

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

In re Petition of)
)
WestStar Communications, Inc.) CSR-3900-A
)
For Modification of ADI Market of)
Reno, Nevada Television Stations)

MEMORANDUM OPINION AND ORDER

Adopted: April 9, 1996

Released: April 17, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. WestStar Communications, Inc. ("WestStar") filed the above-captioned petition pursuant to 47 C.F.R. §§ 76.7 and 76.59, requesting the exclusion from the Reno, Nevada television market of the eastern portions of Placer and El Dorado Counties in California served by its Truckee, California cable system. The petition is opposed by Page Enterprises, Inc. ("Page"), licensee of station KAME-TV, and Sarkes Tarzian, Inc. ("STI"), licensee of station KTVN, Reno, Nevada. Great Western Broadcasting Corp. ("Great Western"), licensee of station KXTV, Sacramento, California filed comments in support of the petition, and WestStar filed a reply to the oppositions.

BACKGROUND

2. Pursuant to Section 614 of the Communications Act, as amended (Section 4 of the 1992 Cable Act¹), and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,² a commercial television broadcast station is entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992). See 47 U.S.C. § 614.

² *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993).

market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.³ 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.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.

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; and

³ Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. 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*.

⁴ Certain counties are divided into more than one sampling unit because of the topography involved. 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. Refer to Arbitron's *Description of Methodology* handbook for a more complete description of how counties are allocated.

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

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.⁵

5. The Commission provided the following guidance in the *Report and Order* to aid decision making in these matters:

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

⁵ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

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

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.⁷

7. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a County-by-County basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁸ The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.⁹

MARKET FACTS AND ARGUMENTS OF THE PARTIES

The Petition

8. WestStar's states that its entire Truckee, California cable system, which serves the communities of Lake Tahoe, Truckee, Donner Summit, and Tahoe City, California, is located in California. It notes that all of Sacramento County and most of Placer and El Dorado Counties, California, are in the Sacramento, California ADI, while a portion of eastern Placer and El Dorado Counties is in the Reno, Nevada ADI, according to the 1992 Arbitron ADI Market Atlas. WestStar requests that the Commission modify these television markets so as to exclude the eastern portions of Placer and El Dorado Counties served by its cable system from the Reno ADI and include them in the Sacramento ADI.

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

⁸ 8 FCC Rcd at 2977 n.139. Viewership information 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. See, e.g., *RKZ Television, Inc.*, 8 FCC Rcd 8008, 8010 (1993).

⁹ 47 C.F.R. §76.59.

9. WestStar alleges that approximately one-third of its 9072 subscribers are located in the two California county areas that Arbitron places in the Reno ADI. It asserts that the Reno stations do not serve these areas in any way, nor do they form any part of the Reno market. WestStar says it carries only two Reno stations -- KOLO (ABC) because it threatened to invoke network non-duplication protection against another station being carried, and KREN (Ind) because of its Spanish language programming. WestStar says it sent all five Reno stations notices that their signal quality is inadequate at the system's principal headend and claims that only KOLO can be received off-air by ordinary means in any significant portion of the service area. According to WestStar, the Reno stations do not serve the local needs of these communities and provide no local news or sport coverage and have little presence in these communities.

10. As evidence that the eastern portions of Placer and El Dorado Counties are really part of the Sacramento television market instead of the Reno market, WestStar asserts that Sacramento stations cover significant news and sport developments occurring in the counties served by its system, and refers to some examples of such coverage of events. Its subscribers pay taxes and send their children to school in California, and many subscriber premises are second homes for Sacramento and San Francisco residents, events which, according to WestStar, show that there is a strong Sacramento and California connection for people living in these communities located on the west side of Lake Tahoe and little Nevada connection. WestStar asserts that only one Reno station, KOLO, is significantly viewed in these communities.

The Oppositions

11. Both Page and STI dispute WestStar's claim that Reno stations provide little or no service to communities served by the WestStar cable system. For its part Page argues that the examples of service by Sacramento stations listed by WestStar belie, by their paucity, the notion of meaningful service. Page states that its station KAME covered all the events listed by WestStar for the Sacramento station, and that its ongoing interest in those communities is reflected in coverage of twelve events of special interest to the area within a two month period. Page asserts a belief that it provides a good quality signal to the WestStar headend by means of translators which rebroadcasts KAME origination.¹⁰ The geopolitical accident of the California-Nevada border should be given no decisional significance in this context, according to Page.

