

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

In the Matter of:
WRNN License Company, LLC
Petition for Modification of the Television Market
of WRNN-DT, Kingston, New York
CSR 6432-A

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2005

Released: April 11, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. WRNN License Company, LLC ("WRNN"), licensee of Station WRNN-DT, Kingston, New York ("WRNN-DT" or the "Station"), Channel 48, has filed the above-captioned petition for special relief, seeking to modify the Station's market to include the cable communities of the Bronx (Marble Hill), Western Brooklyn, Northern and Southern Manhattan, Eastern, Western and Southern Queens, and Staten Island (collectively the "Communities") that are served by cable systems operated by Time Warner. Time Warner filed an opposition to the petition and WRNN filed a reply. Time Warner also filed supplements to which WRNN replied. Subsequently, Time Warner requested that its opposition and related supplements be withdrawn. WRNN's petition is now unopposed. For the reasons stated below, we grant WRNN's market modification petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Act and the 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. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A

1 WRNN states that with respect to the Bronx, it seeks carriage only on cable systems owned by Time Warner, which WRNN understands to be the system serving Marble Hill.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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)("Market Modification Final Report and Order").

DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Each county in the United States is assigned 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.⁴

3. Under the Act, however, the Commission is 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.⁵

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.⁶

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

⁴ For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ 47 U.S.C. § 534(h)(1)(C).

⁶ *Id.*

exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁷

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.⁸

4. In the *Market Modification Final Report and Order*,⁹ 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.¹⁰

(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.¹¹

⁷ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

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

⁹ *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999).

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.

¹¹ 47 C.F.R. § 76.59(b).

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee. The *Market Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.¹²

5. In *Carriage of Digital Television Broadcast Signals*, the Commission concluded that under Section 614(a) of the Act, a digital-only television station has mandatory carriage rights, and amended the rules accordingly.¹³ The Commission has established a framework for analyzing market modifications for digital television stations.¹⁴ The Commission stated that Nielsen's market designations, publications, and assignments for the analog television market should continue to be binding on broadcast stations transitioning to digital television broadcasting. The presumption is that the market of the station's digital signal is coterminous with the station's market area for its analog signal during the transition period.¹⁵ The Commission also found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, will be applicable to digital television modification petitions during the transition period when television stations broadcast both an analog signal and a digital signal.¹⁶ The Commission recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of the analog television signal. Therefore, in deciding DTV market modification cases, the Commission stated that it would take into consideration changes in signal strength and technical coverage because of new digital television channel assignments and power limits. It concluded that all other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.¹⁷

6. In 1985, WRNN inaugurated service on analog Channel 62 from a transmitter located on Overlook Mountain in Woodstock, New York and the station's main studios in Kingston, New York. WRNN states that in 1996, by Bureau Order, the Communities at issue in this Petition were deleted from WRNN's market for purposes of must carry.¹⁸ The Bureau concluded that WRNN failed to satisfy any statutory criteria applicable to market modification proceedings. The Bureau found that WRNN had no history of cable carriage on Time Warner's systems serving the Communities, that WRNN did not provide local service to the Communities, and that WRNN did not place either a Grade A or Grade B contour over the Communities.¹⁹ In addition, the Bureau concluded that WRNN is geographically distant from the Communities with Woodstock, New York, where the station's transmitter site was located, an average of 94 miles away.²⁰ The *WRNN Modification Order* also found that several television stations

¹² *Market Modification Final Report and Order*, 14 FCC Rcd at 8389.

¹³ See 16 FCC Rcd 2598, 2606 (2001) ("*DTV Must Carry Report and Order*"); 47 C.F.R. § 76.64(f)(4). The Commission concluded that for purposes of supporting the conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its high definition digital ("HDTV") or standard definition digital ("SDTV") television signals be carried on the cable system for delivery to subscribers in either a digital or an analog format. *DTV Must Carry Report and Order*, 16 FCC Rcd at 2630.

¹⁴ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2635-36.

¹⁵ We note that in adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to insure that a station's digital over-the-air coverage area would replicate as closely as possible its current over-the-air analog coverage area. See *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

¹⁶ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

¹⁷ *Id.*

¹⁸ Petition at 2. See *Petition of Time Warner New York City Cable Group for Modification of ADI for Station WRNN, Kingston, NY*, 11 FCC Rcd 6528 (1996) (*WRNN Modification Decision*), *aff'd* *WLNY-TV, Inc. v. FCC*, 163 F.3d 137 (2d Cir. 1998) ("*WLNY-TV, Inc.*").

