

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

In the Matter of:	)	
	)	
Avenue TV Cable Service, Inc.	)	
	)	CSR-5549-A
For Modification of the DMA Market	)	
Of Television Station KDOC-TV	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 5, 2000**

**Released: September 7, 2000**

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

**I. INTRODUCTION**

1. Avenue TV Cable Service, Inc. ("Avenue Cable") has filed a petition with the Commission pursuant to Sections 76.7 and 76.59 of the Commission's rules,<sup>1</sup> seeking to delete certain communities from the designated market area ("DMA") of television station KDOC-TV, (Channel 56), Anaheim, California ("KDOC"). Specifically, Avenue requests that the City of Ventura and the unincorporated portions of western Ventura County, California (the "Ventura Communities") be excluded from KDOC's television market.<sup>2</sup> KDOC filed an opposition to which Avenue replied.

**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 1992, Broadcast Signal Carriage Issues ("Must Carry Order")*,<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 "designated market area," or DMA, as defined by Nielsen Media Research.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of

<sup>1</sup> 47 C.F.R. §§ 76.7 and 76.59.

<sup>2</sup> Petition at 1.

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

<sup>4</sup> Section 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). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that Arbitron's "Areas

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others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 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.<sup>6</sup>

4. 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 new 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.<sup>7</sup>

5. 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

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of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. 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").

<sup>5</sup> For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>6</sup> 47 U.S.C. §534(h)(1)(C).

<sup>7</sup> *Must Carry Order*, 8 FCC Rcd 2965, 2976 (1993).

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.

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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>8</sup>

6. Recently, 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:

(A) 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.

(B) 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: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>9</sup>

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(F) 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., 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.<sup>10</sup>

Petitions for special relief to modify television markets that do not include the above

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

<sup>9</sup> The 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 service to a community under factor two of the market modification test.

<sup>10</sup> 47 C.F.R. §76.59(b).

evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

7. With respect to deletions of communities from a station's market, the legislative history of this provision states that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's [DMA] 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>11</sup>

8. 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>12</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 a modification request.<sup>13</sup>

### III. DISCUSSION

9. KDOC is licensed to Anaheim, California, which is deemed to be part of the Los Angeles DMA.<sup>14</sup> The Ventura Communities are also located in the Los Angeles DMA.<sup>15</sup> The market modification process incorporated into the Communications Act is not intended to be a process whereby cable operators may seek relief from the mandatory signal carriage obligations apart from the question of whether a change in the market area is warranted. The Commission, based upon an analysis of the statutory factors and the evidence presented, may include or exclude particular communities from a television station's market to ensure that a television station is carried in the areas which it serves and which forms its economic market. When viewed against this background and considering the precedent established in prior cases involving communities in the Los Angeles DMA,<sup>16</sup> we believe that Avenue Cable's deletion petition appears to be a

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<sup>11</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>12</sup> 8 FCC Rcd 15 2977 n. 139.

<sup>13</sup> 47 C.F.R. §76.59.

<sup>14</sup> Petition at 5. Prior to the Commission's adoption of a change in market definitions for must carry purposes from ADIs to DMAs, western Ventura County was divided into western and eastern parts. Currently, Ventura County is treated by Nielsen as a unified viewing area. See *Modification Final Report and Order*, 14 FCC Rcd 8366, Appendix B.

<sup>15</sup> Petition at 5.

<sup>16</sup> See *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803 (1995); *The Chronicle Publishing Company d/b/a Ventura County Cablevision*, 10 FCC Rcd 9474 (1995); *Smith Broadcasters of Santa Barbara*, 10 FCC Rcd 9447 (continued...)

legitimate request to redraw DMA boundaries to make them congruous with market realities.

