

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

In the Matter of)	
)	
Media General Communications Holdings, Inc.)	CSR-8889-N
WNCT-TV, Greenville, North Carolina)	MB Docket No. 14-131
)	
Petition for Waiver of Sections 76.92(f) and)	
76.106(a) of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: February 23, 2016**Released: February 24, 2016**

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

I. INTRODUCTION

1. Media General Communications Holdings, LLC ("Media General"), licensee of television station WNCT-TV (CBS), Greenville, North Carolina, filed the above-captioned petition seeking a waiver of the significantly viewed exception to the network non-duplication and syndicated exclusivity rules.¹ Media General seeks this waiver so that it may be entitled to network nonduplication and syndicated exclusivity protection against WRAL-TV (CBS), Raleigh, North Carolina in the communities of Greenville and Kinston, North Carolina. The petition is opposed by Capitol Broadcasting Company, Inc. ("CBC"), licensee of WRAL-TV.² For the reasons discussed below, we grant Media General'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 otherwise subject to deletion is exempt from application of both the network non-duplication and syndicated exclusivity rules if it is "significantly viewed" in a relevant community (the "significantly viewed exception").⁴ 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 exclusivity rules because it has established that it is viewed over the air in the subject community. A similar exception is provided in the syndicated exclusivity rules.⁵

¹ 47 C.F.R. §§ 76.92(f) and 76.106(a) (significantly viewed exception to the cable network non-duplication and syndicated exclusivity rules). The Petitioner does not seek the waiver for DBS carriage.

² The record also includes 21 comments filed by consumers supporting the continued carriage of WRAL-TV.

³ See 47 C.F.R. § 76.92; 47 C.F.R. § 76.101.

⁴ 47 C.F.R. §§ 76.92(f); 76.122(j) (network nonduplication exception for cable and satellite carriers); see 47 C.F.R. §§ 76.5(i) and 76.54.

⁵ 47 C.F.R. §§ 76.106(a); 76.123(k) (significantly viewed exception for cable and satellite carriers).

3. In order to obtain a waiver of Section 76.92(f), the Commission held in *KCST-TV, Inc.*⁶ 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.⁷ The Commission has found that this type of test is applicable as well for waivers of the syndicated exclusivity exemption.⁸

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."⁹ 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 sample size.¹⁰ 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.¹¹ If a petitioner is purchasing survey data on a system-specific basis where two or more communities are involved, the proportion of diaries from each community surveyed must be approximately the same as the proportion of the population for each community served by the cable system.¹² 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.¹³ It should be noted

⁶ 103 FCC 2d 407, 412 ¶ 10 & n.9 (1986).

⁷ 47 C.F.R. § 76.5(i).

⁸ See *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5640-41 ¶ 6 (1990).

⁹ 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.

¹⁰ 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 (2001), where the 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.

¹¹ It should be noted that Nielsen identifies individual communities by zip codes, a process not incompatible with the surveying process discussed here.

¹² 47 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.

¹³ 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 data base it is using, what communities (or zip codes) are covered, the

(continued....)

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.¹⁴ 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.¹⁵ 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.¹⁶ 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 the choice of sweep periods.

III. DISCUSSION

5. In support of its request for waiver of the significantly viewed exception to the network nonduplication and syndicated exclusivity rules, Media General submits separate data for Greenville and Kinston from The Nielsen Company to demonstrate that WRAL-TV is no longer significantly viewed in the communities for which waiver is sought.¹⁷ The submitted audience statistics are the results of re-tabulations of Nielsen's audience data for non-cable/non-ADS homes identified by zip codes.¹⁸ The submitted data are for two-four week audience sweep periods in each of two years. The first year survey's audience estimates come from Nielsen's February 2012 and November 2012 audience sweep data and the second year estimates are based on February 2013 and November 2013 data. Rather than an average of each year's surveys, as is permissible under the rules,¹⁹ Media General has chosen to submit the results for the individual sweep periods. These surveys 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

(...continued from previous page)

station(s) surveyed, and time periods covered. *See e.g., Radio Perry, Inc.*, 11 FCC Rcd 10564, 10568-9 (1996); *Gulf-California Broadcast Company*, 21 FCC Rcd 3476, 3479-80 (2006).

¹⁴ 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."

¹⁵ *Id.*

¹⁶ 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 calculation 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."

