

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)
)
Miami Valley Broadcasting Corporation) Docket No. 13-201
) CSR No. 8824-A
For Modification of the Television Market)
For WHIO-TV, Dayton, Ohio)

To: The Secretary
Chief, Policy Division, Media Bureau

OPPOSITION TO PETITION FOR SPECIAL RELIEF

Indiana Broadcasting, LLC (“Indiana Broadcasting”), licensee of television station WISH-TV, Channel 9, Indianapolis, Indiana, and WNDY-TV, Channel 32, Marion, Indiana, by its attorneys and pursuant to Sections 76.7(b)(1) and 76.59 of the Commission’s Rules, hereby opposes the above-captioned Petition for Special Relief (the “Petition”) filed by Miami Valley Broadcasting Corporation, an affiliate of Cox Media Group (together, “CMG”). CMG seeks to modify the television market of WHIO-TV, Dayton, Ohio (the “Station” or “WHIO”), the CBS affiliate in the Dayton Designated Market Area (“DMA”), to add ten communities located in Wayne County, Indiana. Nielsen assigns Wayne County, Indiana to the Indianapolis DMA.¹

Indiana Broadcasting opposes the requested market modification. Although CMG asserts that the Wayne County communities are part of WHIO’s natural market, the reality is different. There is no substantial commuting between Wayne County and Dayton. WHIO has not shown that it provides any coverage at all of six of the ten communities, and only incidental coverage of three others. WHIO has made no showing that it provides meaningful, sustained coverage of

¹ Indiana Broadcasting specifically limits its Opposition to those communities located in Wayne County, Indiana and is not including those communities in the Petition located in Auglaize and Allen Counties, Ohio as part of the instant Opposition.

politics and public affairs of interest to Indiana residents. In fact, there is a substantial divide between Dayton and the Wayne County communities. Dayton is located in Ohio and serves the Buckeye State of Ohio, while Wayne County is located squarely in Indiana Hoosier Country. CMG has failed to show that the ten Indiana communities (most of which are mentioned nowhere in the Petition, except in the list asking that their market be modified) should be included in the market of a station that broadcasts in and serves another market in Dayton, Ohio. As shown below, CMG provides no facts or data to distinguish the ten listed Indiana communities from Wayne County itself. And Nielsen has properly and objectively placed Wayne County in the Indianapolis DMA.

Congress has directed the Commission to “afford particular attention to the value of localism” when considering a request to add communities to a station’s market by focusing on the following factors: (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; and (iv) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.² The Commission reviews requested market changes on a community-by-community basis rather than on a county-by-county basis.³ As explained below, CMG’s Petition fails to meet the statutory factors, and it has not provided community specific information. Instead, CMG has attempted to extrapolate a few

² 47 U.S.C. § 534(h)(1)(C).

³ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2977 n. 139 (1993).

statistics about Wayne County or the community of Richmond and attempts to bootstrap those to all ten communities. CMG's petition must be denied because it has not made the required community-by-community showing.

The first statutory factor is historical cable carriage. CMG argues that the Station has been carried on some Wayne County systems for decades and that the Station is currently carried.⁴ But CMG fails to provide a complete picture. The historical carriage in recent years was likely based simply on Wayne County's previous assignment to the Dayton DMA by Nielsen for a few scattered years. Since Nielsen has now re-assigned Wayne to its home-state Indianapolis DMA, there is no reason to perpetuate historical carriage that was based on a DMA assignment that has been accurately changed. Nielsen's change reflects diminished ties between Wayne County, Indiana and Ohio, and there is no reason for the FCC to second-guess that determination simply because Nielsen's prior determination resulted in must-carry status.

CMG also claims, with regard to the second statutory factor, that it provides substantial coverage of Wayne County. In support of that assertion it supplies excerpts from the Station's Quarterly Issues/Programs Lists. The Quarterly Issues Programs Lists on file with the Commission, though, show only a tiny number of the Station's stories actually addressed issues of importance to Wayne County. Although CMG contends that WHIO's local news coverage routinely incorporates matters of public concern in the Wayne County communities, its own exhibits show otherwise. In a two-year period, the Station aired four short news segments related to Centerville, one each related to Hagerstown and Cambridge City,⁵ and thirty-three related to Richmond, mostly crimes. According to CMG's own data, there is no showing of any coverage at all of the ten communities. Three of the communities listed as receiving some

⁴ Petition at 10.

⁵ Over two years, Cox claims the Station ran one, thirty second story related to Hagerstown (a crime) and one story (estimated to be one minute) related to Cambridge City.

coverage (Economy, Williamsburg and Logansport) are not even communities for which the Station is seeking local market designation.

With respect to the Indiana communities, WHIO has failed to demonstrate a commitment to the communities that would justify modifying the Station's market to include those communities. These communities, all in a different state, are simply not part of WHIO's natural market. Further, the Station is not entitled to extrapolate any coverage of an event in one Wayne County community to all other communities in Wayne County in which it seeks relief. Showings must be made on a community-by-community basis.⁶ Yet that is not what CBG does in the Petition. For all ten communities, WHIO claims 67 news segments over a period of twenty-four months. That is the equivalent of only approximately a single story per quarter per community. But even that claim overstates the coverage, because according to the attachments to CMG's own Petition, WHIO provided no coverage whatsoever for six of the ten communities. If the Commission is truly serious about issues of localism and the requirement that broadcasters serve the needs and interests of their local communities, the service of WHIO in this case does not justify the addition of the Wayne County communities to WHIO's market, particularly when the most recent issues-programs lists show that coverage has declined dramatically.

