

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

In re:)	
)	
Avenue TV Cable Service, Inc.)	
)	
For Modification of the ADI Markets)	CSR-4622-A
of KWHY-TV and KZKI(TV))	

MEMORANDUM OPINION AND ORDER

Adopted: April 5, 1996

Released: April 17, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Avenue TV Cable Service, Inc., ("Avenue Cable"), a cable operator which provides service in the City of Ventura and in the unincorporated portions of the western half of Ventura County, California (collectively the "Ventura Communities") filed the above-captioned petition for special relief seeking to exclude the Ventura Communities from the "area of dominant influence" (ADI) of the television stations KWHY-TV (Channel 22), Los Angeles, California, and of KZKI(TV) (Channel 30), San Bernadino, California, for the limited purpose of the cable television mandatory broadcast signal carriage rules. On January 11, 1996, Harriscope of Los Angeles, Inc., licensee of television broadcast station KWHY, filed its opposition to the petition. Also on January 11, 1996, Paxson Los Angeles License, Inc., licensee of television station KZKI, filed its opposition to the petition. On January 24, 1996, Avenue Cable filed its reply to the respective appositions of KWHY-TV and KZKI(TV).

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*,¹ 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.² An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing

¹ 8 FCC Rcd 2965, 2976-2977 (1993).

² 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*.

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.³

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 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.⁴

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

³ 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*.

⁴ Communications Act of 1934, as amended, §614(h)(1)(C)(ii), 47 U.S.C. §534(h)(1)(C)(ii).

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.⁵

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 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.⁶

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

⁵ H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

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

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.⁷

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.⁸ 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.⁹

MARKET FACTS AND ADI ARGUMENTS

8. Commercial television stations KWHY and KZKI are licensed to the cities of Los Angeles and San Bernadino, California, respectively. Each station is assigned to the Los Angeles ADI. Avenue Cable is licensed to serve the Ventura Communities which are located in the western half of Ventura County on the northern edge of the Los Angeles ADI.

9. In its petition, Avenue Cable begins by noting that communities located in the western portion of Ventura County, like those at issue, should not be in the Los Angeles ADI but belong instead in the Santa Barbara-Santa Maria-San Luis Obispo ADI. Avenue Cable then asserts that the markets of KWHY-TV and KZKI(TV) should be modified for must-carry purposes. Specifically, Avenue Cable argues that application of the four factors enumerated in 47 U.S.C. §534(h)(1)(C)(ii) justifies its request to exclude the Ventura Communities from each television station's market. In support of its petition, Avenue Cable first notes that KZKI(TV) has never been carried on Avenue Cable's systems and that KWHY-TV was carried from 1982-1984 but was dropped because of distance and a poor quality signal.¹⁰ Avenue Cable then states that neither station provides coverage or other local service to the Ventura Communities. In fact,

⁷ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁸ 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.

⁹ 47 C.F.R. §76.59.

¹⁰ Avenue Cable states that it dropped KWHY-TV in mid-1984 because copyright liability for carrying a distant signal as well as the poor quality of the signal. Avenue Cable further states that no other cable system located in Ventura County carries either KWHY-TV or KZKI(TV).

Avenue Cable asserts that neither station provides a predicted Grade B coverage to the Ventura Communities and that all of its service area is clearly outside of the Grade B contours of each station.¹¹ Avenue Cable further asserts that the two stations are geographically remote from the Ventura Communities and are, in fact, separated from those areas by the Santa Monica Mountains. Avenue Cable claims that the Santa Monica Mountains form a natural barrier which divides the Ventura County into Ventura East and Ventura West. Avenue Cable then states that the Commission has recognized that the natural geographic division formed by the mountain range also divides Ventura into two distinct areas for audience survey purposes.¹²

10. With respect to the third statutory factor, the provision of local programming, Avenue Cable states that it carries a multitude of other stations which provide extensive coverage of local issues.¹³ As to the fourth and final statutory factor, Avenue Cable states that the viewership ratings for each station were unobtainable because it is not a subscriber to either the Nielson or the Arbitron services. Avenue Cable argues that, presumably, television ratings for KWHY-TV and KZKI(TV) are unlikely to appear on any ratings report because: (1) the Grade B contours for each station do not appear to cover any of the communities served by Avenue Cable; and (2) neither station has a history of carriage. Finally, Avenue Cable argues that the public interest would be deserved by mandatory carriage of KZKI(TV) and KWHY-TV, since neither station has a local nexus with the communities at issue.

