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

In the Matter of:	)	
	)	
Comcast Cable Communications, LLC	)	MB Docket No. 14-102, CSR 8883-A
on behalf of its subsidiaries and affiliates	)	
	)	
For Modification of the Television Market of	)	
Station WFXU, Channel 48, Live Oak, Florida	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 4, 2015 **Released: March 5, 2015**

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates ("Petitioner" or "Comcast"), filed the above-captioned petition seeking to modify the Tallahassee-Thomasville, Florida designated market area ("DMA") with respect to television broadcast station WFXU (Channel 48), Live Oak, Florida ("WFXU" or "Station"). Specifically, Comcast requests that WFXU be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the cable systems serving the Florida communities of Gadsden County (Unincorporated), Jefferson County (Unincorporated), Leon County (Unincorporated), Midway, Monticello, Quincy, Sopchoppy, Tallahassee, and Wakulla County (Unincorporated) (the "Communities").[1] Budd Broadcasting Co., Inc., licensee of WFXU, ("Budd Broadcasting" or "Budd") filed an Opposition in the proceeding.[2] Comcast filed a Reply. For the reasons stated below, we grant Comcast's request.

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

[1] *See* Petition at n.1, Exhibit 1.

[2] Comcast argues that Budd Broadcasting's late-filed opposition is procedurally defective and should be stricken from the record without any further consideration by the Commission. Budd filed two requests for extension of time and Comcast filed an opposition against the later request and Budd filed a reply. Budd's Opposition was ultimately untimely filed on January 6, 2015, more than 5 months beyond the official due date. While we agree with Comcast about the procedural irregularities in this matter and would under other circumstances strike the Opposition, we decline to do so in this proceeding because of the impact it has upon Budd's carriage rights. We will, instead, incorporate Budd's Opposition into our analysis in order to allow Budd the opportunity to be on the record of a proceeding that could affect its carriage rights.

are entitled to assert mandatory carriage rights on cable systems located within the station's market.[3] A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.[4] 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.[5]

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.[6]

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.[7]

The legislative history of the provision states that:

---

[3] 8 FCC Rcd 2965, 2976-1977 (1993).

[4] 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); s*ee 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"*).

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

[6] 47 U.S.C. §534(h)(1)(C).

[7] *Id.*

> 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.[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.[9]

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.[10]

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

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

[10] 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.

> (3) Available data on shopping and labor patterns in the local market.
>
> (4) Television station programming information derived from station logs or the local edition of the television guide.
>
> (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
>
> (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.[11]

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

III. DISCUSSION

5. The issue before us is whether to grant Comcast's request to exclude WFXU from mandatory carriage on the subject cable systems. All of the communities at issue are located in the Tallahassee-Thomasville DMA, as is WFXU, which is licensed to Live Oak, Florida. Considering all of the relevant factual circumstances in the record, we believe that the market modification petition is a legitimate request to redraw DMA boundaries to make them more congruous with market realities.

6. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."[12] Comcast states that WFXU has no history of carriage on the subject cable systems.[13] Comcast argues that because WFXU has never been carried, there would be no disruption of established viewing patterns, nor would the requested action deprive the station of any existing cable audience.[14] Comcast argues that in this case, WFXU's lack of historic carriage confirms that there is no nexus between WFXU and the Communities.[15]

7. Second, we consider "whether the television station provides coverage or other local service to such community."[16] Comcast states that a Longley-Rice digital signal coverage map

[11] 47 C.F.R. §76.59(b).

[12] 47 U.S.C. §534(h)(1)(C).

[13] Petition at 4. Comcast states that according to the Commision's database, the Station was initially licensed under the current call sign in 1999. *See id.* at Exhibit 8.

[14] Petition at 4.

[15] *Id.*

[16] 47 U.S.C. §534(h)(1)(C).

demonstrates that the Communities are located beyond WFXU's 41 dBu service area contour reach.[17] Comcast further states that signal strength studies taken at the principal headends serving the Communities also demonstrate that WFXU does not provide an actual off-air signal of adequate strength.[18] Comcast asserts that given WFXU's lack of contour coverage and its failure to deliver a signal of sufficient strength to the respective Communities' system headends, it is reasonable to conclude that WFXU does not deliver a good quality off-air signal to individual households in the Communities and, therefore, does not provide coverage within those Communities.[19] Accordingly, Comcast submits that the signal strength studies combined with the Longley-Rice coverage map demonstrate that the Communities are beyond WFXU's ability to reach over-the-air television reception households.[20]

8. Comcast further asserts that the lack of signal coverage could be reasonably anticipated as the average distance between Live Oak, WFXU's city of license, and the Communities is an average 82 miles. Comcast states that the distances from Live Oak to the incorporated Communities of Midway, Monticello, Quincy, Sopchoppy, and Tallahassee are 89 miles, 56 miles, 97 miles, 91 miles and 78 miles respectively.[21] Comcast states that these distances are similar to or exceed those found to justify market modification requests in previous Commission cases.[22]

