

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

In the Matter of:)
)
) CSR-5077-A
Time Warner Entertainment Co., L.P.)
d/b/a Time Warner Cable)
)
)
For Modification of the Boston,)
Massachusetts ADI)

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 1997

Released: December 23, 1997

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Time Warner Entertainment Co., L.P. d/b/a Time Warner Cable ("Time Warner") has filed with the Commission, pursuant to Sections 76.7(a)(1) and 76.59(a) of the Commission's rules,¹ a petition requesting modification of the television market of television station WHRC-TV, Channel 46, Norwell, Massachusetts ("WHRC") for purposes of the cable television mandatory broadcast signal carriage rules. Time Warner requests that the communities in Essex,² Middlesex,³ and Suffolk⁴ Counties be deleted from the television market of WHRC (collectively, the "Communities"). WHRC filed an opposition to which Time Warner replied.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁵ and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*, commercial television

¹47 C.F.R. §§ 76.7(a)(1) and 76.59(a).

²The communities served by Time Warner Cable in Essex County are the Cities of Lynn and Salem, and the Town of Swampscott. Petition at Attachment 1.

³The communities served by Time Warner Cable in Middlesex County are the Cities of Everett, Malden, Medford, Melrose, Somerville, Stoneham, and the Town of Wakefield. *Id.*

⁴The communities served by Time Warner Cable in Suffolk County are the Cities of Chelsea and the Town of Winthrop. *Id.*

⁵Pub. L. No. 102-385, 106 Stat. 1460 (1992).

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.⁶ 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.⁷

3. The Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) further 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, Section 614(h)(1)(C)(ii) 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; and

⁶Section 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) 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*. The Commission is currently addressing in a rulemaking proceeding the question of whether Nielsen DMAs would better define television markets. See Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, Report and Order and Further Notice of Proposed Rule Making, CS Docket No. 95-178, 11 FCC Rcd 6201, (1996) ("*Market Determinations*").

⁷Because 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*.

(IV) evidence of viewing patterns in cable and non-cable households within the areas served by the cable system or systems in such community.⁸

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.⁹

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* non-cable 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 viewing on a community basis for cable and non-cable homes, and significantly viewed surveys typically measure viewing only in non-cable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.¹⁰

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

⁸47 U.S.C. §534(h)(1)(C)(ii).

⁹H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

¹⁰*Must-Carry Order*, 8 FCC Rcd at 2977 (emphasis in original).

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.¹¹

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.¹²

III. MARKET FACTS AND ARGUMENT

7. The cable communities at issue are located in Essex, Middlesex, and Suffolk Counties. Time Warner's principal headend is located in Middlesex County in the City of Malden, Massachusetts. Time Warner's Malden system serves the Communities. WHRC's city of license, Norwell, Massachusetts, and the Communities are part of the Boston ADI which is the sixth largest television market and is geographically widespread. WHRC's city of license is located 19.4 miles from the City of Boston. On average, the Communities are located 6.5 miles from the City of Boston and four of the cable communities at issue are contiguous with the City of Boston. Time Warner carries eight Boston television stations on its cable systems serving the Boston ADI.

8. In support of its petition, Time Warner argues that WHRC should be excluded from carriage on Time Warner's Malden system because the station does not satisfy any of the four statutory market modification factors. First, with regard to historic carriage, Time Warner asserts that WHRC has never been carried on its Malden system.¹³ Time Warner further asserts that WHRC is not currently carried by other cable systems serving communities that are closely proximate to the cable communities at issue.¹⁴ Second, with regard to local coverage, Time Warner asserts that WHRC fails to provide full Grade B contour coverage to all but one of the cable communities at issue. Time Warner states that WHRC's Grade B contour covers the City of Winthrop and provides partial coverage to the Cities of Chelsea, Somerville, and Everett.

9. Time Warner further states that WHRC's programming format consisting of program-length presentations fails to target local needs and interests. Time Warner presents evidence indicating

¹¹H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

¹²*Must-Carry Order*, 8 FCC Rcd at 2977 n.139.

¹³Petition at 5.

