

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

In the Matter of	)	
	)	
WTVG, Inc. and	)	CSR-7024-N
WUPW Broadcasting, LLC	)	CSR-7853-N
	)	
Petitions for Waiver of Section 76.92(f)	)	
of the Commission's Rules	)	

**ORDER**

**Adopted: August 27, 2010**

**Released: August 27, 2010**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In two Orders issued on the same day,<sup>1</sup> the Media Bureau found that two Detroit, Michigan-area stations are no longer significantly viewed in the city of Toledo, Ohio, and as a result granted two Toledo-area stations authority to enforce their network exclusivity rights on cable and satellite systems in the subject community of Toledo, Ohio. Both waivers were opposed by Buckeye Cablevision, Inc. (“Buckeye”),<sup>2</sup> operator of a Toledo-area integrated cable system that carries both of the Detroit stations as well as both of the Toledo stations.<sup>3</sup> Buckeye has filed Requests for Stay and Applications for Review in response to our rulings.<sup>4</sup> The Toledo stations have filed Oppositions to these petitions.<sup>5</sup> Because Buckeye’s arguments run largely parallel in these two cases, we have consolidated

<sup>1</sup> *WTVG, Inc. Petition for Waiver of Section 76.92(f) of the Commission's Rules*, CSR-7024-N, Memorandum Opinion and Order, DA 10-459 (rel. March 18, 2010) (“WTVG Order”), *WUPW Broadcasting, LLC. Petition for Waiver of Section 76.92(f) of the Commission's Rules*, CSR-7853-N, Memorandum Opinion and Order, DA 10-460 (rel. March 18, 2010) (“WUPW Order”) (collectively, the “Toledo Orders”).

<sup>2</sup> Buckeye also sought, in the alternative, waivers of the requirement for it to provide non-duplication protection to the Toledo stations. WTVG Order at 1; WUPW Order at 1. There is some dispute about whether Buckeye made proper waiver requests, but we find that the parties had sufficient notice. WTVG, Inc. Opposition to Request for Stay at note 29 (filed April 28, 2010) (“WTVG Opposition”). *See infra* § III.A.4.

<sup>3</sup> Buckeye Opposition to WTVG Petition for Special Relief (filed June 19, 2006) (“Buckeye Opposition to WTVG”) and Buckeye Opposition to WUPW Petition for Special Relief (filed May 1, 2008) (“Buckeye Opposition to WUPW”).

<sup>4</sup> Buckeye Request for Stay of WTVG Order (filed April 19, 2010) (“WTVG Request”), Buckeye Application for Review of WTVG Order (filed April 19, 2010) (“WTVG Application”); Buckeye Request for Stay of WUPW Order (filed April 19, 2010) (“WUPW Request”), Buckeye Application for Review of WUPW Order (filed April 19, 2010) (“WUPW Application”).

<sup>5</sup> WTVG Opposition, WTVG, Inc. Opposition to Application for Review (filed May 12, 2010) (“WTVG Opposition to Review”); WUPW Broadcasting, LLC Opposition to Request for Stay (filed April 26, 2010) (“WTVG Opposition”), WUPW Broadcasting, LLC Opposition to Application for Review (filed May 12, 2010) (“WUPW Opposition to Review”). Buckeye also filed Replies to the Oppositions to the Requests for Stays; pursuant to 47 C.F.R. § 1.45(d), these improper filings are not included in the record of this proceeding and were not considered in resolving the Requests for Stay.

them in this Order resolving the Requests for Stay.<sup>6</sup> For the reasons discussed below, we deny Buckeye's stay petitions.