¹⁷ Petition, Exhibit A (Description of Nielsen's methodology and the survey data).

¹⁸ *See id.* at 4, n.11; Exhibit A. The zip codes for Greenville are 27833, 27834, 27835, 27836, and 27858. The zip codes for Kinston are 28501, 28502, 28503, and 28504.

¹⁹ *See* 47 C.F.R. § 76.54(b).

for Greenville and Kinston. The following tables show the number of in-tab households used to derive the audience estimates, the total viewing hours, standard error about the total viewing hours, the net weekly circulation share, and the standard error about the net weekly circulation share.²⁰

TABLE 1 – WRAL-TV VIEWING IN GREENVILLE

Survey Dates	No. of Diaries	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
February 2012	6	0.00	0.00	0.00	0.00
November 2012	4	0.00	0.00	0.00	0.00
February 2013	5	0.00	0.00	0.00	0.00
November 2013	8	0.00	0.00	0.00	0.00

TABLE 2 – WRAL-TV VIEWING IN KINSTON

Survey Dates	No. of Diaries	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
February 2012	3	0.00	0.00	0.00	0.00
November 2012	9	0.00	0.00	0.00	0.00
February 2013	6	0.00	0.00	0.00	0.00
November 2013	3	0.00	0.00	0.00	0.00

7. Media General states that the Nielsen studies confirm that WRAL-TV has not met the standards for significant viewing for two consecutive years, as it attains no over-the-air viewership in any of the eight survey periods.²¹ Thus, the Petitioner concludes that it has met its burden to obtain the requested waiver of the significantly viewed exceptions in Greenville and Kinston, North Carolina.²²

8. In opposition to Media General's waiver request, CBC claims that it understands that the cable operator serving Greenville and Kinston will drop WRAL-TV if the request is granted.²³ CBC further argues that Media General's viewership study is a misleading analysis of WRAL-TV's viewership in the communities.²⁴ In addition, CBC contends that the relief it requests can be granted without initiating a rulemaking proceeding or making a change in Commission policy.²⁵

9. CBC notes that Media General asserts that the Nielsen study methodology that it used in this case is consistent with what the Commission previously has accepted in these types of cases and that

²⁰ See Petition, Exhibit A.

²¹ *Id.* at 4.

²² *Id.* at 5.

²³ CBC Opposition at 1-2. CBC states that it has been advised by Suddenlink, the cable operator for both communities, that it cannot accommodate partial carriage of WRAL-TV and will drop the station if the waiver request is granted. *Id.* at 7.

²⁴ *Id.* at 2-7.

²⁵ *Id.* at 8-9.

no further examination is therefore required.²⁶ However, CBC argues that the study paints a misleading picture of how many people watch and value WRAL-TV's programming.²⁷ CBC asserts that WRAL-TV is the most watched station in North Carolina and the Commission should be skeptical of the claim that it has no off-air viewership at all in Greenville and Kinston as the Nielsen study suggests.²⁸

10. CBC argues that Commission precedent notwithstanding, the small off-air sample used by Nielsen for its estimates of station viewing in Greenville and Kinston are susceptible to challenge as arbitrary and capricious.²⁹ It points out that the study is based on as few as four and no more than eight off-air households in Greenville, and as few as three and no more than nine off-air households in Kinston.³⁰ It also states that according to Nielsen, as of July 2014, there were 6,190 off-air households in Pitt County where Greenville is located and 3,094 off-air households in Lenoir County where Kinston is located, and that combined cable and DBS household shares are 87% and 91% in these counties, respectively.³¹ According to CBC, other evidence confirms that any study based on off-air viewership substantially understates the number of people in these communities who watch and view WRAL-TV.³² In particular, CBC refers to consumer comments in the docket, telephone call and voicemail transcriptions, sample e-mails, and a summary of responses to a survey on the station's website.³³

11. CBC asserts that the discrepancies between the off-air study submitted by Media General and the actual viewing of WRAL-TV stem from the fact that cable and DBS are the predominant means of distribution of off-air signals to households in these communities.³⁴ CBC asserts that while the Commission has frequently relied on off-air viewership in these types of cases, it has recognized that the growth of MVPDs may limit the value of off-air viewership studies and therefore should not be forgotten.³⁵ CBC contends that the evidence it presents demonstrates why off-air viewership by itself is not a reliable measure of its viewers, and whatever the merits of the historical approach may be, the facts of this case have shown that consideration of only off-air viewing is not appropriate here.³⁶ CBC concludes that the Commission should give all the evidence a hard look before taking any action that

²⁶ *Id.* at 2.

