

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

In the Matter of:	)	
	)	
Armstrong Utilities, Inc., for Modification of	)	
Market of Station WGGN-TV, Sandusky, Ohio	)	CSR 4834-A
	)	
In the Matter of:	)	
	)	
Christian Faith Broadcast, Inc. v. Armstrong	)	CSR 4631-M
Utilities, Inc., for Carriage of WGGN-TV,	)	
Sandusky, Ohio	)	
	)	
Application for Review	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 25, 2001**

**Released: October 4, 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 *Armstrong Utilities, Inc. d/b/a Armstrong Cable Services ("Bureau Order")*.<sup>1</sup> The *Bureau Order* granted the petition of Armstrong Utilities, Inc. d/b/a Armstrong Cable Services ("Armstrong") under Sections 76.7(a) and 76.59(a) of the Commission's rules,<sup>2</sup> and deleted the communities of Ashland and Medina, Ohio and certain other nearby communities (the "Communities") served by Armstrong's cable system from WGGN-TV's television market.<sup>3</sup> Armstrong filed an opposition to the application for review, and Christian filed a reply. For the reasons discussed below, we affirm the Bureau's action and 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."<sup>4</sup> Four statutory factors considered are historic carriage of the station, station coverage of

<sup>1</sup>12 FCC Rcd 2498 (CSB 1997).

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

<sup>3</sup>The other communities are Hayesville, Butler, and Liverpool, and the Townships of Milton, Orange, Sullivan, Troy, Mifflin, Montgomery, Weller, Lafayette, Montville, York, and Litchfield, Ohio.

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

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* ignored salient facts, made errors on specific factual issues, and improperly applied the record facts to the legal issues. More specifically, Christian argues that the *Bureau Order* discriminated against WGGN-TV's religious programming by according minimal weight to religious programming carried by WGGN-TV and by finding that WGGN-TV provides only minimal programming of general interest to the Communities.<sup>6</sup> Christian also contends that the *Bureau Order* erred in finding that the Communities are geographically remote from WGGN-TV.<sup>7</sup> Christian contends that the *Bureau Order* contained procedural error in considering arguments Armstrong presented in the petition, arguing that Armstrong was procedurally obligated to present those arguments in response to Christian's earlier filed must carry complaint.<sup>8</sup> Christian requests that the Commission reverse the *Bureau Order*, deny the request to delete the Communities from WGGN-TV's market, and reaffirm an earlier Order requiring carriage of WGGN-TV.<sup>9</sup>

4. As Armstrong points out in opposition, the *Bureau Order* found that although WGGN-TV has been operational since 1982, it has never been carried on Armstrong's cable system serving the Communities and is not listed in local television guides circulated in the Communities. The *Bureau Order* also found that WGGN-TV has no viewing in any of the communities served by Armstrong's cable system.<sup>10</sup> Moreover, WGGN-TV's Grade B contour reaches only a small portion of the Communities at issue.<sup>11</sup> The *Bureau Order* also found that WGGN-TV and the relevant Communities are, on average, approximately 50 miles apart.<sup>12</sup> The record also shows that Armstrong's cable system carries numerous

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

<sup>6</sup>Christian Application at 12-15.

<sup>7</sup>*Id.* at 18.

<sup>8</sup>*Id.* at 22.

<sup>9</sup>In *Christian Faith Broadcast, Inc.*, 11 FCC Rcd 4177 (CSB 1996) ("*Carriage Order*"), the Bureau granted a must carry complaint filed by Christian and ordered Armstrong to carry WGGN-TV on Armstrong's cable system subject to conditions. However, the *Bureau Order* excluded the Communities served by Armstrong from WGGN-TV's market, and consequently WGGN-TV was no longer qualified as a "local commercial television station" for must carry purposes with respect to Armstrong's cable system. Accordingly, the *Bureau Order* vacated the earlier *Carriage Order*. *Bureau Order*, 12 FCC Rcd at 2506-2507.

<sup>10</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>11</sup>Approximately 176 of Armstrong's 18,839 subscribers live in Troy and Sullivan, Ohio, the only Communities within WGGN-TV's Grade B signal contour.

<sup>12</sup>Sandusky, Ohio, WGGN-TV's city of license, is approximately 45 miles from Armstrong's headend in Ashland, Ohio; almost 50 miles from the system's headend in Medina, Ohio; and on average approximately 49 miles from each of the Communities.

other television stations that provide coverage of news and issues of concern to the Communities served by its cable system.<sup>13</sup> The *Bureau Order* recognized that WGGN-TV produces a program five times weekly that originates at a church located in one of the Communities, and that this programming generates calls to WGGN-TV from viewers in the Communities, but determined that any credit for such programming should be accorded only minimal weight. Considering the whole record, the *Bureau Order* determined that exclusion of the Communities served by Armstrong's cable system from WGGN-TV's television market will better effectuate the purposes of the must-carry statutory provisions.

