

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

In the Matter of:)	
)	
Frontiersvision Operating Partners, L.P. d/b/a)	CSR-5702-A
Adelphia Cable Communications)	
)	
For Modification of the Boston,)	
Massachusetts DMA)	
)	
Norwell Television, LLC v. Frontiersvision)	CSC-386
Operating Partners, L.P. d/b/a Adelphia Cable)	
Communications)	
)	
Petition for Order to Show Cause)	

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2001

Released: October 4, 2001

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

I. INTRODUCTION

1. Frontiersvision Operating Partners, L.P. d/b/a Adelphia Cable Communications (“Adelphia”) filed the above-captioned petition for special relief seeking to modify the Boston, Massachusetts DMA relative to television broadcast station WWDP (Ch. 46), Norwell, Massachusetts (“WWDP”). Specifically, Adelphia requests that WWDP be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its Gloucester and Amesbury, Massachusetts cable systems.¹ An opposition to this petition was filed on behalf of Norwell Television, LLC, licensee of WWDP to which Adelphia has replied.² In addition, WWDP filed a petition for order to show cause for Adelphia’s alleged failure to comply with two Commission Orders granting must carry complaints filed by WWDP which required Adelphia to begin carriage of WWDP by May 20, and June 19, 2001, respectively, on the Gloucester and Amesbury cable systems.³ This petition will be consolidated with our action herein.

¹Adelphia’s Gloucester cable system also serves the communities of Rockport, Essex, and Manchester. Adelphia’s Amesbury cable system also serves the communities of Salisbury, Merrimac, and South Hampton. Petition at 1.

²WWDP filed a motion to accept a supplement to the record to which Adelphia filed a motion to strike. Given that WWDP does not present any information not already discussed in the normal pleading cycle, we will not accept this pleading as part of the record.

³The must carry complaints to which WWDP refers are *Norwell Television, LLC v. Adelphia Communications Corporation*, CSR-5613-M, DA 01-442 (released February 16, 2001) (“*Gloucester Order*”), and (continued...)

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.⁴ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁵ 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.⁶

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.⁷

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;

(...continued from previous page)

Norwell Television, LLC v. Frontiersvision Operating Partners, L.P., a subsidiary of Adelphia Communications Corporation, CSR-5642-M, DA 01-1267 (released May 23, 2001)(“*Amesbury Order*”). We note that in the *Gloucester* proceeding, WWDP’s complaint also referenced Adelphia’s cable systems serving Martha’s Vineyard and Tisbury, Massachusetts. However, neither of these systems were included in Adelphia’s petition for modification or WWDP’s petition for show cause.

⁴8 FCC Rcd 2965, 2976-1977 (1993).

⁵Section 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. 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*”).

⁶For a more complete description of how counties are allocated, see Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁷47 U.S.C. §534(h)(1)(C).

(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;

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁸

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.⁹

With respect to deletions of communities from a station's market, the legislative history of the 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.¹⁰

⁸*Id.*

⁹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

¹⁰*Id.* at 97-98.

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.¹¹

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:

(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 relating 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.¹²

(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.¹³

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

¹¹*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

¹²The 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.

¹³47 C.F.R. §76.59(b).

Modification Final Report and Order also provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

A. Modification petition

5. The issue before us is Adelphia's request to exclude WWDP from mandatory carriage in its cable systems' communities. Adelphia's petition for modification was filed subsequent to must carry complaints filed by WWDP seeking carriage on Adelphia's Gloucester and Amesbury cable systems. Although WWDP met the definition of a "local commercial station" in those proceedings and its complaints were granted, our actions therein did not preclude Adelphia from filing the instant petition. Except for the community of South Hampton, New Hampshire, all of Adelphia's communities are located in Essex County, Massachusetts. The community of South Hampton is located in Rockingham County, New Hampshire. Both counties are deemed to be part of the Boston, Massachusetts DMA. WWDP is licensed to Norwell, Massachusetts, which is also considered to be part of the Boston DMA. The market change 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. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that Adelphia's deletion petition appears to be a legitimate request to redraw DMA boundaries to make them congruous with market realities.