10. In its petition, Avenue Cable maintains that an analysis of the four statutory factors governing market modification requests supports the deletion of the Ventura Communities from KDOC's television market.<sup>17</sup> With regard to the first statutory factor, historic carriage, Avenue Cable states that KDOC has never been carried on its cable system serving the communities at issue.<sup>18</sup> Avenue Cable further states that KDOC is not carried on other cable systems serving Ventura County.<sup>19</sup> Moreover, Avenue Cable states that it does not carry any other full-powered commercial television station licensed to Anaheim, KDOC's city of license, nor does it carry any television station transmitting from Sunset Ridge which, until recently, was KDOC's transmitter site.<sup>20</sup>

11. In opposition, KDOC argues that Avenue Cable's petition is premature because KDOC is in the process of changing its transmitter site from Sunset Ridge to Mount Wilson.<sup>21</sup> KDOC further argues that a grant of Avenue Cable's petition will result in discrimination among similarly situated stations because Avenue Cable currently carries at least nine television stations transmitting from Mount Wilson.<sup>22</sup> Avenue Cable responds that because it carries some Mount Wilson stations does not mean that it is required to carry all.<sup>23</sup> Avenue Cable maintains that this issue was decided in *Avenue TV Cable Service, Inc.* ("Avenue Order") where the Bureau excluded certain western Ventura communities from the television market of KWHY-TV, which transmitted from Mount Wilson.<sup>24</sup> In the *Avenue Order*, the Bureau found that "[t]he fact that television stations within a particular market transmit from a common transmitter site is noteworthy with respect to market modifications."<sup>25</sup> However, the Bureau concluded that, despite a common transmitter site, the balance of the evidence in that case distinguished KWHY-TV from other stations transmitting from Mount Wilson and weighed in favor of deleting certain communities located in western Ventura County from KWHY-TV's television market.<sup>26</sup>

12. Avenue Cable next argues that with regard to the second statutory factor, local service, KDOC does not satisfy any of the three criteria by which the Commission evaluates local service.<sup>27</sup> The Bureau has stated that local service may be measured by: (1) "examining the distance between the station and the cable communities subject to the deletion request and taking into account natural phenomena such

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(1995); and *Golden Orange Broadcasting Co.*, 10 FCC Rcd 10619 (1995).

<sup>17</sup> Petition at 11.

<sup>18</sup> *Id.* at 4. Avenue Cable attaches a copy of its current channel line-up as Exhibit A and an affidavit from its Vice President and General Manager.

<sup>19</sup> Petition at 5.

<sup>20</sup> *Id.*

<sup>21</sup> Opposition at 3.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Reply at 6. Currently, Avenue Cable does not carry television stations KWHY, KHSC and KTBN, each of which transmits from Mount Wilson. See Petition at 5.

<sup>24</sup> *Id.* at 6, see *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803 (1996).

<sup>25</sup> *Avenue Order*, 11 FCC Rcd at 4813.

<sup>26</sup> *Id.*

<sup>27</sup> Petition at 6, citing *Media General Cable of Fairfax County, Inc.*, 15 FCC Rcd 149 (2000) ("*Media General*").

as waterways, mountains and valleys which tend to separate communities;” (2) “[a] station’s broadcast of local programming, which has a distinct nexus to the cable communities;” and (3) “a station’s Grade A or Grade B contour coverage ... .”<sup>28</sup> Avenue Cable states that KDOC is a geographically distant signal because Avenue Cable’s headend is 86.42 miles from KDOC’s city of license and KDOC’s transmitter site, Mount Wilson, is 70.01 miles distant.<sup>29</sup>

13. Moreover, Avenue Cable argues that the Santa Monica Mountains form a natural barrier between KDOC and the Ventura Communities.<sup>30</sup> Avenue Cable cites prior decisions where the Bureau has found that Ventura County’s rugged terrain divides the area in such a way that portions of the county are far closer to the Santa Barbara-Santa Maria-San Luis Obispo television market than to the Los Angeles market to which the television stations at issue were assigned.<sup>31</sup> In *Chronicle Publishing Company d/b/a Ventura County Cablevision* (“*Ventura Cablevision*”), the Bureau found that the topography and the distances involved formed a basis for distinguishing those communities in western Ventura County from the rest of the Los Angeles market.<sup>32</sup> In fact, in *Ventura Cablevision*, the Bureau deleted certain communities in the western portion of Ventura County from the television market of KDOC, the station here at issue.<sup>33</sup>