11. In its opposition, KZKI(TV) asserts that analysis of the four statutory factors governing ADI modification requests does not support exclusion of the Ventura Communities from the market of KZKI(TV). It notes that Avenue Cable has failed to demonstrate that such exclusion would serve the public interest. With respect to historic carriage, KZKI(TV) notes that Avenue Cable has never carried KZKI(TV) because it is a new station and has not been afforded an opportunity to establish relationships with local cable systems.¹⁴ KZKI(TV) notes that the Commission, in *Chronicle*,¹⁵ recognized that the historic carriage factor should not be given great weight as it is applied to KZKI(TV) because it is a new market entrant and to do so would defeat the underlying purposes of the mandatory carriage requirements. KZKI(TV) next states that, with respect to local coverage, the existence of predicted Grade B coverage is not conclusive of a

¹¹ In support of this argument, Avenue Cable attaches, as exhibits, the 1995 edition of the *Television and Cable Factbook* and the *1995 Rand McNally Road Atlas*, a comparison of which purportedly shows that its service area is outside of the Grade B contours of KWHY-TV and KZKI(TV), respectively.

¹² Citing *Chronicle Publishing* at ¶ 25, (CSR-4490-A, CSR-4468-M), 10 FCC Rcd 9474, DA 95-1829 (Cab. Serv. Bur., released Aug. 23, 1995).

¹³ Avenue Cable notes that local coverage is provided by KEYT-TV(ABC, Santa Barbara), KSTV-TV (Ind., Ventura), KADY-TV (Ind., Ventura), and KCOY-TV (CBS, Santa Maria). Avenue Cable also notes that it carries a number of non-broadcast cable programming as well.

¹⁴ KZKI(TV) states that it began broadcasting on January 7, 1994.

¹⁵ *Chronicle Publishing* at ¶ 21.

television station's ability to provide local service. KZKI(TV) asserts that the Ventura Communities are located within its television market and that it will deliver a good signal to Avenue Cable's principal headend.

12. With respect to local programming coverage, KZKI(TV) challenges Avenue Cable's interpretation of this statutory factor. KZKI(TV) asserts that the fact that Avenue Cable carries other local stations does not act as a bar to its carriage of KZKI(TV). Rather this factor was intended, KZKI(TV) argues, to enhance a station's claim where it could be shown that other stations do not provide local coverage. Finally, KZKI(TV) argues that the fourth statutory factor, i.e., viewership ratings, should be given little weight because of the unique character and circumstances of the television station. KZKI(TV) is a home shopping station which, like other home shopping stations, has a limited audience yet provides an important public service. KZKI(TV) notes that the Commission has stated that viewership is difficult to separate from historic carriage¹⁶ and states that this is particularly true with respect to new stations such as KZKI(TV).

13. KZKI(TV) next states that Avenue Cable, in addition to not meeting the requisite showing required by the four statutory factors, has not demonstrated that exclusion of the Ventura Communities from KZKI(TV)'s ADI would serve the public interest. KZKI(TV) argues that the Commission has denied a cable system's request to exclude certain communities from a television station's ADI where the cable system has not established that such exclusion would serve the public interest.¹⁷ In this case, KZKI(TV) argues that the public interest would be served by affording it the opportunity to develop an audience and by ensuring that cable operators are required to provide diverse programming.

