

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

In the Matter of )
Update to Publication for Television Broadcast ) MB Docket No. 22-239
Station DMA Determinations for Cable and )
Satellite Carriage )

ORDER

Adopted: August 21, 2023

Released: August 21, 2023

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we conform section 76.66(e) of the Commission’s rules to the requirements of the Communications Act, correcting errors that were inadvertently introduced in the prior Report and Order in this docket.

II. BACKGROUND

2. In November of 2022, the Commission adopted the Nielsen Update Order, which revised Commission rules to use the Nielsen Company’s Local TV Station Information Report as the successor publication to the annual Station Index Directory and United States Television Household Estimates in determining a television station’s designated market area for satellite and cable carriage under the Commission’s regulations. Pursuant to that change, section 76.66(e)(3) of the Commission’s rules was revised, and the time periods mentioned in that rule were brought up to date. These updates were intended to reflect the upcoming statutorily-established carriage election cycle periods, but contained errors.

III. DISCUSSION

3. In this Order, we revise section 76.66(e)(3) of the Commission’s rules in order to conform to the requirements of the Communications Act. Specifically, we correct the references to the upcoming carriage election cycles in the first and second sentences to confirm that the next cycle runs from 2024-2026 (not 2024-2027), and the following cycle runs from 2027-2029 (not 2028-2030).

4. We find that notice and comment procedures are unnecessary under the “good cause” exception of the Administrative Procedure Act (APA) because correcting the references in section 76.66(e)(3) entails no exercise of our administrative discretion. The dates of each carriage cycle are long-established as a matter of law, and the reference to these dates in section 76.66 is merely as an aid to

1 Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage, Report and Order, FCC 22-89, MB Docket No. 22-239 (rel. Nov. 18, 2022).

2 Id. at Appendix B, Final Rules, para. 3.

3 47 USC 325(b)(3)(B) (“The regulations required by subparagraph (A) shall require that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title.”).

4 5 U.S.C. § 553(b)(3)(B) (notice and comment is not necessary “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

understanding. The rule change does not establish additional regulatory obligations or burdens on regulated entities. Moreover, the public interest would not be served by seeking notice and comment on the corrections because the dates reflected in the rule are plainly wrong and contrary to the dates set by statute. Seeking comment on whether these errors should be corrected or not would be a waste of Commission resources and any further delay in making these corrections could create confusion among regulatees. Consequently, we find notice and comment procedures are unnecessary for this action.

#### IV. PROCEDURAL MATTERS

5. *Paperwork Reduction Act Analysis.* This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>5</sup> In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>6</sup>

6. *Congressional Review Act.* The Commission has determined and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

7. *Regulatory Flexibility Act.* Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act<sup>7</sup> does not apply.

#### V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303, 325, 335, 338, 339, 340, 403, and 614 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 154(j), 303, 325, 335, 338, 339, 340, 403, and 534 this Order **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that Part 76 of the Commission’s Rules **IS AMENDED** as set forth in Appendix A and such rule amendments will become effective 30 days after publication in the Federal Register.

10. **IT IS FURTHER ORDERED**, that pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of this Report and Order to Congress and to the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>5</sup> The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>6</sup> The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

<sup>7</sup> 5 U.S.C. § 601 *et seq.* *See id.* § 601(2).

## APPENDIX A

## FINAL RULES

## PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:  
Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.66 is amended by revising paragraph (e)(3) as follows:

**§ 76.66 Satellite broadcast signal carriage.**

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(e) \*\*\*

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(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024 and ending on December 31, ~~2026~~2027. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, ~~2027~~2028, and ending December 31, ~~2029~~2030, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (i.e., October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.