

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

In the Matter of:)
)
Barrington Broadcasting Flint Corporation)
) CSR-6342-N
For Waiver of Section 76.92(f) of the)
Commission’s Rules)

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2004

Released: November 8, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Barrington Broadcasting Flint Corporation, licensee of station WEYI-TV (NBC), Saginaw, Michigan (“WEYI-TV”), has filed a petition for special relief seeking a waiver of the Commission’s significantly viewed exception to the network nonduplication rules.¹ Subsequently, WEYI-TV submitted a supplement to its petition. 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.² 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.³ Station WEYI-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 television broadcast station WDIV, Detroit, Michigan (“WDIV”) on Comcast Cablevision of Flint, Inc.’s (“Comcast”) cable system serving Flint, Michigan. WDIV is considered to be significantly viewed in Genesee County, Michigan, where Comcast’s cable system is located.⁴

¹47 C.F.R. § 76.92(f).

²See 47 C.F.R. § 76.92.

³For a network station to be recognized as significantly viewed 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).

⁴WDIV was deemed significantly viewed in Genessee County on the basis of the Commission’s original surveys for significantly viewed status. See *Reconsideration of the Cable Television Report and Order*, Appendix B, 36 FCC 2d 326 (1972).

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 longer significantly viewed, based either on community-specific or system-specific, noncable viewing data, to one standard error.⁵ 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.⁶

III. DISCUSSION

4. In support of its petition, WEYI-TV states that both it and WDIV are NBC network affiliates.⁷ WEYI-TV states that it is licensed to Saginaw, Michigan, which is part of the Flint-Saginaw Bay City DMA and it acquired network nonduplication rights for the entire Flint DMA from NBC in 1995.⁸ WEYI-TV states that, except for the fact that WDIV is considered to be significantly viewed in Genessee County, it would be entitled to assert network nonduplication protection against WDIV for Comcast's cable system serving Flint, Michigan.⁹ WEYI-TV argues that WDIV no longer meets the significantly viewed requirements set forth in Section 76.54(b) of the Commission's rules.¹⁰ In support, WEYI-TV submits special tabulations of A.C. Nielsen audience survey data of noncable homes for two consecutive years to demonstrate that WDIV is no longer significantly viewed in Flint.¹¹ Based on these surveys' demonstration, WEYI-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 system.

5. The data WEYI-TV submits are the results of a community-specific Nielsen Media Research tabulation based on data for noncable homes in the zip codes comprising Flint.¹² The first year survey's audience estimates were based on November 2001/February 2002 data and the second year's estimates on November 2002/February 2003 data.¹³ WEYI-TV states that WDIV's share of total viewing hours in noncable homes in Flint falls below the required 3 percent minimum, within one standard error, as shown in the table below:¹⁴

⁵103 FCC 2d 407 (1986).

⁶See 47 C.F.R. § 76.54(b).

⁷Petition at 2.

⁸*Id.* In general, the network nonduplication rights of a station are limited to 35 miles from the station's city of license.

⁹*Id.*

¹⁰47 C.F.R. § 76.54(b).

¹¹Petition at Exhibit 1.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*, see also October 15, 2004 supplement to petition.

<u>Survey Dates</u> ¹⁵	<u>Diaries</u>	<u>Share Viewing Hours</u>	<u>Standard Error</u>	<u>Net Weekly Circulation</u>	<u>Standard Error</u>
Nov 01/Feb 02	39	1.37	0.61	21.86	6.78
Nov 02/Feb 03	27	1.72	0.81	14.58	6.84

6. We find that, as required by the Commission, WEYI-TV has provided two sets of community-specific survey results for the community of Flint, Michigan, for each year surveyed. Section 76.5(i) of the Commission's rules requires that for network stations to be considered significantly viewed, the survey results should exceed a 3 percent share of total viewing hours and a net weekly circulation of 25 percent, by at least one standard error.¹⁶ For the first year, the results show, with one standard error added, that WDIV would attain a 1.98 percent share of total viewing hours and a 28.64 percent net weekly circulation. For the second year, the reported results with one standard error added are 2.53 percent share of total viewing hours and a net weekly circulation of 21.42 percent. For both years, the share of total weekly viewing hours falls below the required 3 percent minimum for significantly viewed status when the standard errors are considered. With regard to net weekly circulation, when standard errors are considered, the first year's share exceeds the required 25 percent minimum while the second year's share falls below the required minimum. However, the criteria for determining whether a station is significantly viewed requires that both the total viewing hours and net weekly circulation shares exceed the criteria provided in Section 76.5(i) of the Commission's rules. Accordingly, we find that the submitted audience surveys are sufficient to show that WDIV no longer attains the viewing levels needed to demonstrate significantly viewed status in the community of Flint, Michigan.

7. For the above reasons, we find that a grant of the waiver of the significantly viewed exemption to the network nonduplication rules with regard to the community-specific survey for Flint, Michigan, will serve the public interest.

¹⁵The survey dates of November 2001/February 2002 and November 2002/February 2003 meet the criteria set forth in the rules and *KCST-TV, Inc.* that the two one-week surveys be separated by at least 30 days and that both surveys may not occur between April and September.

¹⁶47 C.F.R. § 76.5(i).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Barrington Broadcasting Flint Corporation **IS GRANTED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

¹⁷47 C.F.R. § 0.283.