

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Harrison County, Texas	)	MB Docket No. 18-24
	)	CSR No. 8951-A
	)	
Petitions for Modification of the Satellite	)	MB Docket No. 18-25
Television Markets of KLTU, Tyler, Texas and	)	CSR No. 8952-A
KFXK-TV, Longview, Texas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 1, 2018**

**Released: June 1, 2018**

By the Senior Deputy Chief, Media Bureau, Policy Division

**I. INTRODUCTION**

1. Harrison County, Texas (Petitioner or the County), with the support of its residents, has filed two market modification petitions to make two Texas television stations (collectively, the Stations) available to satellite subscribers in the County. For historical and geographic reasons, residents in the County generally receive only Louisiana television stations, limiting their access to Texas-specific news, sports, weather, and politics. With this Memorandum Opinion and Order (Order), the Media Bureau grants both Petitions in full.

2. Petitioner filed the above-captioned Petitions seeking to modify the local satellite carriage television markets of the Stations to include Harrison County, currently assigned to the Shreveport Designated Market Area (DMA).<sup>1</sup> The Stations are: KFXK-TV, Longview, Texas (Facility ID No. 70917) (FOX) (KFXK) and KLTU, Tyler, Texas (Facility ID No. 68540) (ABC) (KLTU).<sup>2</sup> The Petitions are unopposed. In addition, DISH Network LLC (DISH) and AT&T/DIRECTV, LLC (DIRECTV) have filed Feasibility Certifications.<sup>3</sup> Both carriers acknowledge that they provide full coverage of the county with HD and SD spot beams currently carrying the Stations, although DISH argues that carriage of the Stations nonetheless is infeasible.<sup>4</sup> Each Petition has been reviewed on its individual merits. Because

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<sup>1</sup>See *Harrison County, Texas Petition for Special Relief for Modification of the Television Market of Station KFXK – FOX 51, Tyler/Longview, Texas with Respect to DISH Network and DIRECTV*, MB Docket 18-25 (filed Jan. 29, 2018) (*KFXK Petition*); *Harrison County, Texas Petition for Special Relief for Modification of the Television Market of Station KLTU (ABC), Channel 7, Tyler/Longview, Texas with Respect to DISH Network and DIRECTV*, MB Docket 18-24 (filed Jan. 29, 2018) (*KLTU Petition*) (collectively, the *Petitions*). The Media Bureau placed the Petitions on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0464 (MB Feb. 2, 2018) (*Public Notice*).

<sup>2</sup> *Petitions* at 1.

<sup>3</sup> *DISH Network L.L.C. STELAR Feasibility Certification, Market Modification Pre-Filing Coordination Letter for Harrison County, Texas* (dated Dec. 19, 2016, filed in MB Docket No. 15-71) (*DISH Certification*); Letter from DIRECTV to Judge Hugh Taylor (dated Jan. 25, 2017, filed in MB Docket No. 15-71) (*DIRECTV Certification*).

<sup>4</sup> *Id.*

they were filed simultaneously, and because the Stations are identically situated with respect to the feasibility of their carriage into the County, we have consolidated our decisions into this single Order for the sake of administrative efficiency.<sup>5</sup>

## II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.<sup>6</sup> A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.<sup>7</sup> Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).<sup>8</sup> DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.<sup>9</sup> Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license,<sup>10</sup> it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.<sup>11</sup>

4. The STELA Reauthorization Act of 2014 (STELAR) added satellite television carriage to the Commission’s market modification authority, which previously applied only to cable television carriage.<sup>12</sup> Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station’s local television market for purposes of satellite carriage, following a written request. In the Commission’s 2015 *STELAR Market Modification Report and Order* implementing Section 102 of the STELAR, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station’s local television market to include a new community located in a neighboring local market.<sup>13</sup> The

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<sup>5</sup> See generally *Public Notice, DISH Certification, and DIRECTV Certification*.

<sup>6</sup> 47 U.S.C. § 338(a)(1).

<sup>7</sup> 47 CFR § 76.66(a)(6).

<sup>8</sup> See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located).

<sup>9</sup> The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

<sup>10</sup> 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station’s local market. See *Satellite Home Viewer Improvement Act of 1999 (SHVIA)*, Pub. L. No. 106-113, 113 Stat. 1501 (1999).

<sup>11</sup> See 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the “carry one, carry all” requirement.

<sup>12</sup> The STELA Reauthorization Act of 2014, § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (STELAR) (adding 47 U.S.C. § 338(l)). “STELA” refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175.

