

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

In the Matter of :)	
)	
RCN Telecom Services of Pennsylvania, Inc.)	
)	CSR 5049-A
For Modification of Television Market of)	
Television Station WTGI-TV, Wilmington,)	
Delaware)	
)	
Application for Review)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2001

Released: August 16, 2001

By the Commission:

I. INTRODUCTION

1. Before the Commission is an application by Paxson Philadelphia License, Inc. ("Paxson") seeking review of a television market modification Order adopted by the Cable Services Bureau.¹ Paxson, licensee of television station WTGI-TV, Wilmington, Delaware, requests reversal of the Bureau Order, which granted the petition of RCN Telecom Services of Pennsylvania, Inc. ("RCN"), a cable operator, for deletion of various communities in the northern portions of the Philadelphia area of dominant influence ("ADI") from WTGI-TV's television market for must carry purposes. RCN filed an opposition to the application, and Paxson filed a reply. The Application for Review is denied.

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."² 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.³ 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 in detail here.

3. Paxson contends that the analysis and application of the market modification procedures are

¹*RCN Telecom Services of Pennsylvania, Inc.*, 12 FCC Rcd 19700 (CSB 1997) (herein "*Bureau Order*").

²*See* 47 U.S.C. § 534(h)(1)(C)(i).

³*See* 47 U.S.C. § 534(h)(1)(C)(ii).

erroneous in light of its commitment to providing local programming. Paxson also contends that the market modifications made in the *Bureau Order* are at odds with the intent of Congress and inconsistent with purposes of the statutory must carry provisions.

4. In this instance, the *Bureau Order* found that the television market of Paxson's Wilmington, Delaware station WTGI-TV did not include certain cable communities located in Pennsylvania in the northern portion of the Philadelphia ADI.⁴ The Bureau based these findings on a record which showed an absence of any cable carriage or over-the-air viewing of WTGI-TV in the communities, the station's extended distance from and their lack of Grade B signal coverage of the communities, and the provision of an abundance of local services by other area stations actually serving those communities. The Bureau also noted that the Delaware-Pennsylvania border, represented by the Delaware River, and the Greater Philadelphia Metropolitan Area intervene between this Wilmington, Delaware station and the Pennsylvania cable communities at issue. In this manner, the parties have raised on review issues with respect to the Philadelphia ADI that are, in all material respects, essentially similar to the issues the Commission previously analyzed and resolved with respect to the New York ADI in *New York ADI Appeals Memorandum Opinion and Order*.⁵ Our findings and conclusions in the *New York ADI Order* were upheld on judicial review in *WLNY-TV, Inc., et al. v. FCC*.⁶

5. In view of our decision in the *New York ADI Order* and the Court's affirmation of that decision, we affirm the Bureau's similar analysis and resolution of these Section 614(h) issues in this case. Paxson has introduced nothing that establishes any erroneous finding as to any material question of fact requiring reconsideration of the Bureau's findings.⁷

III. ORDERING CLAUSE

6. 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, the captioned application for review **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁴At 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*").

⁵12 FCC Rcd 12262 (1997) ("*New York ADI Order*").

⁶163 F. 3d 187 (2d Cir. 1998).

⁷47 C.F.R. § 1.115(b)(2)(iv).