

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

In the Matter of	)	
	)	
Petition of Tobacco Valley Communications	)	MB Docket No. 15-152, CSR 8911-A
	)	
To Exclude Eureka and Communities in North	)	
Lincoln County from the Local Market of Several	)	
Spokane, Washington Broadcasters and Include it	)	
in the Local Market of Several Missoula, Montana	)	
Broadcasters	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 15, 2016**

**Released: August 15, 2016**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Tobacco Valley Communications, LLC (the Petitioner or TVC), filed the above-captioned petition seeking to modify the television market of certain stations in Spokane, Washington, and Missoula, Montana.<sup>1</sup> Specifically, TVC seeks to exclude Eureka, Montana,<sup>2</sup> from the local markets of four Spokane, Washington television stations (the Spokane Stations),<sup>3</sup> and simultaneously include it within the markets of four Missoula, Montana television stations (the Missoula Stations).<sup>4</sup> The Petition is unopposed.<sup>5</sup> For the reasons stated below, we grant TVC's Petition.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (the "Act"), and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their markets.<sup>6</sup> A station's market for

<sup>1</sup> Petition for Special Relief of Tobacco Valley Communications, filed Jun. 17, 2015 ("Petition").

<sup>2</sup> The Communities are Eureka, Rexford, Trego, Fortine, West Kootenai, and Stryker, Montana and the rural areas surrounding these communities (the Communities). See Petition at 4 & 5, n.2.

<sup>3</sup> Petition at 8. The Spokane Stations are KXLY-TV (ABC), KREM-TV (CBS), KHQ-TV (NBC), and KAYU-TV (Fox).

<sup>4</sup> Petition at 17. The Missoula Stations are KTMF-TV (Fox and ABC), KPAX-TV (CBS), and KCFW-TV (NBC). KTMF and KPAX are licensed to Missoula, Montana and KCFW is licensed to Kalispell, Montana. *Id.*

<sup>5</sup> At the request of Commission staff, on October 21, 2015, TVC supplemented its Petition to reflect the new statutory market modification factor added by the STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014 (discussed below). Although served on the Spokane Stations and the Missoula Stations, TVC's supplement generated no opposition or comment by the stations.

<sup>6</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>7</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>8</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides 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.<sup>9</sup>

In considering such requests, Section 614(h)(1)(C)(ii) of the Act provides that “the Commission shall afford particular attention to the value of localism” by taking into account such factors as:

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence<sup>10</sup>;
- (IV) 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;
- (V) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>11</sup>

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<sup>7</sup> Section 614(h)(1)(C) of the Act provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s Rules (the “Rules”) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

<sup>8</sup> For a more complete description of how counties are allocated, see Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>9</sup> 47 U.S.C. §534(h)(1)(C).

<sup>10</sup> The STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014, added a new statutory factor, denominated as factor III above. See also *Amendment to the Commission’s Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, Report and Order*, FCC 15-111, released September 2, 2015.

<sup>11</sup> 47 U.S.C. §534(h)(1)(C)(ii)(I)-(V).

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>12</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>13</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
- (2) Grade B contour maps<sup>14</sup> delineating the station's technical service area<sup>15</sup> and

<sup>12</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>13</sup> *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>14</sup> Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>15</sup> While the Grade B contour defined an analog television station's service area, *see* 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited contour service level – which for UHF stations is 41 dBu. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise-limited contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, ¶ 3, 19554, ¶ 111 (2005); *Implementation of the*

showing the location of the cable system headends and communities in relation to the service areas.

- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>16</sup>

5. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

6. In the *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, digital-only television stations had mandatory carriage rights, and amended its rules to reflect this revision.<sup>17</sup> The Commission also clarified its framework for analyzing market modifications for digital television stations.<sup>18</sup> It found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.<sup>19</sup> While the Commission presumed the market of a station’s digital signal would be coterminous with that station’s market area for its prior analog signal, it recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal.<sup>20</sup> Therefore, in deciding DTV market modifications, the Commission

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*Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act, Report and Order*, 20 FCC Rcd 17278, 17292, ¶ 31 (2005). See also *Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974, ¶ 7 n.27 (2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of analog station’s Grade B contour.”).