9. Comcast states that the lack of nexus between WFXU and the Communities is also demonstrated by driving distance and time. For instance, Comcast states that it is approximately 81 miles driving distance from Live Oak to Tallahassee, which takes an estimated 1 hour and 23 minutes of driving time.[23] Comcast further states that there is an even greater driving distance and time between Live Oak and the incorporated Communities of Midway, Quincy and Sopchoppy.[24] Comcast also points to recent U.S. Census workforce data that show only a *de minimis* number of residents from the Communities work in Live Oak.[25] As an example, Comcast states the reported 30 people from Tallahassee that work in Live Oak represent less than 0.02 percent of the total 150,257 "18 years and over" population reported for that community by the 2010 Census.[26]

10. Finally, Comcast argues that WFXU does not appear to provide any local programming

[17] Petition at 5, Exhibit 3.

[18] *Id.*, Exhibit 5.

[19] Petition at 5.

[20] *Id.* Comcast further states that these findings are buttressed by the signal coverage map available from the Commission's website which further illustrates that WFXU's signal fails to reach the Communities. *See id.* at Exhibit 9.

[21] Petition at Exhibit 6.

[22] Petition at 6, n.18, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220, ¶ 8 (1998) (39 to 70 miles); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347, ¶ 21 (1997) (38 to 61 miles); *Time Warner Cable*, DA 97-1009, 12 FCC Rcd 23249, ¶ 15 (1997) (42 to 58 miles); *Time Warner Cable*, 11 FCC Rcd 13149, ¶ 13 (1996) (45 miles); and *Cablevision of Cleveland, L.P. and V Cable Inc. d/b/a Cablevision of Ohio*, 11 FCC Rcd 18034, ¶ 13 (1996) (41 miles).

[23] Petition at 6, Exhibit 10.

[24] *Id.*

[25] Petition at 6-7, Exhibit 11.

[26] *Id.* at 7, Exhibit 12.

tailored to the communities at issue.[27] Comcast states that it was unable to locate any evidence of WFXU's programming in the television guide found in *The Tallahassee Democrat* available to residents of the Communities.[28] Comcast states that while it was unable to find a website for WXFU, it did find that the Station is listed as an affiliate on the website of national network, Soul of the South TV.[29] Comcast states Soul of the South TV's website includes a daily program schedule that appears to be common to all of its affiliated stations. Comcast asserts that there is no evidence that WFXU provides any truly local programming to any of the particular Communities.[30]

11. The third statutory factor we must consider is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."[31] Comcast asserts that the cable systems serving the Communities currently carry a number of local broadcast stations in multiple formats, which provide coverage of local news and sporting events.[32] Comcast also asserts that these stations deliver digital contour coverage or an actual off-air signal to the Communities.[33] For example, Comcast states that the systems at issue carry stations licensed to the named market communities of Tallahassee, Florida and Thomasville, Georgia, such as WTXL (ABC), WTWC (NBC), and WCTV (CBS) which all air local newscasts.[34]

12. Comcast also notes that the Commission has stated that where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities within its market, and it is clear that the station at issue is not providing local service to those communities, then the issue of local carriage of other stations becomes a factor which the Commission will give greater weight than in cases where a party is seeking to add communities.[35] Comcast further asserts that even if WFXU were to provide significant or unique programming specifically targeting the Communities, which it does not, the coverage provided by other truly local stations would undermine any special benefits associated with WFXU.[36]

13. The fourth statutory factor concerns "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."[37] Comcast

[27] Petition at 7.

[28] *Id.*, Exhibit 13.

[29] *Id.*, Exhibit 14.

[30] Petition at 7.

[31] 47 U.S.C. §534(h)(1)(C).

[32] Petition at 8, Exhibit 7.

[33] *Id.*; *see also* Exhibit 15.

[34] Petition at 8. Comcast lists all of the respective times the staions air newscasts. Comcast states that the relevant programming schedules were obtained from www.tvguide.com/listings attached as Exhibit 16.

[35] Petition at 8, citing *Rifkin/Narragansett South Florida, CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, ¶ 27 (1996).

[36] Petition at 8.

