

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

Petition of:)	
)	
Armstrong Utilities, Inc.)	
)	
for Modification of the DMA Market of)	
Television Station WACP to Exclude the)	
Communities of:)	CSR-_____
)	
Oxford, PA)	PA1995
East Nottingham Twp, PA)	PA1994
Elk Twp, PA)	PA3098
Highland Twp, PA)	PA3096
Londonderry Twp, PA)	PA3095
Lower Oxford Twp, PA)	PA2695
Upper Oxford Twp, PA)	PA3099
West Fallowfield Twp, PA)	PA3097
West Nottingham Twp, PA)	PA2705
)	

PETITION FOR SPECIAL RELIEF

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September 26, 2013

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PETITION FOR SPECIAL RELIEF

I. INTRODUCTION AND SUMMARY

Armstrong Utilities, Inc. (“Armstrong”) seeks modification of WACP’s market to exclude nine local franchise areas¹ (“Communities”) on the western edge of the Philadelphia Designated Market Area (“DMA”). Ample evidence shows that the station is not local to the Communities, including:

- WACP fails to place the required service contour over the Communities.
- WACP does not provide any programming directed at the Communities.

¹ The nine local franchise areas are East Nottingham Twp, Elk Twp, Highland Twp, Londonderry Twp, Lower Oxford Twp, Oxford, Upper Oxford Twp, West Fallowfield Twp, and West Nottingham Twp.

- At least five local stations carried by Armstrong in the Communities cover issues of concern to the Communities and provide carriage and coverage of sporting events and other events in the Communities.
- WACP has no history of carriage on Armstrong's system serving the Communities.
- WACP has no reportable ratings in cable or noncable households in Communities.
- There is no economic connection between the Communities and Atlantic City, WACP's community of license.

In short, WACP fails to meet any of the statutory criteria for status as a local station, and additional factors weigh further in favor of excluding the Communities from WACP's market.

II. BACKGROUND

Armstrong Utilities, Inc., the System, and the Communities. Armstrong operates 15 cable systems in four states, serving primarily smaller communities and rural areas. This Petition involves Armstrong's Oxford, Pennsylvania system ("System"). Armstrong has operated the Oxford system since 1981. The System's service area includes the far western corner of the Philadelphia DMA, serving about 5,400 customers residing in the Communities, all of which are located in Chester County, PA.²

The System's headend is about 62 miles from WACP's transmitter and 88 miles from Atlantic City, the station's city of license. Exhibit 2 contains a map depicting the Oxford system, showing the approximate distances between the Communities, WACP's transmitter, and WACP's community of license.

WACP. According to Warren's Online Cable Factbook,³ WACP is a commercial broadcast station licensed to Western Pacific Broadcast, LLC, and transmitting on channel 4 from Atlantic City, New Jersey in the Philadelphia DMA. WACP has never been carried on the Oxford system. WACP's community of license, Atlantic City, New Jersey, is more than 81 miles from the nearest of the Communities.⁴

² The System also serves communities in Cecil County, MD (Baltimore DMA) and York County, PA (Harrisburg-Lancaster-Lebanon-York, PA DMA). These communities are not relevant for this Petition.

³ Warren Communications News, Advanced TVFactbook, www.advancedtvfactbook.com (subscription required).

⁴ See Exhibit 2, Map Depicting Oxford System, WACP City of License, and WACP Transmitter.

Must Carry Complaint. In December 2012, WACP filed a must carry complaint against Armstrong.⁵ Armstrong opposed the complaint on grounds that the signal failed to deliver a good quality signal to Armstrong's headend.⁶ The Opposition included a complete signal strength test report, showing WACP failed to deliver the required signal level.⁷ Communication between Armstrong's Vice President of Engineering, Mr. Edgar E. Hassler, Jr., and WACP's consulting engineer followed, resulting in the installation at Armstrong's headend of an amplifier and filter selected by WACP's engineer.

The equipment provided by WACP only served to amplify a poor quality signal, resulting in grossly substandard picture quality. Following the equipment installation and additional testing, Armstrong filed a Supplemental Opposition in the must carry case.⁸ The Supplemental Opposition contains detailed evidence, including multiple screen shots and digital signal analysis reports, all showing the poor quality of WACP's signal at the Oxford headend.⁹ We append that filing as Exhibit 3. It provides important background information and evidence showing the

⁵ *Carriage Complaint Against Armstrong Utilities, Inc. by Western Pacific Broadcast, LLC With Respect to Carriage Within the Philadelphia, PA Designated Market Area of Local Commercial Television Station WACP, Licensed to Atlantic City, New Jersey, CSR-8752-M, Petition for Special Relief by Order of Carriage* (filed Dec. 6, 2012) ("WACP Must Carry Complaint").

