

FCC MAIL SECTION

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

DISPATCHED BY
 CS Docket No. 94-95

In the Matter of

Amendment of Section 76.51
 of the Commission's Rules
 to Include Lakeland, Florida
 in the Tampa-St. Petersburg-
 Clearwater, Florida Television Market

REPORT AND ORDER

Adopted: May 16, 1995;

Released: May 25, 1995

By the Cable Services Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* in the captioned proceeding,¹ issued in response to a petition filed by Public Interest Corporation, licensee of television station WTMV(TV), channel 32, Lakeland, Florida ("WTMV"). The *Notice* proposed to amend Section 76.51 of the Commission's Rules,² to change the designation of the Tampa-St. Petersburg-Clearwater, Florida television market to "Tampa-St. Petersburg-Clearwater-Lakeland, Florida." No comments in opposition to this proposal have been filed.

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine the scope of territorial exclusivity rights that television broadcast stations may purchase and, in addition, may help define the scope of compulsory copyright license liability for cable operators in certain circumstances.³ Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station communities of license on this list.⁴ Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.⁵ Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.⁶

3. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),⁷ which amended Section 614 of the Communications Act of 1934, as amended ("Act"),⁸ requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules.⁹

RULE MAKING COMMENTS

4. The petitioner contends that WTMV in Lakeland competes directly with television stations in the Tampa-St. Petersburg-Clearwater hyphenated market for audience share and advertising revenues. Although Lakeland is located inside the Tampa-St. Petersburg "area of dominant influence" ("ADI"), the petitioner argues that because Lakeland is not a designated community in the above market, WTMV is considered a "distant signal" for purposes of compulsory copyright license liability if carried on cable systems more than 35 miles from Lakeland. According to the petitioner, the consequence of being classified as a "distant signal" is that cable systems will have to pay significant copyright royalties in order to carry WTMV, and WTMV, in turn, will have to indemnify the cable systems for these royalties. In contrast, stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of the listed communities in a given hyphenated market and are not subject to copyright liability. The petitioner asserts that because WTMV may have to pay copyright fees attendant to its carriage as a "distant signal" that stations in Tampa, St. Petersburg and Clearwater do not, WTMV is disadvantaged in its competition with these stations.

5. In support of its proposal, the petitioner states that it meets all of the criteria stipulated by the Commission for redesignation of the hyphenated market. The petitioner contends that Lakeland is sufficiently proximate to Tampa, St. Petersburg and Clearwater to be considered part of the Tampa-St. Petersburg-Clearwater hyphenated market. According to the petitioner, Lakeland is only 31 miles from Tampa, 47 miles from St. Petersburg, and 50 miles from Clearwater. The petitioner maintains that because of this geographic proximity, Lakeland, Tampa, St. Petersburg and Clearwater have shared economic, social and cultural interests which link them together as a single television market. The petitioner submits a contour map showing that WTMV provides city grade contour coverage to part of Tampa, Grade A contour coverage to virtually all of Tampa, and Grade B contour coverage to all of St. Petersburg. Clearwater is just beyond WTMV's Grade B contour, however, it is part of the Tampa-St. Petersburg ADI. A map delineating the Grade B contours of stations in the Tampa area reveals that the signal contours of WTMV substantially overlap with the signal contours of other stations in the Tampa-St. Petersburg ADI. To further support its contention that WTMV competes directly with Tampa market stations and is an integral part of the Tampa-St. Petersburg

¹ 9 FCC Rcd 4398 (1994).

² 47 C.F.R. §76.51.

³ See 47 C.F.R. §73.658(m) and 17 U.S.C. §111(f).

⁴ See 47 C.F.R. Part 76, subpart F.

⁵ See CATV-Non Network Agreements, 46 FCC 2d 892, 898 (1974).

⁶ *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

⁷ Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ 47 U.S.C. §614.

⁹ See Section 614(f) of the Act.

ADI, the petitioner asserts that WTMV is widely recognized as a Tampa market station. In particular, the petitioner notes the following: Tampa newspapers and magazines include WTMV in television program listings; Tampa-based publications have recognized the station for its programming and commitment to local service; program syndicators charge WTMV Tampa market rates for programming; and Tampa businesses as well as regional and national advertisers buy time on WTMV. In addition, the petitioner states that WTMV carries many ABC, NBC and CBS programs when the Tampa network affiliates preempt their network programming and that WTMV is the Tampa television affiliate for the Florida Marlins major league baseball club. The petitioner urges the Commission to add Lakeland to the Tampa-St. Petersburg-Clearwater hyphenated market in order to redress what the petitioner perceives as a competitive imbalance between WTMV and stations licensed to Tampa, St. Petersburg and Clearwater.

DISCUSSION

6. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area.¹⁰ In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;¹¹ (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.¹² Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."¹³

7. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that television stations licensed to Tampa, St. Petersburg, Clearwater and Lakeland do compete for programming, audience and advertisers in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. In addition, no oppositions to the proposed re-hyphenation have been filed.

8. We note that the issue raised by the petitioner regarding WTMV's copyright license liability has largely been resolved with the passage of the Satellite Home Viewer Act of 1994,¹⁴ which amended Section 111(f) of title 17, United States Code.¹⁵ Under this Act, a station located within the same ADI as a cable system is no longer considered a "distant signal" on that system for purposes of compulsory copyright license liability and, therefore, is not subject to the additional copyright fees attendant to "distant signal" carriage within the market.¹⁶ Applying the Act to the facts of this proceeding, WTMV would not be considered a "distant signal" if carried on cable systems located in the Tampa-St. Petersburg ADI and, therefore, would not face additional copyright fees relative to other stations located within the same ADI. Nevertheless, we find that the equalization of the regulatory status of WTMV with stations in Tampa, St. Petersburg and Clearwater through the inclusion of Lakeland as a named community in the market is warranted given that WTMV competes with these stations for programming, audience and advertisers. Such a rationalization of the competitive situation appears to be the public benefit which congress anticipated by instructing the Commission, in Section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list.

9. This proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network nonduplication obligations of individual cable systems. Redesignation of the market reflects in the rules the general competitive situation that in fact exists in the local area, allowing the application of the more specific rules, including those relating to "area of dominant influence" changes, to be addressed from the perspective of a properly defined market area. Accordingly, the proposed rule change will be adopted.

10. Accordingly, IT IS ORDERED, that effective [30 days after publication in Federal Register], Section 76.51 of the Commission's Rules IS AMENDED to include Lakeland, Florida, as follows:

Tampa-St. Petersburg-Clearwater-Lakeland, Florida

11. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

12. This action is taken by the Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commissions rules. 47 C.F.R. §0.321

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁰ *Cable Television Report and Order*, 36 FCC 2d 143, 176 (1972).

¹¹ This concern -- that cable carriage might be provided in areas beyond a stations Grade B signal contour -- has reduced relevance under the must-carry rules included in the 1992 Cable Act which are based on "Area of Dominant Influence" geographic market areas rather than on Grade B contours.

¹² See e. g., *Fresno-Visalia, California*, 57 R.R. 2d 1122, 1124 (1985); *TV 14, Inc. (Rome, Georgia)*, 7 FCC Rcd 8591 (1992).

¹³ See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, Califor-*

nia), 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

¹⁴ Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994).

¹⁵ 17 U.S.C. §111(f). Public Interest Corporation filed its petition for rule making to amend Section 76.51 of the Commission's Rules on December 16, 1993, prior to the passage of the Satellite Home Viewer Act which was signed into law on October 18, 1994.

¹⁶ 108 Stat. 3481.