

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

In the Matter of:)	
)	
CoxCom, Inc. d/b/a Cox Communications Phoenix)	CSR-6637-A
)	
Petition For Modification of the Television Market of Television Station KMOH (TV), Kingman, Arizona)	

MEMORANDUM OPINION AND ORDER

Adopted: August 2, 2005

Released: August 9, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. CoxCom, Inc., d/b/a Cox Communications Phoenix (“Cox”), operator of cable television systems in the Phoenix, Arizona metropolitan area, filed the above-captioned petition for special relief. Cox seeks to modify the Phoenix, Arizona designated market area to exclude twenty-nine Cox cable communities (“cable communities”)¹ from the television market of KMOH (TV), Kingman, Arizona (“KMOH”) for the purposes of the Commission’s cable television mandatory broadcast signal carriage rules. KMOH filed an opposition to which Cox replied. For the reasons discussed below, we grant Cox’s petition.

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”)*, 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

¹Cox lists the following twenty-nine communities in the Phoenix area which it seeks to exclude from KMOH’s television market: Scottsdale, Carefree, Maricopa, Paradise Valley, Tempe, Phoenix, Mesa, Chandler, Peoria, Youngtown, Sun City, Ahwatukee, Litchfield Park, Sun Lakes, Glendale, Luke AFB, Surprise, Goodyear, Fountain Hills, Gilbert, Apache Wells, El Mirage, Guadalupe, Roadrunner MHP, Buckeye, Casa Grande, Tolleson, Avondale, and Rio Verde, Arizona. Petition at Exhibit A.

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.

(continued...)

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

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

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§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*, 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.*

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

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

(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.

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

⁸*Must Carry Order*, 8 FCC Rcd at n.139 (1993).

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

(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 with a filing fee. The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

III. DISCUSSION

5. In support of its petition to exclude the cable communities in the Phoenix area from the television market of KMOH in Kingman, Arizona, Cox asserts that KMOH fails to meet the above four statutory factors.¹¹ With regard to the first factor, Cox claims KMOH has no history of carriage in the cable communities. Cox explains that since 1988, when KMOH began broadcasting, it had never been carried by Cox or any other cable television system in the Phoenix metropolitan area.¹²

6. Cox further states concerning the second factor, that KMOH does not provide local service to the cable communities. Cox estimates that the cable communities are between 139 and 207 miles from Kingman, with 165 miles the average distance, and explains that there are intervening mountain ranges. According to Cox, KMOH's Grade B contour falls far short of the cable communities. To support this, Cox provides engineering statements based on Longely-Rice analysis. Moreover, Cox claims that KMOH offers no local programming directed to the cable communities. Instead, Cox asserts that KMOH rebroadcasts general interest Spanish language programming carried on commonly-owned station KBEH-TV, which is located in Los Angeles, California, 367 miles from Phoenix. Cox indicates that this programming does not specifically target or serve the local informational needs of Phoenix residents.¹³

7. In response to the third statutory factor, Cox claims that abundant local programming is available from other stations in the Phoenix area. Cox explains that it carries thirteen local television stations, and two of these are Spanish language stations.¹⁴

8. In addressing the fourth factor, Cox asserts that KMOH does not have reportable ratings in cable and noncable households in the cable communities, and is not listed in the television schedules of Phoenix's main newspapers. Finally, Cox states that several nationally recognized market classifications, such as the U.S. Office of Management and Budget's Metropolitan Statistical Area classification standard, place KMOH and the cable communities in different markets.¹⁶

9. In its opposition, KMOH claims it should not be excluded from the cable communities

¹⁰47 C.F.R. §76.59(b).

¹¹Petition at 2-3.

¹²*Id.* at 3-4.

¹³*Id.* at 5-9, and Exhibits A and D.

¹⁴*Id.* at 9-10.

