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

In re:	)	
	)	
WHP LICENSEE, LLC	)	CSR No. _____
	)	
Petition for Special Relief for Waiver of	)	
Section 76.92(f) of the Commission's Rules	)	

To: The Secretary
Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

WHP Licensee, LLC, licensee of WHP-TV, Harrisburg, Pennsylvania, by its attorneys and pursuant to Section 76.7 of the Commission's Rules,[1] hereby files its Petition for Special Relief seeking a waiver of the "significantly viewed" exception to the network non-duplication protections contained in Section 76.92(f) of the Commission's Rules.[2] Pursuant to this exception, cable systems are permitted to carry the entire signal of distant television station WPHL-TV and KYW-TV in the communities of Lancaster, PA and Elizabethtown, PA (the "Communities"), which are located in Lancaster County within the Harrisburg-Lebanon-Lancaster-York Nielsen Designated Market Area ("Harrisburg DMA"), including network programming that duplicates that of WHP-TV. This is the case even though WPHL-TV and KYW-TV are not located in the Harrisburg DMA, but in the Philadelphia, Pennsylvania DMA.

The instant waiver is being sought so that WHP-TV can enforce its rights to network program non-duplication protection against WPHL-TV and KYW-TV. As explained more fully

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1 47 C.F.R. § 76.7.

2 47 C.F.R. § 76.92(f).

below, although WPHL-TV and KYW-TV are included in the Commission's now more than forty-year-old 1972 list of television stations that were "significantly viewed" in Lancaster County within the Harrisburg DMA,[3] the stations, in fact, no longer attain the viewing levels required for such status in the Communities in the Harrisburg DMA. Consequently, WHP-TV respectfully requests that the Commission waive the "significantly viewed" exception with respect to WPHL-TV and KYW-TV in the Communities.

WHP-TV is a CBS and MyNetwork affiliate, and is licensed to Harrisburg, Pennsylvania in the Harrisburg DMA. In contrast, WPHL-TV (a MyNetwork affiliate) and KYW-TV (a CBS affiliate) are licensed to operate in the Philadelphia DMA. Nevertheless, WHP-TV, a local station in relation to the Communities, cannot exercise its program exclusivity rights against WPHL-TV and KYW-TV solely because the stations were reported in the Commission's 1972 list as being "significantly viewed" in Lancaster County. As a result of the "significantly viewed" exception, cable systems in the Communities are currently not required to delete the duplicating network programming of WPHL-TV and KYW-TV.[4]

Pursuant to the Commission's Rules and case precedent, in order to obtain a waiver of the "significantly viewed" exception, a petitioner must demonstrate "utilizing community- or system-specific data, to one standard error . . . that the station in question has not met [the Commission's] standards for significant viewing for two consecutive years."[5] For network stations such as WPHL-TV and KYW-TV to be significantly viewed, they must achieve in non-cable homes both a share of viewing hours of more than 3% (total week hours) and a net weekly

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3 *See* 1972 Reconsideration Order, 36 FCC 2d 326, Appendix B (1972).

4 47 C.F.R. §76.92(f).

5 *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

circulation of at least 25%, calculated to one standard error.[6] WPHL-TV and KYW-TV fail to meet these requirements in the Communities. A special community-specific survey conducted by Nielsen Media Research, attached hereto as Exhibit A, includes a special tabulation of over-the-air viewing using diaries from noncable/non-ADS homes for the specified ZIP Codes of Lancaster County. Notice was previously given of the special tabulation as required by 47 C.F.R. §76.54.[7]

As the studies show, WPHL-TV and KYW-TV fail to meet the benchmarks for significantly viewed status in the Communities by a wide margin because the share of viewing in non-cable homes falls below 3%, within one standard error, and the net weekly circulation falls below 25%, within one standard error, for each of the Communities. Indeed, all of the studies show that for each of the Communities and in all survey periods, WPHL-TV's and KYW-TV's shares of total viewing hours and their net weekly circulation are at *zero.*

The independent, community-specific Nielsen data attached hereto thus provides an even more compelling showing than recent FCC precedent that WPHL-TV and KYW-TV are no longer significantly viewed in the Communities in the Harrisburg DMA.[8] In light of these facts,

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6 *WGFL License Corp.*, 22 FCC Rcd. 1708, 1710 (2007) (citing 47 C.F.R. §76.5(i)).

