

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

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| In the Matter of                               | ) |                      |
|  | ) |                      |
| Update to Publication for Television Broadcast | ) | MB Docket No. 22-239 |
| Station DMA Determinations                     | ) |                      |
| for Cable and Satellite Carriage               | ) |                      |
|  | ) |                      |

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby responds to the Federal Communications Commission’s (FCC or Commission) Notice<sup>2</sup> seeking comment on updating its regulations to reference a new publication for use in determining a television station’s Designated Market Area (DMA) for satellite and cable carriage. As discussed below, NAB agrees with the proposed changes. We also urge the Commission to monitor developments in the marketplace for data gathering and analysis concerning the broadcast industry. Should other entities begin publishing market assignment data that could be used for purposes of the FCC’s carriage rules, the Commission should consider whether such publications would better suit the purposes of its rules and the public interest. In addition, the Commission should look for ways for licensees that subscribe to different audience measurement services to have free or low-cost access to Nielsen’s proprietary DMA assignment information because it is required to be used to comply with FCC rules.

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<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, Notice of Proposed Rulemaking, MB Docket No. 22-239, FCC No. 22-55 (rel. July 14, 2022) (Notice).

## II. UPDATING THE FCC'S RULES TO REFLECT NEW NIELSEN PUBLICATIONS DOES NOT RAISE SIGNIFICANT ISSUES, BUT THE COMMISSION SHOULD CONTINUE TO MONITOR THE MARKETPLACE FOR OTHER POTENTIAL SOURCES OF DATA

According to the Notice, the Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish the annual Nielsen Station Index Directory (Annual Station Index).<sup>3</sup> This publication has been used, in combination with the Nielsen Station Index and U.S. Television Household Estimates (Household Estimates), to determine a station's market for purposes of cable and satellite carriage.<sup>4</sup> Nielsen has replaced the Annual Station Index with a monthly Local TV Station Information Report (Local TV Report), which is now the only publication necessary to determine a station's DMA, and the Household Estimates publication is no longer in use.<sup>5</sup> The Notice tentatively concludes that the Commission should revise its rules to identify the Local TV Report as the successor publication to be used to determine a station's DMA,<sup>6</sup> and seeks comment on this tentative conclusion and related implementation issues.<sup>7</sup>

NAB is not aware of other publications that currently offer market assignment information for television stations, and therefore agrees with the proposal to modify Sections 76.55(e)(2) and 76.66(e)(2) to reference the Nielsen Local TV Report.<sup>8</sup> Should

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<sup>3</sup> Notice at ¶ 1, citing Letter from Michael Nilsson, Harris, Wiltshire & Grannis LLP, Counsel to the Nielsen Company, to Evan Baranoff, Attorney Advisor, Media Bureau, Policy Division, Federal Communications Commission (Dec. 15, 2021) (Nielsen Letter). The Notice states that the Nielsen Company also submitted brief addenda to this letter on June 2, 2022, and on June 6, 2022 (Nielsen Letter Addenda).

<sup>4</sup> Notice at ¶ 1, citing 47 C.F.R. § 76.55(e)(2) and 47 C.F.R. § 76.66(e)(2).

<sup>5</sup> Notice at ¶ 1, citing Nielsen Letter at 2; Nielsen Letter Addenda.

<sup>6</sup> Notice at ¶¶ 1, 4.

<sup>7</sup> Notice at ¶¶ 4-6.

<sup>8</sup> Notice at ¶ 4 (observing that Nielsen represents that the Local TV Report "generally contains the same market assignment information as the Annual Station Index but is published monthly rather than annually").

other publications with market assignments become available in the future, however, NAB urges the Commission to consider whether referencing such other publications would better serve the purposes of its rules and the public interest. NAB also encourages the Commission to consider alternatives to Nielsen in connection with any of its rules or required showings by broadcast stations, particularly given current concerns with certain Nielsen data.<sup>9</sup> For purposes of TV station DMA assignments, stations and multichannel video programming distributors need to be working from a single “playbook,” so only one data source can be relied on in this context. However, for matters that do not require reliance on a single data source, the Commission should give fair and nondiscriminatory consideration to other sources of data.<sup>10</sup>

Moreover, NAB understands that relying on Nielsen for DMA assignment information presents challenges because DMA data are proprietary. We understand that the publication(s) a station must consult to comply with the FCC’s carriage rules are generally available only to Nielsen subscribers. The Commission should consider whether this information can be made available to stations that are not Nielsen subscribers for free or at a nominal cost, since broadcasters need the information to comply with FCC rules.