¹⁶*Id.* at 13-14.

based on its analysis of the four statutory criteria. Regarding the first factor, KMOH indicates that it has not been historically carried by cable television systems serving the cable communities, but this should not be held against it because it is a new station.¹⁷ KMOH claims that its lack of historical carriage is partly attributable to the fact that until recently it was a satellite of a Maricopa County (the same county where the cable communities are located) television station.¹⁸ KMOH further asserts that it should be considered a new station because it has a new format.¹⁹

10. With regard to the second statutory factor, KMOH admits that it is located a substantial distance from the cable communities and its Grade B signal does not reach them.²⁰ However, KMOH asserts that the Commission has held that Grade B coverage is not an absolute measure of a station's market, and that the Commission has indicated that similar distances separating a station and cable system are not too great to be part of same market.²¹

11. Further, according to KMOH, considerations of distance and lack of Grade B coverage are outweighed by KMOH's substantial local public affairs and children's programming that address the interests of the cable communities.²² KMOH explains that it broadcasts entirely in Spanish,²³ and that its programs include five hours a week of a locally produced public affairs program,²⁴ and over thirty hours of children's programs. KMOH includes statements from community representatives supporting its local and children's programming.²⁵ This programming, KMOH states, would add to the diversity of the programming already carried by Cox in the cable communities since Cox only carries one other full power Spanish TV station in its basic tier.²⁶

12. Concerning the third statutory factor, namely, whether other television stations provide coverage of local news and issues, KMOH claims that it offers unique local programming that is not available on other stations.²⁷ However, KMOH states that the Commission has decided that this factor should not be used against a station seeking to defend itself from being excluded from a market. Thus, according to KMOH, "this criterion should either be credited in favor of KMOH, or at least, not counted against the station."²⁸

13. With respect to the fourth statutory factor, viewing patterns in the cable communities,

¹⁷Opposition at 23.

¹⁸*Id.* at iv.

¹⁹*Id.* at 15.

²⁰*Id.* at iv.

²¹*Id.* at 12-13, citing, e.g., *Mid-State Television, Inc.*, 16 FCC Rcd 5525, 5530 (CSB 2001), and *Lone Pine Television*, 18 FCC Rcd 23955 (MB 2003).

²²*Id.* at 23.

²³*Id.* at 2.

²⁴*Id.* at 5-6.

²⁵*Id.* at 7-8 and 10-12.

²⁶*Id.* at iii and 18.

²⁷*Id.* at iii.

²⁸*Id.* at 16-17.

KMOH claims that “Cox is in error when it argues that KMOH-TV has no ratings. In fact, KMOH actually has ratings....”²⁹ Further, KMOH argues that its ratings, or lack thereof, have no significance because it is a specialty station as well as a new station.³⁰ KMOH asserts that it is a specialty station because of its Spanish language and children’s programming, and that the Commission has recognized that specialty stations typically attract limited audiences.³¹ Likewise, KMOH argues that ratings are not relevant because it is a new station, and it can take years for a new station to build viewership.³²

14. KMOH also argues that if Cox’s petition were granted to exclude the cable communities from KMOH’s market that this would have an anti-competitive effect protecting Cox’s interests contrary to the public interests. According to KMOH, “Cox acts as the exclusive advertising sales agent for many of the Hispanic channels carried on its cable systems” and if KMOH is unable to be carried in the cable communities, “Cox would be eliminating a new full-power Hispanic television station from the Phoenix market that would compete for Hispanic advertising dollars.”³³ KMOH, moreover, argues that granting Cox’s petition would severely injure KMOH-TV economically, eliminate a competitor to Cox, and result in the loss of Spanish language local and children’s programming.³⁴ Finally, KMOH claims that since it has not requested carriage on Cox’s cable systems in the cable communities, there is no actual cable carriage dispute, and, therefore, KMOH should not be subject to a market modification proceeding.³⁵

15. In its reply, Cox asserts that KMOH basically concedes that the statutory factors support excluding the cable communities from the station’s market. Cox explains that “KMOH admits, as it must, that it is separated by ‘substantial distance’ from and does not place a Grade B signal over Maricopa County, that it has only ‘slight’ ratings in the County; that it has no history of carriage there, and that Cox already carries truly local broadcasters....”³⁶

16. Regarding historical carriage, Cox again claims that KMOH has never been carried by a cable television system in the Phoenix area. Cox argues that this indicates KMOH is in a separate market.³⁷ Cox states that KMOH’s failure to provide the cable communities with a Grade B signal, and the distance and geographic barriers, such as mountains, separating the two parties reflect that they are in different markets.³⁸ Cox further asserts that “KMOH fails to broadcast any programming specifically targeted to the viewers in the Cox Communities. Instead, KMOH, by its own acknowledgment, broadcasts general interest Spanish-language programming.”³⁹ Cox repeats its argument that KMOH broadcasts the same programming as commonly-owned KBEH-TV in Los Angeles, California, except for a one hour public affairs program broadcast Monday through Friday. This one hour program, according to

²⁹*Id.* at 14 and Exhibit A, attachment 10.

