

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

In the Matter of:)	
)	
Time Warner Entertainment-Advance/ Newhouse Partnership d/b/a Time Warner Cable)	CSR-6954-A
)	
For Modification of the Los Angeles, California DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: July 25, 2007

Released: July 27, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable (“Time Warner”), filed the above-captioned petition for special relief seeking to modify the Los Angeles, California designated market area with respect to station KWHY-TV (Ch. 22), Los Angeles, California (“KWHY-TV”).¹ Specifically, Time Warner requests that KWHY-TV be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the communities of Barstow, Marine Corps Logistics Base, and adjacent areas of unincorporated San Bernardino County (including areas known as Daggett, Hinkley, Lenwood and Yermo), California. An opposition to this petition was filed on behalf of NBC Telemundo License Co., licensee of KWHY-TV, to which Time Warner replied. For the reasons stated below, we deny Time Warner’s request.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic

¹Modification at 1.

²*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) (“*Must Carry Order*”).

³Section 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

(continued...)

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.⁴

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.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

(...continued from previous page)

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").

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

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

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.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 *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.⁹
- (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

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

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

⁹Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical exhibit. 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.

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.¹⁰

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 Time Warner's request to exclude KWHY-TV from mandatory carriage in Barstow, Marine Corps Logistics Base, and adjacent areas of unincorporated San Bernardino County (including areas known as Daggett, Hinkley, Lenwood and Yermo), California. All of the communities at issue are located in the Los Angeles DMA, as is KWHY-TV, which is licensed to Los Angeles, California. Considering all of the relevant factual circumstances in the record, we do not believe that the petition warrants a modification of the Los Angeles DMA with respect to KWHY.

6. The first statutory factor 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."¹¹ Time Warner states that KWHY-TV has no history of carriage on the Barstow cable system.¹² Time Warner argues that KWHY-TV's lack of carriage during its operational history is due to the fact that the subject communities are all located outside the scope of KWHY-TV's natural market.¹³

7. KWHY-TV argues in opposition that the Commission has recognized that lack of historical carriage "is not especially relevant when a station delivers specialty programming."¹⁴ KWHY-TV states that the economic feasibility of a specialty station paying for a microwave link to deliver a quality signal to a relatively small group of communities is heavily dependent on the demographics of a particular area. In this instance, KWHY-TV maintains that the changing demographics in the subject communities has made it more economically feasible and the ongoing upgrades by the station's current owner enhanced its ability to deliver a quality signal.¹⁵ KWHY-TV asserts further that Time Warner's carriage of other stations assigned to the same area as KWHY-TV only enhances its carriage rights.¹⁶ KWHY-TV notes that in *Comcast Cablevision of Danbury, Inc.*, the Commission concluded that, just as in the situation here, the first statutory factor favored preservation of carriage rights because the cable system carried stations from communities near the station's home community.¹⁷ Finally, KWHY-TV

¹⁰47 C.F.R. §76.59(b).

¹¹47 U.S.C. §534(h)(1)(C).

¹²Modification at 6.

¹³*Id.* at 6-7, citing *CSR TKR, Inc.*, 16 FCC Rcd 12577, 12583 (2001).

¹⁴Opposition at 6, citing *Comcast Cablevision of Danbury, Inc.*, 18 FCC Rcd 274, 278 (2003); *CoxCom, Inc.*, 17 FCC Rcd 17192 (2002).

¹⁵*Id.* at 7.

¹⁶*Id.*

¹⁷18 FCC Rcd at 278.

argues that the Commission has long recognized that stations located within a television market's "hub" area merit carriage throughout the market.¹⁸ KWHY-TV contends that this principle applies even to stations not specifically assigned to the hub city, but to a community within the hub area.¹⁹

