

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

In the Matter of
La Plata County, Colorado
Petitions for Modification of the Satellite
Television Markets of KDVR-TV, KCNC-TV,
KMGH-TV, and KUSA-TV, Denver, Colorado
MB Docket No. 16-366
CSR No. 8927-A
MB Docket No. 16-367
CSR No. 8928-A
MB Docket No. 16-368
CSR No. 8929-A
MB Docket No. 16-369
CSR No. 8930-A

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2017

Released: March 1, 2017

By the Acting Chief, Media Bureau

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I. INTRODUCTION

1. La Plata County, Colorado ("Petitioner" or "La Plata County"), with the support of hundreds of its residents, has filed market modification petitions to make four Denver television stations (collectively, the "Stations") available to La Plata satellite subscribers. For historical and geographic reasons, La Plata County residents generally receive only New Mexico television stations, limiting their access to Colorado-specific news, sports, weather, and politics. With this Order, the Media Bureau grants these four petitions, and finds satellite carriage to be feasible to the extent described below.

2. Petitioner filed the above-captioned Petitions seeking to modify the local satellite carriage television markets of the Stations to include La Plata County, currently assigned to the Albuquerque-

Santa Fe Designated Market Area (DMA).¹ The Stations are: KDVR-TV, Denver, Colorado (Facility ID No. 126) (“KDVR”); KCNC-TV, Denver, Colorado (Facility ID No. 47903) (“KCNC”); KMGH-TV, Denver, Colorado (Facility ID No. 40875) (“KMGH”); and KUSA-TV, Denver, Colorado (Facility ID No. 23074) (“KUSA”).² A consolidated Opposition to the KDVR and KCNC Petitions was filed by LIN of New Mexico, LLC and LIN of Colorado, LLC (“LIN”).³ A consolidated Opposition to the KMGH and KUSA Petitions was filed by KOAT Hearst Television Inc. and KOB-TV, LLC (“KOAT/KOB”).⁴ In addition, DISH Network LLC (“DISH”) has filed a certification indicating that carriage of all of the Stations into La Plata in standard definition (SD) is feasible,⁵ and AT&T/DIRECTV, LLC (“DIRECTV”) has filed a certification indicating that SD carriage of all of the Stations into La Plata is feasible at this time, and high definition (HD) carriage is feasible in a portion of the community.⁶ Each Petition has been reviewed on its individual merits. Because they were filed simultaneously, and because the Stations are identically situated with respect to the feasibility of their carriage into the county at issue, we have consolidated our decisions into this single Order for the convenience of the parties.⁷ For the reasons discussed more fully below, we grant each of La Plata County’s Petitions, and modify the markets of KDVR, KCNC, KMGH, and KUSA, with respect to DISH and DIRECTV, to include La Plata County. We conclude that it is feasible for DISH and DIRECTV to offer the Stations throughout La Plata in SD format, and that it is feasible for DIRECTV to do so in HD format except in the seven identified ZIP codes. As discussed below, we further conclude that after the satellite serving La Plata County in SD is decommissioned, it will continue to be feasible for DIRECTV to offer the Stations in HD except in the seven La Plata County ZIP codes identified herein.

II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.⁸ A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.⁹ Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company

¹ See Petition for Special Relief (KDVR) of La Plata County, Colorado, MB Docket 16-366 (filed Sept. 7, 2016) (*KDVR Petition*); Petition for Special Relief (KCNC) of La Plata County, Colorado, MB Docket 16-367 (filed Sept. 7, 2016) (*KCNC Petition*); Petition for Special Relief (KMGH) of La Plata County, Colorado, MB Docket 16-368 (filed Sept. 7, 2016) (*KMGH Petition*); and Petition for Special Relief (KUSA) of La Plata County, Colorado, MB Docket 16-369 (filed Sept. 7, 2016) (*KUSA Petition*) (collectively, the *Petitions*). The Media Bureau placed the Petitions on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0448 (MB Nov. 2, 2016) (*La Plata Public Notice*).

² *Petitions* at 1.

³ *LIN Opposition to Petitions for Special Relief*, MB Dockets 16-366 and 16-367 (filed November 22, 2016) (*LIN Opposition*).

⁴ *KOAT/KOB Opposition to Petitions for Special Relief*, MB Dockets 16-368 and 16-369 (filed November 22, 2016) (*KOAT/KOB Opposition*).

⁵ *DISH Feasibility Certification* (dated July 14, 2016, filed in MB Docket No. 15-71).

⁶ *DIRECTV Feasibility Certification* (dated July 28, 2016, filed in MB Docket No. 15-71). The seven ZIP codes that DIRECTV has certified are not covered by its HD spot beam are 81137, 81301, 81302, 81303, 81326, 81328, and 81329.

⁷ See generally *La Plata Public Notice*, *DISH Feasibility Certification*, and *DIRECTV Feasibility Certification*.

⁸ 47 U.S.C. § 338(a)(1).

⁹ 47 CFR § 76.66(a)(6).

(Nielsen).¹⁰ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹¹ Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license,¹² it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.¹³

4. The STELA Reauthorization Act of 2014 (STELAR) added satellite television carriage to the Commission's market modification authority, which previously applied only to cable television carriage.¹⁴ Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station's local television market for purposes of satellite carriage, following a written request. In the Commission's 2015 *STELAR Market Modification Report and Order* implementing Section 102 of the STELAR, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station's local television market to include a new community located in a neighboring local market.¹⁵ The rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

5. By extending the market modification process to satellite television, Congress, in part, sought to address the so-called "orphan county" problem. An orphan county is a county that, as a result of the structure of a local satellite market, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.¹⁶ Satellite television subscribers residing in an orphan county often are not able to access their home state's news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the structure of, and therefore the stations located within, a local market was a primary factor in Congress' decision to extend market modification authority to the satellite context.¹⁷

¹⁰ See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station's local market for purposes of satellite carriage as the DMA in which the station is located).

¹¹ The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

¹² 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station's local market. See Satellite Home Viewer Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999).

¹³ See 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the "carry one, carry all" requirement.

¹⁴ The STELA Reauthorization Act of 2014, § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (STELAR) (adding 47 U.S.C. § 338(l)). "STELA" refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175.

¹⁵ *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

¹⁶ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

¹⁷ See generally 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*).

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to the satellite context.¹⁸ Notably, the STELAR carves out an exception to carriage obligations¹⁹ resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification “shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”²⁰ In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting carriage obligation under those circumstances.²¹ This exception applies only in the satellite context.²²

7. Once the threshold issue of technical and economic feasibility is resolved, Section 338(l) provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account the following five factors:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.²³

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station’s local market. The importance of

¹⁸ See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station’s market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) by the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station’s market to delete a community, the station is considered “distant” and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

¹⁹ See *supra* note 11 and accompanying text (describing the “carry one, carry all” satellite carriage requirement).

²⁰ 47 U.S.C. § 338(l)(3)(A).

²¹ *Senate Commerce Committee Report* at 11 (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.”).

²² In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station’s market, the modification is granted without reference to issues of technical and economic feasibility. As explained in the *STELAR Market Modification Report and Order*, Congress recognized “the inherent difference between cable and satellite television service” by adopting certain “provisions specific to satellite,” including 47 U.S.C. § 338(l)(3)(A)’s feasibility exception. 30 FCC Rcd at 10408, n.6.

