

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

In re:

Northstar Television  
of Providence, Inc. CSR-4107-A  
Providence, Rhode Island

Petition for Special Relief  
for Modification of Station  
WNAC-TV's ADI

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 1996; Released: February 12, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Northstar Television of Providence, Inc. ("WNAC-TV"), licensee of station WNAC-TV (Fox, channel 64), Providence, Rhode Island, has filed the above-captioned petition for special relief requesting the Commission to modify its television market for purposes of establishing must-carry rights to include the communities of Auburn, Boylston, Dudley, Grafton, Holden, Leicester, Millbury, Northbridge, Oxford, Paxton, Southborough, Southbridge, Spencer, Sturbridge, Upton, Webster, West Boylston, West Brookfield, Westborough, and Worcester within the Providence, Rhode Island-New Bedford, Massachusetts "area of dominant influence" for purposes of the cable television mandatory broadcast signal carriage rules. WNAC-TV's petition is opposed by Greater Media Cable ("Greater Media"), operator of a cable system serving Worcester, Massachusetts and vicinity. WNAC-TV has replied.<sup>1</sup>

BACKGROUND

2. Pursuant to §4 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")<sup>2</sup> and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

3. Under the Act, however, the Commission is also directed to consider changes in ADI areas. Section 4 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.<sup>6</sup>

<sup>1</sup> WNAC-TV also filed an Emergency Petition for Enforcement of Statutory Stay seeking enforcement of the mandatory stay provisions of §614(h)(1)(C)(iii) of the Communications Act and §76.59(c) of the Commission's Rules. In light of our decision herein, we need not address the issues raised in the petition for stay filed by WNAC-TV.

<sup>2</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>3</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>4</sup> Section 614(h)(1)(C) of the 1992 Cable Act specifies that a 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*.

<sup>5</sup> 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*.

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

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.<sup>7</sup>

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.<sup>8</sup>

6. 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.<sup>9</sup> 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 ADI change request.<sup>10</sup>

7. Adding communities to a station's ADI generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of its activated channel capacity to compliance with the mandatory signal carriage obligations, 2) the station is responsible for delivering a good quality signal to the principal headend of the system, 3) indemnification may be required for any increase in copyright liability resulting from carriage, and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried or the signals of more than one local station affiliated with a particular broadcast network. If, pursuant to these requirements, a system operator elects to carry the signal of only a single affiliate of a broadcast network, it is obliged to carry the affiliate from within the ADI whose city of license is closest to the principal headend of the cable system.<sup>11</sup> Accordingly, based on the specific circumstances involved, the addition of communities to a station's ADI may guarantee it cable carriage and specific channel position rights; simply provide the system operator with an expanded list of must-carry signals from which to choose, i.e., when it has used up its channel capacity mandated for broadcast signals carriage, or determined which of duplicating broadcast affiliated stations are entitled to carriage priority.

#### MARKET FACTS AND ARGUMENTS OF THE PARTIES

8. The communities here in question are all in Worcester County, Massachusetts, which is located within the Boston (Worcester) ADI. Worcester County is adjacent to the Providence-New Bedford ADI, just to its north. The communities in question are located across Worcester County, and range from approximately 25 to 47 miles from Providence.

9. In support of its petition, WNAC-TV argues that it has been carried on the Greater Media system serving the communities in question since 1991. With regard to local service, WNAC-TV states that it places a Grade B or better signal over the subject communities. WNAC-TV also states that two other Fox affiliates put signals over portions of Worcester County; however, Station WTIC-TV (Fox, Channel 61), Hartford, Connecticut does not place a Grade B signal over most of the area in question, including Worcester, the community with the largest population density. Regarding local viewing patterns, WNAC-TV cites Arbitron's 1992-93 Cable County Coverage Study in which WNAC-TV's viewership in Worcester County is recorded as follows: an average quarter hour share of cable households of 1; an average net weekly circulation in cable households of 23; a share of county prime time viewing of 2; and a prime time net weekly circulation in all households of 15.

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.

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

<sup>8</sup> 8 FCC Rcd at 2977 (emphasis in original).