³⁰*Id.* at 23.

³¹*Id.* at 13-14.

³²*Id.* at 14-15

³³*Id.* at iii and 19-21,

³⁴*Id.* at iii, 4 and 21-22.

³⁵*Id.* at iv.

³⁶Reply at 4.

³⁷*Id.* at 16-17.

³⁸*Id.* at 13-15.

³⁹*Id.* at 8.

Cox, is a general interest program targeted to the Hispanic community throughout the Phoenix DMA and its nexus to the cable communities “is extremely attenuated at best.”⁴⁰ Further, Cox maintains that even if this program were a local program in terms of the cable communities, five hours a week of local programming is insufficient to outweigh the other statutory factors that weigh against KMOH.⁴¹ With regard to cases that KMOH cited in support of its position, Cox claims that, in general, KMOH misstates these cases.⁴²

17. Concerning KMOH’s claim that it has ratings in the cable communities, Cox replies that the station “has no hope of showing any appreciable off-air viewership because its signal cannot be received by residents in the Cox Communities. To the extent KMOH garners any ratings at all, they likely can be attributed to KMOH’s recent carriage by one of the national DBS operators under the ‘carry one, carry all’ regime, and even then KMOH has not managed above a .30 rating.”⁴³ Cox further argues that KMOH’s carriage by a direct broadcast satellite carrier “in no way demonstrates a market nexus between Kingman, Arizona and the Cox Communities.”⁴⁴

18. Finally, Cox states that there is no legal requirement that there be a demand by a television station for mandatory carriage before a cable operator, such as Cox, may petition to modify a market. Cox, moreover, asserts that KMOH’s claim that its business plans would be adversely affected if the cable communities were excluded from its television market is not relevant.⁴⁵

19. The first statutory factor that we are required to address is whether the television station has been carried on cable systems in the cable communities. Based on evidence submitted by the parties, KMOH has no history of carriage in the cable communities or on nearby cable television systems. However, evidence has also been presented that KMOH is a specialty station. Therefore, since specialty stations, such as foreign language stations, often have a limited audience, we do not assign much weight to KMOH’s lack of carriage by cable systems in and near the cable communities.⁴⁶

20. With regard to coverage or local service by KMOH, we find that there is no coverage. Maricopa County, where the cable communities are located, is entirely outside KMOH’s Grade B contour,⁴⁷ and KMOH admits that its Grade B contour does not extend to the cable communities. Cox, moreover, submitted a Longely-Rice study that reflects the cable communities do not receive KMOH’s off the air signal.⁴⁸ Further, it is clear that the station is geographically distant from the cable

⁴⁰*Id.* at 8-9 and n.24.

⁴¹*Id.* at 10-12.

⁴²*Id.* at 4-7. Cox states KMOH misrepresented the holdings of stated several cases, and refers to *Lone Pine Television*, 18 FCC Rcd 23955 (MB 2005), where KMOH claims the Media Bureau indicated that separation between a station and cable systems of 175 to 200 miles was not too great to be in same market. Cox claims that this decision actually granted a cable operator’s market modification request based on facts similar to its situation. Cox also cited *Pulitzer Broadcasting*, 10 FCC Rcd 3475 (CSB 1995). Cox explained that in this case, although there was lack of Grade B coverage, the other statutory factors were met, a factual situation, according to Cox, absent in KMOH’s situation.

⁴³Reply at 15. Cox explains that under “carry one, carry all,” if a Direct Broadcast Satellite (“DBS”) operator carries one television station located in the Phoenix DMA, it is required to carry all other television stations in the same DMA. *Id.* at 17.

⁴⁴*Id.* at 17.

⁴⁵*Id.* at 3.

communities, from approximately 139 to 207 miles, with intervening mountains. Relevant legislative history notes that when modifying a market, 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 a part of the station's market.⁴⁹ The distance and terrain factors in this case tend to explain the history of non-carriage of KMOH in the cable communities, and strongly indicate that the communities served by Cox are too distant to properly be part of KMOH's television market.