## II. BACKGROUND

2. WTVG, Inc., licensee of WTVG-DT, Toledo, Ohio, an ABC affiliate ("WTVG"), asked the Commission to waive the significantly viewed status of WXYZ-TV, a Detroit, Michigan, ABC affiliate ("WXYZ"), in the City of Toledo. Similarly, WUPW Broadcasting, LLC, licensee of WUPW-DT, Toledo, Ohio, a FOX affiliate ("WUPW"), asked the Commission to waive the significantly viewed status of WJBK-DT, a Detroit, Michigan, FOX affiliate ("WJBK"), in the same community. Waiver of significantly viewed status would allow the Toledo stations to enforce their exclusivity rights against the Detroit stations in Toledo. Buckeye opposed the petitions of both WTVG and WUPW (the "Toledo Stations"),<sup>7</sup> arguing that the petitions were flawed on their face, that they were contrary to Commission rules, and that compliance with the proposed waivers would be technically infeasible due to the alleged exorbitant costs required. The Bureau considered and rejected each of Buckeye's claims, and granted the requested waivers to the Toledo stations.<sup>8</sup> Buckeye filed Applications for Review of the decisions with the Commission,<sup>9</sup> and sought a stay of the Toledo Orders pending the Commission's decision.<sup>10</sup>

## III. DISCUSSION

3. In evaluating a request for a stay, the Commission and the courts generally consider the following four factors: (i) whether the complainant is likely to prevail on the merits of its complaint; (ii) whether the complainant will suffer irreparable harm absent a stay; (iii) whether grant of a stay will not substantially harm other interested parties; and (iv) whether the public interest favors grant of a stay.<sup>11</sup> As the moving party, Buckeye has the burden of proof in support of the stay,<sup>12</sup> and no single factor is necessarily dispositive.<sup>13</sup> We conclude that Buckeye has failed to satisfy its burden.

### A. Likelihood of Success on the Merits

4. Buckeye raises four major arguments to support its contention that that it will prevail on the merits in its Application for Review, and suggests a number of errors in the Toledo Orders. We hold that Buckeye is not likely to succeed based on any of these arguments.

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<sup>6</sup> Where case-specific questions arise, we consider them independently.

<sup>7</sup> Buckeye Opposition to WTVG, Buckeye Opposition to WUPW. WXYZ also initially opposed the WTVG petition, on grounds similar to those of Buckeye, but has not joined Buckeye in its appeal of the Bureau decision or filed an independent Application for Review. Channel 7, Inc. Opposition to Petition for Special Relief (filed June 19, 2006). WJBK did not oppose the original WUPW petition, and has in fact expressed a willingness to accept some loss of carriage outside of Toledo if necessary for Buckeye to comply with the WUPW waiver decision. WUPW Opposition to Request for Stay at Appendix A.

<sup>8</sup> See *supra*, note 1.

<sup>9</sup> WTVG Application, WUPW Application.

<sup>10</sup> WTVG Request, WUPW Request.

<sup>11</sup> See, e.g., *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("*Virginia Petroleum Jobbers*"); see also *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977) (clarifying the standard set forth in *Virginia Petroleum Jobbers*); *Hispanic Information and Telecomm. Network, Inc.*, 20 FCC Rcd. 5471, 5480, ¶ 26 (2005).

<sup>12</sup> See *Amendment of Part 22 of the Commission's Rules*, Order, 8 FCC Rcd. 5087, ¶ 2 (1993).

<sup>13</sup> *AT&T Corp. v. Ameritech Corp.*, File No. E-98-41, Memorandum Opinion and Order, 13 FCC Rcd. 14508 at 14515-16 (1998) ("*AT&T*").

### 1. The Toledo Stations' Reliance on Nielsen Data was Appropriate

5. Buckeye argues that the Nielsen data submitted by the Toledo stations did not “accurately measure[] broadcast viewing habits in Toledo,” and raises a variety of arguments against the validity of the data.<sup>14</sup> WTVG states that “[a]ll of these factual matters were thoroughly raised by Buckeye in its Opposition [to the original waiver request] and deliberately considered by the Bureau.”<sup>15</sup> Buckeye attempts to magnify several small issues, such as a mathematical error made but corrected by WTVG and the use of certain non-residential ZIP codes by both Toledo stations.<sup>16</sup> All of the issues now re-raised by Buckeye were fully addressed in the Toledo Orders, and Commission analysis indicated that any limitations in the data were unlikely to “measurably affect the statistical results.”<sup>17</sup> As to the presentation of the data, as WUPW observed, it was in each case “prepared by Nielsen using its established and industry standard methodology.”<sup>18</sup> Indeed, as the Bureau noted in the Toledo Orders, the data’s presentation was “consistent with the Commission’s well-established precedent for such submissions,”<sup>19</sup> and Buckeye offers no example where the Commission found similar Nielsen data insufficient. Consequently, we are not persuaded that Buckeye is likely to succeed based on this argument.

