

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

In the Matter of:)	
)	
Virginia Broadcasting Corp.)	
)	CSR-6914-N
For Waiver of Sections 76.92(f) and)	
76.106(a) of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2006

Released: April 4, 2006

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Virginia Broadcasting Corp., licensee of station WVIR-TV (NBC, Ch. 29), Charlottesville, Virginia ("WVIR-TV"), filed the captioned petition seeking a waiver of the rules that preclude cable operators from deleting the duplicate programming of "significantly viewed" stations under the network nonduplication and syndicated exclusivity rules ("exclusivity rules").¹ The record contains no opposition to this petition.² For the reasons discussed below, we deny WVIR-TV's waiver request.

II. BACKGROUND

2. Upon the request of a local television station with exclusive rights to distribute a network or syndicated program, a cable operator generally may not carry a duplicating program broadcast by a distant station.³ Under Sections 76.92(f) and 76.106(a) of the Commission's rules, however, a signal

¹ 47 C.F.R. §§ 76.92(f) and 76.106(a). Although not expressly requested in WVIR-TV's petition for waiver of Sections 76.92(f) and 76.106(a) (significantly viewed exception to cable network nonduplication and syndicated exclusivity), a waiver of Sections 76.122(j) and 76.123(k) (significantly viewed exception to satellite network nonduplication and syndicated exclusivity) would also appertain based on the same showing that a station is no longer significantly viewed in the relevant community; *see* 47 C.F.R. §§ 76.92(f), 76.106(a), 76.122(j) and 76.123(k). *See* 47 U.S.C. §§ 340(a)(2) and 340(c). We also take this opportunity to remind petitioners that, in accordance with Section 76.7(c)(3), petitions should be accompanied by certificate of service showing that affected cable operators, stations and interested persons, including satellite carriers, have been served; 47 C.F.R. § 76.7(c)(3).

²We note that initially Jefferson-Pilot Communications Company of Virginia, licensee of television broadcast station WWBT (Ch. 12), Richmond, Virginia, filed a motion for extension of time to file a response to WVIR-TV's petition. Subsequently, by letter dated August 29, 2005, WWBT elected not to file a response.

³*See* 47 C.F.R. §§ 76.92 and 76.101.

otherwise subject to deletion is exempt from application of the exclusivity rules if it is “significantly viewed” in a relevant community (“the significantly viewed exception”).⁴ The Commission’s rules provide stations such protection within specified geographic zones.⁵ The significantly viewed exception to the exclusivity rules is based on it being established that an otherwise distant station receives a “significant” level of over-the-air viewership in a subject community. If this viewership level is met, the station is no longer considered distant for purposes of the application of the exclusivity rules because it has established that it is viewed over the air in the subject community.

3. In the 2005 Report and Order implementing Section 340 of the Communications Act, the Commission adopted a rule for satellite carriage that mirrors the rules for cable carriage.⁶ Accordingly, the amended Section 76.122(a) and (j) and 76.123(a) and (k) of the Commission’s rules allow a station or distributor with exclusive rights to network or syndicated programming to assert exclusivity protection to require satellite carriers to delete such programming. The duplicating station may respond to such assertions by claiming the significantly viewed exception.⁷ The party asserting exclusivity protection may request a waiver of the significantly viewed exception from the Commission by demonstrating that the station is no longer significantly viewed in a particular community or communities.⁸ If the waiver is granted, the duplicating programming must be deleted by a cable operator or satellite carrier if the station is carried in a community in which the station has been shown to no longer be significantly viewed. It should be noted that the station itself is not removed from the significantly viewed list and may continue to be carried, provided the necessary programming deletions are made.⁹

4. In order to obtain a waiver of the significantly viewed exception to the exclusivity rules, the Commission held in *KCST-TV, Inc.*¹⁰ that 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 over-the-air viewing data, following the methodology set forth in Section 76.54(b) of the Commission’s rules. For each year, the data must be the result of independent professional surveys taken during two one week periods separated by at least 30 days, the viewing samples must be distributed proportionately among the relevant cable communities, and not more than one of the surveys may be taken between April and September of each year.¹¹ 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.¹² For independent stations (*i.e.*, non-network stations), to be considered significantly viewed, Section 76.5(i) of the Commission’s rules requires the survey results should exceed a 2 percent share of

⁴ 47 C.F.R. §§ 76.92(f) and 76.106(a); *see* 47 C.F.R. §§ 76.5(i) and 76.54.

⁵ *See* 47 C.F.R. §§ 73.658 and 76.53.

