

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

In the Matter of:)	
)	
Brownwood Cable Television Service, Inc.)	
)	CSR 5559-A
Modification of Television Market of Television)	
Station KCPB(TV), Snyder, Texas)	
)	
Petition for Reconsideration)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 2001

Released: February 13, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Prime Time Christian Broadcasting, Inc. ("PTCB"), licensee of television station KCPB(TV), Channel 17, Snyder, Texas, ("KCPB") has filed a petition for reconsideration of the Memorandum Opinion and Order in *Brownwood Cable Television Service, Inc.*¹ An opposition to the petition was filed by Brownwood Cable Television Service, Inc. ("Brownwood"), operator of cable systems in Brownwood, Bangs, Clyde, Cross Plains, Rising Star, and Santa Ana, Texas (the "Communities"), and PTCB filed a reply to the opposition.

II. DISCUSSION

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."² The facts, a detailed description of these market modification provisions and the Commission's related regulations, the arguments of the parties, and a detailed analysis of those matters are also set forth in the *Brownwood Order* and need not be repeated here.

A. Procedural Matters

3. PTCB argues that existing carriage on a cable system is a prerequisite for the submission of the petition for relief considered in the *Brownwood Order*. We reject this argument. There is no requirement in either the statutory must carry provisions or the Commission's regulations implementing those provisions that requires existing carriage on a cable system as a procedural prerequisite for filing a request for modification of a station's market pursuant to Section 614(h)(1)(C), as PTCB claims.³

¹DA 00-2296, released by the Cable Services Bureau on October 10, 2000 ("*Brownwood Order*").

²See 47 U.S.C. §534(h)(1)(C)(i).

³Petition at 3.

Certainly, nothing cited from the *Must Carry Order* suggests such a prerequisite.⁴ A review of the Commission's decisions pursuant to the market modification provisions of Section 614 reveals that existing carriage of a station on a cable system has never been deemed a prerequisite for the filing of a market modification petition.⁵

4. We also reject PTCB's argument that the *Brownwood Order* was procedurally defective because Brownwood failed to show compliance with a previously issued carriage order that was not stayed.⁶ Maintenance of the status quo by the cable operator during consideration of this market modification case is consistent with Commission practice.⁷

B. Substantive Matters

5. PTCB faults conclusions reached in the *Brownwood Order* on the four statutory factors considered in market modification cases. PTCB disputes the finding that KPCB has no history of carriage in any of the relevant Communities, noting that the station is being carried on other cable systems serving other communities, some of which are in the same counties as the communities served by Brownwood.⁸ The *Brownwood Order* found that KPCB does not provide a Grade B signal over the Communities, that the distances from KPCB to the Communities (from 85 to 133 miles) preclude a conclusion that Brownwood serves as a bottleneck denying KPCB access to the Communities, and that these factors tend to explain the history of non-carriage in the Communities.⁹ PTCB contends that the relevant test is not whether KPCB provides a Grade B signal over the Communities. Instead, PTCB claims credit for local service to the Communities on the basis of signal strength study results showing that KPCB's translator station K58FZ delivers a good quality must carry signal to Brownwood cable systems' headends.¹⁰ The ability of a station to deliver a good quality signal to a cable system headend by means of a translator is an acceptable method of demonstrating that a station is "local" for purposes of establishing must carry status for the station under Section 614(h)(1)(B)(iii). However, the *Brownwood Order* correctly held that translator coverage of a community does not lessen the relevance of the failure of the parent full power station to directly serve the

⁴See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965 (1993) ("*Must Carry Order*").

⁵See e.g., *Petition of Armstrong Utilities, Inc.*, 13 FCC Rcd 2498, 2506-07 (CSB 1997); *Armstrong Utilities, Inc., d/b/a Armstrong Cable Services*, 14 FCC Rcd 10454, 10462 (CSB 1999).

⁶See *Prime Time Christian Broadcasting, Inc. v. Brownwood Television Cable Services, Inc.*, 15 FCC Rcd 7872, (CSB 2000).

⁷See *Must Carry Order* at 2977.

⁸*Brownwood Order* at ¶ 13.

⁹*Brownwood Order* at ¶ 13. PTCB submitted information (Petition at 9-11 & Exhibits 12-21) showing that the predicted Grade B contours of three Abilene stations carried by Brownwood do not reach all of the systems' headends, contrary to findings in the *Brownwood Order* at ¶ 13. That information nonetheless shows that the Grade B contours of the Abilene stations reach much closer to the Communities at issue than does the Grade B contour of KPCB. In any event, the carriage rights of the Abilene stations are not at issue at this proceeding. Moreover, the *Brownwood Order* did not classify the Abilene stations as "local" as PTCB suggests (Petition at 8), but instead declined to accord their carriage by Brownwood any credit under the local community service factor. *Brownwood Order* at ¶ 15.

