support to all internal connection appeals down to the seventy percent discount level, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

22. It is furthered ordered that, because the Commission has found good cause, this Order and 47 CFR 54.725, as amended, is effective June 24, 1999.

23. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45, including the Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Add a Note to paragraph (g)(1)(iii) to read as follows:

§ 54.507 Cap.

* * * * *

(g) * * *

Note to paragraph (g)(l)(iii): To the extent that there are single discount percentage levels associated with ''shared services'' under § 54.505(b)(4), the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for the eighty-nine percent discount, then for the eighty-eight percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

* * * * *

3. Revise § 54.725 to read as follows:

§ 54.725 Universal service disbursements during pendency of a request for review and Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

[FR Doc. 99–16181 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–178; FCC 99–116]

Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission dismisses petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV and by Costa de Oro Television, Inc., licensee of KSTV, that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. The Commission has found that special relief is not warranted for these stations as they have taken advantage of the market modification process. Also addressed are possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as the Commission moves from an ADI to a DMA-based market structure. The Commission has set forth several procedural and evidentiary mechanisms to ameliorate the impact the change in market definitions may have on cable operators and broadcasters. The principal goal of the measures taken is to reduce, to the maximum extent feasible, cable subscriber confusion, and disruption in viewing patterns, that may arise because of the change. The Commission also improves the functioning of the *ad hoc* market modification process mandated by the Communications Act. New rules have been implemented encapsulizing the evidence necessary for filing market modification petitions.

DATES: These rules are effective July 26, 1999. Public comments on the modified information collection requirements are due on or before July 14, 1999.

ADDRESSES: A copy of any comments on the modified information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111. For additional information concerning the information collection contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration and Second Report and Order, CS Docket No. 95–178, FCC 99–116 adopted May 21, 1999 and released May 26, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St. SW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 12th St. SW, Washington, DC 20554.

Synopsis of the Order on Reconsideration and Second Report and Order

1. The *First Report and Order and Further Notice of Proposed Rulemaking* (''*First Order*''), 61 FR 29312, in this proceeding established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules. The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence (''ADIs'') to Nielsen Media Research designated market areas (''DMAs'') for must-carry/retransmission consent elections. That action was necessary because the Arbitron market definition mechanism previously relied on was no longer available. However, the Commission continued to use

Arbitron's 1991–1992 *Television ADI Market Guide* designations for the 1996–1999 must-carry/retransmission consent election period and postponed the switch to DMAs until the third must-carry/retransmission consent cycle that is to commence on January 1, 2000.

2. The *First Order* delayed the transition to DMAs because of concerns related to the transition from one market definition to another and the relationship of such a transition to the *ad hoc* market boundary change process provided for in Section 614(h) of the Communications Act. For this reason, the *Further Notice of Proposed Rulemaking* was issued to solicit additional information and provide parties an opportunity to further consider issues relating to the transition to market designations based on DMAs. It also sought comment on procedures for refining the Section 614(h) market modification process.

3. Our task in this *Order on Reconsideration and Second Report and Order* is twofold. First, we consider the arguments raised in petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (ch. 31—Ann Arbor, MI) (''WBSX–TV''), and by Costa de Oro Television, Inc., licensee of KSTV (ch. 57—Ventura, CA) (''KSTV–TV''), that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. For the reasons discussed below, we conclude that no special treatment for these petitioners is warranted.

4. Second, we address the issues raised in the *Further Notice,* and by the comments filed in response to that *Notice,* regarding possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as we move from an ADI to a DMA-based market structure. We also take this opportunity to improve the functioning of the *ad hoc* market modification process mandated by Section 614(h) of the Communications Act. Our principal goal is to reduce, to the extent feasible, cable subscriber confusion and disruption in viewing patterns that may arise because of the switch from ADIs to DMAs. Another goal is to clarify the procedures for determining markets for must carry purposes so that the administration of Section 614 by the Commission is efficient and workable.

5. Under provisions added to the Act by the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''), local commercial broadcast television stations may elect whether they will be carried by local cable television systems, and open video systems, under the mandatory carriage (''must-carry'') or retransmission consent rules. A station electing must carry rights is entitled to insist on cable carriage in its local market. Should a local station choose retransmission consent, it and the cable system negotiate the terms of a carriage agreement and the station is permitted to receive compensation in return for carriage. Stations are required to make this election once every three years. The current cycle commenced on January 1, 1997, with elections having been made by October 1, 1996.

