ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

POLICY DECISION

CABLE COMPULSORY LICENSE; POLICY DECISION CONCERNING FEDERAL COMMUNICATIONS COMMISSION ACTION AMENDING LIST OF MAJOR TELEVISION MARKETS

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Copyright Office

Cable Compulsory License; Policy Decision Concerning Federal Communications Commission Action Amending List of Major Television Markets

[Docket No. RM 85-2]

AGENCY: Copyright Office, Library of Congress.

ACTION: Policy decision.

SUMMARY: The Copyright Office has determined that television signals entitled to mandatory carriage status under the FCC's former must carry rules pursuant to an FCC market redesignation order (revising the list of major television markets in 47 CFR 76.51) are to be treated as local signals for purposes of the cable compulsory license of section 111 of the Copyright Act.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 111 of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. Under this system, a large cable system. *i.e.*, a system having [1] gross receipts above a designated level (presently $292,000 per semiannual accounting period), is generally required to calculate its royalty payments, in part, on the basis of the number of signals of primary transmitters it carries beyond the transmitters' local service areas, i.e., "distant signals." In the case of a television braodcast station, the [2] "local service area of a primary transmitter" is defined in section 111(f) of the 1976 Act as comprising "the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effort on April 15, 1976. . ." [3]

Section 76.51 of the regulations of the Federal Communications Commission ("FCC") in effect on April 15, 1976 contains a list of the major television markets and their designated communities. This list was first published by the FCC in its 1972 cable rulemaking proceeding. *See Cable Television Report and Order*, 36 FCC 2d 143, 220 (1972). In adopting this list, the FCC was concerned that the table of major television markets remain stable in order to allow plans and investment to go forward with confidence and to avoid any disruptive impact on the viewing public. *Id.* at 173.

Under the FCC rules in effect on April 15, 1976, a cable system operator would look to this major market list as one of the criteria for determining which television broadcast stations are subject to mandatory carriage. For example, under former section 76.61(a)(4) of the FCC rules, where a cable system serves a community that is located in whole or in part within a major television market, the cable system may, or upon appropriate request of the broadcast station must, carry the signals of "[t]elevision broadcast stations licensed to other designated communities of the same television market. . ." 47 [4] 76.61(a)(4)(1976). Further, before repeal by the FCC of its distant signal carriage rules (*see Report and Order in Docket Nos. 20988 and 21284*, 79 FCC 2d 663 (1980)), the existence of a cable system within a major television market would subject it to a specific market quota of distant signals. 47 CFR 76.61(b)(1979).

In view of the close relationship between specific rules of the FCC and the cable compulsory licensing system in the copyright law, Congress authorized the Copyright Royalty Tribunal to adjust the royalty rates for cable systems where certain changes are made in the FCC rules. Section 801(b)(2)(B) of the 1976 Act provides that the Tribunal may, upon receipt of a petition filed under section 804, adjust the cable royalty rates "[i]n the event that the rules and regulations of the [FCC] are amended . . . to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of such signals . . . " 17 U.S.C. 801(b)(2)(B)(1986). In accordance with this provision, the Tribunal acted in 1982 to adjust the cable compulsory license rates following repeal of the FCC's distant signal carriage and syndicated exclusivity rules. *See Adjustment of the Royalty Rates for Cable Systems*, 47 FR S2146-S2159 (November 19, 1982). Under these adjusted rates, in certain instances, cable systems must compute 3.75 per centum of their gross receipts for each

[1] Error; line should read: "large cable system, i.e., a system having"

[2] Error; line should read: "of a television broadcast station, the"

[3] Error; line should read: "effect on April 15, 1976 . . ." "

[4] Error; line should read: "same television market . . ." 47 CFR"

distant signal equivalent ("DSE") or any fraction thereof. *See* 37 CFR 306.2(c)(1984). Pursuant to section 801(b)(2)(B) of the 1976 Act, this rate adjustment does not apply to any DSE represented by: (i) Carriage of any signal permitted under the rules and regulations of the FCC in effect on April 15, 1976 or the carriage of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the FCC, as such rules and regulations were in effect on April 15, 1976.