<sup>13</sup> *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

5. By extending the market modification process to satellite television, Congress sought to address the so-called “orphan county” problem. An orphan county is a county that, as a result of the structure of a local satellite market, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.<sup>14</sup> Satellite television subscribers residing in an orphan county often are not able to access their home state’s news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the structure of, and therefore the stations located within, a local market was a primary factor in Congress’ decision to extend market modification authority to the satellite context.<sup>15</sup>

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that already in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to satellite operations.<sup>16</sup> The STELAR carves out an exception to carriage obligations<sup>17</sup> resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification “shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”<sup>18</sup> In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting carriage obligation under those circumstances.<sup>19</sup> This exception applies only in the satellite context.<sup>20</sup>

7. Once the threshold issue of technical and economic feasibility is resolved, Section 338(l) provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account the following five factors:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;

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<sup>14</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

<sup>15</sup> See generally Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113<sup>th</sup> Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*).

<sup>16</sup> See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station’s market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) with the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station’s market to delete a community, the station is considered “distant” and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

<sup>17</sup> See *supra* note 10 and accompanying text (describing the “carry one, carry all” satellite carriage requirement).

<sup>18</sup> 47 U.S.C. § 338(l)(3)(A).

<sup>19</sup> *Senate Commerce Committee Report* at 11 (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.”).

<sup>20</sup> In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station’s market, the modification is granted without reference to issues of technical and economic feasibility. As explained in the *STELAR Market Modification Report and Order*, Congress recognized “the inherent difference between cable and satellite television service” by adopting certain “provisions specific to satellite,” including 47 U.S.C. § 338(l)(3)(A)’s feasibility exception. 30 FCC Rcd at 10408, n.6.

- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier 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 interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.<sup>21</sup>

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station's local market. The importance of particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.<sup>22</sup>

8. Significantly, in the *STELAR*, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.<sup>23</sup> This new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition ..., even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>24</sup>

9. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.<sup>25</sup> Accordingly, the rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility 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) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (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;

<sup>21</sup> 47 U.S.C. § 338(l)(2)(B)(i)-(v).

<sup>22</sup> Section 338(h)(1)(C)(ii) of the Act directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). 47 U.S.C. § 338(h)(1)(C)(ii). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, para. 53 (1999) (*Cable Market Modification Second Report and Order*).

<sup>23</sup> See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

<sup>24</sup> *Senate Commerce Committee Report* at 11.

<sup>25</sup> See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

- (5) Cable system or satellite carrier 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 multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.<sup>26</sup>

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.<sup>27</sup> The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if the Bureau is in a position to resolve the petition without such evidence.<sup>28</sup> Parties may submit whatever additional evidence they deem appropriate and relevant.<sup>29</sup>

10. In the instant proceeding, the County filed two Petitions seeking modification of the local television markets of Texas Stations KFXK and KLTV to include Harrison County, Texas. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that both standard definition (SD) and high definition (HD) spot beams provide service to all residents in the County, but argue that carriage is infeasible for other reasons.<sup>30</sup> The *DIRECTV Certification* declares that HD and SD service to all residents in the County is currently feasible.<sup>31</sup> We received supportive comments from several local government officials, Texas's Senior United States Senator John Cornyn, and Congressman Louie Gohmert of the Texas First District, representing Harrison.<sup>32</sup> We also received resident comments in support of the Petitions.<sup>33</sup>

11. The Commission must make two determinations with respect to each of the Petitions: (1) whether the carriage of a station resulting from a proposed market modification is technically and economically feasible for each of the satellite carriers; and (2) if so, whether the petition demonstrates that a modification to the station's television market is warranted, based on the five statutory factors and

<sup>26</sup> 47 CFR § 76.59(b)(1)-(7).

<sup>27</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

<sup>28</sup> *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

<sup>29</sup> *Id.* We note that although not required by Section 76.59(b), detailed information about programming is extremely important in the orphan county context. Because geographic proximity tests have less significance in orphan county cases than in other market modification cases, *see infra* para. 20, programming information has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect petitioners seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, also demonstrate that such programming is not regularly broadcast by any station currently serving the county.

<sup>30</sup> *DISH Certification* at 1-2.

<sup>31</sup> *DIRECTV Certification* at 3-4 ("Form of Certification Regarding Spot Beam Coverage" for KLTV and for KFXK).