6. For the purposes of these carriage rights, a station is considered local on all cable systems located in the same television market as the station. As enacted, Section 614(h)(1)(C) of the Act specifies that a station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of the Commission's rules, in effect on May 1, 1991. Section 73.3555(d)(3)(i), now redesignated as section 73.3555(e)(2)(i), is a separate rule concerned with broadcast station ownership issues that refers to Arbitron's ADIs. An ADI is a geographic market designation that defines each television market based on measured viewing patterns. Essentially, each county or portion of a county in the contiguous areas of the United States is allocated to a discrete market based on which home-market stations receive a preponderance of total viewing hours in the county. For the purposes of this calculation, both over-the-air and cable television viewing are included. Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county.

7. Moreover, under the ''home county rule,'' the county in which the station's community of license is located is considered within its market. Under Arbitron, a station's city of license, and its home county, may be located in one ADI but assigned by Arbitron to another ADI for ratings reporting purposes. The station may assert its must carry rights, or elect retransmission consent, against cable operators in its home county and all of the cable operators in the ADI to which the station is assigned.

8. In addition to ADIs that generally define the area in which a station is entitled to insist on carriage, Section 614(h) of the Act directs the Commission to consider individual requests for changes through a market modification process, including the determination that particular communities may be part of more than one television market. The Act provides that the Commission may ''With respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.''

9. Section 614(h)(1)(C)(ii) states that in deciding requests for market modifications, the Commission shall consider several factors: (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (II) whether the television station provides coverage or other local service to such community; (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interests to the community; and (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community. Section 76.59 of the rules provides that broadcast stations and cable operators shall submit requests for market modifications in accordance with the procedures for filing petitions for special relief.

10. Arbitron discontinued its television ratings and research business after the Commission established the mechanism for determining a station's local market for purposes of the triennial must carry/retransmission consent election. Thus, future editions of the publications referred to in the rules are no longer available and new procedures for defining market areas for must carry purposes had to be established.

11. Historically, Arbitron and Nielsen have been the primary national television ratings services. Conceptually, their market designations—ADIs and DMAs—are the same. They both use audience survey information from cable and noncable households to determine the assignment of counties to local television markets based on the market whose stations receive the largest share of viewing in the county. The differences in their assignments of specific counties to particular markets reflect a number of factors, including slightly different methodologies and criteria as well as normal sampling and statistical variations. Each company also has a policy for determining what constitutes a separate market based on a complex

statistical formula. For example, Arbitron considers some areas, such as Hagerstown, Maryland, or Sarasota, Florida, as separate markets, compared to Nielsen, which includes Hagerstown in the Washington, DC. DMA and Sarasota in the Tampa DMA. In addition, these services reserve the right to take into account other considerations. Nielsen, in particular, ''reserves the right not to create a DMA if there is a lack of sufficient financial support of Nielsen Service in that potential DMA.''

12. Nielsen has established a system to determine which stations are considered ''local'' for ratings reporting purposes. This is the ''Market-Of-Origin'' assignment process and involves several statistical calculations based upon viewership and other factors. However, a station may petition Nielsen to change its Market-Of-Origin assignment if both its transmitter and the majority of its Grade B service contour are located in a different DMA than the DMA in which the station's community of license is located. Such a petition must include relevant information on which the petitioning station bases its request for a change in Market-Of-Origin including, but not limited to, community of license, present transmitter location, signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. Nielsen reserves the right to use its best judgment based upon the information available to it in considering whether the change sought by the petition reflects the reality of the market affected. The station's assignment is then made available in Nielsen's *Directory of Stations* publication. Thus, it appears that the home county rule applies in the DMA context as it had in the ADI context.

13. In the *First Order*, the Commission concluded that Nielsen's DMA market assignments provide the most accurate method for determining the areas serviced by local stations, recognizing that over time the 1992–92 ADI market list, if relied upon, would become outdated. Moreover, we continued to believe that our 1993 decision to use updated market designations for each election cycle to account for changing markets was appropriate. Nielsen currently provides the only generally recognized source of information on television markets that would permit us to retain this policy. Thus, we concluded that Nielsen's DMA market designations will provide the best method of ''delineat[ing] television markets based on viewing patterns'' in the future.

