

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

In the Matter of)	
)	
Victory Television Network, Inc.)	MB Docket No. 17-157
)	
For Modification of the Satellite Television Market)	CSR No. 8937-A
For KVTJ-DT, Jonesboro, Arkansas)	
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)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2017

Released: October 4, 2017

By the Senior Deputy Chief, Media Bureau, Policy Division

I. INTRODUCTION

1. Victory Television, Inc. (Petitioner or VTN), filed the above-captioned Petition seeking to modify the local satellite carriage television market of KVTJ-DT, Jonesboro, Arkansas (Facility ID No. 2784) (KVTJ or the Station), currently assigned to the Jonesboro, Arkansas Designated Market Area, to include the following communities in Arkansas: Crittenden County, Cross County, Mississippi County, Poinsett County, and Saint Francis County, currently assigned to the Memphis, Tennessee DMA, and the following communities in Missouri: Dunklin County and Pemiscot County, currently assigned to the Paducah, KY-Cape Girardeau, MO-Harrisburg, IL DMA (collectively, the Satellite Communities).¹ Both DIRECTV, LLC (DIRECTV) and DISH TV LLC (DISH) made Feasibility Certifications during the pre-filing coordination period indicating that service to this area was at least partially infeasible,² but the Petition itself is unopposed.³ For the reasons discussed more fully below, we grant in part and deny in part VTN's Petition. We find that DIRECTV has met its burden to demonstrate technical or economic infeasibility with respect to 59 ZIP codes in the Satellite Communities, and that DISH has done so with respect to St. Francis County and the "unserved" portion of Crittenden County.⁴ We also find that the evidence weighs in favor of the expansion of KVTJ's market to include the remainder of the Satellite Communities in this case. We therefore partially modify KVTJ's local satellite television market with respect to both DIRECTV and DISH.

¹ Petition for Special Relief of Victory Television Network, Inc., MB Docket No. 17-157 (filed May 30, 2017) (Petition), <https://www.fcc.gov/ecfs/filing>. The Media Bureau placed the Petition on public notice on June 9, 2017. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0455 (MB June 9, 2017).

² DIRECTV Feasibility Certification, Petition at Exhibit N, (filed June 27, 2016) (DIRECTV Feasibility Certification), DISH Feasibility Certification, Petition at Exhibit O, (filed June 10, 2016) (Initial DISH Feasibility Certification); *see also* DISH Updated Feasibility Certification (filed July 31, 2017) (DISH Updated Feasibility Certification).

³ DIRECTV did file a "Response" to the Petition. DIRECTV, LLC Response to Petition for Special Relief, MB Docket No. 17-157 (filed June 29, 2017) (June 2017 DIRECTV Response). DIRECTV also filed a Response in the earlier proceeding in this docket. *See* DIRECTV, LLC Response to Petition for Special Relief, MB Docket No. 16-416, CSR 8931-A (filed Jan. 23 2017) (January 2017 DIRECTV Response); *see also infra* n. 23.

⁴ *See infra* paras. 13 and 15.

II. BACKGROUND

2. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.⁵ 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.⁶ 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).⁷ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.⁸ 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,⁹ it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.¹⁰

3. 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.¹¹ 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 another DMA.¹² 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.

4. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that 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

⁵ 47 U.S.C. § 338(a)(1).

⁶ 47 CFR § 76.66(a)(6).

⁷ 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).

⁸ 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.

⁹ 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).

¹⁰ 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.

¹¹ 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.

¹² *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).

specific to the satellite context.¹³ Notably, the STELAR carves out an exception to carriage obligations¹⁴ 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.”¹⁵ 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.¹⁶

5. 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. In part, the Commission must do so by taking account of the following five statutory factors, which are not intended to be exclusive:

- (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.¹⁷

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.¹⁸

¹³ 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) by 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.

¹⁴ See *supra* n.10 and accompanying text (describing the “carry one, carry all” satellite carriage requirement).

¹⁵ 47 U.S.C. § 338(l)(3)(A).

¹⁶ *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.”).

