

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

In the Matter of the Petition of)	
)	
SNET Personal Vision)	CSR 4883-A
)	
For Modification of Market of:)	
Station WFSB--Hartford, CT)	
Station WTIC-TV--Hartford, CT)	
Station WVIT, New Britain-Hartford, CT)	

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 1997

Released: May 5, 1997

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. SNET Personal Vision, Inc. ("SNET") filed the above-captioned petition, pursuant to Sections 76.7 and 76.59(a) of the Commission rules,¹ requesting that the Commission modify the market of television stations WFSB (Ch. 3-CBS), WTIC-TV (Ch. 61-Fox), and WVIT (Ch. 30-NBC), three full power commercial stations licensed to communities located in the Hartford-New Haven ADI. SNET asks that the market of these television stations be expanded to include several Connecticut communities ("the Communities") to be served by SNET's state-wide cable system.² The grant of the requested action would enable these stations to assert their must carry/retransmission rights on a copyright-free basis on SNET's cable system. The petition is unopposed.

BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,³ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems

¹47 C.F.R. §§ 76.7 and 76.59(a).

²The communities, all located in Fairfield County, Connecticut, include: Bethel, Bridgeport, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, Newtown, Norwalk, Redding, Ridgefield, Shelton, Sherman, Stamford, Stratford, Trumbull, Weston, Westport, Wilton, and unincorporated areas of Fairfield County.

³8 FCC Rcd 2965, 2976-2977 (1993).

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.⁴ 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.⁵

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 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;

(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 news 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

⁴Section 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*.

⁵Because 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*.

community.⁶

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 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.⁷

5. The Commission provided guidance in its *Report and Order in MM Docket 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 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.⁸

⁶Communications Act of 1934, as amended, §614(h)(1)(C)(ii), 47 U.S.C. §534(h)(1)(C)(ii).

⁷H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

⁸8 FCC Rcd at 2977 (emphasis in original).

6. 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.⁹ 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 a market change request.¹⁰

7. Adding communities to a station's market generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of the system's activated channel capacity to compliance with the mandatory signal carriage obligations,¹¹ 2) the station is responsible for delivering a good quality signal to the principal headend of the system,¹² and 3) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried, or the signals of more than one local station affiliated with a particular broadcast network.¹³ If, pursuant to these requirements, a system operator elects to carry only one such duplicating signal, the operator is obliged to carry the station from the ADI whose city of license is closest to the principal headend of the cable system.¹⁴ Accordingly, depending upon the circumstances involved, the addition of communities to a station's market may guarantee that station's carriage in the subject communities. Alternatively, should there be more must-carry stations than one-third of the system's channel capacity, it would provide the system operator with an expanded list of must-carry signals from which to choose. Also, should the station be a duplicating network station, it will determine which station has priority carriage in the subject communities added.

MARKET FACTS AND ARGUMENTS

8. SNET first explains that, on September 25, 1996, it was granted an 11 year, state-wide cable franchise by the Connecticut Department of Public Utility Control ("DPUC"). SNET seeks to modify the ADIs of WFSB, WTIC-TV, and WVIT to add the Fairfield County communities it will serve under this franchise. These stations are all licensed to communities in the Hartford-New Haven ADI while the cable communities in Fairfield County are located in the

⁹8 FCC Rcd at 2977 n.139.

¹⁰47 C.F.R. §76.59.

¹¹See 47 U.S.C. § 534(b)(1)(B).

¹²See 47 U.S.C. § 534(h)(1)(B)(iii).

¹³See 47 U.S.C. § 534(b)(5).

¹⁴8 FCC Rcd at 2981.

New York ADI.¹⁵ Including WFSB, WTIC-TV, and WVIT in the cable communities at issue will allow the stations to exercise must carry and retransmission rights without any copyright liability incurred by SNET. In addition, SNET asserts that "it would be impossible" for the stations to make uniform must carry/retransmission consent elections with respect to the overlapping franchise areas, as required under Section 76.64(g) of the Commission's rules, unless the stations are afforded equivalent must carry rights as to all such systems. According to SNET, the Cable Services Bureau has previously granted market modification petitions which have added various Fairfield County cable communities to the three stations' ADIs.¹⁶ SNET accords significant weight to the Bureau's prior decisions when making its arguments

9. SNET argues that WFSB, WTIC-TV, and WVIT generally satisfy the market modification test set forth in Section 614(h) of the 1992 Cable Act. Addressing WFSB's qualifications first, SNET asserts that this station meets the historical carriage factor because it has been carried on Cablevision Systems Corp's Fairfield County systems¹⁷ since the early 1980s. Turning to the local coverage factor, SNET asserts that WFSB places a Grade B contour over virtually all of Fairfield County and the station provides local news, sports, and community affairs programming to the cable communities at issue.¹⁸ Finally, SNET argues that WFSB also has audience share in Fairfield County; this shows that the station has a marketplace presence in the communities.