[37] 47 U.S.C. §534(h)(1)(C).

asserts that WFXU has no reported viewership in the Communities.[38] Comcast states that because WFXU is unable to deliver an off-air signal or provide a 41 dBu service contour to the Communities, it would not be unusual that the Station has no reported viewership in those Communities.[39] In addition, Comcast notes that the Nielsen 2013 DMA Report Viewer data does not report any ratings whatsoever for WFXU in either cable or non-cable households in any of the counties in which the Communities are located.[40]

14. Budd Broadcasting states in opposition that Comcast's main argument in this proceeding is that WFXU fails to deliver a signal to either of the two principal headends serving the Communities.[41] Budd submits an engineering statement which states that Budd is the licensee of WFXU-DT and WUFX-LD which serve the Tallahassee-Thomasville DMA.[42] Budd states that WUFX-LD is a low power digital television station which receives and rebroadcasts content from WFXU-DT.[43] Budd asserts that the two stations have a combined signal coverage area which covers a significant portion of the Tallahassee-Thomasville DMA.[44] Budd submits that the engineering statement that it provides demonstrates that the combined Longley-Rice coverage areas for WFXU-DT and WUFX-LD have a strong presence in the Tallahassee-Thomasville DMA and will provide the required signal strength needed for the Monticello and Timberlane cable headends.[45]

15. In reply, Comcast argues that Budd Broadcasting fails to rebut its demonstration that all four relevant statutory factors support the modification of WFXU's must carry market to exclude the Communities served by Comcast in the Tallahassee-Thomasville DMA.[46] Comcast asserts that having essentially conceded the controlling market modification factors with respect to WFXU, Budd focuses entirely on the signal coverage of low power television station WUFX-LD.[47] Comcast argues that its modification request cannot be denied because WUFX-LD receives and rebroadcasts content from WFXU and provides a signal to the principal headends that serve the Communities.[48] Comcast states that Commission precedent makes clear that Budd cannot rely on translator stations to establish a "local presence" for the purposes of the "coverage" prong of the market modification test.[49] Finally, Comcast

[38] Petition at 9.

[39] *Id.*

[40] *Id.*, Exhibit 17.

[41] Budd Broadcasting Opposition at 2.

[42] *Id.* and attached Engineering Statement of Kessler and Gehman Associates, Inc.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] Reply at 2.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 3, citing *Time Warner New York City Cable Group*, 11 FCC Rcd 6528, ¶ 24 (1996) (explaining that "such [translator] coverage does not lessen the relevance of the parent station's failure to place a grade B Contour over the subject cable communities as Grade B coverage is indicative of the station's natural market."); *Dynamic Cablevision of Florida Ltd., et al.*, 12 FCC Rcd 9952, ¶ 13 (1997) ("Commercial translators are secondary service stations that are explicitly not entitled to carriage in their own right and the service provided by [the station's] translators here are of limited significance in the market modification analysis. On balance, the translators here appear not to be a

(continued…)

argues that a ruling that would give WFXU credit for coverage achieved via a translator or LPTV station would effectively eviscerate the distinction between full power and LPTV status incorporated into the must carry statute.[50]

16. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purposes of ensuring that a television station is carried in the areas which it serves and which form its economic market.[51] Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.[52] In this matter, WFXU has no history of carriage and no measureable viewership in any of the Communities. In addition, WFXU does not offer any significant local programming to the Communities, while other broadcast stations currently carried by the systems at issue provide news coverage of local issues, including local sports.

17. Despite the submission of Budd Broadcasting's engineering statement, we find that WFXU, located an average of more than 82 miles from the Communities, does not provide service coverage of 41 dBu (the digital equivalent of an analog Grade B contour) over the Communities. Budd cannot establish a local presence to satisfy the coverage prong of the market modification test by relying on the fact that WUFX-LD, a low power digital television station, receives and rebroadcasts content from WFXU. The Longley-Rice study submitted by Budd, based on coverage from low power station WUFX-LD, is not an acceptable submission and cannot be relied upon as an indication of WFXU's coverage area. As a general matter, while we recognize that translator stations which retransmit stations' signals may encompass particular cable communities, translator stations do not have carriage rights under Section 614 and they do not provide evidence that the cable communities are within a station's natural market.[53] We agree with Comcast that affording WFXU credit for coverage achieved by low power station WUFX-LD would compromise the intent of the relevant statute. We cannot find that WFXU provides coverage or other local service to the Communities; and that, in combination with Budd's failure to counter Comcast's record evidence on any other market modification factor with respect to WFXU, warrants the grant of Comcast's request for market modification in this proceeding.

(…continued from previous page)
reflection of the underlying market area of [the station], filling in gaps in the station's service area, but an extension of it."), *aff'd*, 14 FCC Rcd 13783 (1999).

[50] Reply at 3. *See* 47 U.S.C. § 543(h)(1)(B)(i).

[51] 47 U.S.C. § 534(h)(1)(C).

[52] 47 U.S.C. § 534(h)(1)(C)(i).

[53] *See Comcast of California/Idaho, Inc. et al.*, 2004 WL 1057658 at n.76. *See also Rifkin/Narragansett South Florida, CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, 21106 (1996).

IV. ORDERING CLAUSES

18. 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 (MB Docket No. 14-102, CSR 8883-A) filed by Comcast Cable Communications, LLC on behalf of its subsidiaries and affiliates **IS GRANTED.**

19. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.[54]

FEDERAL COMMUNICATIONS COMMISSION

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

[54] 47 C.F.R. § 0.283.