12. STI asserts that its station KTVN and other Reno stations have significant viewership in the California communities near Lake Tahoe and that there are readily identifiable economic ties between Reno and the Lake Tahoe area. STI argues that not only is WestStar's carriage of two of five Reno stations significant itself, but that it is even more significant that the area's other major cable systems serving communities neighboring to the WestStar

¹⁰ Our files show that translator station K23DT is licensed to Page to retransmit the signal of KAME on channel 23 from an antenna attached to an FM broadcast station tower (KRNO(FM)) atop Slide Mountain. See File No. BLTT 930927IB, granted October 10, 1993. The authorization for station K39DT, also cited by Page, has subsequently been deleted.

communities carry all five Reno stations. This carriage of Reno stations on other cable systems is reflected, according to STI, in listings of Reno stations in the local Truckee newspaper. The absence of over-the-air viewing of Reno stations stems from geographical factors which put viewers at the mercy of cable systems in these communities where cable penetration rates exceed 90%, argues STI.

13. STI disputes WestStar's assertion that Reno stations do not deliver a good quality signal to the cable system principal headend by asserting that WestStar's relevant principal headend for must-carry purposes is actually on top of Ward Peak, rather than at the Indian Jack Road location in Truckee claimed by WestStar. STI points out that the signal of each of the stations now carried by WestStar is received not at Indian Jack Road facility but at the Ward Peak location and then transmitted by microwave to the Indian Jack Road facility. The engineering staffs of both STI and WestStar have established through discussions that the KTVN signal at Ward Peak is adequate under the statutory criteria, according to STI.

14. STI claims coverage of community issues by asserting that station KTVN aired more than a half dozen stories over a one month period, that Truckee is the third ranked community of origin for station news stories aired on KTVN, and that its reporters make the thirty mile trip to Truckee to cover local government and other news frequently. STI submitted a Truckee newspaper vendor's log for the purpose of showing that Reno newspapers outsold Sacramento and San Francisco newspapers, which in turn would show that Truckee and other Lake Tahoe residents have more community of interest with Reno than with Sacramento.

15. STI asserts that overall station viewing data is the relevant data, because of the high area cable penetration rates. According to STI, this data shows that KTVN alone has a thirteen percent share and a net weekly circulation of seventy five percent in Placer County, for second position among all Reno stations who capture one-half of the viewing share, while California market stations attract only six percent each. It asserts further that ratings data for El Dorado County are markedly similar. STI suggests that, while these data do not show a lack of community interest in events in Sacramento or California as a whole, it does show that the Truckee community has a divided character, looking both to the east and west. The Commission has addressed such circumstances by requiring cable systems serving customer in two adjacent ADIs to carry stations local to both ADIs,¹¹ and therefore WestStar's mandatory carriage line-up should include the five Reno stations and those Sacramento stations not duplicating the network programming of closer Reno stations, STI argues.

The Comments in Support and Reply

16. Great Western supports the petition because of the concern that its station KXTV, a CBS affiliate in Sacramento, would be eliminated from WestStar's channel line-up, because Station KTVN, also a CBS affiliate located in Reno and nearer to WestStar's headend, has

¹¹ STI cites *Report & Order*, 8 FCC Rcd, at 2975.

exercised must-carry rights and because of channel constraints of the cable system. If WestStar's petition succeeds in getting the communities in eastern Placer and El Dorado Counties excluded from the Reno ADI, station KTVN would lose must-carry rights on WestStar's system, which would then continue with KXTV in its channel line-up. This outcome should prevail, Great Western argues, because its KXTV has a significant presence in these eastern county areas. Such presence is said to be established by the more than 250 stories and reports covering the Truckee/Squaw Valley/ Alpine Meadows area which KXTV has broadcast during a year and a half period.¹² Great Western states that such coverage includes both hard news, including coverage of the California legislature and other items that affect California, as well as numerous feature stories on area citizens. It also points out that its programming includes extensive coverage of area weather conditions both on a regular basis and when severe weather threatens, thus providing protection for the safety and property of area residents. Great Western also claims active participation in community affairs through publicizing of area events and by donation of equipment and services in support of an area video museum.