¹⁷ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

¹⁸ 47 U.S.C. § 338(h)(1)(C)(ii) directs the Commission to “afford particular attention to the value of localism by taking into account *such factors as*” those listed (emphasis added). 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*).

6. 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.¹⁹ 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;
- (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.²⁰

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice, but may be re-filed at a later date with the appropriate filing fee.²¹ In addition to the required evidence, parties may submit whatever additional evidence they deem appropriate and relevant.²²

7. In the instant proceeding, VTN filed a Petition on May 30, 2017 seeking modification of the local television market of KVTJ to include the Satellite Communities.²³ During the pre-filing coordination period, the satellite carriers each filed Feasibility Certifications. DIRECTV's certification claims that carriage of the Station is infeasible in 59 ZIP codes in the Satellite Communities due to insufficient spot beam coverage, but is otherwise feasible.²⁴ DIRECTV filed a Response to VTN's Petition in order to emphasize its position that satellite carriage of KVTJ in the ZIP codes not covered by its Jonesboro, AR spot beam is not technically and economically feasible under the Commission's

¹⁹ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

²⁰ 47 CFR § 76.59(b)(1)-(7).

²¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

²² *Id.*

²³ An earlier Petition filed by VTN to modify the local satellite television market of KVTJ was dismissed without prejudice (Initial Petition); dismissed in *Victory Television Network, Inc. For Modification of the Satellite Television Market of KVTJ-DT, Jonesboro, Arkansas*, Order, 32 FCC Rcd 2888 (2017) (*Initial Order*). VTN then filed the current Petition, providing supplemental evidence in support of its request that the Commission modify KVTJ's local market for purposes of carriage by DIRECTV, LLC (DIRECTV) and DISH Network LLC (DISH) (Petition).

²⁴ DIRECTV Feasibility Certification at 1.

precedent.²⁵ DISH's initial certification claimed that carriage of the Station would be infeasible throughout the Satellite Communities for a variety of reasons.²⁶ In part, DISH's certification states that all of St. Francis County, as well as the "unserved" portion of Crittenden County, is outside the coverage of the relevant spot beams.²⁷ DISH's Updated Feasibility Certification asks the Bureau to view the information that it submitted in its Initial Certification in light of the approach taken in *Gray Television Licensee, LLC, For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin (Gray)*.²⁸

8. The Commission must make two determinations in response to VTN's Petition: (1) 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; and (2) whether the resulting carriage of the Station from the proposed market modification is technically and economically feasible for each of the satellite carriers.²⁹ We consider the latter question first, because we will not grant a market modification petition if the resulting carriage would be infeasible.³⁰

III. DISCUSSION

9. For the reasons set forth below, we find that the evidence weighs in favor of the modification of KVTJ's market to include all of the Satellite Communities where carriage of the Station is not technically or economically infeasible.

A. Technical and Economic Feasibility

10. Section 338(l)(3) of the Communications Act does not require a satellite operator to carry a station in response to a market modification 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.³¹ In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage that would result from a market modification is infeasible.³² The Commission requires different demonstrations of infeasibility depending on whether the

²⁵ June 2017 DIRECTV Response. DIRECTV states that it does not oppose the grant of VTN's Petition with respect to DIRECTV to the extent that the requested market modification is technically and economically feasible. DIRECTV asserts, however, that it needed to file a response in the instant matter because VTN's Petition continues to reflect a misunderstanding of the legal standard applicable to satellite television market modifications. *Id.* 1-2. As discussed in para. 13, *infra*, we find that DIRECTV's filing does meet the Commission's requirements for a detailed certification, and rule against VTN on this question.

²⁶ See Initial DISH Feasibility Certification.

²⁷ *Id.* at 3, para. 9 (b), (d) and Updated DISH Feasibility Certification at 4, para. 9 (b), (d) (DISH clarifies its technical infeasibility claims in St. Francis County and parts of Crittenden County and states that carriage would be "technically infeasible" pursuant to 47 C.F.R. § 76.59(e)).

²⁸ See DISH Updated Feasibility Certification, citing *Gray Television Licensee, LLC, Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, 32 FCC Rcd 668 (2017). VTN filed a letter in response to DISH's Updated Feasibility Certification. Letter from Jim Grant, General Manager of VTN, to Marlene H. Dortch, Secretary, Federal Communications Commission (August 11, 2017).

