

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

Retransmission of Digital Broadcast Signals) Docket No. RM 2005-5
Pursuant to the Cable Statutory License)

**JOINT COMMENTS OF
MEREDITH CORPORATION AND SMITH MEDIA, LLC**

Meredith Corporation and Smith Media, LLC (collectively, the “Joint Parties”), by their attorneys, hereby submit their Comments in response to the above-referenced Notice of Proposed Rulemaking (“NPRM”).¹ The Joint Parties’ Comments are limited to urging clarification on a single, narrow issue.

DISCUSSION

**A PRE-EXISTING TELEVISION MARKET MODIFICATION BY THE
FEDERAL COMMUNICATIONS COMMISSION DEFINES THE LOCAL
SERVICE AREA OF BOTH A TELEVISION STATION'S ANALOG AND ITS
DIGITAL BROADCAST SIGNALS.**

As the Copyright Office noted in the NPRM, defining the “local service area” of a television station is important under the cable compulsory copyright license. A station is local (and hence royalty-free) when carried on cable systems within its local service area, and the station is distant (and hence triggers royalty payments on Form SA3 cable systems) when carried on cable systems outside its local service area.

In analyzing the local service area of digital broadcast signals, the Copyright Office started, correctly, with the statutory definition of local service area in Section

¹ *Notice of Proposed Rulemaking*, 73 Fed. Reg. 31399 (June 2, 2008).

111(f) of the Copyright Act. The statutory definition of local service area includes, among other areas, "such station's television market, as defined in Section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations. . . ." (emphasis added). The Copyright Office continued its discussion by acknowledging that the local service area of a television station includes, among other areas, the "station's television market as currently defined by the FCC." NPRM at 31407.

The Joint Parties' point of clarification relates to the NPRM's next sentence.² Admittedly, that sentence begins with the phrase "[i]n general," and the sentence may not purport to be a comprehensive statement of the Copyright Office's position; for example, it does not refer to hyphenated television markets. Nevertheless, the sentence may be read to equate a station's television market with its 35 mile zone and its Nielsen Designated Market Area ("DMA"). However, a station's television market is also shaped and defined by Federal Communication Commission ("FCC") market modification decisions.³ There are a number of pre-existing FCC market modification decisions on which both broadcasters and cable operators rely in order to be able to serve their viewers and customers.

² The sentence reads: "In general, a broadcast station is considered distant vis-à-vis a particular cable system where subscribers served by that system are located outside that broadcast station's specified 35 mile zone (a market definition concept arising under the FCC old rules), its area of Dominant Influence ("ADI") (under Arbitron's defunct television market system), or designated market Area ("DMA") (under Nielsen's current television market system).

³ See *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*, note 85 and accompanying text, available at <http://www.copyright.gov/docs/section109/> (June 30, 2008).

The Joint Parties urge the Copyright Office to clarify that the television market (and therefore the local service area) of a station's digital broadcast signals also includes pre-existing market modifications relating to the station by the FCC. As noted above, and as the Copyright Office itself seems to have acknowledged in the NPRM, the definition of local service area in Section 111(f) appears to compel this result. Moreover, this result is entirely consistent with FCC precedent relating both (1) to maintaining consistency between the television markets of a station's digital and analog signals and (2) to the FCC's approach during its transition from ADI market modification decisions to DMA market modification decisions.⁴

CONCLUSION

For the foregoing reasons, out of an abundance of caution, the Joint Parties respectfully urge the Copyright Office to clarify that pre-existing FCC market modifications relating to a station also define the local service area of that station's digital signals.

Respectfully submitted,

David J. Wittenstein
Counsel for Meredith Corporation
and Smith Media, LLC
Dow Lohnes, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

July 31, 2008

⁴ See, e.g., *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 16 FCC Rcd. 5022, 5027-28 at ¶ 15-17 (2001); *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd. 2598, 2636 at ¶ 85 (2001); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd. 8366, 8381 at ¶ 35 (1999).