17. WestStar, in reply to the oppositions, reasserts that Reno stations do not provide an adequate quality signal to its principal headend at Indian Jack Road in Truckee, and for that reason are not entitled to must-carry on its systems. WestStar also notes that it previously provided information to the Commission in File No. CSR 3799-M to show that the Indian Jack Road facility qualified as its principal headend.¹³ WestStar also argues that the viewing data submitted by STI fails to establish community preference for Reno stations, and that the Reno stations have not shown that they meet the local interest needs of community residents. In this latter regard, WestStar suggests that the number of stories of local community interest listed by the Reno stations appears rather limited when compared with the extensive listing of covered local events presented by Great Western is considered. WestStar also asserts that a vehement public objection to mandatory carriage of Reno station undercuts any claims that those stations are serving the local community. The newspaper sales data submitted by STI actually shows, according to WestStar, a relatively less community of interest of local residents toward Reno as compared with Sacramento and California in general.¹⁴

¹² See Great Western comments, Exhibit B.

¹³ See *Channel 5 Public Broadcasting, Inc. vs WestStar Cable*, 10 FCC Rcd 8215 (Cable Ser. Bur. 1995).

¹⁴ WestStar states that the newspaper data, when examined closely, shows that Truckee-residents preferred two California papers by a margin of three to one over Reno papers during the period examined.

ANALYSES**A. Historic Signal Carriage**

18. The parties agree that, in considering WestStar's petition for modification of the Reno ADI, focus must be placed on the four factors specifically referenced in the statute.¹⁵ As pointed out in the pleadings, the irregular and mountainous terrain provide serious obstacle to over-the-air television viewing in these California communities located in the eastern portions of Placer and El Dorado Counties and near the western shore of Lake Tahoe. As a result, cable systems have achieved penetration rates generally in excess of ninety percent,¹⁶ and thus substantially all television viewing is by means of cable. Also, prior to the effective date of the statutory must-carry provisions, cable systems in areas of high penetration such as that involved here enjoyed considerable freedom to determine which broadcast stations would complement their channel line-up. In this setting, we note that WestStar historically has carried two of the five Reno stations. Other cable systems in the area have carried all of the Reno stations.

B. Station Audience in Communities Served by Cable System

19. Because of the circumstances noted above, one might expect that the three Reno stations not carried on WestStar's cable system would have limited viewing in these eastern California counties served by WestStar. However, Arbitron has divided both Placer and El Dorado into western and eastern regions for audience survey purposes and Reno stations, including the three that are not carried by WestStar, KAME, KTVN, and KOLO, are among the stations with the highest audience shares in the eastern part of the survey area where the cable communities are located. In Placer East, the total share for all Reno stations is fifty and while the Sacramento/Stockton/Modesto stations' have a combined share of only six.¹⁷ The viewing data for El Dorado County East are similar.¹⁸ Based on these data, we find that the Reno stations enjoy a substantial edge in audience viewing in these eastern portions of Placer and El Dorado counties over stations from the Sacramento area.¹⁹

¹⁵ See paragraph 5 above.

¹⁶ Cable penetration in Placer County East is 92% and in El Dorado County East is 99%. See 1993-1994 Arbitron, *Television County Coverage*, pp. 98 and 27, respectively.

¹⁷ Not six each, as STI suggests. San Francisco-Oakland-San Jose stations attract a share of fifty five. See 1993-1994 Arbitron, *Television County Coverage*, p. 98.

¹⁸ See 1993-1994 Arbitron, *Television County Coverage*, p. 27. See also Nielsen County/Coverage Study 1995 p. 263.

¹⁹ *Ibid.*

C. Station Coverage of Communities Served by Cable System

20. Reno stations KOLO-TV, KTVN and KREN-TV appear to place predicted Grade A signal over the communities in the eastern portions of these two California counties served by WestStar, with the other two stations placing Grade B or better signals there.²⁰ The predicted Grade B signals of the Sacramento stations fall well short of these communities.²¹ The relevant facts are that WestStar receives a complement of Sacramento signals off-air at a facility atop Ward Peak and transmits them by microwave to a facility at Indian Jack Road in Truckee.²² WestStar also carries Reno stations KOLO-TV and KREN(TV). Moreover, the Reno stations are located geographically substantially closer to the communities in the eastern portion of Placer and El Dorado Counties served by WestStar than are any of the Sacramento stations, all of which except one have transmission facilities located generally to the south of Sacramento across the Sierra Nevada mountain range.²³ Finally, we note that Page holds a license for a translator station for rebroadcast of its station KAME from a location atop Slide Mountain overlooking Lake Tahoe.²⁴

D. Station Programming Specifically for Communities Served by Cable System

21. The record before us shows that programming specifically for the eastern portions of Placer and El Dorado Counties is broadcast by the two Reno stations and by the one

²⁰ See *Television & Cable Factbook*, Stations Vol. No. 63, 1995 Edition, pp A-708-712.

