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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Definition of Markets for )  
Purposes of the Cable )  
Television Mandatory Television )  
Broadcast Signal Carriage Rules )

CS Docket No. 95-178

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**REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA") hereby submits its reply comments in the above-captioned proceeding.

In our initial comments, NCTA supported the Commission's proposal to continue to use Arbitron's 1991-92 Television ADI Market Guide to define market areas for must carry/retransmission consent purposes, subject to individual review and refinement through the section 614(h) process. Although Arbitron is no longer updating the market guide, we argued that continued reliance on the ADI list for the 1996 election and thereafter will ensure stability and predictability in the broadcast signal carriage process without sacrificing the carriage of broadcast stations in the communities that they truly serve. It will also avoid the protracted administrative burdens and costs associated with revamping the signal carriage market definition.

Upon review of the comments filed in this proceeding, we continue to believe that the Commission's first instincts were right. Protecting the viewing public from the inevitable disruption and instability that would result from switching from the

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ADI system to the Nielsen DMA system far outweighs broadcaster concerns about the use of “static” market designations -- particularly given the statute’s built-in flexibility to modify the list to address changed circumstances. Indeed, to the extent the 1991/92 ADI list fails to reflect market realities in the future, the section 614(h) mechanism already in place coupled with the new requirement in the Telecommunications Act of 1996 that market modification requests be resolved on a 120-day expedited basis answers this concern.

### **DISCUSSION**

The 1991/92 ADI market list provided the foundation for the entire must carry regime established under the 1992 Cable Act. Over the past several years, the public has become accustomed to viewing certain broadcast stations on their cable system based on this system. But this stability was hard won, as consumers endured months of channel displacements and realignments while cable operators complied with the newly-acquired carriage rights of additional broadcast stations. To undo this whole system by switching to DMA will only trigger a new round of channel changes that will anger and frustrate viewers with little likelihood that it will serve the purposes of the must carry rules in any meaningful way.

As the Commission has recognized in various contexts, “[m]ost importantly, subscribers have an interest in certainty of service and minimal disruption.”<sup>1</sup> In

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<sup>1</sup> Report and Order, MM Docket No. 92-259, FCC 93-144, 8 FCC Rcd 2965 (1993) at para. 124. See also, Cable Television Report and Order, FCC 72-108, 36 FCC 2d 171, 172 (1972) at para. 75; Memorandum Opinion and Order on Reconsideration,

Footnote cont'd

their comments, however, the broadcasters largely ignore the adverse impact that converting to the DMA system would have on the viewing public. In some markets it would wreak havoc. In Denver, Colorado, for example, eleven additional counties would added under DMA, while four counties would be deleted. The National Association of Broadcasters' own comparison of the DMA and ADI market lists shows that approximately 126 markets would be affected by switching to DMAs, with approximately 79 markets gaining counties and 83 markets losing counties.<sup>2</sup>

The upheaval in audience viewing patterns might be worth it if it could be shown that changing from ADI to DMA, and revising market boundaries every three years based on viewership changes, involves any systematic improvement in market definitions. We submit that many of the stations that would have to be added under DMA are likely to be in fringe areas that do not truly serve the market, but happen to fall into a county designated to that market under the DMA analysis instead of the ADI result because of a slight variation in the way audience viewing is measured. Those few stations in counties where there has been a major shift in viewing patterns and local coverage can, if they have not already done so, be addressed in the market modification process. Thus, NAB's assumption that

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FCC 72-530, 36 FCC 2d 326 (1972) at para. 52, aff'd sub nom. American Civil Liberties Union v. FCC, 523 F.2d 1344 (9th Circ. 1975).

<sup>2</sup> Comments of NAB at 4.

retaining use of the ADI list will not accommodate changing market realities is unfounded.

Similarly, the broadcasters' assertion that the Arbitron information will be quickly outdated is belied by the fact that the ADI list changed very little over the ten-year period between the 1981-82 ADI market designation and the 1991-92 designations. NAB nonetheless claims that switching to DMA is needed because the broadcast industry is in flux and that market dynamics will change during the broadcasters transition from analog to digital. First, we believe that there is no statutory basis for broadcast stations to expand their carriage rights beyond existing analog channels to new digital broadcast services that were not even contemplated when the 1992 Cable Act was passed. And, second, any changes in television viewership as a result of the transition to digital can be accommodated in the existing scheme.

Moreover, as noted above, the Telecommunications Act of 1996 modifies the section 614(h) process by entitling stations to expedited treatment of their requests for market modification. The statute specifically provides that from now on the Commission must grant or deny the request within 120 days after it is filed. Stations who believe they have cause for adjustment now are guaranteed a time-certain review process.

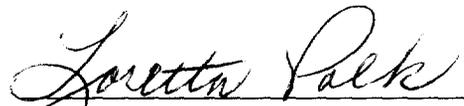
Although no one discussed this new provision in their comments, it is also significant that the Act changed the market determination provision for purposes of the must carry/retransmission consent rules by deleting the reference to Arbitron's

audience research data and inserting the following language: “a broadcast station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns.” By not specifying any particular market methodology, the statute gives the FCC the flexibility to determine the best approach to market determinations. The Commission is not bound under the Act to use Arbitron data, Nielsen data or any other audience research service; it may rely on any market list published in any commercial publication which delineates such information. The current system achieves this.

Lastly, as NCTA pointed out in its initial comments, the administrative burdens associated with changing from the ADI definition to the DMA definition should not be underestimated. Cable operators would have to reevaluate copyright liability for the carriage of every broadcast station and would have to reassess the must carry status of every station, including undertaking a station renotification process, reviewing geographic coordinates of cable headends and the signal strength of individual stations. But the Commission would be faced with the greatest burden as the floodgates open to new petitions for market modification under the new scheme -- all of which would have to be resolved within 120 days. The FCC would have to allocate substantial resources to handle all of the new petitions within the statutory deadline, with, as noted earlier, no decisive benefit to audiences, most or all of whom view at the fringes of the broadcasters' signals.

**CONCLUSION**

In sum, NCTA believes that the existing 1991/92 ADI list combined with the market modification process has and will continue to ensure that television stations are carried in the areas which they serve and which form their economic market. We urge the Commission to adopt its tentative decision to continue to use the ADI market list, rather than subject the public to the disruption and confusion that would result from switching to the DMA market list.



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Daniel L. Brenner

Loretta P. Polk

1724 Massachusetts Avenue, N.W.

Washington, D.C. 20036

(202) 775-3664

Counsel for the National Cable  
Television Association, Inc.

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