

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

In the Matter of)	
)	
Gray Television Licensee, LLC)	
)	CSR-8759-N
Petition For Waiver of Section 76.92(f))	Docket No. 13-16
and 76.106(a) of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: February 25, 2015

Released: February 25, 2015

By the Senior Deputy Chief, Policy Division Media Bureau:

I. INTRODUCTION

1. Gray Television Licensee, LLC (“Gray”), licensee of WTAP-TV, WIYE-LD, and WOVA-LD, Parkersburg, West Virginia,¹ filed the above captioned petition seeking a waiver of the network nonduplication and syndicated exclusivity rules (“exclusivity rules”) that preclude cable operators from deleting the duplicate programming of “significantly viewed” stations.² Specifically, Gray wants to demonstrate that WOWK-TV, a CBS affiliate licensed to Huntington, and WVAH-TV, the Fox affiliate licensed to Charleston, both of West Virginia, are no longer significantly viewed stations in Parkersburg, West Virginia, and that Gray’s own WTAP, WIYE and WOVA should be entitled to exercise their exclusivity rights against these stations therein.³ The petition is opposed by WVAH Licensee, LLC, licensee of WVAH-TV;⁴ West Virginia Media Holdings, LLC, licensee of WOWK-TV;⁵ and Cequel Communications, LLC d/b/a Suddenlink Communications.⁶ Gray filed a consolidated reply to the

¹ See Petition for Special Relief of Gray Television Licensee, LLC (“Petition”) at 1, n.1. According to Gray, it has affiliation agreements with CBS authorizing carriage of CBS network programming on WTAP-TV and WIYE-TV and with Fox authorizing carriage of Fox programming on WTAP-TV and WOVA-TV. *Id.* Gray claims its affiliation agreements include network non-duplication protection to the extent permitted by the rules, and that WTAP is also a party to syndicated programming agreements providing exclusivity protection in Parkersburg. *Id.*

² 47 C.F.R. §§ 76.92(f) and 76.106(a). Although not expressly requested in Gray’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 to a waiver for carriage on DBS systems 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).

³ Petition at 1.

⁴ See WVAH Licensee, LLC, Opposition to Petition for Special Relief (filed Feb. 11, 2013) (“WVAH Opposition”).

⁵ See West Virginia Media Holdings, LLC, Opposition (filed Feb. 11, 2013) (“WVMH Opposition”).

⁶ See Cequel Communications, LLC d/b/a Suddenlink Communications, Opposition to Petition for Waiver of Sections 76.92(f) and 76.106(a) of the Commission’s Rules (filed Feb. 25, 2013).

oppositions.⁷ For the reasons discussed below, we deny Gray's Petition.

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.⁸ 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").⁹ The significantly viewed exception to the exclusivity rules is based on a demonstration 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 network nonduplication and syndicated exclusivity rules because it has established that it is viewed over the air in the subject community.

3. In order to obtain a waiver of Section 76.92(f), 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). 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.¹¹ For independent stations (*i.e.*, non-network stations), to be considered significantly viewed, Section 76.5(i) of the Commission's rules requires that the survey results should exceed a 2 percent share of total viewing hours and a net weekly circulation of 5 percent, by at least one standard error.¹²

4. Since the Commission's decision in *KCST-TV*, the methodology required by Section 76.54(b) of the rules for a petitioner seeking a waiver of the significantly viewed exception has evolved, pursuant to case law and market realities. Section 76.54(b) states in pertinent part that significant viewing "may be demonstrated by 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."¹³ 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* with a sweep period is acceptable and, if anything, adds to the accuracy of the audience statistics because of the increased

⁷ See Gray Television Licensee, LLC, Consolidated Reply (filed Mar. 12, 2013) ("Gray Reply").

⁸ See 47 C.F.R. § 76.92; 47 C.F.R. § 76.101.

⁹ 47 C.F.R. § 76.92(f); see 47 C.F.R. §§ 76.5(i) and 76.54.

¹⁰ 103 FCC 2d 407, 413 ¶ 11 (1986).

¹¹ See 47 C.F.R. § 76.5(i) & 76.55(b).

¹² See *id.* The Commission has found that this type of test is applicable as well for waivers of the syndicated exclusivity exemption. See, e.g., *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640 (1990).