14. In its opposition to Avenue Cable's petition, KWHY-TV begins by noting that Avenue Cable has denied carriage of KWHY-TV, despite the fact that it carries all nine of the other commercial television stations licensed to Los Angeles on its system in western Ventura County, including a station licensed to Corona which is a community located east of Los Angeles and thus farther from the areas served by Avenue than KWHY-TV's city of license. KWHY-TV also notes that it broadcasts from a transmitter located at Mount Wilson, a site from which each of the nine Los Angeles stations carried by Avenue Cable locate their transmitters. KWHY-TV further notes that it broadcasts with a specialized Spanish language format that caters to a large Hispanic population residing in the communities at issue.

15. KWHY-TV asserts that the first statutory criterion, historic carriage, is of little moment here because Avenue Cable has never carried KWHY-TV. Rather than rely on history in such cases, KWHY-TV argues that the Commission has looked to the carriage patterns of

¹⁶ *Id.* at ¶ 22.

¹⁷ Citing *North Central Cable Communications*, 10 FCC Rcd 4381, 4383 (1995).

other similarly situated stations to delineate the shape of the market.¹⁸ KWHY-TV argues that Avenue Cable has singled out KWHY-TV as the only commercial television station licensed to Los Angeles that it does not carry on its system serving the Ventura Communities. This exclusion, KWHY-TV argues, is unjustified discrimination against the television station. With respect to the provision of local service, the second criterion, KWHY-TV acknowledges that its Grade B contour does not encompass Avenue Cable's entire service area. However, engineering data, proffered by Harriscope, indicates that KWHY-TV's signal is of actual Grade B strength measured at Avenue Cable's main offices, at its off-air headend, and at randomly selected points throughout the City of Ventura.¹⁹ KWHY-TV notes that, as further evidence of Avenue Cable's discriminatory treatment, Avenue Cable carries another Spanish language station, KMEX, whose predicted Grade B contour does not include all of Avenue Cable's service area. KWHY-TV's provision of local service, it contends, is not hampered by the topography of Ventura County. To the contrary, KWHY-TV states that its television station is local to western Ventura County, the portion of Ventura County which lies within Avenue Cable's service area. Moreover, KWHY-TV notes that Avenue Cable already carries nine Los Angeles stations, all of which transmit from Mount Wilson, as does KWHY-TV.²⁰ In addition to transmitting from the same site as the Los Angeles stations which Avenue Cable carries, KWHY-TV states that it shares in, along with other television stations carried by Avenue Cable, serving an important local public interest. KWHY-TV engages in Spanish programming which serves a large percentage of the residents of western Ventura County and Avenue Cable's service area. KWHY-TV states that, as of the 1990 Census, the population of the City of Ventura was 17.6% Hispanic and it is projected to be 20.3% by 1997.

16. Harrisburg states that consideration of the third criterion, carriage of other local television stations, should not preclude KWHY-TV from being carried on Avenue Cable's systems. The provision of alternative and diverse programming, Harrisburg argues, is a tenet long upheld by the Commission. KWHY-TV should not be penalized for augmenting subscriber choice and a cable system's ability to provide diverse programming to the communities it serves. Finally, with respect to viewership data, KWHY-TV argues that Avenue Cable has not met its evidentiary burden because it did not introduce any audience data. Alternatively, KWHY-TV argues that any audience data offered by Avenue Cable would be inapposite here because of KWHY-TV's specialized foreign language programming format. KWHY-TV concludes its

¹⁸ Citing *Chronicle* at ¶ 22.

¹⁹ Harriscope attaches a Declaration of David Zulli and a study done by Capp's TV Electronics, Inc.

²⁰ Citing *ML Media Partners, L.P.*, (CSR-4283-A), 10 FCC Rcd. 9456, 9461, DA 95-1826 (Cab. Serv. Bur., released Aug. 23, 1995) (Commission denied modification request of cable system carrying numerous other television stations from the Los Angeles market, including other stations, broadcasting from the same, or almost the same, transmitter site.) KWHY-TV also notes that three of the four stations that are located in the Los Angeles market but are not carried by Avenue Cable transmit from Sunset Ridge, a site that is 22 miles further east than the Mount Wilson site from which KWHY-TV transmits. It is not reasonable, KWHY-TV contends, to group KWHY-TV with these stations for purposes of must-carry and ADI modification.