<sup>16</sup> 47 C.F.R. §76.59(b).

<sup>17</sup> See 16 FCC Rcd 2598, 2606, 2610 (2001); 47 C.F.R. § 76.64(f)(4).

<sup>18</sup> See 16 FCC Rcd at 2635-36. The Commission affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen market designations, publications, and assignments it used for analog signal carriage issues. See *id.* at 2636.

<sup>19</sup> See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

<sup>20</sup> See *id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station’s digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. See *id.* at 2636, n.254, citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

would take changes in signal strength and technical coverage into consideration, on a case-by-case basis.<sup>21</sup>

### III. DISCUSSION

7. TVC operates cable systems serving communities in Northwestern Montana.<sup>22</sup> The issue before us is whether to grant TVC's request to exclude the four Spokane Stations and simultaneously modify the market to include four Montana Stations.<sup>23</sup> TVC can only achieve its desired objective through a market modification request if it shows that Eureka should be included or excluded from the local markets of the respective stations.<sup>24</sup> However, deletion of Eureka from the Spokane Stations' market is not a prerequisite for the addition of the Missoula Stations. We must examine the relevant facts in the record as they pertain to each statutory factor, and we must do so for each of the 8 stations referenced in the Petition. According to TVC, "[t]his is consistent with the Commission's preferred approach," as "the Commission indicated [in the *Must Carry Order*] that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market."<sup>25</sup>

#### A. Historic Carriage

8. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."<sup>26</sup> Historic carriage may demonstrate a "market nexus" between the broadcast stations and the communities where the station is carried, thus, providing evidence of the scope of a station's market.<sup>27</sup> Petitioners usually meet this first statutory factor by filing "cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings."<sup>28</sup>

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<sup>21</sup> *See id.*

<sup>22</sup> Petition at 4. As discussed above, the Commission adopted a standardized evidence approach for market modification petitions. Because of the distances involved and the extremely rural nature of the Communities at issue in this proceeding, TVC was not able to supply the Commission with each item of standardized evidence because it was simply unavailable. We recognize TVC's Petition as a good faith effort to submit as much of the standardized evidence as it could obtain and otherwise waive for good cause any evidence that was unavailable to TVC.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> We note that Section 614(h)(1)(C) only contemplates adding or subtracting stations, not entire communities. *See* 47 U.S.C. § 534(h)(1)(C). However, the Commission has said that we will not preclude a cable provider from petitioning for the market modification of multiple stations in the same community. *See Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139 (providing that a cable operator could petition for market modifications for more than one station licensed to the same community as long as the cable operator submitted information demonstrating that each station is entitled to have its market modified).

<sup>25</sup> Petition at 8, citing *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>26</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>27</sup> *See e.g., Tennessee Broadcasting Partners*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3932 (MB 2008) ("*Tennessee Broadcasting*"), citing *Paxson Atlanta License, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 5735, 21 (CSB 1996).

<sup>28</sup> 47 C.F.R. § 76.59(b)(6).

## 1. The Spokane Stations.

9. TVC states that the Communities, located in Lincoln County, Montana, fall within the Spokane DMA, and that Lincoln County is the only Montana county that is part of the Spokane DMA.<sup>29</sup> TVC claims that this is largely due to a “historical accident,” because television broadcasters in Missoula were not broadcasting when the Spokane DMA was created, and thus Lincoln County was assigned to the Spokane DMA by default.<sup>30</sup> TVC submits channel lineups, which show the history of carriage for each of the Spokane Stations.<sup>31</sup> For example, although TVC carried all of the Spokane Stations on its system in early 2004, it subsequently dropped the Spokane NBC, ABC and CBS affiliates and currently only carries Fox affiliate, KAYU.<sup>32</sup> Based on the evidence submitted by TVC, we find that the historic carriage factor weighs in favor of granting the requested modification with respect to all of the Spokane Stations to exclude the Communities from their local markets.

