

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

In the Matter of)
Chesapeake Television Licensee, LLC,) CSR-8818-N
licensee of WBFF(TV), Baltimore,) MB Docket No. 13-181
Maryland)
Petition for Waiver of Sections 76.92(f) and)
76.106(a) of the Commission’s Rules)

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 2015

Released: June 25, 2015

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Chesapeake Television Licensee, LLC (“Chesapeake”), licensee of Station WBFF(TV) (Fox), Baltimore, Maryland, filed the above-captioned petition seeking a waiver of the rules that preclude cable operators from deleting the duplicate programming of “significantly viewed” stations under the network non-duplication and syndicated exclusivity rules (“exclusivity rules”).

1 47 C.F.R. §§ 76.92(f) and 76.106(a). Although not expressly requested in Chesapeake’s petition for waiver of Sections 76.92(f) and 76.106(a) (significantly viewed exception to the cable network non-duplication and syndicated exclusivity rules), a waiver of Sections 76.122(j) and 76.123(k) (significantly viewed exception to the satellite network non-duplication and syndicated exclusivity rules) would also appertain to a waiver for carriage on DBS systems based on the same showing that a station is no longer significantly viewed in the relevant community.

2 Petition at 1.

3 Anne Arundel Broadband DBA Broadstripe (“Broadstripe”) filed a “Comment and Opposition” in this proceeding. Chesapeake moves to strike Broadband’s pleading in its entirety because it was filed after the twenty (20) day relevant time period for filing comments or oppositions. Chesapeake Consolidated Reply at n.2. See also 47 C.F.R. § 76.7(b)(1). Broadband requests permission to file its comment and opposition asserting that it is timely with respect to the time frame for filing a reply comment in this proceeding. Broadband “Comment and Opposition” at 1. Broadband also states that its comments are important to protect the rights of its subscribers located in Anne Arundel County and, therefore, consideration of these comments is in the public interest. Id. In order to have the benefit of a complete record in this proceeding and in order to protect the public interest, we will consider Broadband’s filing as an informal comment.

II. BACKGROUND

2. Upon the request of a local television station with exclusive rights to distribute a network or syndicated program, a cable operator generally may not carry a duplicating program broadcast by a distant station.⁴ Under Sections 76.92(f) and 76.106(a) of the Commission's rules, however, a signal otherwise subject to deletion is exempt from application of both the network non-duplication and syndicated exclusivity rules if it is "significantly viewed" in a relevant community (the "significantly viewed exception").⁵ The significantly viewed exception to the exclusivity rules is based on a demonstration that an otherwise distant station receives a "significant" level of over-the-air viewership in a subject community. If this viewership level is met, the station is no longer considered distant for purposes of the application of the exclusivity rules because it has established that it is viewed over the air in the subject community. A similar exception is provided in the syndicated exclusivity rules.⁶

3. In order to obtain a waiver of Section 76.92(f), the Commission held in *KCST-TV, Inc.*⁷ that 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 over-the-air viewing data, following the methodology set forth in Section 76.54(b). Section 76.5(i) of the Commission's rules requires that for network stations to be considered significantly viewed, the survey results should exceed a 3 percent share of total viewing hours and a net weekly circulation of 25 percent, by at least one standard error.⁸ For independent stations (*i.e.*, non-network stations), to be considered significantly viewed, Section 76.5(i) of the Commission's rules requires that the survey results should exceed a 2 percent share of total viewing hours and a net weekly circulation of 5 percent, by at least one standard error.⁹ The Commission has found that this type of test is applicable as well for waivers of the syndicated exclusivity exemption.¹⁰

4. Since the Commission's decision in *KCST-TV*, the methodology required by Section 76.54(b) of the rules for a petitioner seeking a waiver of the significantly viewed exception has evolved, pursuant to case law and market realities. Section 76.54(b) states in pertinent part that significant viewing "may be demonstrated by an independent professional audience survey of [over-the-air] television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September."¹¹ Over time, The Nielsen Company ("Nielsen") became the primary surveying organization through which a petitioner could obtain television surveys. Nielsen, which routinely surveys television markets to obtain television stations' viewership, conducts four-week audience surveys four times a year (*i.e.*, February, May, July, and November "sweep periods"). The Bureau has found that replacing each week required under *KCST-TV* with a sweep period is acceptable and, if anything, adds to the accuracy of the audience statistics because of the increased

⁴ See 47 C.F.R. § 76.92; 47 C.F.R. § 76.101.

⁵ 47 C.F.R. §§ 76.92(f); see 47 C.F.R. §§ 76.5(i) and 76.54.

⁶ 47 C.F.R. § 76.106(a).

⁷ 103 FCC 2d 407, 412 ¶ 10 & n.9 (1986).

⁸ 47 C.F.R. § 76.5(i).

⁹ *Id.*

¹⁰ See *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5640-41 ¶ 6 (1990).

¹¹ 47 C.F.R. § 76.54(b). The criteria set forth in *KCST-TV* require that two separate surveys be performed pursuant to Section 76.54(b) in consecutive years. The provisions of Section 76.54(b) therefore apply to each year's survey. It should be noted that these types of surveys cannot be done by the affected television station, cable system or satellite operator.

sample size.¹² Accordingly, a petitioner may submit the results from two sweep periods in each year. For use in exclusivity waivers, a petitioner may purchase survey data from Nielsen on either a community-specific or system-specific basis.¹³ If a petitioner is purchasing survey data on a system-specific basis where two or more communities are involved, the proportion of diaries from each community surveyed must be approximately the same as the proportion of the population for each community served by the cable system.¹⁴ In order to produce the data required for exclusivity waivers, Nielsen re-tabulates the over-the-air data that it collects for its routine audience sweep periods, selecting in-tab diaries from its database from the area served by a cable system or an individual cable community.¹⁵ It should be noted that, despite the fact that a petitioner is purchasing a re-tabulation of data that has already been collected, it is still obligated to notify interested parties prior to the purchase of such data, pursuant to the requirements set forth in Section 76.54(c) of the Commission's rules.¹⁶ Such notice should indicate the surveying organization, the methodology used to calculate the viewing shares (*e.g.*, a description of the process used to re-tabulate the information in an existing database), the manner in which the communities (and/or zip codes) were selected, and the survey periods used.¹⁷ Notification to interested parties before the purchase of Nielsen data allows a petitioner to correct any errors or clarify issues related to the methodology before the data are purchased and the petition is actually filed and, perhaps, avoid the filing of oppositions. Finally, we note that the manner in which surveys based on sweep periods are averaged, remains the same as for weekly surveys.¹⁸ A petitioner may therefore submit the average of the two sweep periods for each year. If, however, a petitioner submits more than two sweep periods, in addition to the average or combined audience shares for the year, it must also include the separate sweep data for each individual sweep period used. This ensures that the reported audience results data are not skewed by the choice of sweep periods.

¹² Although, in general, petitioners are prohibited from using two surveys between April and September (*i.e.*, May or July sweeps), we have not ruled out a petitioner providing all sweeps in a year where more than two are submitted. See *WTNH Broadcasting, Inc. and K-W TV, Inc.*, 16 FCC Rcd 6781, 6784 (2001), where the Bureau did not reject the petition because of the inclusion of both May and July data, but only concluded that, in such a case, it would be necessary to provide individual survey period results so that we could determine the effect of the third and fourth sweep periods.

¹³ It should be noted that Nielsen identifies individual communities by zip codes, a process not incompatible with the surveying process discussed here.

¹⁴ 47 C.F.R. § 76.54(b). Proportionality based on population demonstrates that more weight is given to larger communities. While there must be at least one diary from each community in each survey, there is no minimum sample size since the standard error allows us to be sure that there is a high probability that the reported result meets or falls below our criteria. Because Nielsen is able to weight its sampling, they can provide such proportionality.

¹⁵ We expect petitioners who commission such data to include, along with the survey data itself, a description of the procedures used to re-tabulate the data, which data base it is using, what communities (or zip codes) are covered, the station(s) surveyed, and time periods covered. See *e.g.*, *Radio Perry, Inc.*, 11 FCC Rcd 10564, 10568-9 (1996); *Gulf-California Broadcast Company*, 21 FCC Rcd 3476, 3479-80 (2006).

¹⁶ 47 C.F.R. § 76.54(c). Section 76.54(c) states that “[n]otice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least 30 days prior to the initial survey period.”

¹⁷ *Id.*

¹⁸ Section 76.54(b) states that “[i]f two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing levels. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level.”

III. DISCUSSION

5. Chesapeake submits community-specific data from The Nielsen Company to demonstrate that WTTG is no longer significantly viewed in Glen Burnie, Bel Air, Ellicott City, and Columbia.¹⁹ For each community, the submitted audience statistics are the results of two separate community-specific re-tabulations of Nielsen's audience data based on non-cable/non-ADS homes located in the relevant zip codes.²⁰ The submitted data are averages for two four-week audience sweep periods in each of two years. The first year survey's audience estimates were derived from Nielsen's February 2007 and July 2007 audience sweep data and the second year estimates were based on February 2008 and July 2008 data.²¹ The following tables show the number of in-tab households used to derive the audience estimates, the share of total viewing hours, the standard error for the share of total viewing hours, the net weekly circulation share, and the standard error for the net weekly circulation share for WTTG.²²

TABLE 1 – WTTG VIEWING IN GLEN BURNIE

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 07/July 07	6	0.00	0.00	0.00	0.00
Feb. 08/July 08	5	0.00	0.00	0.00	0.00

TABLE 2 – WTTG VIEWING IN BEL AIR

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 07/July 07	1	0.00	0.00	0.00	0.00
Feb. 08/July 08	3	0.00	0.00	0.00	0.00

TABLE 3 – WTTG VIEWING IN ELLICOTT CITY

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 07/July 07	12	0.00	0.00	0.00	0.00
Feb. 08/July 08	7	0.00	0.00	0.00	0.00

¹⁹ Descriptions of methodology and the survey data re-tabulated for this request are provided in the Petition at Exhibit 1. Chesapeake reports that it provided interested parties with notice of the special tabulations and that, on August 31, 2012, Fox responded and objected to the proposed procedures, which Chesapeake argues are entirely consistent with longstanding precedent. *See* Petition at 3 & n.5.

²⁰ *See* Petition at 3 & n.4. *See also* Exhibit 1.

²¹ Petition at 3.

²² *See* Exhibit 1.

TABLE 4 – WTTG VIEWING IN COLUMBIA

Survey Dates	No. of In-Tab HHs	Total Viewing Hours Share	Standard Error	NWC Share	Standard Error
Feb. 07/July 07	3	0.00	0.00	0.00	0.00
Feb. 08/July 08	3	0.00	0.00	0.00	0.00

6. Chesapeake states that the audience surveys show that for all communities and for all survey periods, WTTG’s share of total viewing hours and its net weekly circulation is zero. Thus, it asserts WTTG fails to meet the benchmarks of a 3 share of viewing hours and a 25 net weekly circulation of 25% by a wide margin.²³ Accordingly, it asks the Commission to grant its request for a waiver of the significantly viewed exception to the network non-duplication and syndicated exclusivity rules.²⁴

A. Survey Issues

7. Opponents argue that Chesapeake’s request should be denied because the Nielsen data are out-of-date, noting that the included audience sweep periods are more than five years old.²⁵ Fox and Broadstripe cite *WISN Hearst-Argyle Television, Inc.*, where the Commission stated that it has “never imposed a requirement that the submitted data include the latest available survey period,” but it does “expect petitioners to use relatively recent data for these types of waivers.”²⁶ Thus, they argue that the data cannot be used to assess the current viewership of WTTG. In addition, Fox notes that the surveys were conducted prior to the DTV transition, and that over-the-air viewing is experiencing a “renaissance” in the post-DTV transition environment.²⁷

8. Howard County also argues that the Nielsen data are “insignificant and outdated” and not representative of the county’s households. It notes, for example, that the sample included 3 households in 2007 and 3 households in 2008 for Columbia, representing 38,249 households in the sampled zip codes.²⁸ Similarly, Anne Arundel compares the sample sizes for Glen Burnie, located in its county, with the total number of households.²⁹ It states that there are 28,013 housing units in the community, yet Nielsen’s sample only includes 8 households in 2007 and 5 in 2008.³⁰ Anne Arundel asserts that it is not surprising

²³ Petition at 3. The cited criteria, which are for network stations, are an unintended error since Fox is considered an independent station for purposes of significantly viewed status. Earlier in the Petition, Chesapeake correctly recites the criteria for independent stations – a 2 share of total weekly viewing hours and a 5 net weekly circulation share. *Id.* at 2.

²⁴ Petition at 4.

²⁵ Fox Opposition at 1-2; Howard Opposition at 2; Anne Arundel Opposition at 6; Broadstripe Opposition at 2.

²⁶ Fox Opposition at 2, citing *WISN Hearst-Argyle Television, Inc.*, 26 FCC Rcd 4044 (2011); Broadstripe Opposition at 2 (referring to and quoting Fox’s citation).

²⁷ Fox Opposition at 2-3. Fox cites NAB’s recent claim that 19.3 percent of all households are non-pay TV households based on a study by GfK Media and Entertainment. See NAB, *Over-the Air TV Renaissance Continues as Pay TV Cord-Cutting Rises* (Press Release), June 21, 2013. See also Anne Arundel Opposition at 6.

²⁸ Howard Opposition at 2. For Ellicott City, it states that there are 28,780 households in the sampled zip codes, represented by 12 households in 2007 and 7 households in 2008.

²⁹ Anne Arundel Opposition at 6. See also Broadstripe Opposition at 2-3.

³⁰ Anne Arundel Opposition at 6. As reflected in Table 1, *supra*, the sample for Glen Burnie included 6 households in 2007 and not 8 households as noted by Anne Arundel County. See Petition at Exhibit 1. This minor typographical error does not alter our analysis in this matter.

that the number of over-the-air households is small given the high penetration of cable and DBS, but “judging the viewing habits of the entire community of Glen Burnie (and in effect potentially the entire County) based on the habits of a handful of ‘over-the-air’ households is simply not reasonable given the evolution of the local television viewing market. . . .”³¹

9. In response, Chesapeake asserts that the submitted re-tabulations of Nielsen data are consistent with Commission precedent and criteria.³² With respect to survey dates and the small samples, Chesapeake states that Nielsen could not uncover any more recent or additional information because “few, if any, viewers are watching WTTG in the Baltimore DMA these days.”³³ It explains that there may have been sufficient over-the-air viewing in 1972 to establish significantly viewed status, but given the increasing number of alternatives from Baltimore stations, that level of viewership does not exist today.³⁴ Chesapeake states that it submitted statistically valid data, as permitted by longstanding precedent, and is not required to submit more.³⁵ Chesapeake also argues that the Commission should not consider the Opponents’ complaint regarding the surveys because they did not submit any more recent data to demonstrate that WTTG meets the standard to establish significant viewing levels.³⁶ In addition, Chesapeake responds to the comments regarding the possible effect of the digital transition and claimed increases in over-the-air viewing on WTTG’s viewership by noting that WTTG’s signal reach is smaller now than it was prior to the transition.³⁷

B. Other Issues

10. Howard and Anne Arundel Counties state that they are located between Baltimore and Washington, and are not “Baltimore-centric” as Chesapeake argues.³⁸ They observe that residents of their counties have ties to both cities and that many of those people work in Washington.³⁹ Howard County points out that it is part of the Washington-Baltimore-Arlington Combined Statistical Area.⁴⁰ Both counties state that five Washington stations are on the significantly viewed list compared to only four Baltimore stations, with Anne Arundel noting that one Washington station, WDCA, has been added since

³¹ Anne Arundel Opposition at 6-7. *See also id.* at 8-10.

³² Chesapeake Reply at 1-2.

³³ *Id.* at 2.

³⁴ *Id.*

³⁵ *Id.* at 3. Chesapeake states that the Media Bureau can distinguish cases in which a petition has had to go back in time to identify a reporting period with sufficient in-tabs to meet the requirement from those in which a petitioner may be relying on old data to cherry-pick those survey periods that show viewing below the threshold, when some viewing is present. Chesapeake states that it is not cherry-picking to skew reported viewing below a threshold in this case because there is zero viewing in all of the nearby communities in all of the survey periods spanning two years as required. *Id.* at n.7.