⁶ *Carriage Complaint Against Armstrong Utilities, Inc. by Western Pacific Broadcast, LLC With Respect to Carriage Within the Philadelphia, PA Designated Market Area of Local Commercial Television Station WACP, Licensed to Atlantic City, New Jersey, CSR 8752-M, Opposition of Armstrong Utilities, Inc.* (filed Jan. 4, 2013) ("Opposition").

⁷ *Id.*, Exhibit 6.

⁸ *Carriage Complaint Against Armstrong Utilities, Inc. by Western Pacific Broadcast, LLC With Respect to Carriage Within the Philadelphia, PA Designated Market Area of Local Commercial Television Station WACP, Licensed to Atlantic City, New Jersey, CSR 8752-M, WACP Must Carry Complaint, Supplemental Opposition of Armstrong Utilities, Inc.* (filed June 28, 2013) ("Supplemental Opposition"), appended as Exhibit 3.

⁹ Supplemental Opposition at 6-11 & Engineering Statement, Exhibits 1-4 (screen shots showing poor picture quality after installing equipment requested by WACP).

awful quality of WACP's signal at the Oxford headend, all of which supports excluding the Communities from WACP's market.

As of the date of this Petition, the complaint remains pending.

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 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 provided that the Commission may:

with 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.¹³

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

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*, MM Docket No. 93-8, Report and Order, 8 FCC Rcd 5321 ¶ 22 (1993) (emphasis added).

¹³ 47 U.S.C § 534(h)(1)(C)(i).

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;
3. 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
4. Evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.¹⁴

Applying the four factors to this case unequivocally establishes that WACP station is not local to the communities. The Media Bureau should promptly grant the market modification requested here and dismiss WACP's must carry complaint.

IV. WACP IS NOT LOCAL TO THE COMMUNITIES

We begin our analysis with the second statutory factor, as WACP's complete lack of coverage or local service should decide the case. Evaluation of the first, third, and fourth factors follows that. We conclude with a discussion of additional factors, mainly the complete lack of economic connection between the Communities and Atlantic City.

¹⁴ 47 U.S.C § 534(h)(1)(C)(ii)(I)-(IV).

A. WACP fails to provide any coverage or local service to the Communities.

1. All of the Communities fall outside WACP's Grade B Contour.¹⁵

The Commission has repeatedly emphasized that failure to provide Grade B coverage is a central factor excluding communities from a station's market.¹⁶ In a recent market modification case involving WACP, *WACP v. Service Electric*, the Bureau expressly relied on this policy in excluding 62 communities from WACP's market.¹⁷ The Bureau should reach the same result here. As discussed below, none of the communities is within WACP's service contour.

Exhibit 4 contains a broadcast engineering analysis by Meintel, Sgrignoli & Wallace ("MSW Report").¹⁸ The MSW Report includes an analysis of WACP's service contour. The MSW Report concludes that WACP fails to place a Grade B over any of the communities:

Analysis conducted by MSW revealed that the WACP-DT Noise Limited Contour does not, in fact, encompass the Armstrong Head-End location at Oxford, PA. Utilizing the azimuth pattern published by the manufacturer of the WACP-DT antenna (Jampro) model JHD-LV2 (3 around panel) a map as well as point-to-point terrain profile were generated using the FCC OET-69 prediction methodology.

Although, the FCC's CDBS (Consolidated Data Base System) lists the antenna parameters for WACP as being "omni," the antenna employed by WACP-DT does not exhibit a completely omni-directional azimuth pattern. The antenna is a panel type antenna which is comprised of many panels arranged around the tower faces as well as panels stacked vertically.

¹⁵ As a DTV station, WACP's service area is defined by its noise-limited service contour (NLSC)—the area where its signal strength is predicted to exceed the noise-limited service level, which for VHF stations is 28 dBu. See 47 C.F.R. § 73.622(e). We refer to WACP's Grade B as the functional equivalent of the station's NLSC. See *Service Electric Cablevision, Inc.*, 28 FCC Rcd 10804 ¶ 4 n.18 (2013) ("*WACP v. Service Electric*").

