

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

In re:)	
)	
Petition of Time Warner New York City Cable Group)	CSR-4416-A
)	
)	
For Modification of ADI for Station WRNN, Kingston, NY)	

MEMORANDUM OPINION AND ORDER

Adopted: May 22, 1996

Released: May 31, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Before the Commission is the captioned petition filed by Time Warner New York City Cable Group ("Time Warner" or "operator") seeking to modify the New York "area of dominant influence" ("ADI") and to exclude the communities of Northern and Southern Manhattan, Eastern, Western, and Southern Queens, Western Brooklyn, and Staten Island, from WRNN's television market.¹ WRNN-TV Associates Limited Partnership, licensee of television station WRNN-TV (Channel 62), Kingston, NY, filed an opposition to the petition to which Time Warner replied.²

¹ The corporate title and CUID numbers of the affected cable systems are as follows (1) **Time Warner Cable of New York City** serving Southern Manhattan (NY 0234), Eastern Queens (NY 1281), Western Queens (NY 1340), and Western Brooklyn (NY 1280); (2) **Queens Inner Unity Cable Systems** serving Southern Queens (NY 1402); (3) **Paragon Cable Manhattan** serving Northern Manhattan (NY 0104); and (4) **Staten Island Cable** serving Staten Island (NY 1312).

² WLIG-TV, Inc, licensee of television station WLIG, filed comments in this proceeding to correct unfounded assertions made by WRNN in its opposition.

On March 7, 1996, WRNN filed a brief *ex parte* letter with the Commission which includes as an exhibit, a Grade B contour map of WRNN's translator licensed to Nyack, New York. Time Warner filed a response to this submission on March 20, 1996.

BACKGROUND

2. Pursuant to §614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,³ 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 "area of dominant influence" or ADI as defined by the Arbitron audience research organization.⁴ An ADI 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.⁵

3. Under the Act, however, the Commission is also directed to consider changes in ADI 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.

In considering such requests, the 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

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

⁵ Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

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.⁶

4. The legislative history of this provision indicates that:

where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI 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 areas 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

5. The Commission provided guidance in its *Report and Order in MM Docket 92-259, supra*, to aid decision making in these matters, as follows:

For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate

⁶ Communications Act of 1934, as amended, §614(h)(1)(C)(ii), 47 U.S.C. §534(h)(1)(C)(ii).

⁷ H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.⁸

6. As for deletions of communities from a station's ADI, the legislative history of this provision indicates that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.⁹

7. In adopting rules to implement this provision, the Commission indicated that changes requested 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.¹⁰ The rules further provide, in accordance with the requirements of the Act, that a station not be deleted from carriage during the pendency of an market area change request.¹¹

MARKET FACTS AND ARGUMENTS OF THE PARTIES

8. In its petition, Time Warner requests that the Commission delete New York City from the television market of station WRNN, Kingston, New York. Time Warner generally asserts that WRNN is not "local" to New York City as its programming is geared to the local needs and interests of the distant Kingston area. Moreover, the needs of Time Warner's subscribers for local news, public affairs and public service programming are being fully met by the local broadcast stations and cable offerings carried on the New York City systems. Time

⁸ 8 FCC Rcd at 2977 (emphasis in original).

⁹ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

¹⁰ 8 FCC Rcd at 2977 n.139. Viewership data cited herein is county data, rather than community-specific data. However, absent evidence that such data is not fairly reflective of viewing in the actual communities in question, we accept such data as probative in cases of this type.

¹¹ 47 C.F.R. §76.59.

Warner also notes that it has not carried WRNN because of past copyright and signal quality concerns.

9. With regard to the historical carriage factor, the operator asserts that WRNN has never been carried on the systems because it has never believed that the station provides any locally-oriented programming of interest to New York City cable subscribers. Time Warner also states that it has never carried any television station licensed to the same area as WRNN.¹² For example, the systems have never carried WTBY, a station licensed to Poughkeepsie, NY, which is to the south of Kingston. Referring to the third factor, Time Warner states that other stations and cable offerings provide ample local news, sports, and public service programming throughout each broadcast day to its New York City subscribers.¹³ Time Warner also mentions that it meets local community concerns through its carriage of at least nine public, educational, and government access channels on its systems. The operator alleges that WRNN has achieved no viewing in the households of New York City and therefore does not have a sufficient audience to be rated in the New York market. The operator then points out that the station is in fact listed in Nielsen Media Research's audience research survey for the Albany-Schenectady-Troy, NY DMA. The operator also argues that the addition of WRNN, or any of the other newly copyright-free television stations, would have an adverse impact upon its subscribers as it would have to drop a cable programming service to accommodate carriage of the station's signal.¹⁴

