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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 24 1996

Federal Communications Commission  
Office of Secretary

In The Matter Of )  
 )  
Definition of Markets for Purposes )  
of the Cable Television Mandatory )  
Television Broadcast Signal )  
Carriage Rules )

CS Docket No. 95-178

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To: The Commission

PETITION FOR RECONSIDERATION

Costa de Oro Television, Inc. ("Costa"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby files its Petition for Reconsideration of the Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 96-197, released May 24, 1996 ("R&O"), in the above-captioned proceeding dealing with the market definition process to be utilized by the Commission in connection with the 1996 round of must-carry/retransmission consent elections. In support thereof, Costa states as follows.

1. In the R&O, the Commission decided that the system of viewership measurement to be utilized to define markets for the 1996 round of retransmission consent/must-carry elections was to be a continuation of the market definitions contained in the 1991-1992 ADI Market Guide ("1991-92 Guide") published by The Arbitron Company ("Arbitron"). This would serve for three years and would be replaced in the 1999 elections by the rankings found in the DMA Market and Demographic Rank Report published by

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Nielsen Media Research ("Nielsen"). In its Comments, Costa has objected to the continued use of the Arbitron rankings owing to the fact that Arbitron had discontinued its television ratings service in 1993 and the Commission would be relying on market ratings that had not changed for five years.

2. Costa disagrees with the Commission's conclusion that the administrative burden on the Commission should outweigh the continued use of stale market data in a media world that is constantly changing and evolving. Costa believes that the only proper course of action was for the Commission to have switched to Nielsen DMA data for the 1996 elections. Not only does this accord with the reality of market rankings, but it complies with the direction of Section 301 of the Telecommunications Act of 1996, which required the Commission to use "commercial publications which delineate television markets based on viewing patterns." The only commercial publication now available is that published by Nielsen and the Commission was required to make use of it.

3. In this Petition for Reconsideration, Costa requests that the Commission address points raised by Commenters and left unaddressed in the R&O. First, Costa brought to the Commission's attention the dilemma it faces. The 1991-92 Guide contains a reference to Costa having requested to be assigned to the Santa Barbara ADI rather than the Los Angeles ADI, the latter being the ADI in which Station KSTV(TV), of which Costa is the permittee, is located. Costa never subscribed to Arbitron and never knew

about the reference until it made must-carry requests upon local cable television systems. They refused, citing the Arbitron reference, and the Cable Services Bureau has agreed with their contentions.

4. Costa has no mechanism to change the Arbitron results. It has argued to the Commission that it never made such a request and produced a sworn statement from Arbitron that no such request can be located in its files. As for Nielsen, it considers Costa's station to be in the Los Angeles DMA and its ranking information (Exhibit A) contains no reference to the permittee requesting treatment in the Santa Barbara DMA.

5. Were the Commission to adopt DMA rankings, there would be no issue that commencing on January 1, 1997, Costa would be entitled to must-carry treatment for its station in the Los Angeles ADI. Instead, Costa is bound by the 1991-92 Guide containing erroneous information as to the permittee.

6. Costa submits that the failure to change the rankings system from an outdated publication with an error regarding KSTV(TV) poses a significant hardship upon it. It is now faced with three more years of not having must-carry treatment in the market which it is located in and which it has a Nielsen ranking for. Considering this impact, and the Congressional direction for a system based on commercial publications, Costa cannot understand how the Commission can allow the Arbitron-based system to remain in place. Costa urges the Commission to provide that a party which can show that the 1991-1992 Guide contains an

inaccuracy to rely, instead, on the latest DMA rankings.

7. Costa also questions why the Commission did not respond to certain of the Comments filed by another party to the proceeding, SL Communications, Inc. ("SL"). SL asked that the Commission craft an exception for stations that commence full-power operation in a period subsequent to the preparation of the 1991-1992 Guide. SL's concern was that a new station should not be bound by the market conditions fromt what could be up to nine years in the past. New stations are making plans based on the market at the present time and should be entitled to look to present market rankings for must-carry treatment.