7 The Commission has "never imposed a requirement that the submitted data include the latest available survey period, although [it does] expect petitioners to use relatively recent data for these types of waivers." *WISN Hearst-Argyle Television, Inc.*, 26 FCC Rcd 4044, 4053-54, ¶ 14 (2011). Here, the time between the filing of the Petition and the first survey period is only three years, and less than 2 years from the last included survey of November 2013. Accordingly, the instant data is "relatively recent," and is distinguishable from circumstances in which the Commission has denied petitions based on out-of-date data. *See, e.g.*, *Chesapeake Television Licensee, LLC, Licensee of WBFF(TV), Baltimore, Maryland*, 30 F.C.C. Rcd. 6455 (2015) (denying petition where time between the filing of the petition in July 2013 and the first survey date of February 2007 was more than six years from filing of the petition).

8 *See, e.g.*, *Barrington Broadcasting Flint Corporation*, 19 FCC Rcd 22046 (2004) ("*Barrington*") and *WSMH Licensee, LLC*, 2005 FCC LEXIS 4884 (2005) ("*WSMH*"). In *Barrington* (at ¶ 6), the data demonstrated for the first year that television station WDIV attained a 1.98 percent share of total viewing hours and a 28.64 percent net weekly circulation, and for the second year a 2.53 percent share of total viewing hours and a net weekly circulation of 21.42 percent. In *WSMH* the Nielsen studies demonstrated that television station WJBK attained total viewing shares of 0.81 percent and 0.67 percent and 15.89 percent and 12.76 percent with respect to net weekly circulation.

WHP-TV submits that the instant request for a waiver of Section 76.92(f) of the Commission's Rules to permit WHP-TV to assert its network non-duplication rights again WPHL-TV and KYW-TV in the Communities should be granted.

Conclusion

For the reasons stated herein, WHP-TV respectfully requests that the Commission waive the significantly viewed exception to the network non-duplication rules to allow WHP-TV to assert its network non-duplication rights against WPHL-TV and KYW-TV in the Communities local to WHP-TV in the Harrisburg DMA.

Respectfully submitted,

By: _____
Clifford M. Harrington
Jessica Nyman

Counsel for WHP-TV Licensee, LLC

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, N.W.
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(202) 663-8000

Dated: September 18, 2015

CERTIFICATE OF SERVICE

I, Cherie Mills, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "Petition for Special Relief" was served via U.S. mail on this 18th day of September, 2015 to the following:

*Marlene Dortch Media Bureau Federal Communications Commission 445 12th Street Washington, DC 20554	Comcast Cable 1311 S. Duke St. Lancaster, PA 17603
WPHL-TV WPHL, LLC 5001 Wynnefield Avenue Philadelphia, PA 19131	KYW-TV CBS Broadcasting Inc. 1800 K Street, NW Suite 920 Washington, DC 20006
WHTM-TV 3235 Hoffman Street P.O. Box 5860 Harrisburg, PA 17110	WPMT(TV) WPMT, LLC 2005 South Queen Street York, PA 17403
WGAL(TV) WGAL Hearst Television, Inc. P.O. Box 1800 C/O Brooks Pierce, et al. Raleigh, NC 27602	WLYH-TV Nexstar Broadcasting, Inc. 545 E. John Carpenter Freeway Suite 700 Irving, TX 75062
WITF-TV WITF, Inc. 4801 Lindle Road Harrisburg, PA 17111	WGCB-TV NRJ TV RL License Co., LLC 722 S. Denton Tap Road Suite 130 Coppell, TX 75019
Elizabethtown Borough 60 South Hanover St. Elizabethtown, PA 17022	City of Lancaster 120 North Duke Street P.O. Box 1599 Lancaster, PA 17608
WFMZ-TV Maranatha Broadcasting Company, Inc. 300 East Rock Road Allentown, PA 18103	WBPH-TV Sonshine Family Television, Inc. 813 N. Fenwick Street Allentown, PA 18109

WBRE-TV Nexstar Broadcasting, Inc. 545 E. John Carpenter Freeway Suite 700 Irving, TX 75602	WCAU(TV) NCB Telemundo License LLC 300 New Jersey Ave., N.W. Washington, DC 20001
WTVE(TV) NRJ TV Philly License Co., LLC 722 S. Denton Tap Road Suite 130 Coppell, TX 75019	WNEP-TV Local TV Pennsylvania License, LLC 16 Montage Mountain Road Moosic, PA 18507
WPVI-TV ABC, Inc. 77 W. 66th Street 16th Floor New York, NY 10023	WYOU(TV) Mission Broadcasting, Inc. 30400 Detroit Road Suite 304 Westlake, OH 44145

Cherie Mills

Cherie Mills

*Via Hand Delivery

EXHIBIT A

nielsen

The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for KYW and WPHL during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2012, Nov 2012, February 2013 and November 2013 measurement periods. The report is based on series of Zip code groups. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_{1}^{n}(w * Qhrs(s))}{\sum_{1}^{n}(w * Qhrs(t))}$$

Share Standard Error

EXHIBIT A

nielsen

$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_{1}^{n} \left[\frac{(w * Qhrs(s)) - (Share * w * Qhrs(t))}{\sum_{1}^{n} (w * Qhrs(t))} \right]^2}$$

where n = number of intab households
where w = household weight
where $Qhrs(s)$ = total quarter hours tuned to station of interest by household
where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$Average\ Weekly\ Cume = \frac{1}{z} * \sum_{1}^{z} \left[\frac{\sum_{1}^{n} (HH\ Weight * x)}{\sum_{1}^{n} HH\ Weight} \right]$$

Average Weekly Cume Standard Error

$$Std\ Error = \sqrt{\frac{1}{z^2} \sum_{1}^{z} \left[\frac{n}{n-1} * \sum_{1}^{n} \left[\frac{(x - Week\ Cume) * HH\ Weight}{\sum_{1}^{n} HH\ Weight} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)
where n = number of intab households in week
where x = 0 if household did not tune station of interest
where x = 1 if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.

EXHIBIT A

nielsen

WPHL

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
17601, 17602, 17603 & 17611 LANCASTER PA LANCASTER COUNTY	Number of Intabs	14	8
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
17022 ELIZABETHTOWN PA LANCASTER COUNTY	Number of Intabs	6	7
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

KYW

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
17601, 17602 & 17603 LANCASTER, PA LANCASTER COUNTY	Number of Intabs	14	8
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
17022 ELIZABETHTOWN, PA LANCASTER COUNTY	Number of Intabs	6	7
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

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READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX # **979089**	FEDERAL COMMUNICATIONS COMMISSION **REMITTANCE ADVICE** **FORM 159** PAGE NO 1 OF 1	APPROVED BY OMB 3060-059 SPECIAL USE FCC USE ONLY

SECTION A - Payer Information

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) REDACTED	(3) TOTAL AMOUNT PAID (dollars and cents) **$1465.00**

(4) STREET ADDRESS LINE NO. 1
2300 N Street, N.W.

(5) STREET ADDRESS LINE NO. 2

(6) CITY **Washington**	(7) STATE **DC**	(8) ZIP CODE **20037-1128**

(9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) **202-6638525**	(10) COUNTRY CODE (IF NOT IN U.S.A.) **US**

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN) REDACTED	(12) FCC USE ONLY

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME
Clifford M Harrington

(14) STREET ADDRESS LINE NO. 1
2300 N Street, N.W.

(15) STREET ADDRESS LINE NO. 2

(16) CITY **Washington**	(17) STATE **DC**	(18) ZIP CODE **20037-1128**

(19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) **202-6638525**	(20) COUNTRY CODE (IF NOT IN U.S.A.) **US**

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN) **0016660540**	(22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) FCC Call Sign/Other ID **WHP-TV**	(24A) Payment Type Code(PTC) **TQC**	(25A) Quantity **1**
(26A) Fee Due for (PTC) **$1,465.00**	(27A) Total Fee **$1465.00**	FCC Use Only

(28A) FCC CODE 1	(29A) FCC CODE 2 **X**

(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only

(28B) FCC CODE 1	(29B) FCC CODE 2