

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

In the Matter of:)	
)	
Comcast Cablevision of the South d/b/a)	
Comcast of Oak Ridge)	CSR-5535-A
)	CSR-5544-M
Living Faith Ministries, Inc. v. Comcast)	
Cablevision of the South d/b/a Comcast of Oak)	
Ridge)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: March 23, 2001

Released: March 26, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Living Faith Ministries, Inc., licensee of television broadcast station WAGV (Ch. 44), Harlan, Kentucky (“WAGV”), has requested reconsideration of the Cable Services Bureau’s (“Bureau”) decision granting the market modification request of Comcast Cablevision of the South d/b/a Comcast of Oak Ridge (“Comcast”) to exclude WAGV from the communities served by its Oak Ridge, Tennessee cable system for must carry purposes.¹ An opposition to this petition was filed on behalf of Comcast to which WAGV replied.

II. BACKGROUND

2. In its request for modification, Comcast sought to exclude the three communities and surrounding unincorporated county areas served by its Oak Ridge cable system. Both Comcast’s cable system and WAGV’s city of license are considered to be part of the Knoxville, Tennessee designated market area (“DMA”). The Bureau granted Comcast’s request, finding that it adequately met the market modification factors. WAGV was found to have no historic carriage, no local programming or viewership, no Grade B coverage, and was geographically distant from the subject communities.

III. DISCUSSION

3. In support of its request, WAGV argues that the Bureau misapplied the market modification factors and failed to take into consideration the particular circumstances of this case.²

¹*Comcast Cablevision of the South d/b/a Comcast of Oak Ridge*, 15 FCC Rcd 15105 (2000)(“Bureau Order”).

²Petition at 1.

WAGV states that, despite the fact that it has attempted and continues to attempt to serve Comcast's communities, Comcast has barred WAGV from providing local service. For instance, WAGV points out that Comcast's reliance on WAGV's lack of historical carriage and viewership are a direct result of Comcast's unilateral decision to refuse WAGV carriage on any of its systems. WAGV states that while the Bureau properly recognized that these factors were not controlling in this instance, it still linked them to other factors such as lack of Grade B coverage and carriage of other similarly-situated stations in making its decision to grant Comcast's request.³

4. WAGV points out that contrary to the Bureau's conclusion, there are no "similarly-situated" stations located in the Knoxville DMA which Comcast refuses to carry. WAGV argues that it is the only Kentucky station which was constructed with the idea that it would serve the Knoxville DMA, and given its nexus to Harlan County and the Knoxville area, it is inappropriate to compare it to other Kentucky stations which are licensed to the Lexington, Kentucky DMA.⁴ WAGV states that, rather, it should be compared to the other stations licensed to the Knoxville DMA, all of which Comcast carries. In addition, WAGV states that the Bureau's conclusion faulting WAGV for not being carried in portions of Campbell County ignores the fact that the majority of that county is served by Comcast, which refuses to carry its signal.⁵ Similarly, WAGV states that the Bureau's conclusion that its lack of viewership is detrimental is not only inconsistent with previous Commission decisions, but would only be relevant if WAGV was determined not to be a local station.⁶ WAGV argues that Comcast's failure to carry its signal only helps to ensure that it will never receive ratings as significant as those of the other market stations with which it competes.

5. WAGV states that the Bureau has repeatedly held that a station's carriage on cable systems in the same area not only constitutes an indicia of local service, but provides evidence as to the scope of the station's market.⁷ While the *Bureau Order* pointed to a lack of Grade B coverage, which in normal circumstances might be relevant, WAGV maintains that its situation is unique in that the region involved is located in the Appalachian Mountains.⁸ WAGV argues that the same natural topography which adversely affects the reception of all television stations in the market also ties WAGV's community of license and Comcast's communities together. WAGV points out that few, if any, of the local stations carried by Comcast could provide a viewable off-air signal to the subject communities and therefore must rely instead on cable carriage. WAGV states that it is not surprising that the region has a high cable penetration rate as a result. WAGV argues that for the Bureau and Comcast to emphasize lack of Grade B coverage simply ignores the similar problems encountered by the majority of stations located in the Knoxville DMA.⁹

³Petition at 3, citing *Bureau Order* at 15114.