## 2. The Missoula Stations.

10. Historically, TVC has tried to “meet its subscribers’ demands for local content, and has undertaken considerable effort and expense to obtain and provide to its subscribers the Missoula Stations.”<sup>33</sup> TVC voluntarily carried the Missoula Stations, pursuant to retransmission consent agreements, so that it’s northwestern Montana subscribers could get local content produced by Missoula Stations.<sup>34</sup> In 2012, KXLY (ABC) Spokane exercised its network non-duplication and syndicated exclusivity rights to blackout the ABC network programming and duplicating syndicated programming of KTMF (ABC) Missoula, and since 2012, TVC’s subscribers have not had access to an ABC affiliate from either Spokane or Missoula.<sup>35</sup> TVC maintains two translator sites so the broadcast signals of KCFW (NBC) Missoula and KPAX (CBS) Missoula reach its Eureka headend.<sup>36</sup> The translator for KCFW (NBC) Kalispell has been serviced by TVC for more than 20 years, and the translator for KPAX (CBS) Missoula has been owned by TVC since 1998.<sup>37</sup> The Missoula Stations have been a part of TVC’s channel lineup for over a decade. Based on the evidence submitted by TVC, we find that the historic carriage factor weighs in favor of granting the requested modification with respect to all of the Missoula Stations to include the Communities in their local markets.

## B. Station Coverage and Local Service

11. The second statutory factor we must consider is “whether the television station provides

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<sup>29</sup> Petition at 4, at Exhibit C: Area Maps of the Spokane and Missoula DMAs.

<sup>30</sup> Petition at 4, at Exhibits C - D.

<sup>31</sup> See Petition at Exhibit L: Channel Line-Up Card.

<sup>32</sup> *Id.*; see *In the Matter of CoxCom, LLC for Modification of the Market of WMDE, Dover, Delaware*, 30 FCC Rcd. 10978-10979 at ¶ 46 (2015) (“*CoxCom, LLC*”), citing *Baltimore Broadcasting, L.L.C.*, 17 FCC Rcd 7984, 7989-90 at ¶ 10 (2002) (“[T]he Commission has repeatedly held that a brief period of carriage pursuant to the must-carry rules do not satisfy the historic carriage factor.”).

<sup>33</sup> Petition at 17.

<sup>34</sup> *Id.* (“By carrying the Montana stations, TVC ensures that its Northwestern Montana subscribers can view local content generated by Montana stations, including Montana news, weather, sports, etc.”).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at Exhibit L: Translator Transfer to TVC and Photographs of Translator Site and Translator.

<sup>37</sup> Petition at 17.

coverage or other local service to such community.”<sup>38</sup> To analyze a station’s coverage or local service, we look to a station’s signal contour coverage over the communities,<sup>39</sup> its proximity to the communities in mileage,<sup>40</sup> and its provision of programming with a distinct nexus to the communities.<sup>41</sup> As the Commission has stated “Grade B contour coverage, in the absence of other determinative market facts (i.e.,]...a terrain obstacle such as a mountain range or a significant body of water), is an efficient tool to adjust market boundaries.”<sup>42</sup> A station’s broadcasting of local programming which has a distinct nexus to the cable communities is also evidence of local service.<sup>43</sup>

### 1. The Spokane Stations.

12. *Geographic Proximity.* A station’s close proximity “to the community in terms of mileage” is used as information that helps the Commission determine whether the station satisfies the second statutory factor.<sup>44</sup> TVC states that, “[t]he transmitters for all of the Spokane stations are more than 200 miles from Eureka [, which] are separated from Eureka not only by the State of Idaho but also by the extremely mountainous terrain.”<sup>45</sup> TVC submits that, given the mountainous terrain separating the Communities from the Spokane Stations, it takes 4 hours and 11 minutes to drive between the locations.<sup>46</sup> Also, TVC asserts that none of the four Spokane Stations “provide[s] an off-air signal to Eureka or anywhere else in North Lincoln County.”<sup>47</sup>