6. In support of its request, Adelphia argues that although its systems and WWDP are located within the same DMA, WWDP is geographically removed from the subject communities and it fails to present any programming tailored to the needs and interests of the subject communities' residents.¹⁴ Adelphia notes that in a factually similar case, the Commission granted a modification petition to exclude WWDP's predecessor, WBPX, from the communities served by Greater Worcester Cablevision, finding that the station did not have a local nexus to the communities at issue.¹⁵ Adelphia submits that the facts are similar here and requests that it be relieved of any obligation to carry WWDP on its systems.¹⁶

7. Adelphia states that WWDP has no history of carriage on either the Gloucester or Amesbury system.¹⁷ Adelphia notes that, historically, WWDP has been unable to deliver a signal of adequate quality to Adelphia's headends and therefore has not been a qualified "local commercial television station" for must carry purposes.¹⁸ Further, Adelphia points out that to the best of its knowledge, and

¹⁴Petition at 1.

¹⁵See *Greater Worcester Cablevision, Inc., et al.*, 13 FCC Rcd 22220 (1998).

¹⁶Adelphia notes that a must carry complaint filed by WWDP for carriage on the Gloucester system (CSR-5613-M) was granted, but states that the grant is not in effect because WWDP has not yet delivered a signal of adequate strength to the system's principal headend. Adelphia states that it will maintain the status quo regarding carriage on this system pending the outcome of its modification petition. Adelphia notes further that, at the time its modification petition was filed, the Cable Services Bureau had not yet released a decision in a separate must carry complaint regarding the Amesbury system (CSR-5642-M). Adelphia states that, in any event, grant of the subject request would moot both of WWDP's complaints.

¹⁷Petition at Exhibit A.

¹⁸See 47 U.S.C. §534(h)(10)(B)(iii).

according to editions of the *Television and Cable Factbook*, no other nearby cable systems, including several geographically closer to WWDP, carry the signal.¹⁹

8. Second, Adelphia states that not only is WWDP geographically remote from its systems, but its predicted Grade B contour fails to encompass the communities.²⁰ Adelphia notes that in *Greater Worcester* the Bureau found that lack of Grade B contour coverage was an important factor in determining that the station did not provide local service to the communities.²¹ Adelphia argues that the 1992 Cable Act's modification provisions states that "the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market."²² Adelphia states that WWDP's transmitter is located 45-58 miles from its systems' headends with the distance to the individual communities even further.²³

9. Adelphia points out that WWDP and the communities are further separated by geographic features such as the Boston Harbor and the City of Boston and one of the subject communities, South Hampton, is located in a separate state from WWDP.²⁴ Adelphia states that the Commission has repeatedly stated that natural boundaries, such as bodies of water, as well as political boundaries such as state borders, are factors that further separate communities from television stations' markets.²⁵ Adelphia asserts that this geographic attenuation results in a lack of business and economic connections as well, including shopping and labor patterns, between WWDP's market and the subject communities.²⁶ In addition, Adelphia states that there is no history of advertisements by WWDP in the communities, either through Adelphia's own cable classifieds or the local newspapers serving the Amesbury area and the Cape Ann area where the Gloucester communities are located.²⁷

10. Third, Adelphia argues that WWDP does not air any local news, sports or community interest programming targeted to its subscribers, but rather offers generic Spanish-language programming which is affiliated with the Telemundo network.²⁸ Adelphia argues that this programming is general in nature and not specifically geared to the communities at issue and that the Commission has rejected general interest programming as insufficient to satisfy the DMA local programming factor.²⁹ In any event,

¹⁹Petition at Exhibit B.

²⁰*Id.* at Exhibit C.

²¹*Greater Worcester*, 13 FCC Rcd at 22228.

²²House Report at 97.

²³Petition at Exhibits E & F.

²⁴*Id.* at 8.

²⁵*See e.g., Adelphia Cablevision Associates, L.P.*, 14 FCC Rcd 7686 (1999); *Rifkin/Narrangansett 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 12262 (1997); and *Comcast of Central New Jersey*, 13 FCC Rcd 1656 (1997).

²⁶Petition at 8-9.

²⁷*Id.* at 10.

²⁸*Id.* at Exhibit I. Adelphia notes that this programming includes soap operas, movies, international news and soccer games rebroadcast from other countries. *Id.* at 12.

²⁹*Id.* at 12. *See also TCI Cablevision of New Mexico, Inc.*, DA 01-339 (released February 9, 2000) at ¶82.

