

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Petition of	)	
	)	
Franklin County, Georgia	)	
	)	
For Modification of the Television Market	)	MB Docket 18-158
of Station WSB-TV (ABC), Atlanta, GA	)	File No. CSR-8957-A
	)	
For Modification of the Television Market	)	MB Docket 18-159
of Station WXIA (NBC), Atlanta, GA	)	File No. CSR-8958-A
	)	
For Modification of the Television Market	)	MB Docket 18-160
of Station WAGA (FOX), Atlanta, GA	)	File No. CSR-8959-A
	)	
For Modification of the Television Market	)	MB Docket 18-161
of Station WGCL (CBS), Atlanta, GA	)	File No. CSR-8960-A

**OPPOSITION TO APPLICATION FOR REVIEW**

The Franklin County Board of Commissioners (“the County”), through staff and with the support of its citizens, hereby opposes the Application for Review (“AFR”) filed by WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina (“WYFF”); Meredith Corporation, licensee of FOX affiliate WHNS(TV), Greenville, South Carolina (“WHNS”); Nexstar Broadcasting, Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina (“WSPA”); and WLOS Licensee LLC, licensee of WLOS(TB), Asheville, North Carolina (“WLOS”) (collectively, the “Greenville Stations”) of the Federal Communications Commission (“FCC”) Media Bureau’s (“Bureau”) September 17, 2018 Memorandum Opinion and Order (“the Order”) granting four satellite market modification petitions filed by the County (“the Petitions”) to add Franklin County to the local television

markets of four Atlanta television stations, WXIA, WAGA, WGCL, and WSB-TV, (collectively, the “Atlanta Stations”).

The FCC adopted rules to implement Section 102 STELA Reauthorization Act of 2014 (STELAR) and enable satellite carriers to “better serve the interests of their local communities.”<sup>1</sup> Furthermore, the FCC stated “our rules implement the STELAR to achieve the goal of better service for consumers.”<sup>2</sup>

On September 17, 2018, the Bureau adopted an Order modifying the local market of the Atlanta network stations that paves the way for satellite carrier to bring long-desired Georgia-oriented programming to Franklin County. The Order carried out Congress’ explicit intent in STELAR to empower the FCC to address the plight of orphan counties<sup>3</sup> and their inability to receive in-state programming, and did so in a manner consistent with the Commission’s own rules and precedent. The Commission should reject the self-serving attempt by the Greenville Stations to reverse that pro-consumer decision.

**I. THE BUREAU APPROPRIATELY CONSIDERED AND WEIGHTED EVIDENCE INCLUDING CITIZEN COMMENTS WHICH EXPRESS THE PLIGHT OF FRANKLIN COUNTY, AN ORPHAN COUNTY**

The legislative intent of Congress was to address the plight of orphan counties and its residents. The FCC’s rules sought to better serve the interest of local communities and facilitate better service for consumers. Who best to convey the best interest and desired of the local communities than the local community itself. As noted in the Order, the *STELAR Market*

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<sup>1</sup>Television Market Modification; Statutory Implementation; 47 CFR Part 76 Fed. Reg. Vol. 80, No. 191 (October 2, 2015) ¶ 1

<sup>2</sup> Id. at 1

<sup>3</sup> Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong, S. Rep. No. 113-322 (2014) (Senate Commerce Committee Report)

*Modification Report and Order* made clear, comments from local residents and their official representatives, are “enormously helpful in demonstrating a nexus.”<sup>4</sup> Yet, the AFR attempts to minimize and even disregard the overwhelming and compelling evidence brought forth by the citizens and government officials elected to represent the citizens. Furthermore, the AFR charges that the Bureau acted impermissibly in regards to accepting and considering public comment despite the consideration of public comment is in agreement with the FCC’s rules<sup>5</sup>.

The AFR implies that the 563 respondents to the County’s online survey was insignificant as it represents less than 3% of the County’s population. In this instance, the AFR and the Greenville Stations fail to recognize the composition of the local market they serve.

