

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

| | | |
|--|---|---------------------|
| Petition of: |) | |
| |) | |
| The Electric Plant Board of the City of |) | |
| Russellville |) | |
| Cumberland Cellular, Inc., d/b/a Duo County |) | |
| Telecom |) | |
| North Central Telephone Cooperative, Inc. |) | MB Docket No. _____ |
| |) | |
| For Modification of the Market of Television |) | CSR-_____ |
| Station WBKO |) | |
| |) | |

PETITION FOR SPECIAL RELIEF

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SUMMARY

In this Petition, the Electric Plant Board of the City of Russellville, North Central Telephone Cooperative and Cumberland Cellular, Inc., d/b/a Duo County Telecom, demonstrate conclusively that the local television market of WBKO, Bowling Green, Kentucky, should be modified to include six communities located in Logan, Allen, Cumberland, Adair and Russell Counties (the “Communities”) in Kentucky. The Communities and the counties they reside in are quintessential examples of the problem Congress sought to solve when it amended the Communications Act in 2014 and directed the Commission to consider the additional statutory factor (now denominated as the third of five statutory factors) – whether modifying the market of a television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.

This Petition addresses not only the lack of in-state programming that residents in the Communities receive, but also satisfies the four other statutory factors that the Commission must consider when evaluating whether to modify a station’s television market. First, WBKO has been historically carried in the Communities, as carriage of WBKO dates back to or near the commencement of cable service in each area. Second, WBKO provides an extensive amount of local programming directed at the Communities, and each community is situated within WBKO’s natural geographic market. Third, stations currently considered local in the Communities appear to air little to no programming expressly directed toward residents in each area. Fourth, WBKO has reportable ratings in the Communities and airs the most watched local newscast in each county. In addition, there is also a strong economic nexus between the Communities and Bowling Green, and support from Congressman James Comer, whose congressional district includes Logan, Allen, Cumberland, Adair and Russell Counties. Accordingly, as demonstrated herein, the Commission should grant this Petition forthwith.

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PETITION FOR SPECIAL RELIEF

I. INTRODUCTION

The Electric Plant Board of the City of Russellville, North Central Telephone Cooperative and Cumberland Cellular, Inc., d/b/a Duo County Telecom (collectively, “Petitioners”) seek modification of the television market of WBKO, Bowling Green, Kentucky, to include six communities located in Logan, Allen, Cumberland, Adair and Russell Counties in Kentucky.¹

The Communities and the counties they reside within are quintessential examples of the problem Congress was trying to solve when it amended the Communications Act in 2014 and directed the Commission to consider a new statutory factor – whether modifying the market of the television station would promote consumers’ access to television broadcast station signals

¹ This Petition requests modification covering the following areas: Russellville, Scottsville, Burkesville, Columbia, Jamestown and Russell Springs, Kentucky, along with surrounding unincorporated areas served (collectively, the “Communities”).

that originate in their State of residence.² Russellville (Logan County), Scottsville (Allen County) and Burkesville (Cumberland County) are assigned to the Nashville, Tennessee DMA and, unsurprisingly, receive almost exclusively Tennessee-focused local programming. These communities are over 50 miles away from Nashville and their small size offers little incentive for Nashville stations to cover issues of local importance. Although Columbia (Adair County) and Russell Springs and Jamestown (Russell County) do receive in-state programming from stations in the Louisville and Lexington DMAs, respectively, these communities are also of small size and over 80 miles away, severely limiting the relevance of in-state programming that these subscribers receive.

Significantly, neither the Nashville stations nor the Louisville or Lexington stations cover local weather forecasts, alerts, and warnings concerning the Communities to the extent that WBKO does. Moreover, the Communities and Bowling Green, WBKO's City of License, are all located in Kentucky's 1st United States Congressional District. WBKO's coverage of local, state, and national politics is therefore particularly relevant to the Communities and their residents. Congressman James Comer, Kentucky's 1st District Representative, sums up the importance of WBKO smartly – "WBKO is a critical source of local news, weather, and sports for residents in [the Communities]."³

As described below, this Petition addresses not only the current lack of in-state broadcast programming that residents in the Communities currently receive from their subscription television service, but also satisfies the other statutory factors that the Commission must consider

² Satellite Television Extension and Localism Act Reauthorization Act of 2014, Pub. L. 113-200, 128 Stat. 2059 (2014).

³ Exhibit 17 (Letter from Congressman James Comer, 1st District, Kentucky, in support of Petition).

when evaluating whether to adjust a station's local market. In addition, there is also a strong economic nexus between the Communities and the station's city of license, Bowling Green. In short, WBKO meets all statutory criteria for status as a local station in the Communities, and additional factors weigh further in favor of including the Communities in WBKO's market. The Commission should expeditiously grant this Petition.

II. BACKGROUND

WBKO. According to Warren's Online Cable Factbook, WBKO is a commercial broadcast station licensed to Gray Television Licensee LLC and transmitting on channel 13 from Bowling Green, Kentucky in the Bowling Green Designated Market Area ("DMA").⁴ WBKO's primary stream broadcasts programming affiliated with the ABC network. WBKO's two multicast streams broadcast programming affiliated with the FOX and CW networks, respectively.

