

In the Matter of)	
)	
Elbert County, Georgia)	MB Docket No. -19-94
)	CSR No. 8975-A
)	
Petition for Modification of the Satellite Television)	
Markets of WSB-TV, WXIA WAGA, and WGCL,)	
Atlanta, Georgia)	

Released: June 7, 2019

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while its SD spot beams covers 15 of the 16 current zip codes in the County.⁵ DISH states that it is unaware of any factors, at this time, that would render carriage of the stations technically infeasible.⁶ Neither carrier opposed the Petition. We note that, for purposes of our analysis in this case, the situation in Elbert County is virtually identical to those in its neighboring Georgia counties, Hart, Franklin, and Stephens. Our analysis below reflects the same approach taken in our orders granting the market modification petitions of those counties, although we note that unlike in those cases, the Petition was unopposed.⁷

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.⁸ 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.⁹ 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).¹⁰ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹¹

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.¹² Market modification, which long has existed in the cable context, provides a means for the

⁵ *DIRECTV Amendment; DIRECTV Certification.*

⁶ *DISH Certification.*

⁷ We note that Elbert, Stephens, Hart, and Franklin Counties are contiguous, and we have granted the Petitions for Modifications filed by Stephens, Hart and Franklin. *Stephens County, Georgia Petitions for Modification of the Satellite Television Markets of WSB-TV, WGCL, WAGA and WXIA-TV, Atlanta, Georgia*, MB Docket Nos. 18-358, 18-359, 18-360, 18-361, Memorandum Opinion and Order, DA 19-256, 2019 WL 1495079 (April 3, 2019); *Hart County, Georgia Petition for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA and WGCL, Atlanta, Georgia*, MB Docket No. 18-250, Memorandum Opinion and Order, DA 18-1048, 33 FCC Rcd 9879 (MB Oct. 12, 2018), Application for Review filed Nov. 13, 2018; *Franklin County, Georgia Petitions for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA and WGCL, Atlanta, Georgia*, MB Docket Nos. 18-158, 18-159, 18-160, and 18-161, Memorandum Opinion and Order, 33 FCC Rcd 8742 (MB 2018), Application for Review filed Nov. 13, 2018.

⁸ 47 U.S.C. § 338(a)(1).

⁹ 47 CFR § 76.66(a)(6). 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, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewers Improvement Act (SHVIA) for carriage of stations to any subscriber within a station’s local market (Satellite Home Viewers Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999)). See also 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.

¹⁰ 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).

¹¹ 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.

¹² 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)). “STELAR” refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175. See also Consolidated Appropriations Act of 2019, Pub. L. No. 116-6 (Feb. 15, 2019); Conference Report (H. Rept. 116-9) at 673 (noting that “despite the reforms made in STELAR, many communities continue to

(continued...)

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*, 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.¹³ The 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 the local television markets, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.¹⁴ 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.¹⁵

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.¹⁶ The STELAR carves out an exception to carriage obligations¹⁷ 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."¹⁸ In enacting this provision, Congress recognized that the unique nature of satellite television service may

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struggle with market modification petitions," and directing the Commission to continue to "provide a full analysis to ensure decisions on market modification are comprehensively reviewed and STELAR's intent to promote localism is retained" and "adhere to statutory requirements and congressional intent when taking administrative action under STELAR.").

¹³ *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).

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

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

¹⁶ 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.

¹⁷ See *supra* note 9 (describing the "carry one, carry all" satellite carriage requirement).

¹⁸ 47 U.S.C. § 338(l)(3)(A).

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.¹⁹ This exception applies only in the satellite context.²⁰

7. 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.²¹ 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.²² Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.²³ 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.”²⁴ 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.²⁵

8. 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:

¹⁹ *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.”).

²⁰ 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.

²¹ *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).

²² *Id.* at 10435-6, 10438, paras. 39, 42.

²³ *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).

²⁴ *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. The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury. *Id.* at 10435-36, para. 39.

²⁵ *Id.* at 10438, para. 42. To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility. *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”).