14. We observed, however, that a shift to a DMA-based market definition standard could result in some stations currently on local cable systems being replaced, some other programming services (i.e., cable networks) being dropped to accommodate situations where the number of stations entitled to carriage increases, and some channel line-ups needing to be reconfigured to accommodate the channel positioning requests of stations with new must-carry rights. The Commission also voiced concern about the impact the change to DMAs would have on the Section 614(h) market modification decisions already in force. The consensus of commenters was that prior market modification decisions should remain in effect. It was unclear, however, whether cable operators could face conflicting obligations or be subject to carriage of signals from multiple markets based on a revised market standard when these modifications are considered in conjunction with a new market definition. We did not receive any information regarding the effect that such decisions, in conjunction with a change to a DMA standard, would have on the must-carry obligations of cable operators. In addition, we were unable to determine the burden on the Commission to remedy conflicts that might result from an immediate switch to DMAs. The complexity of such situations and the administrative burden on the Commission and others to resolve possible conflicts could, the Commission believed, disrupt the orderly provision of local television service to subscribers.

15. Based on these considerations, the Commission postponed the switch in market designation until the next must-carry/retransmission consent takes effect on January 1, 2000, to ensure that potential transitional problems could be addressed. We reasoned that the phased-in approach would assist parties who expressed concerns that a switch in market definitions would result in administrative burdens and costs for cable operators, including small cable operators, and would impede the entry of new market entrants, such as local exchange carriers planning to operate cable systems under Title VI or the OVS provisions. Thus, the Commission decided to continue to use the 1991–1992 ADI market list for the 1996 election and to establish a framework that uses updated DMA markets lists for the 1999 and subsequent elections.

16. Two parties, Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (channel 31, Ann Arbor, Michigan) (''WBSX–TV'') and Costa de Oro Television, Inc., licensee of KSTV (channel 57, Ventura, California) (''KSTV–TV'') filed petitions for reconsideration of the First Order generally arguing that the Commission did not adequately consider updated market information, unique to their situations, when considering the transition from ADIs to DMAs.

17. We believe there is no reason to make special exceptions for these two stations. The individual circumstances that apply to WBSX–TV and KSTV–TV are most appropriately dealt with through the market modification process, which takes into consideration their future DMA assignments. Both stations have used the market modification process to seek significant expansion of their ADI markets for must carry purposes. WBSX–TV has already added 55 communities to its current ADI, and KSTV–TV has added 22 communities. The Commission has specifically indicated that information regarding DMAs could be useful in resolving individual ad hoc market modification requests filed pursuant to Section 614(h). The stations may therefore use the modification process to change their DMAs, in the future, if the situation so warrants.

18. The *Further Notice of Proposed Rulemaking* sought comment on mechanisms for facilitating the transition from a market definition system based on ADIs to one based on DMAs. Commenters were asked to consider whether special provisions should be made for particular types of systems (e.g., systems with fewer than a specified number of subscribers) to minimize the disruptions that could occur due to a switch to DMAs. The Commission is also concerned about the potential impact on consumers who are cable subscribers.

19. We are not making the change suggested by Southern. Its concern about non-network territorial exclusivity arrangements appears to be misplaced and are better left addressed in Gen. Docket No. 87–24, which focuses on the network rules of concern to Southern. The change from ADIs to DMAs for must carry purposes in section 76.55 affects neither of the market listings referenced in Section 73.658(m) for purposes of territorial exclusivity in non-network arrangements. Section 73.658(m) provides that exclusivity may be secured in hyphenated markets included in the top 100 markets listed in section 76.51 or, if the market in question is not in the top 100 list, then Section 73.658(m) makes reference to the ARB Television Market Analysis. Even though Arbitron's television market analysis is no longer published,

there has been no change in the reference, and the Nielsen DMA list has not been substituted theretofore. Because section 73.568(m) refers to section 76.51, the reference to DMAs in section 76.55 is not relevant to territorial exclusivity in non-network arrangements, and Southern's objection to the switch to DMAs on this basis is unwarranted.