²⁹ See 47 U.S.C. § 338(l); see also 47 CFR § 76.59.

³⁰ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10442, para. 50.

³¹ 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).

³² *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).

claim of infeasibility is based on insufficient spot beam coverage or some other basis.³³ DIRECTV and DISH both filed Feasibility Certifications, claiming partial or total economic and/or technical infeasibility. We find that DIRECTV has met its burden to demonstrate technical or economic infeasibility with respect to 59 ZIP codes in the Satellite Communities. We find that DISH has met its burden to demonstrate technical or economic infeasibility in St. Francis County and that portion of Crittenden County not served by a spot beam that carries KVJT. As discussed in more detail below, we find that carriage of KVTJ into the Satellite Communities is otherwise technically and economically feasible for both carriers.

11. Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.³⁴ 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.”³⁵ The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury.³⁶

12. 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 such assertions on a case-by-case basis.³⁷ To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility.³⁸

³³ *Id.* at 10435-6, 10438, paras. 39, 42.

³⁴ *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. Doing 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).

³⁵ *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.

³⁶ *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.

³⁷ *Id.* at 10438, para. 42.

³⁸ *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. DIRECTV Infeasibility Claim

13. DIRECTV claims that carriage of KVTJ is infeasible in 59 ZIP codes in the Satellite Communities due to insufficient spot beam coverage.³⁹ Specifically, DIRECTV certifies, under penalty of perjury, that it conducted an analysis with respect to the ability of the spot beam on which it carries KVTJ to serve every ZIP code in the Satellite Communities, that the analysis was conducted “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,” and that it is unable to provide service “to some of the zip codes associated with this request because reception of the signal [in those ZIP codes] does not meet the minimum performance thresholds for DIRECTV’s service.”⁴⁰ DIRECTV states that it does not otherwise oppose VTN’s Petition with respect to DIRECTV “to the extent that the requested market modification is technically and economically feasible.”⁴¹ VTN’s Petition asserts that DIRECTV has “not demonstrated that adding the Satellite Communities is technically or economically infeasible,”⁴² but does not allege any specific inadequacies in DIRECTV’s analysis or presentation. We find that DIRECTV’s certification meets the Commission’s requirements for a detailed certification,⁴³ and therefore sufficiently demonstrates spot beam coverage infeasibility with respect to the 59 ZIP codes specified in its certification. We find that DIRECTV’s carriage of the Station in the Satellite Communities is otherwise feasible.

2. DISH Infeasibility Claim

14. DISH’s Updated Feasibility Certification claims that grant of any part of the proposed market modification would be technically and/or economically infeasible, either because of a lack of spot beam coverage or because of costs associated with making KVTJ available to subscribers covered by the relevant spot beam(s).⁴⁴ DISH asks that if the Commission grants the market modification in this proceeding in whole or in part, that it apply the approach taken in *Gray*, which was substantially similar with regard to the relevant facts.⁴⁵

15. DISH states that it carries KVTJ on two different satellites, one located at the 129° W.L. orbital slot (Western Arc Spot Beam) and the other at the 61.5° W.L. orbital slot (Eastern Arc Spot Beam).⁴⁶ It claims that carriage of KVTJ is infeasible in St. Francis County and portions of Crittenden County due to insufficient coverage from either spot beam.⁴⁷ Specifically, DISH certifies, under penalty

³⁹ DIRECTV Feasibility Certification at 1 and 3-4; June 2017 DIRECTV Response at 2-3. Specifically, DIRECTV certifies that its spot beam does not cover the following 13 Zip codes in Crittenden County, AR: 72301, 72303, 72325, 72327, 72331, 72332, 72339, 72346, 72348, 72364, 72376, 72384, and 72386; the following 2 Zip codes in Cross County, AR: 72331 and 72346; the following 4 Zip Codes in St. Francis County, AR: 72021, 72346, 72348, and 72376; the following 2 Zip codes in Poinsett County, AR: 72354 and 72386; the following 21 Zip codes in Mississippi County, AR: 72310, 72313, 72315, 72316, 72319, 72321, 72329, 72330, 72338, 72350, 72351, 72354, 72358, 72370, 72386, 72391, 72395, 72426, 72428, 72438, and 72442; the following 12 Zip codes in Pemiscot County, MO: 63826, 63827, 63830, 63839, 63840, 63848, 63849, 63851, 63853, 63873, 63877, and 63879; and the following 5 Zip codes in Dunklin County, MO: 63849, 63855, 63857, 63875, and 63877.

