

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

In the Matter of:	)	
	)	
Mediacom California LLC	)	CSR-6139-A
	)	
For Modification of the Los Angeles, California DMA	)	
	)	
Rancho Palos Verdes Broadcasters, Inc.	)	CSR-6088-M
v.	)	
MediaCom LLC	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 31, 2003**

**Released: August 6, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom California LLC (“Mediacom”) 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, Mediacom requests that the seventeen California communities listed below (the “Communities”)<sup>1</sup> be excluded from the market of KXLA, for purposes of the cable television mandatory broadcast signal carriage rules. Rancho Palos Verdes Broadcasters, Inc. (“Rancho”), licensee of KXLA, filed an opposition to the petition to which Mediacom replied. In *Rancho Palos Verdes Broadcasters, Inc. v. MediaCom LLC*,<sup>2</sup> we granted a must carry complaint filed by Rancho and ordered Mediacom to carry KXLA’s signal on its cable systems serving seven of these communities. Mediacom has filed a petition for reconsideration of *Rancho Palos Verdes*, which is pending. Rancho filed an opposition to this petition, to which Mediacom has replied. We are consolidating these cases concerning the signal carriage rights of KXLA on the cable systems in question. For the reasons stated below, we grant Mediacom’s request for modification and dismiss Mediacom’s reconsideration petition as moot.

<sup>1</sup> The communities Mediacom seeks to have deleted from KXLA’s market are Trona, Pioneer Point, Argus, Westend, Ridgecrest, Kernville, Inyokern, Bodfish, Lake Isabella, Wofford Heights, Mountain Mesa, South Lake, Belle Vista, Weldon, Onyx, China Lake, and China Lake NWC, California.

<sup>2</sup> DA 03-1520, released May 7, 2003 (“*Rancho Palos Verdes*”).

## 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.<sup>3</sup> 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 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>

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

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<sup>3</sup> 8 FCC Rcd 2965, 2976-1977 (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). 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*”).

<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).

the areas served by the cable system or systems in such community.<sup>7</sup>

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.<sup>8</sup>

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 to all stations in the market.<sup>9</sup>

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.<sup>10</sup>

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

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

<sup>9</sup> *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>10</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  
(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 non-cable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>11</sup>

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. Mediacom's petition presents the third instance in which we have been asked to modify KXLA's market by deleting communities of considerable distance from the station.<sup>12</sup> In *Time Warner* and *Frontier*, we found that KXLA has no history of carriage and no discernable viewer ship in the communities at issue; that no proximate cable systems carry KXLA; that KXLA is geographically distant from the communities; that KXLA's predicted Grade B contour falls far short of the cable communities; and that the station is separated from the communities by numerous geographic barriers such as the San Gabriel Mountains and the San Bernardino National Forest.<sup>13</sup> We further found that these factors tend to explain the history of non-carriage of the station on the cable systems and strongly indicate that the communities are too distant to properly be a part of KXLA's television market.<sup>14</sup> In *Time Warner* and *Frontier*, we also distinguished *Fouke Amusement Enterprise, Inc.*<sup>15</sup> and rejected contentions that these factors should be given little weight since the station provides Asian-language programming for the benefit of the Asian-American population throughout the Los Angeles DMA as well as the communities

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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>11</sup> 47 C.F.R. §76.59(b).

<sup>12</sup> The other cases are *Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner*, 18 FCC Rcd 4490 (2003) ("*Time Warner*"), and *Frontier, A Citizens Communications Company*, (DA 03-1553, released May 12, 2003) ("*Frontier*").

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 10 FCC Rcd 668 (CSB 1995). ("*Fouke Amusement*").

at issue.<sup>16</sup> Both decisions noted that in *Fouke Amusement*, the station in question provided the only locally produced programming of particular appeal to the Asian community<sup>17</sup> and found that KXLA failed to provide any specific information or documentation regarding the orientation of its programming to the cable communities in issue.<sup>18</sup>

6. We have carefully reviewed the record in this case and find that the information responsive to the four statutory market modification factors set forth in Section 614(h) presented in this case is similar to that presented and considered in *Time Warner* and *Frontier*. The record here shows that KXLA has no history of carriage and no discernable viewership in the communities at issue; no proximate cable systems carry KXLA; KXLA is geographically distant from the communities;<sup>19</sup> KXLA's predicted Grade B contour falls far short of the cable communities; and the station is separated from the communities by the San Gabriel Mountains, the San Bernardino National Forest, and other geographic barriers.<sup>20</sup> Rancho again attempts to overcome this failure to satisfy the four statutory market modification factors by pointing to KXLA's provision of Asian-language programming to the Asian-American population throughout the Los Angeles DMA and the cable communities at issue.<sup>21</sup> However, Rancho has failed to show that KXLA's local programming is any different in this case from that which we found insufficient to overcome such deficiencies in *Time Warner* and *Frontier*. Given that the record now before us is similar in all essential respects to that in *Time Warner* and *Frontier*, we find that the communities served by Mediacom are also too distant to properly be a part of KXLA's television market. We find also that the Asian portion of KXLA's programming fails to satisfy the local programming factor, noting in particular that the Asian population of none of the communities served by Mediacom exceeds 3.8% of total population, according to U.S. Census data.<sup>22</sup> For the foregoing reasons, we conclude that the communities served by Mediacom should be deleted from KXLA's market.

7. In view of our decision in the market modification proceeding, the arguments raised by Mediacom and KXLA in reference to the above-described must carry complaint and petition for reconsideration are moot. As such, Mediacom's petition for reconsideration is dismissed.

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<sup>16</sup> *Id.*

<sup>17</sup> The Commission's ruling in *Fouke 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 *Fouke Amusement*, 10 FCC Rcd at 671.

<sup>18</sup> *Id.*

<sup>19</sup> The cable Communities are at least 125 miles from KXLA. Petition at 5.

<sup>20</sup> Petition at 4-9.

<sup>21</sup> Opposition at 9-11.

<sup>22</sup> Reply at 11 and Exhibit B.

**IV. ORDERING CLAUSES**

8. 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 Mediacom of California LLP **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that petition for reconsideration filed by Mediacom of California LLP (CSR-6139-A) **IS HEREBY DISMISSED**.

10. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>23</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert, Deputy Chief  
Policy Division, Media Bureau

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<sup>23</sup> 47 C.F.R. §0.283.