10. Time Warner's principal argument, however, is that WRNN does not provide local service to the relevant cable communities. The operator claims the station makes no effort to serve New York City with programming of local interest to City residents.¹⁵ The local programming and service the station does provide is oriented more toward viewers living in the upstate New York counties of Ulster and Dutchess.¹⁶ The operator also notes that WRNN is not physically proximate as Kingston, NY is about 80 miles away from New York City. In contrast, the station is just 51 miles from Albany, NY, the center of the separate Albany-Schenectady-Troy

¹² Time Warner submits that Cablevision Systems Corporation has also never carried WRNN on its systems serving the Bronx and eastern Brooklyn, the only areas of New York City not served by Time Warner's systems.

¹³ The systems carry the following local commercial stations: WCBS (CBS); WNBC (NBC); WABC (ABC); WNYW (FOX); WWOR (general); WPIX (general); WXTV (Spanish lang.); WNJU (Spanish lang.); WHSE (Home Shopping) and WLIG (General). The noncommercial stations currently carried are: WNYC; WNET; WLIW; WJNJ; and WNYE.

¹⁴ According to Time Warner, its 550 MHz systems in Manhattan, Queens, and Brooklyn are filled to capacity.

¹⁵ Time Warner notes that the lack of interest on the part of New York City viewers is evidenced by the fact that *TV Guide* does not include WRNN in its New York City television station programming guide. The operator asserts that *TV Guide* recognizes that the programming of WRNN is not of sufficient local interest to be included with that of 20 other broadcast stations in the New York City edition.

¹⁶ Time Warner gives several examples of news stories broadcast by WRNN that illustrate the station's upstate New York focus.

ADI. Time Warner submits that WRNN's Grade B contour does not appear to cover most of the areas served by the New York City systems and the station fails to provide an adequate strength signal at the headend of any of the systems. Nevertheless, the station appears to cover Albany, Schenectady, and Troy with its Grade B contour.

11. In opposition, WRNN first explains that it is a UHF independent television station serving a large portion of the greater New York ADI with a high quality over-the-air signal.¹⁷ WRNN asserts that Time Warner consistently has sought to avoid its legal obligation to carry its signal, and thereby perpetuates the monopoly profits being earned by competing cable program services in which Time Warner has an economic stake. The station argues that the Commission should ignore Time Warner's attempt to split the ADI into separate and discrete areas of viewing patterns because the operator itself recognizes that the greater New York ADI is an economically integrated viewing/advertising community. For example, Time Warner is a major participant in WNYI, a tri-state cable advertising interconnect where an advertiser can acquire time through a single purchase on cable systems covering New York City, Long Island, New Jersey, Westchester County, Rockland County, and southern Connecticut. According to the station, Time Warner's participation in WNYI illustrates the fallacy of its claims that WRNN is not part of the greater New York television market. WRNN then questions why New York City stations should be carried in Kingston and surrounding areas if WRNN has no right to be carried in New York City.

12. With regard to past cable carriage, WRNN argues that the operator's argument is circular. The past lack of carriage of WRNN by Time Warner and other cable systems in the ADI has been a reflection of WRNN's newness and the unreasonable actions of the cable operators themselves. According to WRNN, Congress intended the statute to eliminate such instances of refusals to carry, not to perpetuate them. The station also mentions that Time Warner has been arbitrary in its decisions as to which independent stations to carry system-wide, agreeing for example to carry WLIG, Riverhead, NY, a similarly situated station on systems which are as much as 83.5 miles away. As for the third statutory factor, WRNN argues that it is irrelevant that many other stations in the market provide similar programming because the fundamental purpose of must carry is to create a greater diversity of offerings.

13. To rebut Time Warner's lack of local programming claim, WRNN argues that its programming, both at present and as proposed for the future, provides just the sort of local service that Congress stated the Commission should consider as a critical factor in refusing to delete cable communities from a particular market. The station asserts that the examples Time

¹⁷ WRNN states that it is a qualified must carry signal signing on-the-air in late 1985. The station asserts that it has tried to satisfy the operator's concerns about its signal quality by agreeing to deliver its signal via fiber-optics to each Time Warner headend. WRNN also states that Time Warner filed its petition shortly after Congress enacted a new Copyright Act provision making a station's ADI local for copyright as well as for must carry purposes. WRNN notes that the following cable operators in the New York ADI have agreed to carry the station's signal after Section 111 of the 1976 Copyright Act was amended: Comcast of Danbury, CT; Cablevision of Yorktown; Continental Cable of Ossining; United Cable of North Salem; and TKR Rockland. The station notes that these systems alone raise WRNN's reach of television households by 33%.

