

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

In the Matter of:)	
)	
Marcus Cable Associates, LLC)	
)	CSR-5295-A
For Modification of the Dallas-Ft. Worth, TX ADI)	CSR-5316-M
)	
Complaint of KTAQ-TV 47 v. Marcus Cable Associates, LLC)	
)	
Request for Carriage)	

ORDER ON RECONSIDERATION

Adopted: September 22, 2000

Released: September 29, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. KTAQ-TV 47, licensee of television broadcast station KTAQ (Ch. 47), Greenville, Texas (“KTAQ”), has requested reconsideration of the Bureau’s December 22, 1998 decision granting market modification request of Marcus Cable Associates, LLC (“Marcus”) to exclude KTAQ from various Texas cable communities for must carry purposes.¹ An opposition to this petition was filed on behalf of Marcus to which KTAQ replied. Marcus subsequently filed a response to KTAQ’s reply to which KTAQ filed an opposition.

II. BACKGROUND

2. In its request for modification, Marcus sought to exclude 26 cable communities served by seven cable systems from KTAQ’s market. Both Marcus’ cable systems and KTAQ’s city of license were considered to be part of the Dallas-Ft. Worth, Texas area of dominant influence (“ADI”) market and, after the Commission’s changeover from the use of Arbitron’s ADIs to Nielsen’s designated market areas (“DMAs”) to determine markets, the counties remain in the Dallas-Ft. Worth DMA.

3. The Bureau granted Marcus’ request, finding that KTAQ failed to adequately meet the market modification factors. KTAQ was found to be geographically distant, with no history of carriage, no Grade B contour coverage, no locally-focused programming, and no viewership in the subject communities.

¹*Marcus Cable Associates, LLC*, 14 FCC Rcd 1 (1998). This decision also dismissed an accompanying must carry complaint filed by KTAQ against Marcus.

III. DISCUSSION

4. In our review of the petition for reconsideration before us, we note that Marcus argues in opposition that KTAQ-TV's petition is procedurally defective because it was not filed within the time limit established by Section 1.106(f) of the Commission's rules.² Marcus points out that the *Bureau Order* was released on December 28, 1998, and that, in order for the petition to be timely-filed, the deadline for KTAQ-TV to file its reconsideration would have been January 27, 1999. In this instance, however, Marcus states that KTAQ-TV did not file its petition until January 28, 1999.

5. In its reply to opposition and an opposition to Marcus' response to reply, KTAQ-TV maintains that, contrary to Marcus' assertions, its petition is timely filed. KTAQ-TV contends that the Commission has on numerous occasions supported KTAQ-TV's interpretation of Section 1.4(b) of Commission's rules which states that the 30-day filing period begins tolling "the day after the day" on which public notice of the action is taken.³ In support, KTAQ-TV cites several Commission decisions which clearly explain how the 30-day filing period for reconsiderations is to be calculated.⁴

6. Upon review, we agree with Marcus that KTAQ-TV's petition for reconsideration was not timely-filed. While the decisions to which KTAQ-TV points to in support of its position may have been relevant at the time in which they were released, KTAQ-TV fails to take into account that in 1991, the Commission amended Section 1.4(b) of its rules to establish that the date of public notice of a decision is the day that the relevant action is taken (i.e., the day the item is published in the Federal Register, or the date that the item is released).⁵ The first day to be counted, therefore, starts the day after public notice and the two-day lag and any attendant confusion utilized prior to this decision was eliminated. As a result, we conclude that KTAQ-TV's petition for reconsideration is procedurally defective because it was not filed within the mandatory 30-day filing period and it will be dismissed.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's rules, that the petition for reconsideration, filed by KTAQ-TV 47, **IS DISMISSED**.⁶

²47 C.F.R. §1.106(f).

³47 C.F.R. §1.4(b).

⁴See e.g., *Richardson Independent School District*, 5 FCC Rcd 3135, 3136 (1990); *Advanced Communications Corp.*, 6 FCC Rcd 6977 (1991) at note 2; and *Amendment of Section 73.202(b), Table of Allotments*, 7 FCC Rcd 3946 (1990).

⁵See *Amendment of the Commission's Rules Regarding Computation of Time*, 6 FCC Rcd 4797 (1991). See also 47 U.S.C. §405.

⁶47 U.S.C. §614(h); 47 C.F.R. §1.106.

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.⁷

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

⁷47 C.F.R. §0.321.