¹⁹ *WRNN Modification Decision*, 11 FCC Rcd at 6539.

²⁰ *Id.*

licensed to New York City and adjacent communities had a closer economic nexus, cast a City Grade signal over the Communities, and provided more focused local programming than WRNN.²¹ The Bureau also determined that WRNN had no audience in the counties in which the cable systems were located.²²

III. DISCUSSION

7. WRNN-DT asserts that since the Commission's prior market modification decision, WRNN has modified its operations and program services and currently provides a unique local service to the Communities from digital-only television facilities that provide robust technical coverage of the entire New York City area.²³ WRNN-DT argues that it is geographically proximate to the communities because WRNN-DT's transmitter site is located on Beacon Mountain, New York, which is almost half the distance to the Communities as the previous analog Channel 62 site.²⁴ WRNN-DT argues that the change in circumstances is precisely the type of situation the market modification process is designed to address and its market modification arguments are set forth in detail below.²⁵

8. **Historic Carriage.** WRNN-DT asserts that it is now a single channel digital-only television station operating on DTV Channel 48.²⁶ WRNN-DT asserts that the Station is carried by New York University's private cable system, encompassing 12,000 dorm rooms in Manhattan and a SMATV system serving 5,000 homes in Manhattan and 20,000 in Brooklyn.²⁷ It also states that pursuant to a 2002 voluntary agreement with Cablevision, Cablevision delivers WRNN-DT to more than half a million homes in the boroughs of the Bronx and Brooklyn, which according to WRNN-DT are directly adjacent to the Communities.²⁸ Beginning in December 2004, WRNN-DT will be carried by RCN in 85,000 homes in Manhattan and Queens²⁹ Additionally, WRNN-DT states that the Station is available to 309,000 residents of the Communities via satellite packages on DirecTV and EchoStar.³⁰ In addition, WRNN-DT states that St. John's University's WRED-TV which is carried on Time Warner's cable system in Queens, simulcasts WRNN-DT's prime-time programming from 7-9 pm and NYC-TV³¹ simulcasts WRNN-DT's original local sports programming.³²

9. **Viewership.** WRNN-DT states that a Media Audit survey conducted in January 2004 found that the Station's programming earned a cume³³ rating (Adult 18 plus, Monday-Sunday 7am-1 am)

²¹ *Id.*

²² *Id.*

²³ WRNN Petition at 2, 4.

²⁴ *Id.* at 42-43.

²⁵ *Id.* at 2, 4.

²⁶ *Id.* at 5. WRNN indicates that it surrendered for cancellation its license to operate analog Channel 62, pursuant to Commission authority granted July 8, 2004. See *WRNN-TV Associates Limited Partnership*, 19 FCC Rcd 12343 (MB 2004).

²⁷ WRNN Petition at 16.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* WRNN-DT states that it is available via "local-into-local" satellite packages.

³¹ WRNN-DT states that NYC-TV is the official television network of the City of New York.

³² WRNN Petition at 18.

³³ According to the Media Audit survey, the TV Daypart equals a 7 Day Cume. The cume rating is a measure of a station's reach into the marketplace. Television audiences are often measured on the basis of weekly cume, which is the unduplicated number of persons who tuned in during any half hour period over a week.

of 6.5 in homes in Manhattan and Queens.³⁴ Moreover, it asserts that programs targeted to the Communities, such as “RNN Live” and “RNN Metro,” earned the best ratings.³⁵ WRNN-DT contends that the ratings are well within the range the Commission has found sufficient to support market modification where an independent station is at issue.³⁶

10. **Local Service.** WRNN-DT asserts that each of the Communities falls well within WRNN-DT’s 41dBu and/or 48 dBu coverage contour and that WRNN-DT provides 48 dBu City Grade service to the majority of the Communities.³⁷ It states that the current coverage of the Communities is the result of facilities modifications WRNN-DT has undertaken pursuant to Commission approval.³⁸ According to WRNN-DT, the Bronx is within 42 miles of WRNN-DT’s transmitter site, Brooklyn within 56 miles, Manhattan within 42 miles, Queens within 48 miles, and Staten Island within 58 miles.³⁹ WRNN-DT argues that the distances between the Communities and the Station are well within the range that the Commission has approved for adding communities to a station’s must carry market, or in refusing to delete communities from a station’s market.⁴⁰