¹⁰Petition at 9-14.

subject cable communities and may not be used for the purpose of establishing a station's market under the market modification procedures set forth in Section 614(h)(1)(C)(ii).¹¹

6. The *Brownwood Order* found that all of PTCB's licensed stations located in Texas and New Mexico, including KPCB, carry the same programming, and concluded that KPCB's programming is directed more toward PTCB's multi-station audience than toward the Communities served by Brownwood. The *Brownwood Order* further noted that the Commission has consistently declined to deem a station "local" for these purposes by airing the minimal amount of programming associated with the communities in question shown on the record.¹² PTCB's petition makes no attempt to establish that additional programming beyond that considered in the *Brownwood Order* is directed toward the Communities at issue. Instead, PTCB argues for different conclusions from that reached in the *Bureau Order* with respect to the programming previously considered. In support of this argument, PTCB emphasizes that KPCB has lived up to programming commitments made in its original operating applications. It also emphasizes the religious and Spanish language content of its programming as meeting needs not met by area commercial stations. These aspects of KPCB's programming may be relevant to the station's and its sister stations' obligations to present programming in the public interest for station licensing purposes.¹³ However, their relevance, weight, and decisional significance under the statutory coverage and local service factor set forth in Section 614, is substantially lessened by the fact that this programming is directed to the audiences of all PTCB stations, as noted in the *Brownwood Order*.¹⁴

7. PTCB submitted with the petition a large packet of letters requesting that KPCB be carried. Those letters fail to show that a different result is required. Most of the letters simply state the author's desire for PTCB "to be carried locally so I can watch it," and state that the station provides programming other stations do not provide.¹⁵ That information does not bear on the coverage and local service factor, namely whether programming is directed to the relevant local communities.¹⁶ On the other hand, the statements that PTCB should be carried "so I can watch it" undermine PTCB's claim that KPCB is substantially viewed in the communities from which such statements originate.

8. Finally, PTCB points out that the amount certain programmers are willing to pay stations for presentation of their programming depends on the size of audience reached by the station carrying the programming.¹⁷ We see nothing within the ambit of the statutory four factors considered in market modification cases that requires communities, otherwise shown to be beyond a station's market, to be deemed part of a station's market for purposes of enhancing a station's marketability in the manner suggested by PTCB.

¹¹*Dynamic Cablevision of Florida, Ltd., et al.*, 12 FCC Rcd 9952 (1997); *See also KBL Cablesystems of the Southwest, Inc. d/b/a Paragon Cable*, 12 FCC Rcd 21923 (CSB 1997). Petitioner's Exhibits 25 through 32 show only that KPCB is listed in some unidentified television guide publication. Those listings do not establish that KPCB is viewable off-the-air in the Communities at issue here as PTCB claims. Moreover, evidence of monetary contributions for station operations, without more, is not evidence of viewership. Petition at 15 & Exhibit 33.

¹²*Brownwood Order* at ¶ 14.

¹³*See* 47 U.S.C. § 309(a); 47 C.F.R. § 73.3591(a)(4).

¹⁴*Brownwood Order* at ¶ 14.

¹⁵Petition at 6 & Exhibit 10.

¹⁶47 U.S.C. § 534(h)(1)(C)(ii)(IV).

¹⁷Petition at 15-17.

9. In summary, we find the analysis in the *Brownwood Order* regarding historic carriage of the station and carriage of other stations in the community, station coverage and local service to the community, coverage of the communities by other stations, and station audience share, to be fully supported by substantial evidence of record. The findings and conclusions of the *Brownwood Order* are solidly based on that analysis and fully consistent with the Commission's analysis and application of the market modification provisions of Section 614(h) in *New York ADI Appeals Memorandum Opinion and Order*, ("*New York ADI Order*").¹⁸ The Commission's findings and conclusions in the *New York ADI Order* were upheld on judicial review in *WLNY-TV, Inc., et al. v. FCC*.¹⁹ We have examined the additional evidentiary materials provided in the reconsideration petition by PTCB and are not persuaded that a reconsideration of the result reached in the *Brownwood Order* is required. Accordingly, we reaffirm the conclusions reached in the *Brownwood Order* that the requested market modification will effectuate the purposes of the must carry statutory provisions and associated Commission rules.

III. ORDERS CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Sections 1, 4(i), 5(c), 405, and 614(h)(1)(C) of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 155(c), 405, 534(h)(1)(C), that the captioned petition for reconsideration **IS DENIED**.

11. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁸12 FCC Rcd 12262 (1997).

¹⁹163 F. 3d 187 (2d Cir. 1998).

²⁰47 C.F.R. § 0.321.