modification petitions under Section 614(h) of the Act and Section 76.59 of the rules.[133] We request comment on the following specific information submission requirements and seek alternatives that parties believe will assist the Commission in its review of individual requests. In particular, we propose to require that each filing include exhibits that show:

- The relevant community locations and geographic features, disclosing station transmitter sites, cable system headend locations and terrain features that would affect station reception and transportation and other local factors influencing the shape of the economic market involved. Relevant mileage would be clearly disclosed;

- Historical cable carriage, illustrated by the submission of documents, such as rate cards, listing the cable system's channel line-ups for a period of several years;

- Coverage provided by the stations, including maps of the areas in question with the universe of involved broadcast station contours and cable system franchise areas clearly delineated with the same level of specificity as the maps filed with the Commission for licensing proceedings;

- Information regarding coverage of news or other programming of interest to the community as demonstrated by program logs or other descriptions of local program offerings, such as detailed listings of the programming provided in a typical week that address issues of importance in the community in question and not the market in general;

- Other information that demonstrates a nexus between the station and the cable community, including data on transportation, shopping, and labor patterns; and

- Published audience data for the relevant stations showing their average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households over a period of several years.

53. A second potential means of increasing the efficiency of the decision making process with respect to market modification petitions would be to alter to some extent the burden

[133] WRNN-TV suggests that the Commission explicitly state that in determining modification of markets, stations that otherwise qualify for must-carry and pledge to provide concrete amounts of public interest programming receive added preferences to full market-wide carriage irrespective of any other factors in the market modification analysis. WRNN-TV Reply Comments at 5-6. The statutory factors that must be considered when evaluating market modifications include consideration of programming of local interest along with other information. The Commission does not believe that it is appropriate to state that one factor is more important than any other as each is valuable in assessing whether a particular community should be included as part of a station's local market. However, commenters are invited to address this proposal.

of producing the relevant evidence. Thus, for example, Section 614(h) establishes four statutory factors to govern the *ad hoc* market change process, including historical carriage, local service, service from other stations, and audience viewing patterns. These factors are intended to provide evidence as to a particular station's market area, but they are not the only factors considered. These factors must be considered in conjunction with other relevant information to develop a result that is designed to "better effectuate the purposes" of the must-carry requirements. The process could perhaps be expedited by permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing. Such factors track the statutory provision and are relatively free from factual dispute. The presentation of such a *prima facie* case could then trigger an obligation on the part of any objecting entity to complete the factual record by presenting conflicting evidence as to the actual economic market involved. This could include, for example, programming information and other evidence as to the local advertising market involved. Dividing the obligations in this fashion, if it were to be effective, would require that the parties with the best access to relevant information disclose that information at the earliest possible point in the process. We seek comment on how this might be accomplished.

V. ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis

1. Final Regulatory Flexibility Analysis for the Report and Order

54. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § § 601-12, the Commission's final analysis with respect to the *Report and Order* is as follows:

55. *Need and Purpose of this Action*: This action is necessary because the procedure for determining local television markets for signal carriage purposes relies on a market list no longer published by the Arbitron Ratings Company

56. *Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis*: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

57. *Significant Alternatives Considered and Rejected.* The Commission proposed three alternatives in its *Notice* and comments were submitted that addressed the administrative burdens of each alternative. In order to minimize the administrative burdens on broadcasters and cable operators, the decision contained herein retains the existing market definitions and the existing market modification process for the 1996 must-carry/retransmission consent election cycle. This decision postpones a change in market definition from Arbitron's ADI to Nielsen's DMA until the 1999 election in order to provide an opportunity for the Commission and affected parties to consider transitional mechanisms that could minimize the effects of changing market definitions on broadcasters and cable operators, including small business entities.

2. *Initial Regulatory Flexibility Analysis for the Further Notice of Proposed Rulemaking*

58. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Further Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of the *Further Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub.L.No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Objectives. The objective of the *Further Notice* is to solicit comments on ways to ease the transition to a revised market definition of local television markets based on Nielsen's DMAs for must-carry/retransmission consent elections beginning in 1999. We request information that will permit us to develop transitional mechanisms to minimize problems that could result from changing market designations on broadcasters' must-carry rights, cable operators' signal carriage obligations, and the availability of local television service to cable subscribers. The *Further Notice* also seeks comment on requirements intended to make the Section 614(h) market modification process more efficient.

Legal Basis. Authority for this proposed rulemaking is contained in Sections 4(i), 4(j) and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 534, and in Section 301 of the Telecommunications Act of 1996, Pub.L.No. 104-104 (1996).