On January 17, 1985, the FCC amended its list of major television markets in section 76.51 of its rules to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach, Florida hyphenated market. *See* 50 FR 2565–2570 (January 17, 1985); *Report and Order in MM Docket No. 84–11 RM 4557*, 102 FCC2d 1062 (released Jan. 11, 1985; adopted Nov. 21, 1984). This final rule raised questions concerning the interplay between the FCC "must-carry" rules that were in effect at that time for cable systems in major television markets, the calculation of royalties under the cable compulsory licensing system in section 111 of the Copyright Act of 1976, and the role of the Copyright Royalty Tribunal in adjusting royalty rates for cable systems following certain FCC rule changes.

In deciding to amend its list of major television markets in former § 76.61, the FCC noted the copyright concerns of Micro Cable Communications Corp. and Group W, who argued in comments to the rulemaking that the list amendment would cause certain cable systems to be in the undesirable position of being required to carry certain signals and pay copyright royalties for their carriage at the 3.75 percent and syndicated
exclusively surcharge rates. Systems 5
might be in this position if the Copyright Act definition of local signals, which incorporates by reference the FCC rules of *1976*, also requires reference to the major television market list in effect on April 15, 1976.

The FCC concluded that such would not be the case, and that after its rule change, "the Melbourne and Cocoa stations are considered local for purposes of the Copyright Act." 50 FR 2570. The FCC reasoned that "[a]lthough additional stations will henceforth be able to insist on mandatory signal carriage, that is a consequence of the market situation, not of a change in the Commission's rules in effect on April 15, 1976." *Id.* The FCC analogized the major television market list amendment to a determination by the Commission that a particular station is significantly viewed under § 76.54 of its rules.

A representative of Group W Cable, Inc. formally requested, by letter dated February 19, 1985, that the Copyright Office open a public proceeding in which the copyright issues of the FCC's final rule amending the list of major television markets in § 76.71 of its rules could be addressed. It was stressed that the issues involved in the Florida case concerned the FCC, cable operators and copyright owners. It was also noted that, in addition to the Melbourne-Cocoa, Florida decision, the FCC made comparable changes in a California major market,[1] and that more than 400 additional petitions to change the major television market list were pending at the FCC.

The Copyright Office agreed that the copyright consequences of the FCC's decision to redefine two of the markets in the FCC's list of major television markets at 47 CFR 76.51 should be addressed in a public proceeding, and initiated a Notice of Inquiry on that topic. *See* 50 FR 14725–14728 (April 15, 1985). Specifically, the Copyright Office invited comment on the following questions and related issues:

1(a). What is the impact on the copyright law of a change by the FCC in the major television market list, which has the effect for FCC purposes of making a formerly "distant" signal a "local" must-carry signal? (b) How should the 1982 cable rate adjustment (both the 3.75% rate and the syndicated exclusivity surcharge) be applied in these changed circumstances? (c) Is the FCC correct in its assumption that § 76.61 of its rules is unchanged by the amendment to the list of major television markets and that, although a cable system may be required under § 76.61(a)(4) to carry additional stations after the change in § 76.51(b)(55), it is a "consequence of the market situation, not of a change in the Commission's Rules in effect in April 15, 1976?"

2. Should a distinction be drawn between the copyright consequences of any amendments to the list of major television markets in § 76.51 and any changes in the stations deemed significantly viewed under § 76.54 of the FCC rules after April 15, 1976?