21. KMOH cites Commission decisions purportedly in support of its opposition to Cox's petition regarding the issues of distance and lack of Grade B contour. In one decision, *Mid-State Television, Inc.*,⁵⁰ KMOH claims that the Commission found that Grade B coverage is not an absolute measure of a station's market, but is merely one indicator of local service.⁵¹ This decision also stated, however, that where a station lacked historical carriage "the Commission has recognized the difficulty of applying the statutory factors to stations attracting a small audience share." The decision further stated "[i]n such situations, the Commission has focused more heavily on basic geography and technical features, mileage and Grade B contour to provide a clearer picture... of the market boundaries of the station."⁵² The Commission concluded in *Mid-State Television, Inc.* that the station and cable communities were in the same market largely because of Grade B coverage, proximity (28 miles separation), and no terrain obstacles.⁵³ The facts in KMOH's situation are notably different.

22. In another decision, *Lone Pine Television*,⁵⁴ KMOH states that the Commission determined distances of 175 to 200 miles between a station and cable systems "would not be too distant to be part of the market."⁵⁵ KMOH mischaracterizes our decision in *Lone Pine Television*. The decision pointed out that the television stations "are geographically distant from the [cable] communities at 200 and 175 miles, respectively," and based on facts similar to KMOH's situation, granted the cable operator's request to modify its market to exclude the television stations.⁵⁶ KMOH also cites *WLNY-TV, Inc. v. FCC*.⁵⁷ KMOH explains that a U.S. Circuit Court held in this case that the Commission "should consider Grade B contour, distance and political boundaries and other unenumerated factors to limit the exclusion of stations, not to enhance their exclusion."⁵⁸ The Commission routinely relies on distance and

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⁴⁶*Time Warner Entertainment v. KXLA (TV), Rancho Palos Verdes, California*, 18 FCC Rcd 4990, 4995 (2003).

⁴⁷*Warren Communications News, Television and Cable Factbook 2005*, p. A-101.

⁴⁸Petition at 5-7 and Exhibit D.

⁴⁹H. R. Rep. No. 628, 102d Cong., 2d Sess 97-98 (1992).

⁵⁰16 FCC Rcd 5525 (2001).

⁵¹Opposition at 12.

⁵²16 FCC Rcd at 5530-1 (citation omitted).

⁵³*Id.* at 5531-2.

⁵⁴18 FCC Rcd 23955 (2003).

⁵⁵Opposition at 13.

⁵⁶18 FCC Rcd 23964-5.

⁵⁷163 F. 3d 137 (2d Cir. 1998).

⁵⁸Opposition at 13.

analysis of a station's Grade B signal coverage in most if not all market modification proceedings regardless of whether the results might enhance inclusion or exclusion of a station from a market. However, as discussed in *WLNY*, distance and Grade B contour are only two of many types of evidence reviewed by the Commission. Our analysis herein takes into account all of the relevant factors placed in the record. We do not believe that our consideration of distance and Grade B contour as part of our analysis is contrary to the *WLNY* decision.

23. KMOH claims that considerations of distance and lack of Grade B coverage are outweighed by its Spanish language, local public affairs, and children's programming.⁵⁹ Section 614 of the Communications Act provides that the Commission should consider as one factor whether a station provides "local service to such community."⁶⁰ The Commission's *Must Carry Order* implementing this provision stated that "the Commission shall afford particular attention to the value of localism by taking into account such factors as... local service to the community." Further, "[t]o show that the station provides... local service... could be demonstrated by program logs or other descriptions of local program offerings."⁶¹ In other words, a station's broadcast of local programming, namely, programming that has a distinct nexus to a cable community, is evidence of local service.⁶² The programs that KMOH cites in its program schedule⁶³ appear to be primarily general interest programming not specifically focused on the cable communities. For example, programs such as "Gadget Boy's Adventures in History," "Jaycee & the Wheeled Warriors," "Mas Musica," "Fiesta Mexicana," and "Fiesta Latina" are listed. Further, KMOH seems to concede that this is general interest programming and also states that it broadcasts "the same entertainment and children's programming" as KBEH-TV,⁶⁴ which is located in Oxnard, California, on the Pacific Ocean north of Los Angeles.⁶⁵ This indicates that the overwhelming majority of KMOH's programming is directed to a multi-state audience rather than the specific cable communities.

24. KMOH stresses that its five hours per week Spanish language program *El 6 Para Ti* is only broadcast on KMOH-TV, and that this is a local public affairs program that is locally produced and "specifically addresses the problems, interest and needs of the Hispanic families and Hispanic children... of its service area, including the Cox Communities."⁶⁶ In support of this statement, KMOH provides a "Master Guest List" of speakers on the program. While the submitted "Master Guest List" includes examples of programming allegedly addressed to the cable communities, we are unable to determine from this list the duration of a guest speaker's appearance on a program making it difficult to quantify the amount of programming targeted at the cable communities. Further, we are generally unable to ascertain whether the subject matter is of general interest or specifically directed to the cable communities. Other programs are clearly not directed to the cable communities, for example, a program with the Mayor of

⁵⁹*Id.* at 2, 5-8, 10-12 and 23.