¹³ 47 C.F.R. § 76.54(b). The criteria set forth in *KCST-TV* require that two separate surveys be performed pursuant to Section 76.54(b) in consecutive years. The provisions of Section 76.54(b) therefore apply to each year's survey. It should be noted that these types of surveys cannot be done by the affected television station, cable system or satellite operator.

sample size.¹⁴ 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.¹⁵ If a petitioner is purchasing survey data on a system-specific basis where two or more communities are involved, the percent of diaries from each community surveyed must be approximately the same as the percentage of the total population for each community served by the cable system.¹⁶ 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.¹⁷ It should be noted that, despite the fact that a petitioner is purchasing a re-tabulation of data that has already been collected, it is still 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.¹⁸ Notification to interested parties before the purchase of Nielsen data allows a petitioner to correct any errors or clarify issues related to the methodology before the data are purchased and the petition is actually filed and, perhaps, avoid the filing of oppositions. Finally, we note that the manner in which surveys based on sweep periods are averaged, remains the same as for weekly surveys.¹⁹ A petitioner may therefore submit the average of the 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

¹⁴Although, 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 we could determine the effect of the third and fourth sweep periods).

¹⁵It should be noted that Nielsen identifies individual communities by zip codes, a process not incompatible with the surveying process discussed here.

¹⁶47 C.F.R. § 76.54(b). Proportionality based on population demonstrates that more weight is given to larger communities. While there must be at least one diary from each community in each survey, there is no minimum sample size since the standard error allows us to be sure that there is a high probability that the reported result meets or falls below our criteria. Because Nielsen is able to weight its sampling, they can provide such proportionality.

¹⁷We 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 it is using, 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. That 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.

¹⁸47 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.” Such notice should indicate the surveying organization, the methodology used to calculate the viewing shares (*e.g.*, a description of the process used to re-tabulate the information in an existing database), the manner in which the communities (and/or zip codes) were selected, and the survey periods used. *Id.*

¹⁹Section 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.”

the choice of sweep periods.

III. DISCUSSION

5. Gray submits community-specific data from The Nielsen Company to demonstrate that WOWK-TV and WVAH-TV are no longer significantly viewed in Parkersburg.²⁰ The submitted audience statistics are the results re-tabulations of Nielsen's audience data for non-cable/non-ADS homes identified by zip codes.²¹ The submitted data are averages for two four-week audience sweep periods in each of two years. The first year survey's audience estimates come from Nielsen's February 2011 and May 2011 audience sweep data and the second year estimates are based on February 2012 and May 2012 data. These surveys are intended to satisfy the requirement that petitioners provide a showing of significantly viewed status for each station based on two one-week surveys, separated by at least 30 days, of non-cable/non-ADS homes conducted by an independent audience survey firm for two consecutive years.

6. The report provided by Nielsen and submitted by the petitioner shows audience statistics for each of the stations in Parkersburg. The following tables – Table 1 for WOWK-TV and Table 2 for WVAH-TV – show the number of households studied (*i.e.*, in-tab diaries) used to derive the audience estimates, the total viewing hours share, the standard error about the total viewing hours share, the net weekly circulation share, and the standard error about the net weekly circulation share.²²

TABLE 1 – WOWK-TV VIEWING IN PARKERSBURG, WV

Survey Dates	Households Studied	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 11/May 11	10	0.00	0.00	0.00	0.00
Feb. 12/May 12	7	0.00	0.00	0.00	0.00

TABLE 2 – WVAH-TV VIEWING IN PARKERSBURG, WV

Survey Dates	Households Studied	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 11/May 11	10	0.94	1.02	4.79	5.81
Feb. 12/May 12	7	0.00	0.00	0.00	0.00

7. Based on these reported audience statistics, Gray asserts that it has met its burden to demonstrate that WOWK-TV and WVAH-TV are no longer significantly viewed and that its request for waiver should be granted so that it may be entitled to assert its network non-duplication and syndicated

²⁰ Exhibit A includes the description of Nielsen's methodology and the survey data.

²¹ See Petition at 3-5; Exhibit A. The re-tabulations of Nielsen's data are for residential zip codes 26101 and 26104, assigned to Parkersburg by the U.S. Postal Service. *Id.* at 4.

