

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

In the Matter of:)	
)	
Frederick Cablevision, Inc.)	
)	CSR 4623-A
Modification of Television Market of Television)	
Station WTMW(TV), Arlington, Virginia)	
)	
Petition for Reconsideration)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 2001

Released: March 16, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Urban Broadcasting Corporation (“Urban”), permittee of television station WTMW (TV), Channel 14, Arlington, Virginia, (“WTMW”) has filed a petition for reconsideration of the Memorandum Opinion and Order in *Frederick Cablevision, Inc.*¹ An opposition to the petition was filed by Frederick Cablevision, Inc. and C/R TV Cable, Inc. (“Frederick Cablevision”), operator of cable systems in Frederick County, Maryland and Jefferson County, West Virginia (the “Communities”), and Urban filed a reply to the opposition.²

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."³ 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 set forth in the *Frederick Order* and need not be repeated here. In the *Frederick Order*, the Cable Services Bureau (the “Bureau”) granted Frederick Cablevision’s petition to exclude eighteen communities it serves in Frederick County, Maryland and Jefferson County, West Virginia from the television of market of WTMW. The Bureau found that based on the distance and the four statutory factors, the Communities

¹ Memorandum Opinion and Order, 11 FCC Rcd 4242 (1996) (“*Frederick Order*”).

² At the request of the Bureau, both parties filed a supplement to their pleadings.

³ See 47 U.S.C. §534(h)(1)(C)(i).

were sufficiently removed from WTMW that they ought not be deemed part of the station's market for mandatory carriage provisions.⁴

3. Urban faults conclusions reached in the *Frederick Order* regarding two of the four statutory factors considered in market modification cases. Urban argues that the Bureau should have concluded that Factor I (historical carriage and carriage or non-carriage of other stations located in the same area) favors carriage of WTMW because stations in Washington, DC, which is in the same economic market as WTMW are being carried.⁵ Urban also maintains that Factor II (coverage or other local service to community) should have been decided in Urban's favor because WTMW's predicted Grade B signal contour indicates that some of the Communities will receive WTMW's signal.⁶ Urban notes that it operates at a 50 percent power limitation at the direction of the Mass Media Bureau, and argues that it should not be penalized due to the Commission's actions.⁷

4. In opposition, Frederick Cablevision argues that Urban fails to justify reversal of the *Frederick Order*. Frederick Cablevision contends that it is appropriate to exclude the Communities from WTMW's market even though stations from Washington, DC are carried because WTMW has no historical carriage on the systems serving the Communities.⁸ Frederick Cablevision further argues that notwithstanding WTMW's theoretical Grade B coverage, its testing of WTMW's signal strength demonstrates that it is highly unlikely that WTMW provides an off-air signal of adequate strength to any of the Communities.⁹

5. After reviewing the record, we find no basis for overturning the *Frederick Order*. The *Frederick Order* found, and Applicants do not dispute, that WTMW has no history of carriage in the Communities (Factor I), no measurable audience in the Communities (Factor IV), and lacks significant programming specifically designed for the Communities (Factor II). Likewise, Applicants do not dispute the finding that other stations provide coverage of local issues (Factor III). Urban submits that cable carriage of Washington, DC television stations but not WTMW is discriminatory. To the contrary, the *Frederick Order* found that the carriage of other local television stations provided support for the exclusion of the Communities from WTMW's market.¹⁰ Where a cable operator seeks to delete a station's mandatory carriage rights in certain communities, the issue of local coverage by other stations becomes a factor receiving greater weight than in cases where a station is seeking to add communities.¹¹ In this

⁴ *Frederick Order*, 11 FCC Rcd at 4247.

⁵ Urban Supplement at 3.

⁶ *Id.* at 5.

⁷ Urban Petition at 6.

⁸ Frederick Cablevision Supplement at 8.

⁹ *Id.* at 6.

¹⁰ *Frederick Order*, 11 FCC Rcd at 4248.

¹¹ *Gulf & Pacific Communications, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 21986 (1997).

instance, the *Frederick Order* found that other stations carried by the cable operators had a closer nexus to the cable communities at issue, and provided more focused local programming than WTMW.¹²

6. Similarly, we do not agree with Urban's contention that the Bureau should have found that Factor II (Grade B Coverage/Local Service) favors its position. The Commission has recognized the use of Grade B contour in constructing a station's markets.¹³ WTMW's own submission, however, indicates that all of the Communities except New Market and Mount Airy are outside of its predicted Grade B contour.¹⁴ As to those two communities, Urban does not dispute the results of Frederick Cablevision's testing which indicates that WTMW does not send a sufficient over-the-air signal to allow for adequate viewing in those communities. We do not believe that the *Frederick Order* places undue or unfair significance on WTMW's operation at a 50 per cent power level. The *Frederick Order* noted that operating at a reduced power level was only one of the factors to explain why WTMW's viewership was too low to be reported in the communities.¹⁵

7. In summary, we find the analysis in the *Frederick 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 in the record. The findings and conclusions of the *Frederick 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*").¹⁶ 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*.¹⁷ We have examined the additional evidentiary materials provided by Urban and are not persuaded that a reconsideration of the result reached in the *Frederick Order* is warranted. Accordingly, we affirm the conclusions reached in the *Frederick Order* that the requested market modification will effectuate the purposes of the must carry statutory provisions and associated Commission rules.

¹² *Frederick Order*, 11 FCC Rcd at 4248. The facts in the present case are distinguishable from *Bremor Cable Partners*, Memorandum Opinion and Order, 14 FCC Rcd 11742 (1992), which Urban cited in support of its position. The *Bremor Order* found that cable carriage of other stations that broadcast from the same location as the station at issue indicated that all of the stations' market included that community. In *Bremor*, however, the community was not served by stations from other markets, whereas the *Frederick Order* found that the communities in Frederick County were served by a station located in another market. *Frederick Order*, 11 FCC Rcd at 4248.

¹³ *Market Modifications and the N.Y. Area of Dominant Influence*, Memorandum Opinion and Order, 12 FCC Rcd, 12262, 12268 (1997).

¹⁴ Urban Supplement at Exhibit B.

¹⁵ *Frederick Order*, 11 FCC Rcd at 4248.

¹⁶ 12 FCC Rcd 12262 (1997).

¹⁷ 163 F. 3d 187 (2d Cir. 1998).

III. ORDERING CLAUSES

8. 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**.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁸ 47 C.F.R. § 0.321.