20. We agree with those commenters that continue to express concern about the potentially disruptive consequences of switching to DMAs. A comparison of the ADI markets currently used with the DMA markets that will be used after the current election cycle is over, reveals that 135 counties change markets because of the switch from ADIs to DMAs. A sampling of these counties suggests that, in certain instances, the changes will have serious impact, even though a relatively small number of cable systems and broadcasters would be involved. And, though a strong case could be made for reversing the market shift based on the *ad hoc* market evaluation factors contained in Section 614(h), this statutory mechanism, in and of itself, may not significantly lessen the impact of the change. Thus, we believe that some general relief is warranted. We note that the change in market definition from ADI to DMA will take effect on January 1, 2000, which prompts us to consider on our own motion whether this timing would create a Year 2000 (''Y2K'') problem, particularly for the cable systems that will experience carriage or channel line-up changes. Commission staff has confirmed with relevant industry representatives that cable systems' headend signal processing equipment is not dependent on date or time, and, therefore, the market definition change would not raise Y2K considerations.

21. A cable system currently within a particular station's ADI, but outside that station's DMA, may want to continue carrying that station after the transition to DMAs because the station serves the local interests of its subscribers. We believe that when the cable system wants to carry a particular station, it is a strong indication that the community it serves continues to be within the station's local market notwithstanding the change in market definition. Therefore, to minimize programming disruptions, we adopt a policy whereby a cable system within a television station's ADI (but outside its DMA) that currently carries the station on its channel line-up may continue to carry the station, without being subject to copyright liability, even after the transition to DMAs. We note that the Act's one-third channel capacity cap, and related closest network affiliate provision, apply in this particular situation. This policy adheres to the Commission's goals of providing cable subscribers with television programming that serves the interests of localism, while also reducing the possibility of channel line-up disruptions and subsequent subscriber confusion. Our approach also takes into account the Commission's need for current market information that only Nielsen can provide while, at the same time, ensuring that cable subscribers are not deprived of valued broadcast services. In these cases, the commercial television station is, and will continue to be, local with respect to this cable system, in conformance with section 76.55 of the Commission's rules. This policy applies to stations that elected retransmission consent or must carry.

22. As stated earlier, one of the principal goals in this proceeding is to reduce channel line-up disruptions whenever possible. The rule changes we are adopting, which permit individual fact-specific Commission adjustments prior to the shift to DMAs, seek to accomplish that goal. The new rules, amending sections 76.55(e) and 76.59, will include the following features:

—In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that change from one market to another will be permitted to treat their systems as either in the new market, or with respect to the specific stations carried prior to the market change, as in both markets.

—If any dispute is triggered by a change in markets that results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request. The market modification request and the carriage complaint will then be addressed simultaneously. All broadcast signal carriage issues, such as channel positioning matters, would be addressed in the same proceeding. Pending complaints and petitions will be disposed of in a single proceeding whenever practicable.

23. We also find that where a broadcast station is dissatisfied with a final market modification decision issued by the Commission, and then successfully petitions Nielsen to change its market-of-origin in response to the Commission's adverse decision, the Commission's market modification decision remains controlling.

24. In Section 614(h) market modification cases, where issues are raised as to which market the cable communities are properly associated, the Commission will pay particular attention to the following considerations:

—Where persuasive evidence exists showing that two markets have been merged into a single market because there was insufficient financial support from purchasers of the rating report available from the rating service to maintain separate markets, or for other reasons unrelated to market definitions relevant to the purposes of the Commission's broadcast signal carriage rules, it will be presumed, in the absence of a demonstration to the contrary, that the previous demarcation points between the markets should be maintained. A failure of financial support for the ratings service shall not be regarded as indicative of a market change for purposes of the rules. Such evidence, as letters to the station from Nielsen explaining the change, would fulfill the burden of proof in this context.

—Where a county is shifted into a noncontiguous market (*e.g.*, a county in State A is considered part of a DMA in State B, which is not geographically contiguous with the county in State A), in considering whether that shift should be followed or revised through the Section 614(h) process, localism as reflected in over-the-air audience ratings, will be given particular attention. That is, because over-the-air audience data is a more accurate and reliable indication of local viewership, greater evidentiary weight will be given to over-the-air audience data than to cable audience data. Careful attention will be given to unique market situations, like those in the Rocky Mountain area, where counties are sometimes hundreds of miles away from the core of the market. In considering a requested market modification, the Commission will closely examine whether the challenged market redesignation resulted from audience change due to cable carriage of the signals in question as opposed to resulting from changes in the local market.