²³ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.²⁴

8. Significantly, in the STELAR, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.²⁵ This new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."²⁶

9. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.²⁷ Accordingly, the rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.²⁸

²⁴ 47 U.S.C. § 338(h)(1)(C)(ii) directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, ¶ 53 (1999) (*Cable Market Modification Second Report and Order*).

²⁵ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

²⁶ *Senate Commerce Committee Report* at 11.

²⁷ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

²⁸ 47 CFR § 76.59(b)(1)-(7).

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.²⁹ The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if the Bureau is in a position to resolve the petition without such evidence.³⁰ Parties may submit whatever additional evidence they deem appropriate and relevant.³¹

10. In the instant proceeding, La Plata filed four Petitions seeking modification of the local television markets of Denver Stations KDVR, KCNC, KMGH, and KUSA to include La Plata County, Colorado. The Petitions were placed on public notice on November 2, 2016.³² During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. DISH's certification states that SD service to the county is feasible, but that HD service is not.³³ DIRECTV's certification explains that: SD service to the county is feasible for the time being, but that the satellite carrying the relevant spot beam is scheduled to be removed from service within the next three years; and HD service is infeasible in seven ZIP codes in La Plata (reflecting the majority of the area of the county) due to insufficient spot beam coverage.³⁴ We received one joint opposition filed by LIN,³⁵ and a second filed by KOAT/KOB.³⁶ These parties argue that the *Petitions* should be dismissed on procedural grounds, and in the alternative that they should be denied based on analysis of the statutory factors. We received supportive comments from local government officials, both of Colorado's United States Senators, and the Congressman representing La Plata County.³⁷ We also received hundreds of resident comments in support of each of the *Petitions*.³⁸

11. The Commission must make two determinations with respect to each of the *Petitions*: (1) whether the petition demonstrates that a modification to the station's television market is warranted, based on the five statutory factors and any other relevant information; and (2) whether the resulting carriage of the station from the proposed market modification is technically and economically feasible for each of the satellite carriers.³⁹ We consider the latter question first, because we will not grant a market

²⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

³⁰ *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

³¹ *Id.*

³² Special Relief and Show Cause Petitions, Public Notice (MB November 22, 2016).

³³ *DISH Feasibility Certification*.

³⁴ *DIRECTV Feasibility Certification*.

³⁵ *LIN Opposition*.

³⁶ *KOAT/KOB Opposition*.

³⁷ Local representatives filing in support of these petitions include: Senator Michael F. Bennett, Senator Cory Gardner, Congressman Scott R. Tipton, Director Phil Campbell of the Durango-La Plata Emergency Communications Center, and the La Plata County Board of County Commissioners (who filed the petitions on behalf of La Plata County). Long before the commencement of this proceeding, government officials were sharing concerns with the Commission about La Plata's lack of access to in-state programming. *See, e.g.*, Letter from Sen. Mark Udall, Sen. Michael Bennet, Rep. Diana DeGette, Rep. Doug Lamborn, Rep. Ed Perlmutter, Rep. Mike Coffman, Rep. Jared Polis, Rep. Cory Gardner, and Rep. Scott R. Tipton, Colorado Delegation, to Julius Genachowski, Chairman, FCC (Feb. 16, 2011) (cited in *In-State Broadcast Programming: Report to Congress Pursuant To Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-238, Report, 26 FCC Rcd 11919 at 10931, n.68 (MB 2011) (*2011 In-State Report*)).

³⁸ *See generally* MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, and *Petitions* at Exhibit I (some comments were filed in multiple dockets and/or made in reference to more than one station).

³⁹ 47 U.S.C. § 338(1); *see also* 47 CFR § 76.59.

modification petition if the resulting carriage would be infeasible.⁴⁰

III. DISCUSSION

12. For the reasons set forth below, we find that the evidence weighs in favor of the expansion of KDVR, KCNC, KMGH, and KUSA's markets to include La Plata County. We therefore modify the markets of KDVR, KCNC, KMGH, and KUSA to include La Plata County, and conclude that it is feasible for DISH and DIRECTV to offer the Stations throughout La Plata in SD format. As discussed below, we further conclude that it is feasible for DIRECTV to offer the Stations in high definition (HD) except in the seven La Plata County ZIP codes identified herein.

13. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59.⁴¹ We find good cause to waive these submissions because we have ample evidence to render our decision without them. Because the petition seeks to rectify an orphan county situation, the need for some traditional market modification evidence is diminished, as discussed in more detail below.⁴² Accordingly, we find that La Plata should not be held to the same evidentiary standards in this case as we would apply to a traditional petition for market modification, and we waive certain of the requirements of Section 76.59.⁴³

A. Technical and Economic Feasibility

14. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of La Plata County. As discussed below, however, we recognize that this feasibility in most cases will be limited to the provision of SD service and in some cases will be of limited duration. Section 338(1)(3) of the Communications Act does not require a satellite operator to carry a station in response to a market modification if it is not technically and economically feasible for the carrier to accomplish the carriage by means of its satellites in operation at the time of the determination.⁴⁴ In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage resulting from a market modification is infeasible.⁴⁵ The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.⁴⁶

15. Satellite carriers use spot beams to offer local broadcast stations to targeted geographic

⁴⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10442, para. 50.

⁴¹ Specifically, we waive 47 CFR §§ 76.59(b)(2), (3), (5), and (6) to the extent necessary; *see also supra* note 30 and accompanying text.

⁴² *Infra* para. 22, discussing the reduced importance, in orphan county cases, of the specific evidence at issue here.

⁴³ We note that although not required by Section 76.59(b), it has become clear that detailed information about programming is extremely important in the orphan county context. Because of the reduced importance of geographic factors it has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect future petitioners seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, to explain that they are not regularly broadcast by any station currently serving the county.

⁴⁴ 47 U.S.C. § 338(1)(3) (A “market determination ... shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”). *See also* 47 CFR § 76.59(e).

⁴⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

⁴⁶ *Id.* at 10435-6, 10438, paras. 39, 42.

areas.⁴⁷ With respect to claims of “spot beam coverage infeasibility,” the Commission concluded that “it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried.”⁴⁸ The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury.⁴⁹

16. With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.⁵⁰ To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility.⁵¹

17. DIRECTV and DISH each filed Feasibility Certifications in response to the County’s Petition. The certifications by each satellite provider were identical for each of the Stations. Both satellite providers indicate that carriage is feasible, with certain qualifications. DISH indicates that due to its “current technical capabilities” it can provide the Stations only in SD format.⁵² DIRECTV indicates that the spot beam on which it carries the Stations in HD does not serve seven of the ZIP codes in La Plata County, and that, while it can currently serve the whole county via the spot beam carrying the Stations in SD, the satellite carrying that spot beam is scheduled to be removed from service no later than 2019.⁵³

⁴⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10430, n.162 (quoting DIRECTV to explain that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas. Doing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.” This is in contrast to a “CONUS” beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

⁴⁸ *Id.* at 10410429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider’s CONUS beam (using spectrum that could otherwise be deployed for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32.

⁴⁹ *Id.* at 10435-36, para. 39. The Commission requires satellite carriers claiming that a market modification is technically infeasible based on spot beam coverage to submit a detailed certification that must include the following: (1) an explanation of why carriage is not technically and economically feasible, including a detailed explanation of the process by which the satellite carrier has determined whether or not the spot beam in question covers the geographic area at issue; (2) a statement that the satellite carrier has conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam in question; and (3) a supporting affidavit or declaration under penalty of perjury, as contemplated under Section 1.16 of the Commission’s Rules and 28 USC § 1746, signed and dated by an authorized officer of the satellite carrier with personal knowledge of the representations provided in the certification, verifying the truth and accuracy of the information therein. *Id.* at 10437-8, para. 41.

⁵⁰ *Id.* at 10438, para. 42.

⁵¹ *Id.*; see also *id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage “through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible”).

⁵² *DISH Feasibility Certification*.

⁵³ *DIRECTV Feasibility Certification*. See also *DIRECTV, LLC Response to Petition for Special Relief (DIRECTV Response)*.

We find the claims of both satellite providers to be sufficiently supported.

18. We note that, although carriage of the Stations by DIRECTV is feasible at this time, it will cease to be feasible in seven ZIP codes once they are no longer served by a relevant spot beam.⁵⁴ Because the removal from service of DIRECTV's satellite could occur as soon as next year and Petitioner has been notified of that schedule, we will not require DIRECTV to petition to remove the seven ZIP codes from the Stations' markets after service becomes infeasible.⁵⁵ Instead, DIRECTV may file updated feasibility certifications with the parties and with the Commission once plans and timing for removal of the satellite from service are finalized.⁵⁶ If there has been no change in DIRECTV's projected ability to cover the seven ZIP codes with a spot beam carrying the Stations, this updated feasibility certification should provide sufficient information for the Bureau to determine on its own motion that service to these ZIP codes is no longer feasible for DIRECTV, and to remove them from the local market of the Stations as of the date of removal from service of the satellite in question.⁵⁷

B. Orphan County Status

19. La Plata County is one of the counties the Commission has repeatedly and specifically identified as an "orphan" county with insufficient access to in-state programming,⁵⁸ and precisely the type of community that Congress intended to assist by broadening the market modification process.⁵⁹ The approach we take in our analysis of the statutory factors, accordingly, reflects the unusual fact patterns present in an orphan county scenario. La Plata County is assigned to the Albuquerque-Santa Fe DMA, which includes 28 New Mexico counties, part of one county in Arizona, and just two Colorado counties (La Plata and Montezuma). La Plata County residents who subscribe to satellite television service are served exclusively by stations licensed to communities within the state of New Mexico.⁶⁰ The Petitioner argues that residents of La Plata County are currently underserved by the broadcast stations in the Albuquerque-Santa Fe DMA, due to those stations' focus on news and programming information of

⁵⁴ *DIRECTV Feasibility Certification*. The seven ZIP codes that DIRECTV has certified are not covered by its HD spot beam are 81137, 81301, 81302, 81303, 81326, 81328, and 81329. *See also DIRECTV Response* at 3. Carriage of the stations in HD into eastern La Plata County (ZIP code 81122) is currently feasible, and will remain feasible after the SD spot beam at issue is removed from service. *Id.* This may impact DIRECTV's carriage obligations if it reaches an agreement for carriage with one or more of the Stations. *See* 47 CFR § 76.66(k) ("Material Degradation").

⁵⁵ In normal circumstances, a reduction in spot beam coverage that rendered service infeasible would require a new market modification petition or petitions by the satellite carrier. *See STELAR Market Modification Report and Order*, 30 FCC Rcd at 10440, n.231. In these unique circumstances, particularly the apparent certainty that DIRECTV will decommission the satellite as scheduled, requiring DIRECTV to incur the costs of filing such additional petitions would be unnecessary.

⁵⁶ These certifications should be filed in the relevant dockets with copies sent electronically to the Chief, Media Bureau and the Chief, Policy Division, Media Bureau.

⁵⁷ The Bureau may seek additional information from the parties if there appears to have been any change in relevant circumstances.

⁵⁸ *2011 In-State Report*, 26 FCC Rcd at 12480; *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, Report, 31 FCC Rcd 5463 at 5670, Appendix D. (*2016 In-State Report*)

⁵⁹ The "core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12.

⁶⁰ *2016 In-State Report*, 31 FCC Rcd at 5670. The only full-power commercial broadcast stations serving residents of La Plata County over the air (KRTN-TV and KREZ-TV) are satellites rebroadcasting the signal of New Mexico-based stations.

interest to New Mexicans.⁶¹ This claim is supported by hundreds of comments filed in the docket by county residents and their representatives.⁶²

20. Neither Opposition disputes the characterization of La Plata as an “orphan county,” although they argue that the stations assigned to the Albuquerque-Santa Fe DMA “[have] been providing the residents of La Plata County, Colorado with extensive coverage of local news, sports, and weather for decades,”⁶³ and “regularly provide coverage of local news and events in La Plata County, daily weather information, ski and snowboard reports, and other locally-oriented programming.”⁶⁴ Notwithstanding these arguments, we find no ambiguity with respect to La Plata’s status as an orphan county. It is clearly under-served by in-state programming, and is “in one state [] assigned to a neighboring state’s local television market and, therefore, satellite subscribers residing in [La Plata] cannot receive some or any broadcast stations that originate in-state.”⁶⁵

21. With the STELAR’s revisions to the market modification process, and its addition of a satellite market modification process, Congress intended to address orphan county situations like these. Indeed, the legislative history observes that “many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances,” may “lack access to local television programming that is relevant to their everyday lives” and instructs us to “consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations.”⁶⁶ As we observed in the *STELAR Market Modification Report and Order*, “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.⁶⁷ We analyze these factors here in light of the importance Congress placed on addressing orphan

⁶¹ *Petitions* at 3.

⁶² See generally MB Docket Nos. 16-366, 16-367, 16-368, and 16-369.

⁶³ *LIN Opposition* at 2.

⁶⁴ *KOAT/KOB Opposition* at 5-6.

⁶⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, n.5. We note that immediately prior to the commencement of this proceeding, the Stations submitted a letter to Colorado Senators Michael Bennet and Cory Gardner stating that they would be willing to negotiate with satellite providers for “targeted” carriage of their locally-produced news and public affairs programming, to the extent that this programming is not duplicated by an Albuquerque broadcaster. Letter from Colorado Broadcasters Association Members to Senator Michael Bennet and Senator Cory Gardner (August 29, 2016) (included in *Petitions* at Exhibit H). This kind of targeted DBS carriage would be theoretically possible even absent a market modification, because stations own the copyright in their locally produced programming. This means that a satellite carrier with rights to carry this specific programming would not need the statutory copyright license it uses to redistribute the entirety of an in-market broadcast signal (and that it would be able to rely upon in the event of a market modification). It would, however, need to devote the bandwidth of an entire satellite “channel” to each station for which it carried targeted programming, and show subscribers a blank screen on that channel during any non-local programming. KOAT/KOB argue in their Opposition that the Denver stations’ willingness to negotiate for such “targeted” carriage obviates the need for grant of the Petitions, as they see “no justification why the Denver Stations’ willingness to import their local news and public affairs programming would not achieve the very goals of the Petitions without the need for FCC intervention.” *KOAT/KOB Opposition* at 17. However, as evidenced by passage of the STELAR, Congress did see a significant justification for FCC intervention in precisely this type of scenario. The availability of “targeted carriage” does not, in fact, achieve the “goals of the Petitions,” or of Congress. As La Plata County observes, a satellite provider would be unlikely to even have the capacity to carry a “special, blacked out feed” of the Stations just to ensure that subscribers in a single county could receive a portion of those Stations’ programming. *La Plata Reply to Oppositions to Petitions for Special Relief* at 6-7 (filed in dockets 16-366, 16-367, 16-368, and 16-369) (*Reply to Oppositions*).

