CoxCom, Inc.*, 17 FCC Rcd 17192, 17195 (2002).

¹⁷Reply at 6, citing *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386, 19396 (2000); *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298, 306 (1998); *Rifkin/Narragansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, 21104 (1996), *recon. denied*, 14 FCC 13788 (1999).

¹⁸47 U.S.C. §534(h)(1)(C).

¹⁹Modification Petition at 3.

²⁰*Id.* at Exhibit H.

²¹*Id.* at 8, citing *Greater Worcester Cablevision*, 12 FCC Rcd 17347 (1997); *TKR Cable Company*, 12 FCC Rcd 8414 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999); *Home Link Communications of Princeton, L.P.*, 13 FCC Rcd 1578 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999).

²²*Id.* at 4.

²³*Id.* at Exhibits D and E.

²⁴*Id.* at Exhibit F.

²⁵*Id.* at 6, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-70 miles); *Mid-Hudson Cablevision, Inc.*, 15 FCC Rcd 5011 (2000) (average 47 miles); *Blue Ridge Cable Technologies, Inc.*, 14 FCC Rcd 2320 (1999) (43 miles).

²⁶*Id.* at Exhibits F and G.

separate communities from television stations in market modification proceedings.²⁷

8. KXLA argues that the instant proceeding presents a situation in which the Commission must look to factors beyond the technical Grade B contour requirement in considering coverage and local service. It points out that the Commission has stated that while “as a general matter Grade B coverage demonstrates service to cable communities and serves as a measure of a station’s natural economic market, it is not an exclusive test.”²⁸ KXLA maintains that an emphasis on narrow geographic considerations is inappropriate here where the Asian-American communities that serve as KXLA’s audience “form communities that cross city and county lines, transforming the entire Los Angeles market into groups of interrelated markets.”²⁹ KXLA asserts that it provides unique locally-focused Asian-language programming that Frontier should utilize for the benefit of its Asian-American subscribers.³⁰

9. Frontier argues that while no single factor is outcome determinative in a market modification proceeding, KXLA’s contention that the Bureau should overlook its lack of Grade B coverage ignores the Commission’s repeated emphasis on this factor as important in the market modification analysis.³¹ Frontier notes that KXLA also fails to mention the vast distance between its city of license and Needles or the fact that the Commission has recognized that where DMAs span very large geographic distances, as does the Los Angeles DMA, “the broadcast signal carriage rules were not intended to transform a station with a restricted market and service area into a regional ‘super station’ that must be automatically carried in every single community in an ADI.”³² Frontier maintains that this is precisely the type of situation Congress sought to address when it provided for the market modification process to exclude communities that are “so far removed from the station that [they] cannot be deemed part of the station’s market.”³³ Further, Frontier points out that the Commission has repeatedly cited geographic barriers, such as those separating KXLA and Needles, in decisions granting exclusion.³⁴ Finally, Frontier states that KXLA makes no effort to show that its programming is in any way specifically tailored to the residents of Needles, but rather relies solely on its provision of general Asian-

²⁷*Id.* at 7, citing *Adelphia Cablevision Associates, L.P.*, 14 FCC Rcd 7686 (1999); *Rifkin/Narragansett South Florida CATV Limited Partnership d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996), *recon. denied*, 14 FCC Rcd 13788 (1999); *Time Warner New York City Cable Group*, 11 FCC Rcd 6528 (1996); *Time Warner New York City Cable Group*, 12 FCC Rcd 13094 (1996), *recon. denied*, 12 FCC Rcd 12262 (1997); *Comcast of Central New Jersey*, 13 FCC Rcd 1656 (1997).

²⁸Opposition at 4, citing *Suburban Cable TV Co., Inc.*, 16 FCC Rcd 10790, 10797 (2001) (citing *Must Carry Order*, 8 FCC Rcd at 2977).

²⁹*Id.*, citing *Fouce Amusement Enterprises, Inc.*, 10 FCC Rcd 668, 670 (1995).

³⁰*Id.* at 5-6 and Exhibit D.

³¹Reply at 7-8, citing *Adelphia Cable Partners, L.P.*, 13 FCC Rcd 4047 (1996), *recon. denied*, 14 FCC Rcd 13783 (1999); *Dynamic Cablevision of Florida, Ltd. et al.*, 11 FCC Rcd 9880 (1996), *recon. denied*, 14 FCC Rcd 13783 (1999); *Time Warner Cable*, DA 03-824 (released March 19, 2003) at para. 12.

³²Reply at 8-9, citing *Gold Coast Cablevision*, 11 FCC Rcd at 21103.

³³*Id.* at 9, citing *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12268-69 (1997).

³⁴*Id.* at 9-10, citing *Gold Coast Cablevision*, 11 FCC Rcd at 21103; *Adelphia Cable Associates, L.P.*, 14 FCC Rcd 7686 (1999); *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087 (1998); *Time Warner New York City Cable Group*, 12 FCC Rcd 13094 (1996); *Time Warner Cable*, DA 03-824 at para. 12.

language programming as the most important factor in this case.³⁵ Such reliance, however, has been soundly rejected by the Commission.³⁶ Finally, Frontier notes that only 1.4 percent of Needles' population (or 69 people) identify themselves as Asian as compared to 25.9 percent of Rancho Palos Verdes' population.³⁷ While KXLA may well serve its home community with programming of local interest, it has little relevance to Needles.

