

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

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| In the Matter of: |) | |
| |) | |
| Petition of Community Television Systems, Inc. |) | |
| and United Cable Television Services Corporation |) | CSR 5360-A |
| |) | |
| For Modification of Market of Television |) | |
| Station WSAH(TV), Bridgeport, Connecticut |) | |
| |) | |
| Petition for Partial Reconsideration |) | |

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 2000

Released: April 18, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Community Television Systems, Inc. and United Cable Television Services Corporation ("TCI-C") have filed a petition seeking partial reconsideration of *Paxson New York License, Inc.*, ("Bureau Order"),¹ which granted in part a market modification petition filed by Paxson New York License, Inc. pursuant to Sections 76.7(a) and 76.59(a) of the Commission's rules.² The *Bureau Order* added a number of Connecticut communities to the market of television station WBPT-TV, Bridgeport, Connecticut, and declined to add certain other communities to that station's market. TCI-C's petition seeks reconsideration of the determination to add the communities of Berlin, Bristol, Farmington, New Britain, and Plainville, Connecticut (the "Communities") to WBPT-TV's market. SAH-New York License Corp. ("SAH"), licensee of television station WSAH(TV) (formerly WBPT-TV),³ filed an opposition to the petition, and TCI-C filed a reply.

2. Section 614(h)(1)(C)(i) of the Communications Act authorizes the Commission to add communities to, or delete communities from a television station's market "to better effectuate the purposes of this section."⁴ A detailed description of these market modification provisions and the

¹14 FCC Rcd 7715 (CSB 1999).

²47 C.F.R. §§ 76.7(a) and 76.59(a).

³Station WBPT-TV was acquired by MFP, Inc., a wholly owned subsidiary of Shop at Home, Inc., on June 3, 1999. See MFP, Inc.'s Consent Motion for Extension of Time filed July 1, 1999, n. 1. The station, referred to hereinafter as WSAH(TV), was subsequently assigned to SAH. See SAH Opposition, n. 1.

⁴Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. (continued...)

Commission's related regulations are set forth in the *Bureau Order*.

II. DISCUSSION

3. The facts, applicable law, arguments of the parties, and a detailed analysis of matters set forth in the *Bureau Order* need not be repeated here. We consider here only TCI-C's contention that the Communities should not have been added to WSAH(TV)'s television market. TCI-C's principle contention is that the *Bureau Order* improperly found the Communities to be within WSAH(TV)'s Grade B signal contour. TCI-C contends that, based on that finding, the *Bureau Order* added the Communities to WSAH(TV)'s market along with other communities also found to be within the station's Grade B signal contour, despite the absence of record evidence showing cable carriage or measurable station audience in the communities, or coverage of the communities by other stations.⁵ With its reconsideration petition, TCI-C provided a WSAH(TV) contour study conducted using the Longley-Rice prediction methodology, which shows that the Communities are outside the station's Grade B signal contour.⁶ The Commission has indicated that station contour maps based on the Longley-Rice methodology will be considered as probative evidence in signal contour analyses and as a proper tool to augment Grade B showings.⁷ The Commission has encouraged use of the Longley-Rice methodology because it takes account of mountainous terrain and unusual geographical features.⁸ In view of this record evidence, we modify paragraph 15 of the *Bureau Order* and find that the Communities are located outside WSAH(TV)'s Grade B contour.⁹

4. Based on our finding that the Communities are located outside WSAH(TV)'s Grade B contour, we now conclude that these Communities should not be added to WSAH(TV)'s market, for the

(...continued from previous page)

§534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*,⁷ be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

⁵See 47 U.S.C. § 534(h)(1)(C).

⁶TCI-C Reply, Exhibit 2.

⁷*Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366, 8389 (1999) ("Signal Carriage Rules").