⁶⁶ *Senate Commerce Committee Report* at 11.

⁶⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

counties' inability to receive in-state programming. We conclude that this is necessary in order to best effectuate the goals of the STELAR.⁶⁸

22. In particular, we note that in-state programming is a type of "local" service.⁶⁹ Unlike in a traditional market modification process, in which a station might demonstrate a local connection through geographic proximity tests, in-state stations are more likely to demonstrate that they are "local" through evidence showing they seek to provide a community with access to news, politics, sports, emergency and other programming specifically related to their home state. Heavy reliance on geographic proximity tests in the context of an orphan county fact pattern seems especially inappropriate given the "remote geographic location of orphan counties"⁷⁰ and the fact that they are by definition on the outskirts of a petitioner's home state. Accordingly, we find that tests based on geographic proximity, which have historically been considered important for demonstrating a market nexus between a station and a community, are of significantly reduced relevance in the orphan county context. Similarly, we would anticipate that historic carriage of a petitioner station would be less common and its viewer ratings would be lower in an orphan county than we have found in prior successful market modification proceedings.⁷¹ To hold orphan county market modification petitions to these pre-STELAR standards would frustrate the will of Congress, which instructed us to "consider the plight" of viewers in these counties. Therefore, in line with Congress' addition of the new third statutory factor, in orphan county situations we will give substantial weight to the local/in-state programming a petitioner proposes to bring to the orphan county

⁶⁸ We will weigh the factors in the same manner in the event of any future cable market modification petition regarding communities within an orphan county. By adding the new statutory factor number three to both new DBS modification processes and existing cable modification processes, Congress made clear that we should do so. *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 17 ("the STELAR added a fifth factor (inserted as the new third statutory factor) for both cable and satellite to 'promote consumers' access to television broadcast station signals that originate in their State of residence.>"). We note, however, that the impact of a market modification may be different in a cable context than in a satellite context, even in situations where the fact patterns are otherwise similar, and this differing impact may lead us to a different result. Although cable operators are not required to carry duplicating stations or more than one local station affiliated with a particular network, if a cable system declines to carry duplicating stations, it must at least carry the station closest to the principal headend of the cable system, even if that station is from another state. *See* 47 CFR § 76.56(b)(5). By contrast, in the satellite carriage context, if two stations are located in the same market but different states and are affiliated with the same network, the satellite carrier must carry both of them. *See* 47 U.S.C. § 338(c)(1); 47 CFR § 76.66(h)(1) (*and see* 47 CFR § 76.66(h)(2)-(3), explaining that if the duplicating stations are both in the same state, the satellite carrier may choose which to carry, regardless of their location). In both the cable and satellite contexts an operator may choose to carry multiple duplicating stations, but is unlikely to do so absent a requirement, due to bandwidth constraints. As a result of these different regimes, a cable market modification could result in the cable system dropping an established station in favor of a new station, but a satellite carrier would either be required to carry both versions of a duplicating station or could choose to carry only the already-established station. Thus, the potential for market disruption of long-established network stations is lower in the satellite context, and we are therefore more likely, even if only marginally more likely, to grant DBS orphan county market modification petitions.

⁶⁹ *See Senate Commerce Committee Report* at 15 ("The Committee 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."). *See also Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, CSR No. 8926-A, Memorandum Opinion and Order, DA 17-74, para. 27 (MB 2017).

⁷⁰ *Id.* at 10418, para. 15.

⁷¹ *See, e.g., Tennessee Broadcasting Partners*, 23 FCC Rcd 3928 (MB 2008). *NB*: like all pre-STELAR market modification cases, *Tennessee* is a cable case, not a DBS case. The most important difference, however, is that Petitioner's case involves an orphan county, not that the markets being modified are satellite rather than cable markets.

when determining whether a nexus to a new community has been demonstrated, and will consider the other factors, when they apply, as enhancements to a petitioner's case.⁷² In particular, as the Commission explained in the *STELAR Market Modification Report and Order*, government official and consumer comments supporting a proposed market modification can be particularly valuable in demonstrating a nexus between the station and the community.⁷³

23. Applying this framework to each of the simultaneously-filed KDVR, KCNC, KMGH, and KUSA Petitions, we find that each Station has a significant nexus to La Plata County, primarily demonstrated through the local/in-state programming provided by each Station and the substantial and widespread support of La Plata County residents and government officials for these modifications. We therefore grant the modifications.

C. KDVR-TV

24. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”⁷⁴ We find this factor to be neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context. LIN correctly observes that Petitioner provides no evidence with respect to historic carriage of KDVR in La Plata County.⁷⁵ Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”⁷⁶ and making no representation with respect to cable carriage.⁷⁷ Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

25. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”⁷⁸ We find that this factor weighs heavily in favor of a grant of the Petition. As explained above, we find that evidence related to distance such as contour maps and “shopping and labor patterns” are not determinative in the consideration of a market modification request involving an orphan county, though they generally must be submitted as part of a market modification

⁷² In contrast, in market modification proceedings that do not involve the addition or deletion of an in-State broadcaster, the Media Bureau has found that the third statutory factor is inapplicable. See *COXCOM, LLC*, 30 FCC Rcd 10978, 10999, para 46 (MB 2015) (“The 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.”).

⁷³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

⁷⁴ 47 U.S.C. § 338(l)(2)(B)(i).

⁷⁵ *LIN Opposition* at 2.

⁷⁶ We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KDVR, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

⁷⁷ *KDVR Petition* at 6.

⁷⁸ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide “noise-limited service contour maps ... delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

petition⁷⁹ and may enhance a petitioner's case.⁸⁰ The LIN Opposition correctly notes that KDVR provides no over-the-air coverage of La Plata County,⁸¹ and Petitioner declined to provide evidence of "shopping and labor patterns" between the county and Denver, KVDR's city of license.⁸² LIN suggests that these omissions render support for factor two "either superficial or entirely absent."⁸³ This, however, is a misreading of the second statutory factor, which is not limited to the narrow presence or absence of over-the-air coverage of the community by the broadcast signal at issue, but requires us to consider the overall "local service to the community" provided by the station.⁸⁴

26. In this case, we find that overall geographic proximity measures do not enhance the Petitioner's case, and we thus consider them neutral. Instead, to determine whether there is a sufficient nexus between KDVR and La Plata County to justify a market modification, we assess whether the programming offered by KDVR meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.⁸⁵ In doing so, we are mindful of Congress' intention that "local" programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming "originating from and about" their state.⁸⁶ We hold that all programming carried on KDVR and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KDVR.⁸⁷ We accordingly find that KDVR carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.⁸⁸ We also give substantial weight to the hundreds of comments from residents and their government representatives supporting the Petition.⁸⁹ As the Commission noted in the *STELAR Market Modification Report and Order*, "local government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue."⁹⁰ These comments show the significance that residents place on Colorado-specific programming, and the specific

⁷⁹ 47 CFR § 76.59(b)(2), (3).

⁸⁰ *Supra* para. 22.

⁸¹ *Lin Opposition* at 2, 5.

