

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

In the Matter of:)	
)	
Greater Worcester Cablevision, Inc.)	
et al.)	CSR 5015-A
)	
For Modification of Market of)	
Station WGOT-TV, Merrimack,)	
New Hampshire)	
)	
Application for Review)	

MEMORANDUM OPINION & ORDER

Adopted: February 8, 2001

Released: February 20, 2001

By the Commission:

I. INTRODUCTION

1. Paxson Boston License, Inc. ("Paxson"), licensee of WGOT-TV, Merrimack, New Hampshire, has filed an Application for Review of the Cable Services Bureau's (the "Bureau") order in *Greater Worcester Cablevision, Inc., et al.* ("Bureau Order").¹ The *Bureau Order* granted the combined petition of Greater Worcester Cablevision, Inc., et al. ("Petitioner") pursuant to Sections 76.7(a) and 76.59 (a) of the Commission's rules,² and deleted the designated communities in Worcester County ("the System") from the Boston, Massachusetts area of dominant influence ("ADI") from WGOT's television market for must carry purposes. Petitioner filed an opposition to the application for review, and Paxson filed a reply.

II. BACKGROUND

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."³ A detailed description of these market modification provisions and the Commission's related regulations are set forth in the *Bureau Order*.⁴

¹12 FCC Rd. 17347 (1997).

²47 C.F.R. §§ 76.7(a) and 76.59(a).

³See 47 U.S.C. §534(h)(1)(C)(i).

⁴Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, "be used to implement the

(continued...)

III. DISCUSSION

3. The facts, applicable law, arguments of the parties, and a detailed analysis of those matters are set forth in the *Bureau Order* and need not be repeated here. In the underlying *Bureau Order*, the Cable Services Bureau granted a combined petition filed by Greater Worcester Cablevision, Inc. *et al.*, against WGOT-TV Merrimack, New Hampshire, licensee of Paxson Boston License, Inc. The petition argued for deletion of designated communities in Worcester County from the Boston, Massachusetts ADI, insofar as mandatory carriage of WGOT-TV was concerned. The Bureau found that WGOT's absence of historic signal carriage, minimal viewership, lack of significant programming specifically designed for the designated communities, geographic remoteness, lack of Grade B contour coverage, and the provision of local service and coverage by other local stations justified the station's exclusion.

4. Paxson essentially contends that the *Bureau Order* unduly relied on the fact that WGOT-TV's Grade B contour did not encompass the communities at issue. Paxson also maintains that the Bureau's decision is inconsistent with its decision in another proceeding captioned *Greater Worcester Cablevision, Inc. ("WNDS-TV")*.⁵ Paxson argues that the Bureau's decision was reached without any consideration of the demonstrably harmful impact that deletion of the cable communities will have on the viability of WGOT-TV.

5. In *WNDS-TV*, the Bureau denied a request to exclude Station WNDS-TV, Derry, New Hampshire from carriage on Greater Worcester's cable system.⁶ WNDS-TV is located approximately the same distance from Worcester as is WGOT-TV. Paxson maintains that the disparate treatment of WGOT-TV in the instant proceeding is in error. Contrary to Paxson's contention, we find the Bureau's decision in the *WNDS-TV* to be consistent with the *Bureau Order* before us. In *WNDS-TV*, exclusion was denied because, unlike in the matter before us today, the petitioner had failed to show particularized and persuasive evidence that the communities in question were not part of the WNDS-TV's television market.

6. In contrast, the record in this proceeding clearly shows that the *Bureau Order* was based on an underlying analysis of the statutory criteria, as well as other factors, in making the determination that WGOT-TV's market did not include the communities at issue. The *Bureau Order* found that WGOT-TV had no historic carriage or audience shares in the communities. Additionally, it found that WGOT-TV's Grade B contour failed to encompass the relevant communities. Whereas in *WNDS-TV*, Station WNDS-TV's Grade B contour was found to encompass the subject communities including the densely populated City of Worcester. The Commission has held that the failure of a station's Grade B contour to encompass the communities at issue, like WGOT-TV's, is an especially relevant factor in determining a station's market when it fails to meet the other statutory criteria.⁷ Further, WGOT-TV failed to introduce any

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mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *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").

⁵ 10 FCC Rcd 12569 (1995).

⁶ *Id.* at 12570,12573 (1995).

⁷ 12 FCC Rcd 12262, 12271 (1997).

evidence that it carried programming specifically directed at the subject communities. Finally, the decision noted that several other stations served the communities as well as noting WGOT-TV's distance from the communities. All these factors taken together collectively formed the basis of the *Bureau Order*.

7. Based on the above, we find that the record in this proceeding clearly shows that the Bureau carefully considered the four statutory factors set forth in the market modification provisions, as well as non-statutory factors. We affirm the Bureau's conclusion. The *Bureau Order* is fully consistent with the analysis and application of the market modification provisions of Section 614(h) as discussed in *New York ADI Appeals*, Memorandum Opinion and Order.⁸

IV. 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), that the captioned application for review **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁸12 FCC Rcd 12262 (1997) *aff'd* 163 F.3d 187 (2d Cir.1998)