- (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;
- (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.²⁶

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.²⁷

9. 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.²⁸ 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."²⁹

10. 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.³⁰ 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

²⁶ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

²⁷ 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*).

²⁸ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

²⁹ *Senate Commerce Committee Report* at 11.

³⁰ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

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;
- (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.³¹

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.³² The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if it is in a position to resolve the petition without such evidence.³³ Parties may submit whatever additional evidence they deem appropriate and relevant.³⁴

11. In the instant proceeding, the County filed a Petition seeking modification of the local television markets of Atlanta Stations WSB-TV, WXIA, WAGA, and WGCL to include Elbert County, Georgia. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that its current satellites and spot beam configurations render carriage technically feasible, but asserts that carriage may become economically infeasible due to additional costs associated with retransmission consent fees.³⁵ The *DIRECTV Certification and Certification Amendment* say that HD service to all zip codes in the County is currently feasible, and that service also is technically feasible in 15 of the 16 zip codes in the County through SD spot beam coverage.³⁶ The Commission received supportive comments from Georgia Congressman Doug Collins of

³¹ 47 CFR § 76.59(b)(1)-(7).

³² *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

³³ *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

³⁴ *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, 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.

³⁵ *DISH Certification* at 1-2; *DIRECTV Amendment* at 3-6.

³⁶ *DIRECTV Certification* at 2-5 ("Form of Certification Regarding Spot Beam Coverage" for WSB-TV, WXIA, WAGA and WGCL); *DIRECTV Amendment* at 3-6.

Georgia's Ninth District, United States Senators, Johnny Isakson and David Perdue, and the Georgia Association of Broadcasters.³⁷ In addition, Elbert County residents were overwhelmingly in favor of the filing of this Petition.³⁸

12. The Commission must make two determinations with respect to the Petition: (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 any other relevant information.³⁹

III. DISCUSSION

13. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry WSB-TV, WXIA, WAGA, and WGCL 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 the Stations to include Elbert County, Georgia.

14. As an initial matter, we waive certain of the evidentiary requirements of section 76.59(b)⁴⁰ pursuant to the County's request.⁴¹ Specifically, we grant Petitioner's request to waive the requirement to file MVPD channel line-up cards and published audience data.⁴² The County requests a waiver of the MVPD channel line-up cards because "there has not been historic carriage of the Station in the County by satellite carriers."⁴³ The County requests a waiver of the published audience data because "given the lack of historical carriage of the station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition."⁴⁴ We find good cause to waive these evidentiary requirements, as well as the requirement to file Grade B contour maps,⁴⁵ because we have ample evidence to render our decision without them. However, to minimize the danger of a dismissal due to insufficient evidence, we strongly encourage future Petitioners to closely coordinate with the stations at issue in order to provide a full and complete record.⁴⁶

³⁷ See Joint Letter from Congressman Doug Collins and Senators Johnny Isakson and David Perdue to Ajit Pai, Chairman, FCC (May 19, 2017) (*Petition* at Exhibit K); and Letter from Bob Houghton, President, Georgia Association of Broadcasters to Ajit Pai, Chairman, FCC (November 27, 2017) (*Petition* at Exhibit K); Letter from Congressman Doug Collins to Ajit Pai, Chairman, FCC (April 26, 2019).

³⁸ *Petition* at 13 and Exhibit M and N.

³⁹ 47 U.S.C. § 338(l); *see also* 47 CFR § 76.59.

⁴⁰ 47 CFR § 76.59(b).

⁴¹ *Petition* at 9; *see also supra* note 32 and accompanying text (setting forth the standardized evidence required to be filed with market modifications).

⁴² *Id.*; 47 CFR §§ 76.59(b)(5) and (6). As discussed above, this evidence was not necessary in order to render a decision on the Petition. The County asks for a waiver of cable system channel line-up cards and other exhibits establishing historic carriage and specifically states with regard to satellite carriage that "[t]here has not been historic carriage of the Station[s] in the County by satellite carriers, and therefore no evidence is being submitted for this element with respect to satellite." *Petition* at 10. Regarding published audience data for the Stations for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records, the County states that "given the lack of historical carriage of the station[s] in the County, Nielsen rating[s] or other audience data would not be helpful in evaluating [the] Petition." *Id.*

⁴³ *Petition*. at 9.