⁸² *KDVR Petition* at 6.

⁸³ *LIN Opposition* at 1.

⁸⁴ This includes, in particular, locally-relevant programming. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

⁸⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

⁸⁶ *Senate Commerce Committee Report* at 11, 15 (explaining that the "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives" and directing the Commission to interpret local programming to include "not only television programming [. . .] 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").

⁸⁷ *KDVR Petition* at 6 and Exhibit C.

⁸⁸ *See, e.g.,* "New DMV License Rollout" (aired 4/6/16); "Oil Jobs Leaving Colorado" (aired 1/18/16); "Colorado Voters Still Approve Marijuana" (Aired 9/19/16) "Colorado 2016 Ballot Guide" (aired on multiple days and news programs prior to 11/8/2016, and discussing every statewide ballot measure in detail); "CSU Rams Heading to Bowl Game" (Aired 12/28/15).

⁸⁹ *See generally* MB Docket no. 16-366 and *KDVR Petition* at Exhibit I.

⁹⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

types of coverage they seek (which coverage, as noted immediately above, is available on a regular basis on KDVR).⁹¹

27. *Access to In-State Stations.* The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”⁹² We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and therefore that this factor weighs heavily in favor of granting the Petition. This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.⁹³

28. LIN misunderstands both the purpose and the application of the third statutory factor in saying that “the weight given to the so-called [*sic*] in-state factor is minimized because the Petitioner cannot show that La Plata County residents ‘had little (or no) access’ to programming specifically related to La Plata County.”⁹⁴ First, the in-state factor is never “minimized” so long as the station is located in the same state as the local market in question – the Commission was explicit that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”⁹⁵ Second, the presence of “programming specifically related to La Plata County” is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”⁹⁶ not their *county* of residence.

29. KDVR is a FOX affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,⁹⁷ KDVR provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting this petition,⁹⁸ La Plata County residents currently have “little (or no) access” to some of the Colorado-specific programming provided by KDVR. As discussed in more detail below, LIN station KRQE has aired some stories relevant to La Plata County residents.⁹⁹ LIN does not dispute,

⁹¹ See, e.g., Robert Winslow Comments (“There were a number of ballot issues in Colorado this year and we were not able to receive news about them since the local network newscasts originate in New Mexico. We would also like to be able to receive current news about our Colorado sports teams - not just the professional ones, but high school and college as well. There are many graduates in our area from the University of Colorado and Colorado State University and other state colleges and they would like to hear coverage of their Alma Maters.”); Malcolm Perkins Comments (“I am a big Colorado sports fan. I try to keep up with the political happenings in my state, not to mention the weather forecasts, entertainment, and news of Colorado. To know more about what goes on in New Mexico than my own state is ludicrous and completely unacceptable.”); Jon Powell and Linda Arndt Comments (“We need access to Denver TV for state-wide news, weather, events, and politics. Currently we receive those items only from Albuquerque NM where we can't vote”).

⁹² 47 U.S.C. § 338(1)(2)(B)(iii).

⁹³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁹⁴ *LIN Opposition* at 5.

⁹⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁹⁶ *Id.* (emphasis added).

⁹⁷ *Supra* note 88.

⁹⁸ *Supra* note 89.

⁹⁹ *Infra* para. 30. LIN appears to argue that its stations’ provision of some locally relevant news and sports programming to La Plata County is, by itself, grounds for denial of the KDVR Petition. See *LIN Opposition* at 4,

(continued....)

however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.¹⁰⁰ As discussed above, KDVR offers precisely this type of Colorado-specific public affairs programming.¹⁰¹

30. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”¹⁰² We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will neither weigh in favor of or against a modification request if another station serves that community.¹⁰³ KRQE is an Albuquerque-based broadcast station carrying both CBS and FOX programming on multiple streams. It is the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The LIN Opposition provides evidence that KRQE has aired some stories relevant to La Plata County residents in the past 18 months, though sometimes through a New Mexico-centric lens (*e.g.*, “New Mexico to sue EPA over mine spill,” “Poll names New Mexico railroad best in nation”).¹⁰⁴ The LIN Opposition also states that every regular season Denver Broncos game in the past three years has been carried on KRQE, and has as a result been available to La Plata County viewers.¹⁰⁵ Petitioner does not dispute these claims.¹⁰⁶ Because other stations, including KRQE, provide the county with coverage of local issues and carriage of local sports,

(Continued from previous page) _____

Section II (entitled “Evidence that LIN’s La Plata County-based stations provide the area with extensive local news, weather, and sports coverage significantly outweighs the paucity of evidence in the petitions and supports denial of the market modification requests.” We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13 (Cable Services Bureau 1997). However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Petition for Modification of the Dayton, OH Designated Market Area with respect to Television Station WHIO-TV, Dayton, OH*, 28 FCC Rcd 16011, 16019 (MB 2013) (“*Dayton*”). As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

¹⁰⁰ *KDVR Petition* at 4.

¹⁰¹ *Supra* note 88.

¹⁰² 47 U.S.C. § 338(l)(2)(B)(iv).

¹⁰³ See *e.g.*, *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, para. 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, para. 13 (1997).

¹⁰⁴ *Lin Opposition* at 5-7 (listing 23 stories aired over approximately 18 months that are arguably relevant to La Plata County viewers).

¹⁰⁵ *Id.* at 7.

¹⁰⁶ La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

we find that this factor weighs neither against nor in favor of La Plata County's request to modify KDVR's market, and give it no weight in our consideration of whether to grant the Petition.

31. *Viewing Patterns.* Finally, we consider "evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community."¹⁰⁷ This factor also is neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context.¹⁰⁸ The LIN Opposition correctly observes that Petitioner provides no evidence of household viewing patterns. The Petitioner argues that, "given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition."¹⁰⁹ Absent any evidence with respect to viewing patterns, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the KDVR Petition.

32. *Conclusion.* The issue before us is whether to grant Petitioner's request to modify the local satellite carriage market of KDVR—of the Denver DMA—to include Colorado's La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.¹¹⁰ Section 338(l) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.¹¹¹ Under this statutory provision, the Commission must afford particular attention to the value of localism.¹¹² We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KDVR and La Plata County. We accordingly grant La Plata's request for market modification, and order the addition of La Plata County to the local market of KDVR on both DISH and DIRECTV.¹¹³

D. KCNC-TV

33. *Historic Carriage.* The first factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community."¹¹⁴ We find this factor to be neutral in our analysis. As discussed above, we consider this an

¹⁰⁷ 47 U.S.C. § 338(l)(2)(B)(v).

¹⁰⁸ *Supra* para. 22.

¹⁰⁹ *KDVR Petition* at 6.

¹¹⁰ *KDVR Petition* at 1.