13. *Time Zone.* TVC emphasizes that each of the Spokane Stations are located in the Pacific Time Zone, while the Communities are in the Mountain Time Zone.<sup>48</sup> Thus, “residents of Eureka cannot rely on the programming schedules issued by the Spokane stations and must allow for the additional hour when using local program guides.”<sup>49</sup>

14. *Shopping and Labor Market.* TVC states that the Spokane market cannot be considered a

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<sup>38</sup> 47 U.S.C. §534(h)(1)(C)(ii)(II).

<sup>39</sup> See *supra* n.14; see also *supra* n.15; see 47 C.F.R. § 76.59(b)(2); *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201, 6224 ¶ 48 (1996), modified by, *Order on Reconsideration and Second Report and Order*, 14 FCC Rcd 8366, 8387-88, ¶¶ 49-50 (1999).

<sup>40</sup> See *Must Carry Order*, 8 FCC Rcd 2965, 2977, ¶ 47; see also 47 C.F.R. § 76.59.

<sup>41</sup> *Tennessee Broadcasting Partners*, 25 FCC Rcd 4857, 4859 (MB 2010).

<sup>42</sup> *Cablevision Sys. Corp. v. FCC*, 570 F.3d 83, 90 (2d Cir. 2009), citing *Market Modifications and the New York Area of Dominant Influence*, 12 F.C.C.R. 12262, 12271 ¶ 17 (1997).

<sup>43</sup> *Tennessee Broadcasting Partners*, 25 FCC Rcd 4857, 4859 (MB 2010), citing *Time Warner Entertainment*, Memorandum Opinion and Order, 11 FCC Rcd 6541, 6553, ¶ 25 (CSB 1996).

<sup>44</sup> *Must Carry Order*, 8 FCC Rcd at 2977, ¶ 47.

<sup>45</sup> TVC states that the Idaho panhandle separates the community of Eureka from all four of the Spokane stations. See Petition at 9-10, at Exhibit C: Area Maps of the Spokane and Missoula DMAs. The Spokane stations are each located about 226.7 miles away from the Eureka. Petition at 9, at Exhibit F: MapQuest Map with Distance and Driving Directions from Eureka to Spokane. *Id.* at Exhibit D: Time Zone Map.

<sup>46</sup> Petition at 9, at Exhibit F: MapQuest Map with Distance and Driving Directions from Eureka to Spokane.

<sup>47</sup> Petition at 8-9.

<sup>48</sup> Petition at 9-10; *id.* at Exhibit D: Time Zone Map.

<sup>49</sup> Petition at 10 (referring to the programming guides published in local newspapers as examples).

local shopping or labor market for residents of the Communities. TVC argues that the shopping and labor patterns in the Spokane, Washington market do not favor a finding that the Communities should be included in the four Spokane Station's local market. A Nielsen Media Research Profile of the Spokane Market (Spokane Market Profile) names the Spokane Stations, and identifies various labor, demographic, and shopping statistics for the Spokane DMA.<sup>50</sup> The Spokane Market Profile mainly describes statistics for the City of Spokane, and does not reference the Communities or Lincoln County.<sup>51</sup>

15. TVC asserts that the Spokane stations are so far apart and the drive between them so lengthy "that daily commutes or quick shopping trips from one to the other are highly unlikely."<sup>52</sup> "Moreover, the twisting and turning nature of the highways between Spokane and Eureka, coupled with the elevations reached on certain sections of those highways, makes the trip particularly treacherous and time-consuming during cold or otherwise extreme weather – a common occurrence in this part of the Northern Rocky Mountains."<sup>53</sup>