⁴⁰ DIRECTV Feasibility Certification at 2.

⁴¹ June 2017 DIRECTV Response at 1.

⁴² Petition at 2; *see also id.* at 12 (asserting that DIRECTV “did not indicate that providing KVTJ to any of the Satellite Communities would be economically infeasible”).

⁴³ *See supra* n.36 (discussing the required content for a detailed certification).

⁴⁴ DISH Updated Feasibility Certification at 6. DISH filed two feasibility certifications in this proceeding: an initial Feasibility Certification and an Updated Feasibility Certification. *See supra* n. 2. For purposes of our analysis, we will rely on DISH’s Updated Feasibility Certification.

⁴⁵ *Id.* at 2-5, paras. 8, 9 (a), (d), (e), and (f).

⁴⁶ *Id.* at 1.

⁴⁷ *Id.* at 4.

of perjury, that it conducted an analysis with respect to the ability of the spot beams on which it carries KVTJ to serve all of the Satellite Communities, that the analysis was conducted “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,”⁴⁸ and that it is unable to provide service to some areas in the Satellite Communities because they are outside the coverage area of spot beams carrying KVTJ.⁴⁹ VTN’s Petition asserts that “[t]o the extent that DISH claims that it is technically infeasible to provide KVTJ to (1) the remainder of Crittenden, Poinsett and/or Mississippi [C]ounties, or (2) St. Francis County, DISH should be required to provide additional details as to its methodology for determining spot beam coverage.”⁵⁰ VTN does not allege any specific inadequacies in DISH’s analysis or presentation with respect to its spot beam coverage. We find that DISH’s certification meets the Commission’s requirements for a detailed certification,⁵¹ and therefore sufficiently demonstrates spot beam coverage infeasibility with respect to St. Francis County and the “unserved” portion of Crittenden County (*i.e.*, that portion not covered by the Eastern Arc Satellite Spot Beam).⁵² As discussed below, we find that DISH’s carriage of the Station in the Satellite Communities is otherwise feasible.

16. Although not explicit in DISH’s filing, it appears that subscribers in the remainder of the Satellite Communities fall into two general groups. One group, spread throughout all of the Satellite Communities other than St. Francis County, is already receiving service from a satellite carrying KVTJ and has the necessary equipment in the home to view it.⁵³ The second group, also spread throughout the Satellite Communities, would require some combination of replacing or repointing satellite antennas and/or replacing set-top boxes.⁵⁴ DISH explains that receiving service from orbital slots not planned for in the original equipment installation at a subscriber’s home would normally require DISH to send out a truck and technician to either adjust equipment or install different equipment.⁵⁵ The company argues that adjusting or installing equipment in this manner “would impose a very substantial cost burden on DISH.”⁵⁶ We assume DISH makes this argument because it has some subscribers who fall into the second group described above. Even for subscribers who are technically ready to receive KVTJ (*i.e.*, those in the first group), DISH states that it would be required to make “operational and billing changes” if the channels available changed, and claims that subscribers may become confused if they cannot receive the same programming as their neighbors.⁵⁷

17. As noted above, the facts in *Gray* were substantially similar to the instant Petition. In that case, one group of subscribers had the equipment and satellite orientation necessary to receive the petitioning station, while a second group would have required a truck roll and/or a change of equipment to receive the station in question. DISH argued that serving either group was economically infeasible.⁵⁸ The

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 4.

⁵⁰ Petition at 13.

⁵¹ See *supra* n. 36 (discussing the required content for a detailed certification).