²¹ See *Television & Cable Factbook*, Stations Vol. No. 63, 1995 Edition, pp A-144-152.

²² WestStar has designated the Indian Jack Road facility as its principal headend for must-carry purposes. It also asserts that none of the Reno stations delivers a good quality signal meeting statutory must-carry requirements to the Indian Jack Road site. Page and STI assert that their stations deliver a good quality signal to the Ward Peak facility, which, they argue, must be considered WestStar's principal headend for must-carry purposes. Page and STI argue that it is therefore irrelevant that their stations may not deliver quality signals to the Indian Jack Road facility.

Although station signal strength at a cable system headend has particular relevance largely for purpose of determining must-carry rights, we note that the parties have provided no signal strength measurements at either of these reception facilities. Also, we previously determined that WestStar has properly designated the Indian Jack Road facility as its principal headend for must-carry purposes. See *Channel 5 Public Broadcasting, Inc. vs WestStar Cable*, 10 FCC Rcd 8215 (Cable Ser. Bur. 1995). Page and STI have provided no new information that would require us to reconsider that conclusion. See also, *Complaint of the Mississippi Authority for Educational Television against Time Warner Cable*, 9 FCC Rcd 3069 (1994). Moreover, we have previously determined that a cable operator is not responsible for the transportation of a station's signal to its principal headend by microwave. See, *Complaint of Family Stations, Inc. against Sonic Cable Television*, 10 FCC Rcd 1672, 1673 (1995).

²³ See *Television & Cable Factbook*, Stations Vol. No. 63, 1995 Edition, pp A-144-152.

²⁴ See n. 10 above.

Sacramento station that participated in this proceeding.²⁵ These stations also attain some level of direct participation in local events and affairs of public interest. However, since the record does not contain any significant amount of information about whether or to what extent other Reno and Sacramento stations program specifically for these communities or take part in local activities, no particular conclusion may be drawn about what overall level or quality of programming specifically for these communities originates with either Reno or Sacramento stations as a whole.

SUMMARY AND DECISION

22. In summary, we observe that the Reno market stations achieve a substantially larger audience share in the communities at issue than do the Sacramento stations. The Reno stations' demonstrated ability to attract an audience in these communities must be regarded as a significant factor suggesting that the Reno stations have overcome any problems they may in fact experience with respect to coverage of the communities at issue here. The record shows that both the Reno and Sacramento stations participating in this proceeding consider these markets important by their significant levels of programming specifically for these communities as well as by their direct participation in local events. Further, that WestStar considers carriage of Sacramento stations an important part of its channel line-up is made evident by its reception facility atop Ward Peak and microwave facilities carrying those signals to the Truckee headend. However, we conclude, based on the totality of the evidence, that a decision to retain these communities in the Reno stations' market better serves the public interest. Important in our decision is the fact that the Reno stations have been able to attract substantial viewing audiences in the communities at issue, despite coverage problems caused by the surrounding irregular terrain. The Reno stations have a significantly higher level of viewing than the Sacramento/Stockton/Modesto stations.²⁶ The Reno stations are also located geographically substantially closer to these communities than are the Sacramento stations. These communities, which lie largely east of the Sierra Nevada mountain range, share greater proximity to the Reno area than do the Sacramento stations located well to the west of those mountains. Moreover, two of the Reno stations are already being carried on the WestStar cable system, and all of the Reno stations are being carried on major cable systems serving communities neighboring those served by WestStar. For these reasons, we find that these communities make up a part of, and should continue to be included in, the Reno stations' market and that a denial of the petition will serve the public interest.

²⁵ Great Western certainly presented a longer list of programming specifically for these communities than did the two Reno stations. Their list covered a year and a half, while that of the Reno stations was presented within briefer periods of a few months. From these presentations, we can conclude with confidence only that a significant amount of programming specifically for the communities at issue originates from both sources.

²⁶ See 1993-1994 Arbitron, *Television County Coverage*, p. 98.

ORDER

23. Accordingly, **IT IS ORDERED**, pursuant to §614(h)(1)(C) of the Communications Act of 1934, as amended, 47 U.S.C. §534(h)(1)(C), and §76.59 of the Commission's Rules, 47 C.F.R. §76.59, that the petition for special relief filed by WestStar Communications, Inc. in File No. CSR-3900-A **IS DENIED**.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau