

§ 101.1513 License term and renewal expectancy.

Because the licensee will obtain a single license for all of its facilities, the license renewal period will be ten years from the registration of the first link. Adding links will not change the overall renewal period of the license.

§ 101.1523 Sharing and coordination among non-government licensees and between non-government and government services.

(a) Registration of each link in the 71–76 GHz, 81–86 GHz, and 92–95 GHz bands will be in the Universal Licensing System until the Wireless Telecommunications Bureau announces by public notice the implementation of a third-party database.

(b) Sharing and coordination among non-Federal Government links and between non-Federal Government and Federal Government links, shall occur according to the registration and coordination standards and procedures adopted in Report & Order, FCC 03–248, and as further detailed in subsequent implementation public notices issued consistent with that order. Protection of individual links against harmful interference from other links shall generally be granted to first-in-time registered links. Successful completion of coordination via the NTIA automated mechanism shall constitute successful non-Federal Government to Federal Government coordination for that individual link.

(c) In addition, the following types of non-Federal Government links require the filing with the Commission an FCC Form 601 for each link for the purpose of coordination and registration, in addition to registering each link in the third-party database:

- (1) Facilities requiring the submission of an Environmental Assessment,
- (2) Facilities requiring international coordination, and
- (3) Operation in quiet zones.

(d) The Commission believes the licensee is in the best position to determine the nature of its operations and whether those operations impact these settings, and is required to submit to a database manager, as part of the registration package, documentation that an FCC Form 601 has been filed.

§ 101.1525 RF safety.

Licensees in the 70–80–90 GHz bands are subject to the exposure requirements found in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, and will use the parameters found therein.

§ 101.1527 Canadian and Mexican coordination.

(a) A licensee of bands 71.0–76.0, 81.0–86.0, 92–94 GHz and 94.1–95 GHz must comply with § 1.928(f) of this chapter, which pertains to coordination with Canada.

(b) A licensee of bands 71.0–76.0, 81.0–86.0, 92–94 GHz and 94.1–95 GHz must coordinate with Mexico in the following situations:

(1) For a station the antenna of which looks within the 200 deg. sector toward the Mexico-United States borders, that area in each country within 35 miles of the borders; and

(2) For a station the antenna of which looks within the 160 deg. sector away from the Canada-United States borders, that area in each country within 5 miles of the borders.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 25**

[IB Docket Nos. 02–34, 00–248, and 96–111; FCC 03–128]

Satellite Licensing Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Commission adopted rule revisions to create a streamlined procedure for certain space station modification requests related to fleet management. Certain rules contained new and modified information requirements and were published in the *Federal Register* on November 3, 2003. This document announces the effective date of these published rules. 47 CFR 25.117, 25.118, 25.131, 25.137.

DATES: The amendments to §§ 25.117, 25.118, 25.131, and 25.137, published at 68 FR 62247, November 3, 2003, became effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, Satellite Policy Branch, (202) 418–1539.

SUPPLEMENTARY INFORMATION: On January 8, 2004, the Office of Management and Budget (OMB) approved the information collection requirement contained in Sections 25.117, 25.118, 25.131, and 25.137, pursuant to OMB Control No. 3060–1007.

Accordingly, the information collection requirement contained in these rules became effective on January 8, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1416 Filed 1–22–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76**

[CS Docket 00–1; DA 00–1337]

Amendment of List of Major Television Markets Designated Communities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to add the communities of Merced and Porterville, California to the Fresno-Visalia-Hanford-Clovis hyphenated television market ("Fresno-Visalia" market). The Communications Act requires that the Commission make revisions needed to update the list of top 100 television markets and their designated communities. The Commission's rules enumerates the top 100 television markets and the designated communities within those markets. In addition to permitting broadcast territorial exclusivity, television stations that are part of a hyphenated market may assert network non-duplication rights and syndicated programming exclusivity against other television stations throughout the hyphenated market. Market hyphenation helps equalize competition among stations in a market. This document concludes that there is sufficient evidence demonstrating commonality between the two communities to be added to the Fresno-Visalia hyphenated market.