¹⁶ See, e.g., *Rancho Palos Verdes Broadcasters, Inc. v. Frontier*, 18 FCC Rcd 9589 ¶ 9 (2003) (citations omitted); *Paxson Atlanta License, Inc. v. Brenmor Cable Partners, L.P.*, 13 FCC Rcd 4341 ¶ 32 (1998) ("*Paxson Order*").

¹⁷ *WACP v. Service Electric*, ¶ 33.

¹⁸ Exhibit 4, Meintel, Sgrignoli & Wallace, Evaluation of WACP DTV Channel 4 Service Contour and Signal Issues, Oxford PA, Aug. 28, 2013.

In the case at hand, the azimuth pattern of the transmitting antenna installed by WACP has several deep nulls that result from the combination of the panels in the array. In fact, the antenna has a deep null in its azimuth pattern in the direction of the Oxford, PA head-end. According to the manufacturer's data, the relative field in the direction of the Oxford, PA head-end location is approximately -3.33 dB below that of the peak ERP. This means that the ERP in the direction of the head-end of interest is only approximately 4.64 KW. The 28dB μ contour falls well short of the Oxford, PA head-end when taking into consideration WACP's actual ERP along the azimuth of interest.¹⁹

Exhibit 5 contains the WACP service contour from the MSW Report with the approximate locations of the Communities added.²⁰ As shown, all of the Communities fall outside WACP's service contour. Exhibit 6 contains the predicted WACP service contour from the FCC's CDBS.²¹ As the MSW Report points out, the CDBS service contour has not been adjusted to account for WACP's antenna configuration.²²

In light of the findings of the MSW Report, the Bureau's decision in *WACP v. Service Electric* becomes especially germane. In that case, the Bureau articulated its approach to market modification requests involving new stations like WACP: "It is true that with new stations, failure to establish either historic carriage or significant viewership is given lesser weight, and we typically rely more on a station's Grade B contour to delineate its market."²³ Based primarily

¹⁹ *Id.* at 3 (emphasis added).

²⁰ Exhibit 5, based on the WACP Service Contour Map from Exhibit 4, MSW Report at 4.

²¹ Exhibit 6, FCC TV Query, WACP Predicted Service Contour (28 dB μ), *available at* <http://transition.fcc.gov/fcc-bin/tvq?list=0&facid=189358>.

²² Exhibit 4, MSW Report at 3.

²³ *WACP v. Service Electric*, ¶ 24 (emphasis added), *citing Avenue Cable TV Service, Inc.*, 16 FCC Rcd 16436 ¶ 22 (2001) ("*Avenue Cable*"). *See also Avenue Cable*, ¶ 20 n.50 ("As a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market."); *NYADI Order*, 12 FCC Rcd 12262 ¶ 17 (1997) ("[G]rade B contour coverage, in the absence of other determinative market facts ... is an efficient tool to

on WACP's failure to place a Grade B over 62 communities, the Bureau excluded those communities from WACP's market:

In a case such as this, to define the current limit of WACP's market, we typically rely on a station's service area in conjunction with other factors, and given that WACP provides no programming service, we rely on the limit of its Grade B contour taken together with other factors - its carriage by competing providers in the communities at issue, its carriage on proximate systems, and SE Cable TV's carriage of a co-located station, WWSI, in some of the communities. These factors weigh in favor of granting SE Cable TV's request to modify WACP's market to remove [62 communities outside of WACP's Grade B].²⁴

The MSW Report shows that WACP fails to provide the required service contour over the Communities. As the Bureau concluded in *WACP v. Service Electric*, failure to provide the required service contour weighs decisively in favor of excluding a community from WACP's market.

2. WACP's community of license is more than 81 miles from the Communities.

The distance between a station and the community can support a finding that "a community within a station's DMA may be so far removed from the station that it cannot be deemed to be part of the station's market."²⁵ Atlantic City, WACP's community of license, is more than 81 miles from Elk, PA, the nearest of the Communities. The other Communities lie between 82 and 88 miles away from Atlantic City. In *WACP v. Service Electric*, the Bureau excluded communities from WACP's market where the distance was less than the distances

adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal."); *WRNN License Company, LLC*, 21 FCC Rcd 5952 ¶ 14 (2006).