¹⁴*Id.* Time Warner states that the cable system serving the adjacent communities of Cambridge, Revere, Saugus, Stoneham and Winchester, Massachusetts, does not carry WHRC and neither does the cable system serving the City of Boston.

that for the quarter April 1 through June 30, 1997, WHRC's programming consisted entirely of public affairs programming supplied by The Christian Network.¹⁵ Time Warner maintains that such network-supplied programming has no nexus to the television station's city of license or to the cable communities at issue. Time Warner states that WHRC is not listed in any of the TV listings published by the local newspapers available in the communities served by Time Warner's Malden system nor is it listed in the Boston edition of *TV Guide*.¹⁶ Time Warner asserts that carriage of WHRC would provide no diversity in programming because Time Warner currently carries television station WGOT(TV) which broadcasts the same public affairs programs broadcast by WHRC.

10. Time Warner further states that, with regard to the service to the cable communities at issue offered by other local television stations and eligible for carriage on Time Warner's system, local coverage is provided by numerous local stations providing a wide range of local news, sports coverage, public affairs and public service programming.¹⁷ Time Warner states that three of the Boston stations which it carries begin each weekday broadcast with two-hour local newscasts.¹⁸ Time Warner points out that, in market modification proceedings, the Commission has held that when considering the deletion of a television station, the issue of local coverage by other stations carried by the cable operator takes on greater significance.¹⁹

11. Finally, Time Warner asserts that, with regard to viewership levels, WHRC recently resumed broadcasting in December, 1996 and that it is unlikely that the station has any ratings data at this time. Time Warner argues however that it reasonably can be assumed that WHRC fails to achieve a measurable audience share in the Communities because of its lack of a local nexus.

12. In opposition, WHRC states that it is a station that has recently resumed broadcasting after a six-year absence and that it is entitled to carriage on Time Warner's cable systems serving the Communities.²⁰ WHRC states that it is currently operating at a reduced power level while it secures the zoning approvals necessary to complete construction of its transmitter facilities.²¹ WHRC asserts that it should not be excluded from the Boston ADI based upon of the scope of WHRC's temporary operations. Alternatively, WHRC argues that even if it should continue its operations from its current transmitter site,

¹⁵Petition at 7.

¹⁶*Id.* at 8.

¹⁷*Id.* at Exhibit 7.

¹⁸Time Warner states that WBZ-TV, WCVB-TV, and WHDH-TV carry 5 a.m. newcasts and local news programs at noon, 5 p.m., 6 p.m., and 11 p.m.

¹⁹Petition at 9 citing *TCI of Illinois*, DA 97-1002 (Cab. Serv. Bur. rel. May 12, 1997) at ¶ 26.

²⁰WHRC was operational during the period December 1986- Spring, 1990. Petition at 5.

²¹Opposition at 2. WHRC states that in 1996 it obtained a construction permit from the Commission but has experienced construction delays due to a zoning dispute over its transmitter site. WHRC states that, until it obtains the necessary zoning permit, it is operating pursuant to a modified construction permit which permits it to transmit from a temporary site seven miles away from the initially authorized transmitter site. WHRC further states that, once the zoning permit is obtained, it will seek to modify its license in order to relocate its transmitter to the originally authorized site.

Time Warner fails to satisfy the requirements for deletion under the four-part statutory test for market modification.

13. WHRC asserts that its status as a new television station and its limited technical capabilities diminish the significance of the station's lack of historical carriage. WHRC states that the Cable Services Bureau has acknowledged that according much weight to the lack of historic carriage of a new television station "would defeat the underlying purposes of the mandatory carriage requirement by preventing weaker or newer stations that cable systems had previously declined to carry, from ever obtaining the right to carriage."²² WHRC maintains that this reasoning is particularly relevant here because the station had only been operating full-time for approximately six months when Time Warner filed its market modification petition. WHRC states that Time Warner's assertion that the station is not carried by other Boston cable systems is inaccurate. WHRC states that it is carried by a number of cable systems serving 56 communities in the Boston market and that it will be carried by the cable system serving the City of Boston shortly.²³ WHRC further states that, in addition to the 56 communities in which it is already carried, carriage requests are pending in 30 additional communities for which the station has demonstrated that it can deliver a good quality signal.²⁴ WHRC points out that the Commission has recently ruled that carriage on cable systems in neighboring communities can rebut a cable operator's argument that a station has no history of carriage in the cable communities at issue.²⁵

14. WHRC argues that, with regard to coverage or other local service, its predicted Grade B contour when its facilities are constructed as authorized by the Commission will encompass all of the Communities as well as the City of Boston. WHRC asserts that its proposed Grade B contour will blanket the Communities²⁶ and that, currently, its temporary facilities provide Grade B coverage to many of those communities.²⁷ Specifically, WHRC states that it provides Grade B contour coverage over all or substantially all of one-third of the communities at issue, namely, Everett, Winthrop, Chelsea and Somerville. WHRC further states that it places a signal of Grade B quality or better over many of the communities beyond WHRC's predicted Grade B contour.²⁸ WHRC maintains that the communities currently receiving its Grade B or better signal contain a disproportionate share of the total number of viewers served by Time Warner's cable system serving the Communities.²⁹

²²*Id.* at 11, citing *Avenue TV Cable Service, Inc.*, 11 FCC Rcd 4803, 4811 (1996).