11. WRNN-DT also asserts that since its main studio is located in New York City, the Communities are well within the economic core of WRNN-DT’s market.⁴¹ It also asserts that the Station’s main studio location lies well within the Station’s 48 dBu City Grade contour.⁴² WRNN-DT additionally argues that it is ready, willing and able to deliver a good quality signal to each of Time Warner’s headends in the subject Communities.⁴³ However, WRNN-DT indicates that despite its best efforts, the Station was unable to obtain measurements from the precise points mandated by the Commission’s rules, but it did take measurements from locations that are as close as possible to the headends.⁴⁴ WRNN-DT states that measurements indicate that the Station provides a “robust” signal to all of the relevant headends.⁴⁵ WRNN-DT also asserts that the Station is part of the same geographic and economic market as the Communities. WRNN-DT points to major transportation routes, such as major interstate highways and railroad, enabling access between WRNN-DT’s transmitter site, community of license, and the Communities.⁴⁶ Additionally, WRNN-DT asserts there are business and personal connections between residents in the Communities and the Hudson Valley which create an important

³⁴ WRNN Petition at 47. WRNN-DT points out that WRNN is not a Nielsen subscriber and has accordingly relied upon Media Audit ratings information for purposes of this filing.

³⁵ WRNN Petition at 47. WRNN-DT states that these programs respectively earned a cume rating of 4.0 and 2.3 in Manhattan/Queens.

³⁶ *Id.*, citing *Seal Rock Broadcasters, LLC*, 18 FCC Rcd at 16265, 16267 (modifying market of station that earned 1 share during the time it broadcast local news)(“*Seal Rock Broadcasters*”).

³⁷ *Id.* at 20. WRNN points out that for digital-only stations operating on channels 14-69, 41 dBu coverage is the equivalent of Grade B coverage, and 48 dBu constitutes City Grade coverage.

³⁸ *Id.*

³⁹ *Id.* at 5 and 43.

⁴⁰ *Id.*

⁴¹ *Id.* at 44.

⁴² *Id.* at 44 n.115. WRNN notes that it has a separate studio and news bureau in Queens.

⁴³ *Id.* at 46.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 53.

economic tie.⁴⁷

12. With regard to programming, WRNN-DT asserts that it airs more than 14 hours of daily, regularly scheduled, local news and public affairs programming, 300 reports per week, of specific relevance to the Communities, including “RNN Metro” and “RNN Live.”⁴⁸ WRNN-DT points out that “RNN Live” covers national and global issues as well, but in a manner that is of particular interest to the Communities.⁴⁹ In addition, WRNN-DT asserts that the Station provides a wide range of other news and information programming targeted to the Communities, including “News on the Hour” in which Station reporters provide local weather, news, and traffic reports covering the Communities.⁵⁰ WRNN-DT also states that it provides entertainment calendar updates listing on-going and one-time events throughout the five boroughs of New York City.⁵¹ WRNN-DT states that it also originates and airs numerous sporting events that are local to the Communities, such as local college football games and football contests between the New York Police and Fire Departments, and it regularly reports the sports scores of high schools and colleges located throughout the Communities.⁵² In addition, WRNN-DT argues that several local political leaders, as well as the New York City Department of Information Technology and Telecommunications and the New York State Public Service Commission, have written letters in support of carriage of WRNN-DT on cable systems in the Communities, asserting that WRNN-DT serves critically important local needs of the Communities.⁵³

13. **Coverage by Other Qualified Stations.** WRNN-DT argues that coverage of local news by other stations carried on the system does not weigh against a station seeking to add communities to its market.⁵⁴

14. 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 purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.⁵⁵ Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission to afford particular attention to the value of localism, taking into account four specified statutory factors.⁵⁶ These principles apply to all television stations without regard to the mode in which the station broadcasts. Furthermore, the Commission has found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, are applicable to digital television modification proceedings during the transition period.⁵⁷

15. In analyzing the statutory factors for market modification, we find that the record evidence indicates that WRNN-DT apparently has minimal cable carriage in the requested Communities.