⁴⁴ *Id.*

⁴⁵ 47 CFR §§ 76.59(b)(2). *See infra* note {71}, discussing the maps filed by Petitioner.

⁴⁶ *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at 10418, para. 14.

A. Technical and Economic Feasibility

15. 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. In their Feasibility Certifications, 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 all of the current zip codes in Elbert County in HD and 15 of the 16 zip codes in SD is feasible.⁴⁷ DISH states that, at this time, it is unaware of any factors that would make carriage of the Stations technically infeasible; however, it asserts that it “reserves the right to amend this Feasibility Certification at any time due to, among other things, a satellite equipment failure or a different satellite being brought into service for the area that includes the County which has different coverage capabilities than the satellite(s) currently being used.”⁴⁸ DISH has not amended its certification. However, DISH contends that if any of the Stations elects retransmission consent and it is unable to reach an agreement with a given Station, then it would not be possible to provide that Station’s signal into the County. DISH then asserts that, in such circumstances, it “may be either technically or economically infeasible, or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent.”⁴⁹ We clarify that the results of private retransmission consent negotiations play no part in the Commission’s technical and economic feasibility analysis and are not a proper basis for infeasibility. Therefore, we disregard DISH’s arguments on this issue.⁵⁰

B. Orphan County Status

16. Elbert is an “orphan county” with insufficient access to in-state programming. The County is assigned to the Greenville-Spartanburg-Asheville-Anderson DMA, which includes four Georgia counties, 14 counties in North Carolina, and 10 South Carolina counties.⁵¹ The Petitioner asserts that Elbert County residents who subscribe to satellite television service have been deprived of the ability to receive preferred in-state Georgia television broadcast stations and instead are relegated to local broadcast content oriented to North and South Carolina.⁵² The Petitioner argues that residents of the County are currently underserved by the broadcast stations in the current DMA because they are deprived of in-state news, politics, sports, and weather.⁵³ This claim is supported by County residents, who were provided Notice of a Public Hearing on June 11, 2018, to consider whether the County should file a petition to modify the market.⁵⁴ County residents had the opportunity to voice their opinions at the hearing. Many people attended and spoke in support of filing a petition, and only one resident opposed the filing.⁵⁵ Because of the resident support, the Board of Commissioners voted to file the Petition. This

⁴⁷ *DIRECTV Certification* at 1-5; *DIRECTV Amendment* at 1-6. DIRECTV states that any SD-only subscriber in the one zip code unserved in SD could switch to HD service in order to receive the signals and the HD equipment will be provided without an additional charge *DIRECTV Amendment* at 1.

⁴⁸ *DISH Certification* at 1.

⁴⁹ *Id.*

⁵⁰ We note that a satellite carrier may not carry a station with which it has not reached a retransmission consent agreement, unless that station has expressly elected mandatory carriage.

⁵¹ See <http://krgspec.com/MarketSearch.aspx?DMAID=191>.

⁵² *Petition* at 1, 10.

⁵³ *Id.* at 10.

⁵⁴ *Id.* at 13.

⁵⁵ *Minutes of Public Hearing, Elbert County Board of Commissioners* (Monday, June 11, 2018) (Meeting Minutes), available at <http://www.elbertga.us/2018-boc-minutes.html>.

local support in favor of the Petition is consistent with the findings of a local newspaper's poll of residents.⁵⁶

17. With the STELAR's revisions to the market modification process, and its addition of a satellite market modification process, Congress expressly intended to address orphan county situations like that of Elbert County.⁵⁷ 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."⁵⁸ 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.⁵⁹ 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.⁶⁰ In this case, grant of the market modification request would bring much desired in-state programming to Elbert County and the request is supported by government officials and local residents.

