

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

In re:	)	
	)	
Complaint of Reading Broadcasting, Inc.	)	CSR-4926-M
against	)	
	)	
Suburban Cable TV Co. Inc.	)	
	)	
Request for Carriage	)	
	)	
Suburban Cable TV Co. Inc.	)	CSR-4986-A
	)	
For Modification of the ADI of	)	
Station WTVE	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 23, 1997**

**Released: June 26, 1997**

By the Deputy Chief, Cable Services Bureau:

**INTRODUCTION**

1. Reading Broadcasting, Inc. ("WTVE"), licensee of station WTVE (Channel 51), Reading, Pennsylvania, has filed the above-captioned mandatory signal carriage complaint (CSR-4926-M) against Suburban Cable TV Co. Inc. ("Suburban"), operator of a cable television system serving thirty-five communities in Chester, Delaware, and Lancaster Counties, Pennsylvania.<sup>1</sup> The Chester and Delaware County communities, as is Reading, which is WTVE's city of license, are located in the Philadelphia area of dominant influence ("ADI"). Lancaster County is located in the Harrisburg-York-Lancaster-Lebanon, Pennsylvania ADI. Suburban has opposed WTVE's complaint. In addition, Suburban has filed the above-captioned petition (CSR-4986-A) to modify the market of WTVE, to remove the communities Suburban serves from the station's market. WTVE has opposed Suburban's petition, and Suburban has replied. We are consolidating these

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<sup>1</sup> These communities are Atglen, Birmingham, Cain, Charlestown Township, Coatesville, Downingtown, East Bradford Township, East Brandywine Township, East Cain Township, East Fallowfield Township, East Goshen Township, East Nantmeal Township, Honeybrook Township, Modena, Parkesburg, Pocopson, South Coatesville, Upper Uwchlan Township, Uwchlan, Valley, Wallace Township, West Bradford Township, West Brandywine Township, West Cain Township, West Chester, West Goshen Township, West Nantmeal Township, West Pikeland Township, West Sadsbury Township, Westtown, West Vincent Township, and West Whiteland Township [Chester County]; Thornberry and Thornbury Township [Delaware County]; and Sadsbury Township [Lancaster County].

cases for processing to determine the signal carriage rights of WTVE in the communities Suburban serves.

## BACKGROUND

2. Pursuant to §614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket No. 92-259*,<sup>2</sup> commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.<sup>3</sup> An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>4</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as -

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

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<sup>2</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup> Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

<sup>4</sup> Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides new coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

4. The legislative history of this provision indicates that:

where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas in which they serve and which form their economic market.

\* \* \* \*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>5</sup>

5. The Commission provided guidance in its *Report and Order in MM Docket No. 92-259, supra*, to aid decision making in these matters, as follows:

For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (e.g., rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since

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<sup>5</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

this factor requires us to evaluate viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.<sup>6</sup>

6. As for deletions of communities from a station's market, the legislative history of this provision indicates that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.<sup>7</sup>

7. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>8</sup> The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.<sup>9</sup>

#### ARGUMENTS OF THE PARTIES

8. *Signal Carriage Complaint (CSR-4925-M)*. WTVE states that its city of license and the communities Suburban serves are all located in the Philadelphia ADI, and that WTVE is thus entitled to carriage on Suburban's cable system. WTVE states that it has repeatedly attempted to install receiving equipment at its own expense on Suburban's tower to determine through signal testing the need for equipment (which WTVE will supply at its own expense) to allow Suburban to receive a good quality signal from the station. WTVE complains that Suburban has insisted upon a structural analysis of its tower prior to any equipment installation,

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<sup>6</sup> 8 FCC Rcd at 2977 (emphasis in original).

<sup>7</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

<sup>8</sup> 8 FCC Rcd at 2977 n. 139.

<sup>9</sup> 47 C.F.R. §76.59.

even for testing. WTVE contends that this is merely a delaying tactic on Suburban's part, and that Suburban no longer responds to correspondence from WTVE. Accordingly, WTVE requests that the Commission order Suburban to commence carriage of WTVE's signal.

9. In response to WTVE, Suburban states that the station fails to reveal correspondence which shows that Suburban no longer insists on a structural analysis of its tower. Suburban further states that WTVE fails to reveal that Suburban has conducted signal strength tests which reveal that WTVE fails to deliver a good quality signal to Suburban's principal headend. Suburban submits test results which show that on October 9, 1996, in rainy weather, Suburban measured WTVE's signal at Suburban's headend for six hours beginning at 6 p.m., and found WTVE's signal strength to vary between -63.75 dBm and -64.85 dBm. Suburban argues that WTVE is not entitled to carriage on Suburban's system until the station provides a signal strength of -45 dBm or better,<sup>10</sup> and urges that WTVE's complaint be denied.

