

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

In the Matter of:)	
)	
Garden State Cable TV)	
)	CSR-5035-A
For Modification of the Philadelphia, Pennsylvania ADI)	
)	

ORDER ON RECONSIDERATION

Adopted: October 5, 2000

Released: October 10, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Reading Broadcasting, Inc., licensee of Television Broadcast Station WTVE (Ch. 51), Reading, Pennsylvania ("WTVE"), has requested reconsideration of the Bureau's decision granting Garden State Cable TV's ("Garden State") request to modify its market to exclude its cable communities from the market of WTVE.¹ An opposition to this petition was filed on behalf of Garden State. No reply from WTVE was received, but it did file a subsequent supplement to its reconsideration to which Garden State replied.

II. BACKGROUND

2. In its request for modification, Garden State sought to exclude the 58 communities served by its Cherry Hill, New Jersey cable system from the television market of WTVE for must carry purposes. This modification request was unopposed. Garden State argued that its request should be granted because WTVE was geographically remote from its cable system communities and the station failed to meet any of the market modification criteria. After an analysis of the information presented by Garden State, the Bureau agreed that WTVE's failure to meet any of the market modification factors warranted the conclusion that WTVE was not part of Garden State's market. As a result, Garden State's petition was granted.

III. DISCUSSION

3. In support of its request for reconsideration, WTVE argued that its failure to oppose Garden State's initial modification petition was due to two reasons. First, WTVE maintains that its counsel was unable to participate due to potential conflict of interest. Second, WTVE indicates that negotiations for carriage with Suburban Cable, one of the owners of the Garden State system, would, if successful, have obviated the need for an objection. Section 1.106(b)(1) of the Commission's rules

¹See *Garden State Cable TV*, 12 FCC Rcd 18226 (1997).

requires that parties in a proceeding seeking reconsideration show good reason why it was not possible for them to participate in the earlier stages of the proceeding. We are not convinced that WTVE has met this criterion in this instance and we will therefore not accept WTVE's petition as a formal request for reconsideration. New counsel could have been retained. Further, WTVE, despite ongoing negotiations, was responsible for responding to the petition filed by Garden State. Indeed, we note that WTVE filed an extension of time to file an opposition to Garden States' petition and this extension was granted. Its failure to do so was a matter of choice and not beyond its control.

4. In any event, we note that a review of the pleadings in this case indicates that WTVE has not presented sufficient evidence to alter our original decision to grant Garden State's request.² WTVE has pointed to a potential change in its facilities which will result in a relocation of its transmitter site and an enlargement of its predicted Grade B contour. We have received no current information from WTVE to indicate that these changes have taken place. In addition, WTVE has suggested that the change in its programming to a Spanish-language format changes its relevance to the cable subscribers served by Garden State and warrants a reversal of our previous decision. We do not agree. The Commission's must carry rules and its policies with regard to modification of markets are not predicated upon a station's programming content. In this instance, WTVE has failed to demonstrate that our original decision was based on an erroneous analysis of the factors which shape its television market.

5. For the reasons stated above, we therefore dismiss WTVE's reconsideration request.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for reconsideration filed by Reading Broadcasting, Inc. **IS DISMISSED**.

7. This action is taken pursuant to authority delegated by Sections 0.321 and 1.106 of the Commission's rules.³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²See 47 C.F.R. §§1.106(c)(2) and (d)(2).

³47 C.F.R. §§0.321 and 1.106.