16. *Grade B Contour and Longley Rice Analysis.* TVC asserts that the Spokane Stations' Grade B off-air signals "ARE NOT available in the northern portion of Lincoln County," but are available in the southern portion of the County.<sup>54</sup> Petitioner also notes that Lincoln County is extremely large and the northern portion of Lincoln County is separated from the southern portion by roughly 70 miles of mountainous terrain and that, while "Nielsen has viewership information for Lincoln County as a whole...[it] is unaware of any way to determine what proportion of those viewership numbers are attributable only to the northern – and less populous - portion of Lincoln County where...the Grade B signals for the Spokane networks are not available."<sup>55</sup>

17. Additionally, TVC cites a 2002 significantly viewed decision involving one of the Spokane stations and the community of Kalispell, also located in northwestern Montana.<sup>56</sup> None of the Spokane station signals were capable of reaching Kalispell, similar to how none of the Spokane station signals reach Eureka or any of the remainder of North Lincoln County. The Commission found that the Spokane station KXLY was not significantly viewed and granted the petition.<sup>57</sup> Just as none of the

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<sup>50</sup> Petition at 10, at Exhibit E (containing market profile for the Spokane, Washington DMA, and indicating that Spokane is a "Diary Market" which means that Nielsen relies on the viewing diaries from a sample set of households within a particular DMA to measure the viewership within that market. The diaries are measured four times a year to calculate the viewership statistics.); see TVB Local Marketing Solutions, *Local Media Market Measurement Types* (available at <http://www.tvb.org/research/measurement/2166862>) (last accessed Oct. 28, 2015).

<sup>51</sup> Petition at 10, at Exhibit E.

<sup>52</sup> For example, TVC states that "Spokane is a large city by the standards of this part of the country (population 471,221 as of the 2010 census), and Eureka is quite small (population 1,037). So there would be little reason for people to go from Spokane to Eureka for work or shopping." Petition at 10.

<sup>53</sup> Petition at 9.

<sup>54</sup> Petition at 11 (emphasis original); Petitioners are encouraged to provide a more specific technical coverage showing, through the submission of service coverage prediction maps that take terrain into account, particularly maps using the Longley-Rice prediction methodology. See *supra* n.14; see *In the Matter of Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 F.C.C.R. 8366 at ¶ 8 and n.102 (1999).

<sup>55</sup> Petition at 11.

<sup>56</sup> Petition at 12, at Exhibit I, citing *In the Matter of MMM License LLC for Waiver of Section 76.92(f) of the Commission's Rules*, 17 FCC Rcd. 20875, 20876 at ¶ 5(MB 2002) (*MMM Decision*) ("KTMF points out that KXLY-TV's transmitter site is approximately 140 miles from Kalispell and is separated from that community not only by the state of Idaho, but also by mountainous terrain. Moreover, KTMF states that not only does KXLY-TV's Grade B Contour fall short of Flathead County, but its signal is delivered to the cable head end by microwave.").

<sup>57</sup> Petition at 12-13.



Spokane station signals in the *MMM Decision* reached Kalispell, none of the Spokane station signals reach Eureka or any of the remainder of North Lincoln County.<sup>58</sup> Additionally, none of the Spokane stations provide off-air signals, nor do the Grade B contours of any of the Spokane Stations reach the Communities.<sup>59</sup> Moreover, TVC submitted evidence that the Spokane Stations provided no coverage of news and events in the Communities.<sup>60</sup> Based on the evidence submitted by TVC, we find that the station coverage and local service factor weighs in favor of granting the requested modification with respect to all of the Spokane Stations to exclude the Communities from their local market.

## 2. The Missoula Stations.

18. *Geographic Proximity.* All of the Missoula stations are about 189.4 miles from Eureka, which totals about 3 hours and 24 minutes of driving time.<sup>61</sup> TVC asserts that although the terrain between Eureka and Missoula is mountainous, the elevation changes are not as extreme as those between Spokane and Eureka, making the drive less treacherous.<sup>62</sup>

19. *Time Zone.* Additionally, Missoula and Eureka are not only in the same state, but they also share the same time zone, Mountain Standard Time.<sup>63</sup> Thus, program listings in Eureka have the same start and end time as those in Missoula, meaning Eureka residents can rely on the program schedules of Missoula, and do not have to worry about allowing for an additional hour when using the programming guides.<sup>64</sup>

20. *Shopping and Labor Market.* Missoula and Eureka are both located in the Northwestern part of Montana, drawing in tourists who enjoy the variety of outdoor activities, such as hiking, backpacking, boating, fishing, and snowmobiling.<sup>65</sup> As shown by a Lincoln County fact sheet, Eureka and Missoula are both heavily forested and rely on the timber industry.<sup>66</sup> However, Spokane does not share such similarities.<sup>67</sup> Missoula is the largest city in northwestern Montana, and as of 2010 had 527 retail establishments, and employed 7,640 people.<sup>68</sup>

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<sup>58</sup> Petition at 13.

<sup>59</sup> *Id.* at Exhibits O and Q.

<sup>60</sup> Petition at Exhibit N: Documents Demonstrating Absence of Content Local to Eureka on KREM-TV Spokane; Exhibit P: Documents Demonstrating Absence of Content Local to Eureka on KHQ-TV Spokane; Exhibit R: Documents Demonstrating Absence of Content Local to Eureka on KAYU-TV Spokane; *see* Petition at 20-21; *see also* Supplement Petition at 2.

<sup>61</sup> Petition at 18; Exhibit T: Mapquest Map Showing Distance and Driving Directions from Eureka to Missoula.

<sup>62</sup> *Id.*; *see also* Petition at 22, at Exhibit I.

<sup>63</sup> Petition at 19.

<sup>64</sup> *Id.*

<sup>65</sup> Petition at Exhibit S.

<sup>66</sup> *Id.*, at Exhibit X.

<sup>67</sup> In the Market Profile for Spokane, it is clear from the statistics provided that there is a lot of economic activity taking place, being supported by a large population of 471,221. Under the “Unique Characteristics” section, Spokane is characterized as a “hot spot” for young professionals, and the regional Spokane hostitals were recognized as the nation’s “most wired.” *See* Petition at Exhibit H. The Market Profile for Missoula classified it as the “number one historic small town,” which is home to individuals who “enjoy outdoor activities such as hunting, fishing, and camping,” and where “Pickup trucks are popular[.]” *See* Petition at Exhibit S.

<sup>68</sup> *Id.*, at Exhibit V.

21. Many citizens of the Communities attend the University of Montana, located in Missoula, and follow their various sports teams.<sup>69</sup> Thus, many people in Eureka consume Missoula local news. Local sports news is of particular importance in rural Montana, and Missoula DMA stations report the scores and highlights of small town sports teams in the Eureka area, along with segments on local athletes and events.<sup>70</sup> Unlike the Missoula Stations, the Spokane Stations do not cover the local weather and wildlife news for the Eureka area, which is critical to residents of Eureka where road conditions, grizzly bear sightings, and blizzard conditions are only a few of the topics of important information they do not get by being situated in the Spokane DMA.<sup>71</sup> Further, Spokane DMA networks do not provide political election advertising or information for Montana poll results, and election results, yet the Missoula networks provide full coverage of Montana elections, debates, and political advertising.<sup>72</sup> Moreover, when the term “Eureka” was searched in the website of Missoula’s ABC and Fox affiliates, 83 search results were returned, and every result dealt with stories of local interest related to Eureka, Montana, further highlighting a stronger link between Missoula and Eureka.<sup>73</sup> Based on the evidence submitted by TVC, we find that the station coverage and local service factor weighs in favor of granting the requested modification with respect to all of the Missoula Stations to add the Communities to their local market.