10. *Market Modification Petition (CSR-4986-A)*. Addressing the statutory factors for market modification, Suburban states that it has never carried WTVE, even though the station began operation in May 1980. Suburban notes that WTVE never even sought carriage on Suburban's system until 1993. In addition, Suburban states that several other area cable systems do not carry WTVE. Suburban contends that the Schuylkill River separates WTVE from Suburban's communities, and argues that this reveals the station's geographic attenuation from the communities in question.<sup>11</sup> Suburban further argues that WTVE fails to provide an adequate signal to Suburban's headend, and references its opposition to WTVE's signal carriage complaint. Suburban submits a copy of WTVE's program schedule, which, Suburban states, shows that WTVE provides no local programming directed toward the needs and interests of Suburban's subscribers, but rather consists almost exclusively of infomercials. Suburban notes that it does carry on its system several Philadelphia ADI licensees which provide extensive coverage of local news, sports, traffic, weather, and other information directed toward Chester, Delaware, and Lancaster County residents.<sup>12</sup> In addition, Suburban carries a public, education, and government access channel as well as a local origination channel. Suburban states that it also carries the Weather Channel, which provides local weather information of interest to Suburban's subscribers. Suburban further argues that WTVE's viewing in Chester, Delaware, and Lancaster Counties is nonexistent, and is not even listed by Nielsen for those counties. In addition, Suburban states that

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<sup>10</sup> 47 U.S.C. §534(h)(1)(B)(iii).

<sup>11</sup> Suburban cites *Cablevision Systems Corporation*, 12 FCC Rcd 2485, 2491 (1997).

<sup>12</sup> Suburban supplies a channel line-up which indicates that Suburban carries Stations KYW-TV (CBS, Channel 3), WPVI-TV (ABC, Channel 6), WCAU-TV (NBC, Channel 10), WPHL-TV (WB, Channel 17), WTXF-TV (Fox, Channel 29), WPSG-TV (UPN, Channel 57), and WTGI-TV (Ind., Channel 61), Philadelphia, Pennsylvania; WHYY-TV (PBS, Channel 12), Wilmington, Delaware; and WNJS (PBS, Channel 23), Camden, New Jersey. Suburban notes that it also carries Station WGAL-TV (NBC, Channel 8), Lancaster, Pennsylvania.

WTVE is not listed by the Commission as being significantly viewed in any Pennsylvania county.<sup>13</sup> Suburban also notes that neither the *Daily Local News* nor the Southeast Pennsylvania edition of *TV Guide* list WTVE's program offerings.

11. WTVE argues in opposition that its city of license is only twenty-six miles from Suburban's principal headend. WTVE states that it is seeking to enforce its carriage rights on other area systems, and expects to be carried in Philadelphia as of April 16, 1997; in New Montgomery as of May 1, 1997; and in Radnor soon thereafter. Currently, states WTVE, it reaches almost one half million cable households. WTVE maintains that the Schuylkill River is small, and constitutes no barrier to communities adjacent to WTVE. WTVE states that it is capable of providing a good quality signal to Suburban with a Blonder Tongue Model SCMA-UB51 amplifier, which WTVE is willing to provide. WTVE states that the fact that viewers purchase merchandise advertised on the station attests to its viewership. WTVE also states that cable penetration in the communities in question exceeds seventy percent, explaining the station's limited viewing as it is excluded from cable carriage. WTVE notes that it encompasses Suburban's principal headend with a City Grade signal contour, which has previously been found to be "decisive" in cases such as WTVE's.<sup>14</sup>

12. In reply, Suburban argues that WTVE's opposition was not properly served, and thus should not be considered. Suburban contends that WTVE concedes that many area cable systems, including the area's largest, do not carry the station. Suburban argues that WTVE has yet to demonstrate that it provides a good quality signal to Suburban's principal headend. Suburban notes that the Schuylkill River is over forty-five miles long, and thus in fact separates WTVE from Suburban's communities. Suburban maintains that WTVE does not dispute that its programming is not directed toward Suburban's communities. Suburban notes that the Commission has previously found that the programming of home shopping stations such as WTVE has no specific ties to communities.<sup>15</sup> Suburban notes, too, that WTVE acknowledges its lack of measured viewing in the communities Suburban serves.

### ANALYSIS AND DECISION

13. We turn first to Suburban's market modification petition, to determine whether the communities served by Suburban should be removed from WTVE's ADI. A resolution of this matter will determine whether WTVE is eligible to claim carriage rights in these communities. We initially address two procedural matters. First, Suburban contends that WTVE's opposition should be dismissed because it was not served on all persons listed in Suburban's certificate of

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<sup>13</sup> In order to be declared to be significantly viewed, an independent station must achieve a 2% share of total viewing hours and a net weekly circulation of 5% in non-cable homes. 47 C.F.R. §76.5(i).

<sup>14</sup> WTVE cites *Cablevision Systems Corporation, supra*.

<sup>15</sup> Suburban cites *Time Warner New York City Cable Group*, DA 96-1645, at ¶20 (released September 17, 1996).

service, as mandated by §76.7(d) of the Commission's rules.<sup>16</sup> We disagree. We note that Suburban raises this issue in its reply, which Suburban served on all persons served with Suburban's petition, and none of these persons has complained. In the interests of maintaining a full record for decision in this matter, and in the absence of any demonstrated prejudice to any party, we will accept WTVE's opposition. Second, we note that one of the communities affected by the instant petitions, Sadsbury Township in Lancaster County, is not in the Philadelphia ADI but rather is in the Harrisburg-York-Lancaster-Lebanon, Pennsylvania ADI. Accordingly, with respect to this community, the instant petitions are moot.