⁵² DISH Updated Feasibility Certification at para. 9 (b), (d). DISH does not claim a lack of spot beam coverage in either Poinsett or Mississippi Counties. *Id.* at para. 9 (e), (f).

⁵³ For instance, any subscriber in Pemiscot or Dunklin County who does not “receive service *only* from the 110° or 119° W.L. orbital slots.” *Id.* at 2, 6 (emphasis in original).

⁵⁴ *Id.* at 2-6.

⁵⁵ *Id.* at 1.

⁵⁶ *Id.*

⁵⁷ *Id.* at 6.

⁵⁸ *Gray*, 32 FCC Rcd 668, para. 17.

Bureau found, on the contrary, that serving the first group was *per se* feasible,⁵⁹ and that “the costs associated with providing those customers who do not currently have access to the spot beam with such access are low enough that serving them [was] not technically or economically infeasible.”⁶⁰

18. While DISH has not provided a detailed cost analysis in this proceeding, we have been given no reason to believe that the costs involved are meaningfully different from those discussed in *Gray*. As such, we reject any argument that the costs involved for DISH to provide subscribers access to KVJT amount to technical or economic infeasibility. As we did in *Gray*, we recognize that that “a service change, particularly one involving a service visit and potential new equipment, could create some burden on the few subscribers” not currently served by one of the relevant spot beams.⁶¹ Therefore, as we did in *Gray*, we specify here that, if DISH ultimately carries KVJT after the grant of this Petition, it must do so immediately for subscribers in the first group (*i.e.*, those who require only “operational and billing changes”) and new subscribers, but may roll out service at a more measured, non-dilatory pace to existing subscribers in the second group (*i.e.*, those who will require a service visit and/or new equipment).⁶²

B. Statutory Factors

19. Next we turn to an analysis of the record relating to the five statutory factors and other relevant evidence to determine whether to modify the local market of KVTJ to include those areas of the Satellite Communities where carriage of the station would be technically and economically feasible. For the reasons discussed below, we find that the local satellite television market of KVTJ should be modified, and grant VTN’s petition in part.

20. *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.”⁶³ VTN notes that the Commission has consistently concluded that a station’s history of carriage by a cable operator demonstrates that cable subscribers value the station and that they have been associated with the market of the station as viewers for a considerable period of time.⁶⁴ VTN also notes that KVTJ’s cable market already includes the Satellite Communities, due to the grant of an earlier, cable-specific, market modification petition.⁶⁵ VTN states that since the grant of that request in 1998, KVTJ has been carried on cable systems throughout those communities, with the only exception being communities located in Pemiscot County, MS.⁶⁶ VTN asserts that KVTJ’s record of carriage by multiple cable

⁵⁹ *Id.* at para. 18 (“If we were to find that these kinds of ‘operational and billing change’ costs were sufficient to render a market modification technically or economically infeasible, the exception would swallow the rule”).

⁶⁰ *Id.* at para. 20.

⁶¹ *Id.*

⁶² *Id.* (as we did in *Gray*, we also make clear here that “DISH must ensure that any new customers in [the Satellite Communities] who subscribe to local-into-local service after the grant of this market modification are capable of receiving all local signals DISH has the right to provide immediately upon beginning service, including [KVTJ] if it is carried after grant of this Petition”). Expressing concern about certain ambiguous language in DISH’s Updated Feasibility Certification, VTN correctly notes that “there does not appear to be any basis in the *Gray* Order upon which to base a requirement that subscribers pay for equipment upgrades required to receive KVTJ.” VTN Response to DISH Updated Feasibility Certification at 2.

⁶³ 47 U.S.C. § 338(l)(2)(B)(i).

⁶⁴ Petition at 5, citing *News Press Gazette*, 10 FCC Rcd 10331, 10333 (1995); *Time Warner Entertainment Co.*, 20 FCC Rcd 13635 (2005).

⁶⁵ Petition at 5. The 1998 Petition was filed by Agape Church, Inc., the previous permittee/licensee of KVTJ. See *Petition of Agape Church, Inc. for Modification of Station KVTJ(TV)’s ADI*, 14 FCC Rcd 2309 (1999) (*Agape*).

