

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Delmarva Broadcast Service General Partnership	)	CSR-5552-N
	)	
For Waiver of §§76.92(f) and 76.156(a) of the Commission's rules	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 8, 2000**

**Released: September 11, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Delmarva Broadcast Service General Partnership, licensee of television broadcast station WMDT (ABC, Ch. 47), Salisbury, Maryland ("WMDT"), has filed a petition for special relief seeking a waiver of the Commission's significantly viewed exception to the network nonduplication rules (47 C.F.R. §76.92(f)) and the syndicated program exclusivity rules (47 C.F.R. §76.156(a)). No opposition to this petition has been received.

**II. BACKGROUND**

2. Upon the request of a local station which has the exclusive rights to distribute a network program, a cable operator generally may not carry a duplicating network program broadcast by a distant station.<sup>1</sup> However, an otherwise distant station is exempt from the application of the network nonduplication rules if it is considered significantly viewed in a relevant community.<sup>2</sup> Likewise, pursuant to the Commission's cable television syndicated programming exclusivity rules, a cable system may not import duplicating syndicated programming which has been purchased by a local station on an exclusive basis.<sup>3</sup> In both situations, the Commission's rules in general provide stations such protection within a station's 35-mile geographic zone.<sup>4</sup> However, a local station may not exercise either right if an otherwise distant station is considered "significantly viewed" within the community served by the cable system.<sup>5</sup> The

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<sup>1</sup>See 47 C.F.R. §76.92.

<sup>2</sup>47 C.F.R. §§76.5(i) and 76.54.

<sup>3</sup>See 47 C.F.R. §76.156.

<sup>4</sup>The 35-mile geographic zone extends from the reference point of the community of license of the television station. See 47 C.F.R. §§73.658 and 76.53.

<sup>5</sup>See 47 C.F.R. §76.156.

significantly viewed exception to the Commission's exclusivity rules is based on an otherwise distant station establishing that it receives a "significant" level of over-the-air viewership in a subject community. Should this viewership level be met, the station is no longer considered distant for purposes of the application of the Commission's exclusivity rules since it has established that it can be received over-the-air in the subject communities.

3. Station WMDT seeks a waiver of the significantly viewed exception to the Commission's network nonduplication and syndicated exclusivity rules so that it may enforce its rights to network nonduplication and syndicated exclusivity against Station WTTG-TV (FOX, Ch. 5), Washington, D.C. ("WTTG-TV").<sup>6</sup> WTTG-TV is currently considered to be significantly viewed in Wicomico County, Maryland, and Sussex County, Delaware, where the cable communities served by Comcast Cable Communications ("Comcast") are located.<sup>7</sup>

4. In *KCST-TV, Inc.*, the Commission held that in order to obtain a waiver of Section 76.92(f) of the Commission's rules, which provides for an exemption to the network nonduplication rules for significantly viewed stations, petitioners would be required to demonstrate for two consecutive years that a station was no longer significantly viewed, based either on community-specific or system-specific noncable viewing data, to one standard error.<sup>8</sup> For each year, the data must be obtained as a result of independent professional surveys taken during two one-week periods which are separated by at least thirty days, the viewing samples must be distributed proportionately among the relevant cable communities, and not more than one of the surveys may be taken between April and September of each year.<sup>9</sup>

### III. DISCUSSION

5. In support of its petition, WMDT states that it is an ABC network affiliate, licensed to Salisbury, Maryland, and operates as part of the Salisbury designated market area ("DMA"). WMDT points out that the cable system involved is located within the same market and all of the communities served are located within WMDT's 35-mile specified zone and Grade A contour. WMDT states that WTTG-TV, on the other hand, is licensed to Washington, D.C., which is approximately 80-100 miles from the communities, and does not place either a Grade A or Grade B contour over the communities. Despite this, WMDT maintains that it is precluded from asserting its legitimate network nonduplication and syndicated exclusivity rights against WTTG-TV due to the fact that WTTG-TV is considered to be significantly viewed in the counties in which Comcast's cable communities are located. WMDT asserts that WTTG-TV no longer meets the significantly viewed standard in the cable communities herein. WMDT commissioned VideProbeIndex, Inc. ("VPI") to conduct combined surveys in the respective communities to determine WTTG-TV's actual significantly viewed status.<sup>10</sup> WMDT states that VPI

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<sup>6</sup>FOX network stations are treated as independent stations for significantly viewed purposes. For an independent station to be recognized as significantly viewed in a community or in a county, it must achieve in noncable homes a share of viewing hours of at least 2 percent (total week hours) and a net weekly circulation of at least 5 percent. 47 C.F.R. §76.5(i).

