

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

In the Matter of)

Time Warner NY Cable LLC)
d/b/a Time Warner Cable)

CSR-7181-A

Petition for Modification of the DMA Market of)
Television Broadcast Station WGGN-TV,)
Sandusky, Ohio)

MEMORANDUM OPINION AND ORDER

Adopted: August 22, 2007

Released: August 23, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address the petition for special relief filed by Time Warner NY Cable LLC d/b/a Time Warner Cable ("Time Warner"). Time Warner seeks to modify the Cleveland-Akron designated market area to exclude 43 northeastern Ohio communities ("cable communities" or "communities")¹ from the television market of Christian Faith Broadcast, Inc., Licensee of WGGN-TV, Channel 52, Sandusky, Ohio ("WGGN") for the purposes of the Commission's cable television mandatory broadcast signal carriage rules. No opposition to Time Warner's petition was filed. For the reasons explained below, we grant Time Warner's petition for special relief.

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 are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A

¹ Time Warner seeks to exclude from WGGN-TV's market the following communities: 1) Glenmont (OH0060); 2) Richland (OH0061); 3) Killbuck (OH0078); 4) Millersburg (OH0079); 5) Dennison (OH0117); 6) Dover (OH0118); 7) Gnadenhutzen (OH0120); 8) New Philadelphia (OH0123); 9) Newcomerstown (OH0124); 10) Sugarcreek (OH0125); 11) Uhrichsville (OH0126); 12) Strasburg (OH0137); 13) Carrollton (OH148); 14) Minerva (OH0168); 15) Parral (OH0195); 16) Barnhill (OH0196); 17) Beach City (OH0196); 18) Wilmot (OH0257); 19) Midvale (OH0299); 20) Malvern (OH0326); 21) Tuscarawas (OH0541); 22) Bolivar (OH0627); 23) Zoar (OH0628); 24) Dellroy (OH1126); 25) Monroe (OH1127); 26) Sherrodsville (OH1128); 27) Fredericksburg (OH1554); 28) Holmesville (OH1555); 29) Walnut Creek (OH2048); 30) Berlin (OH2049); 31) Lake Buckhorn (OH2050); 32) Tuscarawas (OH2062); 33) Baltic (OH2196); 34) Lawrence (OH2245); 35) Paris (OH2319); 36) Brown (OH2323); 37) Atwood Lake (OH2463); 38) Washington (OH2561); 39) Port Washington (OH2574); 40) Roswell (OH2578); 41) Stone Creek Village (OH2745); 42) Oxford (OH2791); and 43) Dover (OH2793).

²8 FCC Rcd 2965, 2976-77 (1993).

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 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

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 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*, Order on Reconsideration and Second Report and Order, 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.*

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.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.

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.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.

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

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

⁹The 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.

- (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.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. Time Warner asserts that none of the statutory factors suggest a close economic relationship between WGGN and the subject communities. Although WGGN has been in existence since 1982, Time Warner states that it has never carried WGGN in any of the cable communities.¹¹ In addition, Time Warner states that WGGN fails to provide Grade B coverage over any of the cable communities.¹² Time Warner asserts that WGGN's general interest religious programming is "not of specific interest to residents of the distant [cable] communities."¹³ Time Warner also asserts that it already carries numerous local channels that do provide local programming.¹⁴ As further evidence of a lack of a connection between WGGN and the communities, Time Warner notes that the local daily newspaper serving the subject communities fails to list WGGN-TV in its television listings.¹⁵ Time Warner also emphasizes that there is significant distance between WGGN and the cable communities, ranging from 72 miles (Fredericksburg) to 104 miles (Carrollton).¹⁶ Furthermore, asserts Time Warner, whereas WGGN's community of license, Sandusky, lies within an industrial area, the cable communities are rural in nature. Based on these factors, asserts Time Warner, the cable communities should be excluded from the television market of WGGN.

¹⁰ 47 C.F.R. §76.59(b).

¹¹ See Petition at 6.

¹² See *id.* at 9.

¹³ See *id.*

¹⁴ See *id.* at 11.

¹⁵ See *id.*

¹⁶ See *id.* at 7. Time Warner cites numerous cases in which the Commission found physical distance to be a significant factor supporting market modification. See Petition at 8 (citing *Armstrong Utilities, Inc.*, 21 FCC Rcd 13475 (2006); *Comcast Cable Communications, LLC*, 20 FCC Rcd 10093(2005); *KDOC-TV*, 18 FCC Rcd 4969 (2003); *Paxson Portland License, Inc.*, 17 FCC Rcd 18332 (2002); *Time Warner Cable*, 17 FCC Rcd 9542 (2002); *Time Warner Entertainment-Advance/Newhouse Partnership*, 16 FCC Rcd 15279 (2001); *Greater Worcester Cablevision, Inc.*, 12 FCC Rcd 17347 (1997); *Continental Cablevision of Western New England, Inc.*, 11 FCC Rcd 6488 (1996); *Time Warner Cable*, 14 FCC Rcd 23249 (1996); *Cablevision of Cleveland, L.P. and V. Cable, Inc.*, 11 FCC Rcd 18034 (1996)).

6. We recognize that because WGGN offers specialized content, cable systems may be more reluctant to carry this station because of its appeal to smaller, niche audiences. For this reason, the Bureau has traditionally not given much weight to a lack of historical carriage or viewership of specialty stations.¹⁷ We note that there is no evidence of historical carriage or viewership in the subject communities. Even discounting these factors, however, there is no evidence suggesting that WGGN serves the subject communities. We also note that the Grade B contour map submitted by Time Warner shows a lack of coverage of the cable communities. Although we note that WGGN's religious programming may be of interest to residents of the cable communities, there is no evidence in the record supporting the conclusion that WGGN's programming specifically addresses the cable communities. In the absence of such local programming, the Commission has given weight to a system's carriage of other local stations.¹⁸ We further note that this petition is unopposed. Based on the record, Time Warner has demonstrated that WGGN should be excluded from the cable communities.

IV. ORDERING CLAUSES

7. 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-7157-A), filed by Time Warner NY Cable LLC **IS GRANTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ See, e.g., *KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 (2003); *Falcon Cable Systems Co. II, L.P.*, 18 FCC Rcd 23774, 23781 (2003).

¹⁸ See *Cablevision of Ohio*, 11 FCC Rcd 18034 (1996).