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

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

**OPPOSITION OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its Opposition to the Petitions for Reconsideration filed in the above-captioned proceeding.

DISCUSSION

Under the mandatory carriage rules, a television station is entitled to assert carriage rights on cable systems located in its television market,¹ defined as its Area of Dominant Influence ("ADI").² For the initial must carry/retransmission consent election in 1993, the FCC specified that the 1991-1992 ADI Television Market Guide assignments would be used.³ The Commission in its above-captioned Report and Order⁴ adopted a transition from ADIs to DMA

¹ 47 C.F.R. §76.55(c).

² Id., §76.55(e).

³ Id., note to ¶ (e).

⁴ 11 FCC Rcd. 6201 (1996).

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market designations for must carry/retransmission consent purposes. But during the upcoming 1996 election, the Commission determined to continue to use the 1991-92 ADI market list. Stations may rely on the DMA market lists for the 1999 and subsequent elections.

Both Blackstar of Ann Arbor (“Blackstar”) and Costa de Oro Television (“Costa”) have filed for reconsideration of this Order. Neither Petitioner objects, as a general matter, to the Commission’s decision to continue to rely on the Arbitron 1991-92 market list for the 1996 must carry/retransmission consent election. Instead, Blackstar and Costa raise concerns regarding alleged errors in the 1991-92 Arbitron list with respect to their particular stations, and suggest that the Commission entertain blanket modifications to the ADI list from stations similarly situated.

Blackstar asks the Commission to “clarif[y] that, for purposes of the 1996 must-carry election, stations will be permitted to utilize updated Arbitron ADI market designations where reliable evidence is available to substantiate what Arbitron’s designation would have been for the 1996 must-carry election.”⁵ In its case, Blackstar states that the Arbitron market list issued after 1991-1992 resulted in a change in its market designation -- from Lansing to Detroit, Michigan. Costa argues that Arbitron’s 1991-92 market list erroneously included its station in the Santa Barbara, rather than the Los Angeles, ADI.⁶ It therefore urges the Commission to modify its rules to allow a station to rely on the latest DMA rankings, if the 1991-92 Arbitron Guide contains an inaccuracy.⁷

⁵ Blackstar Petition at 2.

⁶ Costa Petition at 2.

⁷ Id. at 3. Costa also argues that stations commencing operation since 1992 should be able to rely on DMA market determinations. Id. at 5. Costa presents no persuasive reason why new stations should be treated any differently than other stations in this respect. The rules should be applied consistently.

Both stations raise discrete issues with respect to the 1991-92 Arbitron list that do not warrant the across-the-board revisions to the rules that they advocate. To the extent that either or both stations raise concerns about the accuracy of their particular market designation, the Commission's rules already provide them with a remedy -- they may petition for special relief. As the Commission explained in its Order, "for the time being, the Commission will rely on market modifications determined pursuant to section 614(h) to refine market boundaries to account for changes in viewing patterns and market conditions."⁸ And under the 1996 Act, these petitions for market modifications must be resolved by the Commission expeditiously⁹

Indeed, it appears that both petitioners already have availed themselves of this alternative avenue for relief. Blackstar has filed a special relief petition requesting modifications to its ADI listing.¹⁰ And Costa already has had its must carry rights in the Los Angeles ADI reviewed by the Cable Services Bureau, which determined in three separate instances that Costa is not eligible for must carry status on particular cable systems in the Los Angeles ADI.¹¹

Under these circumstances, the Commission's rules already provide petitioners with a more appropriate procedure for obtaining relief that addresses their particularized concerns

⁸ Order, 11 FCC Rcd. at 6223.

⁹ 47 U.S.C. §614(h) (requiring resolution within 120 days).

¹⁰ FCC Public Notice, CSR 4786-A (July 19, 1996).

¹¹ See Complaints of Costa De Oro Television, Inc., 10 FCC Rcd. 9468 (Cable Ser. Bur. 1995) (dismissing must carry complaint); Complaints of Costa De Oro Television, Inc., against United Cable Television of East San Fernando Valley, Inc., 10 FCC Rcd. 503 (Cable Ser. Bur. 1996) (denying Costa carriage); Complaints of Costa De Oro Television, Inc. against Copley/Colony Cablevision, 10 FCC Rcd. 505 (Cable Ser. Bur. 1996) (same). In fact, the Bureau previously determined that Costa "introduced no evidence showing that Arbitron erred in assigning the station to the Santa Barbara ADI." 10 FCC Rcd. at 9472.

regarding their ADI designations. Their individual circumstances do not warrant making wholesale revisions to the rule.

CONCLUSION

For the foregoing reasons, the Commission should maintain its rules regarding use of the 1991-92 Arbitron market guide for this next must carry/retransmission consent election cycle.

Respectfully submitted,



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August 8, 1996

CERTIFICATE OF SERVICE

I, Staci M. Pittman, do hereby certify that on this 8th day of August, 1996, copies of the foregoing "**Opposition of the National Cable Television Association, Inc.**" were delivered by first-class, postage pre-paid mail upon the following:

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