

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Definition of Markets for Purposes of the )  
Cable Television Mandatory Television )  
Broadcast Signal Carriage Rules )  
)  
Implementation of Section 301(d) of the )  
Telecommunications Act of 1996 )  
)  
Market Determinations )

CS Docket No. 95-178

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

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States, representing owners and operators of cable systems serving more than 80 percent of cable television households, as well as program networks and others interested in or affiliated with the cable television industry.

**DISCUSSION**

Our initial comments in this proceeding proposed that the Commission continue to rely on the 1991-92 Arbitron ADI market designations to determine a television station's local market for must carry purposes, rather than switching to Nielsen Designated Market Areas ("DMAs"). NCTA endorsed this approach to avoid the disruptions to cable operators and their customers that would result from a wholesale revision to must carry markets.

The Commission in its Report and Order in this proceeding, however, decided to use DMAs for defining television stations' local markets beginning in the 1999 must carry/retransmission election period. The Further Notice seeks comments on ways to help

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smooth the transition to this new definition of a “local” commercial station for must carry purposes.

**I. OPERATORS SHOULD BE PROVIDED SUFFICIENT TIME FOR A TRANSITION TO THEIR NEW SIGNAL CARRIAGE OPERATIONS**

In approaching this issue, the ultimate goal should be minimizing the disruptions to cable customers. In order to do so, the Commission should adopt a transition that provides cable operators sufficient lead time in which to rearrange their signal complements, if necessary, under the new market definitions, and which seeks to minimize problems that may result from additional and inconsistent must carry obligations.

In its initial must carry Order, the Commission recognized that these adjustments could not occur overnight. Operators must notify customers of changes in their channel line-ups, notify broadcast stations that their carriage may be terminated, reposition other services in order to make room for new stations with channel positioning rights, and make any necessary technical or other adjustments.<sup>1</sup> In addition, operators faced with must carry demands from stations previously not considered part of their market will need to determine whether those stations provide the requisite signal strength in order to qualify for must carry. The Commission should provide operators with sufficient time to make these determinations.

The rules currently provide a three month period in which stations may elect between must carry and retransmission consent and if the latter, during which negotiations regarding signal carriage may occur. This time frame was not designed with these wholesale market changes in mind.<sup>2</sup> Operators that have systems located in counties that will switch markets, as

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<sup>1</sup> Report and Order, 8 FCC Rcd. 2965, 3001 (1993).

<sup>2</sup> Existing rules provide for elections to occur on October 1, with implementation occurring on January 1.

well as systems that may face additional station carriage obligations from stations previously outside their market, will face burdens in addition to those normally associated with negotiations with broadcasters already carried on their systems. Given the additional burdens that will be imposed in many instances by changing to new markets, the Commission should provide a longer lead time for stations that were not previously carried to notify an operator that its system is within the station's DMA, and for stations already carried to notify an operator whether they are also in the DMA. An additional 120 days to conduct tests, prepare for channel realignments, and the like will be necessary. In addition, this will provide operators and broadcasters sufficient time to submit market modification petitions, if necessary, and for the FCC to adjudicate these petitions.

**II. THE COMMISSION SHOULD ENSURE THAT THE CHANGE IN MARKET DEFINITION WILL NOT RESULT IN INCREASED MUST CARRY BURDENS**

The Further Notice also requests comment regarding the effect of changing to a DMA market definition on Section 614(h) decisions. Several aspects of market modifications may be implicated by this decision. For example, the Bureau has already decided cases in which a station that is inside an ADI has been deemed not to be a must carry station because it fails to serve the cable community.<sup>3</sup> These determinations, based on examination of the particular station's carriage history, signal strength, and local service, should stand regardless of whether that station is also in a DMA covering the cable community.

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<sup>3</sup> See, e.g., Time Warner Cable for Modifications of the Philadelphia, Pennsylvania ADI, 1996 FCC Lexis 3729 (rel. Oct. 15, 1996); Petition of Time Warner New York City Cable Group for Modification of ADI Station WHAI, Bridgeport, CT, 1996 FCC Lexis 5167 (rel. Sept. 17, 1996); Dynamic Cablevision of Florida, Ltd. and Continental Cablevision of Jacksonville, Inc., d/b/a/ Comcast of Broward County, WA, and Continental Cablevision of Broward County, Inc. For Modification of the Miami-Ft. Lauderdale, Florida ADI, 11 FCC Rcd. 9880 (1996).

The same approach should apply to stations outside an ADI (which are also outside the DMA) that previously sought a market modification to be deemed "local" to the cable community and were denied.

In addition, the Commission should make clear that a cable operator is not subject to increased must carry burdens due to the change in markets. Specifically, existing rules provide that where a market modification petition is pending, a cable operator cannot delete a commercial television station from carriage.<sup>4</sup> The Commission should ensure that this provision is not transformed into the equivalent of grandfathered carriage rights for stations that previously were deemed to be in an ADI, but which are not in the DMA. Otherwise, a cable operator would be forced to carry what could be deemed to be a distant signal for copyright purposes (without any indemnification for increased copyright liability from the station), and its must carry obligations could potentially increase significantly. The Commission should not require operators to continue to carry stations that are not in the DMA, but which were considered to be in their ADI, until a market modification petition is resolved by the FCC.<sup>5</sup>

### CONCLUSION

For the foregoing reasons, the Commission should provide cable operators with a reasonable transition to new must carry markets.

Respectfully submitted,

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<sup>4</sup> 47 C.F.R. §76.56(c).

<sup>5</sup> In cases where an operator and a station mutually agree to continued carriage of a station previously deemed to be within its market, the Commission should provide a pro forma approach to quickly determine the station to be within a DMA.