

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

GRAY TELEVISION LICENSEE, LLC
WHSV-TV (Fac. ID No. 4688)
Harrisonburg, Virginia

CSR - _____

Petition for Waiver of Sections 76.92(f) and
76.106(a) of the Commission's Rules

To: Office of the Secretary
Attn: Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Pursuant to 47 C.F.R. § 76.7(a)(1), Gray Television Licensee, LLC (“Gray”), licensee of WHSV-TV, Harrisonburg, Virginia, respectfully requests waivers of the “significantly viewed” exceptions to the network non-duplication rule and the syndicated exclusivity rule with respect to WTTG, Washington, DC, in the two largest communities in WHSV-TV’s market, Harrisonburg and Staunton, Virginia.

These exceptions currently are preventing WHSV-TV from realizing the benefits of its network non-duplication and syndicated exclusivity rights in the cable television systems serving Harrisonburg and Staunton. As a result, the broadcast programming rights for which WHSV-TV bargained in its affiliation agreement with Fox Television Network are being ignored in favor of Fox network programming broadcast by WTTG, a distant Fox owned-and-operated television station. WTTG, however, broadcasts from a tower site located more than 100 miles from Harrisonburg and more than 120 miles from Staunton, thereby making it physically impossible from the station to deliver an over-the-air signal to these two communities. Not surprisingly, the community-specific viewing survey Nielsen conducted has confirmed conclusively that WTTG lacks ANY over-the-air viewership in these communities. The Commission, therefore, should grant this Petition, waive the “significantly viewed” exceptions to the program exclusivity rules with respect to WTTG in

Harrisonburg and Staunton, and permit WHSV-TV to benefit from the exclusivity rights for which it bargained.

Background

Harrisonburg and Staunton, Virginia, are well within the protected “geographic zone” for WHSV-TV provided by the Commission’s Rules and by Gray’s network affiliation and syndicated programming agreements, and well outside the geographic zone of WTTG.¹ Consequently, the Commission’s network non-duplication and syndicated program exclusivity rules ordinarily would permit Gray to require that the local cable systems delete the duplicating network and syndicated programming of WTTG in Harrisonburg and Staunton.²

Under the “significantly viewed” exceptions to those rules, however, a cable system is not required to delete the duplicating programming of distant stations that are deemed to be “significantly viewed” in the community at issue.³ In this case, the Commission’s 1972 list of “significantly viewed” stations identified WTTG (then broadcasting an analog VHF signal) as “significantly viewed” in Rockingham County/Harrisonburg City and Augusta County/Staunton.⁴ Accordingly, absent the waivers requested herein, a cable operator need not delete the duplicating programming of WTTG in Harrisonburg or Staunton.⁵

¹ The geographic zone for WHSV-TV is 55 miles from Harrisonburg with respect to network programming and 35 miles with respect to syndicated programming. The geographic zone for WTTG is 35 miles for both network and syndicated programming. 47 C.F.R § 76.92, Note; *id.* § 76.101, Note. The reference points for Washington, DC and Harrisonburg, Virginia, are located 106 miles apart, and the reference points for Washington and Staunton are 122 miles apart. See <http://www.indo.com/distance/>. For a graphical depiction of WTTG’s signal contour, see Exhibit A.

² 47 C.F.R. §§ 76.92 and 76.101.

³ See *id.* §§ 76.92(f) and 76.106(a).

⁴ *Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems*, Memorandum Opinion and Order on Reconsideration, 36 F.C.C.2d 326 (App. B) (1972).

⁵ 47 C.F.R. § 76.92(f) (2011).

Recognizing that the presumption created by the 41-year-old “significantly viewed” list may no longer reflect real-life circumstances, the Commission more than 25 years ago adopted procedures for waiving the significantly viewed exception based on studies by an independent, professional audience survey organization.⁶ To obtain a waiver, a petitioner must demonstrate, “utilizing community- or system-specific data, to one standard error, . . . that the station in question has not met [the FCC’s] standards for significant viewing for two consecutive years.”⁷ To be presumed “significantly viewed” in a community, WTTG, a Fox affiliate, must achieve *both* “a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent” in non-cable homes in that community.⁸

Waiver Showing

Gray engaged Nielsen Media Research to prepare a study of representative community-specific audience surveys of WTTG’s over-the-air viewing in Harrisonburg and Staunton. As documented in Exhibits B, C, and D, attached hereto, Nielsen used the same methodology that the Bureau has accepted in countless petitions similar to this one. In particular, Nielsen prepared a special tabulation of diaries obtained from non-cable and non-ADS households in February and May 2011 and February and May 2012.⁹ Gray notified interested parties of its intent to purchase data from Nielsen,¹⁰ and it received one response. In a one-page letter dated December 14, 2012, Fox Television Licensee, LLC, the licensee of WTTG, objected to the methodology Nielsen routinely uses and the Bureau routinely accepts in “significantly viewed” waiver petitions.