<sup>9</sup> 8 FCC Rcd at 2977 n.139. Viewership data cited herein is county data, rather than community-specific data. However,

<sup>10</sup> 47 C.F.R. §76.59.

<sup>11</sup> 8 FCC Rcd at 2981.

WNAC-TV also argues that another factor to be considered is that it provides an alternative advertising and public affairs outlet for Worcester County.

10. In opposition, Greater Media argues that not only has WNAC-TV failed to demonstrate the need for carriage on its system, but it has also failed to recognize the added copyright burden that such carriage would impose. Greater Media asserts that WNAC-TV's petition is a meaningless gesture since inclusion on the list of "must carry" stations would not actually result in carriage for the station. Greater Media states that it already carries Television Broadcast Station WFXT (Fox, Channel 25), Boston, Massachusetts, which is also a Fox affiliate located within the same ADI as Worcester. Greater Media notes that although Providence may be closer to Worcester than Boston is geographically, Boston is the state capital and the major commercial and cultural center for the state. According to Greater Media, enforced carriage of WNAC-TV would add nothing to the information and public service programming already provided to the system's subscribers by WFXT. Greater Media also notes that WNAC-TV has not been "historically" carried because it was only carried for a brief period of time from 1991 until 1993. Greater Media also points out that the station is not significantly viewed in Worcester County and has substantially less viewership than WFXT.

11. In addition, Greater Media states that when it did carry WNAC-TV, it was only in those communities where the station was local for copyright purposes. Greater Media states that, under Copyright Office regulations,<sup>12</sup> that would be only within 35 miles of Providence, which would be an area extending up to Worcester, but no farther to the north or west. According to Greater Media, many of the communities served by its system are located in an area where WNAC-TV is "distant" for copyright purposes. Carriage of the station in those "distant" communities would cause Greater Media to become liable for significant additional copyright royalty fees. Greater Media argues that under the 1992 Cable Act, a station cannot become a "must carry" station if its carriage would generate additional copyright payments, unless the station agrees to indemnify the system. According to Greater Media, in the absence of any recognition of copyright liability, WNAC-TV's request for "must carry" status is of no real effect and is basically moot.

12. In reply, WNAC-TV argues that whether or not the station is local for copyright purposes throughout Greater Media's cable system is irrelevant to the Commission's Congressionally mandated analysis. WNAC-TV states that it is only after the Commission has determined whether or not to extend a station's must-carry zone does the issue of signal carriage by a cable system become relevant. WNAC-TV contends that the reason for reviewing additions to must-carry zones independently from the question of whether a system ultimately will be required to carry the station is that copyright status can change. Accordingly,

WNAC-TV argues that if the Commission were only to expand must-carry zones where stations were local for copyright purposes, it would be faced with additional petitions every time the copyright status of a station changed. Notwithstanding that argument however, WNAC-TV notes that two-thirds of the communities it seeks to add to its must-carry zone are local for copyright purposes.<sup>13</sup>

13. Moreover, WNAC-TV argues that Greater Media has failed to rebut its showing that its must-carry zone should be expanded under the currently applicable statutory standards. WNAC-TV contends that even though Greater Media deleted carriage of its signal without what it argues was proper notice and in violation of the mandatory stay provision, the system did historically carry the station for three years. According to WNAC-TV, Greater Media cannot now argue that reinstatement of carriage would be a severe burden in light of its improper actions in deleting the station. In addition, WNAC-TV argues that the station is local to the viewers in Worcester County. WNAC-TV reiterates its contention that the communities in question are closer to Providence than they are to Boston and that substantial numbers of viewers in the communities watch the station and benefit from its advertising and programming.

#### ANALYSIS AND DECISION

14. We are not persuaded by the arguments raised by WNAC-TV and we will deny its petition. While WNAC-TV does meet the second criteria in that its Grade B contour encompasses the subject communities, it fails, in varying degrees, to meet the other three criteria. First, there is no record of long-term historic carriage. While it is true that the station was carried on Greater Media from 1991 until 1993,<sup>14</sup> the station was deleted by the system in 1993, thus prompting the instant petition. The reasons for deleting the station, upon which WNAC-TV speculates,<sup>15</sup> are not relevant to our discussion in this case and we need not explore further the justification, or lack thereof, for dropping the station.