²³Opposition at 12, n.28, and Exhibit 4.

²⁴Opposition at 12.

²⁵*Id.* at 12 citing *Comcast of Central New Jersey*, DA 97-1191 (Cab. Serv. Bur. rel. June 5, 1997).

²⁶*Id.* and Exhibit 2.

²⁷Opposition at Exhibit 3.

²⁸*Id.* at 7.

²⁹*Id.* WHRC states that, according to 1990 Census data, the two most populous communities served by Time Warner are the Cities of Lynn (pop. 81,245) and Somerville (pop. 76,210). The Cities of Medford and Malden, which WHRC asserts that it provides partial Grade B coverage, are the third and fourth most populous communities served by Time Warner, with 1990 populations of 57,407 and 53,884, respectively. WHRC maintains that these

15. WHRC further argues that the Communities are geographically proximate to WHRC's transmitter site. WHRC maintains that the cable communities at issue are located, on average, 28.9 miles from WHRC's transmitter site and 23.1 miles from its city of license.³⁰ WHRC points out that Time Warner carries several stations whose communities of license are much more distant.³¹ WHRC argues that the must-carry provisions prohibit cable operators from discriminating between similarly-situated television stations. WHRC maintains that its current and proposed Grade B contour coverage and the geographic proximity of the Communities evidences a strong market nexus between WHRC and those communities.

16. With regard to local programming, WHRC argues that its lack of local programming is more a reflection of its status as a new television station than the scope of its television market. WHRC states that it fully expects to begin providing locally-originated, local public affairs, news, and sports programming shortly after it receives an occupancy permit for its new broadcast studio facilities. WHRC maintains that its current lack of local programming does not automatically disqualify it from carriage in the Communities as the Commission has found that local programming does not guarantee carriage neither is it a condition precedent for obtaining carriage.³²

17. WHRC asserts that the third statutory factor, carriage of other television stations which provide local coverage or programming, can be used in deletion requests only where it is clear that the station at issue is not providing local service. In this case, WHRC argues that its proximity to the Communities and its Grade B contour demonstrate that it is providing local service. WHRC asserts that its service to the Boston market is also demonstrated by its proximity to the City of Boston which lies at the heart of the Boston ADI. WHRC states that its city of license is located 19.1 miles from the City of Boston and that four of the cable communities at issue are contiguous with the City of Boston.³³ WHRC asserts that these factors demonstrate that it is part of the Boston television market.

18. WHRC argues that the fourth statutory factor, viewership levels, should be accorded no weight in this proceeding because WHRC is a new station. To do otherwise, WHRC argues, would undermine the goal underlying the mandatory carriage provisions which is to increase diversity in programming by ensuring carriage of new and specialty television stations. WHRC notes that it has been broadcasting for approximately six months and that the Bureau has noted that it may take up to three years

four communities, Lynn, Somerville, Medford, and Malden, together with the three communities which fall within WHRC's Grade B contour, account for approximately 73.5 percent of the total number of viewers in the Communities.

³⁰*Id.* at 5.

³¹WHRC states that Time Warner carries the following stations whose communities of license are similarly distant from the City of Boston and the Communities, respectively: WMFP (24.3 miles from Boston); WHSH-TV (24.6 miles from Boston and 27.0 average miles from the Communities); WUNI (38.2 miles from Boston and 40.9 average miles from the Communities); WNDS 38.4 miles from Boston and 34.2 average miles from the Communities); WENH (53.8 miles from Boston and 48.3 average miles from the Communities). Opposition at 14, n.34.

³²*Id.* at 9 citing *Market Modifications and the New York Area of Dominant Influence*, FCC 97-285 (rel. Aug. 13, 1997) at ¶ 16.