### C. Access to In-State Programming

22. The third statutory factor we must consider is “whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>74</sup> This third statutory factor was recently added by the STELA Reauthorization Act of 2014.<sup>75</sup>

#### 1. The Spokane Stations.

23. We find that this new third statutory factor does not apply here because the proposed modification to delete Eureka from the Spokane market would not directly result in carriage for an in-state station. As we have previously stated in interpreting the in-state programming factor, “[t]he mere possibility that a cable system might carry in-state-programming in place of the deleted station is not sufficient to make use of the in-state enhancement factor.”<sup>76</sup>

#### 2. The Missoula Stations.

24. The stations in Missoula, Montana carry advertising, news, weather, sports, and political content that is of specific interest to the Communities.<sup>77</sup> Based on the facts before us, our analysis of this

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<sup>69</sup> Petition at 20.

<sup>70</sup> Petition at 19-20.

<sup>71</sup> Petition at 20.

<sup>72</sup> *Id.*

<sup>73</sup> Petition at 22, at Exhibit Z.

<sup>74</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(III).

<sup>75</sup> See STELAR, Pub. L. No. 113-200, 128 Stat. 2059. See also *Amendment to the Commission’s Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd. 10406 (2015).

<sup>76</sup> See *CoxCom, LLC*, 30 FCC Rcd. at 10978-10979, ¶ 46. CoxCom sought to modify the television market of WMDE, Dover, Delaware and exclude the cable communities that Cox served in Fairfax County, Virginia, and the FCC granted Cox’s petition.

<sup>77</sup> Supplement Petition at 1.

statutory factor leads us to conclude that, because the requested modification would give the Communities continued and greater access to Montana broadcasters, this factor overwhelmingly supports the addition of the Communities to the Missoula Stations' local market.<sup>78</sup>

#### **D. Carriage of Other Stations**

25. The fourth statutory factor we must consider is “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 events of interest to the community.”<sup>79</sup> In general, we believe that Congress did not intend this fourth criterion to operate as a bar to a station's market modification claim whenever other stations could also be shown to serve the communities at issue.<sup>80</sup> Rather, we believe 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. In this case, because other stations serve the communities in question, this enhancement factor does not appear applicable and carries no weight in our analysis of the Spokane Stations. We find that this factor slightly favors the addition of the Communities to the market of the Missoula Stations because, with the exception of Fox affiliate, KAYU-TV, the Communities are not served by the in-market Spokane Stations.

#### **E. Station Audience and Viewing Patterns**

26. The fifth and final statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”<sup>81</sup> The viewership ratings must be considered in connection with the other factors discussed elsewhere herein for a final determination to be made as to a community.<sup>82</sup> TVC states that it has made efforts to obtain published audience data for the Communities but, has been unsuccessful in obtaining it given that Eureka has a relatively small population.<sup>83</sup>

##### **1. Spokane Stations Viewing Patterns**

27. TVC speculates that, because of the rural nature of the Communities at issue, significantly more Eureka residents access television programming via satellite than do via cable.<sup>84</sup> While TVC, admittedly, has no factual basis for knowing, it estimates that the Spokane Stations are more widely viewed by Eureka residents than the Missoula Stations if only because the Commission's carriage rules would favor stations assigned to the Spokane DMA in which the Communities are currently assigned. However, because the Spokane Stations, with the exception of KAYU-TV are not carried on TVC, we do not believe this factor weighs in favor of retaining the Communities within the market of the Spokane Stations.

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<sup>78</sup> *CoxCom, LLC*, 30 FCC Rcd. at 10978-10979, ¶ 46.

<sup>79</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(IV); see *Cablevision Sys. Corp. v. F.C.C.*, 570 F.3d 83, 93 (2d Cir. 2009).

<sup>80</sup> See e.g., *Tennessee Broadcasting*, 23 FCC Rcd 3928, 3948, citing *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

<sup>81</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(V).