The Electric Plant Board of the City of Russellville. The Electric Plant Board of the City of Russellville ("RPB") is a municipally-owned utility established under Kentucky law in 1942 to provide electrical service in conjunction with the Tennessee Valley Authority project. In 2006, RPB began providing wireless Internet service to Russellville (the "RPB Community") and, in 2010, expanded its offerings to include high-speed data, telephone and video services over a state-of-the-art fiber-to-the-home network. RPB currently serves 1,300 video subscribers, all of which are located in Logan County, Kentucky. Russellville is about 25 miles from Bowling Green, Kentucky, and 30 miles from WBKO's transmitter.⁵

⁴ Warren Communications News, Advanced TVFactbook, www.advancedtvfactbook.com (subscription required).

⁵ Exhibit 1 (Map Depicting Petitioners' Communities and WBKO City of License) (showing the approximate distance between Russellville and WBKO).

RPB retransmitted WBKO pursuant to a retransmission consent agreement with the station until that agreement expired on December 31, 2014. At that time, WBKO informed RPB that it could no longer grant retransmission consent to RPB outside of the Bowling Green DMA pursuant to its network affiliation agreement with the ABC Television Network.

North Central Telephone Cooperative. The North Central Telephone Cooperative (“North Central”) was formed in March 1951 and serves the Scottsville community and surrounding rural areas in Allen County, Kentucky (the “North Central Communities”) along with five counties in Tennessee. The North Central Communities reside about 25 miles from Bowling Green, Kentucky, and about 30 miles from WBKO’s transmitter.⁶

In 2002, North Central launched video service in Scottsville and, in 2008, began to deploy fiber-to-the-home technology. North Central serves 2,043 video subscribers in Kentucky and is a nationally recognized Smart Rural Community and Gig Certified Provider.⁷ North Central retransmitted WBKO in the North Central Communities beginning in 2002 and continued to retransmit WBKO until its retransmission consent agreement with the station expired on December 31, 2014. At that time, WBKO informed North Central that it could no longer grant retransmission consent to North Central outside of the Bowling Green DMA pursuant to its network affiliation agreement with the ABC Television Network.

Cumberland Cellular, Inc., d/b/a Duo County Telecom. Cumberland Cellular, Inc., d/b/a Duo County Telecom (“Duo County”) is a wholly owned subsidiary of Duo County Telephone Cooperative and currently serves 4,650 video subscribers. Duo County Telephone Cooperative was founded as a cooperative in 1954 to provide telephone service in south central

⁶ See *id.* (showing the approximate distances between the North Central Communities and WBKO).

⁷ North Central also serves 4,446 video subscribers in Tennessee.

Kentucky. Today, the cooperative is a full-service communications company and along with its wholly-owned affiliates provides state-of the-art telephone service, broadband Internet service, and digital video services over both a coaxial and telephone network.

Duo County serves Jamestown and Russell Springs in Russell County, Burkesville in Cumberland County, and Columbia in Adair County, along with rural customers outside of the incorporated limits where its facilities are located (the “Duo County Communities”). These communities range from 60 to 80 miles from Bowling Green, Kentucky, and WBKO’s transmitter.⁸

At the time that Duo County acquired the local Charter Communications-managed system on March 31, 2003, the system retransmitted WBKO. Duo County continued to retransmit WBKO until its retransmission consent agreement with the station expired on December 31, 2014. At that time, WBKO informed Duo County that, while it would like to, it could no longer grant retransmission consent to Duo County outside of the Bowling Green DMA pursuant to its new network affiliation agreement with the ABC Television Network.⁹

III. MARKET MODIFICATION STANDARDS

In enacting must carry, Congress made clear its desire to preserve local broadcast television, finding that there was a “substantial governmental interest in ensuring” the continuation of “locally originated television broadcasting” and that television stations are “an

⁸ See Exhibit 1 (showing the approximate distances between the Duo County Communities and WBKO).

⁹ See Exhibit 3 (Letter from R. Richard McCue, WBKO, to Daryl Hammond, Duo County Telecom, dated Sep. 4, 2014) (“Recently, we entered into a new affiliation agreement with ABC that confers that we shall not grant retransmission consent to any MVPD whose subscribers are located outside of the DMA in which the Station Community is located.... We would like to continue our affiliation with you however our ABC contract prohibits us from doing so.”).

important source” of local programming, especially for local news and public affairs programming.”¹⁰ Congress also stressed the importance of localism in market modification proceedings: “In considering requests... [for market modification], the Commission shall afford particular attention to the value of localism....”¹¹ The Commission has similarly recognized that the underlying purpose of must carry is the “preservation of local television service and the local public interest programming provided by these broadcast stations.”¹²

Consistent with the preservation of localism, Congress recognized that in certain circumstances, a DMA may not fully reflect a particular station’s actual market of interest to viewers,¹³ and provided that the Commission may:

[W]ith respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section.¹⁴

In considering market modification petitions, Congress directed the Commission to take into account the following five factors:

1. Whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
2. Whether the television station provides coverage or other local service to such community;

¹⁰ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, §§ 2(10)-(11), 106 Stat. 1460, 1-2 (1992) (emphasis added).