C. Market Modification Analysis⁶¹

18. *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 community."⁶² Petitioner offers no evidence with respect to historic MVPD carriage other than to concede that there has been no historic satellite carriage,⁶³ but argues that "a lack of historical carriage...should [not] weigh against" the Petition.⁶⁴ Given the undisputed statement that the Atlanta Stations have no history of carriage in Elbert County, this factor weighs against the proposed market modification.

19. *Local Service.* Second, we consider "whether the television station provides coverage or other local service to the community."⁶⁵ Such "local service" can include, for example, the presence of a

⁵⁶ *Petition* at 13 and Exhibits M and N. The Petition indicates that there are letters of support from the community. However, the Exhibit that includes copies of those letters (Exhibit L), was omitted from the Petition. Given the other indicia of resident support, including the newspaper poll and count board meeting discussed above, we are able to grant this petition without the attachment.

⁵⁷ 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. See also *supra* para. 5.

⁵⁸ *Senate Commerce Committee Report* at 11.

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

⁶⁰ *Id.* at 10417, n.61.

⁶¹ Because the Stations are identically situated with respect to carriage into Elbert County, we consider them collectively in our analysis below.

⁶² 47 U.S.C. § 338(1)(2)(B)(i).

⁶³ *Petition* at 9.

⁶⁴ *Id.* at 7.

⁶⁵ 47 U.S.C. § 338(1)(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

(continued...)

high quality over-the-air signal; shopping and labor connections between the local community and the station's community of license; support of the local community by the station; and programming, including news or sports coverage, specifically about or addressing the community. The Petitioner does not demonstrate the presence of high quality over-the-air signals for the Stations and overall geographic proximity measures do not enhance the County's case.⁶⁶

20. However, the County supports its Petition with evidence concerning local shopping and labor patterns. Specifically, it states that "[b]ased on a survey of Northeast Georgia Orphan County residents, including Elbert County, over 91% of respondents stated that they shop locally or within the state of Georgia."⁶⁷ Additionally, the Petitioner submits that "[o]ver 97% of respondents seek services such as healthcare and arts/entertainment locally or within the state of Georgia."⁶⁸ The survey also asked respondents "Would you be interested in receiving in-state television broadcast (Atlanta stations)?" and 94.7% said "Yes." The survey also asked: "What is the main reason you are interested in switching to in-state television broadcasts?" and the results were Sports (2.00%), News (14.70%), Politics (1.90%), and All of the Above (81.40%).⁶⁹ While not dispositive, we find that the survey supports the Petition, and reflects the avid interest of Elbert County residents in receiving the Atlanta Stations.

21. In determining the extent of local service provided by the Stations, we also consider the support for the modifications from local residents and their official representatives. As the *STELAR Market Modification Report and Order* made clear, the support of local residents is enormously helpful in demonstrating a nexus between the stations and the local community.⁷⁰ In this case, citizens attending a Public Hearing on this issue overwhelmingly supported the filing of this Petition.⁷¹ In addition, a poll conducted by the local Elberton Star newspaper indicated that 78.8 percent of the respondents support receiving local television channels from Atlanta rather than the stations currently provided.⁷² We find that this support merits substantial weight under this factor.⁷³

22. With regard to local programming, the Petitioner submits multi-day programming lineups for the Stations for both DISH and DIRECTV and asserts that the Stations broadcast "local news programs[s] with Georgia news, sports, and weather several times a day."⁷⁴ We do not find Petitioner's submissions to constitute compelling evidence that the Stations provide regular programming specifically about or addressing Elbert County.

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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*). Additional examples of ways to demonstrate local service beyond coverage and programming are noted above.

⁶⁶ In this regard, the Petitioner submits Exhibit E (entitled "Summary of Distance to Transmitters from All Channels") and Exhibit F (Contour Maps for the Stations).

⁶⁷ *Petition* at 8-9, Exhibit G.