²⁴ *WACP v. Service Electric*, ¶ 33 (emphasis added).

²⁵ *Frontier Communications, Petition for Reconsideration*, 19 FCC Rcd 15439 ¶ 9 (2004), citing H.R. Rep. No. 628, 102d Cong., 2d Sess. 97-98 (1992).

involved in this case.²⁶ In another market modification case, the Bureau considered distances of 45 to 50 miles sufficient to remove a station from the edge of a television market.²⁷

Accordingly, the Bureau should find that the distance between WACP's community of license and the Communities weighs in favor of the requested market modification.

3. WACP provides no services or 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.²⁸ A review of WACP's programming schedule shows that WACP fails to provide any local programming to the Communities.²⁹ The vast majority of WACP's programming consists of infomercials. The Commission routinely finds that general interest programming is not “local” when analyzing market modification petitions.³⁰ “The lack of actual, targeted programming weighs against a station[s] in the market modification analysis.”³¹ This is particularly so in large and diverse markets like Philadelphia.³²

As analyzed above, the local service factor weighs heavily in favor of granting the requested market modification. The communities fall outside WACP's Grade B, the distance between station's community of license and the Communities is over 81 miles, and the station

²⁶ See *WACP v. Service Electric*, ¶ 27 (communities approximately 61 miles from WACP's city of license excluded from station's market).

²⁷ *Armstrong Utilities, Inc.*, 12 FCC Rcd 2498 ¶ 17 (CSB, 1997).

²⁸ 47 U.S.C § 534(h)(1)(C)(ii).

²⁹ Exhibit 7, WACP Programming Schedule for the week of Sept. 17, 2013. Current schedule available at <http://tvlistings.zap2it.com/tvlistings/ZCSGrid.do?sgt=grid&stnNum=75909&channel=&fromTimeInMillis=0&type=print>.

³⁰ See, e.g., *Greater Worcester Cablevision, Inc. v. WPBX*, 13 FCC Rcd 22220 ¶ 19 (1998).

³¹ *NY ADI Order*, ¶ 16.

³² *Paxson Order*, ¶ 10.

provides no local programming. Based on these considerations, the Bureau has ample evidence to grant this Petition. Consideration of other additional factors further bolsters the case for excluding the Communities from WACP's market.

B. WACP has never been carried on the System.

The first statutory factor considers historical carriage. Armstrong does not carry WACP on the System and never has.³³ The lack of carriage is not surprising, given that Atlantic City is 88 miles away from Armstrong's Oxford headend,³⁴ the station offers no local programming for the Communities,³⁵ and the station fails to deliver a good quality signal to the System.³⁶ Moreover, the System does not carry either of the other two Atlantic City stations.³⁷

C. Multiple other stations provide local coverage.

The third statutory factor focuses on whether any other station carried by the System "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."³⁸ In this case, the "local service by other station" factor weighs heavily in favor of excluding the Communities from WACP's market.

³³ Exhibit 1, Declaration of Edgar E. Hassler, Jr., Vice President of Engineering ("Hassler Declaration") at 3; Exhibit 8, Oxford System channel lineup.

³⁴ See Exhibit 2, Map Depicting Oxford System, WACP City of License, and WACP Transmitter.

³⁵ See Exhibit 7, WACP Programming Schedule for the week of Sept. 17, 2013.

³⁶ Exhibit 4, MSW Report at 3; Exhibit 3, Supplemental Opposition at 6-10.

³⁷ FCC Records indicate three active full-power stations whose community of license is Atlantic City, NJ: WMCN-TV (Fac. ID. 9739), WWSI (Fac. ID 23142), and WACP (Fac. ID. 189358); Exhibit 1, Hassler Declaration at 3.

³⁸ 47 U.S.C § 534(h)(1)(C)(III).

At least five Philadelphia stations provide coverage of news, sports, and other events of interest to viewers in the Communities. These include KYW (Philadelphia CBS), WPVI (Philadelphia ABC), WCAU (Philadelphia NBC), WTXF (Philadelphia FOX) and WPSG (Philadelphia CW). Armstrong's System carries all of these stations.³⁹ The stations' programming schedules are listed in the "Daily Local News," a newspaper serving Chester County, where the Communities are located.⁴⁰ The Daily Local News contains no listing for WACP.⁴¹ Through carriage of these Philadelphia stations, Armstrong's customers enjoy a wide variety of news and public affairs programming of local interest. In contrast, WACP's programming offers nothing of local interest to viewers in the Communities.