⁸*Id.*

⁹We are satisfied that the Longley-Rice study provided by TCI-C more reliably establishes the predicted Grade B signal contour of WSAH(TV) than does the study provided by SAH. See SAH Opposition, Attachment 1. Whereas the latter study shows each of the Communities just within the predicted Grade B contour, the Longley-Rice study shows them to lie within large areas not predicted to receive a Grade B signal. Moreover, the Longley-Rice study shows substantial areas much closer to WSAH(TV) than the Communities that are not predicted to receive a Grade B signal, while other more distant areas are predicted to receive such a signal. We believe that such irregularity of predicted signal coverage is indicative of the presence of rough terrain, conditions that the Commission expects the Longley-Rice methodology will more accurately measure for predicted signal coverage. See *Signal Carriage Rules*, 14 FCC Rcd at 8389.

same reasons that the *Bureau Order* declined to add certain other communities to the station's market. In particular, these Communities, like the other communities not previously added to WSAH(TV)'s market, are within Hartford County and near Hartford, Connecticut, one of the major core market cities within the Hartford-New Haven ADI, and located outside WSAH(TV)'s Grade B signal contour.¹⁰ The *Bureau Order* found that these factors distinguish the not-included communities from the communities that were added to WSAH(TV)'s market. The record now before us shows that the Communities at issue are similarly distinguished and for that reason should not be added to WSAH(TV)'s market.

5. We reject SAH's argument that cases in which communities at the fringe of stations' Grade B signal contours have been added to such stations' markets require that we reach a similar result here.¹¹ Such cases have not involved communities near the core of another principal ADI market, such as the Hartford market involved here. However, a distinguishing factor found in this proceeding to preclude the inclusion of certain communities in WSAH(TV)'s market was their nearness to Hartford, Connecticut, one of the major population centers within the Hartford-New Haven ADI.¹² This is precisely the kind of factor that precluded communities near Memphis, Tennessee from being included in the market of Station KVTJ in *Agape Church, Inc.*¹³ Furthermore, the fact that a station's Grade B contour encompasses a community is not necessarily grounds by itself to modify the station's market.

6. In granting the Commission authority to modify market areas to better effectuate the purpose of Section 614, Congress manifested no intent to alter the basic structure of DMA markets. Just as a station's Grade B contour informs our decision, the importance of maintaining the integrity of the basic structure of a DMA market is also a prime concern. We believe that based upon the record in this proceeding, the goal of protecting the integrity of the markets involved is best served by denying the requested addition of those communities located in Hartford County and beyond WSAH(TV)'s Grade B contour to WSAH(TV)'s market. Absent more persuasive evidence, we believe that inclusion of such communities would modify the basic nature and competitive relationships within the core area of the Hartford market and conflict with Congress' objective of carriage of television stations in the economic market areas they serve. Consequently, we grant TCI-C's petition for reconsideration as indicated below.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534(h), and Section 76.59 of the Commission's Rules, 47 C.F.R. §76.59, that the petition for partial reconsideration of *Paxson New York License, Inc.*, 14 FCC Rcd 7715 (CSB 1999) **IS GRANTED**.

8. **IT IS FURTHER ORDERED**, that the television market of television station WASH(TV) **IS MODIFIED** to include the following Connecticut communities: Branford, Chester, East Haven, Guilford, Madison, North Branford, North Haven, Wallingford, the City of New Haven, Clinton, Deep River, Durham, Essex, Haddam, Hamden, Killington, Old Saybrook, Westbrook, West Haven, Orange, Milford, Stratford, Woodbridge, Prospect, Wolcott, Waterbury, Middlebury, Plymouth, New

¹⁰The Communities are within 8 to 15 miles of Hartford, but 37 to 41 miles from Bridgeport, Connecticut, WSAH(TV)'s city of license. Compare TCI-C Exhibit 4 with TCI-C Exhibit 1.

¹¹SAH Opposition, p. 3-5.

¹²*Bureau Order*, at 7723.

¹³14 FCC Rcd 2309, 2318 (CSB 1999).

Milford, Bridgewater, Southbury, Woodbury, Kent, Washington, Roxbury, Bethlehem Borough, Seymour, Shelton, Naguatuck, Oxford, Beacon Falls, Bethany, Derby and Ansonia.

9. **IT IS FURTHER ORDERED** the television market of television station WSAH(TV) **IS NOT MODIFIED** with respect to the following Hartford County, Connecticut communities: Avon, **Berlin**, Bloomfield, **Bristol**, Burlington, Canton, East Hartford, **Farmington**, Hartford, **New Britain**, **Plainville**, Simsbury, West Hartford, Windsor, Meriden, Cheshire, Southington, Manchester, Glastonbury, Newington, Rocky Hill, Wethersfield and South Windsor.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁴47 C.F.R. § 0.321.