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Before The
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Adjustment of Cable
Royalty Rules

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CRT Docket No. 89-5-CRA

MOTION REQUESTING REVISION
OF PROPOSED SECTION 308.2(d)(1)

Program Suppliers request that the Tribunal revise proposed §308.2(d)(1) which was promulgated by the Tribunal's order of November 15, 1990, in the captioned docket. Program Suppliers submit that a revision is necessary to conform the proposed rule with the pertinent FCC rules and long-standing industry practice. The proposed language of §308.2(d) has the potential for creating confusion among cable system operators seeking to comply with the new syndex royalty rate.

The new syndex rate applies in cases where a cable system is outside the 35-mile zone of a top 100 market but within the Grade B contour of a VHF station licensed to that market. Proposed §308.2(d) makes it appear that the 35-mile specified zone is tied to stations rather than to markets. The Tribunal's explanation highlights this problem: the rule is stated to be designed "to coordinate with the FCC definition, which refers to the cable system being 35 miles from the broadcast system [sic]." November 15 Order. The language of proposed §308.2(d) reiterates reliance on use of a station in defining the area covered -- "... in the case of a cable system which is located more than 35 miles from a commercial VHF station."

The FCC's regulations defining and identifying the 35-mile specified zone are not, however, based on distance from a station. Rather, the FCC measures one 35-mile specified zone for each community based on a single reference point within the community. The FCC's definition states in pertinent part:

(e) Specified zone of a television broadcast station. The area extending 35 air miles from the reference point in the community to which that station is licensed or authorized by the Commission. A list of reference point is contained in §76.53.

47 C.F.R. §76.5(e) (first emphasis in original; second added).¹

The list of reference points contained in §76.53 identifies the point of latitude and longitude within each listed community from which the 35-mile specified zone for that community is measured. This single point defines the center of the zone for that community, regardless of how many television stations are licensed to the market. The FCC deliberately defined the 35-mile specified zone by reference to the community, rather than by reference to stations, so as to avoid differing treatment for UHF and VHF stations under the must carry and syndex rules. E.g., Cable Television Report and Order, 36 FCC 2d 143, 174 (1972).

Consistent with the FCC's definition based on a community point of reference (not a station point of reference), the Cable Atlas, which publishes maps showing the 35-mile zones in each state, and which is the only readily available source of the boundaries of the specified zones throughout the country, shows a 35-mile specified zone around each television market, not a 35-mile

¹ Under the old FCC syndex rules, the identical definition was found at §76.5(f).

zone related to each station.

No reference source is available to identify what would be the 35-mile zone for individual television stations. The Stations Volume of the Television and Cable Factbook has the Grade A and Grade B contours for each stations, but neither contour is equivalent to a 35-mile zone around a station.

The 35-mile specified zone defined by §§76.5(e) and 76.53 of the FCC's regulations can vary from a 35-mile ring around specific stations in the same market. Part of the potential problem is what should be the reference point for an individual station: it could be argued that either the antenna site or the studio location could serve as the reference point for a station. Often, the antenna site and the studio location are miles apart.

In most cases, neither the studio nor the antenna site will be in the same point as the reference point given in §76.53 of the FCC's regulations. In these cases, a 35-mile ring drawn around a station would include an area different from the 35-mile zone drawn around the FCC-identified reference point in the community.

To illustrate this problem, attached are the contour maps from the Factbook for two VHF stations (KARK-TV and KATV) in Little Rock, Arkansas. The center point (signified by a triangle) used in defining the Grade A and Grade B contours of KARK-TV is located several miles from the center point of KATV, and both are located in different locations from the reference point defined by the FCC in §76.53 for Little Rock.

The proposed language of §308.2(d) by referring to stations,

rather than to markets, creates the possibility that in Little Rock, three potential 35-mile zones could be used for purposes of determining the applicability of the new syndex rates. Similar problems could occur in other markets having more than one VHF station. Moreover, no ready source is available for determining the 35-mile rings around individual stations. But, if the FCC rules based on communities are used, only one possible reference point and 35-mile zone is present in each community.