D. WACP has no viewership in the Communities.

The fourth statutory factor in a market modification proceeding involves viewing patterns in the Communities in cable and non-cable homes. Armstrong does not subscribe to Nielsen and has not been able to obtain publicly available viewership data regarding WACP.⁴² Current editions of industry publications imply that no audience data is available for WACP.⁴³ WACP has recently implicitly conceded that it garners no ratings within another cable operator's

³⁹ Exhibit 1, Hassler Declaration at 3; Exhibit 8, Oxford System Channel Line-up.

⁴⁰ Exhibit 9, The Daily Local News, Television Listings, Sept. 17, 2013 (showing program schedules for all Philadelphia broadcast stations carried on the Oxford System), <http://allaroundphilly.newspaperdirect.com/epaper/viewer.aspx>.

⁴¹ See Exhibit 9.

⁴² The Bureau recently accepted a petition without ratings data where the petitioner was unable to provide it; the Bureau independently investigated ratings. *Mountain Broadcasting Corporation*, 27 FCC Rcd 2231 ¶ 16 (2012). If the Bureau deems necessary, we encourage it to undertake similar approach in this case.

⁴³ The Advanced TV Factbook does not contain Nielsen data for WACP suggesting that the station registers viewing of less than 5% as per the Nielsen Survey Methods. See www.advancedtvfactbook.com (subscription required).

communities.⁴⁴ Armstrong has no reason to believe that the station captures any ratings in the Communities. Further, the local newspaper does not include WACP in its channel listings.⁴⁵ Given that the Communities fall outside of WACP's Grade B and that potential viewers in the Communities cannot find program listings in their local paper, the Bureau should accept the above facts as demonstrating that the station has no material viewership in the Communities.

* * *

An analysis of each of the four statutory criteria leads to a single conclusion – the Communities are not within WACP's broadcast market. WACP fails to place a Grade B over the communities or provide any other local service to the Communities. WACP has no historical cable carriage in the Communities. At least five other television stations cover issues of concern to the Communities, along with sports and other events of interest. WACP has no viewership in the Communities. No further evidence is required to grant this Petition.

Still, in considering adjustments to a broadcast market, the Commission often considers evidence of an economic connection, or lack thereof, between the station and the communities at issue.⁴⁶ As discussed below, all available evidence shows no economic connection exists between the Communities and WACP.

⁴⁴ See *WACP v. Service Electric*, ¶ 31.

⁴⁵ Exhibit 9, The Daily Local News, Television Listings, Sept. 17, 2013.

⁴⁶ See, e.g., *Armstrong Utilities, Inc.*, 21 FCC Rcd 13475 ¶ 16 (2006) (“*Armstrong WFMZ Order*”); *Petition for Modification of the Designated Market Area of Television Broadcast Station WVXF, Charlotte Amalie, Virgin Islands*, 24 FCC Rcd 8264 ¶ 15 (2009) (giving particular weight to the level of advertising revenue drawn from an adjacent market); *Time Warner Cable Inc.*, 24 FCC Rcd 4423, ¶¶ 9 & 14 (2009) (considering evidence of economic nexus between communities).

E. No economic connection exists between WACP’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.⁴⁷ In the case of WACP, an important additional consideration is the utter lack of economic connection between WACP’s community of license, Atlantic City, NJ 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.⁴⁸ In this case, these attributes are completely absent. There is no traffic corridor between the Communities and Atlantic City. All travel must occur through Philadelphia, PA or Wilmington, DE. The drive from Oxford to Atlantic City is a nearly 110-mile trip requiring at least two hours of travel time.⁴⁹ Further, there are no direct bus or train routes between Oxford and Atlantic City either; travel by Amtrak would take over two and one-half hours, including the time to drive to the station.⁵⁰

⁴⁷ 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 Order*, ¶ 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 markets of the stations involved); *Adelphia Cablevision Associates, L.P.*, 14 FCC Rcd 7686 (1999) ¶ 18 (same).

⁴⁸ *Armstrong WFMZ Order*, ¶16 (noting two-hour drive time between broadcaster city of license and cable communities as a factor supporting market modification).