The Franklin County Commissioners sought a means to collect data and solidify views and opinions express by their constituents. A survey was conducted through the Survey Monkey platform and hosted through the County’s relatively newly revised website (therefore new to the Franklin County Citizens). The Survey process received limited coverage through local means including the legal organ (weekly newspaper) and local radio station. Without any political advertisements, televised marketing or news, town hall meetings, etc., the Commissioners garnered a significant response. A summary of the results of the survey was submitted as part of the Petitions. A recent data download of the survey results directly from Survey Monkey is presented as EXHIBIT A.

In comparison to the Franklin County November 3, 2015 election (EXHIBIT B), the number of survey responses comprised 37% of the total number of votes in the 2015 election of

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<sup>4</sup> 30 FCC Rcd at 10417, n.61 (“[L]ocal government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue”).

<sup>5</sup> AFV at IV ¶C

which a six-year sales tax referendum and general obligation debt committed (the only GO debt for Franklin County) were on the ballot. Considering some citizens have access to cable options, opt to forego television for financial and other reasons, and some survey responses may represent citizens who share a household satellite subscription, the response was considered an overwhelming and accurate depiction of Franklin County by the official elected to represent the citizens.

The AFR implies the citizens comments/complaints regarding lack of access to certain Georgia-focused sports programming are not supported by the facts<sup>6</sup>. The AFR leans on evidence of the sports teams' game broadcast on alternate channels. The world of sports is driven by economic factors. Games will be broadcast on the most economically advantageous platform. However, not everyone is afforded the opportunity of time to watch the games in real-time or premium stations. The AFR fails to provide any evidence that news programming regarding the Georgia-based sports teams (such as scores, highlights, schedules, player status) is provided by the Greenville Stations. Therefore, the concerns and comments of citizens are not misplaced or in contradiction of reality as implied by the AFR.

The AFR makes claims that the citizen comments “focus more on a desire to receive programming relating to Georgia rather than Franklin County specifically”<sup>7</sup>. The AFR further claims citizens comments expressing desire for general Georgia news should be deemed “much less ‘helpful’ in considering local nexus.” This statement disregards the fact that Georgia news IS Franklin County news. Georgia related news such as coverage of the Georgia governor and other political offices, legislation, and taxes are imperative to the daily lives of Franklin County citizens.

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<sup>6</sup> AFR IV ¶ C

<sup>7</sup> AFR IV ¶ A

The AFR attempts to minimize or disregard the fact that Franklin County citizens have a profound interest in receiving information about the same political and public affairs coverage as every other Georgian. Citizen comments submitted in the Petitions confirm the desire for Georgia programming—local and general—as they are one in the same.

In describing a statutorily-required FCC report on better promoting localism in serving orphan counties, the Senate Commerce Committee clarified that it “intends that the FCC’s report will interpret local programming to include not only television programming (in particular news, sports, weather, and other programming containing content relevant to a consumer’s daily life) originating from and about the DMA in which a consumer resides, but also television programming originating from and about the state in which a consumer resides.”<sup>8</sup>. To the extent the Bureau considered citizen comments related to local and/or general Georgia coverage that are important, it was directly following Congress’ instructions in terms of how to evaluate local service to orphan counties.

In the original Petitions, Franklin County shows it is deprived equally of *both* kinds of programming. The lack of coverage of Georgia political news is evident in the most recent election results. In an election that yielded record-breaking turnout, the abstention of votes on key areas was notable. In total, 8,171 votes were cast in the November 6, 2018 election. Yet, the total votes for Georgia Constitutional Amendments 1 through 5 were significantly lower and varied (7,849; 7,694; 7,659; 7,798 and 7,693, respectively)<sup>9</sup> and election results varied from statewide results.<sup>10</sup>

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<sup>8</sup> Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113<sup>th</sup> Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*) (emphasis added)

<sup>9</sup> See EXHIBIT C

<sup>10</sup> See EXHIBIT D

Statewide referendums can have significant local ramifications. As the largest employer in the County, the Franklin County Board of Education is impacted by state legislation. The Georgia Constitutional Amendment 1 in 2016, referred to as the Opportunity School District, would have had a tremendous impact on the County's local system. The Greenville stations did not cover this topic did political advertisements permeate the airwaves in the Greenville market. Franklin County citizens relied on traditional print media, word of mouth, and grassroots movements to educate on the subject.