### 2. This Is An Inappropriate Venue To Argue For Revision Of The Commission’s Rules Regarding Significantly Viewed Stations

6. Buckeye briefly restates its argument that the Commission’s rules in this area, as applied by the Media Bureau, have led to outcomes so flawed that they should be changed.<sup>20</sup> In the instant cases, Buckeye was an opposing party, asking the Commission to change well-established rules in order to deny waivers to stations which applied under those rules. It is now arguing that the initial failure of the Bureau to do so constitutes grounds for reversal. WTVG argues that “the appropriate venue for the Commission to address these concerns is in a rulemaking proceeding as opposed to the instant adjudicatory proceeding.”<sup>21</sup> The Bureau agreed in the WUPW Order, noting that Buckeye’s arguments “raise issues beyond the scope of this” proceeding.<sup>22</sup> Here, again, Buckeye has offered nothing new to persuade us that this is an appropriate venue to revise our rules, or that it is likely to persuade the Commission, on review, that this argument is enough to reverse the Bureau’s decision.

### 3. Buckeye’s Technical Submissions Do Not Support A Waiver Of Its Non-Duplication Obligations

7. Buckeye states that, in both cases, it sought a waiver from the requirement to provide non-duplication protection to the Toledo stations even if their requested waivers were granted,<sup>23</sup> and that

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<sup>14</sup> WUPW Request at 12-18, WTVG Request at 12-18.

<sup>15</sup> WTVG Opposition at 6.

<sup>16</sup> WTVG Request at 13-14, 15, WUPW Request at 12-14.

<sup>17</sup> WUPW Order at ¶ 17, WTVG Order at ¶ 15.

<sup>18</sup> WUPW Opposition at 10-11 (internal citations omitted).

<sup>19</sup> WUPW Order at ¶ 15, WTVG Order at ¶ 17.

<sup>20</sup> WUPW Request at 18-19, WTVG Request at 19.

<sup>21</sup> WTVG Opposition at 4. *See also*, WUPW Opposition at 5.

<sup>22</sup> WUPW Order at note 97.

<sup>23</sup> Procedural issues, including those involving Buckeye’s requests for waiver, are discussed below. For the purposes of this Order, we will consider Buckeye’s requests for waiver to have been properly filed.

in each case “the Bureau’s *de facto* denial of Buckeye’s waiver request is incompatible with the Commission’s precedent and the record evidence.”<sup>24</sup> Buckeye argues that it “provided more than enough evidence to demonstrate that it would be cost-prohibitive to provide exclusivity in the Toledo-only portion of the cable system.”<sup>25</sup> The Bureau disagreed, noting that Buckeye had “merely introduced a laundry list of costs” without the information necessary to “evaluate its engineering analysis,” leaving us unable to independently verify that list of costs.<sup>26</sup> The Oppositions of the Toledo stations note that Buckeye’s Requests for Stay simply reiterate the technical and cost arguments made in their Oppositions to the initial waiver requests, and provide little or no information responsive to the Bureau’s concerns.<sup>27</sup> Indeed, Buckeye’s filings present a significant lack of clarity, exacerbated by a simultaneous absence of certain relevant information and a contradictory profusion of other data.<sup>28</sup> For these reasons, we do not find that Buckeye’s arguments for waiver indicate a likelihood that it will prevail on the merits in its Application for Review.

8. *Burden of Proof.* It is rare for the Commission to grant a waiver of program exclusivity rules based on the expense of compliance.<sup>29</sup> In support of the premise that a stay based on expense is appropriate, Buckeye cites repeatedly to the Commission’s decision in *Continental Cablevision*.<sup>30</sup> The waiver request in that case was unopposed by the affected broadcasters, and was granted primarily due to the small number of subscribers affected – a few hundred, representing less than 5 percent of the system’s subscribers. The Commission emphasized that the burden of proof for similar waivers would be high due to the importance of “the policies underlying the Commission’s exclusivity rules.”<sup>31</sup> The waivers requested here are strongly opposed by the potentially affected stations, and would affect over 50 percent

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<sup>24</sup> WUPW Request at 20, WTVG Request at 20.

