

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**DOCKET FILE COPY ORIGINAL**  
MM Docket No. 95-143

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Greensburg, Pennsylvania  
in the Pittsburgh, Pennsylvania  
Television Market

#### NOTICE OF PROPOSED RULE MAKING

Adopted: August 30, 1995; Released: September 8, 1995

Comment Date: October 31, 1995

Reply Comment Date: November 15, 1995

By the Deputy Chief, Cable Services Bureau:

1. Before the Commission is a petition for rule making filed by Cornerstone Television, Inc., the licensee of television station WPCB(TV), Channel 40, Greensburg, Pennsylvania, to amend Section 76.51 of the Commission's Rules<sup>1</sup> to add the community of Greensburg, Pennsylvania to the Pittsburgh, Pennsylvania television market.<sup>2</sup>

#### BACKGROUND

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>3</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>4</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>5</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>6</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>7</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>8</sup> which added Section 614 to the Communications Act of 1934,<sup>9</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 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>10</sup>

#### THE PETITION

5. According to the petitioner, Greensburg is located approximately 25.9 miles from Pittsburgh. Petitioner also states that WPCB(TV)'s tower is located only 12 miles from Pittsburgh and, therefore, should not be considered a distant signal. Greensburg is said to be located in Westmoreland County, which is one of the counties in the Arbitron ADI, and one of the counties that make up the Metro Survey Area according to Arbitron. Greensburg is said to have common economic, social and cultural interests between the residents in these areas. A map of WPCB(TV)'s

<sup>1</sup> 47 C.F.R. §76.51.

<sup>2</sup> See Report and Order in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

<sup>3</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>4</sup> See 47 C.F.R. Part 76, Subpart F.

<sup>5</sup> See CATV-Non Network Agreements, 46 FCC 2d 892, 898

(1974).

<sup>6</sup> See *Cable Television Report & Order*, 36 FCC 2d 143, 175 (1972).

<sup>7</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *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>8</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>9</sup> 47 U.S.C. §614.

<sup>10</sup> "Requests 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).

city grade, Grade A and Grade B contours is attached indicating that its city grade signal completely encompass both Greensburg and Pittsburgh.

6. Petitioner further states that, although WPCB(TV) is 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 Pittsburgh ADI,<sup>11</sup> because Greensburg 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. As a result, petitioner states, they face additional copyright fees attendant to its carriage as a "distant signal." The principal benefits 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) and to benefit the public "by access to WPCB(TV)'s independent religious/family station, seeking to provide wholesome programming to its viewers not currently available in the market."

#### 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 stations licensed to Pittsburgh and Greensburg do compete for audiences and advertisers throughout much 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 the 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 Greensburg to the Pittsburgh television market.

#### 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 31, 1995** and reply comments on or before **November 15, 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 re-

ceive 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).

##### 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

<sup>11</sup> See Section 76.56(b) of the Commission's Rules.