¹¹ 47 U.S.C. § 534(h)(1)(C)(ii).

¹² *Implementation of Section 4(G) of the Cable Television Consumer Protection and Competition Act of 1992, Home Shopping Station Issues*, Report and Order, 8 FCC Rcd 5321, ¶ 22 (1993) (emphasis added).

¹³ See *House Committee on Energy and Commerce, Cable Television Consumer Protection and Competition Act of 1992*, H.R. Rep. No. 102-628, at 97 (1992).

¹⁴ 47 U.S.C. § 534(h)(1)(C)(i).

3. Whether modifying the 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 cable system 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 cable and noncable households within the areas served by the cable system or systems in such community.¹⁵

Applying the five factors to this case unequivocally establishes that WBKO is local to the Communities. The Commission should promptly grant this Petition.

IV. WBKO IS LOCAL TO THE COMMUNITIES

We begin our analysis with the third statutory factor, as modification of WBKO's market to include the Communities will substantially increase subscribers' access to programming related to their State of residence. Evaluation of the first, second, fourth and fifth factors follows. We conclude with a discussion of additional factors, mainly the economic connection between the Communities and Bowling Green.

A. WBKO Originates in Kentucky and All Consumers Reside in Kentucky.

The third statutory factor considers access to stations that originate in the consumers' State of residence. As described above, the Communities are within the Commonwealth of Kentucky, and WBKO is licensed to Bowling Green, Kentucky.

This factor was added recently in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 to ensure that an MVPD's subscribers are "receiving news, politics, sports, emergency information, and other television programming relevant to their home state."¹⁶

¹⁵ 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

¹⁶ Satellite Television Extension and Localism Act Reauthorization Act of 2014, Pub. L. 113-200, 128 Stat. 2059 (2014); *Amendment to the Commission's Rules Concerning Market*

This factor requires a petition to show that the “involved station is licensed to a community within the same state as the new community.”¹⁷ In particular, the Commission must consider “whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”¹⁸ Moreover, the Commission will give this factor increased weight if the station provides programming specifically related to subscribers’ State of residence, and may give it even more weight if subscribers in the existing market have little or no access to such in-state programming.¹⁹

There is no doubt that modifying WBKO’s local market will promote consumers’ access to television broadcast station signals that originate in their State of residence. WBKO is licensed to Bowling Green, Kentucky, which is located within the same state as the Communities. The Commission should give this factor substantial weight, as Russellville (Logan County), Scottsville (Allen County) and Burkesville (Cumberland County) are part of the Nashville DMA and, as such, are not served by any television stations licensed within the Commonwealth of Kentucky. Furthermore, although Columbia (Adair County) and Russell Springs and Jamestown (Russell County) are part of the Louisville and Lexington DMAs,

Modification, Implementation of Section 102 of the STELA Reauthorization Act, Report and Order, 30 FCC Rcd 10406, ¶ 1 (2015) (“STELAR Market Mod Order”).

¹⁷ *Id.*, ¶¶ 4, 18. To satisfy this factor, the petitioner must “make a statement in its petition whether or not the station is licensed to a community within the same state as the new community.” *Id.*, ¶ 20.

¹⁸ 47 U.S.C. § 534(h)(1)(C)(ii)(III).

¹⁹ STELAR Market Mod Order, ¶¶ 1, 18. *See also Gray Television Licensee, LLC; for Modification of the Satellite Television Market for WSAW-TV, Wausau, Wisconsin*, Memorandum Opinion and Order, MB Docket No. 16-293, ¶ 27 (rel. Jan. 17, 2017) (In “orphan” county situations – where a county is served exclusively, or almost exclusively, by television stations coming from a neighboring state – the Commission “will give substantial weight to the in-state programming a petitioner proposes to bring to the orphan county when determining whether a nexus to a new community has been demonstrated, and will consider the other factors, when they apply, as enhancements to a petitioner’s case.”).

respectively, and therefore have access to Kentucky programming, the long distances from Louisville and Lexington limits the relevance of in-state programming that these subscribers receive. Accordingly, modifying WBKO's local market to include the Communities therefore will ensure that subscribers receive news, politics, sports, emergency information, and other television programming relevant to their home state of Kentucky.

Based on this factor alone, the Commission has ample evidence to grant this Petition. Consideration of the additional factors further bolsters the case for including the Communities within WBKO's market.

B. WBKO Has Been Historically Carried in the Communities.

The first statutory factor considers historical carriage. Under Section 614(h), the Commission must take into account “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community....”²⁰ Cable carriage in the Communities has rarely existed without WBKO. Commission records indicate that WBKO was carried in Russellville and Logan County since at least 1980,²¹ in Scottsville and Allen County for at least three decades,²² and in the Duo County Communities

²⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

²¹ Exhibit 4 (Russellville FCC Community Registrations) (demonstrating carriage of WBKO in Russellville since at least April 1980). RPB retransmitted WBKO from 2010 through 2014, but was forced to cease carriage when the ABC network no longer permitted WBKO to grant carriage to RPB. *See* Exhibit 7 (RPB Historical Channel Lineups) (demonstrating carriage from 2010 – 2014).