opposition by seeking to distinguish prior Commission decisions cited by Avenue Cable in its petition as factually distinct and irrelevant to the case at hand.²¹

17. In its Reply, Avenue Cable argues that all of the market modification factors specified in the 1992 Cable Act support its request to exclude the relevant communities from the television markets of KWHY-TV and KZKI(TV), respectively. Specifically, Avenue Cable argues that, in addition to the absence of historical carriage, neither station provides predicted Grade B contour over or other local service to the operator's service area. In fact, Avenue Cable notes that KZKI(TV) does not dispute its lack of predicted Grade B coverage. With respect to KWHY-TV, Avenue Cable states that a 1993 amendment to that station's file clearly indicates that its predicted Grade B contour signal falls short of Oxnard, a community far to the south and east of Ventura, and that KWHY-TV's own engineering tests indicate that it does not provide actual Grade B coverage. Avenue Cable argues that a lack of Grade B coverage creates a strong presumption against local service. In addition, Avenue Cable argues that the geography and distance between its service area and the signals of each station evidence the lack of local service. Avenue Cable next refutes the argument set forth by KWHY-TV that it discriminates against the television station. Avenue Cable states that, although it carries other Los Angeles stations which transmit from Mount Wilson, KWHY-TV's signal contours are the worst of any Los Angeles station and of any station transmitting from Mount Wilson. KWHY-TV, Avenue Cable argues, is treated no differently from two other stations, KHSC-TV and KTBN-TV, which transmit from Mount Wilson but are not carried on its system.

18. Avenue Cable also states in its reply that there is no local nexus between the programming offered by either KWHY-TV or KZKI(TV). Avenue Cable asserts that Spanish language broadcasting does not automatically establish a local nexus. Moreover, Avenue Cable states that the Commission has found that other stations in the Los Angeles ADI provide more focused programming in the Communities than KZKI. Finally, Avenue Cable notes that neither station has provided evidence of local viewership in the Communities.

DISCUSSION

19. Avenue Cable's petition will be granted with respect to the television markets of KZKI(TV) and KWHY-TV. Ventura County is an area of rugged terrain where there is an overlap of signals from the Los Angeles and the Santa Barbara-Santa Maria-San Luis Obispo markets. Portions of the county are far closer to Santa Barbara than they are to the City of Los Angeles or to the communities in the Los Angeles market to which these television stations are licensed. Arbitron, as noted earlier, has chosen to divide Ventura County into western and eastern sections for audience survey purposes. This division reflects the associated terrain and viewing patterns in the county. In *Smith Broadcasters*, we recognized Arbitron's division of

²¹ KWHY-TV describes *Chronicle, supra*, and *Smith Broadcasters of Santa Barbara L.P., (CSR-3822-A)*, 10 FCC Rcd 9447, DA 95-1825 (Cab. Serv. Bur., released Aug. 23, 1995) as cases that are factually distinct from the instant case.

Ventura County for audience survey purposes and applied that bifurcation for purposes of market modification analysis.²² Similarly, in *Chronicle* we noted that the topography of the area and the distances involved distinguishes communities in western Ventura County from the rest of the Los Angeles market and found, in fact, that cable communities in the western portion of Ventura County should be deleted from the television market of KZKI, among other television stations at issue in that case.²³ We found that those western communities are more connected to the Santa Barbara-Santa Maria-San Luis Obispo market than to Los Angeles.²⁴ Therefore, consistent with our prior decisions in *Smith Broadcasters* and *Chronicle*, and based on our review of the data provided in this proceeding, the general geography, television reception, and viewing patterns, we conclude that the result reached here comports with the requirement contained in Section 614(h) of the Act to "better effectuate the purposes" of the must-carry provisions.

