

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

In the matter of:
Benedek License Corporation
For Waiver of Section 76.92(f) of the
Commission's Rules
CSR-5880-N

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2002

Released: October 3, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Benedek License Corporation, licensee of station WILX-TV (NBC, Ch. 10), Lansing, Michigan ("WILX-TV"), has filed a petition for special relief seeking a waiver of the Commission's significantly viewed exception to the network nonduplication rules. No opposition to this petition has been received.

II. BACKGROUND

2. Upon the request of a local station that has the exclusive rights to distribute a network program, a cable operator generally may not carry a duplicating network program broadcast by a distant station. Under Section 76.92(f) of our rules, however, an otherwise distant station is exempt from the application of the network nonduplication rules if it is considered "significantly viewed" in a relevant community. Station WILX-TV seeks a waiver of the significantly viewed exception to the Commission's network nonduplication rules so that it may assert network nonduplication protection against Station WOOD-TV (NBC, Ch. 8), Grand Rapids, Michigan ("WOOD-TV"). WOOD-TV is considered to be significantly viewed in the counties of Ingham, Clinton and Eaton, Michigan, where the cable system communities served by AT&T Broadband are located.

3. In KCST-TV, Inc., the Commission held that in order to obtain a waiver of Section 76.92(f), petitioners would be required to demonstrate for two consecutive years that a station was no

147 C.F.R. §76.92(f).

2See 47 C.F.R. §76.92.

3For a network station to be recognized as significantly in a community or in a county, it must achieve in noncable homes a share of viewing hours of at least 3 percent (total week hours) and a net weekly circulation of at least 25 percent. 47 C.F.R. §76.5(i).

4WILX-TV states that AT&T's Lansing system provides service to over 63,500 subscribers in the communities of Lansing, Alaiedon Township, De Witt, De Witt Township, Delhi Township, Delta Township, Grand Ledge, Lansing Township, Meridian Township, Oneida Township, Watertown Township, and Windsor Charter Township. WILX-TV states that AT&T's East Lansing cable system, with approximately 22,500 subscribers, serves East Lansing, Alaiedon Township, Haslett, Meridian Township, Michigan State University, Okemos, and Wheatfield Township.

longer significantly viewed, based either on community-specific or system-specific, noncable viewing data, to one standard error.<sup>5</sup> For each year, the data must be obtained as a result of independent professional surveys taken during two one-week periods that are separated by at least thirty days and are distributed proportionately among the relevant communities. Not more than one of the surveys may be taken between April and September of each year.<sup>6</sup>

### III. DISCUSSION

4. In support of its petition, WILX-TV submits special tabulations of A.C. Nielsen audience survey data of noncable homes for two consecutive years to demonstrate that WOOD-TV no longer garners sufficient viewing to meet the significantly viewed standards in the communities served by AT&T's cable systems. Based on these surveys' demonstration, WILX-TV requests that the Bureau grant its request for waiver so that it may be able to claim its nonduplication rights on the subject cable systems.

5. WILX-TV's petition references two separate cable systems. As a result, the survey information provided by WILX-TV needs to be treated separately. Moreover, since each cable system serves multiple cable communities, the sample used to calculate the relevant audience statistics must include diaries in proportion to the populations of the included communities.<sup>7</sup> We find that the information provided by WILX-TV in both instances falls short of our requirements.

6. WILX-TV submits the results of Nielsen Media Research survey data from the November 1999 and February 2000 audience sweep periods for the first year and the November 2000 and February 2001 audience sweep periods for the second year. Although the survey periods used satisfy our rules, the audience statistics from those sweep periods were compiled in two different ways, neither of which meets our requirements. For instance, WILX-TV's first method provides audience statistics for the zip codes associated with AT&T's communities, none of which is specifically identified.<sup>8</sup> Given that AT&T appears to serve two separate systems, the combined data as submitted for the purposes herein is unacceptable. The second method, according to WILX-TV, includes the noncable homes only within the community of Lansing, the largest population concentration in the area served by that particular cable system.<sup>9</sup> A review of the summary of survey results prepared by Nielsen indicates, however, that separate statistics are included not only for Lansing, but East Lansing as well, a separate cable system.<sup>10</sup> Even if we assume that the information provided is for the Lansing and East Lansing cable systems separately, WILX-TV has provided data only for the largest city of each cable system. As such, the data must be rejected because the Commission's rules require that the sample for system-specific surveys include noncable homes from each community served by the system which is proportional to the population of each community.

7. In view of the fact that WILX-TV's showing does not meet the criteria established in *KCST-TV* for waiver of the network nonduplication exemption, we will deny WILX-TV's request.

---

<sup>5</sup>103 FCC 2d 407 (1986).

<sup>6</sup>See 47 C.F.R. §76.54(b).

<sup>7</sup>47 C.F.R. §76.54(b).

<sup>8</sup>Petition at Exhibit Two.

<sup>9</sup>*Id.* at 4.

<sup>10</sup>*Id.* at Exhibit Three.

**IV. ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED** that the petition filed by Benedek License Corporation, **IS DENIED.**

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johson  
Deputy Chief, Media Bureau

---

<sup>11</sup>47 C.F.R. §0.283.