²⁷ *Id.* CBC states that Greenville and Kinston fall inside WRAL-TV's noise-limited contour and the station delivers a viewable off-air signal in both communities. *Id.* CBC also attaches a map of WRAL-TV's noise-limited contour. *See Id.* at n.5, Exhibit 1.

²⁸ CBC Opposition at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 3, 6 at n.16.

³² *Id.* at 4.

³³ *Id.* at 4-6 and Exhibit 2 (telephone call and voicemail transcriptions from WRAL-TV viewers), Exhibit 3 (emails from WRAL-TV viewers), Exhibit 4 (summary of viewer responses to online survey), Exhibit 5 (list of subscribers to the station's weather alert system), Exhibit 6 (list of the local public affairs programming of interest to viewers in Greenville and Kinston).

³⁴ CBC Opposition at 6.

³⁵ CBS notes the Commission's response to the dissent in *KSCT-TV, Inc. v. FCC*, 699 F.2d 1185, 1199 (D.C. Cir. 1983) (Scalia, J., dissenting). CBC quotes the Commission as saying "While not particularly germane in the [KCST-TV] case (in which cable penetration in the San Diego ADI at the time the pertinent data was collected was about 40 percent), the penetration rate of the cable system could be a factor in determining significantly viewed status . . . In appropriate circumstances, this will be a concern of the Commission in evaluating off-air viewing data submitted." *KCST-TV, Inc.*, 103 FCC Rcd 407, 413 n.10 (1986).

³⁶ CBC Opposition at 7.

would deny the citizens of Greenville and Kinston access to its station's programming.³⁷

12. CBC further states that in similar cases the Media Bureau has typically deemed a station's off-air study dispositive, even when it relies on a small sample.³⁸ CBC states that the Bureau has steadfastly refused to stray from this approach, citing the need to avoid unfair surprise to the waiver applicant.³⁹ CBC believes that the Bureau's reliance on off-air viewership studies creates, however unintentionally, a *de facto*, un rebuttable presumption that a waiver of the significantly viewed exception serves the public interest.⁴⁰ According to CBC, the Bureau can fix this simply by returning to the fundamental principle of agency discretion, not requiring a rulemaking or policy change.⁴¹ CBC further contends that the Bureau is not absolutely obligated to mechanically apply its off-air test in all waiver cases, but rather has the discretion to account for the unique facts of each case, as CBC claims exist in this situation.⁴² CBC is asking the Bureau to exercise its discretion here.⁴³

13. Media General responds that CBC offers no evidence that its survey does not demonstrate that WRAL-TV is no longer significantly viewed.⁴⁴ Media General observes that CBC concedes that the Petition satisfies the Commission standards for granting waivers of the significantly viewed exception, but nonetheless asks that it be denied on the basis of arguments that repeatedly have been rejected.⁴⁵

14. Media General states that CBC argues that a grant of the requested waiver would be contrary to the public interest because it would cause the largest cable operator in the communities to drop WRAL-TV and viewers will lose access to its signal.⁴⁶ Media General states that CBC's arguments previously have been rejected and that a grant of a waiver only requires the deletion of the duplicative programming and not the entire signal.⁴⁷ Consistent with these decisions, Media General contends that the Bureau should not involve itself in the business decisions regarding retransmission of out-of-market stations by cable operators.⁴⁸

15. Media General also points out that CBC argues that the Nielsen study understates the number of people in Greenville and Kinston who watch and value WRAL-TV's programming, citing

³⁷ *Id.*

³⁸ *Id.* at 8, citing *Barrington Kirksville Licensee LLC*, 28 FCC Rcd 2843, 2849-50 (2013).

³⁹ *Id.*, citing *Gulf-California Broadcast Company and Journal Broadcast Corporation*, 26 FCC Rcd 15027, 15039 (2011).

⁴⁰ *Id.*

⁴¹ *Id.* at 9, citing *David Oxenford, Esq.*, 28 FCC Rcd 9308, 9310 (2013).