8. Costa submits that SL's point was well taken. Why shouldn't a new station be able to rely on the market as it exists at the time the station attains full-power operation? There is no issue of administrative burden here, since new stations have never been part of an election process and are starting from scratch anyway. These stations should be entitled to treatment not based on an artificial period, but based on the market at the time they commence full-power operation.

9. In sum, Costa continues to believe that there is no case for the maintenance of the status quo. The Telecommunications Act of 1996 has now provided a statutory basis for the adoption of the Nielsen DMAs as the standard for market definitions. At a minimum, the Commission must consider providing, in the context of this rulemaking, some relief for television stations that have been erroneously treated by Arbitron in the 1991-1992 Guide or

are initiating full-power operation at the present time. These stations should be entitled to rely on the latest Nielsen DMA rankings, rather than the outdated 1991-1992 Guide. Therefore, the Commission must reconsider the R&O and provide that for the 1996 retransmission consent/must-carry elections, television stations that can show an error in the 1991-92 Guide or commence full-power operation subsequent to 1992 can rely, instead, on the latest Nielsen market rankings.

Respectfully submitted,

**COSTA DE ORO TELEVISION, INC.**

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Dated: June 24, 1996

Exhibit A

MARKET DATA

LOS ANGELES, CA  
DMA RANK # 2

NOVEMBER 2 - NOVEMBER 28, 1995

TABLE 1 - UNIVERSE ESTIMATES - JAN. 1996

AREA	TOTAL HOUSEHOLDS	TV HOUSEHOLDS	TV HOUSEHOLDS BY COUNTY SIZE 1			
			A	B	C	D
METRO DMA	3,877,200	3,798,020	4,809,926	28,940		7,020
%	9,020,100	4,917,100	5,899,526	288,160		7,020
NSI	9,308,900	6,172,780				LT

TOTAL HOUSEHOLDS are estimated by Nielsen Television (NTS), used by special permission of that organization. They are the best available estimates of television ownership percentages have been applied. TELEVISION OWNERSHIP PERCENTS are based on historical projections from the 1980 and 1970 Census and other sources. HOUSEHOLDS ARE OCCUPIED HOUSING UNITS are estimates of year-round households, including seasonal housing units which are occupied only during certain months of the year are not included in the Household Universe estimates. Thus, the number of households during the survey period may differ from the estimate in Table 1.

1. See NSI Reference Supplement for definition of county size. LT - Less than 1%

TABLE 2 - PENETRATION ESTIMATES

AREA	PERCENT OF TV HOUSEHOLDS				
	BLACK %	HISPANIC %	MULTI-SET %	CABLE TV %	VCR %
METRO DMA	10	8	7	87	83
LOS ANGELES	18	7	7	81	88

Multi-set estimates are based on the measured household. Cable TV and VCR estimates are based on the latest available data. Black and Hispanic estimates are as of January 1, 1995. See NSI Reference Supplement for details.

TABLE 3 - SAMPLE SIZES: HOUSEHOLDS

AREA	METER SAMPLE		DIARY SAMPLE		TOTAL	
	W-TAB AVE.	LISTED	LISTED	UNLISTED	LISTED	UNLISTED
METRO DMA (INCL. METRO)	375 (EUTD)	1791	2484	4236	850	671
NON-METRO DMA	480 (2)	2378	3082	5437	789	897
NSI (INCL. DMA)	—	2793	2824	6307	988	717
NSI (EXCL. DMA)	—	6169	8886	16744	1777	1674

(1) The Non-DMA (Diary) sample is combined with the DMA meter sample for compiling Station Total household. The entire diary sample is used for Audience Composition data.  
(2) Yields an approximate equivalent sample random size of 1200.  
Equivalent sample random sample size is a term used for the statistical equivalence of the sample size for comparing sampling errors of different markets. See NSI Reference Supplement for sample selection procedures in Total Telephone.