⁴Petition at 3-4.

⁵*Id.* at 15113.

⁶*Id.* at 15114. See also Opposition to Modification Petition at Exhibit 1.

⁷See e.g., *Time Warner Entertainment Co., L.P.*, 12 FCC Rcd 22069, 22077 (1997); *Fouce Amusement Enterprises, Inc.*, 10 FCC Rcd 668, 671 (1995); and *Maranatha Broadcasting Company, Inc.*, 13 FCC Rcd 1629, 1636 (1997).

⁸*Bureau Order* at 15113.

⁹Petition at 5.

6. Further, WAGV states that not only did the *Bureau Order* fail to accept WAGV's broadcast of "Picken Time" five days a week as local coverage, it also ignored the fact that WAGV makes time available to local churches and religious music and singing groups located in Anderson County to broadcast their programming.¹⁰ WAGV contends that this programming constitutes part of its outreach program.¹¹ Moreover, WAGV argues that the Bureau incorrectly failed to accept the assertion that there was a social and economic nexus between WAGV and the subject communities. While the *Bureau Order* faulted WAGV for not providing evidence regarding "available data on shopping and labor patterns in the local market," it overlooked the fact that Comcast which, as the petitioner, had the burden of proof, failed to provide "a map, or maps illustrating the . . . station transmitter site . . ."¹² WAGV states that Comcast's failure to provide such information calls for the dismissal of its petition. WAGV concludes that whether or not other stations carried by Comcast may or may not have a closer nexus to the communities than WAGV is irrelevant. The issue, it asserts, is not which station has the closest nexus to Oak Ridge, but rather which community is part of WAGV's economic market. WAGV maintains that it has provided that proof.

7. In opposition, Comcast argues that the market modification factors set forth in the 1992 Cable Act strongly supported the Bureau's decision to grant the requested modification.¹³ Comcast asserts that the fact that the cable communities and WAGV share a common DMA does not automatically justify compelling every cable operator in that DMA to carry the signal of every station within the market. Comcast states that both its modification petition and the *Bureau Order* made it clear that WAGV lacked a sufficient nexus to the subject communities. Comcast states that WAGV's petition for reconsideration has shown no material error or omission in the *Bureau Order*, but merely repeats the arguments it raised in the initial proceeding.¹⁴

8. Comcast states that the arguments advanced by WAGV fail to justify a change in the Bureau's treatment of the four factors and do not warrant a reversal. Comcast states that WAGV's suggestion that the Bureau improperly applied the historic carriage factor in not crediting it with carriage in a cable system adjoining Comcast's (the Jellico system) completely ignores the facts.¹⁵ Comcast points out that the Jellico system does not adjoin nor is it even close to any of the subject cable communities. Indeed, Comcast states that Jellico is approximately 34 miles away from the closest of the subject communities.¹⁶ Comcast states that the *Bureau Order* was therefore proper in finding that WAGV's carriage on a system located an average of 38 miles away was insufficient to overcome the absence of carriage in the communities at issue. Moreover, Comcast indicates that WAGV is incorrect in its assumption that its lack of carriage in Campbell County is due solely to Comcast's refusal of carriage. Comcast states that it only serves three communities in Campbell County and not the remainder of the county as asserted by WAGV.¹⁷ In any event, Comcast states that WAGV is not carried on its system in Campbell County because WAGV did not provide a good quality signal to the system's principal headend.

¹⁰*Id.* See also Petition at 6.

¹¹Opposition to Modification Petition, Declaration of Michael D. Smith at 3.

¹²*Bureau Order* at 15113.

¹³Opposition at 2.

¹⁴*Id.*

¹⁵Petition at 4.

