

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

In the Matter of:)	
)	
Petition of Frederick Cablevision, Inc. and)	
C/R TV Cable, Inc.)	CSR 4623-A
)	
For Modification of the ADI of)	
Station WTMW-TV, Arlington, VA)	
)	
Application for Review)	

MEMORANDUM OPINION AND ORDER

Adopted: December 27, 2004

Released: January 5, 2005

By the Commission:

I. INTRODUCTION

1. Urban Broadcasting Corporation (“Urban”), permittee of television station WTMW (TV), Channel 14, Arlington, Virginia (“WTMW”), has filed an application for review, pursuant to Section 1.115 of the Commission’s regulations,¹ of the Memorandum Opinion and Order in *Frederick Cablevision, Inc.*² in which the former Cable Services Bureau (the “Bureau”), pursuant to Section 614(h)(1)(C) of the Communications Act,³ granted the petition of Frederick Cablevision Inc. and C/R TV Cable Inc. (“Frederick Cablevision”) to exclude eighteen communities in Frederick County, Maryland, and Jefferson County, West Virginia, (the “Communities”) from the television market of WTMW. An opposition to the application was filed by Frederick Cablevision, operator of cable systems in the Communities, and Urban filed a reply to the opposition. Based upon our review of the record in this proceeding, we grant Urban’s application for review and vacate *Frederick Cablevision*.

II. DISCUSSION

2. In *Frederick Cablevision*, the Bureau found, after applying the four factors set forth in Section 614(h)(1)(C),⁴ that the Communities were sufficiently removed from WTMW that they should

¹ 47 C.F.R. § 1.115.

² 16 FCC Rcd 5566 (CSB 2001) (“*Frederick Cablevision*”).

³ 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s Designated Market Areas, or “DMAs”. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”); 47 C.F.R. §76.55(e). A similar Area of Dominant Influence (“ADI”) concept, which applied at the initiation of this proceeding, is discussed in the cited order..

⁴ The four statutory factors are “(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (II) whether the television station provides coverage or other local service to such community; (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news (continued....)”

not be deemed part of the station's market for purposes of the statutory provisions applicable to mandatory carriage of television stations on cable systems.⁵ Urban's application seeks review of *Frederick Cablevision* on the grounds that the order conflicts with Commission precedent and is based on erroneous findings as to material and important questions of fact. Urban contends that the Bureau in *Frederick Cablevision* failed to follow precedent in its application of the historical carriage factor by disregarding the fact that Frederick Cablevision carries all television stations licensed to the Washington, D.C. area, except for WTMW. Urban also argues that the Bureau erred in giving undue weight under Factor III to the fact that another station licensed to one of the Communities provides coverage of local issues in that community.⁶ Frederick Cablevision opposed the application, arguing that the four statutory factors were properly applied to the facts of record.

3. Section 614(h)(1)(C) of the Communications Act requires the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.⁷ We have reviewed the record in *Frederick Cablevision*, which need not be restated in detail here. We agree with Petitioner that the Bureau failed to give adequate weight to certain facts presented, which have relevance in our analysis of the first market modification factor.⁸ The record indicates that every station licensed to the Washington, D.C. metropolitan area, with the exception of WTMW, is carried on Frederick Cablevision's systems serving the Communities. The carriage of the other stations licensed to Washington provides strong evidence that the Communities should be considered part of the market of all stations in the Washington metropolitan area. Of additional weight is the fact that, although WTMW's city of license is Arlington, Virginia, its transmitter is collocated in Washington, D.C. with the transmitter of at least one other Washington television station carried in the Communities by Frederick Cablevision.⁹ In this connection, we take notice that the transmitters of all the network affiliated Washington television stations serving the Communities are also located within the market's unitary core, Washington, D.C.¹⁰ Accordingly, we conclude, based on the carriage in the Communities of all other Washington area stations, the Bureau should have placed decisional emphasis on the historical carriage factor and denied Frederick Cablevision's market modification petition as inconsistent with the purpose of Section 614.

(...continued from previous page)

coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (IV) evidence of viewing patterns in cable and non-cable households within the areas served by the cable system or systems in such community." See 47 U.S.C. § 534(h)(1)(C)(ii).

⁵ *Frederick Cablevision*, 16 FCC Rcd at 5566-68.

⁶ Urban does not challenge the findings in *Frederick Cablevision* that WTMW has no history of carriage in the Communities (Factor I), lacks significant programming specifically designed for the Communities (Factor II), and has no measurable audience in the Communities (Factor IV). Likewise, Urban does not dispute the finding that another station licensed to one of the Communities provides coverage of local issues (Factor III).

⁷ See H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992); *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12926 (1999) ("DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products.").

⁸ 47 U.S.C 534(h)(1)(C)(ii)(I). We are under no obligation to give particular weight to any particular one of these 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, 633-34 (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.").

⁹ WTMW's transmitter is located on the same antenna with WRC-TV.

¹⁰ See *Television & Cable Factbook*, TV Stations, 1997 Edition at pp. A-225 to A-230.

4. The result we reach is in accord with our determination in *New York ADI Appeals Memorandum Opinion and Order*,¹¹ that ADI lines more accurately delineated the market of small stations located at the “hub” of the New York metropolitan area than other factors.¹² Our determination there not to delete communities in the outer portions of the New York ADI from the markets of smaller stations near the center of the New York metropolitan area was approved on appeal in *WLNY-TV, Inc., WRNN-TV Associates Limited Partnership, and Paxson New York License, Inc., v. F.C.C.*¹³ We believe the rationale approved there applies with equal force to WTMW, which is located near the center of the Washington metropolitan area.¹⁴

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), and Section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, that the captioned application for review **IS GRANTED**, *Frederick Cablevision* **IS HEREBY VACATED**, and the petition for relief **IS HEREBY DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ 12 FCC Rcd 12262 (1997).

¹² In *Service Electric Cable TV, Inc.*, 12 FCC Rcd 13299 (CSB 1997), the Bureau declined to delete certain communities from the markets of stations licensed to Wilmington, Delaware, and Burlington, New Jersey. In that case, the Bureau determined against market modification on the grounds that other Philadelphia stations were carried in the cable communities at issue, and observing that both Wilmington and Burlington are in the immediate Philadelphia, Pennsylvania metropolitan area.

¹³ 163 F. 3d 137 (2nd Cir. 1998).

¹⁴ Similar results have been reached in other instances. See, e.g., *Bremor Cable Partners*, 14 FCC Rcd 11742 (CSB 1999) (Georgia communities not deleted from market of WATC, Atlanta, Georgia); *TWI Cable, Inc.*, 12 FCC Rcd 13187 (CSB 1997) (Camden, Tennessee not deleted from market of WNAB-TV, Nashville, Tennessee); *G Force, L.L.C.* 13 FCC Rcd 10386 (CSB 1998) (communities on Kauai not deleted from market of Honolulu, Hawaii stations); and *Jasas Corporation* 14 FCC Rcd 6968 (CSB 1999) (Hagerstown, Maryland added to market of WBDC-TV, Washington, D.C.).