Warner gave regarding WRNN local programming efforts are not "exhaustive" and are no reflection of the local service it provides for the entire ADI. Moreover, locally produced news and informational programming comprises some 33% of WRNN's weekly program schedule. WRNN also states that it has added news bureaus in Westchester and Rockland Counties in preparation for airing "Westchester-Rockland News" -- the first area-wide daily-local newscast in that area, beginning January 30, 1995. In keeping with this concept, WRNN plans to add news bureaus in Danbury and Stamford, Connecticut; Bergen County, New Jersey, and in New York City. WRNN also plans to adopt its current weekly programs such as "Business Forum" and "Safe Streets" to meet the local needs of other New York ADI communities and is presently negotiating to carry several programs on its schedule with special interest to New York City residents.¹⁸ The station asserts that WRNN's lack of Grade B contour coverage is irrelevant because WLIG, like WRNN, does not place a Grade B contour over the systems yet the operator does carry that station. Nonetheless, in a later pleading WRNN shows that its translator station in Nyack, NY (Rockland County) acts to extend its signal into portions of New York City. Time Warner's geographic distance and poor quality signal arguments are also unavailing because WRNN is committed to provide a good quality signal to all of the operator's headends via a microwave link. With regard to viewership, WRNN claims that a special Arbitron survey of the Hudson Valley indicates significant viewership of certain programs in that area.

14. The station also asserts that Time Warner has made no claim that it fulfilled its statutory requirement of carrying the signals of commercial television stations up to one-third of the aggregate number of usable activated channels of its systems. The failure to fulfill this requirement outweighs any argument Time Warner makes that its systems are filled to capacity, and therefore, the operator must make room for WRNN. In addition, WRNN claims that the grant of Time Warner's petition would serve only to limit competition to the numerous cable originated channels the operator owns either outright or in concert with others. Were WRNN to be carried on Time Warner's systems, it would compete directly with the operator's news service "New York 1 News" for viewers and advertisers. WRNN asserts that Time Warner apparently does not welcome this competition for subscribers and advertising revenue and so it seeks to keep the station off its systems. WRNN also argues that the failure to afford it full must carry rights in the greater New York ADI would severely hinder the station's ability to survive in the marketplace, let alone undertake its planned news and information format. Finally, permitting market-wide cable carriage will further the Commission's own long-held policy of fostering the growth of free, over-the-air, UHF independent stations.

15. In a brief filing, WLIG, an independent television station based in Riverhead, NY, attempts to correct unfounded assertions made by WRNN. WLIG first states that it is currently

¹⁸ WRNN explains that it had entered into negotiations with Time Warner whereby the operator would carry the station on all its systems throughout the ADI in exchange for WRNN carrying four programs from the operator's cable service New York 1 News. These discussions were broken off after the operator filed its petition with the Commission.

carried on all the cable systems serving New York City.¹⁹ WLIG then explains that it broadcasts 4 half hours of self-produced local news each weekday from its studio and 2 half hours of self-produced public affairs programming each weekend, covering stories of local interest to viewers in New York City and throughout the New York ADI.²⁰ In addition, WLIG's newscasts include in-depth daily coverage of New York City professional and collegiate sports teams and New York City weather. Finally, WLIG asserts that its Grade B contour encompasses portions of the Queens communities served by Time Warner's Queens systems and it delivers a signal meeting FCC standards to all of the operator's systems.