⁶⁶ *Id.* and Exhibit D. VTN notes that KVTJ is not currently, and has not been historically, carried on cable systems in the communities located in Pemiscot County, MS, despite the fact that KVTJ’s petition for market modification for cable carriage was granted with respect to those communities. Petition at n. 16.

operators in all but one of the Satellite Communities demonstrates that VTN's requested market modification is necessary to make sure that satellite subscribers in the Satellite Communities have access to the same station that others in the area have long been accustomed to viewing on cable.⁶⁷ We find that the first statutory factor weighs in favor of a grant of the Petition.

21. *Local Service.* Second, we consider "whether the television station provides coverage or other local service to the community."⁶⁸ VTN asserts that KVTJ places a noise-limited contour (NLSC) over the Satellite Communities, that the Station's over-the-air broadcast signal therefore provides local services to the communities, and that this should weigh heavily in favor of a grant of its Petition.⁶⁹ VTN supplies a map supporting these claims that is based on a professional engineering analysis which conforms to our rules, depicts satellite local receive sites, and is supported by affidavit.⁷⁰ As the Commission has long held, as a general matter over-the-air signal coverage "demonstrates service to ... communities and serves as a measure of a station's natural economic market,"⁷¹ and "television stations actually do or logically can rely on the area within their [good-quality signal] contours for economic support."⁷² Given KVTJ's uncontested and well-supported claim to place its NLSC over the Satellite Communities, we find that the second statutory factor weighs in favor of a grant of the Petition.⁷³

22. *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."⁷⁴ The Commission has affirmed that "a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community," and that it may "weigh more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers' state of residence."⁷⁵ KVTJ's community of license is Jonesboro, Arkansas.⁷⁶ As such, the Station is licensed to a community within the same state as the Arkansas Satellite Communities and therefore satisfies the in-state factor with regard to those communities. Furthermore, VTN also asserts

⁶⁷ *Id.* at 6.

⁶⁸ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the cable communities, 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, para. 24 (CSB 1999).

⁶⁹ Petition at 6.

⁷⁰ *See* 47 C.F.R. § 76.59(1)-(2), Petition at Exhibit H.

⁷¹ *Time Warner Entertainment-Advance/Newhouse Partnership for Modification of the ADI of: Television Stations: WTBY, Poughkeepsie, NY WRNN, Kingston, NY WHAI-TV, Bridgeport, CT WLIG, Riverhead, NY*, 11 FCC Rcd 6541, at 6553 n. 41 (1996).

⁷² *Amendment of Section 76.51, Major Television Markets. (Orlando-Daytona Beach, Melbourne, and Cocoa, Florida)*, 102 F.C.C.2d 1062, at 1070 (1985).

⁷³ The "additional factors" identified by Petitioner (Petition at 9-11) have in recent years been more commonly considered part of this "Local Service" analysis, but this is neither always the case nor required under the statute or our rules. *See, e.g., Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262 (1997). As discussed in paras. 26-27, *infra*, we find that both the "Local Service" factor and the "Additional" factors weigh in favor of the modification, and we grant Victory's unopposed proposal that we consider those facts "in addition to the statutory factors," rather than as part of them.

⁷⁴ 47 U.S.C. § 338(l)(2)(B)(iii).

⁷⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁷⁶ Petition at 9.

that KVTJ offers programming specifically related to the Arkansas Satellite Communities.⁷⁷ VTN states that one such program is “Arkansas Alive,” which is produced in Arkansas.⁷⁸ According to VTN, the program explores issues of interest to the Arkansas Satellite Communities, and its host conducts interviews with state officials and public figures, including from the Arkansas Satellite Communities themselves.⁷⁹ VTN asserts that the Station’s programming evidences its commitment to providing locally-responsive programming to the Satellite Communities in accordance with its mission.⁸⁰

23. Finally, VTN states that while KVTJ does not satisfy the in-state factor with regard to the Satellite Communities located in Missouri, it argues that this should not adversely affect its request for market modification in those communities.⁸¹ We agree. The Commission has stated that the “in-state factor is not intended to bar a market modification simply because it would not result in increased consumer access to an in-state station’s programming,” and that the factor should be considered inapplicable in such cases.⁸² We therefore find that the third statutory factor weighs heavily in favor of a grant of the petition in the case of the Arkansas Satellite Communities, and give it no weight with respect to the Missouri Satellite Communities.

