

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, MB Docket No. 22-239, Notice of Proposed Rulemaking (July 14, 2022).

Today, we tentatively conclude to adopt Nielsen’s Local TV Report as the successor publication to Nielsen’s Station Index. Both the Station Index, and the Local TV Report, contain definitions for designated market areas, which the Commission critically relies on for many of the rights and obligations it creates within its rules.

This is far from the only Nielsen data on which the Commission relies. The Commission looks to Nielsen to determine whether a broadcast station is ‘significantly viewed’ outside of its market. Nielsen’s market-level TV household estimates determine whether a station is within the “Top 4” in the market, impacting ownership possibilities for broadcasters. And whether a station is failing for the purposes of ownership rules—again, Nielsen.

Indeed, something like 23 Commission rules reference Nielsen in some way. The Commission relies heavily on Nielsen, and has for decades. And, in the ordinary course, following uncontroversial principles of good governance, the public might well expect the Commission to routinely canvas the industry for alternative data providers, comparing products across the sector, ensuring that our reliance on Nielsen is well-founded, so that the Commission can say with confidence that our regulatees, and above all the American people, are well served by the data sources on which we at the Commission rely.

It's a big deal to have your company formally blessed by being specified by name as the basis of regulatory determinations, and it's not the case everywhere. For example, in the financial sector, the Securities and Exchange Commission establishes criteria for designating companies as "Nationally Recognized Statistical Ratings Organizations" (or NRSROs) for purposes of investment ratings. Companies can apply for and lose NRSRO status, and NRSROs, not specific firms, are mentioned and required in applicable laws and rules.

There's an obvious reason why we don't do this at the FCC, though. For most Commission purposes, there is no one else in the industry. Nielsen is the only game in town. There may be a little hemming and hawing here or there about that assertion—but those who know, know. Nielsen has ruled the media ratings world for decades.

That's not necessarily a bad thing, but as we've all learned from the supply chain crises during the pandemic, it's worth looking at bottlenecks, choke points, and single points of failure.

Does it work here? Well, let’s see. The Media Ratings Council (or MRC), which is the accrediting body for media ratings agencies, de-accredited Nielsen last year for “deep-rooted, ongoing performance issues” that pre-dated the issues Nielsen encountered empaneling viewers and listeners during COVID. Nielsen has yet to regain its accreditation.

I am confident that Nielsen will work diligently to correct the defects in its methodology identified by the MRC, and that it will regain its accreditation. But I think it give us pause that the Commission is functionally obligated to adopt presently unaccredited Nielsen data and definitions because, as Nielsen has little competition, the Commission is left with no other choice. Might our obligation to act in the public interest even require us to, where possible, encourage innovation, or even just an alternative, in broadcast viewership and listenership analytics, so we avoid subjecting American media to this single point of failure in our broadcast regulatory scheme?

A lot is at stake here. If broadcasters are effectively obligated to purchase and rely on data that may be inaccurate, are they being given the tools to compete and grow? If a data provider exercises its dominant market position to extract higher prices for data, that are functionally compulsory for broadcasters in small markets to compete, are we discouraging localism? If advertisers believe that the main source of viewership and listenership data that they use to make buys on broadcast stations is unreliable, might that push them away from broadcast and toward online advertising platforms where data are considered more reliable?

That third question may have been appropriate to ask a decade ago, but I think we can consider it, by now, answered with advertisers' wallets. The broadcast industry has been losing to online platforms in the advertising competition. Of course, there are reasons for this outside of the accuracy and completeness of audience analytics—the secular trend of media consumption is toward online platforms, which drives the advertising dollar. Okay, sure. But is it not at least worth taking into account that among the considerations that advertisers—especially small businesses—cite for doing online advertising is the high trust they place in granular audience analytics?

Because, let's be clear, big tech platforms do pretty well—they have to. Their product offerings rely on their analytical performance. Facebook consumer data breadth and quality has been a key value proposition since before its IPO. Apple stitches together an impression of you from millions of data signals gathered from your usage, and provides that data—in anonymized but granular fashion—to its partners. The pitch for Google is that they know what you want when you search, and serve you up the right ad at the right time. The pitch for Amazon is that they know what you buy and when, and recommend you the right product at the right time. And, doubtless, the accuracy and completeness of the data each of these services provide drive, at least in part, the commercial value of these companies and firm decisions to partner with them as an advertising or sales platform. (We can leave CPM online vs. offline out of the equation for now—except to note that for online companies it is intrinsically low, so offline companies have even more reason to try to compete on data quality.)

There's no reason to think that only online companies can do good analytics. The big credit bureaus have decades of your financial history and provide simple tools and scores to help creditors evaluate that information. Credit card processors can generate excellent insight based on purchase patterns. Heck, even direct mail analytics are pretty good.

But there are reasons that it's hard to generate broadcast analytics. Over the air broadcast, by design, does not have an intrinsic data return path—even ATSC 3.0's return path will be delivered over the internet, not over the air (unless you're using a fixed wireless ISP.) So anyone doing broadcast analytics must overcome limitations not experienced by digital analytics. But is enough care being given to overcome those limitations? Both broadcasters and advertisers have long asked these questions, and I am not yet satisfied, considering the present unaccredited status of Nielsen, that the answer is an obvious yes.

Today's item makes a ministerial change in our rules, and I am happy to support it because so much of what we do relies on Nielsen data. Perhaps that reliance is ultimately warranted. But I don't believe that I could confidently tell the American public that we have proven that it is, and I think we owe it to the public to know for sure that we are justified in relying on a source that is quite literally written into our rules. I therefore believe the Commission should open a notice of inquiry related to Nielsen's inclusion in nearly two dozen Commission rules and the Commission's reliance on Nielsen data.

If there are opportunities to identify or generate new sources of broadcast data, we should take them. If there are improvements to be made in our usage of broadcast data, we should make them. And if our ties to Nielsen ultimately represent a structural impediment to the public interest, necessity, and convenience—we should break them.

My thanks to the Media Bureau and Chairwoman Rosenworcel and her staff for their diligent work in not just drafting this item, but in working with my office on edits. I support this item.