<sup>7</sup>The communities located in Wicomico County are: Salisbury, Delmar, Fruitland, Hebron and unincorporated areas of Wicomico County, Maryland. The communities located in Sussex County are: Delmar and unincorporated areas of Sussex County, Delaware.

<sup>8</sup>103 FCC 2d 407 (1986).

<sup>9</sup>See 47 C.F.R. §76.54(b).

<sup>10</sup>Petition at Attachment A.

conducted surveys of two one-week periods for each of two consecutive years, which is consistent with the requirements set forth in Section 76.54(b) of the Commission's rules.<sup>11</sup> The first year surveys were conducted during the weeks of July 23-29 and October 29-November 4, 1997, and the second year surveys were conducted during the weeks of July 22-28 and October 28-November 3, 1998. WMDT states that WTTG-TV's share of total viewing hours in noncable homes in the cable communities falls below the required 3 percent minimum, within one standard error, as shown in the table below:

<u>Survey Year</u>	<u>Households Studied</u>	<u>Share Viewing Hours</u>	<u>Standard Error</u>	<u>Net Weekly Circulation</u>	<u>Standard Error</u>
1997	199	0.4	0.4	4.7	2.3
1998	185	0.5	0.5	4.7	2.3

As a result, WMDT requests that the Commission grant its petition so that it can assert its network nonduplication and syndicated exclusivity rights in the subject communities.

6. In *KCST-TV, Inc.*, the Commission determined that Section 76.92(f) of the rules could be waived if it could be shown that a station has not met the standards for significantly viewed status for two consecutive years based on community-specific or system-specific data, to one standard error. WMDT submits the results of system-specific surveys conducted by VPI over two one-week periods for each of two consecutive years during the weeks of July 23-29 and October 29-November 4, 1997, and July 22-28 and October 28-November 3, 1998. These survey dates meet the criteria set forth in the rules and *KCST-TV, Inc.* that the two one-week surveys be separated by at least 30 days and that both surveys may not occur between April and September. In addition, since combined community surveys were conducted, the rules require that each community be proportionately represented on the basis of its relative population in the sample. We find that the sample distribution here is proportional to the population, as required.

7. We find that, as required by the Commission, WMDT has provided two sets of community-specific survey results for the communities of Salisbury, Delmar, Fruitland, Hebron and unincorporated areas of Wicomico County, Maryland, and Delmar and unincorporated areas of Sussex County, Delaware, for each year surveyed. Section 76.5(i) of the Commission's rules requires that for independent stations to be considered significantly viewed, the survey results should exceed a 2 percent share of total viewing hours and a 5 percent net weekly circulation share, by at least one standard error.<sup>12</sup> In the results obtained by VPI herein, the 1997 reported results for WTTG-TV, with one standard error added, are a 0.8 percent share of total viewing hours and a 7.0 percent net weekly circulation. For 1998, the reported results with the standard errors added are a 1.0 percent share of total viewing hours and a 7.0 percent net weekly circulation share. For both years, the share of total weekly viewing hours falls below the required 2 percent minimum for significantly viewed status and the share of net weekly circulation exceeds the required 5 percent minimum when the standard errors are considered. Because both conditions must be met, however, WTTG-TV does not meet the requirements for significantly viewed status. Accordingly, we find that the submitted audience surveys are sufficient to show that WTTG-TV no longer attains the viewing levels needed to demonstrate significantly viewed status in the subject communities.

<sup>11</sup>47 C.F.R. §76.54(b).

<sup>12</sup>47 C.F.R. §76.5(i).

8. For the above reasons, we find that a grant of a waiver of the significantly viewed exception from the network nonduplication and syndicated exclusivity rules with regard to the community-specific survey for the communities of Salisbury, Delmar, Fuitland, Hebron and unincorporated areas of Wicomico County, Maryland, and Delmar and unincorporated areas of Sussex County, Delaware, will serve the public interest.

#### **IV. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED**, that the petition filed by Delmarva Broadcast Service General Partnership **IS GRANTED**.

10. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>13</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>13</sup>47 C.F.R. §0.321.