

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Significantly Viewed Stations

Modernization of Media Regulation Initiative

MB Docket No. 20-73

MB Docket No. 17-105

REPLY COMMENTS OF THE NIELSEN COMPANY (US) LLC

Nielsen wishes to reply briefly to a few of the initial comments regarding the methodology for determining whether a station is “significantly viewed.”¹ These comments either inaccurately describe Nielsen’s service or suggest changes to the Commission’s rules that may have unintended consequences.

Two commenters, Gray and Sequent, question Nielsen’s ability to conduct significantly viewed measurements.² Both suggest—to one extent or another—that Nielsen’s alleged over-reliance on Return Path Data may have compromised its ability to accurately measure over-the-air viewing.³ But as Nielsen has explained—alone among competitors in this marketplace—it does *not* rely principally on Return Path Data to make its measurements. To the contrary,

¹ *Significantly Viewed Stations*, Notice of Proposed Rulemaking, FCC No. 20-41, MB Docket Nos. 20-73 & 17-105 (rel. Mar 31, 2020) (“*Notice*”). Unless otherwise indicated, all references to “comments” in this document refer to comments filed in these dockets on May 14, 2020.

² Comments of Gray Television, Inc. at 6–8 (“Gray Comments”); Comments of Sequent Partners at 2.

³ *E.g.*, Gray Comments at 8 (“While the transition from diaries to Return Path Data may have improved Nielsen’s data from cable and satellite viewers, it has made it impossible to gather data from over-the-air viewers in thousands of communities around the country.”).

Nielsen supplements Return Path Data with a sufficient number of code readers and other advanced technology to measure over-the-air viewing accurately—something no one else has chosen to do.

Gray also suggests that Nielsen’s “significantly viewed” surveys are too expensive.⁴ Though there may have been exceptions, Nielsen’s policy is to price such surveys close to cost. And it will ensure that, going forward, there are no exceptions to the policy.

Gray’s principal suggestion is to use the Longley-Rice predictive model for signal strength as sort of a *prima facie* demonstration in significantly viewed cases.⁵ Gray proposes that significantly viewed *applicants* (those wanting their stations to be considered significantly viewed, or those wanting some other station to *no longer* be considered significantly viewed) use the Longley-Rice model to predict whether a station’s signal reaches or does not reach 25% of the community in question. The results of this prediction would be determinative unless an *objector* uses Nielsen data to establish that the station is or is not significantly viewed.⁶

Others have observed that use of Longley-Rice in this manner would seem to benefit some broadcasters and burden others.⁷ Yet others have raised legal concerns about the predictive model,⁸ concerns that the *Notice* itself reflects.⁹ From Nielsen’s perspective, the problem with the predictive model is the same as it has always been: it is not evidence of anyone

⁴ Gray Comments at 9 (suggesting that Nielsen charges “thousands of dollars” for such services).

⁵ *Id.* at 13.

⁶ *Id.*

⁷ Comments of Hubbard Broadcasting, Inc. at 1; Comments of Sagamore Hill at 1.

⁸ Comments of NCTA—The Internet and Television Association at 3–5 (“NCTA Comments”).

⁹ *Notice* ¶ 12 (raising similar concerns with respect to satellite carriers).

watching anything. A predictive model cannot tell anyone whether a station is viewed at all, let alone how much or how often it is viewed.

In the end, Nielsen’s commercial business succeeds only if it can accurately measure television audiences. By doing so, Nielsen ensures that advertising and other markets function properly—and helps create a basic level of stability in the video marketplace. This is why Nielsen has invested so many resources in improving its measurements, including those used for significantly viewed determinations. It is also why the premise underlying this *Notice*—that Nielsen has made changes that make getting data on over-the-air viewing more difficult—is mistaken.¹⁰ There is, in other words, no problem here that needs to be solved.

Respectfully Submitted,



Scott Blake Harris
Michael Nilsson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W.
The Eighth Floor
Washington, DC 20036
(202) 730-1300
Counsel for
The Nielsen Company (US) LLC

Joseph B. Fortson
THE NIELSEN
COMPANY (US) LLC
675 Avenue of the Americas
New York, NY 11010

June 15, 2020

¹⁰ NCTA Comments at 4–5; Comments of the Information Technology Industry Council at 1; Comments of Insights Association at 3 (filed May 11, 2020).