3(a). If the amendment made in § 76.51(b)(55) of the FCC rules to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach market would have expanded the former signal carriage quota of a cable system in Melbourne or Cocoa, to permit the system to carry an additional independent television broadcast station beyond the local service area of that station as defined in section 111(f), is the Copyright Royalty Tribunal, upon
request of a petition filed under section 6
804 of Title 17 U.S.C., authorized to institute a proceeding to determine whether an adjustment in the royalty rates under section 111 should be made to accommodate this amendment? (b) Alternatively, since the FCC *eliminated* the distant signal rules in 1981, has the Tribunal already addressed the impact of any FCC changes in the "distant signal" rules, including changes in the major television market list, pursuant to 17 U.S.C. 801(b)(2)(B), in its 1982 cable
rate adjustment. 7

4. What action, if any should the Copyright Office take to clarify the
issues raised by FCC charges in the 8
major television market list?

2. Summary of the Comment Record

The comment period was held open until May 15, 1985, and twelve comments were received from the following commentators: HBI Acquisition Corp. ("HBI"), the National Cable Television Association, Inc. ("NCTA"), Jones Intercable, Inc. ("Jones Intercable"), Southern Broadcasting Corporation ("Southern"), Micro Cable Communications Corp. ("Micro-Cable"), Centel Cable Television ("Centel"), Group W Cable, Inc. ("Group W"), the Federal Communications Commission ("FCC"), the Motion Picture Association
of America ("MPAA"), the National 9
Association of Broadcasters ("NAB"), the Association of Independent Television Stations, Inc. ("INTV"), and Tele-Communications, Inc. ("TCI"). These commentors unanimously agree that in assessing the copyright issues involved in this proceeding, the Copyright Office should adopt the FCC's determination that its final rule including Melbourne and Cocoa, Florida in the Orlando-Daytona Beach hypenated market does not constitute a change in the FCC's rules in effect on April 15, 1976, and should treat signals in the newly defined market that are local for communications purposes as local for purposes of computing copyright royalties as well.

a. Responses to Question 1a.

In reaching the above conclusion, commentators presented several

[1] The FCC amended the list of major television markets in section 76.51(6)(72) of its rules by adding Visalia, Hanford, and Clovis, California to the existing Fresno, California market. 50 FR 7915–7918 (Feb. 27, 1985); *Report and Order in MM Docket No. 84–439 RM–4602; RM 4823; RM–4843*, FCC–85–59, slip. op. (released Feb. 14, 1985; adopted Jan. 30, 1985).

[5] Error; line should read:
"exclusivity surcharge rates. Systems"

[6] Error; line should read:
"receipt of a petition filed under section"

[7] Error; line should read:
"rate adjustment?"

[8] Error; line should read:
"issues raised by FCC changes in the"

[9] Error; line should read:
"of America Inc. ("MPAA"), the National"

different arguments which generally respond to Question 1(a) posed in the Copyright Office's Notice of Inquiry.

(i) Legislative History

Several [2] commentators argue that the legislative history to the Copyright Act of 1976, in its explanation of the definition of "local service area" in section 111(f), indicates that the FCC major market list found at 47 CFR 76.51 is not frozen to its April 15, 1976 status for purposes of determining the local service area of a particular cable system and the copyright royalties owed by the system. These commentators refer to the House Report that states:

> Under FCC rules and regulations this so-called "must carry" area is defined based on the market size and position of cable systems in 47 CFR 76.57, 76.59, 76.61, and 76.63.

H.R. Rep. No. 1496, 94th Cong. 2d Sess. 99 (September 3, 1976) (hereinafter cited as "House Report"). The commentators argue that only the specific rules listed in this quotation were intended to be frozen to their April 15, 1976 status for purposes of determining what are distant signals for computing copyright royalty fees. "Local" signals for copyright purposes would thus include signals required to be carried by cable systems situated in "major television markets," however that term is defined in current FCC regulations. The FCC's change in the major market list is merely a procedural change, and should not have a substantive effect on cable systems' copyright liabilities.