<sup>32</sup> See Letter from Senator John Cornyn to Ajit Pai, Chairman, FCC (Jan. 10, 2018) (*Petitions* at Exhibit 16) and Letter from Congressman Louie Gohmert to Ajit Pai, Chairman, FCC (Jan. 3, 2018) (*Petitions* at Exhibit 17). Elected representatives supporting these petitions also include: Senator Bryan Hughes of the Texas State Senate's First District (Letter from Senator Bryan Hughes to Ajit Pai, Chairman, FCC (Apr. 10, 2017) (*Petitions* at Exhibit 18)); Judge Hugh Taylor, who filed the Petitions on behalf of Harrison County; and Mayor Andy Mack of Longview, Texas (*Petitions* at Exhibit 3).

<sup>33</sup> *Petitions* at Exhibits 1, 5, 6, 7, and 12.

any other relevant information.<sup>34</sup> We will not grant a market modification petition if the resulting carriage would be infeasible.<sup>35</sup>

### III. DISCUSSION

12. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry KFXK and KLTV throughout the County. We further conclude that the evidence weighs in favor of expanding the markets for each of the Stations to include the County. We therefore modify the markets of KFXK and KLTV to include Harrison County, Texas.

13. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59.<sup>36</sup> Specifically, we grant Petitioner's request to waive the requirement to file detailed maps, data on shopping and labor patterns, MVPD channel lineup cards, and published audience data.<sup>37</sup> We find good cause to waive these submissions because we have ample evidence to render our decision without them. There is, however, no guarantee that any future case could be resolved with so much evidence unavailable. We therefore strongly encourage future Petitioners to heed the guidance of the Commission and more closely coordinate with the stations at issue in order to provide a full and complete record.<sup>38</sup> This will minimize the danger of a dismissal due to insufficient evidence.

#### A. Technical and Economic Feasibility

14. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of the County. Section 338(l)(3) does not require a satellite operator to carry a station in response to a market modification request if it is not technically and economically feasible for the carrier to accomplish the carriage by means of its satellites in operation at the time of the determination.<sup>39</sup> In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage resulting from a market modification is infeasible.<sup>40</sup> The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.<sup>41</sup>

15. Satellite carriers use spot beams to offer local broadcast stations to targeted geographic

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<sup>34</sup> 47 U.S.C. § 338(l); *see also* 47 CFR § 76.59.

<sup>35</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10442, para. 50.

<sup>36</sup> We waive 47 CFR §§ 76.59(b)(1), (2), (3), (5), and (6) to the extent necessary; *see also supra* note {28} and accompanying text.

<sup>37</sup> We note that the *Petitions* contain two different lists of Exhibits, one of which identifies a "basic lineup card," but no lineup was included. *See Petitions* at 6 and 9. As discussed above, this evidence was not necessary in order to render a decision on the *Petitions*.

<sup>38</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at para. 14.

<sup>39</sup> *See* 47 U.S.C. § 338(l)(3) (A "market determination ... shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination."). *See also* 47 CFR § 76.59(e).

<sup>40</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

<sup>41</sup> *Id.* at 10435-6, 10438, paras. 39, 42.

areas.<sup>42</sup> With respect to claims of “spot beam coverage infeasibility,” the Commission concluded that “it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried.”<sup>43</sup> The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury.<sup>44</sup> With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.<sup>45</sup> To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility.<sup>46</sup>

16. DIRECTV and DISH each filed Feasibility Certifications during the pre-filing coordination stage. With respect to delivery of each of the Stations into the County, both satellite providers indicate that there is no “spot beam infeasibility,” and that relevant spot beam(s) cover all of the County. DIRECTV states that delivery of the signal to Harrison County subscribers in both SD and HD is presently feasible, although it notes that the satellite carrying the relevant SD spot beam is scheduled to be removed from service within the next 18 months.<sup>47</sup> DISH indicates that current Harrison County subscribers would “require a second satellite dish (and a service call to install it) in order to be able to receive” HD versions of the Stations, but “could likely receive the SD version of the [Stations] with their

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<sup>42</sup> *Id.* at 10430, n.162 (quoting DIRECTV to explain that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas” and that “[d]oing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.”) This is in contrast to a “CONUS” beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

<sup>43</sup> *Id.* at 10429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider’s CONUS beam (using spectrum that could otherwise be deployed for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32.