¹¹¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

¹¹² *Id.*

¹¹³ This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata County to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. See *Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. See, e.g., Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

¹¹⁴ 47 U.S.C. § 338(l)(2)(B)(i).

enhancement factor in the orphan county context. LIN correctly observes that Petitioner provides no evidence with respect to historic carriage of KCNC in La Plata County.¹¹⁵ Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”¹¹⁶ and making no representation with respect to cable carriage.¹¹⁷ Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

34. *Local Service*. Second, we consider “whether the television station provides coverage or other local service to the community.”¹¹⁸ We find that this factor weighs heavily in favor of a grant of the Petition. As explained above, we find that evidence related to distance such as contour maps and “shopping and labor patterns” are not determinative in the consideration of a market modification request involving an orphan county, though they generally must be submitted as part of a market modification petition¹¹⁹ and may enhance a Petitioner’s case.¹²⁰ The LIN Opposition correctly notes that KCNC provides no over-the-air coverage of La Plata County,¹²¹ and Petitioner declined to provide evidence of “shopping and labor patterns” between the county and Denver, KVDR’s city of license.¹²² LIN suggests that these omissions render support for factor two “either superficial or entirely absent.”¹²³ This, however, is a misreading of the second statutory factor, which is not limited to the narrow presence or absence of over-the-air coverage of the community by the broadcast signal at issue, but requires us to consider the overall “local service to the community” provided by the station.¹²⁴

35. In this case, we find that overall geographic proximity measures do not enhance the Petitioner’s case, and we thus consider them neutral. Instead, to determine whether there is a sufficient nexus between KCNC and La Plata County to justify a market modification, we assess whether the programming offered by KCNC meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.¹²⁵ In doing so, we are mindful of Congress’ intention that “local” programming under this

¹¹⁵ *LIN Opposition* at 2.

¹¹⁶ We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KCNC, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

¹¹⁷ *KCNC Petition* at 6.

¹¹⁸ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “noise-limited service contour maps ... delineating the station’s technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station’s broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

¹¹⁹ 47 CFR § 76.59(b)(2), (3).

¹²⁰ *Supra* para. 22.

¹²¹ *Lin Opposition* at 2, 5.

¹²² *KCNC Petition* at 6.

¹²³ *LIN Opposition* at 1.

¹²⁴ This includes, in particular, locally-relevant programming. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

¹²⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming “originating from and about” their state.¹²⁶ We hold that all programming carried on KCNC and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KCNC.¹²⁷ We accordingly find that KCNC carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.¹²⁸ We also give substantial weight to the hundreds of comments from residents and their government representatives supporting the Petition.¹²⁹ As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”¹³⁰ These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they seek (which coverage, as noted immediately above, is available on a regular basis on KCNC).¹³¹

36. *Access to In-State Stations.* The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”¹³² We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and therefore that this factor weighs heavily in favor of granting the Petition. This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.¹³³

37. LIN misunderstands both the purpose and the application of the third statutory factor in saying that “the weight given to the so-called [*sic*] in-state factor is minimized because the Petitioner cannot show that La Plata County residents ‘had little (or no) access’ to programming specifically related

¹²⁶ *Senate Commerce Committee Report* at 11, 15 (explaining that the “many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives” and directing the Commission to interpret local programming to include “not only television programming [. . .] 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”).

¹²⁷ *KCNC Petition* at 6 and Exhibit C.

¹²⁸ *See, e.g.*, October 20, 2016 story on the first national election in which all Colorado voters could vote by mail; December 9, 2016 story on the uncertain status of several Colorado ballot measures; April 1, 2016 story on a partial end to the Colorado ban on letting a car run without anyone inside to warm it up; July 24, 2015 story on Colorado marijuana legalization leading to CDC warnings about pot edibles.

¹²⁹ *See generally* MB Docket no. 16-367 and *KCNC Petition* at Exhibit I.

¹³⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

¹³¹ *See, e.g.*, Kari Plante Comments (“I do not know what is going on in the state that I live in. It is hard to vote if one does not know who the candidates are.”); Jill Fischer Comments (“How are we expected to be educated voters if the only information we receive comes out of New Mexico! We need Colorado news to know what is going on in our state!”); James Ottman Comments (“We have never seen our Governor on TV, expect [*sic*] when he is on national news.”); Chris Mimmack Comments (“I would like to be able to be educated on the political figures that represent the state of Colorado as well as any law changes or amendments that affect the residents of Colorado.”).

¹³² 47 U.S.C. § 338(l)(2)(B)(iii).

¹³³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

to La Plata County.”¹³⁴ First, the in-state factor is never “minimized” so long as the station is located in the same state as the local market in question – the Commission was explicit that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”¹³⁵ Second, the presence of “programming specifically related to La Plata County” is totally unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”¹³⁶ not their *county* of residence.

38. KCNC is a CBS owned and operated station licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,¹³⁷ KCNC provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting this petition,¹³⁸ La Plata County residents currently have “little (or no) access” to some of the Colorado-specific programming provided by KCNC. As discussed in more detail below, LIN station KRQE has aired some stories relevant to La Plata County residents.¹³⁹ LIN does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.¹⁴⁰ As discussed above, KCNC offers precisely this type of Colorado-specific public affairs programming.¹⁴¹

39. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”¹⁴² We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will neither weigh in favor of or against a modification request if

¹³⁴ *LIN Opposition* at 5.

¹³⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

¹³⁶ *Id.* (emphasis added).

¹³⁷ *Supra* note 128.

¹³⁸ *Supra* note 129.

¹³⁹ *Infra* para. 39. LIN appears to argue that its stations’ provision of some locally relevant news and sports programming to La Plata County is, by itself, grounds for denial of the KDVR Petition. *See LIN Opposition* at 4, Section II (entitled “Evidence that LIN’s La Plata County-based stations provide the area with extensive local news, weather, and sports coverage significantly outweighs the paucity of evidence in the petitions and supports denial of the market modification requests.” We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

¹⁴⁰ *KCNC Petition* at 4.

¹⁴¹ *Supra* note 128.

¹⁴² 47 U.S.C. § 338(1)(2)(B)(iv).

another station serves that community.¹⁴³ KRQE is an Albuquerque-based broadcast station carrying both CBS and FOX programming on multiple streams. It is the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The LIN Opposition provides evidence that KRQE has aired some stories relevant to La Plata County residents in the past 18 months, though sometimes through a New Mexico-centric lens (*e.g.*, “New Mexico to sue EPA over mine spill,” “Poll names New Mexico railroad best in nation”).¹⁴⁴ The LIN Opposition also states that every regular season Denver Broncos game in the past three years has been carried on KRQE, and has as a result been available to La Plata County viewers.¹⁴⁵ Petitioner does not dispute these claims.¹⁴⁶ Because other stations, including KRQE, provide the county with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County’s request to modify KCNC’s market, and give it no weight in our consideration of whether to grant the Petition.

40. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”¹⁴⁷ This factor also is neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context.¹⁴⁸ The LIN Opposition correctly observes that Petitioner provides no evidence of household viewing patterns. The Petitioner argues that, “given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition.”¹⁴⁹ Absent any evidence with respect to viewing patterns, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the KCNC Petition.

41. *Conclusion.* The issue before us is whether to grant Petitioner’s request to modify the local satellite carriage market of KCNC—of the Denver DMA—to include Colorado’s La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.¹⁵⁰ Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located in their State.¹⁵¹ Under this statutory provision, the Commission must afford particular attention to the value of localism.¹⁵² We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no

¹⁴³ See *e.g.*, *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, para. 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, para. 13 (1997).

¹⁴⁴ *Lin Opposition* at 5-7 (listing 23 stories aired over approximately 18 months that are arguably relevant to La Plata County viewers).

¹⁴⁵ *Id.* at 7.

¹⁴⁶ La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

¹⁴⁷ 47 U.S.C. § 338(l)(2)(B)(v).

¹⁴⁸ *Supra* para. 22.