Commentators [3] also argue that the FCC's addition of Melbourne and Cocoa to the Orlando-Daytona Beach hyphenated market is not the type of rule change which Congress would consider to be a decrease or increase in a local service area which would materially affect the royalty fee payments provided in the legislation.[4] Therefore, they contend, the Orlando-Daytona Beach market should not be frozen to its status as of April 15, 1976 insofar as the FCC's recent economic redefinition of the market it concerned. 10

[2] NCTA, Centel, and INTV.

[3] NCTA, Centel, INTV, Jones Intercable, and Group W.

[4] The House Report states:

> The definition [of "local service area"] is limited . . . to the FCC rules in effect on April 15, 1976. The purpose of this limitation is to insure that any subsequent rule amendments by the FCC that either increase or decrease the size of the local service area for its purposes do not change the definition for copyright purposes. The Committee believes that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute.

House Report at 99.

10 Error; line should read: "redefinition of the market is concerned"

(ii) Copyright Policy

Several commentators [5] also argue that the FCC's conclusion that must-carry signals in redesignated markets are local for both FCC and copyright purposes is consistent with the underlying basis of the Copyright Act's distinction between "local" and "distant" signals. Congress distinguished local from distant signals for purposes of copyright royalty calculation because it determined that cable carriage of broadcast television programming within station's local market has no impact on the ability of the copyright owner to exploit the retransmitted works in a distant market,[6] and therefore poses no threat to copyright owners. The FCC's market redesignation order reflects the FCC's determination that the communities involved are all part of a single televison market for economic purposes. As such, the FCC's distinction between distant and local signals tracks the Copyright Act's distinction, and is consistent with the copyright law. This argument, commentators contend, is bolstered by the fact that the standard used by the FCC today to determine what constitutes a single market is the same as it was when the FCC created the top 100 market list.[7]

(iii) Communications Policy

Micro Cable refers to FCC policy as further support for the argument that a change to the list of designated major market communities can be viewed as merely a procedural event with no substantive importance and therefore no effect on copyright treatment of cable royalties. Micro-Cable argues that the FCC has treated hyphenated markets in both major markets and smaller markets similarly; as such, Micro-Cable contends that a redesignation of a major market by the FCC should be treated in the same manner as a redesignation of a smaller market. Micro-Cable points out that in a smaller market the FCC gives must-carry status to television stations licensed to other communities which are "generally considered to be part of the same smaller television market," as decided on the facts of each case and determined by industry practices as reflected by national audience rating services. Micro-Cable analogizes that, because as no rule change is involved when a new station becomes part of an existing smaller-market, likewise, the substantive rule has not changed in the case of a major market redesignation and the FCC's decision merely recognizes that certain communities qualify as part of a hyphenated market.

[5] NCTA, Group W, NAB, INTV, and TCI. 11

[6] *See* House Report at 90.

[7] *See Report and Order in MM Docket No. 84-111*, 50 FR 2565, para. 17 (Jan. 17 1985).

11 Error; line should read: "5 NTCA, Group W, NAB, INTV, and TCL."

(iv) Fairness

A common theme running through the various arguments raised in the comments was the issue of fairness. Though they are without legal or other support on this count, commentators are adamant that it would be unjust for the Copyright Office to interpret the Copyright Act so as to require cable systems to pay royalties for signals that are must-carry signals under the then existing FCC regulations.

Micro-Cable argues that it may be assumed that Congress was aware that new television stations could go on the air in the vicinity of cable systems and would be local, and further, that "Congress never intended a situation to arise where one Federal Agency requires conduct by a regulated party and another Federal Agency penalizes that party for the conduct." Group W Cable, Inc. argues that, as a policy matter, "references in the Copyright Act to the FCC's must carry rules were not intended to work bizarre copyright results whenever the FCC alters rules which affect mandatory carriage."