Furthermore, political topics and legislation of a "general Georgia" nature have a local impact in Franklin County. A small sampling of issues of concern to Georgians in Franklin County include topics such as Georgia's Hands-Free Law, medical marijuana, transportation funding, and rural hospital tax credits. The AFR attempts to discredit Georgia news to Georgia viewers as less important in determining localism.

## **II. THE BUREAU APPROPRIATELY ANALYZED THE PETITION AND FACTORS IN ACCORDANCE WITH THE FCC'S RULES AND PROCESSES**

The AFR claims the Order failed "to properly evaluate, credit, and weight the five statutory factors."<sup>11</sup> Furthermore, the AFR claims the Order improperly weighted the third factor, and the Bureau allowed this factor to "trump" all other objective evidence. These assertions posed in the AFR is both an inaccurate description of the Bureau's analysis in the Order and ignores how Congress intended the satellite market modification framework to operate.

According to the FCC policy, "the five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a community should be included or excluded from a local market. The importance of particular factors will vary depending on the circumstance of the

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<sup>11</sup> ARV at IV

case.” In addition, the FCC states, “the Commission may also consider other relevant information.”<sup>12</sup>

The Bureau examined each of the five statutory factors with respect to each of the Atlanta stations at issue, which represents paragraphs 19-29 of the Order. The Bureau weighted each of those factors as supporting, opposing, or having no effect on the underlying market modification petition. The Order did not weight the in-state factor (factor three) to the exclusion of the other four. The Order is also consistent with the Commission’s rules that stated “each petition for market modification will turn on the unique facts of the case, and there is no single universal way to weight the statutory factors.”<sup>13</sup>

The Bureau faithfully followed the analysis set forth in STELAR and its implementing rules in the manner than Congress intended. That analysis led to the Bureau’s pro-consumer determination, and the Order should stand.

### **III. THE BUREAU’S ANALYSIS OF THE ADEQUACY OF LOCAL SERVICE WAS CONSISTENT WITH STELAR’S MANDATE TO ADDRESS THE INFORMATION NEEDS OF ORPHAN COUNTIES**

The AFR claims that the “availability of some local programming targeted to the County by the [Greenville] Stations should at least be afforded some counterweight in the overall weighing of the five factors.”<sup>14</sup> In addition, the AFR claims that the third factor should not be assigned the “greatest possible” weight as the Greenville stations provide *some* in-state programming.<sup>15</sup>

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<sup>12</sup> <https://transition.fcc.gov/bureaus/mb/policy/STELAR-Market-Modification.pdf>

<sup>13</sup> Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014, Report and Order, MB Docket No. 15-71, 30 FCC Rcd 10406, 10421, ¶ 8 (2015) (“STELAR Market Modification Report and Order”)

<sup>14</sup> AFV at IV ¶ D

<sup>15</sup> AFV at IV ¶ B (Emphasis Added)

Combined, the four Greenville stations highlighted a total of 51 news stories over a six to 31-month period<sup>16</sup>, of which only 31 were covered on-air.<sup>17</sup> Averaged across the time-period, the average number of local coverage stories by the Greenville Stations was less than 1 story per month (~.8 stories/month). With the reduction of stories with an explicit Carolina affiliation, the average coverage per month is reduced further to just 0.61 stories per station per month. As noted in the Order<sup>18</sup>, the County provided evidence of 12 local coverage stories by the Atlanta Stations over a six-month period--approximately 0.5 stories each month. This list is just a small sample submitted in Opposition to the Greenville Station's Opposition. This number disregards political stories that have a profound impact on Franklin County and should be considered local coverage as well.