¹⁴⁹ *KCNC Petition* at 6.

¹⁵⁰ *KCNC Petition* at 1.

¹⁵¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

¹⁵² *Id.*

weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KCNC and La Plata County. We accordingly grant La Plata's request for market modification, and order the addition of La Plata County to the local market of KCNC on both DISH and DIRECTV.¹⁵³

E. KMGH-TV

42. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”¹⁵⁴ We find this factor to be neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context. KOAT/KOB correctly observes that Petitioner provides no evidence with respect to historic carriage of KMGH in La Plata County.¹⁵⁵ Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”¹⁵⁶ and making no representation with respect to cable carriage.¹⁵⁷ Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

43. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”¹⁵⁸ We find that this factor weighs heavily in favor of a grant of the petition. As explained above, distance tests such as contour maps are not determinative in the consideration of a market modification request involving an orphan county, though they may enhance a Petitioner's case.¹⁵⁹ KOAT/KOB notes that KMGH provides no over-the-air coverage of La Plata

¹⁵³ This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. See *Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. See, e.g., Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

¹⁵⁴ 47 U.S.C. § 338(l)(2)(B)(i).

¹⁵⁵ *KOAT/KOB Opposition* at 9. Evidence of historic carriage of KOAT and KOB, however, is irrelevant to our analysis under this factor.

¹⁵⁶ We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KMGH, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

¹⁵⁷ *KMGH Petition* at 6.

¹⁵⁸ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “noise-limited service contour maps . . . delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

¹⁵⁹ *Supra* para. 22.

County¹⁶⁰ and is quite distant from La Plata County geographically,¹⁶¹ and that Petitioner declined to provide evidence of shopping and labor patterns in the County.¹⁶² Although KOAT/KOB recognizes the importance to our analysis of determining whether KMGH carries programming with a demonstrated nexus to the community,¹⁶³ it avers that this nexus can only be demonstrated by “local programming from [KMGH] that is specifically directed to news and issues *in La Plata County*.”¹⁶⁴ As discussed above, this is an overly narrow reading of factor two of our statutory analysis, particularly in the orphan county context.¹⁶⁵ Rather, we must consider all of the “local service to the community” provided by the station, and in doing so we must be mindful of Congress’ intention that “local” programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming “originating from and about” their home state.¹⁶⁶ KOAT/KOB emphasizes a distinction between “*state-related* programming” and “*localized* programming” that simply does not exist in the orphan county context.¹⁶⁷

44. In this case, we find that overall geographic proximity measures do not enhance the Petitioner’s case, and we thus consider them neutral.¹⁶⁸ Instead, we assess whether the programming offered by KMGH meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.¹⁶⁹ We hold that all programming carried on KMGH and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KMGH.¹⁷⁰ We find that KMGH carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.¹⁷¹ We also give substantial weight to the hundreds of comments from residents of La Plata County and their government representatives supporting

¹⁶⁰ *KOAT/KOB Opposition* at 11 (observing that translator coverage is not the same as coverage by the station itself for market modification purposes); *see, e.g., Petition for Reconsideration, Petition of Time Warner Cable for Modification of Market of Television Station WGOT-TV, Merrimack, New Hampshire*, CSR 4917-A, 14 FCC Rcd 12118 at 12119, para. 4 (Cable Services Bureau 1999) (“The Commission has held that translator coverage does not lessen the relevance of the parent station's failure to place technical signal coverage over the subject communities”).

¹⁶¹ *Id.*

¹⁶² *Id.* at 11-12 (citing *KMGH Petition* at 6). *See also* 47 CFR §§ 76.59(2), (3).

¹⁶³ *Id.* at 10.

¹⁶⁴ *Id.* at 12 (emphasis added).

¹⁶⁵ *Supra* para. 22.

¹⁶⁶ *Senate Commerce Committee Report* at 11, 15 (explaining that the “many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives” and directing the Commission to interpret local programming to include “not only television programming [. . .] 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”).

¹⁶⁷ *KOAT/KOB Opposition* at 4 (emphasis in original).

¹⁶⁸ *Supra* para. 22.

¹⁶⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

¹⁷⁰ *KMGH Petition* at 6 and Exhibit C.

¹⁷¹ *See, e.g.*, November 3, 2016 story on a major deployment of Colorado soldiers; November 9, 2016 story on a data breach by the VA involving Colorado veterans; July 1, 2016 story on 25 new statewide laws going into effect that day; April 22, 2016 story on the Republican primary race for Colorado Senate; November 16, 2015 story on Colorado Gov. Hickenlooper welcoming the resettling of Syrian refugees in the state.

the Petition.¹⁷² As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”¹⁷³ These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they need (which coverage, as noted immediately above, is available on a regular basis on KMGH).¹⁷⁴

45. *Access to In-State Stations*. The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”¹⁷⁵ We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and that this factor accordingly weighs heavily in favor of granting the Petition. As noted above, this factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.¹⁷⁶

46. KOAT/KOB misapprehends the in-state statutory factor when it argues that “there should be no enhancement for this factor in this case” because “access to in-state Denver Stations” might only give La Plata County residents “certain news programming of statewide interest to all Coloradans in general (including news from the state capitol).”¹⁷⁷ What KOAT/KOB is describing represents the complete fulfillment of Congress’ intent in adopting the new third statutory factor in STELAR.¹⁷⁸ Residents of La Plata County, a quintessential orphan county, have little to no access to programming “of statewide interest to all Coloradans in general (including news from the state capitol),” because all of their broadcast stations originate in New Mexico. Congress saw this as a problem of sufficient significance to justify a change to the entire market modification process, and the Commission was explicit that the in-state connection was so important that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”¹⁷⁹ KOAT/KOB argues that “there is no evidence that [KMGH’s] programming focuses on

¹⁷² See generally MB Docket no. 16-368 and *KMGH Petition* at Exhibit I.

¹⁷³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

¹⁷⁴ See, e.g., Carol Cure Comments (“As a resident of La Plata County, Colorado, I am dismayed that we are unable to access Denver-area/Colorado news, political commentary, public affairs information and sports. . . . During the election season this past few months, we were even denied news about our Colorado candidates that could have assisted us in making decisions as voters, and this was deplorable.”); Gail Lovell Comments (“I want to see the news from Denver about issues affecting me. I live in the state of CO and expect to get news about my state.”); Carrie Slifka and Travis Willschau Comments (“We need Colorado news to be aware of government issues, election topics, and so much more.”); Jeannine Angle Dobbins Comments (“We know nothing about the political candidates from Colorado that we are voting for.”).

¹⁷⁵ 47 U.S.C. § 338(l)(2)(B)(iii).

¹⁷⁶ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

¹⁷⁷ *KOAT/KOB Opposition* at 15.

¹⁷⁸ *Senate Commerce Committee Report* at 11 (“The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a petition filed under the process created by this subsection (as well as a petition filed using the process already in place for cable operators under section 614(h)) of the Communications Act, even if granting such modification would pose an economic challenge to various local television broadcast stations.”).