—Where Nielsen's market redesignation is the result of potentially transitory programming popularity shifts on particular stations rather than from significant changes in the facilities or locations of such stations, the Commission may, upon request, resurrect the former market structure. Thus, for example, if a county were shifted to market A because the stations in that market garnered a 52% share of the audience and

deleted from market B because its stations garnered only a 48% share, the Commission would consider leaving the market unchanged because stability is in the public interest and the underlying structure of the market has not been significantly altered to warrant the difficulties associated with the change.

—We will also consider factors such as changes in the time zone from the old market to the new market, as well as significant disruptions to subscribers. Evidence of significant disruptions to subscribers could include extensive changes in channel line-ups and subscriber objections to the change.

—Where a cable operator or broadcaster seeks to remain associated with a smaller market rather than be shifted to a larger market, the Commission will give weight to this consideration in a market modification proceeding. Supporting the smaller market is consistent with the Section 614(h) policy of paying ''particular attention to the value of localism.'' In general, small cable system and small broadcast station concerns will be given careful attention. In this regard, the Commission will review whether such a change supports the policy of localism. In this situation, we will also take into consideration broadcasters' costs to deliver signals to cable system headends in the market and the costs to cable systems to receive local market stations.

—Separate from the specifics of the market modification process, the four statutory criteria, and other evidence considered in that process, the Commission will consider whether extreme hardship is imposed on small cable systems or small broadcast stations, often those unaffiliated with the top networks, by the DMA conversion process. Such hardship would include disproportionate expense to the system and programming disruption to subscribers that is exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations and channel position conflicts between old and new stations. We believe this hardship scheme will address the concerns raised by small cable operators in their comments, and are more closely aligned with the Act's localism tenets than the small operators' opt out and reimbursement proposals discussed.

25. We noted concern about the effect of changing to a DMA market definition on previous Section 614(h) decisions and petitions pending before the Commission. Specifically, we requested commenting parties to address the consequences of a shift in definitions on the more particularized market boundary redefinition process contained in Section 614(h), the decisions that have been made under that section, and the proceedings under it that would result from shifting market definitions.

26. We conclude that market modification requests filed prior to the effective date of the change from ADI to DMA, including petitions, petitions for reconsideration, and applications for review, will be processed under Arbitron's ADI market definitions. We do not believe that the petitions for reconsideration and applications for review currently pending will be affected by the conversion to DMAs because, in most of these cases, the market assignment will not change. In cases in which the conversion to DMAs will have a direct consequence, we will take the future DMA assignment into account, as we have done since the *First Order* was released. We will also leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations.

27. In addition, we agree with NCTA's argument that where the Commission has previously decided to delete a community from a station's ADI market, that deletion will remain in effect after the conversion to DMAs. We also recognize NCTA's concern that stations should not be able to assert carriage rights in its former market while a market modification deletion request is pending. Generally, a cable operator may not delete a commercial television station from carriage during the pendency of a market modification proceeding. However, if conversion to DMAs moves a station out of the ADI that is the subject of a pending deletion request, the deletion request is effectively moot, and the cable operator may drop the station. We believe that few, if any, pending proceedings will fall within this factual pattern. Nevertheless, we agree with NCTA that, as we stated earlier, the Act and our rules cannot be read to allow a television station to claim carriage rights in more than one DMA, barring a modification by the Commission.

28. We also sought comment on what changes in the modification process may be warranted given that administrative resources available to process Section 614(h) requests are limited and the Act established a 120-day time period for action on these petitions. We stated that new techniques may be needed to increase the efficiency of the decision making process. Under the existing process, a party is free to make its case using whatever evidence it deems appropriate. One suggested means of expediting the modification process was to establish more focused and standardized evidentiary specifications. Therefore, we proposed to establish specific evidentiary requirements in order to support market modification petitions under Section 614(h) of the Act. We requested comment on the following specific information submission requirements and sought alternatives that would assist the Commission in its review of individual requests. In particular, we proposed that each filing include exhibits showing:

—A map detailing the relevant community locations and geographic features, disclosing station transmitter sites, cable system headend locations, terrain features that would affect station reception, and transportation and other local factors influencing the shape of the economic market involved. Relevant mileage would be clearly disclosed;

—Historical cable carriage, illustrated by the submission of documents, such as rate cards, listing the cable system's channel line-ups for a period of several years.