⁴² *Id.*

⁴³ *Id.* CBC also asks that the Bureau to consider whether it is prudent to decide on the merits of the Petition at the same time the Commission is considering whether to eliminate its network nonduplication and syndicated exclusivity rules, citing *Amendment of the Commission's Rules Related to Retransmission Consent, Report and Order and Further Notice of Proposed Rulemaking*, 29 FCC Rcd 3351, 3384-3395 (2014). *Id.* at n.23.

⁴⁴ Reply at 1-2.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*

⁴⁷ *Id.*, citing *TVL Broadcasting of Rhode Island*, 28 FCC Rcd at 15601-02 (2013) and *WUPW Broadcasting LL*, 25 FCC Rcd at 2690 (2010).

⁴⁸ *Id.* at 4.

testimonials from viewers and ratings data for the entire state.⁴⁹ Yet, according to Media General, none of this information represents over-the-air viewing in the communities of interest, and should not call into question the accuracy of its submitted study.⁵⁰ Moreover, Media General states that attacks on Nielsen's study are unsubstantiated and the Bureau has repeatedly affirmed the use of Nielsen data in this manner.⁵¹

16. Media General also notes that while CBC objects to the use of over-the-air viewership as a test for determining significantly viewed status, this argument should be rejected as it contravenes the purpose of the rules and decades of Commission precedent.⁵² Media General continues by reiterating the purpose of the significantly viewed list and the special status it confers on a station in a distant market based on its over-the-air viewership, and argues that there is no logical reason to continue affording the benefits if the viewership no longer exists, especially when it has the potential to negatively impact the economic health of an in-market station.⁵³ Media General asserts that there is no reason to consider WRAL-TV's cable viewership in determining whether it is significantly viewed.⁵⁴ Furthermore, according to Media General, there is no reason for the Bureau to change its policy based on a footnote in the *KCST-TV* decision cited by CBC that posited that cable viewership might be relevant at some time in the future.⁵⁵ Media General states that the Bureau has refrained from trying to divine what, if any, changes the Commission may have contemplated with that footnote and CBC offers no way, beyond anecdotes, to incorporate cable viewership in this process.⁵⁶ Media General argues that to do so would be arbitrary and capricious, and the Bureau should reject CBC's arguments.⁵⁷

17. Media General further contends that the Bureau should continue to apply the logical, precedent supported approach it has followed in numerous significantly viewed cases.⁵⁸ Media General argues that despite CBC's unsupported claim that the Bureau can change the rules without direction from the full Commission, the Bureau is not free to depart from the precedent established in *KCST-TV*.⁵⁹ Media General asserts that the Bureau should reject CBC's request that it adopt and apply a new and

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 4-5, citing *TVL Broadcasting*, 28 FCC Rcd at 15600; *Barrington Kirksville Licensee LLC*, 28 FCC Rcd 2843, 2849-50 (2013) (rejecting arguments that a small sample size makes Nielsen's results unreliable); *WUPW*, 25 FCC Rcd at 2690 (2010); *KAXN, Inc.*, 25 FCC Rcd 3307, 3316 (2010).

⁵² *Id.* at 5.

⁵³ *Id.* 5-6.

⁵⁴ *Id.*

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 6-7.

⁵⁷ *Id.*

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* Media General states that CBC wrongly claims that none of the decisions that have led the Bureau to uphold the traditional over-the air viewership test for significantly viewed waiver cases has been decided at the Commission level. *Id.* at n.28, citing CBC Opposition at 8. Media General notes that in *Gulf-California Broadcast Company*, the case CBC cited prior to this claim in its Opposition, the Bureau cited two full Commission cases: *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326 (1972) and *KCST-TV*, and Section 76.54 of the Commission's rules. See *Gulf-California Broadcast Company*, 26 FCC Rcd at 15039. Media General states that the Bureau is not permitted to depart from any of these precedents absent direction from the full Commission, citing *Michael Couzens, Esq.*, 25 FCC Rcd 13672 (Aud. Div. 2010) (citing *RB Schools*, 21 FCC Rcd 6945, 6946 (MB 2006); *WLDI, Inc.*, 17 FCC Rcd 14750, 14752 (EB 2002); and 47 C.F.R. §§ 0.283, 0.61 (Media General notes that these rules delegate authority to the Media Bureau to implement, but not make Commission policy). *Id.* at n.28.

