

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

In the Matter of:	)	
	)	
Cablevision of Cleveland, L.P. and V Cable, Inc.,	)	
d/b/a Cablevision of Ohio, for Modification of Market	)	CSR 4602-A
of Station WGGN-TV, Sandusky, Ohio	)	
	)	
In the Matter of:	)	
	)	
Christian Faith Broadcast, Inc. v. Cablevision of	)	
Ohio, for Carriage of WGGN-TV	)	CSR 4625-M
	)	
Application for Review	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 9, 2001**

**Released: August 15, 2001**

By the Commission:

**I. INTRODUCTION**

1. Christian Faith Broadcast, Inc. ("Christian"), licensee of television station WGGN-TV, Sandusky, Ohio, has filed an Application for Review of *Cablevision of Cleveland, L.P. and V Cable, Inc., d/b/a Cablevision of Ohio* ("Bureau Order").<sup>1</sup> The *Bureau Order* granted in part the petition of Cablevision of Cleveland, L.P. and V Cable, Inc., d/b/a Cablevision of Ohio ("Cablevision") under Sections 76.7(a) and 76.59(a) of the Commission's rules,<sup>2</sup> and deleted certain communities ("the Communities") served by Cablevision's cable system from WGGN-TV's television market.<sup>3</sup> Cablevision filed an opposition to the application for review, and Christian filed a reply. The Application for Review is denied.

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<sup>1</sup>11 FCC Rcd 18034 (CSB 1996).

<sup>2</sup>47 C.F.R. §§ 76.7(a) and 76.59(a).

<sup>3</sup>The Communities are Bratenahl, Brookpark (parts), Brooklyn (parts), Cleveland, Lakewood, Lindale, Newburgh Heights, North Olmstead, Lake Township, Strongsville, Berea Brunswick, Columbia Township, Middleburg Heights, Brooklyn Heights, Columbia Station Village, Hinkley Township, and Hinkley, Ohio.

## 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."<sup>4</sup> Four statutory factors considered are historic carriage of the station, station coverage of the community, carriage of other stations in the community, and local service to the community.<sup>5</sup> The facts, a detailed description of these market modification provisions and the Commission's related regulations in effect upon adoption of the *Bureau Order*, the arguments of the parties, and a detailed analysis of those matters are also set forth in the *Bureau Order* and need not be repeated here.

3. Christian argues that the *Bureau Order* failed to explain adequately the deletion of certain Communities from WGGN-TV's market while not deleting three other communities.<sup>6</sup> Christian argues that the *Bureau Order* is inconsistent in this respect, because WGGN-TV can deliver essentially the same signal to all of the communities at issue by means of special equipment. Cablevision responded that the *Bureau Order*, consistent with Congress' objective in enacting the market modification provisions of Section 614(h), correctly recognized that the distance between a station and a specific community, or the presence or absence of the station's Grade B contour, are relevant as factors for assessing whether the station provides local programming coverage to a community.<sup>7</sup> We reject Christian's argument which incorrectly suggests that ability to deliver a station's signal to a cable system's headend is the determinative factor in market modification cases. Furthermore, such capability does not require us to disregard findings in the *Bureau Order* relevant to the four statutory market modification factors set forth in Section 614(h) of the Communications Act.

4. Christian argues that the *Bureau Order* improperly focused on the four factors specified in Section 614(h) and ignored evidence that WGGN-TV and its city of license, Sandusky, Ohio, are an integral part of the Cleveland, Ohio area of dominant influence ("ADI").<sup>8</sup> Cablevision contends that Congress envisioned the market modification provisions providing for either expansion or contraction of a television station's must carry market, depending upon application of the four statutory criteria to communities outside or inside the designated market area.<sup>9</sup> In considering requests for modification of television station markets for must carry purposes, Section 614(h) mandates consideration of its four

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<sup>4</sup>See 47 U.S.C. §534(h)(1)(C)(i).

<sup>5</sup>47 U.S.C. § 534(h)(1)(C)(ii).

<sup>6</sup>Based on the relative proximity of WGGN-TV to Avon Village, Sheffield Lake, and Sheffield Lake Township and the apparent Grade B contour coverage of those three communities, the *Bureau Order* found these three communities to be part of WGGN-TV's market, declined to delete those communities from WGGN-TV's market, and ordered Christian to carry WGGN-TV in those communities. *Bureau Order*, 11 FCC Rcd at 18042-44. These aspects of the *Bureau Order* are not at issue here.

<sup>7</sup>Cablevision Opposition at 8.

<sup>8</sup>At the time the *Bureau Order* was released, Section 76.55(e) of the Commission's rules provided that ADIs to be used for purposes of the initial implementation of the mandatory carriage rules would be those published in Arbitron's 1991-1992 *Television Market Guide*. That rule was amended in 1999 to require that commercial broadcast television station markets be defined by Nielsen Media Research's designated market areas ("DMAs"). See 47 C.F.R. § 76.55(e); See also *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("*Modification Final Report and Order*").

<sup>9</sup>*Id.* at 12.

statutory market modification factors. The relevant issue in this context concerns not what communities comprise the Cleveland ADI, but whether certain communities are within WGGN-TV's television market.

5. Christian claims that the finding in the *Bureau Order* of no nexus between WGGN-TV's programming and the Communities at issue is contrary to the record evidence. Christian reiterates that WGGN-TV is within the Cleveland Emergency Broadcasting Service operational area; is charged higher programming prices due to its location within the Cleveland ADI; and airs announcements regarding religious and other events in the Cleveland metropolitan area.<sup>10</sup> When viewed against the overall relevant factual circumstances, we believe the *Bureau Order* properly gave minimal weight to this evidence in determining whether WGGN-TV carries programming of specific local interest or import for cable viewers in the Communities at issue.<sup>11</sup> Christian argues further that WGGN-TV shouldn't be faulted for carrying a limited amount of locally-oriented programming, arguing that it is impractical to expect a station to program for viewers of a cable system that does not carry the station. Christian suggests that WGGN-TV will provide more locally-oriented programming if carriage on Cablevision's cable system were assured. Section 614(h)(1)(C)(II) requires that market modification decisions be made on the basis of whether a television station provides local service to a community and not on promises of future programming.<sup>12</sup>

6. In summary, we find the analysis in the *Bureau Order* regarding the absence of any economic nexus between WGGN-TV, located in Sandusky, Ohio, and the various communities deleted from the station's market was fully established by record evidence demonstrating lack of historic carriage of the station in the communities; lack of station coverage and local service to the communities; coverage of the communities by other stations; and an absence of station viewing in the communities. The findings and conclusions of the *Bureau Order* are solidly based on that analysis and fully consistent with our 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*").<sup>13</sup> The findings and conclusions in the *New York ADI Order* were upheld on judicial review in *WLNY-TV, Inc., et al. v. FCC*.<sup>14</sup> Accordingly, we reaffirm the conclusions reached in the *Bureau Order* that the requested market modification will effectuate the purposes of the must carry statutory provisions and associated Commission rules.

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<sup>10</sup>Christain Reply to Opposition at 2-3.

<sup>11</sup>*Bureau Order*, 11 FCC Rcd at 18041.

<sup>12</sup>47 U.S.C. § 534(h)(1)(C)(II).

<sup>13</sup>12 FCC Rcd 12262 (1997).

<sup>14</sup>163 F. 3d 187 (2d Cir. 1998).

**III. ORDER**

7. 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), and Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the captioned application for review **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary