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August 29, 2022

Filed Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, D.C. 20554

In re Update to Publ'n for Television Broad. Station DMA Determinations for Cable & Satellite Carriage, MB Docket No. 22-239

Dear Ms. Dortch:

The Massachusetts Department of Telecommunications and Cable (“MDTC”) writes in response to the Federal Communications Commission’s (“Commission”) July 14, 2022, Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding to restate its request that the Commission define a commercial television broadcast station’s market in a manner that allows residents of all counties in a state to receive in-state broadcast stations.¹

In 2020, in response to a related Notice of Proposed Rulemaking, the MDTC filed comments placing this request before the Commission.² The MDTC has attached those comments here and notes the particular relevance to the current NPRM, which “invites comment on any equity-related considerations . . . that may be associated with the proposals and issues discussed” in the NPRM.³ Specifically, the NPRM describes the Commission’s efforts to “advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality.”⁴ Massachusetts

¹ See *In re Update to Publ'n for Television Broad. Station DMA Determinations for Cable & Satellite Carriage*, MB Docket No. 22-239, *Notice of Proposed Rulemaking*, DA 22-55 (July 14, 2022).

² See *In re Significantly Viewed Stations*, MB Docket No. 20-73, *Notice of Proposed Rulemaking*, DA 20-411 (Mar. 31, 2020); *In re Significantly Viewed Stations*, MB Docket No. 20-73, *Comments of the MDTC* (May 13, 2020).

³ NPRM ¶ 7.

⁴ *Id.*

residents in “orphan counties,” which do not receive in-state broadcast channels, largely live in rural areas and have been historically underserved and marginalized through their lack of access to in-state news, politics, sports, and other content. The Commission should take this opportunity to rectify this situation by defining a broadcast station’s market with political boundaries in mind, thereby furthering its goal of advancing equity, inclusion, and accessibility.

Please contact the undersigned if you have any questions.

Respectfully submitted,

KAREN CHARLES PETERSON
COMMISSIONER

By: /s/ Sean M. Carroll

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

In the Matter of

Significantly Viewed Stations

Modernization of Media Regulation Initiative

MB Docket No. 20-73

MB Docket No. 17-105

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

KAREN CHARLES PETERSON
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Dated: May 13, 2020

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

In the Matter of

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**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“Commission”) on March 31, 2020, in the above-captioned proceedings.² The MDTC urges the Commission to take this opportunity to change the regulatory definition of “significantly viewed” station or “television market” to ensure that orphan counties receive in-state broadcast stations.

As the Commission is aware, there are several “orphan” counties across the United States that the Nielsen Corporation has assigned to Designated Market Areas (“DMAs”) based in states other than the state in which the county is located.³ One of these “orphan” counties is Berkshire County, Massachusetts which is assigned to the Albany-Schenectady-Troy DMA, which

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the Commission. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

² *In re Significantly Viewed Stations*, MB Docket No. 20-73, *Notice of Proposed Rulemaking*, DA 20-411 (Mar. 31, 2020).

³ *In re Designated Mkt. Areas: Rep. to Cong. Pursuant to Sec. 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, *Report*, ¶ 7; *see also, e.g.*, Letter from Rep. Doug Collins & Rep. Bob Goodlatte, to Tom Wheeler, Chairman, Fed. Commc’ns Comm’n (Aug. 18, 2014).

primarily serves central-eastern New York State. Another orphan county in Massachusetts is Bristol County, which is also assigned to a predominantly out-of-state television market that consists of Bristol County and the entire state of Rhode Island.⁴

The MDTC frequently hears from residents and elected officials in these counties that they lack access to in-state news, political content, weather, and sports because the only broadcast stations carried by their cable operators serve New York or Rhode Island, not Massachusetts.⁵ Residents of these orphan counties do not see political advertisements for their local and in-state races because the out-of-state television markets to which the counties have been assigned do not receive these ads. For example, a 2018 televised debate in a contested race for Berkshire County's representative to Congress was not aired on cable in Berkshire County, because the county did not have access to the Springfield, Massachusetts market station that broadcast the debate.⁶ Perhaps most importantly, the current public health crisis has unfortunately made clear the vital importance of in-state news. Different states instituted different restrictions and programs, which change frequently and are critical for residents to be

⁴ See *In re TVL Broad. of R.I., LLC Petition for Special Relief for Waiver of Sec. 76.92(f) of the Comm'n's Rules*, CSR-8373-N, MDTC Opposition (Nov. 24, 2010) (opposing TVL's petition that eventually resulted in the deletion of WBZ-TV, the CBS Network affiliate licensed to and operating in Boston, MA, from channel lineups in Fall River, MA).