14. Avenue Cable next argues that KDOC fails to provide programming with any local nexus to the Ventura Communities and that KDOC is not listed in the Ventura County TV Star as a television station serving Ventura County.<sup>34</sup> KDOC maintains that Avenue cable’s programming claims have no decisional weight here because such information is only relevant to enhance a station’s claim to carriage.<sup>35</sup>

15. Avenue Cable cites KDOC’s failure to cover the Ventura Communities with a Grade B contour as further evidence of KDOC’s lack of local service.<sup>36</sup> KDOC counters that the map of KDOC’s Grade B contour supplied by Avenue Cable is irrelevant because it pertains to KDOC’s operations from Sunset Ridge and not its new transmitter site, Mount Wilson.<sup>37</sup> KDOC further argues that Avenue Cable

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<sup>28</sup> See *Media General*, 15 FCC Rcd at 155. As a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station’s natural economic market. See *Must Carry Order*, 8 FCC Rcd at 2977, see also *Amendment of Section 76.51 (Orlando-Daytona Beach-Melbourne, and Cocoa, Florida)*, 102 FCC 2d 1062, 1070 (1985) (“We believe that television stations actually do or logically can rely on the area within their Grade B contours for economic support.”).

<sup>29</sup> Petition at 6.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> See *Avenue Order*, 11 FCC Rcd at 4811, see also *Smith Broadcasters of Santa Barbara Limited Partnership*, 10 FCC Rcd 9447 (1995) (“*Smith Broadcasters*”).

<sup>32</sup> See *Ventura Cablevision*, 10 FCC Rcd 9474, 9482 (1995).

<sup>33</sup> *Id.*, 10 FCC Rcd at 9483. In *Ventura Cablevision*, the Bureau deleted the communities of Santa Paula, Camarillo, Ojai, and Somis from KDOC’s television market. The Bureau also modified the television markets of stations KRCA and KZKI.

<sup>34</sup> Petition at 8. Avenue Cable submits the programming logs from KDOC for the weeks of April 23, April 30 and May 7, 2000 as Exhibit F and includes a copy of the April 16-22, 2000 edition of the TV Star as Exhibit G.

<sup>35</sup> Opposition at n.2.

<sup>36</sup> Petition at 8. Avenue Cable attaches a copy of KDOC’s Grade B coverage map from the Commission’s station files as Exhibit H.

<sup>37</sup> Opposition at 2-3.

already carries two television stations, KMEX-TV and KVEA(TV), which do not provide Grade B coverage to the communities at issue.<sup>38</sup> Moreover, KDOC maintains that, once it commences operations from Mount Wilson, it may provide an actual Grade B or better service to the Ventura Communities.<sup>39</sup> Avenue Cable responds that there are legitimate historical and programming reasons to carry KMEX-TV and KVEA(TV) including that they broadcast local news and are the only two Spanish language stations to serve Ventura County.<sup>40</sup> Further, Avenue Cable maintains that there is no need to defer Commission action in order to obtain “actual” Grade B contour studies because Grade B predictions are the principal means used by the Commission to determine signal coverage. Avenue Cable points out that KDOC could have but did not submit a Longley-Rice prediction map which would have provided a more detailed indication of KDOC’s signal coverage.<sup>41</sup>

16. Based upon the record with regard to KDOC’s provision of local service, we do not believe that KDOC satisfies any of the local coverage elements we find important in our market modification analysis. We have previously recognized that the topography of the area and the distances involved result in different viewing patterns between the western and eastern portions of Ventura County.<sup>42</sup> In addition, KDOC does not dispute the programming logs introduced into the record. Further, it is evident from KDOC’s Grade B contour map that the station’s Grade B contour does not encompass the communities at issue here. KDOC’s pending commencement of operations from the Mount Wilson site is not in itself conclusive of local service as there are other television stations currently transmitting from that site which are not carried by Avenue Cable.<sup>43</sup>

17. With regard to the third statutory factor, local programming by other television stations, Avenue Cable states that it carries 13 television stations that serve the Ventura Communities, including a station which is licensed to Ventura.<sup>44</sup> Avenue Cable maintains that these stations provide 29 hours of local news each weekday and that KABL, its public, educational, and governmental access station broadcasts a full schedule of locally-originated programming.<sup>45</sup> KDOC does not dispute Avenue Cable’s factual claim regarding local programming by other stations but denies the relevance of this statutory factor in the context of a system operator’s petition to delete communities from a station’s market.<sup>46</sup> Thus, we believe that Avenue Cable’s carriage of other local television stations provides support for the action requested.