<sup>25</sup> WUPW Request at 24, WTVG Request at 24.

<sup>26</sup> WUPW Order at ¶ 18, WTVG Order at ¶ 19.

<sup>27</sup> WUPW Opposition at 14, WTVG Opposition at 10, 12-15.

<sup>28</sup> For example, Buckeye is evidently currently filtering two Detroit stations, WDIV in Toledo and WJBK in Wood County, without difficulty or unusual expense, but has made no effort to distinguish the instant cases from those situations. WTVG Opposition at 14, Exhibit A, WUPW Opposition at 16. Furthermore, the engineering analyses filed in support of Buckeye’s position in the two cases contain contradictory and inconsistent data that are not explained simply by the passage of time between the two filings. For example, power supplies, “General/Spare” hubsite electronics, and “Engineering Services and Fees” make up almost a quarter of the anticipated costs to comply with the WUPW Order, while making up less than 1% of Buckeye’s anticipated WTVG compliance costs. WUPW AFE Sheet, Hubsite Worksheet. In addition, Buckeye has not provided a detailed topology of its system, which is needed in order to understand how its hubs and nodes relate to the borders of the City of Toledo.

<sup>29</sup> See, e.g., *Complaint of Greater Dayton Public Television against TCI Cablevision of Ohio*, CSR-4168-M, etc., Memorandum Opinion and Order, 10 FCC Rcd. 1048 (1995) (cable system failed to demonstrate how expected costs of compliance would substantially impact the cable system); *Golden Orange Broadcasting Co. v. AT&T Broadband*, CSR-5844-M, Memorandum Opinion and Order, 18 FCC Rcd. 4985 (2003) (insufficient substantiation of costs). But see, *Eastern Connecticut Cable Television, Inc., East Lyme And Montville, Connecticut, Petition for Special Relief*, CSR-607, -608, Memorandum Opinion and Order, 64 F.C.C.2d 563 (1977) (providing a waiver of the non-duplication requirements, due to the excessive costs of immediate compliance, but only for 36 months).

<sup>30</sup> *Continental Cablevision of Ohio, Inc.*, CSR-3341 and -3348, Memorandum Opinion and Order, 7 FCC Rcd. 499 (1992).

<sup>31</sup> *Id.* at ¶ 7 (Internal citations omitted).

of the subscribers served by Buckeye.<sup>32</sup> Based on the record as it stands, Buckeye has not met its burden of showing that it is likely to prevail and be granted the waivers it is seeking.

9. Buckeye also touches briefly on issues and problems it might face if, rather than rebuilding its system, it limited or eliminated access to the Detroit stations for some subscribers in areas where those stations are significantly viewed.<sup>33</sup> Although Buckeye states that this approach would require dropping the Detroit stations or their network programming “throughout the cable system,” this appears to be inaccurate.<sup>34</sup> As Buckeye has itself described, the majority of the system’s hubs provide programming to areas totally outside of Toledo, and are unaffected by these decisions.<sup>35</sup> WTVG argues in its Opposition that, although Buckeye’s system design decisions may cause some disruption of viewing patterns even outside of Toledo, the exclusivity rules cause viewer disruption by their very nature.<sup>36</sup>

#### 4. Minor Procedural Problems Do Not Justify Dismissal In This Case

10. WTVG neglected to provide notice to all required parties when filing its initial waiver petition,<sup>37</sup> but the Bureau held that under the circumstances of this case, WTVG’s service to Buckeye and WXYZ, combined with the public notice released by the Commission, ensured that the necessary parties

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<sup>32</sup> WUPW Application at 23 and note 118. *But see* WTVG Application at 23 and note 119 (although Buckeye provides conflicting information about its total number of subscribers, it consistently claims that 71,021 of them reside in Toledo).