<sup>44</sup> *Id.* at 10435-36, para. 39. The Commission requires satellite carriers claiming that a market modification is technically infeasible based on spot beam coverage to submit a detailed certification that must include the following: (1) an explanation of why carriage is not technically and economically feasible, including a detailed explanation of the process by which the satellite carrier has determined whether or not the spot beam in question covers the geographic area at issue; (2) a statement that the satellite carrier has conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam in question; and (3) a supporting affidavit or declaration under penalty of perjury, as contemplated under Section 1.16 of the Commission’s rules and 28 USC § 1746, signed and dated by an authorized officer of the satellite carrier with personal knowledge of the representations provided in the certification, verifying the truth and accuracy of the information therein. *Id.* at 10437-8, para. 41.

<sup>45</sup> *Id.* at 10438, para. 42.

<sup>46</sup> *Id.*; *see also id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage “through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible”).

<sup>47</sup> *DIRECTV Certification* at 2-3. In contrast to another recent satellite market modification, the discontinuance of SD service will have no impact on the feasibility of providing the signal since HD carriage will remain available throughout the community. *See La Plata County, Colorado Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, Memorandum Opinion and Order, 32 FCC Red 1474 at para. 18 (MB 2017).

current satellite dish and set-top boxes.”<sup>48</sup> DISH also argues that carriage of the Stations in the County will be technically and/or economically infeasible because any carriage potentially will involve a “complex patchwork of different customer scenarios.”<sup>49</sup> This claim is analogous to arguments that DISH has raised, and that the Media Bureau has rejected, in several other recent market modification cases.<sup>50</sup>

17. DISH has not provided a detailed cost analysis in this proceeding, and we have been given no reason to believe that the costs involved in carrying the Stations are meaningfully different from those discussed in previous cases.<sup>51</sup> Given this lack of evidence, we find that DISH has not met its burden of demonstrating that the costs of providing subscribers access to the Stations amount to technical or economic infeasibility. We therefore reject DISH’s technical and economic infeasibility arguments, and find that carriage of the Stations into the entirety of Harrison County is feasible for both carriers. As we did in *Gray*, we recognize that “a service change, particularly one involving a service visit and potential new equipment, could create some burden on the few subscribers” who will need additional equipment or services.<sup>52</sup> Accordingly, we again find that if either satellite provider ultimately carries one or both of the Stations after the grant of this Petition, it must do so immediately for subscribers who require only “operational and billing changes” and for new subscribers. If, however an existing subscriber will require a service visit and/or new equipment in order to receive the Stations, the satellite provider may roll out service at a more measured, non-dilatory pace.<sup>53</sup>

### **B. Orphan County Status**

18. Harrison is an “orphan” county with insufficient access to in-state programming, and is precisely the type of community that Congress intended to assist by broadening the market modification process.<sup>54</sup> The County is assigned to the Shreveport DMA, which includes nine Louisiana counties, seven counties in Arkansas, and eight Texas counties. Despite the relatively equal distribution of counties among the three states in the DMA, Harrison County residents who subscribe to satellite television service

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<sup>48</sup> *DISH Certification* at 1-2.

<sup>49</sup> *Id.* at 1.

<sup>50</sup> See, e.g., *Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, Memorandum Opinion and Order, 32 FCC Rcd 668, paras. 17-19 (MB 2017) (*Gray*); *Victory Television Network, Inc. For Modification of the Satellite Television Market For KVTJ-DT, Jonesboro, Arkansas*, MB Docket No. 17-157, Memorandum Opinion and Order, 32 FCC Rcd 7389, para. 16 (MB 2017) (*Victory*); *Monongalia County, WV and Preston County, WV Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, MB Docket Nos. 17-274, 17-275, Memorandum Opinion and Order, 33 FCC Rcd 1168, para. 15 (MB 2018) (*West Virginia*).

<sup>51</sup> We note that the instant case, in which every subscriber can “likely” receive a version of both Stations without any change of equipment, may in fact constitute one of the least complex scenarios faced by DISH in market modification proceedings to date. See, e.g., *Gray* at para. 20; *Victory* at para. 18; *West Virginia* at para. 16.

<sup>52</sup> *Gray* at para 20.