8. Time Warner argues in reply that, under the Commission's rules, a cable operator is "free to carry any station" and the Barstow system is exercising its statutory and regulatory right to do so.²⁰ Indeed, Time Warner states that, in previous cases, the Commission has dealt with remote cable operators and has established the principle that carriage of other market stations that do not provide Grade B coverage to the cable communities "does not prevent [that cable operator] from exercising its statutory right to seek market modification."²¹ Time Warner points out that the Barstow cable system, which began operations in 1952, was apparently built to provide microwave-delivered Los Angeles network stations KABC-TV, KCBS-TV, and KNBC to consumers in the remote Mojave Desert area where Barstow is located.²² Over the next 20 to 30 years, the Barstow system added the Los Angeles independents and PBS station KCET.²³ Time Warner maintains that without the core Los Angeles stations, there would have been no Barstow system. However, Time Warner states that it should be noted that KWHY-TV is not the only Los Angeles market commercial station that is not carried on the Barstow system; indeed there are 11 other similarly situated stations.²⁴ Time Warner states that it is clear that KWHY-TV has not been singled out for discriminatory treatment. Finally, Time Warner argues that KWHY-TV's reliance on the *Comcast Cablevision of Danbury* is misplaced.²⁵ In that situation, Time Warner argues, the cable communities were 57 miles from the subject station, there were no geographical barriers, and the station's Grade B contour covered one of the three cable communities.²⁶

9. The second statutory factor is "whether the television station provides coverage or other local service to such community."²⁷ Time Warner states that each of the cable communities herein are located 93 to 106 miles from Los Angeles, KWHY-TV's city of license,²⁸ and argues that the Commission has granted prior requests involving similar distances.²⁹ Time Warner states that the system

¹⁸*Id.* at 8-9, citing *WLNY-TV, Inc.*, 163 F.3d 137, 144 (2d Cir. 1998); *Comcast Cablevision of Danbury*, 18 FCC Rcd at 278.

¹⁹*Id.*, citing *Comcast Cablevision of Danbury*, 18 FCC Rcd at 278 (deeming Newark, New Jersey station as part of the hub of New York market, even though Newark was farther from the cable system in question than New York).

²⁰Reply at 3, citing *Comcast Cablevision Corporation of California, LLC*, 17 FCC Rcd 15626, 15631 (2002).

²¹*Id.*

²²*Id.* at 4 and Declaration of Charles R. Gibson, General Manager of the Barstow system.

²³*Id.*

²⁴*Id.* Time Warner states that these stations are KSCI, KVEA, KPXN, KVMD, KMEX-TV, KTBN-TV, KXLA, KFTR-TV, KAZA-TV, KDOC-TV and KRCA.

²⁵*Id.* at 5.

²⁶*Id.*, citing *Comcast Cablevision of Danbury*, 18 FCC Rcd at 277.

²⁷47 U.S.C. §534(h)(1)(C).

²⁸Modification at 7 and Attachments 1A-1E and 2A and 2B.

²⁹*Id.* at 7-8.

communities also lie outside KWHY-TV's predicted Grade B contour by at least 12.3 miles.³⁰ Moreover, Time Warner argues, KWHY-TV's actual service into San Bernardino County is sharply curtailed because of the mountainous terrain that lies between KWHY-TV and the Barstow system.³¹ In addition, Time Warner argues that KWHY-TV fails to provide any programming of local interest to the communities. Time Warner notes that KWHY-TV's programming schedule appears to be exclusively devoted to Spanish-language programming, which Time Warner asserts is of little specific interest to the residents of the subject communities.³² Finally, Time Warner states that the lack of nexus between KWHY-TV and the communities is evidenced by the fact that the station is not listed in the TV program logs published by *The Press Dispatch*, the principal local newspaper for the communities.³³

10. KWHY-TV argues that it provides programming of interest to the Barstow system, including 10 hours per week of local news regarding the Los Angeles market and, in particular to San Bernardino County where the communities are located.³⁴ KWHY-TV asserts that Time Warner is wrong that such programming would not be of interest because it ignores its Spanish-speaking subscribers, particularly those who speak Spanish at home.³⁵ Moreover, KWHY-TV argues that Los Angeles and its metropolitan area are closely linked to the subject communities.³⁶ For instance, KWHY-TV states that Barstow is connected to the Los Angeles metropolitan area by major interstate highways and it is a major stop-over point for travelers heading between Los Angeles and Las Vegas.³⁷ KWHY-TV maintains that such a geographic location underscores the fact that Barstow is part of the Los Angeles economic market despite the intervening mountains and national forest that separates the two areas.³⁸ KWHY-TV argues further that the distances cited by Time Warner in cases that have lost carriage rights ignores the much larger distances inherent in western DMAs.³⁹ In any event, KWHY-TV points out that its community of license and transmitter are closer or as close to the communities herein as any of the other Los Angeles or Ventura commercial stations already carried by the system.⁴⁰ KWHY-TV further maintains that its projected Grade B contour is also not meaningful as a factor in denying it carriage rights to the system.⁴¹ Time Warner carries multiple stations from the Los Angeles area and none rely on over-the-air coverage

³⁰*Id.* at 8 and Exhibit E.