20. Petitioner argues that the television markets of the stations at issue should be modified for the following reasons: 1) the Ventura Communities, located in the western part of Ventura County, do not belong in the Los Angeles ADI; 2) neither station has a history of carriage; 3) neither provides coverage or other local service; 4) the Communities are serviced by other television stations which provide more focused programming than does either station; 5) viewership ratings for each station are presumably deficient since neither has a local presence; and 6) mandatory carriage of these stations would not be in the public interest. The factors listed above are of relevance as a means to distinguish among communities within a market --to define the boundaries of the market-- not to excuse specific cable systems from compliance with the rules.

21. The information supplied in the petition helps define the characteristics of the television markets involved here. Specifically, we note that, with regard to the first statutory criterion, i.e., historic carriage, the 1992 Cable Act acts to remedy past discriminatory signal carriage practices. Therefore, while neither station at issue has a history of carriage on Avenue Cable's system, this is not by itself determinative. To do otherwise 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. We note that KZKI(TV) commenced operation on January 4, 1994 and that KWHY-TV was carried briefly on Avenue Cable's systems from 1982 through mid-1984. Nor in our analysis will we give great

²² *Smith Broadcasters* at ¶ 17.

²³ *Chronicle* at ¶¶ 24 and 27.

²⁴ *Smith Broadcasters* at ¶ 19.

weight to the petitioner's lack of audience shares.²⁵ Because both KWHY-TV, which provides Spanish language programming, and KZKI(TV), which broadcasts a home shopping format, are specialty stations, we cannot weigh heavily their lack of audience shares. Despite their lack of general audience appeal, the Commission has recognized that specialty stations are nevertheless able to "offer a desirable diversity of programming."²⁶ Thus, the absence of historical carriage and limited audience appeal are statutory factors that, rather than being outcome determinative on their own, must be weighed with other factors in reviewing the scope of the markets involved.

22. Avenue Cable claims that, with regard to the third statutory factor, its systems already serve the Ventura Communities with sufficient coverage of local issues and events and, therefore, there is no need to carry the stations at issue. We have consistently applied the third statutory factor as an "enhancement criterion" where a television station could show that it provides a service that other local stations do not. In cases where stations provide similar programming, we have stated that the mere "fact that two or more stations share the same format is not grounds for concluding that their programming is duplicative for purposes of the Commission's must-carry rules."²⁷ The Commission has set forth what constitutes duplicative programming in Section 76.56(b)(5) of its rules.²⁸ In the instant case, the enhancement criterion is inapplicable and does not affect the outcome in this proceeding. We note however that other television stations serving western Ventura County have been found to provide more focused local programming than at least one of the stations at issue here, i.e., KZKI(TV).²⁹

23. It is the second factor, relating to local service and coverage, in combination with the terrain and distances involved, that persuades us that there is a basis for distinguishing between the service provided by the stations at issue and those currently carried on Avenue Cable's system. KZKI(TV), licensed to San Bernadino, transmits from Sunset Ridge. Sunset Ridge is 22 miles further east than the Mount Wilson site from which stations carried on Avenue Cable's systems transmit. The topography of the area, i.e., the mountainous terrain, suggests that significant obstacles are present even in transmitting from the closer site of Mount Wilson. KWHY-TV, licensee of Los Angeles, transmits from Mount Wilson but provides a weaker signal

²⁵ Neither Harriscope nor Paxson have contested Avenue Cable's conclusion regarding the absence of significant audience to the relevant stations in West Ventura County. A review of Arbitron's data taken from its 1993 "Television County Coverage" publication confirms this with respect to KWHY(TV). There was no reported audience share for KZKI-TV because that station went on the air in 1994.

²⁶ See *First Report and Order*, 58 FCC 2d 442,452 (1976), *recon. denied*, 60 FCC 2d 661 (1976).

²⁷ See *ML Media Partners* at ¶ 12.

²⁸ 47 C.F.R 76.56(b)(5). See, e.g., *Complaint of Pray, Inc. against Nationwide Communications, Inc.* 10 FCC Rcd 1053, 1054 (1995).

