

Separate Statement of FCC Commissioners
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In re: Citizens Committee for Expansion of Commercial Television to
the State of Delaware - On Reconsideration.

Since its original decision in this matter, the Commission has revised its signal carriage rule waiver standard in Arlington Telecommunications Corp. d/b/a ARTEC (Arlington County, Virginia), FCC 78-781, ___ FCC 2d ___ (1978) (ARTEC). In ARTEC, we decided that where it is demonstrated that significant adverse impact on local television service will not result from the otherwise proscribed carriage of distant signals, such a showing, in and of itself, establishes a prima facie case for waiver, without the previously-required additional showing of "unique or anomalous circumstances." This revised waiver standard continues to recognize and adhere to the basic policy of the Commission's signal carriage rules, that of avoiding the impairment of local broadcasters' ability to serve the public. This standard also continues to maintain the purpose of the rules in that a waiver applicant must bear the burden of proving that any such impairment is unlikely, although the burden of going forward with counter-evidence of adverse impact does shift to the waiver opponent once a prima facie case of little or no impact has been presented.

The applicability of ARTEC to CCETD's petition is amply demonstrated in the Commission's Order on Reconsideration and need not be reiterated by us here. We do wish to emphasize, however, that this particular application of the ARTEC waiver standard is clearly called for both as a matter of precedent and as a matter of basic procedural fairness to the parties before the Commission.