16. In its reply, Time Warner asserts that WRNN disregards clear statutory factors and distorts relevant evidence. With regard to the historical carriage factor, the operator argues that the 1992 Cable Act makes historic carriage a relevant factor in all market modification petitions, without any exception. Time Warner also asserts that past carriage is important to consider because if carriage of the station's programming would have increased the value of the channel line-up to subscribers through local interest programming, the systems would have previously added it. With regard to carriage of WLIG, Time Warner states that, contrary to the assertions of WRNN, it carried this station's signal on all of its systems prior to the Copyright Act's revision in October, 1994.²¹ The operator also reiterates that WRNN does not provide local service to the systems' cable communities. The programming the station cites as support for the proposition that it provides local service appears to be produced and aired only for Kingston area residents. Similarly, WRNN fails to detail current programs providing specific coverage of issues and events which are local to New York City rather than Hudson Valley. Time Warner also points out that the focus of the local service factor is whether a station currently provides service, not whether it may do so in the future. As for WRNN's arguments regarding Grade B contour coverage, the operator asserts that the Commission has recognized this factor as a pertinent consideration with respect to the second statutory factor especially in a case like this one where the station's Grade B contour is lacking over most of New York City but does cover communities in the adjacent Albany ADI. With regard to viewership, Time Warner reiterates that Nielsen's ratings books for the entire New York City DMA do not even include WRNN. Moreover, the station's claim that a special Arbitron survey of the Hudson Valley indicated significant viewership of certain programs in that area clearly demonstrate that WRNN is not of equal interest throughout the large New York ADI.

¹⁹ Carriage commenced on Time Warner's Queens and Brooklyn systems in 1987; on Cablevision's Brooklyn and Bronx systems in June 1993; on Time Warner's Manhattan cable system in July 1993; on Time Warner's Paragon Cable system (serving Northern Manhattan) in August 1993; and on Time Warner's Staten Island system in September 1994.

²⁰ WLIG submits a detailed news log showing the range of New York City stories it has covered.

²¹ Time Warner clarifies that it receives WLIG's programming from W57BC, an LPTV repeater facility located in Mineola, NY for all its facilities except Staten Island, which receives WLIG from W44AW, and LPTV station in Morristown, NJ.

17. Time Warner asserts that there is no statutory authority for the station's claim that a cable operator has to demonstrate a special "need" to modify its market apart from the specific analysis mandated by Section 614(h). Time Warner also criticizes WRNN's claim that grant of the petition would limit competition calling such an argument unsupported by the record and irrelevant to the market modification analysis.²² Finally, the operator asserts that the statutory market modification procedures do not include an exception for independent UHF stations which fail to provide local service.

18. Time Warner filed a response to an *ex parte* submission from WRNN which illustrated the predicted contour of the station's LPTV facility in Nyack, NY. Time Warner argues that WRNN is attempting to bootstrap the coverage of its LPTV facility onto its parent station's Grade B coverage for purposes of demonstrating a wider local service area. The operator asserts that the use of the LPTV station does not lessen the relevance of the parent's failure to place a Grade B contour over the subject cable communities. Time Warner states that the presence of an LPTV station may be relevant for curing a station's signal quality problems in the context of a must carry proceeding but it is irrelevant in the context of a market modification proceeding.²³ Finally, Time Warner argues that because WRNN's Grade B contour does not cover the cable communities at issue, those same communities do not lie within the natural service area of the station.

19. WRNN filed a reply to Time Warner's response. In it, the station questioned the motive and logic of the operator's need to respond to an *ex parte* submission which was devoid of any argument. WRNN also asserts that its submission was not an attempt to bootstrap any argument and that all it did was provide factual information pursuant to the Commission's request. With regard to the operator's local service argument, WRNN states that its lack of Grade B contour coverage over some of Time Warner's cable communities is not in any way dispositive of the "extensive local service" WRNN provides these communities. WRNN states that its use of fiber optic delivery and the presence of its translator, which "guarantee" a good quality signal throughout the ADI, undermines the operator's reliance on Grade B contours.²⁴

²² With regard to WRNN's characterization of its dialogue with the operator concerning carriage of New York 1 News programming, Time Warner asserts that it never proposed or agreed to carry the station on its systems as part of the sale of programming. The discussions were initiated by WRNN, which sought to acquire the rights to broadcast certain New York 1 News shows. The President of the Time Warner New York City Cable Group broke off negotiations, and expressly informed WRNN of its intention to file a market modification petition, before the operator filed that petition.

²³ Time Warner notes that it has taken no measurements at its headends of the signal available from the LPTV facility, and thus expresses no opinion as to the adequacy of such signal.

²⁴ WRNN updates the record pursuant to 47 C.F.R. §§ 1.65, 76.7 note (1994), to insure the continuing accuracy and completeness of information in the record in this proceeding. On May 14, 1996 WRNN made an additional filing purporting to update the Commission on certain "significant factual and legal changes since January 1995." This filing was not timely and petitioner has not had an opportunity to respond to it. It will accordingly not be considered. As to its timeliness, we note that it is not in the main an update as to recent events. To the contrary,

ANALYSIS AND DECISION

20. We will grant Time Warner's request.²⁵ Based on geography and other relevant information, we believe that the New York City cable communities are sufficiently removed from WRNN that they ought not be deemed part of the station's market for mandatory carriage purposes.²⁶ The evidence before us distinguishes these communities from the rest of the New York television market and persuades us that the action requested would better effectuate the purposes of Section 614 of the Communications Act.