³¹*Id.* at Exhibit E (Longley-Rice propagation study); *see also Avenue TV Cable Service, Inc.*, 16 FCC Rcd 16436 (2001); *MediaOne of Los Angeles, Inc. and MediaOne Group, Inc.*, 15 FCC Rcd 19386, 19398 (2001); *Cox Comm dba Cox Communications Orange County*, 19 FCC Rcd 2509, 4517 (2004).

³²*Id.* at 9 and Attachment 3.

³³*Id.* at 10 and Attachment 4.

³⁴Opposition at 9. KWHY-TV states that it also airs programs of particular interest to the entire market such as one hour per week of locally-produced regional sports news in Spanish. *See* Exhibit A.

³⁵*Id.* at 10.

³⁶*Id.* at 11.

³⁷*Id.*

³⁸*Id.* at 11-12.

³⁹*Id.* at 12. KWHY-TV notes for instance that the city of Los Angeles alone is 44 miles long from its northern to its southern tip. *See* http://en.wikipedia.org/wiki/Los_Angeles.

⁴⁰*Id.*

⁴¹*Id.* at 13.

to transmit their signals to the system.⁴² Indeed, KWHY-TV asserts that the fact that Section 76.60(a) of the Commission's rules allows a station to deliver its signal by other means demonstrates that the lack of a Grade B signal cannot be determinative.⁴³

11. Time Warner argues in reply that, despite KWHY-TV's assertion, there is nothing in the *Comcast Cablevision of Danbury* that supports KWHY-TV's contention that a station's technical coverage is secondary to whether the station delivers programming of particular interest to the communities at issue.⁴⁴ Time Warner states that none of KWHY-TV's statements about its Spanish-language programming offer any evidence that any news stories or other programming relate directly to San Bernardino County, Barstow, or any of the other subject communities.⁴⁵ This lack of evidence, maintains Time Warner, invalidates KWHY-TV's claims in this regard. In any event, Time Warner points out that it is well settled that the must carry rules are content neutral.⁴⁶ The fact that a station broadcasts general interest programming in a foreign language does not override the absence of that programming's particular focus on the cable communities or a specific market connection.⁴⁷ Finally, Time Warner states that the remoteness of its cable system from KWHY-TV has been well documented and is essentially unchallenged by KWHY-TV.⁴⁸

12. 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."⁴⁹ Time Warner states that it currently carries numerous market stations that provide local news throughout the day and a wide range of news, sports, public affairs, and public service coverage.⁵⁰ Time Warner states that these stations, as well as other stations carried on the system, broadcast local news throughout the day and subscribers in the subject communities enjoy a wide range of news, sports, public affairs, and public service coverage.⁵¹ KWHY-TV argues that just because Los Angeles may have many teams, events and businesses of interest to Barstow, it is no reason to reject KWHY-TV's carriage rights, particularly given its unique programming.⁵²

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."⁵³ Time Warner

⁴²*Id.*

⁴³*Id.*; see also 47 C.F.R. § 76.60(a).

⁴⁴Reply at 6.

⁴⁵*Id.*

⁴⁶*Id.* at 7, citing *Comcast Cablevision of California, LLC*, 17 FCC Rcd 15626, 15631 (2002).

⁴⁷*Id.*, citing *CoxCom, Inc.*, 17 FCC Rcd 17192, 17197 (2002); *Frontiersvision Operating Partners, L.P.*, 16 FCC Rcd 17745 (2001); *TCI Cablevision of New Mexico, Inc.*, 16 FCC Rcd 13959 (2001).

⁴⁸*Id.* at 7-8, citing *Time Warner Entertainment Co., L.P.*, DA 05-2431 (rel. Sept. 9, 2005) (50-102 miles).

⁴⁹47 U.S.C. §534(h)(1)(C).

⁵⁰Modification at 10.

⁵¹*Id.* at 11, citing *Avenue TV Cable Service, Inc.*, 16 FCC Rcd 16436, 16445 (2001).

⁵²Opposition at 13-14.