As the Notice observes, there are some differences in the reports that must be accounted for in the FCC’s rules. First, the Local TV Report is published monthly, while the

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<sup>9</sup> See, e.g., Rick Porter, *Nielsen Says it Undercounted Out of Home Viewers for More than a Year*, THE HOLLYWOOD REPORTER (Dec. 22, 2021). See also Notice at n. 7 (noting that the Media Rating Council announced in August 2021 that it had suspended Nielsen National Television Service’s accreditation as a television ratings agency).

<sup>10</sup> For example, the FCC’s rules state that sources other than Nielsen audience measurement data will be considered in connection with multiple ownership showings. 47 C.F.R. § 73.3555(b)(1)(ii) (requiring broadcasters proposing to acquire a second station in the same market to demonstrate that, “at least one of the stations is not ranked among the top four stations in the DMA . . . as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.”) (emphasis added).

Annual Station Index was published annually. The Annual Station Index was based on information gathered in the month of October two years prior to that election (e.g., stations making elections in 2020 for the carriage cycle beginning in 2021 referenced the 2018-2019 Annual Station Index, which was based on information gathered in October 2018).<sup>11</sup> Nielsen has stated that relying on the October Local TV Report published two years before each carriage election therefore could be used as an “apples-to-apples” replacement for the Annual Station Index (i.e., stations making elections in 2023 for the carriage cycle beginning in 2024 would reference the October 2021 Local TV Report).<sup>12</sup> The Commission seeks comment on whether its rules should reference the October Local TV report published two years prior to the October elections, or whether parties would benefit from relying on a more up-to-date report.<sup>13</sup> NAB believes that stations having certainty with respect to their DMA assignments is preferable to having assignments based on more current information, and supports the proposal to reference the October Local TV report published two years prior to each carriage election.

The Commission also seeks comment on whether differences in the two publications’ treatment of LPTV stations, or any other differences in the publications,<sup>14</sup> should be accounted for in its rule modifications and seeks comment on the implications of this change for certain other statutory requirements and rules.<sup>15</sup> NAB knows of no differences in

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<sup>11</sup> Notice at ¶ 4.

<sup>12</sup> Notice at ¶ 4; Nielsen Letter at 1-2.

<sup>13</sup> Notice at ¶ 4

<sup>14</sup> Notice at ¶ 5.

<sup>15</sup> Notice at ¶ 6 (observing that although the Nielsen publications are only directly referenced in the carriage election rules, the proposed change will have implications for other statutory and rule provisions affecting carriage, including retransmission consent, 47 U.S.C. § 325(b)(7)(E) and 47 C.F.R. § 76.65(b)(3)(i), significantly viewed stations, 47 U.S.C.

the two reports or implications for other statutory or rule provisions that would warrant modifications to the proposed rule changes.

### III. CONCLUSION

NAB does not see significant issues raised by the FCC's proposed rule updates to reflect changes to Nielsen's publications. We support the use of the October Local TV Report from two years prior to a carriage election cycle. It also is important for the Commission to consider other potential sources of market assignment data should they become available in the future. Similarly, whenever possible, the Commission should permit stations to rely on reputable data sources other than Nielsen and should consider such data on a nondiscriminatory basis. Finally, it would be helpful to TV licensees that subscribe to different audience measurement services to have free or low-cost access to Nielsen's DMA assignment information because it is required to be used to comply with FCC rules.

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§ 340(i)(1) and 47 C.F.R. 76.54(e), carriage of distant signals by satellite carriers, 47 U.S.C. § 339(d)(1), and field strength contours, 47 C.F.R. 73.683(f)).