Description, Potential Impact and Number of Small Entities Affected. Changing from a market definition based on ADIs to one based on DMAs could affect the area in which certain small commercial broadcast television stations are entitled to elect must-carry/retransmission consent rights and change the signal carriage obligations of certain small cable systems.
The *Further Notice* requests proposals to minimize the impact on such small entities as well as other stations and cable systems.

Reporting, Recordkeeping and Other Compliance Requirements. None.

Federal Rules which Overlap, Duplicate or Conflict with these Rules. None.

Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

59. This *Report and Order and Further Notice of Proposed Rulemaking* (*Order and Further Notice*) may contain either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Order and Further Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the *Further Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Procedural Provisions

60. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally,* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

61. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 31, 1996, and reply comments on or before November 15, 1996. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus 11 copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. 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, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

62. Written comments by the public on the proposed and/or modified information collections are due **October 31, 1996**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov.

D. Ordering Clauses

63. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i), 4(j) and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 534, and Section 301 of the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996), Part 76 IS

AMENDED as set forth in Appendix B, effective thirty days after publication in the Federal Register.

64. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Regulatory Flexibility Analysis, 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. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

LIST OF COMMENTERS

Initial Comments

Association of Local Television Stations, Inc.
Cable Telecommunications Association
Christian Network, Inc.
Cole, Raywid & Braverman on behalf of Antietam Cable, Charter Communications, Inc., Greater Media, Inc., Colorado Cable Television Association, Cable Television Association of Georgia, Indiana Cable Television Association, Cable Television Association of Maryland, Delaware and the District of Columbia, Michigan Cable Telecommunications Association, Pennsylvania Cable and Telecommunications Association, South Carolina Cable Television Association, Tennessee Cable Television Association, and Wisconsin Cable Communications Association
Costa de Oro Television, Inc.
Cox Communications, Inc.
DeSoto Broadcasting, Inc.
Diversified Communications
Evening Post Publishing Co., Hubbard Broadcasting, Inc., Paxson Communications Corporation and Wabash Valley Broadcasting Corporation
Fouce Amusement Enterprises
Great Trails Broadcasting
KTEN Television Limited Partnership
National Association of Broadcasters
National Cable Television Association
Post Company
Press Broadcasting Company, Inc.
Roberts Broadcasting Company and Whitehead Media, Inc.
SL Communications, Inc.
Small Cable Business Association
United Communications Corporation
United States Copyright Office of the Library of Congress
Withers Broadcasting Company of Texas

Reply Comments

Association of Local Television Stations, Inc.
Blackstar of Ann Arbor, Inc.
Cole, Raywid & Braverman on behalf of Antietam Cable, Charter Communications, Inc., Greater Media, Inc., Colorado Cable Television Association, Cable Television Association of Georgia, Indiana Cable Television Association, Cable Television Association of Maryland, Delaware and the District of Columbia, Michigan Cable Telecommunications Association, Pennsylvania Cable and Telecommunications Association, South Carolina Cable Television Association, Tennessee Cable Television Association, and Wisconsin Cable Communications Association
Costa de Oro Television, Inc.
Golden Empire Television Corporation
Great Trails Broadcasting Corp.
GTE Service Corporation
Hearst Corporation
KPNX Broadcasting Company
National Association of Broadcasting
National Cable Television Association
Post Company
Pulitzer Broadcasting Company
United Communications Corporation
WRNN-TV Associates Limited Partnership

APPENDIX B

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.55 is amended by revising paragraph (e) to read as follows:

§76.55 Definitions applicable to the must-carry rules

For purposes of the must-carry rules set forth in this subpart, the following definitions apply:

* * * * *

(e) *Television market.*

(1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to Section 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron *1991-1992 Television ADI Market Guide*, as noted below, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable as published in the Nielsen *1991-92 DMA Market and Demographic Rank Report*, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market;

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to Section 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its *DMA Market and Demographic Rank Report* or any successor publication, as noted below;

(3) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter;

(4) In addition, the county in which a station's community of license is located will be considered within its market.

Note: For the 1996 must-carry/retransimission consent election, the ADI assignments specified in the *1991-1992 Television ADI Market Guide*, available from the Arbiron Ratings Co., 9705 Patuxent Woods Drive, Columbia, MD, will apply. For the 1999 election, which becomes effective on January 1, 2000, DMA assignments specified in the 1997-98 *DMA Market and Demographic Rank Report*, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used. The applicable DMA list for the 2002 election will be the 2000-2001 list, etc.