<sup>53</sup> *Id.* As we did in *Gray*, we also make clear here that DISH and DIRECTV “must ensure that any new customers in [Harrison] who subscribe to local-into-local service after the grant of this market modification are capable of receiving all local signals [the providers have] the right to provide immediately upon beginning service, including [the Stations] if [they are] carried after grant of this Petition.” *Id.*

<sup>54</sup> The “core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming.” *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12.



are served exclusively by stations broadcasting from within the state of Louisiana.<sup>55</sup> The Petitioner argues that residents of the County are currently underserved by the broadcast stations in the Shreveport DMA, due to those stations' focus on news and programming information of interest to Louisianans.<sup>56</sup> This claim is supported by comments from County residents and their representatives.<sup>57</sup>

19. With the STELAR's revisions to the market modification process, and its addition of a satellite market modification process, Congress intended to address orphan county situations like these. Indeed, the legislative history observes that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and instructs us to "consider the plight of these consumers when judging the merits of a [market modification] petition ..., even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>58</sup> As we observed in the *STELAR Market Modification Report and Order*, "each petition for market modification will turn on the unique facts of the case," and there is no single universal way to weight the statutory factors.<sup>59</sup> In order to best effectuate the goals of the STELAR, we place a strong emphasis on Congress' concern about orphan county situations in analyzing the factors in this case. We therefore will give substantial weight to the local and in-state programming a petitioner proposes to bring to the orphan counties, as well as to government official and consumer comments supporting a proposed market modification.<sup>60</sup>

20. Harrison is an orphan county in the unusual circumstance of having geographic proximity to the in-state Stations in this proceeding. As we have explained previously, heavy reliance on geographic proximity tests, which are central to a traditional market modification analysis, is often inappropriate in orphan county cases, given the "remote geographic location of orphan counties"<sup>61</sup> and the fact that they are by definition on the outskirts of a petitioner's home state. In this case, however, the County demonstrates that both of the Stations provide it with significant over-the-air signal coverage, one of the most important geographic elements in a traditional market modification case.<sup>62</sup> These showings notably strengthen its case.

### C. KFXK

21. *Historic Carriage*. The first factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such

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<sup>55</sup> *Petitions* at 1, 3. One Shreveport DMA broadcast station (NBC affiliate KTAL-TV, Facility ID 35648) is licensed to Texarkana, a community on the Texas border. Its transmitter site and main studio, however, are both located in Louisiana. *KTAL-TV Online Public Inspection File* (<https://publicfiles.fcc.gov/tv-profile/ktal-tv>).

<sup>56</sup> *Petitions* at 3.

<sup>57</sup> See *supra* notes {31 and 32} and accompanying text.

<sup>58</sup> *Senate Commerce Committee Report* at 11.

<sup>59</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

<sup>60</sup> *Id.* at 10417, n.61.

<sup>61</sup> *Id.* at 10418, para. 15.

<sup>62</sup> See, e.g., *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928 (MB 2008). NB: like all pre-STELAR market modification cases, *Tennessee* is a cable case, not a DBS case. The most important difference, however, is that Petitioner's case involves orphan counties, not that the markets being modified are satellite rather than cable markets.

community.”<sup>63</sup> Petitioner offers no evidence with respect to historic MVPD carriage.<sup>64</sup> Ordinarily, we would not expect to find strong evidence of historic cable carriage in orphan counties, and in light of the unlikelihood that KFXK would have had satellite carriage outside of its DMA prior to the passage of STELAR, we would assign this factor minimal negative weight with respect to the requested modification. However, we note that KFXK is carried on the channel lineup of Longview and Kilgore Cable TV, which serves subscribers in Longview, Texas, a city located in Harrison County.<sup>65</sup> Accordingly, we find that the historic carriage factor weighs in favor of the requested modification.

22. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>66</sup> This factor includes, in part, consideration of “a station’s signal contour coverage and whether the station places at least a Grade B contour over the cable communities, the station’s proximity to the communities in terms of mileage, and whether it broadcasts local programming with a distinct nexus to the Communities.”<sup>67</sup> Petitioner provides evidence that the County is largely within KFXK’s service contour.<sup>68</sup> Indeed, part of the City of Longview, KFXK’s community of license, is itself within Harrison County. Because the Station’s DMA currently does not include the County, more than a thousand Longview residents are unable to receive via satellite the signal of a station licensed to serve their own community.<sup>69</sup> Petitioner also notes that Shreveport, the community of license of most stations in the Shreveport DMA, is approximately 60 miles away for many Harrison residents – significantly further away than Longview, a city within the County’s own borders.<sup>70</sup>