²² See Petition at 4-5 & Exhibit A.

exclusivity rights in Parkersburg.²³

A. Survey Issues

8. WVAH opposes the petition for special relief and argues that Gray fails to meet the requirements for demonstrating that its station is no longer significantly viewed in Parkersburg because it fails to submit data for all of Parkersburg.²⁴ It notes that the submitted data are for two zip codes – 26101 and 26104 – yet the United States Postal Service (“USPS”) website indicates that there are three zip codes associated with Parkersburg – 25102, 26104 and 26105.²⁵ WVAH states that Gray’s study thus is not representative of the community as a whole, and WVAH claims Gray has improperly “cherry-picked” zip codes without an explanation.²⁶ WVAH asserts that the requested waiver should be denied on this basis.

9. WVMH argues that the petition should be denied because the submitted data make it impossible to determine whether there were in-tab diaries included in each of the survey periods. It claims that the samples used are small (10 diaries in 2011 and 7 in 2012) and that without information to determine whether the combined data for the two survey periods included at least one respondent in each survey period, the data are statistically unreliable.²⁷ In this regard, WVMH states that case law has established that a survey in which there were no surveyed households would be unacceptable for purposes of a waiver of the significantly viewed exception.²⁸

10. Further, WVMH states that the over-the-air data cannot be reconciled with the market realities of Parkersburg. It points out the number of over-the-air households in Parkersburg is small and MVPD penetration is over 90 percent.²⁹ WVMH asserts that its station was the only full-power West Virginia CBS affiliate viewable in Parkersburg during those survey periods, raising questions as to whether the small sample Gray relies on properly represents Parkersburg viewing patterns.³⁰ Noting that the methodology for evaluating requests for significantly viewed waivers has evolved over time based in part on market realities, WVMH argues this case presents an opportunity for the Commission to further evolve its analysis and take the market realities of cable penetration into account.³¹

11. Suddenlink, the cable service provider in Parkersburg and surrounding communities, states that it supports the arguments already set forth in the opposition submitted by WVMH and WVAH.³² It states the sample relied upon by Nielsen is “far too small” to justify Gray’s requested waiver

²³ Petition at 5-6.

²⁴ WVAH Opposition at 1, 3.

²⁵ *Id.* at 3. *See also* WVAH Opposition at Exhibit 1 (USPS zip codes for Parkersburg). WVAH does not dispute the omission of zip codes 26102 and 26103, used for specific post office boxes, and 26106, a unique zip code for a company or organization. *See id.*

²⁶ *Id.* at 3. WVAH admits Gray may have shown that WVAH-TV is no longer significantly viewed in two of the Parkersburg zip codes, but they do not comprise the entire community. *Id.*

²⁷ WVMH Opposition at 8-9. *See also* Suddenlink Opposition at 4-5.

²⁸ WVMH Opposition at 8 (citing *WTNH Broadcasting Inc.*, 27 FCC Rcd 15895, 15901-902 ¶ 9 (MB 2012); *Saga Quad States Communications LLC*, 27 FCC Rcd at 14859, 14865 ¶ 9 (MB 2012)).

²⁹ *Id.* at 9-10. WVMH provides Nielsen data reproduced by the Television Advertising Bureau showing OTA (over-the-air), cable, and ADS penetration by DMA. *See id.* at Exhibit A, ADS, OTA and Wired-Cable Penetration by DMA. The data show that 5.6 percent of the Parkersburg DMA are OTA households. *Id.*

³⁰ *Id.* at 2, 10.

³¹ *Id.* at 10 (citing *WTNH Broadcasting Inc.*, 27 FCC Rcd at 15896-97 ¶ 4 (MB 2012)).

³² Suddenlink Opposition at 2 & n.1.

and asserts that Nielsen retrofitted existing data for this purpose, rather than conducting a new study.³³ In addition, it argues the Commission should not assume that a standard error computation resolves any reliability concerns based on sample size.³⁴ In this regard, it states that, before the Commission grants a petition that would disrupt long-established viewing patterns based on statistical evidence, it should require that the petitioner demonstrate with detailed support from a statistical expert other than the entity undertaking the survey that the survey evidence is reliable and is not undermined by the survey size.³⁵

12. Gray responds to the argument raised with respect to its survey – the omission of zip code 26105. It states that WVAH solely bases its argument on a USPS website look up search whereby a user can obtain all the zip codes to which the USPS will deliver mail using the identified community name.³⁶ Gray asserts that zip code assignments have never served as a definitive source of jurisdictional boundaries, but are maintained to route mail delivery.³⁷ It observes that the USPS look-up site reveals that 26105's preferred city is Vienna, but that Parkersburg is listed under other acceptable cities, and thus, Gray asserts this online inquiry proves nothing and that WVAH's opposition should be dismissed.³⁸