⁵³47 U.S.C. §534(h)(1)(C).

states that, to its knowledge, KWHY-TV fails to achieve reportable off-air viewing in the remote area of San Bernardino County served by its system.⁵⁴ Time Warner argues that this dearth of viewers is consistent with the station's lack of Grade B coverage and is of evidentiary significance. KWHY-TV argues that Time Warner is mistaken in its contention that KWHY-TV does not have viewership ratings in the communities, and also emphasizes the Commission's repeated statements that this factor is not particularly relevant for "specialty" stations.⁵⁵ KWHY-TV states that in October 2005, it recorded a 1.0 percent share and a 0.6 percent rating among metered households in the Barstow zip code (92311).⁵⁶ KWHY-TV maintains that this is significant given its lack of cable carriage and limited other distribution in the relevant area. Time Warner argues that KWHY-TV's claim to local ratings in the Barstow zip code is illusory.⁵⁷ Time Warner asserts that, in light of KWHY-TV's off-air signal deficiencies in the Barstow area, the miniscule viewing of KWHY-TV must be attributable to carriage by one of the national DBS operators.⁵⁸ Time Warner argues, however, that such carriage does not demonstrate a nexus between KWHY-TV and the subject communities.

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.⁵⁹ 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 four statutory factors into account.⁶⁰ It is undisputed that KWHY-TV has no history of carriage in Barstow, despite being on the air for a considerable number of years and that it has minimal audience viewership in San Bernardino County, where Time Warner's cable system is located. However, KWHY-TV's failure to meet these criteria are offset by the fact that it is a specialty station and that such stations, in general, are less likely to meet these factors.⁶¹ In *Paragon Cable*, for example, the Commission addressed the issues of historic carriage and viewership where a specialty station was involved.⁶² There, the Commission stated that "we do not agree that the historical carriage factor should, by itself, be given significant weight . . . because such an interpretation of the 1992 Cable Act would, in effect, prevent *weaker* or newer stations that cable systems had previously declined to carry, from ever being carried."⁶³ In addition, the Commission rejected arguments regarding the lack of ratings of the specialty station involved as "unpersuasive." The Commission explained: "We recognize that home shopping stations, like religious or foreign language stations ("specialty stations"), are capable of 'offer[ing] desirable diversity of programming . . . , yet

⁵⁴Modification at 11.

⁵⁵Opposition at 14.

⁵⁶*Id.*

⁵⁷Reply at 8. The sole evidence for such data is "the October 2005 report," an unidentified report that KWHY-TV did not submit with its petition.

⁵⁸*Id.*

⁵⁹47 U.S.C. § 534(h)(1)(c).

⁶⁰47 U.S.C. § 534(h)(1)(C)(i).

⁶¹See *First Report and Order in Docket No. 20553*, 58 FCC 2d 442 at ¶¶ 23, 28, 36 & 39 (1976) (discussing general nature of specialty stations); *recon. denied*, 60 FCC 2d 661 (1976); see also *Comcast Cablevision of Danbury, Inc.*, 18 FCC Rcd 274, 278 (2003); *CoxCom, Inc.*, 17 FCC Rcd 17192 (2002).

⁶²See *Paragon Cable*, 10 FCC Rcd 9462, 9466 (1995).

⁶³*Id.* (emphasis added).

typically attract limited audiences. We continue to believe, as the Commission did in its specialty station rules, that the fact that such stations attract a smaller audience share must be taken into account in determining the equities concerning a station's right to cable carriage."⁶⁴ In addition, we note that KWHY-TV actually has achieved measurable audience shares in the communities at issue.⁶⁵