Adelphia maintains that the local stations it currently carries provide an abundance of local programming to its subscribers.³⁰ Finally, Adelphia points out that, according to a marketing and research firm, WWDP has no viewership in the communities.³¹ Adelphia states that the Bureau has found that the absence of viewing lends support for requested market exclusions.³²

11. In opposition, WWDP argues that Adelphia's attempt to exclude WWDP from carriage on its systems at this late date amounts to an abuse of the Commission's processes. WWDP asserts that the exclusion of Adelphia's communities from WWDP's market would deprive those communities of the diversity of programming envisioned by Congress and the Commission. WWDP states that it began broadcasting in May 1987, left the air three years later and remained silent until December 1996. Since the present licensee, Norwell Television, acquired the station, WWDP states that it has worked diligently to improve the station's programming and its relationship with cable system operators.³³ Although WWDP concedes that its market share is small in comparison to the large, network-affiliated stations which dominate the Boston DMA, it states that it is confident that both its market share and its importance to viewers in the market will increase dramatically if it is afforded the opportunity.³⁴ WWDP maintains that this is because Hispanics are rapidly growing as a significant population base in the Boston DMA and WWDP is one of only two television stations in the Boston market that broadcasts primarily Spanish-language programming.³⁵ WWDP argues that as a small independent station it relies heavily on cable carriage in order to reach its viewers. WWDP states that if it fails to retain its carriage rights in its own DMA it cannot adequately reach the Hispanic viewers in their market and they, in turn, would be deprived of a programming source directed to their needs and interests.

12. In reply, Adelphia points out that the Bureau recently released a decision which granted the exclusion of New Hampshire communities, including several in Rockingham County, from WWDP's market.³⁶ Adelphia argues that the decision applied in *Metrocast* should be applied here for the same reasons. Adelphia states that at no point does WWDP attempt to refute the showings made in the petition, but instead argues against application of several statutory factors, such as lack of viewership, or ignores other factors, such as WWDP's lack of carriage on nearby systems. Adelphia notes that WWDP provides no specifics to support such statements that its programming is of local interest in the subject communities.³⁷

13. Adelphia argues that the Communications Act, its legislative history, and numerous Commission and Bureau decisions make it clear that a station's carriage rights are not set in stone and that the market modification process can result in either additions to or exclusions from a station's DMA.³⁸ Specifically, Adelphia states that the legislative history indicates that the market modification procedures

³⁰Petition at 14.

³¹*Id.* at Exhibit L.

³²See *TCI Cablevision of Colorado*, 11 FCC Rcd 6109, 6115 (1996).

³³Opposition at 2.

³⁴*Id.* at 3.

³⁵*Id.* WWDP states that the other Spanish-language station is WUNI, Worcester, Massachusetts.

³⁶See *Metrocast Cablevision of New Hampshire LLC*, 16 FCC Rcd 5244 (2001) ("*Metrocast*").

³⁷Reply at 4.

³⁸*Id.*

also “reflect a recognition that the Commission may conclude that a community with a station’s [DMA] may be so far removed from the station that it cannot be deemed part of the station’s market.”³⁹

14. Adelphia states that WWDP contradicts itself with regard to the historic carriage factor by first claiming that as a “new” station this factor shouldn’t apply, then stating that it began broadcasting in May 1987. Adelphia contends that WWDP cannot have it both ways and that, in view of the fact that the station initially went on-the-air in 1987, it does not qualify as a “new” station to which this factor would not apply.⁴⁰ In any event, Adelphia states that the Bureau has repeatedly concluded 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.”⁴¹ Adelphia maintains that the fact that no other nearby cable operators carry WWDP and that the subject systems currently carry truly local broadcast stations demonstrate that Adelphia has not singled out WWDP for exclusion. Indeed, Adelphia states that given WWDP’s lack of historic carriage and lack of carriage, grant of the subject request would not disrupt established viewing patterns or deprive WWDP of an existing audience.⁴²

15. Adelphia notes that WWDP does not deny that its Grade B contour falls far short of the subject communities, but instead states that “a station does not have to rely on Grade B coverage to demonstrate that it provides coverage.”⁴³ However, Adelphia points out that the Commission has repeatedly stated that the lack of Grade B coverage is an important factor in the market modification analysis.⁴⁴ In addition, Adelphia states that Commission has previously recognized that lengthy driving times and geographic distances between communities and stations are factors that further attenuate the station from the communities.⁴⁵ While WWDP argues that it is closer to Gloucester than every other station the system carries, other than stations licensed to Boston or Lawrence, Massachusetts Adelphia states that Boston stations make up the vast majority of stations carried by its systems.⁴⁶ Adelphia states that these stations are all located closer than WWDP, have either been historically carried or provide Grade B coverage, have historically delivered a good quality signal and air programming geared to the communities.

