

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

In the Matter of)	
)	
Catamount Broadcasting of Chico-Redding, Inc. and Chico License LLC, Chico, California)	CSR-8782-N Docket No. 13-107
)	
Petition For Waiver of Sections 76.92(f), 76.106(a), 76.122(j), and 76.123(k) of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: August 16, 2013

Released: August 16, 2013

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On April 5, 2013, Catamount Broadcasting of Chico-Reading, Inc., licensee of CBS affiliate KHSL-TV, and Chico License L.L.C., licensee of NBC affiliate KNVN(TV), both of Chico, California, filed a petition to request a waiver in Chico of the significantly viewed status of KOVR(TV) (CBS), Stockton, California and of KCRA-TV (NBC), Sacramento, California.¹ The grant of this waiver would allow Petitioners to assert their stations' network non-duplication and syndicated exclusivity rights and thereby delete on cable and satellite systems serving the community of Chico, any KCRA and KOVR programming which duplicates programs aired on KNVN and KHSL. Without such a waiver, the significantly viewed status of KCRA and KOVR grants them an exception to the rights these exclusivity rules provide to KNVN and KHSL.² No oppositions have been filed in response to the Petition,³ and for the reasons discussed below, we grant Petitioners' waiver request.

¹ Petition for Special Relief by Catamount Broadcasting and Chico License, L.L.C., filed April 5, 2013 ("Petition"). GOCOM Media and K4 Media, the assignees of KHSL and KNVN, respectively, joined in the petition with the intention of pursuing the same requested relief once they had become licensees of the stations. *See* Petition at 1, n.1. Subsequently, GOCOM Media of Northern California LLC ("GOCOM"), became the licensee of KHSL, and K4 Media Holdings LLC ("K4 Media"), became the licensee of KNVN (the "Petitioners"), and these successors in interest filed a supplemental pleading. *See* Supplement to Petition for Special Relief by GOCOM and K4 Media, at 1 & n.1, filed Aug. 9, 2013 ("Supplement").

² Petitioners seek a waiver of the exclusivity rules applicable to both cable and DBS systems, *see* Petition at 1, n.2., and the same showing for cable – that a station is no longer significantly viewed in the relevant community under Sections 76.92(f) and 76.106(a) (with respect to cable systems), is also effective for obtaining a waiver under Sections 76.122(j) and 76.123(k) (with respect to DBS systems). *See* 47 C.F.R. §§ 76.92(f), 76.106(a), 76.122(j), and 76.123(k).

³ The petition was placed on Public Notice on April 29, 2013, initially numbered as CSR-8782-S. By Public Notice on May 20, 2013, its designation was corrected and its number changed to CSR-8782-N.

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.⁴ Under Sections 76.92(f) and 76.106(a) of the Commission's rules, however, a signal otherwise subject to deletion is exempt from application of both the network nonduplication and syndicated exclusivity rules if it is "significantly viewed" in a relevant community (the "significantly viewed exception").⁵ Section 75.5(i) of our rules, defines a "significantly viewed" network station as one that is viewed in over-the-air households such that it achieves a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent.⁶ Furthermore, to demonstrate such audience levels, Section 76.54(b) states that a petitioner may submit

an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level.

If this viewership level is met, the station is deemed to be significantly viewed and is no longer considered distant for purposes of the application of the network nonduplication and syndicated exclusivity rules; it is subject to the significantly viewed exception to these rules.⁷

3. To obtain a waiver of this exception with respect to certain communities or cable systems, the Commission held in *KCST-TV, Inc.* that a petitioner 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 same methodology set forth in Section 76.54(b), above.⁸ To ensure that the reported audience does not exceed the levels required to demonstrate significantly viewed status – at least a 3 percent share (total week hours) and at least a 25 percent cume (net weekly circulation) – one standard error is added to both the station's share of the total weekly viewing hours and its net weekly circulation share. If the results of these calculations do not exceed the share of viewing hours and net weekly circulation levels required by Section 76.5(i), then we must conclude the station is no longer considered significantly viewed.