DATES: Effective February 23, 2004.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway-Mickle, Media Bureau, 202–418–1419.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in CS Docket No. 00–1, DA 00–1337, adopted June 14, 2000 and released June 20, 2000. The complete text of the R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC. The text may also be purchased from the Commission's copy contractor, Qualex

International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Synopsis of the Report and Order

Introduction

1. Before the Commission is the Notice of Proposed Rule Making ("Notice") in the captioned proceeding, issued in response to a joint petition filed by Pappas Telecasting Incorporated ("Pappas"), licensee of television station KMPH(TV), Visalia, California, Retlaw Enterprises, Inc. ("Retlaw"), licensee of television station KJEO(TV), Fresno, California, and San Joaquin Communications Corp. ("San Joaquin"), licensee of television station KSEE(TV), Fresno, California (collectively, the "Joint Petitioners"). The Notice proposed to amend § 76.51 of the Commission's rules to add the communities of Merced and Porterville, California to the Fresno-Visalia-Hanford-Clovis hyphenated television market ("Fresno-Visalia" market). The Notice also sought comment on the petition for amendment or waiver of section 76.51 with respect to the community of Merced that was filed by Capital Cities/ABC, Inc. ("CC/ABC"). In response to the Notice, three comments were filed with the Commission, all of which were in favor of the action requested by the petitioners.

Background

2. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act") added section 614 to the Communications Act of 1934. Section 614 requires that the Commission make revisions needed to update the list of top 100 television markets and their designated communities. Section 76.51 of the Commission's rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, the top 100 market list is used to determine territorial exclusivity rights under § 73.658(m) of the Commission's rules and helps define the scope of compulsory copyright license liability for cable operators. In addition to broadcast territorial exclusivity, television stations that are part of a hyphenated market may assert network non-duplication rights and syndicated programming exclusivity against other television stations throughout the hyphenated market. A hyphenated television market, a television market that consists of more than one named community, is based upon the premise

that stations licensed to any of the named communities therein compete with all stations licensed to such communities. Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (i) The distance between the existing designated communities and the community or communities proposed to be added to the designation; (ii) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (iii) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (iv) an indication of benefit to the public from the proposed change. These factors help the Commission evaluate the individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule" which is to delineate areas where stations compete.

Discussion

4. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area. Market hyphenation helps to equalize competition among stations in a market where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. Pappas and Fisher Broadcasting Incorporated ("Fisher") state that the factors indicating that the communities of Merced and Porterville should be added to the Fresno-Visalia market that are cited in the original joint petition are even more true today. At the time that the joint petition was filed, there were applications on file with the Commission to commence television service in the communities of Merced and Porterville. Subsequent to the filing of the joint petition, television station KNSO, Channel 51, was licensed to Merced and television station KPXF, Channel 61, was licensed to Porterville. Pappas and Fischer maintain that the new stations licensed to Merced and to Porterville compete with other television stations licensed to communities in the Fresno-Visalia market. In addition, the commenters argue that advancements in technology

and in alternate delivery systems make the grant of syndicated exclusivity and network non-duplication rights imperative to stations licensed to those communities.

5. With regard to the distance between communities in the Fresno-Visalia market and the communities of Merced and Porterville, the first factor for evaluating market hyphenation requests, commenters Gary M. Cocola ("Cocola"), licensee of KGMC(TV), and Paxson Communications License Company, LLC ("Paxson"), licensee of television station KPXF, state that the communities of Merced and Porterville have long been an integral part of the Fresno-Visalia market. Specifically, Cocola and Paxson state that the City of Fresno lies at the geographic center of the Fresno-Visalia market and that Merced is approximately 50 miles north of Fresno and that Porterville is approximately 70 miles south of Fresno. Cocola and Paxson note that, in similar proceedings, the Commission has concluded that communities separated by greater distances can form the same television market. The commenters argue that, because of their geographic proximity, Merced and Porterville share a common social, cultural, and economic bond with communities in the Fresno-Visalia market that is based on the local agribusiness economy. Cocola and Paxson further note that Merced and Porterville are included in Nielsen's Fresno-Visalia "designated market area" or DMA and, prior to that designation, were included in Arbitron's Fresno-Visalia "area of dominant influence" or ADI.

6. We find that the distance between the existing designated communities and the communities of Merced and Porterville, 50 miles and 70 miles respectively, indicates that the communities are sufficiently proximate to be deemed part of the Fresno-Visalia hyphenated market. In the Notice, the Commission noted the well-defined topography of the Fresno-Visalia market including the Coast Ranges Mountains marking its western border and the Sierra Nevada Mountains marking the eastern border. In addition, we note that the Fresno-Visalia market is bounded by the Sacramento-Stockton-Modesto television market to the north and the Bakersfield television market to the south. Thus, the Fresno-Visalia market consists predominately of farming communities located within the central San Joaquin Valley floor which indicates commonality among the communities.

