

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

In the Matter of:)	
)	
KBL Cablesystems of the Southwest, Inc. d/b/a)	
Paragon Cable)	CSR 5087-A
)	
Petition for Modification of Market of Station KTRG,)	
Del Rio, Texas)	
)	
Application for Review)	

MEMORANDUM OPINION AND ORDER

Adopted: September 4, 2001

Released: September 10, 2001

By the Commission:

I. INTRODUCTION

1. Ortiz Broadcasting Corp. ("Ortiz"), licensee of television station KTRG ("KTRG"), Del Rio, Texas, has filed an Application for Review of *KBL Cablesystems of the Southwest, Inc.*, 12 FCC Rcd 21923 (CSB 1997) ("*Bureau Order*").¹ The *Bureau Order* granted the petition of KBL Cablesystems of the Southwest, Inc. d/b/a Paragon Cable ("Paragon") under Sections 76.7(a) and 76.59(a) of the Commission's rules,² and deleted San Antonio, Texas, and certain other communities in Bexar County, Texas, (the Communities") served by Paragon's cable system from KTRG's television market.³ Paragon filed an opposition to the application, and Ortiz filed a reply. For the reasons stated below, we deny the Application for Review.

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."⁴ 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.⁵ The facts, a detailed description of these market modification provisions and the Commission's related regulations, the arguments of the parties, and a detailed analysis of those matters are set forth in the *Bureau Order* and

¹Ortiz also filed a Supplement to its Application for Review.

²47 C.F.R. §§ 76.7(a) and 76.59(a).

³See *Bureau Order*, 12 FCC Rcd 21932, at n. 2.

⁴See 47 U.S.C. §534(h)(1)(C)(i).

⁵See 47 U.S.C. § 534(h)(1)(C)(ii).

need not be repeated in detail here.⁶

3. Ortiz argues that the *Bureau Order* failed to reach considered conclusions with respect to all four factors set forth in Section 614(h)(1)(C)(ii) of the Communications Act. Specifically, Ortiz questions whether the local programming component of KTRG was given proper weight under the statutory factors, whether diversification of programming by a minority owned station must be considered as an element of localism under the statutory factors, and whether a translator station constitutes an acceptable means of delivering a good quality signal to the principal headend of a cable system.⁷ Ortiz also contends that the *Bureau Order* placed excessive emphasis on the considerable distance of the station from the Communities, the failure of the station to provide a Grade B signal to the Communities, and lack of viewing of the station in the Communities.⁸

4. We reject the arguments presented by Ortiz. First, the *Bureau Order* properly relied on *Dynamic Cablevision of Florida, Ltd., et al.*,⁹ in which the Commission confirmed that translators are a secondary service explicitly not entitled to carriage in their own right; that Section 614 (h)(1)(C) specifically excludes translators from the definition of a local commercial station; and that translator coverage of cable communities does not lessen the relevance of the failure of the parent full power station to directly serve those communities.¹⁰ A full power station may utilize a translator signal to deliver its signal to the principal headend of a cable system where the full power station is a "local commercial television station" within the meaning of Section 614(h)(1). However, the determination in the *Bureau Order* that the subject Communities should be excluded from KTRG's market precludes the station from being deemed a "local commercial television station" with respect to those Communities. Such determination means that KTRG is not "within the same television market as the cable system" serving those Communities.¹¹

5. We also reject Ortiz's argument that the *Bureau Order* failed to give proper weight under the statutory factors to the local component of KTRG's programming and that diversification of programming by a minority-owned station must be considered as an element of localism under the statutory factors. The fact that KTRG is minority-owned and offers Spanish language programming was properly afforded little if any weight given the considerable distance of the station from the communities. The *Bureau Order* found that because of distance, KTRG cannot deliver a Grade B or better signal to any of the communities served by Paragon's cable system. Indeed, the station's signal falls approximately 115 miles short of those communities. We find it appropriate that the *Bureau Order* gave little if any weight to programming content that cannot be viewed within communities in the manner prescribed by the Commission's rules because of the extensive geographic separation of the station from them.¹² On the other hand, the extensive geographic separation of the

⁶At 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*").

⁷Application at 6-14 and 20-22.

⁸*Id.* at 14-20.

⁹12 FCC Rcd 9952 (1997).

¹⁰See also *Must Carry Order*, 8 FCC Rcd 2965, 2973 (1993).

¹¹47 U.S.C. § 634(h)(1)(A).

¹²We are under no obligation to give particular weight to any of the statutory factors. See *Time Warner* (continued...)

station from the subject Communities may properly be given significant and substantial weight in market modification cases. The *Bureau Order* properly refused to consider KTRG "local" to the communities because KTRG's programming is retransmitted by a translator near San Antonio. Accepting Ortiz' position would have the effect of rendering any station "local" to any community into which its programming may be retransmitted. We find nothing in the language of Section 614(h) supporting that outcome.

6. Ortiz notes that the *Bureau Order* contains no specific findings with respect to history of carriage of KTRG within the Communities or with respect to the availability of other local news and sports programming, as required by the four factors statutory provisions. Ortiz did not dispute Paragon's representations that KTRG has never been carried on its cable system or that Paragon's cable system carries eight San Antonio television stations.¹³ Given this fact, it is appropriate to assign little if any weight to such lack of carriage and, therefore, the Bureau Order's lack of specific findings with respect to this issue is harmless error. And since Ortiz does not dispute Paragon's representation that its cable system carries eight San Antonio stations,¹⁴ each required by Commission rules to place a City Grade signal over San Antonio, we find that the statutory factor regarding other local news and sports programming to be satisfied.

7. We find the analysis in the *Bureau Order* regarding carriage of other stations in the community, station coverage and local service to the community, coverage of the communities by other stations, and station audience share, to be fully supported by substantial evidence of record. These findings were based on a record showing that KTRG is located approximately 140 miles from the San Antonio area, that while KTRG offers programming specifically for the San Antonio and Bexar County communities, coverage of those communities is achieved solely by means of a translator station not entitled to must carry rights, and that neither the San Antonio's daily newspaper, the *Express News*, or the San Antonio edition of *TV Guide* contains any listing for KTRG. The *Bureau Order* found particularly persuasive KTRG's geographic separation by a large and sparsely populated area from the communities at issue. The *Bureau Order* determined that these factors precluded those communities from being considered part of KTRG's television market, and concluded that grant of Paragon's petition will better effectuate the purposes of the must carry statutory provisions. In these respects the findings and conclusions of the *Bureau Order* are solidly based and fully consistent with the analysis and application of the market modification provisions of Section 614(h) in the *New York ADI Appeals Memorandum Opinion and Order*.¹⁵ 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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Entertainment Co. v. FCC, 56 F.3d 151, 175 (D.C. Cir. 1995); *Accord Omnipoint Corp. v. FCC*, 78 F.3d 620, 633-634 (D.C. Cir. 1996) (When Congress directs an agency to consider certain factors, the agency simply "must reach an express and considered conclusion about the bearing of a factor, but is not required to give any specific weight to it.").

¹³See *Bureau Order*, 12 FCC Rcd at 21927.

¹⁴Paragon Petition, Attachment 8.

¹⁵12 FCC Rcd 12262 (1997) ("*New York ADI Order*"), *aff'd*, *WLNY-TV, Inc., et al. v. FCC*, 163 F. 3d 187 (2d Cir. 1998).

III. ORDERING CLAUSES

8. 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