21. New York is the nation's largest television market with approximately 6.7 million television households. Approximately 68% of the households in the market subscribe to cable service.²⁷ Geographically, the market encompasses some 29 counties in four states,²⁸ and is roughly 170 miles long and 150 miles wide, stretching north into Ulster County and the Catskill Mountains then down the shores of Monmouth and Ocean Counties, New Jersey to the south; Pike County, Pennsylvania is at the westernmost edge of the market which then extends eastward to include Fairfield County, CT and all of Long Island, NY.²⁹ The core of the ADI is New York City, the largest city in the United States and the community of license for several local

it includes a list of awards received by WTZA (WRNN's former call letters) from 1986 through 1995. It contains copies of newspaper and magazine articles that are between a month and seven months old. Finally, it also includes legal arguments based on case precedent from 1995.

²⁵ We note that the constitutionality of the 1992 Cable Act's must carry provisions and the Commission's implementing rules were initially upheld by the U.S. District Court for the District of Columbia. The U.S. Supreme Court subsequently reviewed the lower court's decision and then vacated and remanded the case to the District Court for further fact-finding. *See Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, 819 F.Supp. 32 (D.D.C. 1993), *vacated and remanded*, 114 S.Ct. 2445 (1994), *on remand*, 910 F.Supp. 734 (D.D.C. 1995). However, during the course of this ongoing litigation, no court has stayed the enforcement of the Commission's rules, and therefore Time Warner's challenge to the constitutionality of the rules is inappropriate here.

²⁶ H.R. Rep. 102-628, at 97-98.

²⁷ *See Nielsen February 1996 Cable Television Penetration Estimates.*

²⁸ The following counties are located in the New York ADI: (1) Pike County, PA; (2) Fairfield County, CT; (3) Ocean County, NJ; (4) Monmouth County, NJ; (5) Middlesex County, NJ; (6) Somerset County, NJ; (7) Union County, NJ; (8) Hudson County, NJ; (9) Essex County, NJ; (10) Hunterdon County, NJ; (11) Warren County, NJ; (12) Sussex County, NJ; (13) Morris County, NJ; (14) Passaic County, NJ; (15) Bergen County, NJ; (16) Suffolk County, NY; (17) Nassau County, NY; (18) Westchester County, NY; (19) Rockland County, NY; (20) Putnam County, NY; (21) Dutchess County, NY; (22) Orange County, NY; (23) Ulster County, NY; (24) Sullivan County, NY; (25) Queens County, NY; (26) Kings County, NY; (27) Richmond County, NY; (28) New York County, NY; and (29) The Bronx, NY.

²⁹ The Albany-Schenectady-Troy ADI abuts the New York ADI to the north; the Hartford-New Haven ADI abuts the New York ADI to the east; the Philadelphia ADI abuts the New York ADI to the southwest; the Wilkes Barre-Scranton ADI abuts the New York ADI to the west; and the Binghamton ADI abuts the New York ADI to the northwest.

commercial television stations. Time Warner's New York City cable systems serve over 1 million subscribers making that system the largest in the country. WRNN, which signed on-the-air in 1985 as WTZA, broadcasts news, information, and entertainment programming on channel 62 from a transmitter located on Overlook Mountain in Woodstock, NY with a translator based in Nyack, NY. The station's city of license is Kingston, NY (Ulster County) with its studios located in Kingston and New Windsor, NY.³⁰

22. As an initial matter, we note that, according to the legislative history of the 1992 Cable Act, the use of ADI market areas is intended "to ensure that television stations be carried in the areas which they service and which form their economic market."³¹ Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements.³² The ADI market change process incorporated into the Communications Act, however, is not intended to be a process whereby cable operators may seek relief from the mandatory signal carriage obligations apart from the question of whether a change in the market area involved is warranted. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that the operator's deletion petition appears to be a legitimate request to redraw ADI boundaries to make them congruous with market realities. Time Warner's actions do not clearly reflect an intention to skirt its signal carriage responsibilities under the 1992 Cable Act and the Commission's rules nor do they evidence a pattern of discriminatory conduct against the station.