—Coverage provided by the stations, including maps of the areas in question with the universe of involved broadcast station contours and cable system franchise areas clearly delineated with the same level of specificity as the maps filed with the Commission for broadcast licensing proceedings;

—Information regarding coverage of news or other programming of interest to the community as demonstrated by program logs or other descriptions of local program offerings, such as detailed listings of the programming provided in a typical week that address issues of importance in the community in question and not the market in general;

—Other information that demonstrates a nexus between the station and the cable community, including data on transportation, shopping, and labor patterns;

—Published audience data for the relevant stations showing their average all day audience (i.e., the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households over a period of several years.

29. We will adopt the standardized evidence approach with regard to market modification petitions and amend the rules accordingly. Petitions that do not provide the evidence required by the rule will be dismissed without prejudice. This option has distinct advantages. First, it promotes administrative efficiency. Commission staff would no longer have to spend time tracking down the appropriate maps, ratings data, and carriage records that are missing from the record. Nor would Commission staff need to contact the relevant party to request the information that should have been included in the filing in the first place. With the relevant evidence available, the resources needed to process modification requests would be reduced. It now takes almost the entire 120-day statutory period to research, draft, adopt, and release a market modification decision. The interests of both broadcasters and cable operators will be advanced by a standardized evidentiary approach that will facilitate the decision-making process. By adopting the standardized evidence option, we may be able to bring greater uniformity and certainty to the process and avoid unnecessary reconsideration petitions and appeals, which will enable us to redirect administrative resources that would have been devoted to those proceedings.

30. In addition to the evidence delineated above, we encourage petitioners to provide a more specific technical coverage showing, through the submission of service coverage prediction maps that take terrain into account, particularly maps using the Longley-Rice prediction methodology. In situations involving mountainous terrain or other unusual geographical feature, the Commission will consider Longley-Rice propagation studies in determining whether or not a television station actually provides local service to a community under factor two of the market modification test. We will view such studies as probative evidence in our analysis and a proper tool to augment Grade B contour showings. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. Since both the Commission and the broadcasting industry have relied upon the Longley-Rice model in determining the digital television Table of Allocations, these studies will become increasingly useful in defining market areas for digital television stations as they come on the air.

31. We do not find merit in the argument that the standardized evidence option would pose an unreasonable financial burden on petitioners. We believe that the requested evidence should be obtainable without unreasonable difficulty and is in any case the kind of information that should be reviewed in determining whether a filing is appropriate. Most of the requested information has been included by more careful petitioners in the past without complaint about costs or administrative difficulties. Our decision here simply standardizes the type of evidence we find relevant in processing market modification petitions. However, if a requested item is in the exclusive control of the opposing party, and the opposing party refuses to provide the information, we will take into consideration which party is responsible for the absence of the requested information.

32. ALTV contends that the standardized evidence approach conflicts with the Act because Section 614(h) specifies a limited range of evidence needed to support a market modification petition. We disagree. The language of Section 614(h) provides that in considering market modification requests, ''the Commission shall afford particular attention to the value of localism by taking into account *such factors as* * * *'' (emphasis added), indicating that the factors are non-exclusive. Likewise, the legislative history accompanying Section 614(h) indicates that the four factors are non-exclusive, and we have interpreted this language to mean that the parties may submit any additional evidence they believe is appropriate. The approach we adopt today adds substance to this directive by clearly indicating what kind of evidence is necessary for a modification petition to be deemed complete. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

33. The second proposal proffered by the Commission to increase the efficiency of the decision making process was to alter to some extent the burden of producing the relevant evidence. Thus, for example, Section 614(h) establishes four statutory factors to govern the *ad hoc* market change process, including historical carriage, local service, service from other station, and audience viewing patterns. These factors are intended to provide evidence as to a particular station's market area, but they are not the only factors considered. These factors must be considered in conjunction with other relevant information to develop a result that is designed to ''better effectuate the purposes'' of the must-carry requirements. The *Notice* sought comment on whether the process could be expedited by permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing. Such factors track the statutory provision and are relatively free from factual dispute. The presentation of such a *prima facie* case could then trigger an obligation on the part of any objecting entity to complete the factual record by presenting conflicting evidence as to the actual scope of the economic market involved. This could include, for example, programming information and other evidence as to the local advertising market involved. Dividing the obligations in this fashion, the *Notice* suggested, would force the party with the best access to relevant information to disclose that information at the earliest possible point in the process.