10. With regard to WVIT, SNET also asserts that this station meets the historical carriage factor as it has been carried on several Fairfield County cable systems, including Cablevision, Comcast, and Charter, for at least 10 years. As for local coverage, SNET asserts that WVIT places a Grade A contour over much of Fairfield County and a Grade B contour over almost the entire county; the station also provides Connecticut news coverage and New England professional sports programming to the cable communities.¹⁹

11. As for WTIC-TV, SNET asserts that the station has a proven history of carriage in Bethel and Danbury, two Fairfield County communities now served by Comcast, the incumbent cable operator. The local service factor is met because WTIC-TV covers much of Fairfield County with its Grade A contour and virtually all of Fairfield County with its Grade B contour. SNET also states that WTIC-TV is viewed in Fairfield County according to Nielsen.

¹⁵Fairfield County is the only Connecticut county that is part of the New York ADI.

¹⁶*Modification of the Television Markets of Television Stations WFSB and WVIT* 10 FCC Rcd 4939 (1995)(for WFSB and WVIT); *61 Licensee, Inc.* 10 FCC Rcd 4929(1995)(for WTIC).

¹⁷Cablevision's systems' serve generally the same communities as SNET will serve.

¹⁸SNET relies on the programming record for WFSB discussed in 10 FCC Rcd at 4941.

¹⁹SNET relies on the programming record for WVIT discussed in 10 FCC Rcd at 4942.

DISCUSSION

12. At the outset, based on the general geography and market structures implicated, it is evident that the requested changes would involve a preferable allocation of the area in question between the markets and would "better effectuate the purposes" of the applicable statutory provisions. For WVIT, the border of Fairfield County is less than 30 miles from New Britain, its city of license. For WFSB and WTIC-TV, the border of Fairfield County is approximately 40 miles from Hartford, their city of license. WFSB, WVIT, and WTIC-TV appear closer to Fairfield County than the majority of the stations licensed in the New York ADI and the Hartford-New Haven ADI abuts the County to the south. Turning to the factors specified in the 1992 Cable Act, we find that the cable communities are part of the stations' markets because WFSB, WVIT, and WTIC-TV satisfy one or all of the following factors: (1) history of carriage, (2) local coverage and (3) audience share.

13. SNET demonstrates that WFSB and WVIT have been carried on the incumbent cable service providers' systems in several of the same communities for a number of years. Continuous carriage is evidence that the stations have ties to the communities at issue; both the operators and their subscribers find the stations provide a valuable service. While SNET has not clearly established that WTIC-TV has enjoyed a history of carriage in the majority of cable communities at issue, we find that this omission is not decisionally significant given the station's strong local coverage showing. WFSB and WVIT place a Grade B service contour or better over nearly all of Fairfield County and WTIC-TV covers the majority of the communities with a Grade A contour. Grade B contour coverage is persuasive evidence²⁰ of local coverage with Grade A coverage providing an even stronger indicator of local coverage. While we note that the southwestern tip of the County lies just outside WFSB and WVIT's Grade B contours, we find that the cable communities in that area are close enough to be considered within the fringe of the stations' Grade B contours. SNET has not attempted to produce new data showing the three stations provide local programming to the communities. Instead it has relied on the findings the Cable Services Bureau made in prior decisions involving the same stations and generally the same communities.²¹ In those instances, the Cable Services Bureau found that the stations provide programming of interest to the Fairfield County communities by airing news stories originating in Fairfield County as well as several editorials of interest to the residents in the County.²² We take notice of the record in the prior cases and find that WFSB and WVIT do in fact provide local programming to the cable communities at issue. As for viewing pattern data in cable and non-cable households, WFSB, WVIT, and WTIC-TV have a marketplace presence in Fairfield

²⁰8 FCC Rcd at 2977.

²¹See footnote 16, *supra*.

²²See 10 FCC Rcd at 4943 (for WFSB and WVIT). We note that Grade B coverage, not programming, was the significant local coverage element favoring the addition of WTIC-TV in the prior Fairfield County case involving this station. See 10 FCC Rcd at 4931.

County with a 13 share, 10 share, and 1 share, respectively.²³

14. With respect to the third statutory factor, whether any other station provides coverage of community programming, we note that SNET has not raised this factor in its petition. Nevertheless, in this particularly rare situation where the cable operator is asking for the expansion of several television stations' markets, we do not believe that Congress intended the third criterion to operate as a bar to such a claim whenever other stations could also be shown to serve the communities at issue. Under such circumstances, a denial of carriage rights to the stations could deprive cable viewers of any broadcast signals that might provide programming geared to their communities. Moreover, the grant of SNET's request serves the Commission's goals of advancing competition in multichannel video distribution market as subscribers of the incumbent cable service providers can switch to SNET's service and obtain comparable programming options without any loss in local service.

ORDER

15. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's Rules, 47 C.F.R. § 76.59, that the "Petition for Special Relief" (CSR-4883-A) filed by SNET Personal Vision, Inc. **IS GRANTED**. SNET Personal Vision, Inc. shall notify WFSB, WTIC-TV, and WVIT, in writing of this decision. WFSB, WTIC-TV, and WVIT shall notify SNET within 30 thereafter of its carriage and channel position elections, pursuant to 47 C.F.R. §§76.56, 76.57, 76.64(f). SNET shall comply with these elections within 60 days of written notice from WFSB, WTIC-TV, and WVIT or whenever the cable system is in service in each of the communities.

16. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²³1997 Neilsen Metered Sample Ratings Report.