4. Since the Commission's decision in *KCST-TV*, the methodology required by Section 76.54(b) of the rules has evolved pursuant to case law and market realities. Over time, The Nielsen Company ("Nielsen") became the primary surveying organization through which a petitioner could obtain television surveys. Nielsen, which routinely surveys television markets to obtain television stations' viewership, conducts four-week audience surveys four times a year (*i.e.*, February, May, July and November "sweep periods"). The Bureau has found that replacing each week required under *KCST-TV*

⁴ See 47 C.F.R. §76.92(a) *et seq.*; 47 C.F.R. §76.101.

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

⁶ See 47 C.F.R. 76.5(i).

⁷ See 47 C.F.R. §§ 76.92(f) and 76.106(a).

⁸ *KCST-TV, Inc.*, 103 FCC 2d 407, 413 ¶ 11 (1986). Although *KCST* explicitly dealt with a station obtaining a waiver of the significantly viewed exception to the network nonduplication rule, the Commission has found that this test is equally applicable to such waivers of the syndicated exclusivity exemption. *See Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5640-41 ¶ 6 (1990).

with a sweep period is acceptable and, if anything, adds to the accuracy of the audience statistics because of the increased sample size.⁹ Accordingly, a petitioner may submit the results from two sweep periods in each year. For use in exclusivity waivers, a petitioner may purchase survey data from Nielsen on either a community-specific or system-specific basis.¹⁰ In order to produce the data required for exclusivity waivers, Nielsen re-tabulates the over-the-air data that it collects for its routine audience sweep periods, selecting in-tab diaries from its database from the area served by a cable system or an individual cable community.¹¹ Petitioner is obligated to notify interested parties prior to the purchase of such data, pursuant to the requirements set forth in Section 76.54(c) of the Commission's rules.¹²

5. Finally, we note that the manner in which surveys based on sweep periods are averaged, remains the same as for weekly surveys.¹³ A petitioner may therefore submit the average of two sweep periods for each year. If, however, a petitioner submits more than two sweep periods, in addition to the average or combined audience shares for the year, it must also include the separate sweep data for each individual sweep period used. This ensures that the reported audience results data are not skewed by the choice of sweep periods.

III. DISCUSSION

6. As described above, Petitioners seek a waiver of KCRA and KOVR's significantly viewed status in Chico, California, to reinstate KHSL and KNVN's exclusivity rights in Chico. Petitioners have submitted community-specific data from the Nielsen Company to demonstrate that these stations are no longer significantly viewed in Chico.¹⁴ The submitted audience statistics are the result of two separate

⁹ Although, in general, petitioners are prohibited from using two surveys between April and September (*i.e.*, May or July sweeps), we have not ruled out a petitioner providing all sweeps in a year where more than two are submitted. *See WTNH Broadcasting, Inc. and K-W TV, Inc.*, 16 FCC Rcd 6781, 6784 ¶ 7 (CSB 2001) (Bureau did not reject the petition because of the inclusion of both May and July data, but only concluded that, in such a case, it would be necessary to provide individual survey period results so that it could determine the effect of these sweeps periods).

¹⁰ It should be noted that Nielsen identifies individual communities by zip codes, a process not incompatible with the surveying process discussed here.

¹¹ We expect petitioners who commission such data to include, along with the survey data itself, a description of the procedures used to re-tabulate the data, which database is being used, what communities (or zip codes) are covered, the station(s) surveyed, and time periods covered. Because Nielsen routinely provides this information in a cover letter along with its survey data, it is most helpful if this letter is included. In this way there is no doubt that the data provided was obtained from Nielsen. *See e.g., Radio Perry, Inc.*, 11 FCC Rcd 10564, 10568-9 ¶ 10 (1996); *Gulf-California Broadcast Company*, 21 FCC Rcd 3476, 3479-80 ¶ 8 (2006). We further suggest that the petitioner make it clear that the data they are submitting, along with the description of methodology, are as agreed on between the petitioner and Nielsen.