15. Second, WNAC-TV has not provided sufficient information regarding whether other stations eligible to be carried by the system fail to provide adequate news coverage or other local programming of interest to the community. WNAC-TV only states that there are two Fox affiliates that put signals over portions of Worcester County; but only one, WTIC-TV, does not place a Grade B signal over most of the area in question. WNAC-TV does not address the coverage provided by in-state Fox affiliate, WFXT, the current Fox affiliate serving the Boston ADI. WNAC-TV also does not address whether or not other stations carried by the cable system adequately address the needs of the subject community. However, in this regard, we do not believe that Congress intended this criterion to act as a bar to a station's ADI claim if it were to be shown

<sup>12</sup> 37 C.F.R. §201.17(b)(5).

<sup>13</sup> According to WNAC-TV, those communities are: Auburn, Dudley, Grafton, Millbury, Northborough, North Bridge, Oxford, Southborough, South Bridge, Upton, Webster, Westborough, and Worcester.

<sup>14</sup> WNAC-TV began operation in 1981 but was not carried on Greater Media until 1991. Commission records indicate that it became a Fox affiliate in 1990.

<sup>15</sup> WNAC-TV speculates that Greater Media deleted the station in order to circumvent a proposed retransmission consent

agreement with the Fox network. WNAC-TV surmises that such an agreement would have required Greater Media to retain carriage of all Fox affiliates carried at the time of the agreement. According to WNAC-TV, by deleting the station prior to signing such a retransmission consent agreement with Fox, Greater Media would have been able to avoid complying with such a provision.

that other stations serve the communities at issue. Rather, we believe that this criterion was intended to enhance a station's claim where it could be shown that other stations *do not* serve the communities at issue. WNAC-TV has failed to introduce any evidence which would warrant it receiving such an enhancement. Third, from the Arbitron information presented to us by WNAC-TV, we cannot state that the station has substantial viewership in cable and noncable homes in Worcester County. Review of the Arbitron viewing statistics<sup>16</sup> verifies our conclusion. In Worcester County, WNAC-TV has no viewing share in noncable homes. In cable homes, WNAC-TV receives only a 1 share of viewing hours and a net weekly circulation of 22. On the other hand, the Boston Fox affiliate, WFXT, receives a 5 share of viewing hours and a net weekly circulation of 54. In addition, we agree with Greater Media that although Providence may be slightly closer to Worcester than Boston, Worcester and the surrounding communities at issue are located in Massachusetts and consequently can be expected to have a greater affinity to the Boston ADI which contains the state's capital and also its major commercial and cultural center. This is not a case where the relevant communities are located significantly closer to the out-of-state station, WNAC-TV. The audience data clearly shows that Worcester County viewers prefer viewing the Boston Fox affiliate which currently serves the communities at issue.

16. Lastly, we find that Greater Media's arguments regarding added copyright burdens which may be imposed due to WNAC-TV's carriage to be irrelevant for purposes of evaluating market modifications. Moreover, even if we were to add the disputed communities to the Providence-New Bedford ADI, no additional copyright burden would be imposed owing to WNAC-TV's carriage. Under the "Satellite Home Viewer Act of 1994,"<sup>17</sup> all stations and communities which are located in the same ADI are considered local for copyright purposes.<sup>18</sup>

17. In view of the foregoing, we find that grant of WNAC-TV's petition is not in the public interest.

#### ORDER

18. 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 (CSR-4107-A) filed by Northstar Television of Providence, Inc. IS DENIED.

19. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

<sup>16</sup> See Arbitron, *Television County Coverage: Massachusetts (Cable Controlled Counties)*, 1993.

<sup>17</sup> 17 U.S.C. §119 (1994).

<sup>18</sup> *Id.* 17 U.S.C. §111(f) has been amended regarding the paragraph relating to the definition of "local service area of a primary transmitter" as follows: "or such station's television market as defined in section 76.55(e) of title 47, Code of Federal

regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations."