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Before the
FEDERAL COMMUNICATIONS COMMISSION **FCC** Mail Room
Washington, DC 20554

In the Matter of)	
)	
MPS Media of Gainesville Licensee, LLC)	MB Docket No. 12-214
)	CSR-8692-N
)	
For Waiver of §§ 76.92(f) & 76.106(a) of the)	
Commission's Rules)	
)	

To: Chief, Media Bureau

**OPPOSITION OF POST-NEWSWEEK STATIONS, FLORIDA, INC.,
LICENSEE OF WJXT(TV), JACKSONVILLE, FLORIDA**

Post-Newsweek Stations, Florida, Inc. ("Post-Newsweek"), licensee of television station WJXT(TV), Jacksonville, Florida (Facility ID 53116) ("WJXT"), opposes the above-captioned Petition¹ for a waiver of the significantly viewed exception to the network non-duplication and syndicated exclusivity rules, as set forth at Sections 76.92(f) and 76.106(a) of the Commission's rules.² Petitioner has failed to present data meeting the Commission's standards for waivers of the significantly viewed exception. Specifically, the Petition improperly aggregates viewership data for two years and fails to show that the data proportionally represent all communities served by Cox's cable system. Either of these errors provides the Commission with sufficient cause to deny the Petition. In addition, even if the Commission were to grant the

¹ MPS Media of Gainesville Licensee, LLP, Petition for Waiver of Sections 76.92(f) and 76.106(a) of the Commission's Rules, MB Docket No. 12-214 (filed July 5, 2012) ("Petition"). Post-Newsweek respectfully requests leave to file this Opposition outside the time period prescribed by 47 C.F.R. § 76.7(b)(1). WJXT personnel inadvertently failed to timely notify Post-Newsweek management of the station's receipt of MPS Media's Petition. Post-Newsweek regrets the delay.

² 47 C.F.R. §§ 76.92(f), 76.101.

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Petition, Petitioner still could not assert syndicated exclusivity rights against WJXT in any areas within WJXT's digital television noise-limited service contour.

I. THE PETITION IMPROPERLY AGGREGATES VIEWERSHIP DATA FROM TWO SEPARATE YEARS.

Stations that are considered “significantly viewed” based on their over-the-air viewership in a community are exempt from the network non-duplication and syndicated exclusivity rules.³ Thus, cable operators need not delete programming aired by significantly viewed stations even if local stations carry the same programming. A station that wishes to enforce its exclusivity rights against a competing station that is considered “significantly viewed” must petition the Commission for a waiver of the significantly viewed exception as applied to the competing station.⁴

Any station seeking such a waiver must show that the targeted station has failed for two consecutive years to obtain the viewership level required for “significantly viewed” status.⁵ The petitioner also must demonstrate that the surveys relied upon to reach this conclusion satisfy the minimum standards the Commission's rules set for this type of survey for *each* year.⁶ Here, the Petition does not present the necessary data. Instead, the Petition presents aggregated Nielsen viewership data from a total of four separate sweeps periods in 2010 and 2011.⁷ It is impossible to determine from the Petition whether the data collected in each year meet the Commission's standards.

³ See 47 C.F.R. §§ 76.92(f), 76.106(a).

⁴ See *KCST-TV, Inc.*, 103 F.C.C. 2d 407, 412-13 (1986).

⁵ *Saga Broadcasting, LLC*, 26 FCC Rcd 16851, 16852 (MB 2011).

⁶ *Id.* at 16852 n.10 (citing the methodological requirements of 47 C.F.R. § 76.54(b)).

⁷ See “Significant Viewing Study, Gainesville,” attached to Petition.

II. THE PETITION FAILS TO SHOW THAT ITS DATA PROPORTIONALLY REPRESENTS ALL COMMUNITIES SERVED BY COX'S SYSTEM.

The Petition seeks a waiver of the significantly viewed exception on a system-specific, rather than a community-specific, basis.⁸ Pursuant to Section 76.54(b) of the Commission's rules, "[i]f a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population."⁹ Accordingly, when a petitioner relies on system-specific surveys, "the percentage of diaries from each community surveyed must be approximately the same as the percentage of the total population for each community served by the cable system,"¹⁰ and if a petition "does not provide sufficient information to assess whether [relevant communities] are proportionally represented in the sample used for the Nielsen tabulation of audience statistics ... the survey data is deficient."¹¹

Here, the Petition is deficient because the Petition provides no population data for the relevant communities nor any information regarding how many diaries originated in each community. Instead, the Petition reports combined data for all usable diaries returned over a two-year period across every zip code included in the survey.¹² It therefore is impossible to assess whether all communities served by the Cox system at issue are proportionally represented in the sample relied upon by the Petition.

⁸ See Petition at 5.

⁹ 47 C.F.R. § 76.54(b).

¹⁰ *WTVG, Inc.*, 25 FCC Rcd 2665, 2667 (MB 2010).

¹¹ *Journal Broadcast Corp.*, 21 FCC Rcd 3471, 3474 (MB 2006).

¹² See "Significant Viewing Study, Gainesville," attached to Petition.

III. PETITIONER MAY NOT ENFORCE SYNDICATED EXCLUSIVITY RIGHTS AGAINST WJXT WITH RESPECT TO ANY COMMUNITY UNIT WITHIN WJXT'S SERVICE CONTOUR.

The Petition states that the requested waiver, if granted, “will allow WNBW-DT to exercise its ... syndicated exclusivity rights with respect to ... WJXT(DT), Jacksonville, Florida ... in the areas in the Gainesville, Florida Designated Market Area (‘DMA’) outside of the city limits of Gainesville served by Cox Cable.”¹³ As the Cox Opposition notes, however, this assertion is not strictly accurate.¹⁴ In fact, WJXT’s signal contour covers portions of unincorporated Alachua County.¹⁵ Under Section 76.106(a) of the Commission’s rules, “[n]otwithstanding the requirements of §§76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal’s grade B contour.”¹⁶ The Commission’s rules therefore prohibit WNBW from exercising syndicated exclusivity rights against WJXT in any community unit(s) that falls, in whole or in part, within WJXT’s signal contour, regardless of the outcome of the instant Petition.

* * *

The Petitioner has not provided adequate data regarding WJXT’s viewership. The information presented in the Petition neither demonstrates that WJXT has not been significantly

¹³ Petition at 1.

¹⁴ Opposition of CoxCom LLC d/b/a/ Cox Communications Gainesville/Ocala, MB Docket No. 12-214, at 8 (filed Sept. 5, 2012) (“Cox Opposition”).

¹⁵ *Id.* at 8 & Exhibit A. *See also* WJXT Station Profile, Contour Maps, <https://stations.fcc.gov/station-profile/wjxt/contour-maps/#>.

¹⁶ 47 C.F.R. § 76.106(a). The Commission treats a digital television station’s noise-limited service contour as equivalent to the Grade B contour referenced in the rule’s text. *See Estes Broadcasting, Inc.*, Letter, 25 FCC Rcd 7956, 7956 n.2 (MB 2010).

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viewed for each of two consecutive years nor does it meet the Commission's requirements with respect to proportionality of the communities studied. Accordingly, the Petition must be denied. In addition, areas within WJXT's signal contour are protected from syndicated exclusivity blackouts under Section 76.106(a).

Respectfully submitted,

POST-NEWSWEEK STATIONS, FLORIDA, INC.

By:



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October 4, 2012

DECLARATION OF JOHN J. RONAYNE

I, John J. Ronayne, declare as follows:

1. I am a Vice President of Post-Newsweek Stations, Florida, Inc., which is the licensee of WJXT(TV), Jacksonville, Florida.

2. I have read the foregoing Opposition, and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law and it is not interposed for any improper purpose.


John J. Ronayne

Oct 3, 2012
Date

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CERTIFICATE OF SERVICE

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I, Michael Beder, an associate with the law firm of Covington & Burling LLP, certify that on this 4th day of October, 2012, I caused copies of the foregoing Opposition of Post-Newsweek Stations, Florida, Inc., to be served by first-class U.S. mail, except where electronic mail is indicated, on the following:

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