¹² 47 C.F.R. § 76.54(c). Section 76.54(c) states that "[n]otice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least 30 days prior to the initial survey period."

¹³ Section 76.54(b) states that "[i]f two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing levels. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level."

¹⁴ Descriptions of methodology and the survey data re-tabulated for this request are provided in the Petition, Exh. 2 & Supplement, Exh. 1. In addition, the Petitioners sent letters describing their methodology for conducting the
(continued...)

community-specific re-tabulations of Nielsen's audience data based on non-cable/non-ADS homes located in the six zip codes comprising Chico.¹⁵ The submitted data are averages for two-four week audience sweep periods in each of two years. The first year survey's audience estimates are derived from Nielsen's February 2011 and July 2011 audience sweep data and the second year estimates are based on February 2012 and July 2012 data.¹⁶ The following tables show for each of the two stations for which the waiver is requested the number of in-tab households used to derive the audience estimates, the share of total viewing hours, the standard error for the share of total viewing hours, the net weekly circulation share, and the standard error for the net weekly circulation share.¹⁷

TABLE 1 – KOVR(TV) VIEWING IN CHICO

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 11/July 11	42	0.00	0.00	0.00	0.00
Feb. 12/July 12	49	0.06	0.06	1.03	1.04

TABLE 2 – KCRA-TV VIEWING IN CHICO

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 11/July 11	42	0.05	0.05	2.14	2.14
Feb. 12/July 12	49	0.00	0.00	0.00	0.00

7. We find the Petitioners have made the requisite showing to support their petition. The survey dates they provide and the method they used to combine audience surveys are consistent with the requirements of the Commission's rules and precedent.¹⁸ Petitioners have provided community-specific survey results for Chico, California for two survey periods in each of two years. The submitted data show that neither KCRA nor KOVR attain a sufficient measurable audience, either in terms of total weekly viewing hours or net weekly circulation share, needed to demonstrate significantly viewed status in the community of Chico, California.¹⁹

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surveys to all relevant parties pursuant to Section 76.54(c). See Petition, Exh. 1. They state no party objected to the proposed surveys. Petition at 5.

¹⁵ See Supplement at 2-3 & Exh. 1. The zip codes used to identify Chico are: 95926, 95927, 95928, 95929, 95973, and 95976. See *id.* & Exh. 1; *infra* n.19.

¹⁶ See *id.* & Exh. 1. Petitioners also submitted average audience estimates derived from Nielsen's July 2011 and November 2011 audience sweep data for the first year and July 2012 and November 2012 audience sweep data for the second year. See *id.* & Exh. 1.

¹⁷ See *id.* & Exh. 1.

¹⁸ See 47 C.F.R. § 76.54(b); see also *KCST-TV, Inc.*, 103 FCC 2d 407, 413 ¶ 11 (1986).

¹⁹ As noted above, Section 76.5(i) of the Commission's rules requires that for network stations such as KCRA and KOVR to be considered significantly viewed, their survey results should exceed a 3 percent share of total viewing (continued...)

8. Accordingly, **IT IS ORDERED**, that the petition filed by Catamount Broadcasting of Chico-Reading, Inc., and Chico License Licensee L.L.C., **IS GRANTED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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hours and a net weekly circulation of 25 percent, by at least one standard error. *See* 47 C.F.R. § 76.5(i). The submitted data show that neither station achieved this level of viewership in the Feb./July periods analyzed. We also note that the additional July 2011/Nov. 2011 and July 2012/Nov. 2012 data which Petitioners submitted, but which we did not discuss as part of our analysis, also demonstrates that KCRA and KOVR are no longer significantly viewed in Chico.

²⁰ 47 C.F.R. §0.283.