²² Exhibit 5 (Scottsville and Allen County FCC Community Registrations) (demonstrating carriage of WBKO in Scottsville and Allen County since at least February 1983). Moreover, when North Central began providing cable service in 2002, it retransmitted WBKO and continued to do so until it was forced to cease carriage at the end of 2014. *See* Exhibit 8 (North Central Historical Channel Lineups).

back to or near the commencement of cable service in each area.²³ Cable carriage of WBKO over many decades conclusively demonstrates that WBKO has been historically carried in the Communities. Therefore, Petitioners easily satisfy the first statutory factor.

C. WBKO Provides Coverage and Other Local Service to the Communities.

The second statutory factor directs the Commission to consider “whether the television station provides coverage or other local service to such community.”²⁴ This factor incorporates both technical service and programming service, and includes “whether the station places at least a Grade B contour over the cable communities, the station’s proximity to the communities in terms of mileage, and whether it broadcasts local programming with a distinct nexus to the Communities.”²⁵ As described below, Petitioners meet this second statutory factor in all key respects.

1. The Communities fall within or just outside WBKO’s service contour.

To determine whether a station provides local over-the-air service to a cable community, the Commission examines whether the community at issue is covered by the station’s 41 dBu service contour or is predicted to receive service using Longley-Rice prediction methodology.²⁶

²³ Exhibit 6 (Adair County, Burkesville, Columbia, Cumberland County, Jamestown and Russell Springs FCC Community Unit Registrations) (demonstrating carriage of WBKO in Burkesville since at least September 1961, Columbia since at least April 1960, Jamestown since at least December 1970, and Russell Springs since at least February 1971). Duo County itself also retransmitted WBKO from 2003 through 2014. *See* Exhibit 9 (Duo County Historical Channel Lineups).

²⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(II).

²⁵ *Mountain Broadcasting Corporation; For Modification of the Television Market for WMBC-TV, Newton, New Jersey*, Memorandum Opinion and Order, 27 FCC Rcd 2231, ¶ 12 (2012) (“Mountain Broadcasting”).

²⁶ *See, e.g., id.*, ¶ 10.

The RPB Community. As shown in Exhibit 2, Russellville falls within WBKO's service contour regardless of whether the Commission's traditional prediction model or Longley-Rice is used.²⁷ There are also no natural terrain features or obstacles between Russellville and WBKO that would interfere with WBKO's service there. In other words, WBKO's over-the-air service reaches Russellville and is thus capable of providing service local to the Russellville community.

The North Central Communities. As shown in Exhibit 2, WBKO's service contour covers the North Central Communities regardless of whether the Commission's traditional prediction model or Longley-Rice is used.²⁸ There are also no natural terrain features or obstacles between the North Central Communities and WBKO that would interfere with WBKO's service. WBKO's over-the-air service reaches the North Central Communities and is thus capable of providing service local to the communities.

The Duo County Communities. WBKO's service contour reaches Burkesville while Jamestown, Russell Springs and Columbia fall just outside the predicted service contour.²⁹ There are no terrain obstacles or other natural features that would affect WBKO's over-the-air signal. As the Commission has stated, Grade B coverage is not elevated over other modification factors. Rather, it is just one element among the required criteria.³⁰ Here, because Jamestown, Russell Springs, and Columbia fall only miles short of being included within WBKO's service contour, the Commission should assign far more weight to the local nexus established by the

²⁷ Exhibit 2 (WBKO Predicted Service Contour Map).

²⁸ *Id.*

²⁹ *See id.*

³⁰ *Paxson Atlanta License, Inc.; For Modification of the Atlanta, Georgia ADI Market*, Memorandum Opinion and Order, 13 FCC Rcd 20087, ¶ 17 (1998) ("Paxson Atlanta").

close geographic proximity of the Duo County Communities and Bowling Green, and the abundance of local programming that WBKO directs at the Duo County Communities.

2. WBKO is geographically close to the Communities.

The Commission also examines the geographic proximity between a station and the cable communities at issue when assessing whether the station provides local service within the meaning of the statute.³¹ In this case, Russellville and Scottsville are located within 30 miles from WBKO's transmitter and Bowling Green, WBKO's city of license.³² In addition, the Duo County Communities are located between 60 and 80 miles from Bowling Green and WBKO's transmitter.³³ The distance between the Communities and WBKO are within the range that the Commission has found acceptable in adding communities to stations' markets or, analogously, in declining to delete communities from stations' markets.³⁴ In contrast, the FOX, ABC, CBS and NBC affiliates in the Nashville, Louisville, and Lexington DMAs that are considered "local" are all more than 50 miles, and in some cases more than 100 miles, from the Communities. Accordingly, WBKO's close proximity strongly suggests that WBKO provides local service to the Communities.

³¹ See *Mountain Broadcasting*, ¶ 10 ("[W]e look to . . . the station's proximity to the communities in terms of mileage . . .").

³² See Exhibit 1.