7. With regard to the second factor for evaluating market hyphenation requests, we find that cable carriage, if afforded

to television station KNSO on a hyphenated market basis, would extend beyond its Grade B signal coverage area. Merced station KNSO does not provide Grade B coverage over the communities in the Fresno-Visalia market. In contrast, Porterville station KPXF does place a Grade B contour over the communities in the Fresno-Visalia market. However, Joint Petitioners point out that all of the stations currently in the Fresno-Visalia market, with the exception of KMPH, place a predicted Grade B contour over Merced. Joint Petitioners further maintain that KMPH has a significant viewership in Merced County and that KMPH, as well as the other television stations in the market, are carried on the cable system serving Merced. TCI Cablevision of California, which provides cable service to communities in the Fresno-Visalia market and to Merced, carries independent television station KMPH as well as the network affiliates KFSN, KJEO, and KSEE.

8. Commenters maintain that the Joint Petitioners have shown a particularized need to be added to the Fresno-Visalia market because incumbent Fresno-Visalia market stations actually compete with new stations KNSO and KPXF. Cocola and Paxson state that Merced station KNSO and Porterville station KPXF compete with stations in the Fresno-Visalia market such as KGMC(TV), a station licensed to Fresno. The commenters further state that residents of Merced and of Porterville are served by the same television stations as residents of the named communities in the Fresno-Visalia market, namely, KFSN-TV (ABC affiliate), KJEO(TV) (CBS affiliate), and KSEE (NBC affiliate). In addition, Cocola and Paxson state that viewers in the Fresno-Visalia market receive WB programming from Merced station KNSO and PAXTV programming from Porterville station KPXF. Thus, commenters maintain that "for many years, television stations throughout the Fresno-Visalia Market have acquired programming with the expectation that they would serve the market that has been defined consistently by Arbitron, Nielsen, and actual viewing patterns of residents in the area." The addition of the communities of Merced and Porterville to the Fresno-Visalia market would permit incumbent stations to protect their investments in programming and promotion through the assertion of network non-duplication and syndicated exclusivity rights. Thus, commenters argue that the

Commission's rules should reflect market reality.

9. It appears from the record that television stations licensed to Merced and to Porterville compete for programming, audience, and advertisers in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the two communities to be added and the market as a whole. In addition, the record indicates that the addition of the two communities to the Fresno-Visalia market will benefit the public by equalizing competition among stations, which will improve advertising revenues for those stations and programming options for residents. Thus, the Commission finds that a particularized need has been demonstrated to support the unopposed addition of Merced and Porterville to the Fresno-Visalia market. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth and that the request to add Merced and Porterville to the Fresno-Visalia market should be granted.

10. This proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network non-duplication obligations of individual cable systems. Redesignation of the television market reflects in the Commission's rules the general competitive situation that exists in the local area, allowing the application of the more specific rules, including those governing market modification, to be addressed from the perspective of a properly defined market.

Ordering Clauses

11. Pursuant to section 614 of the Communications Act of 1934, as amended, 47 U.S.C. 614, § 76.51 of the Commission's rules, 47 CFR 76.51, *is amended*, effective thirty (30) days after publication in the **Federal Register**, to include Merced and Porterville, California.

12. This proceeding *is terminated*.

Paperwork Reduction Act

The requirements in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and do not impose new or modified information collection requirements on the public.

OMB Approval: None.

Regulatory Flexibility Analysis: We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding because there will not be a significant economic impact on a

substantial number of small business entities, as defined by section 603 of the Regulatory Flexibility Act. A few cable television system operators will be affected by the rule amendment.

A. Need for, and Objectives of, the Order: We undertake this proceeding to add the communities of Merced and Porterville, California to the Fresno-Visalia-Hanford-Clovis television market.

The addition will help equalize competition in that hyphenated market.

B. Description and Estimate of the Number of Small Entities Impacted: None.

C. Reporting, Recordkeeping, and Other Compliance Requirements: There are no additional reporting and recordkeeping requirements.

D. Significant Alternatives Which Minimize the Impact on Small Entities and Are Consistent with Stated Objectives: There is no significant impact on small entities.

E. Report to Congress: The Commission will send a copy of the R&O in a report to be sent to Congress pursuant to the Congressional Review Act. A copy of the R&O will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable Television Service.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 2. Section 76.51 is amended by revising paragraph (a)(72) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(72) Fresno-Visalia-Hanford-Clovis-Merced-Porterville, California.

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