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<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> Reply at 7.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> See discussion at ¶ 13, *supra*.

<sup>43</sup> See *Avenue Order*, 11 FCC Rcd at 4810 (Order deleted communities in western portion of Ventura County from television market of KWHY; KHSC-TV and KTBN-TV cited as two stations transmitting from Mount Wilson which are not carried by Avenue Cable).

<sup>44</sup> Petition at 9-10. These stations include: KCBS-TV (CBS, Los Angeles); KEYT-TV (ABC, Santa Barbara); KNBC (NBC, Los Angeles); KTLA (Ind., Los Angeles); KABC (ABC, Los Angeles); KADY-TV (Ind., Oxnard); KCAL-TV (Ind., Los Angeles); KCET (PBS, Los Angeles); KTTV (Fox, Los Angeles); KCOP (UPN, Los Angeles); KMEX-TV (Univision, Los Angeles); KVEA (Telemundo, Corona); and KJLA (Ind., Ventura).

<sup>45</sup> Petition at 10. Avenue Cable cites the affidavit of its Vice President and General Manager attached to its petition.

<sup>46</sup> Opposition at 10.

18. With regard to the fourth statutory factor, viewership in cable and noncable households, Avenue Cable provides evidence which indicates that KDOC has no measurable audience in the cable communities at issue.<sup>47</sup> Avenue Cable states that an analysis of viewership in Ventura County was conducted by Media Strategies which concludes that KDOC has no cable or noncable viewership in Ventura County and that the television station is not listed by Nielsen for Ventura County.<sup>48</sup>

19. After carefully considering each statutory factor, as well as other relevant considerations, we find that the modification requested by Avenue Cable should be granted. Based upon topography and distance, we believe that the communities at issue are sufficiently removed from KDOC that they ought not to be deemed part of the station's television market for mandatory carriage purposes. In fact, the circumstances of this case fall squarely within the *Avenue Order*, *Ventura Cablevision*, and *Smith Broadcasters* decisions in which the Commission recognized different viewing patterns between the western and eastern portions of Ventura County as a result of the rugged terrain and distances.<sup>49</sup> KDOC argues that those cases can be distinguished because they were decided at a time when an ADI defined television markets and, within the Los Angeles ADI, Ventura County was divided into western and eastern portions, whereas the Los Angeles DMA is viewed as a unified whole.<sup>50</sup> Thus, KDOC maintains that the primary factual basis for those decisions has been eliminated because Nielsen's classification of the Los Angeles DMA does not bifurcate Ventura County. We disagree. Although the Commission took note of the bifurcation of the county, those decisions were based upon an analysis of each of the statutory factors and other relevant considerations with respect to the evidence presented. In each case, the Commission found that the Santa Monica Mountains posed a significant natural barrier which, for certain communities, results in different viewing patterns, distant signals, and lack of local service. The statutory factors for evaluation of market modification requests have not changed. In the instant case, we have analyzed the modification request on the basis of the evidence in the record and found that its grant advances our goal of ensuring that "television stations be carried in the areas which they service and which form their economic market."<sup>51</sup>

#### IV. ORDERING CLAUSES

20. 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 filed by Avenue TV Cable Service, Inc. **IS GRANTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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<sup>47</sup> Petition at 11.

<sup>48</sup> *Id.*

<sup>49</sup> See discussion at ¶ 13, *supra*.

<sup>50</sup> Opposition at 4. See *Modification Final Report and Order*, 14 FCC Rcd 8366, Appendix B.

<sup>51</sup> See H.R. Rep. 102-628, 102d Cong., 2 Sess. 97 (1992).



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