³³ *Id.*

³⁴ See, e.g., *Paxson Atlanta* (adding communities that were 50 miles away); *Burnham Broadcasting Company Bakersfield, California For Modification of Station KBAK-TV's ADI*, Memorandum Opinion and Order, 10 FCC Rcd 7117 (1997) (adding a community that was over 48 miles away); *Time Warner Cable Avenal, California For Modification of Television Broadcast Station KKAG's ADI*, Memorandum Opinion and Order, 11 FCC Rcd 8047, ¶ 8 (1996) (refusing to delete communities that were 60 miles from the station and 73 miles from the station's transmitter).

3. WBKO provides programming of local interest to the Communities.

Congress directed the Commission to “afford particular attention to the value of localism” when deciding a market modification petition.³⁵ Here, since Logan, Allen, Adair, Columbia, Russell and Warren counties are all located in Kentucky’s 1st United States Congressional District, WBKO’s political coverage of local, state and national politics is directly relevant to voters in the Communities.³⁶ Exhibit 17 contains a letter from Congressman James Comer, Kentucky’s 1st District Representative, in support of this Petition. Moreover, WBKO provides a substantial amount of local programming, including news programming, aimed at the Communities and their residents.

The RPB Community. As demonstrated in Exhibit 11, an analysis of WBKO’s website uncovered an extensive amount of news articles (detailing coverage of local programming) aimed at the Communities.³⁷ In June 2017 alone, WBKO covered a 400-mile yard sale that Russellville residents participated in, a shooting investigation, and information about a new tourism web page focused on the then-upcoming solar eclipse which passed over Russellville.³⁸ Furthermore, since October 1, 2015, WBKO has reported on hundreds of stories about Russellville.³⁹ This local coverage included highly important and timely messages such as informing parents about the location of the preschoolers who had to be relocated after a flash

³⁵ 47 U.S.C. § 534(h)(1)(C)(ii).

³⁶ See Exhibit 12 (Kentucky 1st District Congressional District Map). See also Exhibit 17; Exhibit 18 (Letters from Russellville Mayor and County Judge in support of Petition).

³⁷ Exhibit 11 (Summary Review of WBKO Coverage Since October 1, 2015).

³⁸ See Exhibit 13 (Examples of Weather Alerts and Stories Concerning the Communities).

³⁹ See Exhibit 11 (WBKO covered 370 stories that occurred in Russellville from October 1, 2015 through June 30, 2017 and an additional 266 stories in Logan County).

flood, alerting residents to a telephone scam, disseminating a missing person's report, and distributing multiple local weather alerts.⁴⁰ Additionally, WBKO covered Russellville's high school sports teams, crime, traffic crashes, and human interest stories about residents.⁴¹

The North Central Communities. WBKO provides a substantial amount of local programming aimed at the North Central Communities. The plethora of content focused on and valuable to North Central subscribers exemplifies "local service," further indicating that WBKO provides local coverage to the North Central Communities. As demonstrated in Exhibit 11, WBKO has covered nearly 400 events in Scottsville and, additionally, over 200 events in Allen County since October 2015.⁴² This included severe weather events, local high school sports teams, stories of interest about residents, local crime, matters affecting the local school district, and alerts about missing residents.⁴³ WBKO has also directed news and public interest coverage at Scottsville, including stories this past month on local charitable organizations, tourism, and the solar eclipse.⁴⁴

The Duo County Communities. As demonstrated in Exhibit 11, WBKO has covered a range of topics directed at the Duo County Communities since October 2015.⁴⁵ For example, WBKO has produced stories about Jamestown covering a range of topics from emergency

⁴⁰ Exhibit 13.

⁴¹ *Id.*

⁴² Exhibit 11.

⁴³ Exhibit 13.

⁴⁴ *Id.*

⁴⁵ Exhibit 11 (showing coverage of nearly 200 events in Columbia and Adair County, over 100 events in Russell Springs, Jamestown and Russell County, and 74 events in Burkesville and Cumberland County).

weather contact information and traffic accidents to city beautification efforts and tourism.⁴⁶ WBKO has also covered traffic crashes, local politics, high school sports, and crime in Russell Springs.⁴⁷ Russell Springs and Russell County residents have further benefitted from access to articles explaining an unexpected water shutoff, winter weather preparation taken by local schools, concerts being held in their home town, and a report about a missing person in the area and his eventual discovery.⁴⁸ Columbia and Adair County residents have received coverage from WBKO on topics ranging from high school sports and local politics to human interest stories about residents from that community.⁴⁹ WBKO also provided an alert to Columbia and Adair county residents concerning a missing person's report and publicized local traffic check points, information about the County voting to sell alcohol, new management of the local hospital, and a request for information to help solve a crime in the area.⁵⁰ Finally, Burkesville and Cumberland County residents received coverage from WBKO concerning an ongoing manhunt near their town, a local fair, local weather advisories, political matters such as the location of caucuses and voting locations, traffic accidents, local traffic checkpoints, and local high school sports teams.⁵¹

The foregoing brief examples of the abundant content focused on and valuable to residents in the Communities exemplify the type of "local service" WBKO provides, amply demonstrating that WBKO provides local coverage to the Communities. Accordingly, as

⁴⁶ Exhibit 13.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

exemplified by WBKO's over-the-air signal service area, its city of license, and its local interest news and programming, it is clear that WBKO provides coverage and other local service to the Communities, satisfying the second statutory factor.