The present situation is inconsistent with the intent of the FCC's rules defining the specified zone. It also creates the potential for confusion and difficulty in determining whether a system must pay the new syndex royalty rate.

Accordingly, Program Suppliers request that the Tribunal amend the proposed §308.2(d) to read in pertinent part as follows:

"... in the case of a cable system which is located more than 35 miles from the specified zone of a commercial VHF station"

(Underlining denotes language to be added). Program Suppliers request also that the Tribunal, in discussing this change, state that "specified zone" as used in §308.2(d) has the same meaning given the term in §76.5(e) of the FCC's regulations.

Respectfully submitted,



Arthur Scheiner

Dennis Lane

HOLLAND & KNIGHT

888 Seventeenth Street, N.W.

Suite 900

Washington, D.C. 20006

ATTORNEYS FOR PROGRAM SUPPLIERS

CERTIFICATE OF SERVICE

I, Dennis Lane, certify that I have, this 28TH day of December, 1990, served a copy of the foregoing "MOTION REQUESTING REVISION OF PROPOSED SECTION 308.2(d)(1)" by first class mail, postage prepaid, to the parties on the attached list.


Dennis Lane

Service List

Arnold P. Lutzker, Esq.
Barbara S. Ianniello, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, DC 20037

Paula A. Jameson, Esq.
Barbara S. Welberry, Esq.
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

John I. Stewart, Jr., Esq.
Robert P. Deyling, Esq.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, DC 20004-2505

Robert A. Garrett, Esq.
Arnold & Porter
1200 New Hampshire Ave., N.W.
Washington, DC 20036

Mark J. Palchick, Esq.
James S. Blitz, Esq.
Bishop, Cook, Purcell
& Reynolds
1400 L Street, N.W.
Washington, DC 20005-3502

Charles T. Duncan, Esq.
Michael Faber, Esq.
Reid & Priest
701 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20004

Laurie Hughes, Esq.
SESAC, Inc.
55 Music Square East
Nashville, TN 37203

Bernard Korman, Esq.
ASCAP
One Lincoln Plaza
New York, NY 10023

Brenda L. Fox, Esq.
Seth A. Davidson, Esq.
National Cable Television
Association, Inc.
1724 Massachusetts Ave., N.W.
Washington, DC 20036

Douglas G. Thompson, Jr., Esq.
L. Kendall Satterfield, Esq.
Finkelstein, Thompson & Levenson
2929 Pennsylvania Ave., N.W.
Suite 200
Washington, DC 20007

Henry L. Baumann, Esq.
Benjamin F. P. Ivins, Esq.
National Association of
Broadcasters
1771 N Street, N.W.
Washington, DC 20036

John H. Midlen, Jr., Esq.
John H. Midlen, Jr., Chartered
3238 Prospect Street, N.W.
Washington, DC 20007-3215

Thomas J. Ostertag
Office of the Commissioner
of Baseball
350 Park Avenue
17th Floor
New York, NY 10022

Jamie S. Gorelick, Esq.
Miller, Cassidy, Larroca
& Lewin
2555 M Street, N.W.
Suite 500
Washington, DC 20037

Thomas P. Olson, Esq.
Thomas B. Smith
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420

Paul Glist, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Washington, DC 20006

- 2 -

I. Fred Koenigsberg, Esq.
White & Case
1155 Avenue of the Americas
New York, NY 10036-2787

Philip R. Hochberg, Esq.
Baraff, Koerner, Olender
& Hochberg, P.C.
Suite 700
2033 M Street, N.W.
Washington, DC 20036

Bruce Sokler, Esq.
Mintz, Levin, Cohn,
Glovsky & Popeo, P.C.
1825 Eye Street, N.W.
Washington, DC 20006

Stuart F. Feldstein, Esq.
Fleischman & Walsh, P.C.
1400 16th St., N.W.
Washington, DC 20036

Judith Jurin Semo, Esq.
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Washington, DC 20004

Theodore A. Miles, Esq.
General Counsel
National Public Radio
2025 M Street, N.W.
Washington, DC 20036

Robert St. John Roper, Esq.
Ronald A. Siegel, Esq.
Ian D. Volner, Esq.
Cohn & Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, DC 20036