

UPDATE

April 11, 2018

FCC Grants Petition to Remove Significantly Viewed Status of Stations in Two Pennsylvania Communities

On April 2, 2018, the FCC's Media Bureau released an [Order](#) granting a broadcaster's petition to remove the significantly viewed status of two stations in Lancaster and Elizabethtown, Pennsylvania. By demonstrating that the two stations were no longer significantly viewed, the cable operator(s) serving Lancaster and Elizabethtown will no longer be able to rely on the significantly viewed exception if the broadcaster attempts to exercise its network non-duplication and syndicated exclusivity rights against the cable operator(s). Importantly, no cable operator opposed the petition.

This is a good reminder of the importance of the FCC's broadcast exclusivity regulations – network non-duplication and syndicated exclusivity. Television broadcast station licensees affiliated with broadcast networks often receive, through their affiliation agreement, exclusive rights to distribute certain network programming within a specified geographic area. Television station licensees may also exercise exclusivity rights in accordance with the contractual provisions of their syndicated program license agreements.

In short, when a broadcaster receives exclusive rights by contract, the station can use the FCC's rules to prevent cable systems from carrying duplicate programming. Below, we briefly cover the FCC's broadcast exclusivity regulations – network non-duplication and syndicated exclusivity.

Notice Requirements. The network non-duplication and syndicated exclusivity rules require that, following proper notice from a station, a cable operator must delete duplicating programming in a community that falls within a station's protected zone. A broadcaster's failure to meet the FCC's notice requirements can lead to forfeiture of its network non-duplication or syndicated exclusivity rights.

Extent of Protection. In general, a broadcast station's protected zone extends 35 miles from the station's community of license reference point. For network non-duplication purposes, smaller market stations receive an extra 20-mile secondary zone, for a total of 55 miles from the reference point.

Exceptions. Several exceptions may trump a broadcaster's assertion of network non-duplication or syndicated exclusivity, including:

- Small systems. The network non-duplication and syndicated exclusivity rules do not apply to cable systems with fewer than 1,000 subscribers.
- Significantly viewed stations. A cable system need not delete the duplicate network or syndicated programming of any television station "significantly viewed."

If you have questions about the FCC's broadcast exclusivity rules, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

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