24. *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.”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 VTN provides no evidence about the news and sports/events coverage provided by the broadcast stations currently serving subscribers in the Satellite Communities.⁸⁵ Consistent with our precedent, we therefore give the fourth statutory factor no weight in our consideration of the petition.

25. *Viewing Patterns.* Fifth, 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 In its Petition, VTN notes that the Station does not subscribe to Nielsen,⁸⁷ but consistently receives letters and emails from supportive viewers and submits examples of such correspondence from each of the Satellite Communities.⁸⁸ The Station also provides detailed information regarding its viewer contribution

⁷⁷ Petition at 6-7.

⁷⁸ *Id.* and Exhibit I.

⁷⁹ *Id.* According to VTN’s Exhibit, some of the issues addressed by the program “Arkansas Alive” include: Public Policy, Proposed State Legislation, Community Events, Same Sex Marriage, Arkansas Right to Life/March for Life, Tribute to Martin Luther King, Community and Cross-Denominational Outreach, and Public Health/Addiction. See Exhibit I.

⁸⁰ *Id.* at 8.

⁸¹ *Id.* at n.37.

⁸² *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 19.

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); see also *Jackson Tennessee Broadcasting Order*, 23 FCC Rcd at 3947, para. 49.

⁸⁵ Petition at n.27.

⁸⁶ 47 U.S.C. §§ 338(l)(2)(B)(v).

⁸⁷ Petition at 9.

⁸⁸ *Id.* and Exhibit J.

records from 2012 to 2016, listing the total number of donors in each of the Satellite Communities and calculating donors from the Satellite Communities as a percentage of total donors.⁸⁹ VTN notes that over a third of all donations received by the Station are from the Satellite Communities.⁹⁰ In a similar situation, a petitioning station that did not subscribe to Nielsen provided evidence that “over 41.5 percent” of its contributions in a single year came from communities it was seeking to add to its market, and the Commission granted the petition.⁹¹ VTN has provided evidence of a similar level of support over an even longer period of time. We find that this is sufficient evidence of viewing patterns in the Satellite Communities, and find that the fifth statutory factor weighs in favor of a grant of the Petition.

26. *Additional Factors.* Finally, VTN asserts that there are other factors that militate in favor of its requested market modification.⁹² VTN notes that in addition to, or as part of, its consideration of the standard statutory factors, the Commission takes into account such things as the geographic proximity between a station seeking a market modification and the communities at issue, as well as whether the station and the communities are part of the same business corridor, geographic region, and economic market.⁹³ Regarding geographic proximity, VTN asserts that the distances and driving times between the Satellite Communities and KVTJ are within the range that the Commission has found acceptable in adding communities to a station’s market, or analogously, in declining to delete communities from a station’s market.⁹⁴ VTN asserts that at most, KVTJ’s transmitter site is 90 miles from the most geographically distant of the Satellite Communities (Pemiscot County, Missouri), which it contends is well within a mileage range that the Commission has found acceptable.⁹⁵

27. VTN also asserts that there is a significant economic nexus between the Satellite Communities and KVTJ’s city of license because they are part of the same business corridor, geographic region, and economic market.⁹⁶ First, VTN points out that Jonesboro is connected to the Satellite Communities by major thoroughfares, including Interstate I-555 and many other Arkansas state highways, making it convenient for residents to travel back and forth for purposes of work, education, governmental affairs, entertainment and shopping.⁹⁷ VTN provides studies showing significant commuter traffic between Jonesboro and the Satellite Communities.⁹⁸ Second, VTN argues that many of the

⁸⁹ *Id.* at 3 and Exhibit K.

⁹⁰ *Id.* at 9 and Exhibit K.

⁹¹ *American Christian Television Services, Inc. for Modification of the Lima, Ohio DMA*, 17 FCC Rcd. 528, 532 (2002).