A further review of the highlighted news coverage submitted by the Greenville Stations yields the following points<sup>19</sup>:

- 43% of the stories identified were covered by one or more of the Atlanta Stations or other Georgia Stations (one story covered by a Macon, Georgia affiliate)
- 33% of the news stories had a **North/South Carolina affiliation**
- 24% of the stories pertain to December 2016 Officer Shooting of which the suspect involved in the incident was from **South Carolina**
- 10% of the stories were related to active man-hunts and given the geographic proximity to the state border, would be **of interest to South Carolina** residents
- 8% of the stores were generalized Atlanta/Georgia coverage

Recent news coverage (or lack thereof) shows the continued shortfall of local coverage by the Greenville stations. EXHIBIT G shows the absence of Local/County Election results by each

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<sup>16</sup> See Joint Opposition to Petitions for Special Relief, MB Docket Nos. 18-158, 18-159, 18-160, and 18-161 (2018) Attachments 1 and 2

<sup>17</sup> Id. Note: Some Greenville Stations did not provide On Air data and was assumed to be on-air unless evidence submitted indicated otherwise.

<sup>18</sup> Order at 23

<sup>19</sup> See EXHIBITS E and F



of the Greenville stations in the most recent November 6, 2018 election. The Greenville stations filed, and were granted, an Extension of Time to file the AFR which overlapped this November election cycle. As of the date of filing this opposition, the Greenville Stations have not reported on the Georgia run-off election or the start of the Early Voting process. The AFR claims that their coverage of some local programming should be afforded some weight in the FCC's analysis all the while failing to cover the issues of immediate importance to the County.

Again, the intent of Congress and the FCC is to “better serve” and “provide better service” to local communities. While the Greenville stations provided evidence of coverage of certain news stories, an analysis of the exhibit supports citizens’ comments regarding the “inadequacy” of the Greenville Stations’ coverage. The recent lack of coverage of important election information further solidifies the need for better service of the local community as evidence by the community’s comments. The Bureau was correct in its assignment of weight pertaining to the third factor—access to in-state programming—based on the evidence that county residents have “little access to such in-state programming.”<sup>20</sup> Furthermore, the FCC should not afford any weight to the insignificant local coverage submitted by the Greenville Stations.

#### **IV. THE AFR ATTEMPTS TO MISCONSTRUE THE LACK OF EXPLICIT SUPPORT FROM THE ATLANTA STATIONS AS A DETERMINING FACTOR IN THE PETITION**

The AFR contends that the lack of support or cooperation of the Atlanta Stations should be weighted as a factor against market modification.<sup>21</sup> This assertion is not supported by the STELAR, FCC Rules, or policy. In accordance with the FCC guidance which “encourages county petitioners to ask for the cooperation of the station they want carried via satellite,”<sup>22</sup> the County,

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<sup>20</sup> STELAR at ¶ 18

<sup>21</sup> AFV at IV ¶ D

<sup>22</sup> <https://transition.fcc.gov/bureaus/mb/policy/STELAR-Market-Modification.pdf>

in good-faith, reached out to each of the Atlanta Stations. In addition, the County provided copies of each Petition to the impacted Atlanta Stations. There was NO opposition by the Atlanta Stations as a result of the County's inquisition prior to filing the Petitions. In addition, there was no Atlanta Station opposition during the FCC public comment period or the 120-day period between Petition and Order. It is notable that one Atlanta Station did broadcast an on-air story and follow-up regarding the Franklin County Petition and result.<sup>23</sup> Additionally, the Joint Opposition acknowledges that Meredith Corporation is the licensee, owner, and operator of one of the Atlanta Stations and the sister Greenville station.<sup>24</sup> An explicit support for modification by the Atlanta station will be in direct contradiction to the Joint Opposition filed by its own owner/operator.