³⁶ Chesapeake Reply at 3. Chesapeake also claims that Howard County and Fox cannot meet the requirement to state the name and qualifications of the persons who reviewed their “data” and they fail to provide the required detailed showing, supported by affidavit as required by 47 C.F.R. § 76.7(b)(1). Chesapeake further states that Anne Arundel’s Declaration is unsupported and generalized and is otherwise inadequate because it points to no ratings data. Accordingly, Chesapeake argues that the Opponents have not submitted any cognizable evidence on which to base a challenge to the Nielsen report that it has submitted. *Id.* at 2-3.

³⁷ Chesapeake Reply at 4-5, Exhibit 1 (showing WTTG’s analog and digital signal contours).

³⁸ Howard Opposition at 1; Anne Arundel Opposition at 4.

³⁹ *Id.* at 1-3; *Id.* at 3-5.

⁴⁰ Howard Opposition at 2.

the 1972 list.⁴¹ In addition, Anne Arundel states that WTTG has historically been carried in its county, offering coverage of events of interests to its residents.⁴² In this regard, the county argues that WTTG meets the criteria of Section 47 U.S.C. § 534(h)(1)(C)(ii) of the Communications Act, involving the provisions for market modification under the must-carry rules, that take into consideration historical carriage and coverage of issues of interest and concern in a community.⁴³

11. In reply, Chesapeake observes that while Baltimore and Washington may be relatively close for two large markets, they are not the same market.⁴⁴ But proximity is not the primary issue here – viewership is – according to Chesapeake, as might be the case in a market modification case where commuting patterns or community connections would be relevant.⁴⁵ Chesapeake states that the Commission cannot base a ruling in this case on “general notions of comity and feel-good notions of ‘ties’ between DC and Baltimore” and that the actual ratings it provides must prevail.⁴⁶

12. Opponents further assert that, if the petition is granted, limiting blackouts to the communities included in the waiver request will be difficult if not impossible, and potentially impact almost all of each county’s residents.⁴⁷ They state that the technical configuration of the systems do not coincide with municipal boundaries and, if the waiver is granted, they will be have to black out specific programming or eliminate WTTG on a widespread basis.⁴⁸ In this regard, Howard and Anne Arundel cite the Commission’s observation that cable systems often, but not always, are coincident with municipal boundaries.⁴⁹ Chesapeake did not reply to this issue.

C. Discussion

13. Chesapeake’s petition for waiver of the significantly viewed exception is denied because the statistical showing submitted in this case is deficient. The methodology used for the Nielsen re-tabulations submitted by Chesapeake for 2007 and 2008 are consistent with the requirements for such waiver requests pursuant to *KCST* and precedent.⁵⁰ However, we require the submission of relatively recent data, which are intended to reflect viewing levels at the time the petition is filed to demonstrate that a station is no longer significantly viewed. While it may be true that WTTG continues to have viewing levels below the significantly viewed criteria, the submitted data do not support such a claim related to

⁴¹ Anne Arundel Opposition at 4; Howard Opposition at 3.

⁴² Anne Arundel Opposition at 13.

⁴³ *Id.*

⁴⁴ Chesapeake Reply at 3. Chesapeake argues that the fact that WTTG is entitled to carriage in the Baltimore DMA, while its own WBFF signal, which currently extends well into Virginia counties in the Washington DMA and is not entitled to comparable carriage in the Washington market, underscores the “fundamental unfairness” of the FCC’s outdated 1972 rules. *Id.* at 4.

⁴⁵ Chesapeake Reply at 5.

⁴⁶ *Id.*

⁴⁷ Howard Opposition at 3-4; Broadstripe Opposition at 3; Anne Arundel Opposition at 10-11.

⁴⁸ Howard Opposition at 4 (stating that there are no incorporated communities in its county); Anne Arundel Opposition at 12 (citing the regional nature of the cable franchises in its county); Broadstripe Opposition at 3 (describing its headend system).

⁴⁹ Howard Opposition at 3-4; Anne Arundel Opposition at 11-12, quoting *Implementation of the Satellite Home Viewer and Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act*, MB Docket No. 05-49, Report and Order, 20 FCC Rcd 17278 (2005) at ¶ 44.

⁵⁰ As described below, even if we accepted these survey dates, the data for Bel Air would not be sufficient to demonstrate that WTTG is no longer significantly viewed.

current viewership.