34. We find that the *prima facie* option is not the proper approach because it seems likely to create another area for procedural disputes. In contrast to the standardized evidence approach, which provides a framework that should expedite review, we are concerned that the *prima facie* approach, while possibly streamlining the process, would sacrifice the flexibility to consider all useful evidence. We also reject the market deletion plan proposed by Paxson. Under this approach, the Commission need only find that the cable system and the broadcaster share a DMA, and the cable system still has capacity for the carriage of local signals, in order to dismiss a market deletion petition. We believe this plan is contrary to the plain meaning of the Act because it ignores the four statutory factors that we must take into account when reviewing market deletion requests.

35. With regard to WRNN–TV and Paxson's request that programming should be given more weight in the modification analysis, we believe that it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case. Programming is considered in the context of Section 614(h) proceedings only insofar as it serves to demonstrate the scope a station's existing market and service area, not as

a *quid pro quo* that guarantees carriage or an obligation that must be met to obtain carriage. However, we do find that such information is particularly useful in determining if the television station provides specific service to the community subject to modification. As such, we will include programming of local interest in the analysis along with mileage, Grade B contour coverage, and physical geography, when reviewing the local service element of the market modification test.

36. We continue to believe that our interpretation of Section 614(h), and the evidence we have used to analyze local service and adjust markets is reasonable and consistent with the language of the Act and statutory intent. We note that the arguments Paxson and WRNN raise were addressed at length in the *New York ADI Appeals Memorandum Opinion and Order, (''New York ADI Order''*), 12 FCC Rcd 12262 (1997), which disposed of numerous separate must carry/market modification appeals involving seven New York ADI cable operators and five television stations. The Commission's decision, subsequently affirmed by the United States Court of Appeals for the Second Circuit, *WLNY v. FCC*, 163 F.3d 187 (2d Cir. 1998), generally affirmed a staff decision to retain certain communities, and to delete other communities, from each of the stations' markets based on the four statutory factors, with particular attention paid to the local service factor as measured by Grade B contours and geographic distance, as well as other considerations. The Court's opinion fully endorsed the Commission's approach to market modifications and agreed that our careful balancing of the enumerated statutory factors, and other important considerations, are entirely consistent with the language and intent of the Act.

37. We note that Section 614(h) prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions. Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.

Market Entry Analysis

38. Section 257 of the Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry. The Commission is directed to promote, *inter alia,* a diversity of media voices and vigorous economic competition. We believe that this *Order* is consistent with the objectives of Section 257 in that it promotes a smooth transition to DMAs for both cable operators and broadcasters.

Paperwork Reduction Act

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose modified information collection requirements on the public. The Commission has requested Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the modified information collection requirements contained in this Report and Order. Public comments are due on or before 20 days after date of publication of this Notice in the **Federal Register**. OMB comments are due on or before 30 days after date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0546.

Title: Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules.

Type of Review: Revision of existing collection.

Respondents: Business and for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 4–40 hours.

Frequency of Response: On occasion filing requirement.

Total Estimated Annual Burden to Respondents: 1,680 hours.

Total Estimated Annual Cost to Respondents: $721,500.

Needs and Uses: This collection (OMB 3060–0546) accounts for the paperwork burden imposed on entities when undergoing the market modification request process. Information furnished in market modification filings is used by the Commission to deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market.

Final Regulatory Flexibility Act Analysis

39. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. Section 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Order and Further Notice of Proposed Rulemaking,* 61 FR 29312. The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. The FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847.

40. *Need and Purpose of this Action:* This action is necessary because the procedure for determining local television markets for signal carriage purposes relies on a market list no longer published by the Arbitron Ratings Company. Moreover, action is required to mitigate disruptions in cable channel line-ups that will be caused by the shift to a new television market paradigm.

