

rules, or both, in determining the local service area of each broadcast station they retransmit to their subscribers.

Section 76.55(e) of the FCC's rules defines a television market for purposes of the Commission's new must-carry rules adopted to implement the Cable Television Consumer Protection and Competition Act of 1992. Public Law 102-385. The section provides in its entirety:

(e) Television market. For purposes of the must-carry rules:

(1) A local commercial broadcast television station's market shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in its *Television ADI Market Guide* or any successor publication, as noted below, except that for areas outside the contiguous 48 states the area of dominant influence may be defined using Nielsen's Designated Market Area (DMA), where applicable, and that Puerto Rico, the U.S. Virgin Islands and Guam will each be considered one ADI;

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located;

(3) In addition, the county in which a station's community of license is located will be considered within its market.

Note: For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991-1992 *Television ADI Market Guide*, available from the Arbitron Ratings Co., 312 Marshall Ave., Laurel MD, will apply. ADI assignments will be updated at three year intervals. For the 1996 election period, the 1994-1995 ADI list will be used; the applicable list for the 1999 election will be the 1997-1998 list, etc.

47 CFR 76.55(e) (1993). The Home Viewer Act fixes 47 CFR 76.55(e) as of September 18, 1993, but expressly includes any subsequent modifications to television markets made under § 76.55(e) or § 76.59 of the Commission's rules. Modifications were recognized by the Home Viewer Act because, at the time of its passage, the Arbitron Company had discontinued its publication of the *Television ADI Market Guide* and had filed for bankruptcy.

Subsequent to the enactment of the Home Viewer Act, the Copyright Office amended its cable and satellite carrier compulsory license rules and discussed the changes brought about by the Act. 59 FR 67635 (December 30, 1994). The new definition of the "local service area of a primary transmitter" did not require amendment of the rules; however, the Office described the change in the definition:

The other change to the cable compulsory license made by the 1994 Home Viewer Act is the broadening of the section 111(f) definition of the "local service area of a primary transmitter." The definition is used to determine when a broadcast station is

local or distant to a cable operator, which in turn determines whether the operator must pay a royalty fee for that station. Effective July 1, 1994, the local service area of a broadcast station for copyright purposes also includes the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules.

*Id.* To date, this is all the Office has said regarding the change made to the local service area definition by the Home Viewer Act.

## II. Policy Issues

Amendment of the definition of the "local service area of a primary transmitter" has led to questions in the administration of the cable compulsory license. Two of these questions must be resolved in order for the Copyright Office to administer the cable compulsory license. The first question involves the Copyright Office's use of ADI in its examination of cable statements of account. As discussed above, the amendment to the local service area definition was made effective beginning with the second accounting period of 1994, and cable systems are now using broadcast stations' ADI for determining the local/distant status of the signals. The question has arisen, however, as to the appropriate ADI information to consider in calculating the local service area of a broadcast signal. The Note to 47 CFR 76.55(e) states that the FCC is using the 1991-1992 *Television ADI Market Guide* for the 1993 must-carry/retransmission consent election, and that ADI assignments will be updated at three year intervals.<sup>2</sup> Should cable systems use the 1991-1992 *Television ADI Market Guide* for the 1994/2 accounting period and the 1995 accounting year, or should they apply the current ADI list to the corresponding accounting period—i.e. the 1994 list to the 1994 accounting year and the 1995 list to the 1995 accounting year, where such information is available?

The second question involves the determination of a broadcast station's "television market" for a cable system that serves a community or communities in more than one county

where those counties are assigned to different ADIs. Is the broadcast station local for copyright purposes only in those counties assigned to its ADI, or are there circumstances where the station may be reported as local outside of its ADI?

## III. Policy Decision

As part of its responsibility to administer the cable compulsory license, the Copyright Office is resolving both the issues raised in this Notice. With respect to which ADI (or subsequent) list to use in examining statements of account, the Office will use only the list designated by the Commission for the must-carry/retransmission consent election. For determinations of the local/distant status of a broadcast station, the Office is clarifying the circumstances under which a station may be reported as local for copyright purposes.

### A. The ADI list

The amended local service area definition expressly adopts Arbitron's ADI list in effect on September 18, 1993, plus any subsequent modifications made to that list pursuant to § 76.55(e) or § 76.59 of the FCC's rules. Section 76.55(e) provides that the ADI list in effect on September 18, 1993, is the list appearing in the 1991-1992 *Television ADI Market Guide*. 47 CFR 76.55(e)(Note). It is further provided that 1991-1992 *Television ADI Market Guide* list will remain in effect until the time of the 1996 must-carry/retransmission consent, when the 1994-1995 ADI list will be used. While it is presumed that the ADI list applicable for 1996 will account for the termination of publication of the *Television ADI Market Guide*, § 76.55(e) makes it clear that the Commission will only revise the ADI list at three-year intervals. Because of the Home Viewer Act's direct reference to 47 CFR 76.55(e), the Copyright Office believes that it is consistent with legislative intent to use only the ADI (or replacement) list used by the Commission for the must-carry/retransmission consent election. Thus, for the 1994/2 accounting period, and both accounting periods for 1995, the Copyright Office will use the 1991-1992 *Television ADI Market Guide* in determining the local/distant status of broadcast signals. Cable operators should use only this list for these accounting periods; in examining Statements of Account, the Copyright Office will not recognize the ADI of a broadcast station derived from any source other than the 1991-1992 *Television ADI Market Guide*. For the

<sup>2</sup> The Note further states that the 1994-1995 ADI list will be used for the 1996 election, the 1997-1998 list for the 1999 election, etc. Arbitron, however, discontinued the *Market Guide* after publication of the 1993-1994 edition. New criteria, presumably Nielsen's Designated Market Area, must be adopted before the 1996 must-carry/retransmission consent election, and the Commission has stated that it will address the issue before October 1, 1996. See *Opinion & Order in MM Docket No. 92-259* at 10 n. 45 (November 4, 1994).