The FCC acknowledged that the "ability of the market modification rules to successfully address the problem of consumer access to in-state stations will depend in large part on broadcasters". Furthermore, the FCC "strongly urge[s] broadcasters and satellite carriers to work together to provide relief to consumers and *achieve the goals of the STELAR*."<sup>25</sup>

The introduction of local governments as petitioners in a market modification request is specific to the satellite market modification request and a result of STELAR. Local governments face unique challenges, but are best positioned to advocate for the "plight of the orphan county" and its residents. The lack of a letter from support desired stations should not be weighted against the local government's Petition especially when there is no support in the rules for such action. The assertion by the AFR is erroneous and unfitting in the context and process ordered by the FCC.

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<sup>23</sup> <https://www.youtube.com/watch?v=BgHvgTlgqqA>

<sup>24</sup> See Joint Opposition at ¶ C

<sup>25</sup> Television Market Modification; Statutory Implementation; 47 CFR Part 76 Fed. Reg. Vol. 80, No. 191 (October 2, 2015) ¶ I (emphasis added)

## V. THE BUREAU DID NOT ERR IN ITS DECISION TO WAIVE CERTAIN EVIDENTIARY REQUIREMENTS

While the FCC *may* dismiss Petitions without prejudice for lack of evidence<sup>26</sup>, the FCC may waive the requirement to submit certain evidence. As noted in the Order<sup>27</sup>, this is particularly true if the FCC is in a position “to resolve the petition without such evidence.”<sup>28</sup> The Bureau specifically waived the requirement to file channel line-up cards and published audience data. The Bureau determined it had ample evidence to render a decision without the line-up cards or audience data.<sup>29</sup>

In the Petitions, the County submitted that there “has not been historic carriage of the Station in the County by satellite carriers, and therefore no evidence is being submitted for this element with respect to satellite.”<sup>30</sup> Rural areas, like Franklin County, are limited in the “last-mile infrastructure” that delivers broadband and cable services. However, there is a pocket of service area that is covered by a cable service provider. The channel lineup card for the lucky few with cable access shows that the customer can receive three of the four Atlanta Stations in Franklin County (EXHIBIT H). This information was not submitted with the original petition as the County misunderstood the cable line up request for a *satellite* market modification request.

## VI. CONCLUSION

The AFR is an attempt to maintain the status quo of inadequate local service and lack of in-state broadcasting to the citizens of Franklin County. The AFR attempts to compel the FCC to overturn the Order as issued by the Bureau who faithfully and accurately followed the procedure

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<sup>26</sup>STELAR Market Modification Report and Order, 30 FCC Rcd at 10424, ¶ 22, (emphasis added)

<sup>27</sup> Order at II ¶ 10

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

<sup>29</sup> Order at 14 (emphasis added)

<sup>30</sup> Petitions at III ¶ 5

as set by the FCC and acted in a manner and intent of to serve “the intent of Congress in enacting Section 338(l) [to] provide the petitioning orphan county with the access to in-state programming.”<sup>31</sup> The AFR disregards without any justification the evidence provided by Franklin County to address the five statutory factors required by STELAR and the Commission’s rules, and attempts to dismiss the significance of the in-state factor, public comment, official representative support, and lack of adequate in-state coverage by the Greenville Stations.

The citizens of Franklin County have exercised great patience in working through the change in law via the STELA Reauthorization Act of 2014, the defining of the policies and procedures to implement that law, and the actual petition process for market modification. The release of the Bureau’s Order was viewed as a great accomplishment and great relief after many, many years of continued efforts to bring citizens the in-state broadcasting they have long desired. The AFR is a self-serving attempt that disregards the plight of the citizens of the Franklin County to engage with their home state and receive better service and in-state programming.

For the foregoing reasons, Franklin County urges the Commission to deny the AFR in an expeditious manner and allow the Bureau’s Order to stand.

Respectfully submitted,

FRANKLIN COUNTY BOARD OF COMMISSIONERS

A handwritten signature in black ink, appearing to be "Beth Thomas", written over a horizontal line.

Beth Thomas, County Manager

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<sup>31</sup> Order at IV