⁴⁷ *Id.* at 54.

⁴⁸ *Id.* at 6, 29.

⁴⁹ *Id.* at 27.

⁵⁰ *Id.* at 8, 28.

⁵¹ *Id.* at 41.

⁵² *Id.* at 9-10, 36.

⁵³ *Id.* at 30, 33-35. See Exhibits 12-30. WRNN Petition at 30, citing *Ackerley Media Group, Inc.*, 18 FCC RCD 16199, 16203 (2003)(finding that letter from the City Council demonstrated that the station provides local programming to the cable communities).

⁵⁴ WRNN Reply at 19.

⁵⁵ 47 U.S.C. § 534(h)(1)(C).

⁵⁶ 47 U.S.C. § 534(h)(1)(C)(i).

⁵⁷ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

Furthermore, we note that WRNN-DT has provided some evidence that the Station is carried in communities contiguous to the requested Communities. With regard to signal coverage, WRNN-DT's current coverage of the Communities is the result of modification to the its authorization, including changing the location of the transmitter site to Beacon Mountain, approximately 40 miles south of the previous transmitter location. The Longley- Rice studies it conducted indicate that the Communities fall within WRNN-DT's 48 dBu or 41 dBu contour, the requirement for coverage.⁵⁸ The Bureau's analysis of the data filed shows that WRNN-DT does provide coverage to all or practically all of the Communities at issue.

16. WRNN-DT provides many hours of programming dedicated to home shopping, paid programming, and infomercials, including programming entitled Jewelry Television by ACN. According to WRNN-DT's program schedule, a significant part of WRNN-DT's programming day and week is focused on programming of this nature. However, also on WRNN-DT's programming schedule are shows entitled "RNN Metro," "RNN Live," and "News on the Hour," which provide local news and information of value to the Communities. "RNN Metro" and "RNN Live" each air for one hour weeknights and "News on the Hour" airs reports daily from 6 a.m. to 6 p.m. and from 9 p.m. to midnight. WRNN-DT airs approximately fourteen hours of news and public affairs programming per day. Of significance is that the news and discussion programs offered by WRNN-DT are targeted to the Communities at issue and are of interest to its residents. In addition, WRNN-DT airs sports programs and events of specific interest to the Communities. In addition, different New York City agencies, including the New York City Department of Information Technology and Telecommunications and the New York City Public Service Commission have recognized WRNN-DT's programming contributions and noted that the Station provides coverage of local public policy and social issues of particular relevance to all New Yorkers.⁵⁹ WRNN-DT also airs programming of interest to its community of license such as "Valley News Live", which is aired evenings and directly focuses on events in the Hudson Valley region. WRNN-DT has its main studio in one of the communities and has also shown that its programming has local nexus to the Communities.

17. The third statutory factor 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."⁶⁰ We believe that Congress did not intend this factor to bar a request to modify a DMA when other stations could be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue.⁶¹ With regard to the fourth factor, viewership, the Media Audit survey filed by WRNN-DT does indicate that WRNN-DT has some viewership in areas of the requested Communities.⁶² In view of the above, carriage of the station's signal is reasonable and appropriate under the Act and the Commission's rules.⁶³

⁵⁸ See WRNN Petition, Exhibit 4 (Longley-Rice Study).

⁵⁹ See *id.* at 33-34.

⁶⁰ 47 C.F.R. § 76.59(b).

⁶¹ See, e.g. *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

⁶² Because the Media Audit survey covered only 134 respondents in the Communities of Manhattan and Queens, we are hesitant to assign significant evidentiary weight to its findings. Nevertheless, in spite of the limited circumstances of the Media Audit survey, it does indicate at least some viewership of WRNN-DT.

⁶³ Although granting today WRNN-DT's modification request, we are concerned that placement of the main studio in New York, as well as moving the Station's antenna might threaten the quality of service to WRNN-DT's community of license. Service to the New York City Communities at issue should not be to the detriment to

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(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-6432-A), filed by WRNN License Company, LLC **IS GRANTED** as indicated herein.

19. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.⁶⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief,
Media Bureau

WRNN-DT's community of license and surrounding areas. WRNN-DT should ensure that service to the community of license and surrounding areas will not be compromised.

⁶⁴ 47 C.F.R. § 0.283.