¹⁶Opposition at 5.

¹⁷*Id.*

9. Comcast states that the technical coverage of other stations carried on its system says nothing about whether WAGV has any nexus with the communities at issue. Even if it were relevant, however, Comcast argues that WAGV's allegations are unsupported and incorrect. Moreover, Comcast states that five of the stations it carries – WBXX, WATE, WBIR, WTNZ and WVLT – all provide at least Grade A coverage and an actual off-air signal.¹⁸ Further, Comcast states that WAGV's suggestion that its failure to provide evidence in support of its assertions as to social and economic ties should be excused because of Comcast's failure to specify WAGV's transmitter site on a map fails to explain how disclosure of the transmitter site would demonstrate any nexus with the communities. In any event, Comcast points out that WAGV's transmitter location was depicted on the Longley-Rice map provided as Exhibit 4 to its original petition.¹⁹

10. Comcast states that WAGV also fails to demonstrate how the *Bureau Order* erred in its review of the station's local programming offerings. While WAGV notes one 60-minute program and the air time it offers to the Anderson County religious community, it fails to provide any details about the program or the air time which would indicate programming specifically targeted to the subject communities.²⁰ Moreover, Comcast argues that WAGV's reference to an outreach program is similarly flawed in that it offers virtually no description of truly local programming. Even if this programming were tailored to the communities herein, however, Comcast maintains that such offering would be *de minimis* at best. In addition, Comcast states that WAGV does not dispute that it has no audience in either Anderson or Roane Counties, where the communities are located. Comcast points out, however, that the *Bureau Order's* evaluation of WAGV's viewership did not, in and of itself, cost WAGV its carriage in the communities. As explained in the *Bureau Order*, WAGV's "dearth of viewership is of evidentiary significance when tied with the lack of historical carriage or Grade B coverage."²¹ Comcast argues that such a conclusion is consistent with Commission decisions in other market modification cases.²²

11. In reply, WAGV argues that the Commission has recognized that the reason DMAs are used to determine cable carriage is because use of market areas will "ensure that television stations [are] carried in the areas which they service and which form their economic market."²³ WAGV maintains, therefore, that if Comcast's cable communities form WAGV's economic market, then that is a sufficient nexus to warrant carriage of its station in those communities. WAGV asserts that there is a social and economic basis between its community of license and Comcast's cable communities which should not be ignored. WAGV points out that this is not a case where the cable communities, having been exposed to WAGV's programming, rejected the station as not being in concert with their needs and interests. To the contrary, WAGV states that it has provided declarations revealing that local citizens have sought the carriage of WAGV by Comcast.²⁴

¹⁸Opposition at Exhibits 3 and 10.

¹⁹*Id.* at 7.

²⁰*Id.*

²¹*Bureau Order* at 15114.

²²*See Cablevision of Monmouth, Inc.*, 11 FCC Rcd 9314, 9322 (1996)(The Commission refused to discount the station's lack of carriage and audience "[a]s proper indicators of the scope of its market area" even though the station was a "newer, specialized format station.").

²³H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

²⁴Opposition to Petition for Special Relief, Declarations of Anderson County Commissioner Wimp Shoopman and Michael Smith.

12. While Comcast contests WAGV's claim that it is carried on a cable system adjoining the communities at issue, WAGV indicates that it merely states that it was carried on a system which adjoins an intervening Comcast system. WAGV states that Comcast not only did not deny this fact, but used it in support of its position. WAGV argues that, contrary to Comcast's contention, its statement that WAGV was the only Kentucky station licensed to the Knoxville DMA merely emphasized the fact that the *Bureau Order's* conclusion that Comcast did not carry any other stations licensed to Kentucky was meaningless.²⁵ Similarly, WAGV states that despite Comcast's argument that the Bureau was correct in concluding that the carriage of other local television stations provides support for approval of its petition, the Commission has recently concluded that it could not award any credit under the local community service factor where the cable system provided only the published program schedules of other broadcasters in the market and not program descriptions.²⁶ Moreover, although the *Bureau Order* relied on the absence of a Grade B signal in its conclusion that WAGV did not provide local service, WAGV reiterates that reception of all of the market stations in the Knoxville market are adversely affected by the natural topography of the market. WAGV points out that a review of the Longley-Rice study relied on by Comcast indicates that virtually all of WAGV's service area is affected by this same mountainous terrain.²⁷ WAGV argues that if it were restricted to being carried only in those areas unaffected by mountainous terrain, it would not even be carried in parts of its home county.