41. *Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis:* SCBA filed comments in response to the Initial Regulatory Flexibility Analysis. SCBA states that the Commission's objective of a smooth transition from a market definition based on ADIs to one based on DMAs can be accomplished with respect to small cable systems by creating special transition rules. SCBA has submitted small cable transition rules that allegedly will help minimize regulatory burdens on small cable systems. SCBA first proposes rules that allow qualified small cable systems to opt out of the change in market definitions for the 1999 election. According to SCBA, this will allow certain small cable systems an additional three years to prepare for the impact of market redefinition. In the alternative, SCBA suggests transition rules, detailed in paragraphs 29–30, above, that will protect existing programming and shift certain costs associated with market redefinition to the broadcasters that benefit from those costs. These comments are addressed in the Order.

42. *Description and Estimate of the Number of Small Entities Impacted.* The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act.'' A small concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

43. *Cable Operators.* The Communications Act at 47 U.S.C. Section 543 (m) (2) defines a small cable operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. We have found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area. We can, however, assume that the number of cable operators serving 617,000 subscribers or less that (1) are not affiliated with entities whose gross annual revenues exceed $250,000,000 or (2) serve 50,000 or fewer subscribers in a franchise area, is less than 1450.

44. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

45. *Open Video System (''OVS'').* To date the Commission has certified 23 OVS systems, at least two of which are known to be currently providing service. Little financial information is available for entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenue, we conclude that at least some of the OVS operators qualify as small entities.

46. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There are approximately 1,589 operating full power television broadcasting stations in the nation as of April 30, 1999. Approximately 1,200 of those stations are considered small businesses.

47. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

48. *Reporting, Recordkeeping and Other Compliance Requirements.* The rules adopted in this *Order* will affect broadcast stations, cable operators, and OVS system operators, including those that are small entities. The rules adopted in this *Order* require broadcasters, cable operators, and OVS operators to provide specific forms of evidence to support market modification petitions. We do not believe that the rules adopted here today will require any specialized skills beyond those already used by broadcasters and cable operators.

49. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Rejected.* While declining to adopt SCBA's proposals, the Commission has implemented a procedural mechanism allowing small cable systems to file hardship petitions, if certain conditions are met. Specifically, the Commission will consider, in a case-by-case adjudicatory proceeding, whether extreme hardship would be imposed on small cable systems by requiring a transition to a new DMA market. Such hardship would include disproportionate expense to the system and programming disruption to subscribers exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations; channel position conflicts between old and new stations; or an extensive change in channel line-ups. This mechanism should allay the concerns proffered by small cable operators.

50. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

51. *Accordingly, it is ordered that,* pursuant to Section 4(i), 4(j), 614 and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 534 and 573, and Section 301 of the Telecommunications Act of 1996, Pub. L. 104–104 (1996), part 76 *is amended* as set forth in the rule changes, effective July 26, 1999.

It is further ordered that the commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Final Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

PART 76—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, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.55 is amended by revising paragraphs (e)(1) through (e)(6) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its *DMA Market and Demographic Rank Report* or any successor publication.

(i) For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 *DMA Market and Demographic Rank Report,* available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.

(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

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

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

* * * * *

3. Section 76.59 is amended by revising paragraphs (b) and (c) to read as follows:

§ 76.59 Modification of television markets.

* * * * *

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for special relief, and shall include the following evidence:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(c) Petitions for Special Relief to modify television markets that do not include such evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.

[FR Doc. 99–15959 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD91

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Plant ''Echinocereus lloydii'' (Lloyd's Hedgehog Cactus) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are removing the plant *Echinocereus lloydii* (Lloyd's hedgehog cactus), from the Federal List of Endangered and Threatened Species under the authority of the Endangered Species Act of 1973, as amended (Act). Lloyd's hedgehog cactus was listed as endangered on October 26, 1979, as a result of threats presented by collection and highway projects. Recent evidence indicates that Lloyd's hedgehog cactus is not a distinct species but rather a hybrid or cross which is not evolving independently of its parental species. Therefore, *E. lloydii* no longer qualifies for protection under the Act. Removing Lloyd's hedgehog cactus from the list constitutes our recognition of its hybrid status and removes Federal protection under the Endangered Species Act.

DATES: This rule is effective July 26, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Austin Texas Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.