5. As the *Bureau Order* noted, Section 614(h)(1)(C) of the Communications Act lists several factors the Commission should consider in determining whether to include or exclude particular communities from a television station's market.<sup>14</sup> We agree with the Bureau that application of three of these factors—history of carriage, viewing patterns,<sup>15</sup> and availability of local programming in the Communities other than on the station at issue—yield the clear conclusion that WGGN-TV has little connection to the Communities. Regarding the fourth factor, whether the station provides coverage or other local service to the Communities, the analysis is slightly less clear. Based on the station's Grade B contour, the geography of the area at issue, and the distance from the station to the Communities, it appears that the station does not provide coverage to the Communities. As the Bureau noted, however, the station does provide a local service to the Communities by airing a half-hour program produced five times weekly by a church in one of the Communities, and this religious programming does prompt calls to WGGN from the Communities.<sup>16</sup> The *Bureau Order* does not explain why such programming is insufficiently directed to the Communities, and we accord it more weight than did the Bureau. Nevertheless, we agree that this programming alone is not sufficient to counter the overwhelming weight of evidence from the other factors, all of which go against including the Communities in WGGN-TV's television market.<sup>17</sup>

6. Christian argues also that the *Bureau Order* erred procedurally in considering in this market modification proceeding matters that should have been presented in response to Christian's earlier

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<sup>13</sup>*Bureau Order*, 12 FCC Rcd at 2502-04.

<sup>14</sup>See 47 U.S.C. §534(h)(1)(C)(ii). We are under no obligation to give particular weight to any one of the several statutory factors. See *Time Warner 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.")

<sup>15</sup>We recognize that WGGN-TV, as a specialty station, may not have the broad audience appeal of a typical commercial television station. Under the viewership prong, we have recognized that specialized or targeted programming may not draw as significant a market share as programming of general interest stations. *New York Area of Dominant Influence, Memorandum Opinion and Order*, 12 FCC Rcd 12262, 12268 (1997). In those cases, we consider viewership in the context of the specialized programming offered. However in this case, there is no evidence of any viewers in the subject cable communities, and thus we need not reach the decision of what amount of viewership would be sufficient under this prong.

<sup>16</sup>Of the two principle headends involved, Ashland and Medina, no argument is made as to any specific connection between the origin of the station's programming and Medina. Some of the Ashland programming was generated in Mansfield, Ohio, which is not a community involved in this proceeding, but rather a separate larger community some miles distant. Petition for Review at 9.

<sup>17</sup>See, e.g., *New York Area of Dominant Influence, Memorandum Opinion and Order*, 12 FCC Rcd at 12270 ("[W]e cannot conclude that a station must be considered "local," as Congress intended the term to mean in Section 614 of the 1992 Cable Act, solely by airing some occasional programming associated with some of the communities in question.")

filed must carry complaint.<sup>18</sup> Armstrong argues that the *Bureau Order* properly deemed such matters germane to this market modification proceeding under Section 614(h), and not germane to the earlier filed must carry complaint proceeding under Section 614(d) of the Communications Act.<sup>19</sup> We reject Christian's argument. The matters presented in Armstrong's petition for relief and reviewed elsewhere in this Order were relevant to the four statutory market modification factors set out in Section 614(h). Therefore, they were properly considered in the *Bureau Order*.

7. Christian also contends that the *Bureau Order* rested on errors of fact and law and matters not in the record. Christian does not dispute that the *Carriage Order* conditioned WGGN-TV's right to carriage on the provision of special equipment that would provide a good quality signal to the cable system headends.<sup>20</sup> Christian argues, instead, that the *Bureau Order* failed to consider its efforts following the *Carriage Order* to obtain Armstrong's cooperation in providing and installing that special equipment at Armstrong's headend. Christian provided information concerning such efforts only with its Application for Review. Issues regarding signal strength at cable system headends in the context of must carry complaints bear on the matter of the availability of an adequate signal for carriage. In contrast, in market modification proceedings the Commission must determine pursuant to the statutory coverage and local service factor whether the community served by the cable system is within the television station's market.<sup>21</sup> As discussed above, the *Bureau Order* correctly determined that the Communities served by Armstrong are not within WGGN-TV's market.

8. 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>22</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>23</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>18</sup>See *Carriage Order*, *supra*, n. 5.

<sup>19</sup>*Bureau Order*, 12 FCC Rcd at 2506-2507.

<sup>20</sup>Christian also does not dispute that it filed an application for increased power and antenna height for WGGN-TV. *Bureau Order*, 12 FCC Rcd at 2506.

<sup>21</sup>Compare 47 U.S.C. § 534 § (h)(1)(B) and § 534(h)(C)(ii)(II),

<sup>22</sup>12 FCC Rcd 12262 (1997).

<sup>23</sup>163 F. 3d 187 (2d Cir. 1998).

**III. ORDERING CLAUSES**

9. 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