²⁹ In *Chronicle* at ¶ 23, we said that "in the western portion of the county, there are television stations, such as KEYT and KADY, licensed within Ventura County, which have a closer nexus to the cable communities in that they provide more focused local programming than KDOC, KRCA, and KZKI."

than the other stations transmitting from that site. The fact that television stations within a particular market transmit from a common transmitter site is noteworthy with respect to market modification policy.³⁰ Although the Commission has denied petitions which seek to exclude stations broadcasting from the same, or almost the same, transmitter site, the balance of the evidence in this case weighs in favor of excluding the Communities from KWHY-TV's ADI.³¹ With regard to other evidence of service and coverage, the Commission has used the provision of a Grade B contour over the relevant service area as a probative indicator.³² As it has acknowledged, however, KZKI(TV) does not provide a predicted Grade B contour over the communities at issue. We note that KWHY-TV is predicted to provide Grade B service over a small portion of Avenue Cable's service area.

24. In addressing the issue of service and coverage in *Chronicle* which involved communities in Ventura County, we recognized that Arbitron divided Ventura County into a western portion and an eastern portion for audience reporting purposes.³³ The assignment of the communities involved in that case attempted to replicate the market realities as reflected by Arbitron.³⁴ Specifically, we found that those cable systems serving eastern Ventura County are in the market of KZKI. Applying the same rationale for the market dichotomy used in that case to the present case, we find that the Ventura Communities are outside the television market of KZKI. While we believe that each modification is uniquely tailored to the demonstration made by a particular television station or cable operator, we believe that it is reasonable to use the division set forth in *Chronicle* involving the same station in this case as well, because it creates market uniformity and gives television stations and cable operators regulatory certainty on which they can base future legal and marketing decisions. With respect to KWHY-TV, based on the same rationale we also find that application of the Ventura County market dichotomy established

³⁰ Congress did not intend that market modification policy provide a means for cable systems to avoid their must-carry obligations. See H.R. Rep. No. 102-628, 102d Cong. 2d Sess. at 97 (1992).

³¹ See *ML Media Partners* at ¶ 17 and *Paragon Cable (CSR-4255-A)*, 10 FCC Rcd at 9467, DA 95-1827 (Cab. Serv. Bur., released Aug. 23, 1995). Congress has indicated that, "[u]nless 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." H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

³² The Commission has held that the local service requirement may be satisfied if the station's Grade B contour covers the community. See 8 FCC Rcd at 2981. Grade B contours, however, are not to be used as any absolute measure of the scope of a station's market.

³³ See *Chronicle*, 10 FCC Rcd at 948. The Commission first recognized the bifurcation of Ventura County for analytical purposes in *Smith Broadcasters*, *supra*.

³⁴ In *Chronicle*, we found that the communities of eastern Ventura County, specifically the communities of Thousand Oaks, Fillmore, Newbury Park, Moorpark, Agoura Hills, Calabasas, Westlake and Oak Park, which are located in Los Angeles County, are in the television markets of KDOC (Riverside), KRCA (Anaheim) and KZKI (San Bernadino). We also found that the communities of Santa Paula, Camarillo, Ojai, and Somis which are located in the western portion of Ventura County.

by Arbitron is warranted and that Avenue Cable has also justified exclusion of KWHY-TV from its service area.

25. In sum, the 1992 Cable Act directs the Commission to include or exclude particular communities from a television station's market to ensure that a television station is carried in the areas which it serves and which form its economic market. We conclude that Avenue Cable has satisfied its burden in establishing that the public interest would be served by deleting the cable communities in the western portion of Ventura County from the respective television markets of KZKI(TV) and KWHY-TV.

ORDERING CLAUSE

26. Accordingly, IT IS ORDERED, pursuant to § 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534 and §§ 76.56 and 76.59 of the Commission's Rules, 47 C.F.R. §§ 76.56 and 76.59, that the Petition for Special Relief (CSR-4622-A) filed by Avenue Cable IS GRANTED.

27. This action is taken pursuant to authority delegated by §0.321 of the Commissions rules.

FEDERAL COMMUNICATIONS COMMISSIONS

William H. Johnson,
Deputy Chief, Cable Services Bureau