23. To determine the overall “local service to the community” provided by a station, we look beyond evidence relating to geographic proximity.<sup>71</sup> In particular, we assess whether the programming offered by KFXK meets the informational and service needs of the local residents of the County, based both on our review of specific programming and on government and consumer comments.<sup>72</sup> Petitioner states that KFXK “offers local-oriented weather, news, sports, political coverage, and advertising,” with local news airing weekdays from 7-9 am and 9-10 pm.<sup>73</sup> Petitioner also provides some examples of recent Harrison-specific news stories broadcast by KFXK, addressing issues ranging from high school football scores to consumer warnings to business news.<sup>74</sup> We accordingly find that KFXK carries a significant amount of local programming of interest to the County, thus demonstrating a local connection. We also

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<sup>63</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>64</sup> The *KFXK Petition* at 6 states that there is a “basic lineup card” attached as Exhibit 8. This is inaccurate, and no lineup card appears in the filing.

<sup>65</sup> See Longview and Kilgore Cable TV channel lineup, <http://www.longviewcabletv.com/the-lineup.html> (last visited May 22, 2018). Kilgore is a city located in adjacent Gregg County, Texas.

<sup>66</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide “noise-limited service contour maps ... delineating the station’s technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station’s broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (CSB 1999) (*Jones Cable*).

<sup>67</sup> See *Mountain Broadcasting Corporation; For Modification of the Television Market for WMBC-TV, Newton, New Jersey*, Memorandum Opinion and Order, 27 FCC Rcd 2231, 2236, para. 10 (MB 2012).

<sup>68</sup> *KFXK Petition* at Exhibit 13.

<sup>69</sup> *KFXK Petition* at 4.

<sup>70</sup> *Id.* at 4 and Exhibit 2.

<sup>71</sup> See, e.g., *Jones Cable*, 14 FCC Rcd at 2818, para. 24.

<sup>72</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>73</sup> *KFXK Petition* at 5 and Exhibit 14.

<sup>74</sup> *KFXK Petition* at Exhibit 4.

give positive weight to the comments from residents and their government representatives supporting the Petition.<sup>75</sup> These comments amply demonstrate the significance of locally-focused television programming to Harrison County residents.<sup>76</sup>

24. As discussed above, evidence related to geographic proximity is not determinative in the consideration of a market modification request involving an orphan county, and we generally expect to look more to evidence of relevant programming and community support than to evidence of proximity in orphan county cases.<sup>77</sup> In the instant case, however, Petitioner has demonstrated not only that KFXK provides substantial over-the-air coverage of the County, but also that the Station offers local service through its programming and connection to the County. We thus find that the second statutory factor weighs in favor of the requested modification.

25. *Access to In-State Stations.* The third factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>78</sup> This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>79</sup> KFXK is a FOX affiliate licensed to Longview, Texas, a community within the same state as Harrison County. It provides programming specifically related to Texas. Petitioner notes that this includes not only local news, politics, weather, and emergency information,<sup>80</sup> but also coverage of Houston Texans NFL football that is not available from the Shreveport FOX affiliate (which airs New Orleans Saints games when there is a scheduling conflict).<sup>81</sup> Based on this unique programming, we give the third statutory factor the greatest possible weight in favor of the requested modification.

26. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier 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 interest to the community.”<sup>82</sup> In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations’ service to the communities rarely has counted against a

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<sup>75</sup> See *supra* notes {31 and 32} and accompanying text. As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.” *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>76</sup> See, e.g., Comments of Debbie Brooks Melson in Exhibit 1 (“It will be nice to see news from our local area rather than what is going on in another state”); Comments of Cindy Chipman in Exhibit 1 (“I can’t wait to get local !!!!!”) (*sic*); Comments of Shirley and Steve Copeland in Exhibit 6 (“I would like to voice my support for your efforts to provide Texas local stations to East Texas.”).

<sup>77</sup> *Supra* para. {19}.

<sup>78</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>79</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>80</sup> *KFXK Petition* at 3-4.

<sup>81</sup> *KFXK Petition* at 6 and Exhibit 15.

<sup>82</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

petition.<sup>83</sup> Petitioner states that it is “familiar with Shreveport broadcast stations that should deliver local content, but is unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Longview and Texas-oriented news coverage of issues of concern to the degree expected by residents.”<sup>84</sup> In addition, consumer comments express dissatisfaction with the coverage provided by the stations available to them today. These comments express a preference for Texas-based weather, advertising, and political news, although it is generally not clear from the comments whether there is no existing coverage, or it is simply not provided by a Texas-based station.<sup>85</sup> The lack of opposition to the market modification request and the available evidence suggest that existing stations are not fully serving the community. Overall, we find that the fourth statutory factor weighs in favor of the requested modification.

27. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”<sup>86</sup> We do not expect to find strong evidence of regular viewing in orphan counties, and Petitioner offers no evidence relevant to this factor.<sup>87</sup> We therefore accord this factor negative weight.

#### D. KLTV

28. *Historic Carriage.*<sup>88</sup> Petitioner offers no evidence with respect to historic MVPD carriage.<sup>89</sup> Ordinarily, we would not expect to find strong evidence of historic cable carriage in orphan counties, and in light of the unlikelihood that KLTV would have had satellite carriage outside of its DMA prior to the passage of STELAR, we would assign this factor minimal negative weight with respect to the requested modification. However, we note that KLTV is carried on the channel lineup of Longview and Kilgore Cable TV, which serves subscribers in Longview, Texas, a city located in Harrison County.<sup>90</sup> Accordingly, we find that the historic carriage factor weighs in favor of the requested modification.

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<sup>83</sup> See, e.g., *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

<sup>84</sup> *KFXK Petition* at 5. The *KFXK Petition* also discusses residents’ preference for viewing games featuring Texas-based NFL teams rather than games featuring the Louisiana-based New Orleans Saints. *Id.* at 6 and Exhibit 15.

<sup>85</sup> *KFXK Petition* at Exhibits 1, 3, 6, and 7.

<sup>86</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>87</sup> *KFXK Petition* at 6-7 (“to the extent necessary, we respectfully request a waiver of this item”).

<sup>88</sup> The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.” 47 U.S.C. § 338(l)(2)(B)(i).

<sup>89</sup> The *KLTV Petition* at 6 states that there is a “basic lineup card” attached as Exhibit 8. This is inaccurate, and no lineup card appears in the filing.

<sup>90</sup> See Longview and Kilgore Cable TV channel lineup, <http://www.longviewcabletv.com/the-lineup.html> (last visited May 22, 2018).

29. *Local Service.*<sup>91</sup> Petitioner provides evidence that the County is virtually entirely within KLTV's service contour.<sup>92</sup> Petitioner also notes that Shreveport, the community of license of most stations in the Shreveport DMA, is approximately 60 miles away for many Harrison residents.<sup>93</sup> This is approximately the same distance as KLTV's community of license (Tyler, Texas).

30. Petitioner states that KLTV "offers local-oriented weather, news, sports, political coverage, and advertising," with local news airing weekdays from 4:30-7 am, at 11:30 am, from 4-5:30 pm, and at 6 pm and 10 pm; on Saturdays from 8-9 am, at 6 pm and 10 pm; and on Sundays at 4:30 am, from 8-9 am, and from 10-11 pm.<sup>94</sup> Petitioner also provides numerous examples of recent Harrison-specific news stories broadcast by KLTV, addressing issues ranging from severe storms to a rash of robberies to local history.<sup>95</sup> We accordingly find that KLTV carries a significant amount of local programming of interest to the County, thus demonstrating a local connection. We also give positive weight to the comments from residents and their government representatives supporting the Petition.<sup>96</sup> These comments amply demonstrate the significance of locally-focused television programming to Harrison County residents.<sup>97</sup>

31. As discussed above, evidence related to geographic proximity is not determinative in the consideration of a market modification request involving an orphan county, and we generally expect to look more to evidence of relevant programming and community support than to evidence of proximity in orphan county cases.<sup>98</sup> In the instant case, however, Petitioner has demonstrated not only that KLTV provides virtually complete over-the-air coverage of the County, but also that the Station offers local

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<sup>91</sup> Second, we consider "whether the television station provides coverage or other local service to the community." 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide "noise-limited service contour maps ... delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas." 47 CFR § 76.59(b)(2). This factor includes, in part, the consideration of "a station's signal contour coverage and whether the station places at least a Grade B contour over the cable communities, the station's proximity to the communities in terms of mileage, and whether it broadcasts local programming with a distinct nexus to the Communities." See *Mountain Broadcasting Corporation; For Modification of the Television Market for WMBC-TV, Newton, New Jersey*, Memorandum Opinion and Order, 27 FCC Rcd 2231, 2236, para. 10 (MB 2012). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable*, 14 FCC Rcd at 2818, para. 24. To determine the overall "local service to the community" provided by the station, we also look beyond the evidence relating to geographic proximity. See, *Id.* at para. 24. In particular, we assess whether the programming offered by KLTV meets the informational and service needs of the local residents of the County, based both on our review of specific programming and on government and consumer comments. *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>92</sup> *KLTV Petition* at Exhibit 13.