<sup>33</sup> Buckeye also raises a number of new arguments in passing and with limited substantiation. First, the system argues that application of the Toledo Orders would result in infringement of its Constitutional speech rights under the First Amendment. WUPW Request at 26, WTVG Request at 27. But, as WUPW correctly observes, Buckeye has no First Amendment right to retransmit copyrighted material to which another station has an exclusive right. WUPW Opposition at 16-17 (citing, generally, *United Video, Inc. v. FCC*, 890 F.2d 1173 (D.C. Cir. 1989)). Buckeye’s other arguments are, as WTVG notes, not timely filed, but we address them briefly. WTVG Opposition at 15. The system states in passing that dropping only the network programming of the Detroit stations from areas where they are significantly viewed would result in “massive copyright liability.” WUPW Request at 24, WTVG Request at 25. In support of this statement Buckeye cites only to 17 U.S.C. Section 111. WUPW Request at 3, WTVG Request at 3. In part, Section 111 looks to the Commission’s rules to determine eligibility, and Buckeye has certainly not shown that compliance with our decision in the Toledo Orders would place it in violation of our rules. Buckeye also argues that compliance would result in breach of its contracts for carriage of the Detroit stations. WUPW Request at 24, WTVG Request at 25. At least as regards WJBK, WUPW has offered evidence that not only would such carriage not constitute a breach of contract in the eyes of that Detroit station, but that Buckeye made no effort to verify its breach-of-contract claim before making it to the Commission. WUPW Opposition at Appendix A. As regards WXYZ, Buckeye offers no evidence in support of its claimed concerns. Furthermore, WXYZ itself, filing in opposition to the original WTVG waiver petition, provided no indication that it was concerned about breach of contract, even though it expressly recognized the likelihood that the WTVG waiver would result in loss of the WXYZ signal in areas outside of the City of Toledo. WXYZ Opposition to Petition for Special Relief of WTVG at 4-5 (filed June 19, 2006). As with its other arguments, we conclude that Buckeye is unlikely to prevail on these grounds before the Commission.

<sup>34</sup> WUPW Request at 24, WTVG Request at 25.

<sup>35</sup> WUPW Request at 21, WTVG Request at 22.

<sup>36</sup> WTVG Opposition at 12 (citing *KSWB, Inc.*, CSR-5106-N and -5189-N, Memorandum Opinion and Order, 13 FCC Red. 21867, at 21868 (1998)).

<sup>37</sup> WTVG Reply to Oppositions to Petition for Special Relief Filed by Buckeye Cablevision, Inc. and Channel 7, Inc. at 7 (filed July 12, 2006).

were notified.<sup>38</sup> Buckeye argues that this decision constitutes prejudicial error, and should be fatal for WTVG.<sup>39</sup> WTVG responds that Buckeye was not itself prejudiced by the station's failing.<sup>40</sup> In addition to the public notices in these cases, all parties have been served with Buckeye's petitions for stay and for review, as well as with the responses of the Toledo stations. All interested or potentially interested parties have had ample opportunity to become aware of these disputes and fully participate in the proceedings. Like Buckeye's other arguments, this one does not appear to have a high likelihood of success on the merits.

## B. Other Factors

11. As noted above, the Commission also considers factors beyond the likelihood of success when determining whether to grant a Stay. Commonly, they include: the likelihood of irreparable harm to the complainant; the likelihood of substantial harm to other interested parties; and the public interest. Upon consideration, we find that Buckeye has not met its burden of proof on these factors, and that they do not weigh strongly in favor of the stay.

12. *Irreparable Harm To The Complainant.* As discussed above,<sup>41</sup> Buckeye's claims of technical impossibility have not been sufficiently validated to serve as the basis for a successful claim of irreparable harm. In further support of its claim of irreparable harm, Buckeye points to, for example, the loss of duplicative network programming by some subscribers.<sup>42</sup> Such losses, if any, can be expected to fall more heavily on the subscribers themselves than on Buckeye, and are more properly considered under the fourth factor.

13. *Substantial Harm To Other Interested Parties.* The only interested parties potentially exposed to harm by grant of the stay are WTVG and WUPW. Despite this, neither Toledo station identifies specific harms it would or might suffer as a result of the grant of the stay.<sup>43</sup> They do, however, emphasize the resulting continued loss of the exclusivity protection for which they bargained and to which they are entitled under the law. The Commission has made clear that exclusive programming rights are an essential element of the broadcast system, worthy of protection and valuable to their holders.<sup>44</sup> Buckeye has not shown that these rights are any less valuable in these cases, or that the Toledo stations would not be substantially harmed as a result of their loss.