D. No Other Stations Provide Local Coverage.

The fourth statutory factor focuses on whether any other station "eligible to be carried by a cable system in such community . . . 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."⁵² A search of in-DMA station websites shows little local programming aimed at the Communities. In particular, Nashville station websites show that while the Nashville stations offer some local coverage to Russellville, Scottsville and Burkesville, the coverage falls well short of the local service needed to adequately inform Russellville, Scottsville and Burkesville residents about local news and community affairs. This is not surprising given that subscribers in these communities are located over 50 miles from Nashville, Tennessee, in a different state, and on the northern fringe of the Nashville DMA, a large DMA that covers more than 40 counties from the southern part of Kentucky south to the Mississippi border.⁵³ Furthermore, since Louisville and Lexington stations are over 80 miles from Columbia, and Russell Springs and Jamestown, respectively, these station websites show even less programming directed at the

⁵² 47 U.S.C. § 534(h)(1)(C)(IV).

⁵³ See *Market Modifications and the New York Area of Dominant Influence, Petitions for Reconsideration and Applications for Review of: Cablevision Systems Corporation, Time Warner, WRNN-TV Associates Ltd., Mountain Broadcasting Corporation, Trinity Broadcasting of New York, Inc., Paxson New York License, Inc., WLNY TV, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 12262, ¶ 12 (1997) ("[T]he greater the distance between the cable community and the broadcaster, the less likely it is that the stations serve the local viewing audience from either a programming or technical perspective.").

Duo County Communities. Again, this coverage falls well short of the local service needed to adequately inform Duo County subscribers about local news and community affairs.

Although the Nashville, Louisville and Lexington stations might provide some limited coverage of the Communities, the Commission should not weigh this factor heavily. As the Media Bureau has explained, “Congress did not intend this [factor] to bar a [market modification] claim, but instead [this factor] was intended to enhance its claim where it could be shown that other stations do not serve the communities at issue.”⁵⁴ Here, the limited local coverage provided by the in-DMA stations does not diminish the fact that WBKO overwhelmingly provides more local coverage to the Communities. As such, the Commission should give more weight to the second statutory factor, and find that the Communities should be included in WBKO’s local market.

E. WBKO Has Viewership in the Communities.

The fifth and final statutory factor that the Commission must consider in a market modification proceeding involves “evidence of viewing patterns in the households that subscribe and do not subscribe to the services offered by [MVPDs] within the areas served by such [MVPDs] in such community.”⁵⁵ This factor requires Petitioners to demonstrate that WBKO

⁵⁴ *Seal Rock Broadcasters, LLC; For Modification of the Television Market of Television Station KCBA (TV), Salinas, California*, Memorandum Opinion and Order, 18 FCC Rcd 16262, ¶ 9 (2003); *KSBW License, Inc., For Modification Television Broadcast Station KSBW’s ADI*, Memorandum Opinion and Order, 11 FCC Rcd 2368 (1996) (“KSBW”) (“[W]e do not believe that Congress intended for the third criterion to operate as a general bar to a station’s ADI claim in every circumstance whenever other stations could also be shown to serve the communities at issue. Rather, we believe that this criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue.”).

⁵⁵ 47 U.S.C. § 534(h)(1)(C)(V).

achieves at least “moderate” viewership in the Communities.⁵⁶ The Commission has generally found “moderate” viewership to be met when a station has measurable viewing patterns.⁵⁷ Petitioners have included a Nielsen report illustrating the station’s ratings in the Kentucky counties that contain the Communities.⁵⁸ The report shows carriage from 2014, when Petitioners were still permitted to retransmit WBKO to their subscribers, and demonstrates that WBKO is measurably viewed in the Communities.

The RPB Community. Nielsen data shows that WBKO has a measurable audience in Russellville. Moreover, WBKO airs, as measured by Nielsen, by far the most watched local newscast in Logan County.⁵⁹ WBKO’s household share is 150 percent higher than the next station, even though Logan County is considered part of the Nashville DMA.⁶⁰

The North Central Communities. WBKO is measurably viewed in the North Central Communities. The Nielsen data included with this Petition shows that WBKO achieves over a 10 percent share in Allen County for its primary ABC feed and over a five percent share for its FOX-affiliated multicast.⁶¹ These shares are well above the viewership necessary for the

⁵⁶ See *Ackerley Media Group, Inc.; For Modification of the Television Market of Television Station KION (TV), Monterey, California*, Memorandum Opinion and Order, 18 FCC Rcd 16199, ¶ 10 (2003) (“Ackerley”), citing KSBW.

⁵⁷ See, e.g., *Commonwealth Broadcasting Group, Inc.; For Modification of the Greenwood/Greenville, Mississippi DMA*, Memorandum Opinion and Order, 25 FCC Rcd 213, ¶ 20, n.103 (2010) (the station demonstrated ratings shares and weekly cumulative ratings of 0/7, 1/34 and 1/25 in the relevant areas); Ackerley, ¶¶ 6, 11 (ratings shares were between two and three percent).

⁵⁸ Exhibit 14 (Summary of Nielsen Ratings for WBKO).

⁵⁹ Exhibit 15 (WBKO 2015 Market Analysis) and Exhibit 16 (2012 WBKO Market Analysis).