⁶⁸ *Id.* In response to seeking healthcare and other services, the results were Local (46.00%), Georgia (51.20%), and South Carolina (2.80%).

⁶⁹ *Id.*

⁷⁰ 30 FCC Rcd at 10417, n.61 ("[L]ocal government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue.").

⁷¹ *Petition* at 13.

⁷² *Id.*

⁷³ Supportive comments were also received from Members of Congress as well as from local officials and the Georgia Association of Broadcasters. *See supra* para. 11 and note 38.

⁷⁴ *Petition* at 9; Exhibits H and I.

23. 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 community support or relevant programming than to evidence of proximity in orphan county cases.⁷⁵ In the instant case, the Petitioner has not demonstrated that the Stations offer a significant amount of local programming targeted to Elbert County, but it has offered compelling evidence of community support for access to the Stations as well as evidence of shopping and labor links between Elbert County and Atlanta. Based on the overall evidence, we find that, on balance, the second statutory factor weighs in favor of the requested modification.

24. *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.”⁷⁶ 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.⁷⁷ The Petitioner states that Elbert County residents “feel disenfranchised and disadvantaged by the lack of access to Atlanta programming, and want to receive news, as well as educational, sports, and other programming from [their] own state capitol.”⁷⁸ According to the Petitioner, Elbert County residents lack access, during every election year, “to specific public affairs programming such as televised debates of gubernatorial candidates, Congressional candidates, candidates for State office, or statewide ballot issues, which compromises their ability to be well informed and well educated as to issues affecting them as citizens of Georgia.”⁷⁹

25. Petitioner also asserts that sports fans in the County have had insufficient opportunities to enjoy their home state Atlanta Falcons and the inaugural season of the Atlanta United Major League Soccer team, as well as University of Georgia collegiate sporting events.⁸⁰ Petitioner further notes the importance of in-state weather reports and that “the County is at a disadvantage for seeing the incoming weather from the other portions of [the] state.”⁸¹ In addition, with regard to in-state programming, Petitioner asserts, citing multichannel lineup cards for DISH and DIRECTV, that the Atlanta Stations broadcast “local news program[s] with Georgia news, sports, and weather several times a day.”⁸² Based on the record before us, we therefore give this 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

⁷⁵ See *supra* para. 17.

⁷⁶ 47 U.S.C. § 338(l)(2)(B)(iii).

⁷⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁷⁸ *Petition* at 5.

⁷⁹ *Id.* at 5-6.

⁸⁰ *Id.* at 1, 10-11. The Petitioner asserts that in the past year, Georgia’s sports teams filled national headlines. The County notes that the inaugural season of the Atlanta United Major League Soccer team broke multiple records for attendance. Regarding professional football, the Petitioner contends that “our residents are forced to watch the Carolina Panthers over their in-state team, Atlanta Falcons.” In addition, the Petitioner asserts that the University of Georgia (UGA) is a short 35 mile ride from the County seat and some of the County’s high school students attend a dual enrollment program there (“Move on When Ready”), yet during UGA’s path to the National Championship game, the local broadcasts were filled with Clemson news and sports updates. *Id.* at 11.

⁸¹ *Id.* at 1-2.

⁸² *Id.* at 9-10, Exhibits H and I.

of sporting and other events of interest to the community.”⁸³ 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.⁸⁴ The Petitioner states that it is “unaware of another in-state local broadcast station that is carried by a satellite provider in the County that offers Atlanta- and Georgia-oriented news coverage of issues of concern to residents of the County.”⁸⁵ This is a misreading of factor 4, however, which is not concerned with the “in-state” location or focus of the existing eligible stations. Because there is no relevant evidence in the record concerning this factor, we find that it weighs neither against nor in favor of the Petition, and therefore we consider it to be neutral in our consideration of the Petition.