⁵ See, e.g., Letter from Linda Z. Miller, Chairman, Five Town Cable Advisory Comm. (representing the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge), to Sean M. Carroll, MDTC (May 22, 2018); Letter from Sen. Edward J. Markey, Sen. Elizabeth Warren, & Rep. Richard E. Neal, to Thomas M. Rutledge, Chairman & CEO, Charter Commc'ns (May 14, 2018); *In re Designated Mkt. Areas: Rep. to Cong. Pursuant to Sec. 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, *Comment of Timothy Brastow* (Mar. 24, 2015); *In re Designated Mkt. Areas: Rep. to Cong. Pursuant to Sec. 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, *Comment of Kyle Ramie* (May 7, 2015).

⁶ See, e.g., Nik DeCosta-Klipa, *The Berkshires' 'orphan county' status is creating problems again*, BOSTON.COM, Aug. 22, 2018, <https://www.boston.com/news/politics/2018/08/22/1st-district-debate-richard-neal-tamirah-amatul-wadud-wwlp-orphan-county> ("Rep. Richard Neal faced challenger Tahirah Amatul-Wadud on Wednesday in the first debate of their Democratic primary race for the 1st District congressional seat. But for residents in the western half of Neal's district, the event was absent from the TV airwaves[.]").

informed of in an urgent manner. Limited or no access to in-state broadcast television makes timely awareness of this information difficult, particularly for people who cannot receive or may not be accustomed to receiving news online, and who rely on print newspapers and television to keep them informed.⁷

For all of these reasons, the Commission should amend the regulatory definition of “significantly viewed” to include signals from broadcast stations in the nearest in-state television market for any orphan county. The current definition relies upon a showing of frequent viewership over the air using Nielsen viewership data.⁸ Nielsen viewership data is limited by the small sample size of households that provide the information.⁹ This is an outdated mode of determining which signals are sought out by the residents of a particular locality, and reliance on it leaves many households around the country with limited or no access to in-state broadcast stations. The Commission should take this opportunity to add to its definition of significantly viewed signals to remedy this issue for orphan counties, by ensuring that cable and satellite television providers offer such counties stations from the nearest in-state television market.

Alternatively, the Commission should take this opportunity to consider altering television market assignments for orphan counties. The Commission should consider either amending the

⁷ Notably, a number of communities in Berkshire County currently lack access to broadband and thus struggle to get news, political content, weather, and sports online, to the extent such content is even available online.

⁸ 47 C.F.R. § 76.54.

⁹ See, e.g., Brian Steinberg, *TV Industry Struggles to Agree on Ratings Innovation*, VARIETY, Apr. 11, 2017, <https://variety.com/2017/tv/features/nielsen-total-content-ratings-1202027752>; David Lieberman, *Nielsen Says Industry Rules Bar It From Including Digital Viewers in TV Ratings*, DEADLINE, Apr. 22, 2015, <https://deadline.com/2015/04/nielsen-tv-ratings-rules-1201414432>; John Herrman, *Why Nielsen Ratings Are Inaccurate, and Why They'll Stay That Way*, VULTURE, Jan. 31, 2011, <https://www.vulture.com/2011/01/why-nielsen-ratings-are-inaccurate-and-why-theyll-stay-that-way.html>. While the regulations do not specifically require information from the Nielsen Company, Nielsen is the dominant provider of viewing audience information, and its chief competitor Comscore is similarly limited. See, e.g., Michael LaSardo, *Spot the Differences: Nielsen and Comscore*, KATZMEDIA GROUP: ONMEASUREMENT (Jan. 6, 2020), <https://blog.katzmedia.com/on-measurement/nielsen-comscore-spot-the-differences-series1>.

definition of television market so that it no longer relies upon Nielsen DMAs, or using its authority to override Nielsen's DMA designations in the case of orphan counties and to annex each orphan county to an adjoining in-state television market.¹⁰ Because states, counties, and municipalities have no standing to petition to modify the cable television market(s) to which a television station is assigned,¹¹ the Commission should use its authority to protect residents in orphan counties by amending the definition of television market or by altering local market boundaries.

The MDTC thanks the Commission for the opportunity to comment on this critical issue for its residents. Ensuring that our constituents have timely, meaningful access to news, political content, weather, and sports from their own state is imperative.

Respectfully submitted,

KAREN CHARLES PETERSON, COMMISSIONER

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May 13, 2020

¹⁰ See 47 C.F.R. § 76.55(e).

¹¹ See *id.* § 76.59(a) (granting only counties such standing and even then, only with regard to satellite television markets).