⁶⁰ The data obtained by Petitioners also shows that WBKO’s weekly cumulative viewership in Logan County is 39 percent. In other words, 39 percent of Logan County households view WBKO programming at least weekly. Exhibit 15.

⁶¹ Exhibit 14.

Commission to find that a community should be added to a station's market.⁶² Viewership data also demonstrates that more households in Allen County tune to WBKO's local 5pm and 6pm newscasts than any news broadcast by Nashville stations.⁶³

The Duo County Communities. WBKO is measurably viewed in the Duo County Communities. The Nielsen data included with this Petition as Exhibit 14 shows that WBKO achieves as high as a 1.5 percent share in Russell County for its primary ABC feed.⁶⁴ Viewership data also demonstrates that WBKO's local 5pm, 6pm and 10pm newscasts are the most watched local newscasts in Adair County, and WBKO's weekly cumulative viewership in Russell County is 24 percent.⁶⁵

Based upon the foregoing evidence, Petitioners have proven that each of the five statutory factors is satisfied. Because this evidence unequivocally establishes that WBKO is local to the Communities, the Commission should promptly grant the market modification requested here.

V. AN ECONOMIC CONNECTION EXISTS BETWEEN WBKO'S CITY OF LICENSE AND THE COMMUNITIES

The Commission recognizes that evidence in addition to the statutory factors helps define the scope of a station's market.⁶⁶ In the case of WBKO, an important additional consideration is

⁶² See *supra* note 57.

⁶³ Exhibit 15 and Exhibit 16. In addition, the data obtained by Petitioners also shows that WBKO's weekly cumulative viewership in Allen County (i.e., the percent of Allen County households that view WBKO programming at least weekly) is 54 percent. Exhibit 15.

⁶⁴ Exhibit 14. The Nielsen Report shows that data for Cumberland County falls below the minimum sample size. This is likely due to the small number of diaries in this unmetered area. See *id.*

⁶⁵ Exhibit 15 and Exhibit 16.

⁶⁶ See, e.g., *Massillon Cable TV, Inc.*, 26 FCC Rcd 15221, ¶ 3 (2011) (quoting legislative history of 1992 Cable Act that statutory factors "are not intended to be exclusive"); *Paxson Atlanta*, ¶ 29 ("The factors specified in Section 614(h)(1)(C)(ii) of the Communications Act do not purport to be exclusive and thus other evidence may be considered that is helpful in defining the scope of

the strong economic connection between WBKO's community of license, Bowling Green, Kentucky, and the Communities.

Key attributes of an economic connection between a station's city of license and communities in its market include proximity and convenient transportation routes.⁶⁷ Here, Allen County is considered part of the Bowling Green Metropolitan Statistical Area ("MSA").⁶⁸ Allen, Logan and Warren counties (Bowling Green's county) are also all part of the South Central Kentucky Economic Development Partnership.⁶⁹ Labor statistics further illustrate the economic connection between Bowling Green and the Communities. Census data reveals that a substantial percentage of people living in the Communities commute to work in Bowling Green (and vice versa).⁷⁰ This is not surprising given that U.S. highways and Interstate 65 connect Bowling Green with each community, allowing residents in Bowling Green and each community to live, work and travel the area with relative ease. Moreover, the closest major hospitals to each community are located in Bowling Green, and Bowling Green also has extensive medical facilities that residents in Allen, Logan, Adair, Russell and Cumberland counties rely on. All

the markets of the stations involved); *Adelphia Cablevision Associates, L.P.; For Modification of the ADI of WMFP(TV)*, Lawrence, Massachusetts, Memorandum Opinion and Order, 14 FCC Rcd 7686, ¶ 18 (1999) ("[T]he Commission's decision ... takes into consideration the economic ties between the communities ... and the subject stations.").

⁶⁷ *Armstrong Utilities, Inc.; Petition for Modification of the Philadelphia, Pennsylvania DMA*, Memorandum Opinion and Order, 21 FCC Rcd 13475, ¶16 (2006) (noting two-hour drive time between broadcaster city of license and cable communities as a factor supporting exclusion of area from station's local market).

⁶⁸ See https://www2.census.gov/geo/maps/metroarea/stcbsa_pg/Feb2013/cbsa2013_KY.pdf. The remaining counties, while not considered part of the Bowling Green MSA, are not assigned to any other MSA.

⁶⁹ See <http://www.southcentralky.com/>.

⁷⁰ See <http://kwib.ky.gov/WIOA/SteeringCommittee/20150123/CommutingPatternsData.pdf>. See also Exhibit 19 (Logan, Allen, Adair, Cumberland and Russell County Workforce Profiles).

affected counties and Bowling Green are part of the same National Weather Service office, a key distinction when it comes to ensuring residents are aware of severe weather events.⁷¹

The local Bowling Green newspaper also demonstrates the economic connection between Bowling Green and the Communities. The Bowling Green Daily News is the most widely distributed daily newspaper in South Central Kentucky and extensively covers news, sports and events in Allen, Logan, Adair, Russell and Cumberland counties. There are also many colleges in Bowling Green and the Communities, including Western Kentucky University in Bowling Green with a student body of more than 20,000. A substantial number of Western Kentucky alumni remain in the surrounding counties after graduation.⁷²

The economic connection between Bowling Green and the Communities corroborates the analysis of the statutory factors – the Communities are local to WBKO’s market, and the evidence presented here fully supports the requested market modification.