⁶ See *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

⁷ *Id.*

⁸ 47 C.F.R. § 76.5(i) (2011). WTTG is considered an “independent station” under the FCC’s Rules; *id.* §76.7(j).

⁹ See 47 C.F.R. § 76.54(b) (2011); *Meredith Corporation Petition For Waiver of Section 76.92(f) of the Commission’s Rules*, 22 FCC Rcd 12932, 12934 (2007). In addition, the Commission routinely accepts special tabulations of Nielsen data gathered over two four-week sweeps periods in each of two consecutive years. See *id.*; see also, e.g., *WTNH Broadcasting, Inc.*, 16 FCC Rcd 16377 (2001).

¹⁰ See 47 C.F.R. § 76.54(c) (2011); *Meredith*, 22 FCC Rcd at 12935.

In light of Fox's objection, and to ensure the most complete record upon which the Bureau may base its decision, Gray took the unusual, although not unprecedented, step of commissioning Nielsen to prepare a second special tabulation of diaries obtained from non-cable and non-ADS households in July and November 2011 and July and November 2012. To verify the results in the larger of the two communities, Harrisonburg, Gray commissioned Nielsen to prepare a third study that averaged the results of all four four-week sweeps periods in 2011 and 2012 in Harrisonburg. Gray notified interested parties of the additional study periods. Fox responded with a one-page letter dated April 15, 2013, which reiterated the same objections expressed in its earlier letter. Gray also received a response from the licensee of the only other full-power television station licensed to the Harrisonburg market. In that unsolicited communication, the licensee wrote "WVPT has no objections or concerns. And we wish Gray Television the best in this endeavor."

In the first Nielsen study, attached hereto as Exhibit B, Nielsen compiled data based on the Nielsen Station Index survey conducted over four-week periods during February and May 2011 and February and May 2012 based on the residential zip codes assigned to Harrisonburg by the U.S. Postal Service, namely 22801 and 22802, and on the residential zip code assigned to Staunton by the U.S. Postal Service, namely 24401. In the second Nielsen study, attached hereto as Exhibit C, Nielsen compiled data based on the Nielsen Station Index survey conducted over four-week periods during July and November 2011 and July and November 2012 based on the residential zip codes assigned to Harrisonburg (*i.e.*, 22801 and 22802) and to Staunton (*i.e.*, 24401). Finally, Exhibit D provides Nielsen's third study in which it compiled an average of all the survey data reported in the first two studies, thereby providing WTTG's over-the-air ratings across all ratings periods in 2011 and 2012.

Not surprisingly, given WTTG's great distance from Harrisonburg and Staunton, the Nielsen studies conclusively confirm that WTTG has not met the FCC's standards for significant viewing for two consecutive years. In both Harrisonburg and Staunton, WTTG recorded absolutely no over-the-

air viewership in any of the eight survey periods in 2011 and 2012. Specifically, the station's average net weekly circulation (cume) and average share of viewing hours during the survey periods were as follows:

Harrisonburg

Survey Period	Households Studied	Avg. Net Weekly Circulation	Standard Error	Avg. Share Viewing Hours	Standard Error
Feb/May 11	21	0.00	0.00	0.00	0.00
July/Nov 11	18	0.00	0.00	0.00	0.00
Feb/May 12	17	0.00	0.00	0.00	0.00
July/Nov 12	15	0.00	0.00	0.00	0.00
Average	--	0.00	0.00	0.00	0.00

Staunton

Survey Period	Households Studied	Avg. Net Weekly Circulation	Standard Error	Avg. Share Viewing Hours	Standard Error
Feb/May 11	9	0.00	0.00	0.00	0.00
July/Nov 11	8	0.00	0.00	0.00	0.00
Feb/May 12	10	0.00	0.00	0.00	0.00
July/Nov 12	10	0.00	0.00	0.00	0.00
Average	--	0.00	0.00	0.00	0.00

Conclusion

The Nielsen studies confirm the obvious: distant WTTG, which cannot deliver an over-the-air signal anywhere near Harrisonburg or Staunton, failed to meet the required viewing standard in both 2011 and 2012. Gray therefore has met its burden to obtain the requested waivers and respectfully requests waivers of the significantly viewed exceptions with respect to WTTG in Harrisonburg and Staunton.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC



By: _____

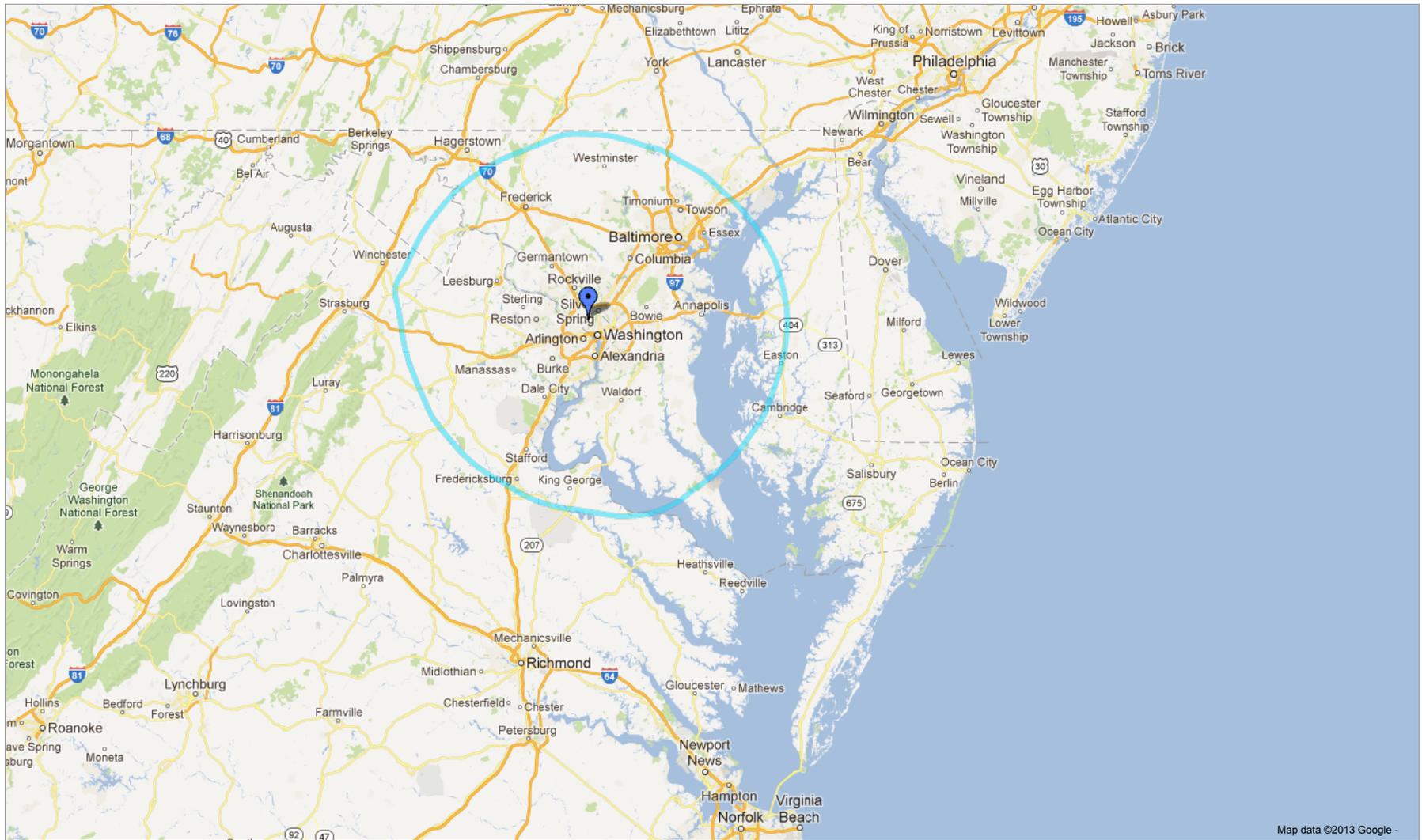
Kevin P. Latek
VP Law & Development
Gray Television, Inc.
4370 Peachtree Rd., NE
Atlanta, GA 30319
404-504-9828

April 30, 2013

Exhibit A



To see all the details that are visible on the screen, use the "Print" link next to the map.



is provided by a third party, and Google is not responsible for it. Information you enter below may become available to the third party.

<http://maps.google.com/?q=http://transition.fcc.gov/fcc-bin/contourplot.kml?gmap=2&appid=1423082&call=WTTG&freq=0.0&contour=41&city=WASHINGTON&state=DC.kml>

Exhibit B



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WTTG during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2011, May 2011, February 2012 and May 2012 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



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

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

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

Average Weekly Cume Standard Error

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

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 C



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WTTG during the Nielsen Station Index (NSI) survey conducted over four week periods during the July 2011, November 2011, July 2012 and November 2012 measurement periods. The report is based on a zip code group. 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:

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Exhibit D



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WTTG during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2011, May 2011, July 2011, November 2011, February 2012, May 2012, July 2012 & November 2012 measurement periods. The report is based on a Zip code group. 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:

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where n = number of intab households in week

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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.



Significant Viewing Study
Harrisonburg
Feb11, May11, Jul11, Nov11, Feb12, May12, Jul12 & Nov12
Su-Sa 7A-1A
WTTG

WTTG

Harrisonburg		
Geography Grouping	Results	Feb11, May11, Jul11, Nov11, Feb12, May12, Jul12, Nov12 Combined
22801 & 22802	Number of Intabs	71
	Average Weekly Cume	0.00
	Cume Std. Error	0.00
	Share	0.00
	Share Std. Error	0.00

Certificate of Service

I, Dottie Boudreau, an Executive Assistant at Gray Television, Inc., do hereby certify that I have on this 30th day of April, caused a copy of the foregoing "Petition for Special Relief" to be served by First Class U.S. Mail postage prepaid, upon the following:

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President & General Manager
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Dottie Boudreau