15. Indeed, KWHY-TV itself has stated that it was only recently that it was economically feasible for it to upgrade its facilities to enable it to provide a quality signal to the Barstow area. While Time Warner argues that distance and geographic barriers preclude KWHY-TV's carriage, we note that the majority of Los Angeles area stations currently carried on the Barstow cable system are similarly distant and separated by the same geographic barriers.⁶⁶ As KWHY-TV notes, its antenna is located at the same site as the antennas of a number of other Los Angeles stations and all of the stations with antennas located at this site, except KWHY-TV, are carried by Time Warner in the communities at issue here.⁶⁷ Moreover, just like KWHY-TV, it appears that all but one of the stations currently carried on the Barstow system fail to provide predicted Grade B contour coverage.⁶⁸ It is also evident that KWHY-TV is making an effort to provide local programming to the Spanish-language population in the San Bernardino County area.⁶⁹ According to the 2000 U.S. Census, Barstow is 36.5 percent Hispanic.⁷⁰ Time Warner has provided no factual support for its claim that such programming would be of little interest to its subscribers.⁷¹ In view of the foregoing, we find that: 1) although KWHY-TV fails to meet the historic carriage criteria for statutory factor I, this is offset not only by its specialty station status, but by the fact that Time Warner carries other stations located in the same area as KWHY-TV; 2) KWHY-TV's lack of viewership in the subject communities under statutory factor IV is again offset by its specialty station status; and 3) KWHY-TV meets statutory factor II with regard to providing programming of interest to residents in the communities at issue and that, although it does not provide predicted Grade B service, it is capable of providing a signal to the cable system in the same manner as other similarly-situated stations currently carried by Time Warner. A grant of Time Warner's request, therefore, would not be in the public interest.⁷²

⁶⁴*Id.*

⁶⁵Opposition at 10-11.

⁶⁶*Cf. Pikes Peak Broadcasting Company*, 10 FCC Rcd 4374 (1995); *Marks CableVision and TCI CableVision of California, Inc.*, 15 FCC Rcd 814 (2000).

⁶⁷Opposition at 2.

⁶⁸Time Warner currently carries KCBS, KNBC, KTLA, KABC, KCET, KCAL, KHIZ, KTTV, KJLA and KCOP. Only KHIZ's predicted Grade B contour, however, appears to encompass Barstow.

⁶⁹Opposition at Exhibit A.

⁷⁰See U.S. Census Bureau American Fact Finder, Geographic Comparison Table, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US06&-box_head_nbr=GCT-P6&-ds_name=DEC_2000_SF1_U&-lang=en&-redol.og=false&-mt_name=DEC_2000_SF1_U_GCTP6_ST7&-format=ST-7&-sse+on (last visited July 18, 2007).

⁷¹See *Channel 33, Inc.*, 11 FCC Rcd 3579 (1996); *cf. Time Warner Cable*, 10 FCC Rcd 962 (1995); *WTVT License, Inc.*, 11 FCC Rcd 18020 (1996).

⁷²While we note that the Commission has granted requests by Time Warner to exclude these same communities or other communities from the markets of other television stations licensed to communities in the Los Angeles DMA (see *Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner Cable*, For Modification of the Television Market of Television Station KXLA(TV), Rancho Palos Verdes, California, 18 FCC Rcd 4990 (2003) (*KXLA(TV)*), *recon. denied*, 20 FCC Rcd 4249 (2005); *Time Warner Cable*, Petition for Special
(continued...)

IV. ORDERING CLAUSES

16. 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-6954-A), filed by Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable **IS DENIED**.

17. **IT IS FURTHER ORDERED** that Time Warner shall commence carriage of KWHY-TV within sixty (60) days of the date that KWHY-TV delivers a good quality signal to the cable system's principal headend.

18. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁷³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

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Relief, KVMD Licensee Co., LLC Complaint for Carriage, 18 FCC Rcd 21384 (2003) (*KVMD*), *recon. pending*; *Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner Cable*, For Modification of the Television Market of Television Station KDOC-TV, Anaheim, California, 18 FCC Rcd 4969 (2003) ("*KCOC-TV*"), those decisions are distinguishable. At the outset, we note that, in *KDOC-TV*, the station did not dispute any of the evidence submitted by Time Warner in that case, instead arguing that the petition was prematurely filed and should be dismissed. Here, KVEA has disputed much of the evidence submitted by Time Warner and submitted evidence of its own. As for *KXLA(TV)* and *KVMD*, both involved stations with no discernable viewing audience in the communities at issue. *See KXLA(TV)*, 18 FCC Rcd at 4992; *KVMD*, 18 FCC Rcd at 21388. In contrast, KVEA has achieved measurable ratings in the communities at issue here. In addition, *KXLA(TV)* involved greater distances separating the station and the communities at issue than are present here. *See KXLA(TV)*, 18 FCC Rcd at 4992. Finally, KVEA has provided significant evidence that it provides programming oriented to the communities at issue. This was not the case in *KXLA(TV)* or *KVMD*. *See KXLA(TV)*, 18 FCC Rcd at 4994; *KVMD*, 18 FCC Rcd at 21391.

⁷³47 C.F.R. §0.283.