To reiterate, LIN submits that coverage of Hagerstown and Cambridge City averaging twenty-two seconds each per year is inadequate to show that WHIO is providing enough service to those communities to justify including those communities in its market. WHIO does not identify any coverage of six of the ten communities (Spring Grove, Mount Ashburn, Dublin, Fountain City, Milton and East Germantown) in the two-year period. Plainly, it has not met its burden of proof with respect to those communities.

⁶ See fn. 3, *supra*.

CMG also cites other factors that it claims show that Wayne County is part of its natural market. But it is clear from economic and labor/commuting data that WHIO, on the one hand, and the ten communities on the other hand, are located in distinct and separate markets and even in separate states. For example, it is striking that *only approximately 1.81%* of Wayne County Indiana workers commute to the State of Ohio, period.⁷ In addition, *only approximately 1.94%* of Wayne County's workers commute from anywhere in Ohio.⁸ That is a revealing and almost remarkable statistic, since Wayne County's main employment center, Richmond, abuts the Ohio-Indiana border and because I-70 provides a convenient commuting corridor.⁹ These commuting patterns show that the state border (which aligns in Wayne County with the DMA boundary) is a real dividing line between two very distinct markets and is a legitimate state divide.

In fact, the Office of Management and Budget ("OMB") has assigned the Richmond Micropolitan Statistical Area¹⁰ to the Richmond-Connersville Combined Statistical Area,¹¹ all of which is in Indiana and within the Indianapolis DMA. Combined Statistical Areas ("CSAs") consist of two or more adjacent metropolitan statistical areas and micropolitan statistical areas that have substantial employment interchange.¹² The CSAs that combine to create a CSA retain separate identities within the larger CSA.¹³ According to OMB, CSAs "can be characterized as representing larger regions that reflect broader social and economic interactions, such as

⁷ See <http://edcwc.com/site-selection/data/workforce/> (last visited Sept. 2, 2013).

⁸ *Id.*

⁹ CMG at pages 8-9 of the Petition makes much of the fact that Interstate 70 connects Wayne County to the Dayton DMA. But in spite of the easy commute between Ohio and Indiana in this part of the border, with only tiny exceptions Buckeyes work in the Dayton DMA and Hoosiers work in the Indianapolis DMA.

¹⁰ See OMB BULLETIN NO. 13-01, regarding "Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas, February 28, 2013 ("OMB No. 13-01") at page 86.

¹¹ OMB No. 13-01 at 108.

¹² See United States Census Bureau, *Geographic Terms and Concepts - Core Based Statistical Areas and Related Statistical Areas*, available at http://www.census.gov/geo/reference/gtc/gtc_cbsa.html.

¹³ *Id.*

wholesaling, commodity distribution, and weekend recreation activities, and are likely to be of considerable interest to regional authorities and the private sector.”¹⁴

The Petition also states that Wayne county residents rely on three universities in Dayton.¹⁵ But the cited source is simply a reference book showing several “nearby colleges and universities”. The Petition provides absolutely no information about actual attendance by Wayne County residents, so, as a result, all CMG provides is conjecture. Notably, the first university listed by the Wayne County reference book is Ball State, in Muncie, located in the Indianapolis DMA and near the center of the State of Indiana and not Ohio. More importantly, Dayton is located at least *70 miles (112 kilometers)* from Muncie, Indiana.¹⁶ This distance is so far it is inconsistent with what the FCC has traditionally called a “nexus” between communities for market modification purposes. And the same publication first lists regional colleges and universities, all of which are located in Indiana and specifically in the Indianapolis DMA.¹⁷ Yet again, the arguments CMG makes are not an underpinning for a market change.

Another significant score against CMG in this case is related to viewing patterns and the fourth statutory factor.¹⁸ Wayne County has been placed in the Indianapolis DMA by Nielsen which, despite the claim of CMG, does not reflect any “uncertainty” by Nielsen. It reflects the reality that Wayne County (and the communities subject to the Petition) are located in Indiana within the large sphere of economic, social and political influence of the greater Indianapolis

¹⁴ OMB 13-01 at 2.

¹⁵ Petition at 9.

¹⁶ See <http://BALI.com.distance>.

¹⁷ The Wayne County EDC lists four regional colleges and universities: Earlham College, Indiana University East, Ivy Tech Community College, and Purdue College of Technology. See Economic Development Corp. of Wayne County, Indiana, EDC of Wayne County, Indiana: Hard Working. Easy Living. at 17, (available at http://www.qtigroup.com/uploadedFiles/Executive_Search/Executive_Search_Listings/Wayne%20County%20Indiana%20Factbook%202012.pdf).

¹⁸ Wayne County is also the home of the Indiana Football Hall of Fame, a location most Ohio residents are likely not going to visit. <http://www.indiana-football.org/>.

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "**OPPOSITION TO PETITION FOR SPECIAL RELIEF**" was served via U.S. mail on this 3rd day of September 2013 to the following:

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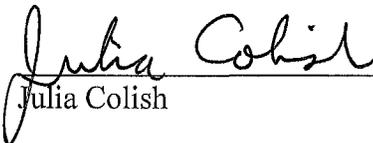
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