⁶ *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act*, MB Docket No. 05-49, Report and Order, FCC 05-187 (rel. Nov. 3, 2005) (“*SHVERA Significantly Viewed Report and Order*”).

⁷ 47 C.F.R. §§ 76.122(j)(2) and 76.123(k)(2).

⁸ *See KCST-TV, Inc.*, 103 FCC 2d 407 (1986).

⁹ *See SHVERA Significantly Viewed Report and Order* at ¶¶ 39-41; *see also* 47 U.S.C. § 340(e)(2).

¹⁰ 103 FCC 2d 407 (1986).

¹¹ *See* 47 C.F.R. § 76.54(b).

¹² 47 C.F.R. § 76.5(i).

total viewing hours and a net weekly circulation of 5 percent, by at least one standard error.¹³ The Commission has found that this type of test is applicable as well for waivers of the syndicated exclusivity exemption.¹⁴

5. WVIR-TV seeks a waiver of the significantly viewed exception so that it may enforce its exclusivity rights against television broadcast stations WWBT, Richmond, Virginia and WRC-TV, Washington, D.C., for communities served by several Adelphia cable systems.¹⁵ WWBT is considered to be significantly viewed in Albemarle and Madison Counties, located in the Charlottesville, Virginia designated market area (“DMA”) and in Rockingham County, located in the Harrisonburg, Virginia DMA. WRC-TV is considered to be significantly viewed in Madison County.¹⁶

III. DISCUSSION

6. WVIR-TV states that it would normally have exclusivity rights for NBC programming in the Charlottesville and Harrisonburg DMAs, but is prevented from asserting those rights against WWBT and WRC-TV in the subject communities because both are considered to be significantly viewed in the counties in which the system communities are located.¹⁷ WVIR-TV asserts, however, that WWBT and WRC-TV no longer meet the significantly viewed standard in the subject communities and, as proof, it submits the results of a special, system-specific significantly viewed study prepared by Nielsen Media Research.¹⁸

7. We reject WVIR-TV’s showing because it does not satisfy Section 76.54(b)’s proportionality requirement for system-specific surveys.¹⁹ If a cable system serves more than one community, a petitioner may elect to submit a system-specific survey, as is the case here. However, Section 76.54(b) requires that “[i]f a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population.”²⁰

8. In the case herein, WVIR-TV identifies five “integrated” cable systems: 1) UCA, L.L.C., Debtor-In-Possession (D-I-P) and Chelsea Communications, LLC (both PSID #004062) serving Charlottesville (VA0039), Crozet (VA0202), and the unincorporated areas of Albemarle County

¹³ *Id.*

¹⁴ *See Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640 (1990).

¹⁵ Petition at 1. WVIR-TV states that WWBT is carried on the following cable systems: Albemarle County, Virginia – 1) Charlottesville, Crozet, unincorporated areas of Albemarle County, and 2) Unincorporated areas of Albemarle County; Madison County, Virginia – 1) Madison, unincorporated areas of Madison County; Rockingham County -- 1) Rockingham County (includes Harrisonburg), 2) Grottoes, unincorporated areas of Rockingham County. WRC-TV is carried on the Madison County cable system serving Madison and the unincorporated areas of Madison County.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3. WVIR-TV states that both WWBT and WRC-TV achieved their significantly viewed status by their inclusion in Appendix B to the *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 378 (1972).

¹⁸ *Id.* at 3 and Exhibit 2.

¹⁹ 47 C.F.R. § 76.54(b).

²⁰ 47 C.F.R. § 76.54(b).

(VA0075); 2) Chelsea Communications LLC (PSID #013595) serving the unincorporated areas of Albemarle County (VA0544); 3) Adelpia GS Cable LLC (PSID #014388) serving Town of Madison (VA0515) and the unincorporated areas of Madison County (VA0604); 4) UCA, L.L.C. D-I-P (PSID #003729) serving Rockingham County (includes Harrisonburg) (VA0036); and 5) UCA, L.L.C. and Chelsea Communications, LLC, D-I-P (PSID #001791) serving the Town of Grottoes (VA0218) and the unincorporated areas of Rockingham County (VA0635).²¹ Although WVIR-TV provides information regarding the total number of diaries from the relevant zip codes in each county and the number of diaries from each zip code in each of the two years, it failed to provide information regarding the population and sample for each community. As a result, we cannot determine whether each community is properly represented in the sample.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, that the petition filed by Virginia Broadcasting Corp. **IS DENIED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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²¹See Petition at Exhibit 1.

²²47 C.F.R. §0.283.