14. *Public Interest.* Buckeye argues in its Requests for Stay that the public interest weighs

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<sup>38</sup> WTVG Order at ¶ 16 (citing *Pappas Television, Inc.*, 51 F.C.C.2d 745 (1975); *Fresno Cable TV*, 48 F.C.C. 2d 116 (1977)).

<sup>39</sup> WTVG Request at 11-12; *see also*, Buckeye Notice of Supplemental Authority (filed May 21, 2010).

<sup>40</sup> WTVG Opposition at 11; *see also*, WTVG Response to Notice of Supplemental Authority (filed June 7, 2010). WTVG notes that Buckeye itself failed to comply with the Commission's procedures when it sought waivers of the requirement to honor the exclusivity requests of the Toledo stations. WTVG Opposition at note 29. Specifically, Buckeye did not file a Special Relief Petition, did not serve notice of its request on the required parties, and did not pay the required filing fee. 47 C.F.R. §§ 1.1104, 76.7.

<sup>41</sup> Section III.A.3, *supra*.

<sup>42</sup> WUPW Request at 24-28, WTVG Request at 25-29. Buckeye does not intend to reconfigure its system, but instead plans to drop the Detroit stations, temporarily if necessary, to comply with Commission rules pending resolution of the Applications for Review. WUPW Request at 24, WTVG Request at 25.

<sup>43</sup> *See generally*, WUPW Opposition at 17-18, WTVG Opposition at 16.

<sup>44</sup> *Amendment Of Subpart F Of Part 76 Of The Commission's Rules And Regulations, etc.*, Docket Nos. 19995, 18785, First Report and Order, 52 F.C.C.2d 519 at ¶ 18 (1975) ("*Exclusivity Order*").

“heavily” in favor of a stay, but provides little evidence of that.<sup>45</sup> The Orders only have a necessary impact on viewers in the city of Toledo, where the Detroit stations are not significantly viewed. Some few Buckeye subscribers<sup>46</sup> may lose their preferred source of network programming, but in adopting the exclusivity rules, the Commission found that the public interest supported their application in situations just such as this.<sup>47</sup> Buckeye’s system design and its choices about how to comply with the Orders may result in loss of the Detroit signals outside of Toledo, or other harms, but these outcomes are not a result of the Orders. Furthermore, the public as a whole has an interest in local station viability,<sup>48</sup> and, in virtually all cases, any lost network programming will be available to Buckeye subscribers from the Toledo stations. Buckeye’s other arguments address not the public interest, specifically, but the substantive merits of its case, which are discussed above. At best, we conclude that the public interest does not weigh in Buckeye’s favor.

15. Given that, on balance, the four factors weigh against the petitioner, we conclude that Buckeye has failed to satisfy its burden of demonstrating that a stay is warranted. Although grant of the stay would avoid some disruption to Buckeye’s customers, the balance of harms does not tip sharply in the cable system’s favor, and Buckeye has not met its burden of demonstrating a likelihood of success on the merits of its complaint.<sup>49</sup> Under judicial and Commission precedent, therefore, Buckeye has not justified grant of its stay requests, and we deny both of Buckeye’s petitions to stay.

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, that the Buckeye Request for Stay of the Bureau’s decision in DA 10-459 **IS DENIED**.

17. **IT IS FURTHER ORDERED** that the Buckeye Request for Stay of the Bureau’s decision in DA 10-460 **IS DENIED**.

18. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>50</sup>

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>45</sup> WUPW Request at 29, WTVG Request at 29.

<sup>46</sup> The Nielsen Company, 2009 County Coverage Study, County Summary (reflecting extremely low cable viewership of the Detroit stations in the Ohio counties served by Buckeye).

<sup>47</sup> See generally *Exclusivity Order*, supra note 44.

<sup>48</sup> See, e.g., *Amendment Of Part 74, Subpart K, Of The Commission's Rules And Regulations, etc.*, Docket Nos. 18397, etc., Cable Television Report and Order, 36 F.C.C.2d 141 at note 32 (1972).

<sup>49</sup> See generally *Virginia Petroleum Jobbers, et al*, supra note 12; see also, *AT&T*, supra note 13.

<sup>50</sup> 47 C.F.R. §0.283.