(v) Public Interest

INTV contends that if the Copyright Office were to reject the FCC's interpretation that FCC amendments to the list of market designations at 47 CFR 76.51 do not constitute changes to the FCC's must-carry rules, the result of affected cable systems having to pay increased copyright royalties for carriage of must-carry signals would be "inimical to the public interst in having access to free, advertiser and public-supported local television programming via cable without having to pay unnecessary additional charges."

b. Response to Question 1(b)

Commentators agree that signals which are newly designated as local signals for FCC purposes pursuant to the FCC's major market list change should not be subject to the 3.75% rate or the syndicated exclusivity surcharge. The prevailing argument for the conclusion is a reiteration of the commentators' basic position. They claim that because the signals in the newly designated portion of the market are subject to mandatory carriage they should be considered local signals, and local signals *are not subject* to the 3.75 fee or the syndicated exclusivity surcharge. They argue alternatively that even if the signals would be considered distant signals for copyright purposes (i.e. because there was a rule change effected by the FCC's Order and the Copyright Act freezes the definition of local signals to the 1976 market list in § 76.51 of the FCC rules), the fact that the signals are subject to mandatory carriage is enough to give the signals the status of "permitted" signals under section 801 of the Copyright Act, so that they would not be subject to the 1982 cable rate adjustment.

Jones Intercable reasons that it is reasonable to assume advertisers and copyright owners will generally consider the new communities in the major market as part of the hyphenated market and that, consequently, copyright holders will be compensated for the carriage of these signals into these markets by royalty payments made pursuant to the compulsory license mechanism in general without application of the 1982 rate adjustment.

Group W contends that because there is no controlling language in the Copyright Act, the applicability of the 1982 cable rate adjustment to the signals newly added by the FCC to the major market list depends upon the treatment which the FCC would have afforded the signals if its distant signal and syndicated exclusivity rules were in effect today. Group W concludes that a system once located outside all major markets and later included within a major market would have been treated by the FCC as any other system operating within a major market. Therefore, pursuant to the FCC's former rules, cable operators should be able to carry two additional distant signals into newly designated portions of a major market at the non-3.75% rate. Group W also concludes that signals already carried on cable systems in the newly expanded market would have been exempted from the syndicated exclusivity rules on a grandfathered basis, and therefore such signals are exempt from the syndicated exclusivity surcharge.

c. Response to Question 1(c)

The commentators all answered this question in the affirmative, for reasons generally discussed in response to Question 1(a). Several commentators emphasized that the FCC's change in its § 76.51 list is not the type of substantive change referred to in section 111(f) or 801(b) of the Copyright Act, and therefore is not a change that can trigger a CRT rate adjustment proceeding. Jones Intercable contrasts the change in the major market list with the circumstances of the CRT's 1982 cable rate adjustment, characterizing the latter as being a response to an extreme change in the "overall plan under which the Commission classified local and distant signals," and therefore an appropriate situation to trigger CRT rate adjustment.

The FCC comments that the Commission adopted the § 76.51 list based on prime-time household rankings. It explains that the purpose of adopting that list was to delineate various television markets by size so as to tailor mandatory carriage rules according to market size and that it is necessary to revise its market designation where appropriate to reflect contemporary market circumstances. The FCC reiterates that, in revising the list, it did not effect a change in the basic mandatory carriage regime under § 76.61.

d. Responses to Question 2

All commentators agree that there is no legal distinction between the copyright consequences of an amendment to the major market list and a change in the list of stations deemed significantly viewed under the FCC's former rules. NCTA argues that both situations "merely involve the application of existing rules to new facts rather than a change in the rules themselves." Jones Intercable argues that the policy considerations underlying both situations are the same because in each, the status of signals being carried on a cable system changes by virtue of changed factual circumstances. The only difference is that stations which become "significantly viewed" attain that status by virtue of changed viewing habits within a TV market, and stations which become part of a major market achieve that status by virtue of a new commonality of interest coupled with geographic proximity with a major market.