23. We note as a preliminary matter that Time Warner and the other cable operators serving communities in the New York ADI recognize that this television market is unusually large in terms of geography and population, and for this reason created the NYI interconnect so that local advertisers can reach as many subscribers as practically possible through the cable television medium. Based on the record and other indicia, we believe that the interconnect was designed to achieve efficiencies in selling advertising time and as a tool in maximizing advertising revenues and does not necessarily reflect a collective viewpoint on the part of these operators that the New York ADI is in fact one uniform and homogenous television marketplace. The interconnect is divided into four sub-zones for advertising purchasing purposes: (1) Northern and Central New Jersey; (2) New York City; (3) Long Island; and (4) Upstate New York/Fairfield County, CT (including, among others, Rockland and Westchester Counties). Time Warner and the other cable operators appear to have recognized that different demographics and consumer patterns exist within the sub-zones and planned their marketing strategy accordingly. Since the evidence suggests that the interconnect was not intended to mirror a tightly knit ADI, we do not see its existence as supportive of the broadcasters' contention that only a single indivisible market is involved.

³⁰ Woodstock is 10 miles northwest of Kingston and New Windsor is 33 miles south of Kingston.

³¹ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

³² 47 U.S.C. §534(h).

24. Turning to the statutory factors, we note that WRNN has no history of cable carriage on either Time Warner's systems or other cable systems serving the five Boroughs of New York despite being on-the-air for 11 years. The evidence also suggests that WRNN does not provide local service to the communities in question. WRNN does not place either a Grade A or Grade B contour over the cable communities.³³ While we recognize that WRNN's translator's service may clip Northern Manhattan, we agree with Time Warner that such coverage does not lessen the relevance of the parent's failure to place a Grade B contour over the subject cable communities as Grade B coverage is indicative of the station's natural market. Commercial translators are secondary service stations that are explicitly not entitled to carriage in their own right and the service here involved is not otherwise sufficient to persuade us that WRNN's market includes the New York City cable communities. Thus, in this instance, we decline to split the City into discrete segments for signal carriage purposes. We also do not believe that WRNN currently provides local programming service to New York City.³⁴ Finally, WRNN is geographically distant from the cable communities with Woodstock, NY, where the station's transmitter site is located, an average of 94 miles away.³⁵ Here then, the distance and lack of service attenuates any local ties the station could have with the cable communities.

25. We also believe that Time Warner's carriage of other local television stations provides support for the action requested in this particular case. Where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities within its ADI, and it is clear that the station is not providing local service to those communities, the issue of local coverage by other stations becomes a factor which we will give greater weight than in cases where a party is seeking to add communities. In this particular instance, there are several television stations licensed to New York City and adjacent communities which have a closer economic nexus, cast a City Grade signal over the cable communities, and provide more focused local programming than WRNN. These market facts, coupled with the distance between the cable communities and WRNN, supports Time Warner's argument under the third factor.

26. Time Warner also demonstrates that WRNN has no audience in the counties in which the cable systems are located. In this regard, we note that Nielsen Media Research has assigned the station to the Albany-Schenectady-Troy DMA for ratings purposes in its latest viewership study. This evidence demonstrates, at least from Nielsen's standpoint, that WRNN, because of its location and Grade B contour, more aptly serves Albany and its environs, rather

³³ We have held that the local service requirement is satisfied if the station's Grade B contour covers the community. See 8 FCC Rcd at 2981.

³⁴ A recent trade press article reflects this broader understanding in the marketplace. In this article, describing WRNN's new format, one of the station's employees stated that "For now, [WRNN's] plan is to leave coverage of New York City to the major news units there." See "WTZA changes call letters, adopts regional news format," *Electronic Media*, October 23, 1995 pp. 6, 43.

³⁵ WRNN is 87 miles away from Manhattan, 93 miles away from Queens, 96 miles away from Brooklyn, and 100 miles away from Staten Island.

than New York City.³⁶ This fact coupled with the station's failure to satisfy any of the other statutory criteria further supports our decision to grant Time Warner's request.

ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED**, pursuant to §614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and §76.59 of the Commission's Rules, 47 C.F.R. §76.59, that the "Petition for Special Relief" (CSR-4416-A) filed November 14, 1994 by Time Warner New York City Cable Group **IS GRANTED**.

28. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules, 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

³⁶ WRNN's Grade B contour covers Albany and Troy. According to Nielsen's *1995 County/Coverage Study*, WRNN has a 2 share and 36 cume in Greene County and a 2 share and 23 cume in Columbia County, both of which are located in the Albany-Schenectady-Troy DMA.