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.”⁸⁶ We do not expect to find strong evidence of regular viewing in orphan counties, and Petitioner offers no evidence relevant to this factor.⁸⁷ By way of explanation, Petitioner notes that “[b]ecause the County has long been assigned by Nielsen to an out-of-state DMA, STELAR’s market modification provision marks the first opportunity for the County to receive the Station[s]’ signal over satellite. Given this lack of carriage, residents of the County have had scant opportunity to develop any viewing patterns for the Station[s].”⁸⁸ Although there is no firm evidence of viewing patterns in the record, Petitioner concedes that “audience data would not be helpful” to its case even if it had been provided.⁸⁹ We therefore hold that this factor weighs against the market modification request.⁹⁰

IV. CONCLUSION

28. The issue before us is whether to grant Petitioner’s requests to modify the local satellite carriage markets of WSB-TV, WXIA, WAGA, and WGCL, all of which are located in the Atlanta, GA DMA, to include Georgia’s Elbert County, which is currently assigned by Nielsen to the Greenville-Spartanburg-Asheville-Anderson 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

⁸³ 47 U.S.C. § 338(l)(2)(B)(iv).

⁸⁴ 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).

⁸⁵ *Petition* at 7.

⁸⁶ 47 U.S.C. § 338(l)(2)(B)(v).

⁸⁷ *Petition* at 9 (“[G]iven the lack of historical carriage of the station[s] in the County, Nielsen rating[s] or other audience data would not be helpful in evaluating [the Petition]. Therefore, to the extent necessary, we respectfully request a waiver of this item.”).

⁸⁸ *Id.* at 7-8.

⁸⁹ *Petition* at 9.

⁹⁰ See, e.g., *Genesee County Video Corp. and Tri-County Cablevision, Inc. For Modification of the Jamestown, New York ADI*, Memorandum Opinion and Order, 12 FCC Rcd 13792 at 13800 (CSB 1997) (“While WNYB’s apparent lack of audience share is not outcome determinative, it weighs in favor of deletion.”). See also *California-Oregon Broadcasting, Inc. D/B/A Crestview Cable Communications For Modification of the DMA for Stations: KFXO, NPG of Oregon, Inc., Bend, OR; KOHD, Three Sisters Broadcasting LLC, Bend, OR; KVTZ, NPG of Oregon, Inc., Bend, OR.*, Memorandum Opinion and Order, 29 FCC Rcd 3833 at 3841 (MB 2014) (“Crestview has failed to supply the evidence we requested, nor was its filing complete ... Given this conflicting information on KOHD, we assume that ... KOHD’s carriage history is not extensive and remains unsubstantiated”).

residents' access to local programming from broadcasters located in their State.⁹¹ Under this statutory provision, the Commission must afford particular attention to the value of localism.⁹²

29. With respect to each of the Stations, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the Station and Elbert County. As the foregoing analysis indicates, this is a close case. In such circumstances, we believe that the outcome that best serves the intent of Congress in enacting section 338(l) is to provide the petitioning orphan county with the access to in-state programming it is requesting.⁹³ We accordingly grant the requests for market modification, and order the addition of Elbert County to the local markets of WSB-TV, WXIA, WAGA, and WGCL on both DISH and DIRECTV.⁹⁴

V. ORDERING CLAUSES

30. 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. 19-94, CSR No. 8975-A) filed by Elbert County, Georgia with respect to WSB-TV, Atlanta, Georgia (Facility ID No. 23960), WXIA, Atlanta, Georgia (Facility ID No. 51163), WAGA, Atlanta, Georgia (Facility ID No. 70689), and WGCL, Atlanta, Georgia (Facility ID No. 72120), **IS GRANTED**.

31. This action is taken pursuant to authority delegated by section 0.283 of the Commission's Rules.⁹⁵

FEDERAL COMMUNICATIONS COMMISSION

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

⁹¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

⁹² *Id.*

⁹³ *See supra* para. 17.

⁹⁴ We remind WSB-TV, WXIA, WAGA, and WGCL of their individual obligations to elect retransmission consent or mandatory carriage with respect to Elbert County within 30 days of the release of this item. We also remind DISH and DIRECTV of their obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.66(d)(6).

⁹⁵ 47 CFR § 0.283.