14. In view of all the facts and circumstances relevant to this proceeding, we find that the communities Suburban serves in the Philadelphia ADI are not so attenuated from WTVE to warrant deleting these communities from the station's ADI. While we recognize that WTVE has no history of carriage in the communities in question, where, as is the case here, a petitioner seeks to delete its communities from a station's ADI with respect to a cable system, we believe that failure to establish historic carriage should not, by itself, be given determinative weight.<sup>17</sup> Nor do we believe that Suburban has succeeded in demonstrating that WTVE does not provide local service to Suburban's communities. All of the communities in question, including Suburban's principal headend community are encompassed by WTVE's City Grade or Grade A contour, or lie just at the edge of the station's Grade A contour. In addition, the communities in question lie within 35 miles of WTVE's city of license. Suburban's principal headend community is only 26 miles from WTVE's city of license. We find this evidence of local service to be decisive.<sup>18</sup> This differentiates this case from *Time Warner New York City Cable Group, supra*, in which the station in question failed even to place a Grade B contour over the communities in question. Nor, given all the circumstances involved, are we prepared to conclude that the Schuylkill River is a natural barrier defining a market boundary.

15. The third factor to consider in market deletion cases is the availability of other broadcasters in the market. While carriage of other local stations may be used as an enhancement factor to support a cable operator's deletion request when there is other evidence in the record that the communities at issue are outside of the station's market, this is not the case before us. That Suburban carries other stations which arguably provide news or other coverage of issue of concern to Suburban's communities is not sufficient in this context to justify removal of the communities from WTVE's ADI. With respect to viewership (the fourth statutory factor), Suburban argues that WTVE lacks viewing in the communities Suburban serves, and demonstrates this with Nielsen viewership data, which records no viewing of WTVE in communities in Chester or Delaware Counties. However, WTVE's lack of carriage in these

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<sup>16</sup> 47 C.F.R. §76.7(d).

<sup>17</sup> See, e.g., *Kansas City Cable Partners d/b/a American Cablevision of Kansas City*, 10 FCC Rcd 3807 (1995).

<sup>18</sup> See, e.g., *Cablevision Systems Corporation*, 12 FCC Rcd at 2491.

heavily cabled communities, as well as the station's specialty station type programming format,<sup>19</sup> likely explain why WTVE's ratings are low in Chester and Delaware Counties. We believe that in the circumstances of the present case a station's limited viewership should not be given determinative weight, in view of the heavily cabled nature of the communities.<sup>20</sup>

16. In view of the foregoing, we find that Suburban has not demonstrated that WTVE lacks a sufficient nexus with the communities Suburban serves. Deletion of these communities from WTVE's ADI is therefore not warranted.

17. Turning to WTVE's signal carriage complaint, having found that grant of Suburban's petition for market modification is not warranted, we find the only issue remaining is that of WTVE's signal strength. While Suburban submits test results purporting to demonstrate that WTVE fails to supply a signal of adequate strength to Suburban's principal headend, we note that Suburban's tests were not performed in full accordance with Commission specifications. There is no indication of the date of most recent calibration of the equipment used, nor does it appear that the measurements were taken at a height at which a receiving antenna would be placed. In addition, WTVE has stated its willingness to provide the specific amplifying equipment that would allow Suburban to receive a good quality signal from the station. Consequently, we shall order Suburban to carry WTVE's signal once WTVE provides a good quality signal employing the specialized equipment it has offered to install at Suburban's principal headend.

#### ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, that the petition for special relief (CSR-4986-A) filed March 21, 1997 by Suburban Cable TV Co. Inc. **IS DISMISSED** to the extent indicated at paragraph 13, *supra*, and in all other respects **IS DENIED**.

19. **IT IS FURTHER ORDERED**, that the "Complaint" (CSR-4926-M) filed January 30, 1997 by Reading Broadcasting, Inc., **IS GRANTED**, in accordance with §614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534) and 47 C.F.R. §76.56(b). Suburban Cable TV Co., Inc. **IS ORDERED** to commence carriage of television station WTVE within sixty (60) days from the day that WTVE provides a good quality signal at Suburban's principal

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<sup>19</sup> See, e.g., *Channel 56 of Orlando, Inc.*, 12 FCC Rcd 4071, 4081 (1996).

<sup>20</sup> See *The Chronicle Publishing Company d/b/a Ventura County Cablevision*, 10 FCC Rcd 9474, 9481-9482 (1995).



headend. WTVE shall notify Suburban Cable in writing of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's Rules) within thirty (30) days of providing a good quality signal.

20. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

**FEDERAL COMMUNICATIONS COMMISSION**

**William H. Johnson**  
**Deputy Chief, Cable Services Bureau**