TCI addresses the fact that the modification of a station's significantly viewed status results not from a revision of, or amendment to, a Commission rule, but from the May 1972 revisions to Appendix B of the FCC's *Cable Television Report and Order*, 36 FCC2d 1 (1972), *recon. granted in part* 36 FCC2d 236 (1972). TCI argues that since section 76.54 of the FCC rules incorporates by reference the list of significantly viewed stations, "a change in that list is clearly akin to and no more than a list of § 76.51." In a footnote TCI suggests that it is likely that the list of significantly viewed stations was put into an appendix rather than in the rules themselves merely because the list is 42 pages long. TCI concludes that it would be reasonable to treat a change in the FCC's major market list similarly to a change in the significantly viewed status of a particular station for copyright royalty purposes.

Commentators noted other situations that might be deemed analogous to the FCC's amendment of the major market list in which the FCC's carriage rules are not changed. Several commentators[8] likened a major market redesignation to a situation in which the licensing by the FCC of a new television station causes changes in a cable system's market designation and must-carry obligations. Jones Intercable likens it to a situation in which a station's grade B contour is expanded or contracted. None of these situations is considered a rule change for copyright purposes.

e. Responses to Questions 3(a) and 3(b)

The five commentators that replied to this question [9] all expressed the belief that the CRT is not authorized to entertain a petition for adjustment of the royalty rates applicable to signals that newly become must-carry signals in a particular hyphenated market pursuant to the FCC's redesignation of its major television market list. The commentators generally argue that it is outside the CRT's authority under section 804(b)(2)(B) to adjust the rates in this instance because the FCC's market redesignation is not an amendment to the rules and regulations of the FCC to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitter of such signals, as is required by section 801(b)(2)(B) to trigger the CRT's rate adjustment authority.

TCI and Jones Intercable add that even assuming that the FCC's market redesignation order is a rule change as contemplated by section 801(b)(2)(B), the CRT has discretion to entertain a petition for rate adjustment, and the Tribunal would be acting in accordance with its powers and the mandate of Congress in declining to undertake any study for the purposes of adjustment based on "so minor a modification of the Commission's rules," or in finding that no rate adjustment was warranted because of the policy underlying the FCC's amendment to its major market listing.

The NCTA contends that since the FCC completely eliminated its distant signal carriage restrictions as of June 24, 1981, the redesignation of a market has no effect whatever on the number of distant signals that a cable system may carry under the FCC's rules. Since the CRT considered the impact of the FCC's decision to repeal all of its distant signals rules in November 1982, there is no basis for further adjustments under section 801(b)(2)(B). Jones Intercable disagrees with this argument and notes that if the FCC had generally amended its rules to increase the 35 mile zone so that signals formerly deemed distant were to henceforth be considered local, the CRT would have the right to determine whether the royalty rate should be adjusted.

[8] NCTA, Jones Intercable, Micro-Cable, and TCI.

[9] NCTA, Jones, Centel, Group W, and TCI.

f. Responses to Question 4

The commentators suggest two general courses of action for the Copyright Office to take in response to the Notice of Inquiry here at issue. The predominantly-held view is that the Copyright Office should adopt as policy the view that signals entitled to mandatory carriage as a result of an FCC market redesignation order are to be treated as local signals for cable compulsory license purposes, and that the Copyright Office should accept any new market status for cable systems that is established by the FCC. This position would be based upon the premise that there is no rule change effected when the FCC amends its major television market list in § 76.51 of the FCC regulations. INTV more specifically suggests that the Copyright Office clarify that under the Copyright Act, local signals include signals which are required by the FCC to be carried by cable systems situated in "major television markets," however that term is defined in existing FCC regulations.

The second suggested alternative is that the Copyright Office adopt a neutral position on the status of signals affected by market redesignation orders, and accept without question Statements of Account which designate signals entitled to mandatory carriage as local regardless of their status prior to the market redesignation.

