

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

In the Matter of:)	
Harron Cablevision of Massachusetts)	
d/b/a Harron Communications Corp.)	
)	CSR 5043-A
For Modification of Market of)	
Station WPXB-TV, Merrimack,)	
New Hampshire)	
)	
Application for Review)	

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 2001

Released: March 2, 2001

By the Commission:

I. INTRODUCTION

1. Paxson Boston License, Inc. ("Paxson"), licensee of WPXB-TV,¹ Merrimack, New Hampshire, has filed an Application for Review of the Cable Services Bureau's (the "Bureau") Order in *Harron Cablevision of Massachusetts, d/b/a Harron Communications Corp.* ("Bureau Order").² The *Bureau Order* granted the Petition for Special Relief of Harron Cablevision of Massachusetts, d/b/a Harron Communications Corp. ("Harron") pursuant to Sections 76.7(a) and 76.59(a) of the Commission's rules,³ and deleted certain communities in Plymouth County, Massachusetts from WPXB-TV's Boston television market for must carry purposes.⁴ Harron filed an opposition to the application for review, and Paxson filed a reply.

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

¹WPXB-TV was formerly known as WGOT-TV. See Public Notice, December 19, 1997.

²*Harron*, 12 FCC Rcd. 21996 (1997).

³47 C.F.R. §§ 76.7(a) and 76.59(a).

⁴The communities deleted were Pembroke, Halifax, Plympton, Abington, and Rockland Massachusetts.

the purposes of this section."⁵ The detailed facts, applicable law, and arguments of the parties are set forth in the *Bureau Order* and need not be repeated here. It is sufficient for our review to note that the Bureau granted the petition filed by Harron requesting deletion of designated communities in Plymouth County, Massachusetts from the Boston, Massachusetts area of dominant influence ("ADI"),⁶ insofar as mandatory carriage of WPXB-TV was concerned. The Bureau found that WPXB's absence of historic signal carriage, lack of measured audience in the cable communities, lack of significant programming relevant to the designated communities, lack of Grade A or Grade B contour coverage, geographic remoteness, and the provision of local service and coverage by other local stations justified the station's exclusion.⁷

3. Paxson contends that the Commission should reverse the *Bureau Order* because it fails to adequately explain how denial of WPXB's carriage rights in the cable communities "better effectuates" the purposes of the must carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").⁸ Paxson argues that the Bureau incorrectly defined WPXB's local market in terms of Grade B contours or mileage rather than DMA's.⁹ Paxson asserts that the Bureau's decision will have a devastating effect on the station's economic and competitive market position, and undermines the central purpose of the must carry rules.¹⁰ In its Opposition, Harron argues that the *Bureau Order* properly considered the statutory factors in evaluating the petition for market modification.¹¹

4. After reviewing the record, we find no basis for overturning the *Bureau Order*. The record here shows that the Bureau correctly considered the market modification provisions. In reaching its determination, the Bureau concluded that no single factor was outcome determinative. Rather, the Bureau relied collectively on factors such as the absence of any historic cable carriage or over-the-air viewing of WPXB-TV in the communities, the provision of local services by other area stations, the lack of WPXB-TV programming designed to serve the

⁵See 47 U.S.C. §534(h)(1)(C)(i).

⁶Harron, 12 FCC Rcd at 22001. An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Although the Commission has determined to switch market definitions from ADIs to Nielsen Media Research's designated market areas ("DMAs"), we continued use of Arbitron's 1991-1992 *Television ADI Market Guide* market designations for the period involved in this proceeding and postponed the switch to Nielsen's DMAs until the must-carry/retransmission consent election that took place on October 1, 1999. See *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 6201 (1996) ("*Market Modification Report and Order*"). 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 *Modification Final Report and Order*, 14 FCC Rcd 8366 (1999) (Second Report and Order). Effective January 1, 2000, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

⁷Harron, 12 FCC Rcd at 22001.

⁸See Paxson Application for Review at 9-14.

⁹*Id.*

¹⁰*Id.* at 14.

¹¹See Harron Opposition at 4-7.

designated communities, the lack of Grade B or better coverage to the communities, and geography. We find the analysis in the *Bureau Order* regarding these factors to be fully supported by record evidence. The findings and conclusions of the *Bureau Order* are not only solidly based on that record, they are fully consistent with the analysis and application of the market modification provisions of Section 614(h) set forth in *New York ADI Appeals*¹² which was upheld on review in *WLNY-TV, Inc. v. FCC*.¹³ Finally, we disagree with Paxson's assertion that the Bureau failed to adequately explain how denial of WPXB's carriage rights better effectuates the purposes of the must carry requirements. The Bureau explained that:

The market change process incorporated into the Communications Act . . . is not intended to be a process whereby cable operators may seek relief from the mandatory signal obligations apart from the question of whether a change in the market area involved [is] warranted. When viewed against this backdrop, and considering all of the relevant factual circumstances in the record, we believe that Harron's deletion petition appears to be a legitimate request to redraw [market] boundaries to make them congruous with market realities.¹⁴

Modifying market boundaries to reflect market realities is the intended purpose of Section 614(h)(1)(C) and we believe that the Bureau's modification in this instance better effectuates the purposes of Section 614(h)(1)(C).¹⁵

III. ORDERING CLAUSES

5. 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

¹²12 FCC Rcd 12262 (1997).

¹³163 F. 3d 137 (2d Cir. 1998).

¹⁴*Harron*, 12 FCC Rcd at 22001.

¹⁵H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992); 47 U.S.C. §534(h)(1)(C)(i); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), 8 FCC Rcd 2965, 2976.