standardless test in order to deny the Petition.⁶⁰ In conclusion, Media General states that, given that CBC does not contest that its Petition satisfies the Commission's existing standards governing significantly viewed waivers, CBC's arguments should be rejected and its request for waiver should be granted.⁶¹

18. As demonstrated by the data submitted by Media General, WRAL-TV attains no measurable audience during any of the survey periods in either Greenville or Kinston. Thus, these data demonstrate that WRAL-TV does not attain at least a 3 share of total weekly viewing hours and at least a 25 net weekly viewing share as required by Section 76.5(i) of the Commission's rules for a network affiliate. We recognize that CBC raises the issue of the small sample sizes used to re-tabulate WRAL-TV's audience in each survey period; however, as long as there are sufficient households in the survey to calculate an arithmetic average, and the standard error is provided to assess the accuracy of the sample, the Bureau finds such surveys acceptable. In fact, unlike surveys where the data from two survey periods are combined, by presenting the individual surveys, Media General demonstrates that each of the periods has at least the minimum number of in-tab households that we generally require when an average is presented. In addition, CBC argues that the percentage of cable/ADS is extremely high in the counties where Greenville and Kinston are located, but the significant viewing test is on a community or system basis and such statistics have no relevance in determining whether WRAL-TV remains significantly viewed in the communities of interest or whether the sample size is appropriate. CBC's arguments are therefore rejected.

19. CBC argues that the submitted audience statistics are not representative of the number of people in Greenville and Kinston that watch its station. However, the information provided regarding the station's actual viewing levels and its popularity among viewers do not appear limited to off-air viewing as required by *KCST-TV*.⁶² In addition, none of the consumer comments included in the record indicates that the particular households involved watch WRAL-TV off-air. Given the purpose of significant viewing as a means to ensure that MVPD subscribers are receiving the stations that are local because they are receivable over the air, such data will be given no consideration in this case.

20. Finally, we agree with Media General that relevant precedent does not allow us to alter the standard for demonstrating that a station is or is no longer significantly viewed based on factors other than the required statistical showing. In this regard, our inquiry is limited to whether WRAL-TV is significantly viewed in the communities of Greenville and Kinston. Other considerations, such as whether or not the incumbent cable operator continues to carry WRAL-TV is beyond the scope of this proceeding. Finally, we note that CBC does not dispute that Media General's showing in this case satisfies the Commission's standards governing significantly viewed waivers.

21. We find that Media General has made the requisite showing to support its petition. Media General has demonstrated that WRAL-TV had no measurable audience during any of the survey

⁶⁰ CBC Opposition at 7.

⁶¹ *Id.* at 8. Media General also states that no basis exists to grant CBC's request that the Bureau hold this case in abeyance while the Commission considers whether to eliminate the programming exclusivity rules in an ongoing rulemaking. *See supra* n.43. Media General states that the Bureau's long-standing policy is to process applications and petitions consistent with current rules rather than delay decisions that might be affected by future Commission decisions, citing *AT&T Services Inc. and AT&T California v. CoxCom, Inc.*, 24 FCC Rcd 2859, 2864 (2009) (denying program access complaint despite pending rulemaking proposing to change precise rule the Bureau applied to deny the complaint); *Local TV Holdings, LLC*, 28 FCC Rcd 16850, 16858-59 (2013) (conditioning grant of transfer application on future outcome of rulemaking). *Id.* at n.30. We agree with Media General that we will not delay our decision in this case because it may or may not be affected by a future Commission decision. We agree with Media General and we decline to delay our decision in this case because it may or may not be affected by a future Commission decision.

⁶² *See supra* ¶ 3 (discussing the *KCST-TV* methodology).

periods and the station does not meet our significantly viewed standard. Based on these results, WRAL-TV fails to achieve significantly viewed status in Greenville and Kinston, North Carolina. Accordingly, we grant Media General's request for a waiver of the significantly viewed exception to the network nonduplication and syndicated exclusivity rules regarding WRAL-TV, Raleigh, North Carolina, in the communities of Greenville and Kinston, North Carolina.

IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, that the petition filed by Media General Communications Holdings, LLC **IS GRANTED**.

23. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's Rules.⁶³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

⁶³ 47 C.F.R. § 0.283.