3. Recent Developments in Must-Carry Regulation

July 19, 1985, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *Quincy Cable TV, Inc. v. FCC*, 768 F2d 1434 (D.C. Cir. July 19, 1985), *cert. den. sub nom. National Association of Broadcasters v. Quincy Cable TV, Inc.*, 106 S Ct 2889 (June 9, [12] 1986), holding that in their then existing form the FCC's mandatory carriage rules contravened the First Amendment. In a footnote of the opinion, the court states that by invalidating the must carry rules on First Amendment grounds, the court does not suggest that they may not continue to serve the function of being a reference point for determining where a local signal ends and a distant signal begins for purposes of computing royalty fees under section 111 of the Copyright Act. *Id.* at 40, n. 42.

In accordance with the *Quincy* decision, the FCC suspended enforcement of the must carry rules, effective July 19, 1985. "Suspended Enforcement of Certain Sections of 47 CFR Part 76," 50 FR 38003 (September 10, 1985). In response to petitioning members of the public, the Commission adopted a combined Notice of Inquiry and Notice of Proposed Rulemaking on November 14, 1985, to consider the matter of amending the mandatory signal carriage rules for cable systems in accordance with the *Quincy* court's decision. 50 FR 48232. Pursuant to that rulemaking proceeding, on March 26, 1987 the FCC adopted a new regulatory program for cable systems that includes interim must-carry rules that will expire at the end of a five year transition period. *Memorandum Opinion and Order in MM Docket No. 85-349*, FCC 87-105, 62 Rad Reg 2d (P&F) 1251 (released May 1, 1987). The new rules went into effect on June 10, 1987.

The *Quincy* decision and its regulatory aftermath at the FCC have had a great impact on the practical significance of the issue raised in this Inquiry. Since July 19, 1985, and the nonenforcement of the former must carry rules, the FCC's major market list has only had limited significance under the FCC's cable regulatory scheme, and has been relevant only with respect to FCC rules that do not relate to a determination of local service areas under the copyright law. Under the must carry rules adopted on March 26, 1986, a television station's market status is immaterial in the determination of mandatory carriage. Thus, it would appear that the FCC will no longer make redesignations of the list, because the list does not affect cable systems' must-carry obligations. Accordingly, whether a change in the major television market is a rule change for purpose of determining copyright royalties will probably affect only the determination of local signal status for cable systems located in the Orlando-Daytona-Melbourne market and the Fresno-Visalia-Hanford-Clovis market.

4. Policy Decision

Having reviewed the Copyright Act of 1976 and its legislative history concerning the definition of local service area in section 111(f) of the Act, as well as the views presented during the comment period of the Inquiry and the current developments in cable communications law, the Copyright Office formally adopts the view that signals entitled to mandatory carriage status under the FCC's former must carry rules as a result of an FCC market redesignation order are to be treated as local signals for purposes of the cable compulsory license. This position is necessarily based upon the interpretations that (1) Congress did not intend § 76.51 to be frozen to its April 15, 1976 status for purposes of determining cable systems' local service area and copyright royalty fees; and (2) when the FCC amends its major television market list in 47 CFR 76.51, there has been no substantive rule change effected so as to impact calculation of cable copyright royalties.

The Copyright Office adopts the above interpretation based on the legislative history of the Copyright Act, as summarized in part 2.a.(1) of this Notice. The commentators representing the cable industry, the broadcast industry and the copyright owners were unanimous, moreover, in urging the Copyright Office to adopt this view. Finally, the changes in the FCC's must-carry rules following the *Quincy* decision have essentially mooted the subject of this Notice. When this inquiry began the Copyright Office had concerns about enlargement of the class of local signals under the Copyright Act due to the approximately 400 petitions for market redesignation at that time pending at the FCC. However, it would appear that this policy concern is now eliminated because under the FCC's amended must-carry rules, the major market list is not determinative of must-carry status, and it is unlikely that a large number of market redesignations will be effected by the FCC in the future.

Dated: July 16, 1987.

Ralph Oman,

Register of Copyrights.

Approved.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87-17123, Filed 7-28-87; 8:45 am]
BILLING CODE 1410-07-M

[12] Error; line should read:
"Cable TV, Inc., 106 S. Ct. 2889 (June 9."