13. With respect to the sample size, Gray observes that the argument that the sample of 10 diaries in one year and 7 diaries in the second year is inadequate, is one the Commission has repeatedly rejected.³⁹ In response to whether the combined survey data included at least one diary from each time period, Gray observes that while Commission policy allows combined data, it affirms the Nielsen studies it used relied upon more than one diary in each survey period.⁴⁰

B. Other Issues

14. WVMH, the Huntington CBS affiliate, argues that the petition should be dismissed because Gray's stations are ineligible for non-duplication and exclusivity protection.⁴¹ Specifically, it states that WIYE-LD is not entitled to exclusivity because it is a low power station, which does not have network non-duplication or syndicated exclusivity protection under the Commission's rules.⁴² WVMH also argues that the digital multiplex channel of WTAP-TV cannot assert exclusivity rights by virtue of any affiliation agreement CBS reached with WIYE-LD as the affiliated station.⁴³ Further, WVMH claims that its relevant service contour overlaps a large portion of Parkersburg, thus barring Gray from claiming syndicated exclusivity against WOWK-TV under Section 76.106(a) independent of its status as a significantly viewed station.⁴⁴

15. Further, WVMH expresses its desire to continue to serve Parkersburg as it has for nearly

³³ *Id.* at 4.

³⁴ *Id.* at 5.

³⁵ *Id.*

³⁶ Gray Reply at 5.

³⁷ *Id.* at 6.

³⁸ *Id.*

³⁹ *Id.* at 5 & n.7 (citation omitted).

⁴⁰ *Id.* at 5.

⁴¹ WVMH Opposition at 3-4.

⁴² *Id.* at 4-6.

⁴³ *Id.*

⁴⁴ *Id.* at 6-7. WVMH provides maps showing the extent to which the "noise limited contours" of WOWK-TV overlap Parkersburg. See WVMH Opposition at Exhibits E-1 and E-2.

half a century.⁴⁵ It notes that as a practical matter, if the waiver is granted, cable operators will not just delete the duplicated programming, but the entire signal. It then argues that the loss of WOWK-TV service to Parkersburg would not be in the public interest given its local programming and its participation in a statewide network of West Virginia owned-and-operated stations.⁴⁶

16. In addition to stating its general support of WVMH's opposition,⁴⁷ Suddenlink asserts that low power stations do not have network non-duplication or syndicated exclusivity rights.⁴⁸ In this regard, it reiterates WVMH's statement that low power WIYE-LD is the affiliate named in the Gray-CBS affiliation agreement and points out that Gray claims that it has an affiliation with Fox for carriage of that network's programming on WOVA-LD.⁴⁹ It also states that, if the waiver were granted, it would not require the blacking out WVAH-TV or WOWK-TV's signals under syndicated exclusivity because the noise-limited service contours of these stations overlaps Parkersburg.⁵⁰

17. In its reply to the oppositions, Gray explains that it is authorized to broadcast Fox programming on WTAP-TV and WOVA-LP and to broadcast CBS programming on WTAP-TV and WIVE-LP.⁵¹ It states it broadcasts NBC programming on channel 15.1, CBS on channel 15.2, and Fox on 15.3, and that it holds affiliation agreements with these networks that confer network non-duplication and syndicated exclusivity rights on these channels.⁵² It clarifies that it is not seeking exclusivity protection for its low power stations, and states that that the oppositions are entirely correct in this regard.⁵³

18. Gray states that WVMH, the Charleston CBS affiliate, misunderstands the scope of the petition and a grant would only require cable operators to honor its station's non-duplication rights conferred by CBS.⁵⁴ It asserts that the Commission's requirements that cable operators carry WOWK-TV's more distant signal during network programming is contrary to the longstanding interest in promoting localism.⁵⁵ Moreover, Gray points out that the requested waiver would not compel cable operators to cease retransmitting relevant local programming, and the petition only concerns carriage of network programming.⁵⁶ To the extent WVMH seeks to have the standards for significantly viewed waivers evolve in a way that would allow perpetual carriage of WOWK-TV's signal in an adjacent market, this is not the forum to seek reconsideration of sections 76.5(i) and 76.54, according to Gray.⁵⁷ Further it states that the Bureau must apply the same rules, policies and precedent that is has applied to

⁴⁵ *Id.* at 2. Exhibit E-3 shows that the Charleston-Huntington DMA abuts the Parkersburg DMA.