13. Finally, WAGV states that the Bureau unfairly burdened WAGV with not supporting its assertions with factual information while not holding Comcast to the same standard. Moreover, WAGV states that Comcast's submission of an exhibit documenting the exact location of its headend in its opposition to WAGV's reconsideration petition does not make up for its failure to initially provide such evidence.

14. A review of the pleadings indicates that WAGV has not presented sufficient evidence to alter our original decision to grant Comcast's request for exclusion. The main thrust of WAGV's arguments appears to be the conclusion that Comcast has unfairly discriminated against WAGV's carriage and is manipulating the modification requirements in an effort to continue this discrimination. We find no evidence to support this conclusion. The Commission's must carry provisions require the carriage of signals entitled to must carry status only after certain conditions are met. One of those conditions is that the station be able to provide a signal of good quality to the cable system's headend. If this cannot be accomplished, the cable system is well within its rights in refusing to carry the station. Comcast has stated that, in at least one instance, its lack of carriage of WAGV was due to the station's inability to provide a signal of sufficient strength. WAGV has not disputed this. WAGV has also argued that it has been discriminated against because it broadcasts religious programming. It should be noted that the must carry rules, as written, are content neutral. Carriage is determined based solely on factors which are not related to the type of programming which a particular station carries. Even if this were not true, other than generalized statements, WAGV has provided no specific instances of discrimination to support this conclusion. The mere fact that some of Comcast's subscribers may have lobbied for carriage of WAGV on their system is not conclusive evidence of discrimination by Comcast, nor is it any indication of the number of subscribers who might be in favor of such carriage.

15. WAGV has also argued that the *Bureau Order* noted its failure to provide proof of the nexus between Harlan, Kentucky and the communities while, at the same time, ignoring Comcast's failure

²⁵*Bureau Order* at 15113.

²⁶See *Brownwood Cable Television Service, Inc.*, 15 FCC Rcd 19636, 19642 (2000).

²⁷Reply at 5.

to provide a map which indicated WAGV's transmitter site, as required by the rules. A review of the exhibits submitted by Comcast in its waiver petition confirms, as stated by Comcast, that the Longley-Rice study it originally submitted does identify the transmitter site of WAGV.²⁸ While Comcast did not submit any data on shopping and labor patterns in the local Knoxville DMA, this fact was noted in the *Bureau Order* and excused because it did not appreciably alter the facts as presented.²⁹

16. WAGV objects to the Bureau's reliance on lack of Grade B coverage in this instance due to the mountainous terrain in the market. However, WAGV overlooks the ability of five other Knoxville market stations to provide not only Grade B, but Grade A coverage to the Oak Ridge area under the same geographic conditions. Although a station's lack of historic carriage and viewership can more easily be dismissed in a modification proceeding, Grade B coverage is a major indicator of a station's market and cannot be overlooked.

17. In view of the foregoing, we find that a grant of WAGV's petition for reconsideration is not in the public interest.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, that the petition for reconsideration filed by Living Faith Ministries, Inc. **IS DENIED**.

19. This action is taken pursuant to authority delegated by Sections 0.321 and 1.106 of the Commission's rules.³⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Cable Services Bureau

²⁸Petition for Waiver at Exhibit 4.

²⁹*Bureau Order* at 15113, n. 42.

³⁰47 C.F.R. §§0.321 and 1.106.