16. Adelphia states that WWDP does not offer any specific examples of news, sports or coverage of other events that is targeted to the subject communities, but instead merely argues that it is “confident that its market share and importance to viewers will increase” if afforded the opportunity.⁴⁷ Adelphia notes, however, that the Bureau has stated in a decision where the station made similar claims that “the station’s plans to air ethnic and minority programming in the future are too speculative and as such, do not count in the present market modification analysis.”⁴⁸ Adelphia states that the Bureau

³⁹H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1997)(“House Report”).

⁴⁰*Id.* at 6.

⁴¹*See MediaOne of Los Angeles, Inc.*, 15 FCC RCd 19386, 19398 (2001); and *Rifkin/Narrangansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, 21104 (1996).

⁴²Reply at 8.

⁴³Opposition at 15.

⁴⁴*See Greater Worcester*, 15 FCC Rcd at 22228.

⁴⁵*See Metrocast*, 16 FCC RCd at 5250.

⁴⁶Reply at 10. *See also* Petition at Exhibit A.

⁴⁷Opposition at 3.

⁴⁸*See e.g., TKR Cable Company*, 12 FCC Rcd 3525, 3534 (1996); and *Market Modifications and the New* (continued...)

specifically rejected this claim with regard to WWDP's predecessor, WPBX, in *Greater Worcester*.⁴⁹ In addition, despite WWDP's arguments, Adelphia states that it demonstrated in its petition that, according to the Census figures, the Hispanic population in the communities is miniscule.⁵⁰ In any event, Adelphia argues that the Commission cannot conclude that all Hispanic programming is relevant to all Hispanic residents in a given area, as WWDP claims, any more than it can conclude the same with regard to English programming.⁵¹

17. With respect to the mandatory statutory criteria, we have carefully reviewed the information provided by Adelphia and WWDP in the context of its request. An analysis of this evidence, as it relates to each factor, is provided below.

18. **Historic Carriage.** WWDP originally began operation in May 1987 and was dark between 1990-1996. Despite being on-the-air for 7 of its 14 years, the station has no history of carriage on Adelphia's cable systems. Given the statutory directive, consideration must be given to this factor, bearing in mind that the objective of the Section 614(h) process is to "better effectuate the purposes" of the broadcast signal carriage scheme. Thus, with respect to the question of historical carriage patterns, attention must be paid to the circumstances from which such patterns developed. Some stations have not had the opportunity to build a record of historical carriage for specific reasons that do not necessarily reflect a judgment as to the geography of the market involved. Therefore, the historical carriage factor – to the extent such lack of carriage is reflective of factors outside of the shape of the market – is not by itself controlling in these circumstances because such an implementation of the 1992 Cable Act would, in effect, prevent weaker stations, that cable systems had previously declined to carry, from ever obtaining carriage rights.⁵² In this instance, we note that, along with WWDP, no other stations licensed to the same general vicinity has ever been carried on Adelphia's cable systems, nor, apparently, on any other nearby cable systems. Adelphia's failure to carry other similarly-situated stations indicates a lack of nexus between WWDP and the subject cable communities.

19. **Grade B Coverage/Local Service.** A station's local service to cable communities is one of the relevant factors to consider in this particular case. It is not influenced by the type or age of the station involved or historical carriage. Service may be measured through geographic means: by examining the distance between the station and the cable communities subject to the deletion request and taking into account natural phenomena such as waterways, mountains and valleys which tend to separate communities. A station's broadcast of local programming, which has a distinct nexus to the cable communities, is also evidence of local service.⁵³ Finally, a station's Grade A or Grade B contour coverage is an additional indicator of local service and we will weigh the presence or absence of such technical coverage accordingly.⁵⁴ In the instant proceeding, WWDP does not satisfy any of the local coverage elements we

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York Area of Dominant Influence, 12 FCC Rcd 12262, 12270 (1997).