³³*Id.*, at 10.

for a television station to establish an audience.³⁴

19. In reply, Time Warner reiterates its position that WHRC should be deleted from the Boston ADI based upon the four-part statutory test for market modification. With regard to WHRC's proposed Grade B contour, Time Warner argues that WHRC must base its showing on current coverage and not theoretical future coverage. Time Warner asserts that WHRC's temporary facilities may never become permanent because it has been over a year since WHRC began using the temporary facilities and it has yet to file with the Commission to relocate to its originally authorized transmitter site.³⁵ Time Warner further asserts that the fact that WHRC has not actually filed to relocate its transmitter facilities distinguishes this case from cases in which the television station has an application to expand its Grade B services actually pending with the Commission.³⁶ Time Warner further asserts that the stations that it carries provide Grade B contour coverage to the Communities even though their cities of license are more distant than WHRC's city of license.

20. Time Warner asserts that it has shown, and WHRC has not disputed, that WHRC's current programming has no specific ties or nexus to the Communities and that its programming is duplicative of the programming of a station currently carried by Time Warner on its cable system serving the Communities. Time Warner further asserts that WHRC has stated its intentions to provide local programming in the future but has failed to provide specific information regarding such future programming. Time Warner further asserts that the availability of locally-originated programming on the Boston-licensed stations carried by Time Warner should be accorded evidentiary weight in this proceeding because WHRC fails to provide local service to most of the communities served by Time Warner, including its principal headend.

IV. DISCUSSION

21. Based upon our analysis of the record relating to the four statutory and other relevant factors, we will deny Time Warner's petition. WHRC's Grade B contour coverage, geographic proximity and other relevant factors persuade us that the cable communities served by Time Warner's Malden System are part of WHRC's television market.

22. The cable television mandatory broadcast signal carriage rules were adopted as part of the 1992 Cable Act. According to the legislative history of that Act, the use of ADI market areas is intended "to ensure that television stations be carried in the areas which they serve and which form their economic market."³⁷ The Act specifically provided that the Commission was to consider adding additional communities or excluding communities from the markets of television stations "to better effectuate the purposes" of the mandatory carriage requirements.³⁸ These factors, however, were "not intended to be

³⁴*Id.* at 13 citing *DeSoto Broadcasting Inc.*, 10 FCC Rcd 4494 (1995).

³⁵Reply at 4.

³⁶*Id.* at 4.

³⁷ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

³⁸ 47 U.S.C. §534(h).

exclusive."³⁹ In acting on such requests the Commission was instructed to "afford particular attention to the value of localism, taking into account four specified statutory factors." We do not believe that the requested exclusion of the Communities served by Time Warner from the television market of WHRC will better effectuate the purposes of the must-carry statutory provisions. We now turn to our analysis of the four-part market modification factors.

A. Historical Signal Carriage

23. Statutory factor one is "whether the station, or other stations located in the same area, has been historically carried on the cable system or systems within such community." WHRC, operating as channel 46 licensed to Norwell, Massachusetts, has no history of carriage on Time Warner's cable system serving the Communities. This factor will be given little weight in this proceeding. WHRC has not had the opportunity to build a record of historical carriage on Time Warner's Malden System because it is a new television station. Under this circumstance, WHRC's lack of historical carriage on Time Warner's Malden cable system does not reflect the scope of the station's market.

24. Historic carriage of television stations in the same area is a factor to be considered in this case. Time Warner carries eight Boston television stations on its cable system serving the Communities.⁴⁰ Such carriage provides evidence of the scope of the market because it demonstrates the belief of both the television stations and the cable systems involved that there is a market nexus between each station and the communities where the station is carried. WHRC's community of license and the cable communities at issue are contiguous to or closely proximate to the City of Boston. Time Warner's historical carriage of stations in the Boston area weighs against deletion of the communities from WHRC's television market.

25. Carriage on nearby cable systems is not a factor enumerated in the statute, but it does seem likely, depending on the specific circumstances involved, that carriage on nearby systems could serve as evidence to define the logical scope of a station's market.⁴¹ Such carriage could also serve to demonstrate market nexus between the broadcast station and the communities where the station is carried and thus provide evidence as to the scope of a station's market. WHRC provides evidence that it does have a history of carriage on several cable systems serving nearby communities. For example, WHRC's signal is carried by cable operators serving 56 communities within the Boston television market including Time Warner's cable system and MediaOne's cable system, both of which serve communities which are closely proximate to the cable communities at issue.⁴² Further, WHRC asserts that the station will be carried in the City of Boston shortly and that the station is in the process of obtaining information concerning launch date and channel position from the cable system serving the City of Boston.⁴³

³⁹ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁴⁰These stations include WGBH-TV, WBZ-TV, WCVB-TV, WHDH-TV, WFXT, WSBK-TV, WGBX-TV, and WABU.

