

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

In the Matter of:)
)
Benedek License Corporation)
) CSR-5546-N
For Waiver of Section 76.92(f) of the)
Commission’s Rules)

ORDER ON RECONSIDERATION

Adopted: March 15, 2001

Released: March 19, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Benedek License Corporation, licensee of Station KGWN-TV (CBS, Ch. 5), Cheyenne, Wyoming (“KGWN-TV”), has requested reconsideration of the Bureau’s decision denying KGWN-TV’s petition seeking a waiver of the Commission’s significantly viewed exception to the network nonduplication rules.¹ No opposition to this petition has been received.

II. BACKGROUND

2. In its request for waiver, KGWN-TV sought a waiver of the significantly viewed exception to the network nonduplication rules so that it could assert network nonduplication protection against Station KCNC-TV (Ch. 4), Denver, Colorado in cable communities served by AT&T. The *Bureau Order* denied KGWN-TV’s request because the petition did not identify the communities associated with zip codes enumerated in the surveys conducted by Nielsen. Moreover, there was no evidence to conclude that the diaries included in the sample were proportional to the population of each cable community, as required by Section 76.54(b) of the Commission’s rules.² Further, the Bureau concluded that KGWN-TV failed to provide standard error estimates as required by the rules. Using the limited information provided, the Bureau calculated an estimate of these values and found that the November 1998 survey results for KCNC-TV exceeded the 3 percent total viewing hours and 25 percent net weekly circulation levels specified in the Commission’s rules. Based on this finding, the *Bureau Order* denied KGWN-TV’s request.

III. DISCUSSION

3. In support of its petition, KGWN-TV states that the survey information provided in its waiver request was community-specific and all of the zip codes enumerated referred to one community, Cheyenne, Wyoming. Therefore, KGWN-TV alleges that the question of proportionality is now irrelevant.

¹KGWN-TV, 15 FCC Rcd 14752 (2000)(“*Bureau Order*”).

²47 C.F.R. §76.54(b).

KGWN-TV submitted revised Nielsen data which now includes the standard errors which were missing in its original submission.³ This new data indicates that, adjusted by one standard error, KCNC-TV attains a 1.77 percent share of total viewing hours and a 15.398 percent net weekly circulation for the November 1998/February 1999 survey. For the November 1999/February 2000 survey, KCNC-TV attains a 1.76 percent share of total viewing hours and net weekly circulation of 13.351 percent. As KGWN-TV states, once the standard errors are calculated and added to the report audience shares, KCNC-TV falls below the minimum 3 percent share of total weekly viewing hours and 25 percent net weekly circulation share in both years. Thus, KCNC-TV is no longer considered significantly viewed in Cheyenne, Wyoming.

4. Based on the revised data and information provided, we conclude that the surveys provided by KGWN-TV now meet the requirements specified in the Commission's rules.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, that the petition for reconsideration filed by Benedek License Corporation **IS GRANTED**.

6. This action is taken pursuant to authority delegated under Sections 0.321 and 1.106 of the Commission's rules.⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

³KGWN-TV's revised data was submitted as combined November 1998/February 1999 survey data for one year and combined November 1999/February 2000 data for the second year. We find this type of submission acceptable.

⁴47 C.F.R. §§0.321 and 1.106.