⁴⁶ *Id.* at 11-12.

⁴⁷ Suddenlink Opposition at 2.

⁴⁸ *Id.*

⁴⁹ *Id.* at 2-3.

⁵⁰ *Id.* at 3-4.

⁵¹ Gray Reply at 2. WTAP-TV is assigned to digital channel 49; its virtual channel is 15.

⁵² *Id.*

⁵³ *Id.* at 3-4. The initial petition named all the Parkersburg stations owned by Gray, and was not clear that the waiver was only sought for the full power station, WTAP-TV.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* at 6-8.

similarly-situated petitions here.⁵⁸

C. Discussion

19. The survey submitted by Gray is consistent with the Commission's requirements under Section 76.54(b) and *KCST* in terms of its use of re-tabulations of Nielsen's routinely collected data to demonstrate that a station is no longer significantly viewed and entitled to a waiver of the significantly viewed exception to the network non-duplication and syndicated exclusivity protections. However, it is not clear whether the zip codes used by Gray to define Parkersburg are correct.⁵⁹

20. In cases of this type, zip codes have generally been found to be a good method for identifying cable communities of interest for the purpose of Nielsen's re-tabulations of its existing data. However, as Gray observes, they are not a definitive source of a community's boundaries.⁶⁰ The zip code look-up website, cited by both Gray and WVAH, is intended to be used in the mail delivery context, and not to delineate cable communities.⁶¹ It appears that Gray and WVAH have provided selective research from the USPS website to support their points.⁶² Additional research on the USPS look-up website provides other evidence that use of this information is not sufficient to resolve the question about which zip codes should be used to delineate the area served by the Parkersburg cable system. For example, entering zip code 26101 shows Parkersburg as the preferred city, but Vienna as acceptable; entering zip code 26104 gives Parkersburg as the preferred city, with N Parkersburg, North Hills, and North Parkersburg listed as acceptable; and entering Vienna produces two zip codes, 26101 and 26105, both associated with the city name Vienna. This limited additional information serves to show that, while the USPS zip code look-up may be useful in some cases to define the geographic limits of a community, it is far from definitive here. In addition, Suddenlink, the party in the best position to confirm the subscriber zip codes billed for its Parkersburg cable system, CUID WV0114, appears to concur with WVAH, although it does not affirmatively state that households located in zip code 26105 are served by the Parkersburg cable system.⁶³

21. It is the burden of the petitioner seeking a waiver of the network nonduplication and syndicated exclusivity rules to establish through reliable evidence that the stations for which it seeks a waiver are no longer significantly viewed stations in the communities named in the Petition. In this instance, the parties opposing the Petition have raised legitimate questions regarding the zip codes used to prepare the Nielsen data that support the Petition. Petitioner failed to adequately rebut these concerns in its Reply and independent investigation by Commission staff could not definitively resolve this issue. For these reasons, the Petition filed by Gray Television Licensee, LLC is denied. Because these concerns are capable of resolution the Petition is denied without prejudice to refiling at a subsequent time.

IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, that the petition filed by Gray Television Licensee, LLC

⁵⁸ *Id.* at 8.

⁵⁹ If the zip codes selected to identify Parkersburg were determined to be correct, then the submitted data are sufficient to demonstrate that WVAH-TV and WOWK-TV are no longer significantly viewed as they do not meet the criteria set forth in Section 76.5(i).

⁶⁰ See Gray Reply at 6.

⁶¹ Gray Reply at Exhibit C; WVAH Opposition at Exhibit 1.

⁶² While Gray found one comparable example in MD to make its point, it is not clear whether its claim would be borne out if other examples were examined.

⁶³ See Suddenlink Opposition at n.1 ("Suddenlink also supports the arguments set forth in the 'Opposition to Petition for Special Relief' submitted by WVAH")

("Gray"), licensee of WTAP-TV, WIYE-LD, and WOVA-LD, Parkersburg, West Virginia, is **DENIED** without prejudice.

23. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.⁶⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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⁶⁴47 C.F.R. §0.283.