TABLE 4 - TELEVISION STATIONS

CITY OF ORIGIN	STATION	CHANNEL	AFFILIATION
LOS ANGELES	KABC-TV	7	ABC
LOS ANGELES	KCAL-TV	9	ABC
LOS ANGELES	KCBS-TV	11	CBS
LOS ANGELES	KCRB-TV	12	CBS
LOS ANGELES	KDCA-TV	13	CBS
LOS ANGELES	KDSE-TV	14	CBS
LOS ANGELES	KDWB-TV	15	CBS
LOS ANGELES	KDZL-TV	16	CBS
LOS ANGELES	KDZL-TV	17	CBS
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LOS ANGELES	KDZL-TV	96	CBS
LOS ANGELES	KDZL-TV	97	CBS
LOS ANGELES	KDZL-TV	98	CBS
LOS ANGELES	KDZL-TV	99	CBS
LOS ANGELES	KDZL-TV	100	CBS

(1) THIS LOCAL STATION IS REPORTABLE IN THE DAYPART SECTION ONLY  
(2) THIS LOCAL STATION IS REPORTABLE IN THE DAYPART SECTION ONLY  
IN ADDITION TO THE REPORTABLE STATIONS LISTED ABOVE, THE FOLLOWING STATIONS ARE REPORTABLE IN THE DAYPART SECTION ONLY: (SEE REFERENCE SUPPLEMENT FOR REPORTING STANDARDS)

\* = NSI Client  
-C = Independent Subscription TV Station  
P = Periodical and Public Broadcasting Service Stations  
Network affiliation as shown herein is based on information supplied by the networks for use in Nielsen Television Index (NTI). For additional details, see NSI Reference Supplement.  
T = Time- Broadcasting System  
C = Public Broadcasting-Commercial  
I = Independent Station

TABLE 5 - TV HOUSEHOLDS AND IN-TAB DIARY HOUSEHOLDS BY SAMPLING AREA

ADJ DMA CNTY	TERRITORY	EST. TV HHOLS JAN 1995	CABLE TV HHOLS NOV 1995	IN-TAB DIARY HHOLS
D INYO	CA P	7,020	98	D 4
D KERN-E	CA P	26,840	74	B 8
KERN-W	CA P	171,620	72	B 389
MD LOS ANGELES	CA LA	2,943,020	58	A 900
MD ORANGE	CA LA	866,020	68	A 330
RIVERSIDE-E	CA LA	5,800	58	A 3
D RIVERSIDE-W	CA LA	355,980	61	A 143
D SAN BERNARDINO	CA LA	507,620	83	A 173
#1 SAN DIEGO	CA P	809,420	82	A 842
#2 SANTA BARBARA-S	CA P	87,890	94	B 138
D VENTURA	CA P	221,880	43	A 88
#3 RIVERSIDE-C	CA LA	100,980	88	A 263

METRO TOTAL 3,798,020 60 1,230  
DMA TOTAL 4,917,620 61 1,648  
NSI AREA TOTAL 6,172,780 58 3,851  
#1 = SAN DIEGO #2 = SANTA BARBARA-SAN MAR-SAN LUIS  
#3 = PALM SPRINGS

NOTE: VIEWING IN ADJACENT DMA'S IS NOT LIMITED TO NSI AREA COUNTIES IN TABLE 5. THE ABOVE LIST OF COUNTIES DOES NOT NECESSARILY REPRESENT ENTIRE AREA FOR WHICH VIEWING OCCURS TO STATIONS IN THIS MARKET. SEE INSIDE BACK COVER FOR FURTHER STATION TOTAL AREA DESCRIPTION.

Initially, approximately 47% of the pre-designated Los Angeles DMA basic meter sample households are recruited and installed. For a typical report period, approximately 41% of the installed meter sample are pre-designated households.

Audience estimates are computed separately for each week. Reported multi-week averages are the average of the appropriate individual week audience estimates. Some of the above counties may have been combined for projecting individual week audience estimates. Viewing among the households in the in-tab sample for all counties that are combined are projected to the Total TV Households for the combined counties. These county groupings are available upon request.  
M = Metro County, D = Designated Market Area County (for definition see Section II)  
\*\* The DMA meter sample currently approximates 532 television households in which meter equipment is installed; 502 households (including households replaced during the survey period) provide records meeting Nielsen accuracy standards during one or more days of this survey interval, including 480 households on the average individual day.  
1. See NSI Reference Supplement for explanation of MARS Territory and County Size.