

FCC MAIL SECTION

BACKGROUND

Before the  
Federal Communications Commission  
Washington, D.C. 20580

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CS Docket No. 95-139 DISPATCHED BY

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Fayetteville, North  
Carolina, in the Raleigh-Durham-  
Goldsboro Television Market

NOTICE OF PROPOSED RULE MAKING

Adopted: August 15, 1995; Released: August 29, 1995

Comment Date: October 20, 1995

Reply Comment Date: November 6, 1995

By the Deputy Chief, Cable Services Bureau:

1. Before the Commission is a joint petition for rule making filed by Capital Cities/ABC, Inc., licensee of television station WTVD(TV), channel 11, Durham, North Carolina; Capitol Broadcasting Company, Inc., licensee of television station WRAL(TV), channel 5, Raleigh, North Carolina; Delta Broadcasting, Inc., licensee of television station WKFT(TV), channel 40, Fayetteville, North Carolina; FSF TV, Inc., licensee of television station WRDC(TV), channel 28, Durham, North Carolina; and Paramount Stations Group of Raleigh Durham Inc., licensee of television station WLFL(TV), channel 22, Raleigh, North Carolina (collectively "Petitioners"), to amend Section 76.51 of the Commission's Rules<sup>1</sup> to add Fayetteville, North Carolina as a designated community in the "Raleigh-Durham" North Carolina television market.<sup>2</sup> Subsequent to the filing of this petition, the market list was amended to include Goldsboro as a designated community in the market.<sup>3</sup> Accordingly, this request will be treated as requesting the addition of Fayetteville to the Raleigh-Durham-Goldsboro market.

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.<sup>4</sup> Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station communities of license on this list.<sup>5</sup> Some markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.<sup>6</sup> Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.<sup>7</sup>

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>8</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>9</sup> which added Section 614 to the Communications Act of 1934,<sup>10</sup> requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission has stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.<sup>11</sup>

<sup>1</sup> 47 C.F.R. §76.51.

<sup>2</sup> See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

<sup>3</sup> *Report and Order* in Docket 93-212, 9 FCC Rcd. 4387 (1994).

<sup>4</sup> See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f). With passage of the Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994) local signal copyright liability is now accorded stations throughout their mandatory cable carriage area, that is, throughout the "area of dominant influence" or ADI of the market to which the station is assigned. Although this generally reduces the importance of the Section 76.51 market list as a determinant of copyright liability, there remain situations where the list determines liability, i.e., where the 35-mile zones associated with the Section 76.51 list extend outside of the ADI of the market.

<sup>5</sup> See 47 C.F.R. Part 76, Subpart F.

<sup>6</sup> See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

<sup>7</sup> See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

<sup>8</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), *ciang Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>9</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>10</sup> 47 U.S.C. §614.

<sup>11</sup> [R]equests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as "rulemaking proposals." See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n.50 (1993).

### THE PETITION

5. According to the petitioners, Fayetteville is located approximately 59 miles southwest of Raleigh and 72 miles south of Durham. Cumberland County in which Fayetteville is located is now the second largest county in the Raleigh-Durham television market and contains 12 percent of the market's television households. Fayetteville is said to be located within and is a "core" city - economically, socially and culturally - within the Raleigh-Durham ADI. It attaches a map, prepared by the North Carolina Department of Transportation, which depicts the geographical proximity of the three cities. Of the five petitioning stations, WRAL (CBS) and WLFL (Fox) are licensed to Raleigh, WTVD (ABC) and WRDC (NBC) are licensed to Durham, and WKFT (Ind.) is licensed to Fayetteville. These five stations compete head-to-head throughout the market for programming, viewers and advertising revenues. Newspapers in Raleigh and Durham, it is said, recognize WKFT, Fayetteville, in the television listings for the Raleigh-Durham area, and newspapers in Fayetteville include the Raleigh-Durham television stations in their television listings.

6. Petitioners further state that, although WKFT(TV) is unavoidably competitive with the other market-area stations, it is disadvantaged in this competition by having to compete with other stations in the market without comparable cable television carriage rights. Although it is entitled to carriage on area cable systems by virtue of its inclusion in the Raleigh-Durham ADI,<sup>12</sup> because Fayetteville is not a designated community in the Section 76.51 market listings, it is considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable systems in the ADI.<sup>13</sup> As a result, petitioners state, they face additional copyright fees attendant to carriage as a "distant signals." The principal benefit of the requested change, however, is said to be parity among market stations under Section 73.658(m) of the Commission's rules (territorial exclusivity rules).

### DISCUSSION

7. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television station licensed to Raleigh, Durham, Goldsboro and Fayetteville, do compete for audiences and advertisers throughout much, if not most, of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Fayetteville to the Raleigh-Durham-

Goldsboro television market. Comment is sought in particular on what consequences, if any, result to the proposal from the addition of Goldsboro to the market (see paragraph 1 above) and from changes in copyright law attendant to passage of the Satellite Home Viewer Act of 1994 (see note 4 above).

### ADMINISTRATIVE MATTERS

#### *Ex Parte Rules -- Non-Restricted Proceeding*

8. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

#### *Comment Information*

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 20, 1995, and reply comments on or before November 6, 1995. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

#### *Initial Regulatory Flexibility Analysis*

10. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall "send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

<sup>12</sup> See Section 76.56(b) of the Commission's Rules.

<sup>13</sup> Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Fayetteville as a designated community in this market list generally results in WKFT(TV)'s classification as a "distant signal" for market-area cable systems

more than 35 miles from Raleigh, Durham, and Goldsboro and outside of the Raleigh-Durham ADI. By amending Section 76.51 of the Rules to include the community of Fayetteville in the market as proposed, cable systems will be able to carry the signals of stations from Raleigh, Durham, Goldsboro, and Fayetteville on an equal basis in terms of copyright liability.

*Additional Information*

11. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact William H. Johnson (202) 416-0800.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau