

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

In the Matter of:)	
)	
Time Warner Entertainment Co., L.P.)	CSR-6681-A
dba Time Warner Cable)	
)	
For Modification of the Television Market of)	
Television Station KAIT(TV), Jonesboro, Arkansas)	

MEMORANDUM OPINION AND ORDER

Adopted: August 12, 2005

Released: August 17, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment Co., L.P., dba Time Warner Cable (“Time Warner”), filed the above-captioned petition for special relief seeking to modify the designated market area (“DMA”) of television broadcast station KAIT(TV), Jonesboro, Arkansas to include the communities of West Memphis, Marion, Sunset, Earle, unincorporated areas of Crittenden County, and Parkin, Arkansas (“cable communities”)¹ for purposes of the cable television mandatory carriage rules. Time Warner is the operator of cable television systems that serve the cable communities. The petition is unopposed. For the following reasons, we grant the petition.

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 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

¹West Memphis (AR0076), Marion (AR0265), Sunset (AR0266), Earle (AR0262), Crittenden County (AR0267), and Parkin (AR0263).

²8 FCC Rcd 2965, 2976-77 (1993).

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*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

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 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

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.*

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

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.

(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

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.

¹⁰47 C.F.R. §76.59(b).

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed with a filing fee. The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

III. DISCUSSION

5. The issue before us is whether to grant Time Warner's request to include the Crittenden County, Arkansas communities of West Memphis, Marion, Sunset, Earle, and unincorporated areas of Crittenden County, and the adjacent Cross County, Arkansas community of Parkin, within the television market of KAIT. KAIT is licensed to Jonesboro, Arkansas, which is located in the Jonesboro DMA, while the cable communities are located directly across the Mississippi River from Memphis, Tennessee, in counties assigned to the Memphis DMA.

6. Time Warner explains in its petition that it has carried KAIT on the cable operator's systems serving the cable communities ("cable systems") since January, 1999.¹¹ In addition, Time Warner states that the cable systems have carried Jonesboro's only other commercial television station, KVTJ, since the Commission's 1999 decision which modified KVTJ's market by adding the cable communities subject to this petition.¹² Time Warner maintains that all the cable communities are included within KAIT's Grade B contour.¹³ Time Warner asserts that KAIT considers the cable communities to be within the station's natural market. In support of the proposed market modification, petitioner points out that the station's news staff includes a reporter assigned to the counties in which the cable communities are located, and that the station provides local programming services to the cable communities, such as news stories covering traffic accidents and road conditions, crimes, local weather, air quality issues, economic development issues, and University of Arkansas sporting events.¹⁴ Time Warner further asserts that although the station has limited viewership in Crittenden County, this factor may be given little evidentiary weight where the station demonstrates a clearcut nexus to the cable communities as evidenced by other statutory factors.

7. In granting Time Warner's petition to modify the market of KAIT to include the cable communities, we find that the station meets the mandatory statutory criteria for market modification. With regard to the first of the four statutory factors, KAIT has a substantial history of carriage on the Time Warner's systems serving the cable communities. We also note that Time Warner carries KVTJ, the only other commercial television station licensed to Jonesboro, KAIT's city of license. Secondly, KAIT has demonstrated that it provides coverage and local service because its Grade B contour encompasses the cable communities. In addition, Time Warner presented evidence that KAIT provides

¹¹Petition at 2. See also Attachment 1, Declaration of Robert J. Barlow, President, Mid-South Division, Time Warner Cable. As stated by Mr. Barlow, Time Warner provides ABC network program protection to in-market station WPTY-TV, Memphis, against KAIT. Thus, only KAIT's non-network programming is available to cable subscribers in the cable communities. Due to the shorter distances between Memphis and the cable communities, WPTY's nonduplication protection rights would not be jeopardized by grant of the instant petition.

¹²*Id.*; see *Agape Church, Inc.*, 14 FCC Rcd 2309 (1999), where the Commission found that adding the cable communities to KVTJ's market would accurately reflect the station's service area, while avoiding any possible impact on the integrity of the Memphis television market.

¹³*Id.* at 6. See also, Attachment 1, Declaration of Robert J. Barlow; Attachment 2, Engineering Statement of Donald G. Everist, Cohen, Dippell and Everist, P.C., Consulting Engineers, Washinton, D.C.

¹⁴*Id.* at 6-7. See also, Attachment 3, Declaration of Ted Fortenberry, Station Manager of KAIT.

local programming to the cable communities. With regard to the third statutory factor, namely, whether other television stations provide local programming, we believe that Congress did not intend this criterion to bar a station's DMA modification claim, but instead was intended to enhance its claim where it could be shown that other stations do not serve the communities at issue.¹⁵ In this case, because other stations serve the cable communities, this enhancement factor is not applicable. Concerning the fourth factor, viewing patterns, Time Warner's petition indicates KAIT has a limited level of viewership in the cable communities.¹⁶

8. We have carefully considered each statutory factor in the context of the circumstances presented here. Given the evidence of historical carriage of both KAIT and KVTJ, local coverage as evidenced by KAIT's Grade B contour and local programming, and some evidence of viewership of KAIT in the cable communities, we conclude that addition of the cable communities to KAIT's market for mandatory carriage purposes better effectuates the purposes of Section 614 of the Communications Act.

IV. ORDERING CLAUSES

9. 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-6681-A), filed by Time Warner Entertainment Co., L.P. dba Time Warner Cable, **IS GRANTED**. KAIT shall notify the relevant cable systems in writing of its carriage and channel position elections, §§ 76.56, 76.57, and 76.64(f) of the Commission's rules.¹⁷

10. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵See *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

¹⁶See *KSBW License, Inc.*, 11 FCC Rcd at 2371.

¹⁷47 C.F.R. § 76.56, 47 C.F.R. § 76.57, and 47 C.F.R. § 76.64.

¹⁸47 C.F.R. § 0.283.