



Nielsen
Media Research

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March 26, 2003

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Federal Communications Commission
Office of the Secretary

VIA TELECOPIER: 2024184232

Mr. Thomas J. Sugrue
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th street. SW
Washington. DC 20554

Ms. Jane E. Mago
General Counsel
Office of General Counsel
Federal Communications Commission
445 12th Street. SW
Washington. DC 20554

Dear Mr. Sugrue and Ms. Mago:

I write in response to your letter dated January 24, 2003, regarding the possible use of Nielsen Media Research's DMA™ regions by the Federal Communications Commission in licensing suppliers of Multichannel Video Distribution and Data Services ("MVDDS").

In its Memorandum *and* Opinion *and Order* *and Second Report and Order*, FCC 02-116, adopted on April 11, 2002 and released on May 23, 2002 (the "*Second Report and Order*"), the Commission concluded that it 'did not believe [that the use of Nielsen Media Research's] DMAs are appropriate for MVDDS" and adopted the use of CEAs as the geographic basis for licensing MVDDS suppliers. The Commission cited several factors in support of its decision, including the absence of a blanket license to the Commission from Nielsen Media Research to use DMAs in this manner and economic benefits to MVDDS licensees by establishing a designation that *is* in the public domain and the advantages of the use of CEAs "to better promote [the Commission's] objectives *and* address commenters' concerns." *Second Report and Order*, para. 132.

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Nielsen
Media Research

Thomas J. Sugrue
Jane E. Mago
March 26, 2003
Page 2

Your January **24** letter states that, "although Nielsen remains unwilling to enter into a formal agreement to allow the Commission to use its DMA designation for the **MVDDS** service areas, Nielsen does not object to the Commission's use of DMAs in this manner," and requests that we let you know if that statement mischaracterizes Nielsen's position on *this* issue.

As we trust you can appreciate, Nielsen's DMA regions and data have been developed and refined over many years and at great expense. In designing and annually revising the DMA regions, Nielsen Media Research uses proprietary criteria, testing methodologies and data to **partition regions** of the United **States** into geographically distinct television viewing areas, and then expresses them in unique, carefully defined regions that are meaningful to the specific business we conduct. In addition, as a result of its long, continuous and successful use of the term, Nielsen Media Research has built up and now owns substantial and valuable goodwill in *the* term **DMA**, for which it has an incontestable trademark registration (**See** Federal Registration No. 1,157,555). Together, the trademark rights in the mark DMA and copyrights in the DMA regions and data are among Nielsen Media Research's most valuable assets. Accordingly, Nielsen Media Research remains unwilling to enter into any agreement or arrangement that would jeopardize these assets. Indeed, Nielsen Media Research must reserve the right to vigorously enforce its rights in its DMA mark, regions and data.

Moreover, **as** we trust you can also appreciate, it is crucial to Nielsen Media Research's business that it maintain its stature as a neutral, unbiased provider of television audience information and services. For this reason, and to ensure that Nielsen Media Research maintains every right to maintain and enforce its rights, Nielsen Media Research must be careful not to, and in this instance does not, take any position regarding the propriety or desirability of the Commission's use of any particular geographic definition (including Nielsen Media Research's DMA regions) to establish MVDDS service areas and license MVDDS suppliers. Accordingly, *the Second Report and Order* accurately reflects the position of Nielsen Media Research with respect to the proposed use of its DMA mark, regions and data – i.e., Nielsen Media Research respectfully cannot grant the Commission a blanket license to use its DMAs for establishing and licensing MVDDS service areas.



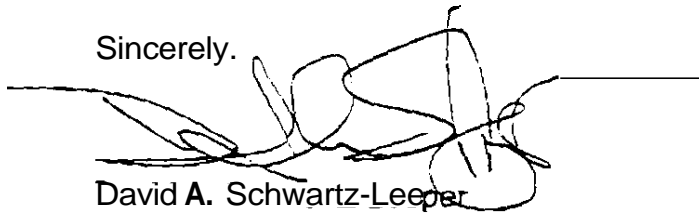
**Nielsen
Media Research**

Thomas J. Sugrue
Jane E. Mago
March 26, 2003
Page 3

In the event that the Commission determines, upon re-examination, to abandon its previous **selection of CEAs** in favor of **DMAs** as the geographic basis for licensing MVDDS. Nielsen Media Research would agree to extend a perpetual, royalty-free license to the Commission, without **the right to sublicense**, to Nielsen Media Research's **DMA mark** and regions, provided that the Commission (i) agrees, and continues to communicate to prospective MVDDS suppliers, that a **territorial license** from **the Commission** to **supply MVDDS** does not confer the right to use Nielsen Media Research's **DMA** mark, regions or data, and that such right must be obtained from Nielsen **Media** Research on such terms **as** may be mutually acceptable to Nielsen Media Research and the supplier, in their **sole** and respective discretion, and **(ii) does** not republish **DMA** regions **or** data in any statute, regulation or rule or otherwise. Nielsen Media Research would then **be** willing to consider licensing DMA region maps or descriptions to any actual or potential MVDDS supplier pursuant to Nielsen **Media** Research's customary **terms** and **restrictions**. For those suppliers that desire to **use** the **DMA** mark or reproduce **DMA** descriptions or data in the conduct of their business, Nielsen Media Research would **also be** willing to consider granting appropriate licenses on a case-by-case basis, in each **case** taking into consideration all circumstances relevant to Nielsen Media Research's own business interests, including (but not necessarily limited to) the existence and status of any license or other contractual relationship any such supplier **may** have with Nielsen Media Research.

I hope the foregoing helps the Commission in its consideration of **this** issue.

Sincerely,



David A. Schwartz-Leeper

DASL/pvs