⁴¹See *Fouce Amusement Enterprises, Inc.*, 100 FCC Rcd 668, 671 (1995).

⁴²See Opposition at Exhibit 4 for a complete list of communities in which WHRC is being carried.

⁴³Similarly, in *Comcast of Central New Jersey*, we took note of the relevant television station's proposed Grade B coverage as evidence of local service. *Comcast of New Jersey*, DA 97-1191 at ¶ 17.

B. Station Coverage of Communities

26. Statutory factor two is "whether the television station provides coverage or other local service to such community." This factor incorporates both technical service and programming service. With respect to technical service, the Commission has stated in its *Report and Order in MM Docket 92-259* that "to show that the station provides coverage or other local service to the cable communities, 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."⁴⁴ WHRC places a Grade B contour over all of the community of Winthrop and over substantially all of the communities of Everett, Winthrop, Chelsea, and Somerville. The remaining communities are proximate to WHRC's predicted Grade B contour.

27. The scope of a local station's market may be measured through geographic means by examining the geographic distance between the station at issue and the relevant cable communities. We note that the Communities are located, on average, approximately 30 miles from WHRC's transmitter site and 23.1 miles from its city of license. We further note that there are no natural barriers here such as mountains or waterways which tend to separate communities and to define natural markets. The distances and geography involved between WHRC and the Communities are not so extreme as to suggest that no market nexus exists.

28. With respect to programming service, Time Warner alleges that there is no programming by WHRC that is specifically targeted to the cable communities here in question. WHRC concedes that its current programming is not locally focused but that it intends to provide local programming after the station begins operations from its new studio facilities. WHRC's lack of local programming weighs in favor of the requested action.

C. Coverage of News, Sporting Events, or Other Events of Interest by Other Stations Entitled to Carriage

29. Statutory factor three is "whether any other television station that is eligible to be carried by a cable system in such a 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." Carriage of other local stations may be used as an enhancement factor to support a cable operator's deletion request when there is other evidence in the record that the communities at issue are outside the station's market. In this instance, Time Warner alleges that it provides carriage to numerous stations that provide local service to subscribers in the Communities. WHRC argues that Time Warner's carriage of other stations should not be given any weight in this proceeding because WHRC itself is providing local service to the Communities. We find that WHRC's Grade B contour coverage is evidence that the station is providing local service to the Communities.

D. Station Audience in Communities Served by Cable System

30. Statutory factor four is "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community." Time Warner has presented

⁴⁴8 FCC Rcd at 2976-2977.

evidence to show that WHRC is not listed in the local television guides to establish that the station is unlikely to be viewed in the Communities. We find that the evidence submitted by Time Warner with regard to WHRC's lack of viewership is mitigated by the fact that WHRC has recently resumed broadcasting and has not had an opportunity to build an audience.

E. Summary

31. We have carefully considered each statutory and other relevant factors in the context of the circumstances presented here. We are under no obligation to give particular weight to any one of the several factors under consideration.⁴⁵ However, given the difficulties of relying exclusively on the statutory factors of historical carriage and viewing patterns, which could severely narrow the carriage rights of stations even within what is undeniably their local market area, we have found it necessary to focus more heavily on factors other than one and four, *i.e.*, those that are not influenced by the type or age of the stations involved or historical carriage. We find that WHRC's Grade B contour coverage and its geographic proximity to the Communities evidence WHRC's ties to the Boston market. We take note Time Warner's carriage of other Boston stations and local stations which are geographically similar to WHRC. Thus we conclude that Time Warner has not demonstrated that the cable communities it serves lack a sufficient nexus with WHRC to warrant deletion of these communities from the Boston ADI.

V. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED**, pursuant to §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 petition for special relief (CSR-5077-A) filed by Time Warner Cable **IS DENIED**.

33. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁴⁵See *Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995); accord, *Omnipoint Corp. v. FCC*, 78 F.3d 620, 633-634 (D.C. Cir. 1996) (When Congress directs an agency to consider certain factors, the agency simply "must reach an express and considered conclusion about the bearing of a factor, but is not required to give any specific weight to it.").