⁶⁰47 U.S.C. §534(h)(1)(C)(ii)(II).

⁶¹*Must Carry Order*, 8 FCC Rcd at 2976-7.

⁶²*Mid-State Television, Inc.*, 16 FCC Rcd 5525, 5530 (2001).

⁶³Opposition at Exhibit B.

⁶⁴*Id.* at 6 n.15. KMOH seems to agree that most of its programming is general interest programming by stating "Cox chides KMOH-TV that its general intent [*sic*] Spanish programming is not worthy of credit, but lauds its carriage of general Spanish programming...."

⁶⁵*Warren Communications News, Television and Cable Factbook 2005*, p. A-249.

⁶⁶Opposition at 5-6, n.15, and Exhibit D.

Kingman (where KMOH is licensed) discussing progress in Kingman.⁶⁷ In any event, the programming directed to the cable communities appears to be substantially less than the five hours a week claimed by KMOH. We do not find that this limited amount of programming contained in this one television show outweighs KMOH's considerable shortcomings in terms of distance from the cable communities and lack of Grade B coverage to establish local service.⁶⁸

25. The third statutory factor 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."⁶⁹ We believe that Congress did not intend this factor to bar a request to modify a DMA when other stations could be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station's market modification claim where it could be shown that other stations do not serve the communities at issue.⁷⁰ Thus, when considering the exclusion of a station from a market, the Commission takes into consideration whether other stations offer local programming. We find that a number of television stations in the Phoenix area provide local service to the cable communities.⁷¹

26. With regard to the fourth statutory factor, namely, evidence of viewing patterns, KMOH claims that it has ratings in the Phoenix area.⁷² However, the rating sheet that KMOH provides reflects no ratings for most of its programming and slight ratings for the remainder.⁷³ The Commission, though, has recognized that specialty stations, such as foreign language stations, typically attract limited audiences, and that this must be taken into account in determining a station's rights regarding cable carriage. Thus, we do not afford much weight to KMOH's low or non-existing ratings.⁷⁴

27. After reviewing the record in this proceeding, we conclude that none of the statutory factors weigh in favor of retaining the cable communities in KMOH's market. Although we assign little weight to factors one (historic carriage) and four (viewing patterns), these factors still weigh in favor of modifying KMOH's market. The third factor, service to the communities by other stations, clearly weighs in favor of Cox's requested modification. Finally, the second factor, coverage or local service, again weighs in favor of market modification. It is undisputed in this proceeding that KMOH is unable to

⁶⁷*Id.* at Exhibit D.

⁶⁸KMOH cites *Pulitzer Broadcasting Co.*, 10 FCC Rcd 3475, 3478 (1995), for the proposition that local programming was sufficient to show a station's service to a community even when it did not provide Grade B signal coverage. Opposition at 12. While we agree with this statement in general, KMOH has not demonstrated that its level of local programming directed at the cable communities warrants such a finding in this instance. Furthermore, *Pulitzer* did not rely on this proposition solely. It went on to find that "[i]n any event, we believe the other factors [station met three of the four statutory factors] weigh heavily in favor of granting the [station's] petition."

⁶⁹*Supra* note 5.

⁷⁰*See, e.g., Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997); and *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995).

⁷¹*Supra* note 47 at p. A-102 through A-120.

⁷²Opposition at 14 and Exhibit A, attachment 10.

⁷³*Id.* at Exhibit A, Attachment 10.

⁷⁴*See, e.g., Lone Pine Television*, 18 FCC Rcd 23955, 23964 (2003); and *North Central Cable Communications*, 10 FCC Rcd 4381, 4383 (1995).

provide Grade B coverage to any of the cable communities. With regard to local service, we acknowledge that KMOH does provide a limited amount of programming targeted to the cable communities. However, we cannot conclude that this limited programming is sufficient by itself to overcome the weight of the other factors favoring modification.

IV. ORDERING CLAUSES

28. 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-6637-A), filed by CoxCom, Inc., **IS GRANTED** to the extent indicated herein. The cable communities where Cox operates cable television systems are excluded from the television market of station KMOH-TV, Kingman, Arizona.

29. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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Media Bureau