14. As noted in *WISN Hearst-Argyle Television, Inc.*, we stated that “we have never imposed a requirement that the submitted data include the latest available survey period, although we do expect petitioners to use relatively recent data for these types of waivers.”⁵¹ In that decision, in which the denial was based on other factors,⁵² we determined the submitted data were timely since the petition was filed in January 2008, following a notice to interested parties under Section 76.54(c) of our rules in September 2007.⁵³ At the time of that notice, with the exception of a July 2007 sweep period, the May 2007 data were the most recent as of the time the petitioner started the process of obtaining a waiver of the significantly viewed exception.⁵⁴

15. The Commission’s previous statement regarding timeliness of the data clearly is applicable in this case. Here, the time between the filing of the petition in July 2013 and the first survey date of February 2007 is more than six years; the last included survey in July 2008, is five years from the filing of the petition. In *WISN Hearst-Argyle Television, Inc.*, the Commission looked at the time between the survey dates and the beginning of the process to seek a waiver. Chesapeake does not provide enough information to definitively determine when it began this process, although it appears that it was a year prior to the filing. It notes that Fox responded to its notice letter on August 31, 2012,⁵⁵ and the letter explaining Nielsen’s methodology has a notation that it was “issued to client on 10/12/12”.⁵⁶ Even taking the time between the re-tabulation and the filing into account, the submitted data cannot be considered relatively recent and must be rejected. The fact that Nielsen did not have more recent data for the relevant communities does not justify acceptance of the out-of-date data. If petitioners can provide evidence that a station is no longer significantly viewed at the time of its request, then it may be granted a waiver. However, if data are not available from Nielsen or any other independent survey organization to make the requisite showing, then a station cannot meet the requirements for a waiver. Moreover, while parties opposing a waiver request may provide data to support their comments as was the case in *WISN Hearst-Argyle Television, Inc.*, opposing parties are not obligated to submit data to support their arguments. The burden of proof is on the petitioner to show that the station is no longer significantly viewed.

16. In addition, the submitted survey data, even if it were timely, would not be sufficient to demonstrate that WTTG is no longer significantly viewed in Bel Air because the 2007 showing is based on only one in-tab household. If only one diary is used for two sweeps, it means that there definitely were no diaries in one of the sweep periods, so that the reported viewing level is clearly not the average of two survey periods. It simply reflects the viewing of one household. For the other communities, while the samples of in-tab households are small, they are sufficient to produce an average. The smallest of these other samples is three diaries, and under our requirements we assume there was at least one diary in each of the two sweep periods included in the average, although we have not historically asked petitioners to

⁵¹ See *WISN Hearst-Argyle Television, Inc.*, 26 FCC Rcd 4044, 4053-54, ¶ 14 (2011).

⁵² It should be noted that we did not deny the *WISN Hearst-Argyle* petition on the basis of the survey dates, and indeed stated that they were consistent with those previously accepted and specified in the rules. The *WISN Hearst-Argyle* decision to deny the waiver request was based on the results of the separate surveys provided, as required, because the averages were based on more than 2 survey periods, and some more recent data filed by an opposing party that called into question whether the submitted results actually reflected viewing patterns in the community. *WISN Hearst-Argyle Television, Inc.*, 26 FCC Rcd at 4052-53, ¶¶ 12-13.

⁵³ 47 C.F.R. § 76.54(c).

⁵⁴ *WISN Hearst-Argyle Television, Inc.*, 26 FCC Rcd at 4051-52, ¶ 11.

⁵⁵ Petition at n.5.

⁵⁶ Petition, Exhibit 1.

prove that to be true.⁵⁷

17. Accordingly, we deny Chesapeake's request for waiver of the significantly viewed exception to the network nonduplication and syndicated exclusivity rules regarding WTTG, Washington, DC in the cable communities of Glen Burnie, Bel Air, Ellicott City, and Columbia, Maryland.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, that the petition filed by Chesapeake Television Licensee, LLC **IS DENIED**.

19. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's Rules.⁵⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
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Media Bureau

⁵⁷ We decline to address the other ancillary issues raised in this case because the statistical showing submitted by Chesapeake is deficient and, in and of itself, requires that the waiver request be denied.

⁵⁸ 47 C.F.R. § 0.283.