VI. CONCLUSION

Based on the evidence presented in this Petition, Petitioners have met all statutory criteria for the Commission to find that WBKO is local to the Communities. Moreover, additional factors weigh further in favor of including the Communities in WBKO’s market. The Commission should expeditiously grant this Petition.

⁷¹ Logan, Allen, Adair, Cumberland and Russell Counties are all part of the Louisville National Weather Service Forecasting Office. See <http://www.weather.gov/lmk/>.

⁷² As of 2016, Western Kentucky alumni data showed 1,740 Western Kentucky alumni living in Logan County, 1,213 in Allen County, 594 in Adair County, 352 in Cumberland County and 500 in Russell County. See https://www.wku.edu/instres/documents/06_development.pdf.

The signatory has read the Petition and, to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, and is not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Scott Friedman", written over a horizontal line.

By:

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Russellville
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County Telecom
North Central Telephone Cooperative, Inc.

CERTIFICATE OF SERVICE

I, Rachel Kimura, paralegal with Cinnamon Mueller, hereby certify that a true and correct copy of the foregoing Petition for Special Relief was delivered by me to the United States Postal Service on August 23, 2017 to be delivered to the person listed below via first-class mail, postage-prepaid:

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WBKO
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Scripps Broadcasting Holdings LLC
C/O Scripps Media Inc.
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WTVF
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Nashville, TN 37219

WZTV Licensee, LLC
C/O Miles S. Mason, Pillsbury Winthrop
1200 Seventeenth St, NW
Washington, DC 20036

WZTV
631 Mainstream Drive
Nashville, TN 37228

Meredith Corporation
WSMV-TV
1716 Locust St.
Des Moines, IA 50309

WSMV-TV
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WTVQ-TV, LLC
27 Abecorn St.
Savannah, GA 31401

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4370 Peachtree Road NE, Suite 400
Atlanta, GA 30319

WDKY Licensee, LLC
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Washington, DC 20036

WLEX Communications, LLC
P.O. Box 1457
Lexington, KY 40591

Sander Operating Co. LLC dba WHAS TV
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Hearst Properties Inc.
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P.O. Box 1800
Raleigh, NC 27602

Independence Television Company
624 W. Muhammad Ali Blvd.
Louisville, KY 40203

WAVE-TV
725 South Floyd Street
Louisville, KY 40203

City of Jamestown
Attn: Tyler McGowan, City Clerk
112 North Main Street
Jamestown, KY 42629

WTVQ-DT
P.O. Box 55590
Lexington, KY 40555

WYMT
199 Black Gold Blvd.
Hazard, KY 41701

WDKY
836 Euclid Ave
Suite 201
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WLEX
1065 Russell Cave Road
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P.O. Box 430
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City of Russell Springs
Attn: Wendy Burton, City Clerk
487 Main St
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City of Columbia
Attn: Rhonda Loy, City Clerk
116 Campbellsville Street
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City of Burkesville
Attn: Brenda Spears, City Clerk
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City of Scottsville
Attn: Gayle Davis, City Clerk
201 West Main Street
Scottsville, KY 42164

City of Russellville
Bob Riggs, City Clerk
168 South Main Street
Russellville, KY 42276

Allen County
Attn: Elaine Williams, County Clerk
201 West Main Street, Room 6
Scottsville, KY 42164



Rachel Kimura

Paralegal

*via email only

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|--|--|---|
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| (5) STREET ADDRESS LINE NO. 2 Suite 1020 | | |
| (6) CITY Chicago | (7) STATE IL | (8) ZIP CODE 60601 |
| (9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 312-3723930 | | (10) COUNTRY CODE (IF NOT IN U.S.A.) US |
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| (13) APPLICANT NAME Russellville Plant Board; North Central Telephone Coop; | | |
| (14) STREET ADDRESS LINE NO. 1 165 E Fourth | | |
| (15) STREET ADDRESS LINE NO. 2 PO Box 418 | | |
| (16) CITY Russellville | (17) STATE KY | (18) ZIP CODE 42276-4018 |
| (19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 270-7260021 | | (20) COUNTRY CODE (IF NOT IN U.S.A.) US |
| FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED | | |
| (21) APPLICANT (FRN) 0001783612 | (22) FCC USE ONLY | |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | |
| (23A) FCC Call Sign/Other ID WBKO | (24A) Payment Type Code(PTC) TQC | (25A) Quantity 1 |
| (26A) Fee Due for (PTC) \$1,495.00 | (27A) Total Fee \$1495.00 | FCC Use Only |
| (28A) FCC CODE 1 N/A | (29A) FCC CODE 2 N/A | |
| | | |
| (23B) FCC Call Sign/Other ID | (24B) Payment Type Code(PTC) | (25B) Quantity |
| (26B) Fee Due for (PTC) | (27B) Total Fee | FCC Use Only |
| (28B) FCC CODE 1 | (29B) FCC CODE 2 | |