⁴⁹ Exhibit 10, Road Map depicting travel routes between Chester County and Atlantic City. Driving time to/from Oxford and Atlantic City is at least 2 hours in non-rush hour traffic. The shortest route is 107 miles through Philadelphia, PA. Distances calculated by using Google Maps, <https://maps.google.com>.

⁵⁰ The closest Amtrak stations near the Communities are Newark, DE (approx. 17 miles away) and Parkesburg, PA (approx. 14 miles away). Distances calculated by using Google Maps, <https://maps.google.com>.

General statistical indicators also distinguish the economic market around Atlantic City from the market near the Communities.⁵¹ Atlantic City, NJ is listed as a principal city in the Atlantic City-Hammonton, NJ Metropolitan Statistical Area.⁵² However, the Communities are all within Chester County, PA, part of the Philadelphia, PA Metropolitan Division, which in turn is part of the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area.⁵³ Further, Oxford, PA and Atlantic City, NJ are in different Arbitron markets. Oxford is part of the Philadelphia market, while Atlantic City is part of the Atlantic City-Cape May market.⁵⁴

Labor statistics also illustrate the lack of economic connection between these locations. Census data reveals that approximately 0.09% of the Chester County population has potentially commuted to Atlantic City.⁵⁵ This is not surprising since the mean travel time to work in Oxford, PA is 24.4 minutes, in contrast with travel time to Atlantic City exceeding two hours.⁵⁶ Indeed, nearly 64% of Chester County residents work in their home county, and over 95% of all

⁵¹ *Armstrong WFMZ Order*, ¶ 16 (noting separate MSAs as a factor supporting market modification).

⁵² Office of Management and Budget, OMB Bulletin 10-02, Dec. 1, 2009, <http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>.

⁵³ *Id.*

⁵⁴ Arbitron, 2012 Radio Metro Map, http://www.arbitron.com/downloads/arb_us_metro_map_12.pdf.

⁵⁵ Exhibit 11, Pennsylvania Dept. of Labor & Industry, Historical Data Analysis, <https://paworkstats.geosolinc.com> (accessible by navigating to Historical Data Analysis, Employment and Wage Data, Labor Force Data, Census Bureau Commuting Patterns, Chester County, 2000 data). The data indicates that of the 80,340 recorded commuters from Chester County, PA (where the Communities are located) only 2,393 commuted to New Jersey, and of those, only 73 commuted to Atlantic County (where Atlantic City is located).

⁵⁶ United States Census Bureau, State & County QuickFacts, Oxford (borough), Pennsylvania, <http://quickfacts.census.gov/qfd/states/42/4257480.html> (workers age 16+, 2007-2011).

Chester County workers live in Pennsylvania.⁵⁷ Nor do local government economic development agencies consider commuter or shopping travel to Atlantic City.⁵⁸

The local newspaper also reflects the complete absence of economic connection between Chester County and Atlantic City. The Daily Local News carries pages of advertisements and job postings for Chester County and nearby businesses, while ads for Atlantic City entities are non-existent.⁵⁹

The lack of any economic connection between Atlantic City and the Communities corroborates the analysis of the statutory factors – the Communities are not local to WACP’s market, and the evidence presented here fully supports the requested market modification.

V. CONCLUSION

Based on the evidence presented in this Petition, WACP meets none of the statutory criteria for a local station in the Communities, and no economic connection exists between the Communities and Atlantic City, NJ. Following well-established precedent, including the Bureau’s recent decision in *WACP v. Service Electric*, the Bureau must exclude the Communities from WACP’s market.

⁵⁷ Exhibit 12, United States Census Bureau, Decennial Commuting Patterns out of Chester County, PA, excerpt from http://www.census.gov/population/www/cen2000/commuting/files/2KWRKCO_PA.xls.

⁵⁸ See Chester County Ride Guide, <http://www.chescorideguide.org/Map.cfm>; Guide to Commuter Options, <http://www.chesco.org/DocumentCenter/View/2581>.

⁵⁹ Exhibit 13, The Daily Local News (serving Chester County, PA), Classified Ads – Online Edition, Sept. 10 & 17, 2013.

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,

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CERTIFICATE OF SERVICE

I, Alma Hoxha, 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 Office on September 26, 2013 to be delivered to the person listed below via first-class, postage-prepaid mail:

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