⁹² *Id.* These “Additional Factors” have in recent years been more commonly considered part of the analysis of statutory factor two, but this is neither always the case nor required. *See supra* n. 73. Victory proposes in its Petition that we consider these facts “in addition to the statutory factors” rather than as part of factor two. Petition at 10. We have no reason to deny this unopposed proposal (in part because both statutory factor two and the “additional” factors weigh in favor of the modification).

⁹³ *Id.* at 9-10.

⁹⁴ *Id.* at 10 (citing *KNTV License, Inc.*, 16 FCC Rcd 6785 (2001) (adding communities that were 35-55 miles away); *Paxson Atlanta license, Inc.*, 13 FCC Rcd 20087 (1998) (adding communities that were 50 miles away); *Burnham Broadcasting, Inc.*, 10 FCC Rcd 7117 (1997) (adding a community that was 48 miles away); *Time Warner Cable*, 11 FCC Rcd 8047 (1996) (refusing to delete communities that were 60 miles away); *Cablevision Systems Corporation*, 11 FCC Rcd 6453 (1996) (refusing to delete communities that were 48-55 miles away); *Time Warner Cable*, 11 FCC Rcd 3510 (1996) (refusing to delete communities that were 45 miles away)).

⁹⁵ *Id.*, citing *Busse Broadcasting Corp.*, 11 FCC Rcd at 6416 (1996) (adding communities that were between 45 and 100 miles away).

⁹⁶ *Id.* at 10-11.

⁹⁷ *Id.* at 10.

⁹⁸ *Id.* at 10-11 and Exhibit M.

Satellite Communities are considered part of the Jonesboro labor market area and primary trade area.⁹⁹ VTN notes that residents of Cross, Crittenden, Dunklin, Mississippi and Poinsett Counties make up 40 percent of the civilian labor force in the Jonesboro labor market.¹⁰⁰ Similarly, VTN states that the populations of Cross, Mississippi, Poinsett, and Dunklin Counties comprise a quarter of the population of the Jonesboro primary trade area.¹⁰¹ Finally, VTN asserts that the Satellite Communities are largely rural and view Jonesboro as an educational and shopping destination.¹⁰² VTN also notes that Jonesboro is the home of Arkansas State University, which fuels the regional economy and is the alma mater to many living in the Satellite Communities.¹⁰³ We find that the geographic proximity of KVTJ to the Satellite Communities and the demonstrated economic nexus between the Station's community of license and those Communities further weighs in favor of a grant of the Petition.

28. *Conclusion.* Based on the record before us, we conclude that the first, second, and fifth statutory factors weigh in favor of a grant of the Petition, and that the third statutory factor weighs heavily in favor of a grant of the Petition with respect to the Arkansas Satellite Communities. We accord no weight to the third statutory factor with respect to the Missouri Satellite Communities, and no weight to the fourth statutory factor with respect to the Satellite Communities as a whole. The additional information presented to us regarding the geographic proximity between KVTJ and the Satellite Communities and the economic nexus between the Station's community of license and those Communities lends further support to a grant of VTN's request. We accordingly grant in part and deny in part VTN's request for market modification, and add the Satellite Communities to the local market of KVTJ on both DIRECTV and DISH, with the exception of the 59 Zip codes listed herein for DIRECTV, and of St. Francis County and the portion of Crittenden County not covered by the Eastern Arc Satellite Spot Beam for DISH.

29. 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. 17-157, CSR-8937-A), filed by Victory Television, Inc., **IS GRANTED IN PART**, with regard to DIRECTV, for all of the Satellite Communities with the exception of the 59 zip codes listed in paragraph 13, above; and, with regard to DISH, for all of the Satellite Communities with the exception of St. Francis County and the unserved portion of Crittenden County described in paragraph 15, above. In all other respects, Victory Television Network, Inc.'s petition **IS DENIED**.

30. This action is taken pursuant to delegated authority by Section 0.283 of the Commission's Rules.¹⁰⁴

FEDERAL COMMUNICATIONS COMMISSION

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

⁹⁹ *Id.* at 11 and Exhibit M.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 11.

¹⁰³ *Id.*

¹⁰⁴ 47 CFR 0.283.