<sup>82</sup> *Tennessee Broadcasting Partners*, 25 FCC Rcd 4857, 4859 (MB 2010).

<sup>83</sup> Petition at 10-11 (TVC claims to have contacted Nielsen to obtain ratings information, but was told that Nielsen does not “break its ratings down below the audience level.”).

<sup>84</sup> Petition at 11-12.

## 2. Missoula Stations Viewing Patterns:

28. In lieu of Nielsen viewership statistics for the town of Eureka, TVC submits “a petition containing 800 signatures from [residents of] North Lincoln County,” which, it claims, indicates Eureka residents’ affirmative desire “to receive the Montana stations out of Missoula and Kalispell rather than a Washington station out of Spokane.”<sup>85</sup> Additionally, TVC raises economic considerations, citing to statistics that highlight the industrial and market differences between Spokane and Eureka areas.<sup>86</sup> Additionally, as TVC speculates, it would be more convenient for Eureka citizens to commute to Missoula or Kalispell than to Spokane, due to the difficulty in traveling from Eureka to Spokane.<sup>87</sup> Because there was no evidence of the Missoula Stations’ viewing patterns in the Communities available for TVC to submit with its Petition, we assign no weight to this factor.

## IV. CONCLUSION

29. Given the extremely rural nature of Lincoln County, TVC’s Petition requests that the Commission exclude the Communities from the local markets of the Spokane broadcasters and include them instead in the local markets of the Missoula broadcasters. TVC argues that the Communities are so far removed from the Spokane DMA, that they cannot be considered part of the market of the Spokane television stations.<sup>88</sup> Rather, TVC argues, the Communities are closer to and share stronger economic ties to the Missoula DMA and thus should be considered part of the market of the Missoula stations.<sup>89</sup> TVC can only achieve its desired objective through a market modification request if it shows that the Communities should be included or excluded from the markets of the requested stations. Therefore, the issue before us is whether the Communities should be excluded from the markets of stations in the Spokane DMA and included in the markets of stations in the Missoula DMA.

30. TVC has demonstrated a history of carrying Missoula stations to provide local programming to its subscribers in the Communities. In addition, TVC has demonstrated that the Missoula stations provide local programming to the Communities. It is also clear that the Spokane Stations are geographically distant from the Communities, while the Missoula stations are closer. TVC provides contour maps, driving directions, and a time zone map to support this argument. Most importantly, TVC has shown that modifying the market would promote consumers’ access to in-state Montana television broadcast signals, which provide local programming of interest, such as Montana political coverage, weather alerts, Montana public interest programming, and Montana news and sports coverage, including stories covering events local to the Communities. It is unchallenged that the Spokane stations fail to provide programming in any of these categories. These factors weigh in favor of granting TVC’s request to remove the Communities from the local market of the Spokane stations, and to add the Communities to the local market of the Missoula stations. Accordingly, TVC’s petition is granted.

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<sup>85</sup> TVC highlights the significance of the 800 signatures in light of the fact that the total population of Eureka is 1,037. Petition at 12, Exhibit G. TVC also states that it has forwarded copies of the same petition to Montana’s Congressional Delegation, which along with the Legislative Consumer Committee of the Montana State Legislature, TVC claims, supports its effort to include the Communities in the Missoula stations’ local market. Although petitions of this nature are not usually filed with market modification petitions, we accept the petition as informal evidence of the clear desire in the Communities for in-State Montana programming.

<sup>86</sup> See Exhibit E.

<sup>87</sup> *Id.*

<sup>88</sup> Petition. at 12-13, at Exhibit E.

<sup>89</sup> *Id.*

**V. ORDERING CLAUSES**

31. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (MB Docket No. 15-120, CSR 8909-A) filed by Tobacco Valley Communications, LLC **IS GRANTED**.

32. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>90</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>90</sup> 47 C.F.R. § 0.283.