10. The third statutory factor we must consider is "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."³⁸ Frontier states that numerous nearby stations carried on its system provide extensive local programming on a regular basis.³⁹ Frontier states that these stations provide news and local programming that is specifically geared to Needles.⁴⁰ Moreover, Frontier notes that, unlike KXLA, these stations are listed in the *Needles Desert Star*, a local paper serving the subject community, and the local edition of *TV Guide*.⁴¹ KXLA argues that none of the broadcast stations currently carried by Frontier offer Asian-language programming, despite the fact that Asian-Americans account for 4.7 percent of the population in San Bernardino County.⁴² KXLA points out that the Commission has recognized that "foreign" programming is not incompatible with local appeal, as such programming is of interest to a significant number of Asian viewers who have strong family, business, social, language and personal ties to particular areas.⁴³ Finally, KXLA notes that the geographic distance of the stations Frontier points to as providing local service ranges from 111 to 244 miles from Needles.⁴⁴ Frontier argues that KXLA's statistics with regard to the distances of the stations in its channel line-up are misleading because they are based on driving mileage and not air mileage.⁴⁵ Frontier points out that Needles is an isolated desert community and that stations licensed to Phoenix, Las Vegas and Prescott are the closest to the cable system. Not only do these stations consider themselves local to Needles, but the residents of Needles consider the stations as local to them.⁴⁶

³⁵*Id.* at 11.

³⁶*Id.*, citing *Petition of Blue Ridge Cable Technologies, Inc.*, 14 FCC Rcd 2320, 2327 (1999) ("While 3.1% of Pike County residents are of Hispanic origin, this does not necessarily mean that WXTV's programming is targeted to interests that are specific to Hispanic residents in the cable communities.").

³⁷*Id.* at Exhibit A (U.S. Census Bureau 2000 information).

³⁸47 U.S.C. §534(h)(1)(C).

³⁹Modification Petition at 9 n.28.

⁴⁰*Id.* at Exhibits I and K.

⁴¹*Id.* at Exhibits J and K.

⁴²Opposition at Exhibits B, E & F-G.

⁴³*Id.* at 7, citing *Fouce*, 10 FCC Rcd at 671.

⁴⁴*Id.* at 5 n.4.

⁴⁵Reply at 18-19. Frontier states that the air mileage between Needles and Las Vegas, Prescott and Phoenix, communities from which it receives signals, is 96, 124 and 174 miles, respectively; *see also* Modification Petition at Exhibits E and N.

⁴⁶*Id.* at 19. Frontier states that citizens of Needles annually donate funds to maintain translator service in order to receive Phoenix television broadcast stations. *Id.* at n.67.

11. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”⁴⁷ Frontier states that, according to a report prepared by a marketing and research consulting firm, KXLA has no reportable viewing in either Needles or San Bernardino County.⁴⁸ In addition, Frontier notes that KXLA is not considered significantly viewed in San Bernardino County and it is not listed in either the local papers or local edition of *TV Guide*.⁴⁹ KXLA states that because it has only been on-the-air for only two years it is still in the process of building its viewership. The Commission has recognized that it normally takes up to 3 years for a station to build viewership within its licensed area.⁵⁰ KXLA maintains that, because of its specialty station status, the mitigating factors that apply to its lack of historic carriage should apply equally here.⁵¹

12. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station’s market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.⁵² Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.⁵³ In this matter, KXLA has no history of carriage and no discernable viewership in the community at issue. It does not appear that any proximate cable systems carry KXLA. As a relatively new specialty station, we do not afford considerable weight to these deficiencies. However, it is clear that KXLA is geographically distant from the communities at 228 miles, that its predicted Grade B contour falls far short of Needles, and that the station is separated from Needles by numerous geographic barriers such as the San Gabriel Mountains and the San Bernardino National Forest. These factors also tend to explain the history of non-carriage of the station on Frontier’s cable system and strongly indicate that Needles is too distant to properly be a part of KXLA’s television market. KXLA has argued that all of these factors are irrelevant because of the fact that it provides Asian-language programming for the benefit of the Asian-American population throughout the Los Angeles DMA and it cites *Fouce Amusement* in support.⁵⁴ However, in *Fouce Amusement*, the Commission noted that the station in question provided the only locally produced programming of particular appeal to the Asian community.⁵⁵ In the instant matter, KXLA fails to provide any specific information or documentation regarding the orientation of its programming to the community of Needles.

13. In view of our decision in the market modification proceeding, the arguments raised by KXLA and Frontier in reference to the above-described must carry complaint are moot. As such,

⁴⁷47 U.S.C. §534(h)(1)(C).

⁴⁸Modification Petition at Exhibit L.

⁴⁹*Id.* at 13.

⁵⁰Opposition at 8, citing *Avenue TV Cable Services, Inc.*, 16 FCC Rcd 16436, 16445 (2001).

⁵¹*Id.*, citing *The Chronicle Publishing Company*, 10 FCC Rcd 9474, 9482 (1995).

⁵²47 U.S.C. § 534(h)(1)(c).

⁵³47 U.S.C. § 534(h)(1)(C)(i).

⁵⁴Opposition at 4.

⁵⁵The Commission’s ruling in *Fouce Amusement* was not decided on the issue of foreign-language programming. In that matter, *inter alia*, the cable communities were located within the City Grade coverage of the station at issue. See *Fouce Amusement*, 10 FCC Rcd at 671.

KXLA's must carry complaint is dismissed.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (CSR-6117-A), filed by Frontier, A Citizens Communications Company **IS GRANTED**.

15. **IT IS FURTHER ORDERED** that the must carry complaint filed by Rancho Palos Verdes Broadcasters, Inc. (CSR-6069-M) **IS HEREBY DISMISSED**.

16. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁵⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

⁵⁶47 C.F.R. §0.321.