⁴⁹15 FCC Rcd at para. 19.

⁵⁰Reply at 14. See also Petition at Exhibit I.

⁵¹*Id.* at 15.

⁵²See *Home Link Communications of Princeton, L.P. and ComVideo Systems, Inc.*, 13 FCC Rcd 1578, 1591 (1997).

⁵³See *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818 (1999).

⁵⁴As 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* (continued...)

find important in a market modification analysis. In this case, WWDP cites no examples of any programming specifically directed to the subject communities, but instead contends that its Spanish-language format will provide valuable programming services to the Hispanic residents in the subject communities. We are not convinced that such programming, while of potential general interest, is the kind that suggests that the subject communities are a particular focus of the station or are in any sense served in a manner that establishes a specific market connection. Further, the cable communities in question, which are located in the northernmost tip of Massachusetts next to New Hampshire fall well outside of WWDP's predicted Grade B contour. Indeed, WWDP's Grade B contour appears to reach no further north than Boston.

20. **Carriage of Other Stations.** We also believe that Adelphia's carriage of other local television stations provides support for the action requested. Where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities, the issue of local coverage by other stations becomes a factor to which we will give greater weight than in cases where a party is seeking to add communities. In this case, we find that the communities at issue are currently served by a number of Boston market stations. These market facts, coupled with the distance between the cable system and WWDP, support Adelphia's modification request under the third factor.

21. **Viewership.** Nielsen's *2000 County/Coverage Study* fails to indicate any viewership for WWDP in the counties in which the subject cable communities are located. Despite WWDP being a specialty station, this dearth of viewership is of evidentiary significance when tied with the lack of historical carriage and Grade B coverage.

22. After carefully considering each statutory factor in the context of the circumstances presented here, as well as other relevant information, we grant Adelphia's modification request. Based on geography, we believe that the cable communities herein are sufficiently removed from WWDP that they ought not be deemed part of WWDP's market for mandatory carriage purposes.⁵⁵ According to the legislative history of the 1992 Cable Act, the use of DMA market areas is intended "to ensure that television stations be carried in the areas which they serve and which form their economic market."⁵⁶ Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements.⁵⁷ Moreover, given the evidence as to the lack of Grade B coverage, the lack of viewership in the cable communities at issue, the lack of historic carriage, and the absence of evidence indicating that WWDP provides local programming, we conclude that deletion of Adelphia's cable communities from WWDP's market for mandatory carriage purposes effectuates the purposes of Section 614 of the Communications Act.

B. Petition for Show Cause

23. In view of our decision in the instant petition, the arguments raised by WWDP and Adelphia in reference to the above-described petition for show cause are now moot. Furthermore, we do

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of Section 76.51 Orlando-Daytona Beach-Melbourne, and Cocoa, Florida, Report and Order, 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.").

⁵⁵H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁵⁶*Id.* at 97.

⁵⁷47 U.S.C. §534(h).

not believe, based on the totality of the evidence presented, that the issuance of a forfeiture against Adelphia is warranted at this time. As such, WWDP's petition for show cause will be dismissed.

IV. ORDERING CLAUSES

24. 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-5702-A), filed by Frontiersvision Operating Partners, L.P., d/b/a Adelphia Cable Communications **IS GRANTED**.

25. **IT IS FURTHER ORDERED**, in view of our action herein, that the portion of the Cable Services Bureau's February 15, 2001 grant of WWDP's must carry complaint against Adelphia's Gloucester, Massachusetts cable system (CSR-5613-M) **IS RESCINDED**.⁵⁸

26. **IT IS FURTHER ORDERED**, in view of our action herein, that the Cable Services Bureau's May 22, 2001 grant of WWDP's must carry complaint against Adelphia's Amesbury, Massachusetts cable system (CSR-5642-M) **IS RESCINDED**.

27. **IT IS FURTHER ORDERED**, that the motion for order to show cause filed by WWDP against Adelphia **IS DISMISSED**.

28. These actions are taken pursuant to authority delegated by Section 0.321 of the Commission's rules.⁵⁹

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

⁵⁸The portion of the *Gloucester Order* relative to the Martha's Vineyard and Tisbury, Massachusetts cable systems remains in effect.

⁵⁹47 C.F.R. §0.321.