

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Significantly Viewed Stations) MB Docket No. 20-73
)
Modernization of Media Regulation Initiative) MB Docket No. 17-105

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

May 11, 2020

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The Insights Association, the leading nonprofit association representing the marketing research and data analytics industry, submits these comments opposed to the Federal Communications Commission (FCC) proposal to abandon accurate audience measurement research in favor of engineering exercises in signal strength measurement.

Insights Association members include both marketing research and data analytics companies and organizations, as well as the research and analytics professionals and departments inside of non-research companies and organizations. Insights Association members are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations, employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

The Federal Communications Commission (FCC) Notice of Proposed Rulemaking (NPRM) on Defining Significantly Viewed Local TV Stations, issued on March 31, 2020,¹ seeks input on modernizing how the agency determines if a TV broadcast station is "significantly viewed" in a given community "outside of its local television market and thus may be treated as a local station in that community" by cable and satellite providers. Since the process "was adopted nearly fifty years ago," the FCC wants to know if it "has become outdated or overly burdensome, particularly for smaller entities."

Broadcasters "hold exclusive rights to distribute network or syndicated programming within their local markets" (which are defined by Designated Market Areas (DMA) as determined by Nielsen data).² Satellite and cable providers are restricted from transmitting "duplicative network or syndicated programming carried on any out-of-market signals that they import into a local market where exclusivity provisions exist in the relevant contractual agreements between broadcasters and networks or syndicators," unless subject to an exemption for stations that are "significantly viewed" by the local community.

"The significantly viewed exception is based on a demonstration," the NPRM continues, "made using over-the-air viewership surveys, that an otherwise distant station receives a 'significant' level of over-the-air viewership in a particular cable or satellite community and therefore should be considered 'local' with respect to that community." The FCC rules differ between a

¹ <https://www.fcc.gov/document/defining-significantly-viewed-local-tv-stations> ,
<https://docs.fcc.gov/public/attachments/FCC-20-41A1.pdf>

² "Local market" is defined in 17 U.S.C. § 122(j)(2)(A) as "in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and— (i)in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii)in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station." Further, a "Designated Market Area" means "a designated market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication." <https://www.law.cornell.edu/uscode/text/17/122>

network station (an affiliate of ABC, CBS or NBC)³ and an independent station,⁴ and have alternative survey approaches for TV station signals that weren't on the air in 1970-71⁵ or for certain other circumstances or for revisiting designations.⁶

The FCC asked if there were "alternative methodologies for demonstrating a station's significantly viewed status outside of its local market," such as using a "technical" measurement like a "Longley-Rice analysis, demonstrating that the station's signal reaches or does not reach a certain percentage of the population in that community." The FCC, even in asking the question, recognized "that such a showing would reflect potential rather than actual viewing in the community at issue." Thus, the FCC seems to have already answered its own question.

The technical measurement of the strength of a TV station's signal, whether at the point of broadcast or using some homes' antennae, cannot begin to compare to scientific audience measurement because it can't tell the FCC whether anyone actually watched the signal, even if the signal strength theoretically captures where such a signal might be capable of being viewed.

It is unreasonable for the FCC to thus "infer that if a station's signal reaches a certain percentage of the population in a community that the station is significantly viewed in the community." American consumers are blessed with the ability to choose, whether that is what they buy and when (or if at all), how they live, or even what they watch on TV and when (if at all). Audience measurement research quantifies and tracks those choices for an accurate

³ A network station is "significantly viewed... if over-the-air viewership surveys demonstrate that the station exceeds a three percent share of viewing hours and a net weekly circulation of 25 percent, by at least one standard error." Per 47 CFR § 76.5(i): "For purposes of the "significantly viewed" definition, "share of viewing hours" means the total hours that over-the-air television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period. "Net weekly circulation" means the number of over-the-air television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total over-the-air television households in the survey area."

⁴ Independent stations are designated as "significantly viewed... if over-the-air viewership surveys demonstrate that the station exceeds a two percent share of viewing hours and a net weekly circulation of five percent, by at least one standard error."

⁵ These "may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods during the first three years of the subject station's operation and are otherwise comparable."

⁶ Alternatively, an "independent professional audience survey of over-the-air television homes" may be used to determine if stations are significantly viewed "in a cable or satellite community. Per 47 CFR § 76.54(b): "Such a survey would be 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. If 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 level. 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. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population. A satellite carrier may demonstrate significant viewing in more than one community or satellite community through a single survey, provided that the sample includes over-the-air television homes from each community that are proportional to the population."

reading of consumer behavior and sentiment. The signal strength approach, by contrast, completely disregards consumer choice.

The Insights Association is agnostic on which company is involved in this audience research, as long as it is a competent private sector marketing research and data analytics provider (or more than one) that abides by industry standards, like our Code.⁷

Audience measurement in general is as technically and scientifically sophisticated as ever, and capable of significant accuracy, despite the fracturing of the television market. While there is discontent in parts of the media marketplace on certain companies dominating media currency in certain markets, that does not suggest the abandonment of media currency altogether.

The Insights Association opposes the potential abandonment of research-based audience measurement in this proceeding (or in other FCC proceedings). Although we appreciate the FCC reviewing this issue, we would hope that the FCC would not consider tearing the whole media and media research marketplace asunder with repeated rulemakings in the space.

The FCC should stick with science and consumer choice.

⁷ Insights Association Code of Standards and Ethics for Marketing Research and Data Analytics
<https://www.insightsassociation.org/issues-policies/insights-association-code-standards-and-ethics-market-research-and-data-analytics-0>