<sup>93</sup> *Id.* at 4.

<sup>94</sup> *Id.* at 5 and Exhibit 14.

<sup>95</sup> *Id.* at Exhibit 4.

<sup>96</sup> See *supra* notes {31 and 32} and accompanying text. As the Commission noted in the *STELAR Market Modification Report and Order*, "local government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>97</sup> See, e.g., Comments of Jack Harmon in Exhibit 1 ("[T]he Tyler stations start to cover the weather as soon as it moves through Dallas."); Comments of JH Hodges in Exhibit 12 ("[I]t would make a lot of sense to watch stations west of here and view their weather satellite information."); Comments of Rick and Donna Turner in Exhibit 5 ("[W]e would love for Dish TV to service the Hallsville (west Harrison County) with TV service out of the Tyler area.") (*sic*).

<sup>98</sup> *Supra* para. {19}.

service through its programming and connection to the County. We thus find that the second statutory factor weighs in favor of the requested modification.

32. *Access to In-State Stations*.<sup>99</sup> KLTV is an ABC affiliate licensed to Tyler, Texas, a community within the same state as Harrison County. It provides programming specifically related to Texas. Petitioner claims that Harrison County viewers currently have little or no access to “emergency news, weather, and local interest stories” focused on Texas.<sup>100</sup> Based on these unrefuted claims of unique in-state programming available from KLTV, we give the third statutory factor the greatest possible weight in favor of the requested modification.

33. *Other Local Stations*.<sup>101</sup> Petitioner states that it is “familiar with Shreveport broadcast stations that should deliver local content, but is unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Longview and Texas-oriented news coverage of issues of concern to the degree expected by residents.”<sup>102</sup> In addition, consumer comments express dissatisfaction with the coverage provided by the stations available to them today. These comments express a preference for Texas-based weather, advertising, and political news, but it is not always clear from the comments whether there is no existing coverage of these topics, or it is simply not provided by a Texas-based station.<sup>103</sup> The lack of opposition to the market modification request and the available evidence suggest that existing stations do not fully serve the community. Overall, we find that the fourth statutory factor weighs in favor of the requested modification.

34. *Viewing Patterns*.<sup>104</sup> We do not expect to find strong evidence of regular viewing in orphan counties, and Petitioner offers no evidence regarding this factor.<sup>105</sup> We therefore accord this factor negative weight.

#### IV. CONCLUSION

35. The issue before us is whether to grant Petitioner’s requests to modify the local satellite carriage markets of KFXK and KLTV—of the Tyler-Longview DMA—to include Texas’s Harrison

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<sup>99</sup> The third factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.” 47 U.S.C. § 338(l)(2)(B)(iii). This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming. *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>100</sup> *KLTV Petition* at 3.

<sup>101</sup> Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier 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 interest to the community.” 47 U.S.C. § 338(l)(2)(B)(iv). In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations’ service to the communities rarely has counted against a petition. See, e.g., *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

<sup>102</sup> *KLTV Petition* at 5.

<sup>103</sup> *KLTV Petition* at Exhibits 1, 3, 6, and 7.

<sup>104</sup> Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.” 47 U.S.C. § 338(l)(2)(B)(v).

<sup>105</sup> *KLTV Petition* at 6 (“to the extent necessary, we respectfully request a waiver of this item”).

County, which is currently assigned by Nielsen to the Shreveport, LA DMA. Section 338(l) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.<sup>106</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>107</sup>

36. With respect to both KFXK and KLTV, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the Station and Harrison County. We accordingly grant the requests for market modification, and order the addition of Harrison County to the local markets of KFXK and KLTV on both DISH and DIRECTV.

## V. ORDERING CLAUSES

37. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-24, CSR No. 8951-A), filed by Harrison County, Texas with respect to KLTV, Tyler, Texas (Facility ID No. 68540), **IS GRANTED**.

38. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-25, CSR No. 8952-A), filed by Harrison County, Texas with respect to KFXK-TV, Longview, Texas (Facility ID No. 70917), **IS GRANTED**.

39. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.<sup>108</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Media Bureau, Policy Division

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<sup>106</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>107</sup> *Id.*

<sup>108</sup> 47 CFR § 0.283.