¹⁷⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

responding to local issues, needs and interests—community news, weather, sports, and public affairs—in La Plata.”¹⁸⁰ Such evidence is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”¹⁸¹ not their *county* of residence. Despite misunderstanding the function of the in-state factor, KOAT/KOB is correct that the “new factor is neither exclusive nor dispositive—rather, it is just one of several statutory factors bearing on the ultimate goal of localism.”¹⁸² The weight given to that factor can be substantial, however, and as the Commission explained in implementing this new statutory factor, “each petition for market modification will turn on the unique facts of the case.”¹⁸³

47. KMGH is an ABC affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,¹⁸⁴ KMGH provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting the Petition,¹⁸⁵ La Plata County residents currently have “little (or no) access” to the types of Colorado-specific programming provided by KMGH. As discussed in more detail below, KOAT and KOB have aired a number of stories relevant to La Plata County residents.¹⁸⁶ KOAT/KOB does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.¹⁸⁷ As discussed above, and as KOAT/KOB acknowledges, KMGH offers precisely this type of Colorado-specific public affairs programming.¹⁸⁸

48. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”¹⁸⁹ We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will weigh neither in favor of nor against a modification request if

¹⁸⁰ *KOAT/KOB Opposition* at 15.

¹⁸¹ *Id.* (emphasis added).

¹⁸² *KOAT/KOB Opposition* at ii.

¹⁸³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

¹⁸⁴ *Supra* note 171.

¹⁸⁵ *Supra* note 172.

¹⁸⁶ *Infra* para. 48. We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

¹⁸⁷ *KMGH Petition* at 4.

¹⁸⁸ *Supra* note 171; *KOAT/KOB Opposition* at 15.

¹⁸⁹ 47 U.S.C. § 338(1)(2)(B)(iv).

another station serves that community.¹⁹⁰ KOAT and KOB are Albuquerque-based broadcast stations carrying ABC and NBC programming, respectively. They are the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The KOAT/KOB Opposition provides evidence that they have aired dozens of stories relevant to La Plata County residents in the past 18 months (including at least one apparently discussing this very proceeding).¹⁹¹ Petitioner does not dispute these claims.¹⁹² Because other stations, including KOAT and KOB, provide the County with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County's request to modify KMGH's market, and give it no weight in our consideration of whether to grant the Petition.

49. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”¹⁹³ As discussed above, we consider this an enhancement factor in the orphan county context.¹⁹⁴ This factor also is neutral in our analysis. KOAT/KOB correctly observes that Petitioner provides no evidence of household viewing patterns.¹⁹⁵ The Petitioner argues that, “given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition.”¹⁹⁶ KOAT/KOB has provided Nielsen data showing low (but measurable) ratings for KMGH in La Plata County.¹⁹⁷ We agree with the opposition that these ratings “do not support any enhancement” under this factor.¹⁹⁸ Accordingly, we give this factor no weight in our consideration of whether to grant the KMGH Petition.

50. *Conclusion.* The issue before us is whether to grant Petitioner's request to modify the local satellite carriage market of KMGH—of the Denver DMA—to include Colorado's La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.¹⁹⁹ Section 338(1) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.²⁰⁰ Under this statutory provision, the Commission must afford particular attention to the value of localism.²⁰¹ We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no

¹⁹⁰ See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

¹⁹¹ *KOAT/KOB Opposition* at Exhibit A, Attachments 1-3 and Exhibit B, Attachments 1-2.

¹⁹² La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

¹⁹³ 47 U.S.C. § 338(1)(2)(B)(v).

¹⁹⁴ *Supra* para. 22.

¹⁹⁵ *KOAT/KOB Opposition* at 14.

¹⁹⁶ *KMGH Petition* at 6.

¹⁹⁷ *KOAT/KOB Opposition* at 14, Exhibit E.

¹⁹⁸ *KOAT/KOB Opposition* at 14.

¹⁹⁹ *KMGH Petition* at 1.

²⁰⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

²⁰¹ *Id.*

weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KMGH and La Plata County. We accordingly grant La Plata's request for market modification, and order that La Plata County be added to the local market of KMGH on both DISH and DIRECTV.²⁰²

F. KUSA-TV

51. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”²⁰³ We find that this factor weighs slightly in favor of granting the Petition. As discussed above, we consider this an enhancement factor in the orphan county context. KOAT/KOB argues that Petitioner provides no evidence with respect to historic carriage of KUSA in La Plata County.²⁰⁴ Petitioner, however, points out that while “there has not been historic carriage of the Station in the County by satellite carriers,”²⁰⁵ the local cable system does simulcast a daily news program broadcast by KUSA.²⁰⁶ As noted above, we would expect historic carriage to be uncommon in orphan county situations. And indeed, the historic carriage demonstrated by Petitioner is minimal. Nonetheless, that KUSA has any historic carriage at all is noteworthy evidence of a nexus between the Station and the county.

52. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”²⁰⁷ We find that this factor weighs heavily in favor of a grant of the petition. As explained above, we find that distance tests such as contour maps are not determinative in the consideration of a market modification request involving an orphan county, though they may enhance

²⁰² This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. See *Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. See, e.g., Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

²⁰³ 47 U.S.C. § 338(l)(2)(B)(i).

²⁰⁴ *KOAT/KOB Opposition* at 9. Evidence of historic carriage of KOAT and KOB, however, is irrelevant to our analysis under this factor.

²⁰⁵ We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KUSA, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

²⁰⁶ *KUSA Petition* at 6.

²⁰⁷ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “noise-limited service contour maps . . . delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

a Petitioner's case.²⁰⁸ KOAT/KOB notes that KUSA provides no over-the-air coverage of La Plata County²⁰⁹ and is quite distant from La Plata County geographically,²¹⁰ and that Petitioner declined to provide evidence of shopping and labor patterns in the County.²¹¹ Although KOAT/KOB recognizes the importance to our analysis of determining whether KUSA carries programming with a demonstrated nexus to the community,²¹² it avers that this nexus can only be demonstrated by "local programming from [KUSA] that is specifically directed to news and issues *in La Plata County*."²¹³ As discussed above, this is an overly narrow reading of factor two of our statutory analysis, particularly in the orphan county context.²¹⁴ Rather, we must consider all of the "local service to the community" provided by the station, and in doing so we must be mindful of Congress' intention that "local" programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming "originating from and about" their home state.²¹⁵ KOAT/KOB emphasizes a distinction between "*state-related* programming" and "*localized* programming" that simply does not exist in the orphan county context.²¹⁶

53. In this case, we find that overall geographic proximity measures do not enhance the Petitioner's case, and we thus consider them neutral.²¹⁷ Instead, we assess whether the programming offered by KUSA meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.²¹⁸ We hold that all programming carried on KUSA and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KUSA.²¹⁹ We find that KUSA carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.²²⁰ We also give substantial weight to the

²⁰⁸ *Supra* para. 22.

²⁰⁹ *KOAT/KOB Opposition* at 11 (observing that translator coverage is not the same as coverage by the station itself for market modification purposes); *see, e.g., Petition for Reconsideration, Petition of Time Warner Cable for Modification of Market of Television Station WGOT-TV, Merrimack, New Hampshire*, CSR 4917-A, 14 FCC Rcd 12118 at 12119, para. 4 (Cable Services Bureau 1999) ("The Commission has held that translator coverage does not lessen the relevance of the parent station's failure to place technical signal coverage over the subject communities").

²¹⁰ *Id.*

²¹¹ *Id.* at 11-12 (citing KUSA Petition at 6). *See also* 47 CFR §§ 76.59(2), (3).

²¹² *Id.* at 10.

²¹³ *Id.* at 12 (emphasis added).

²¹⁴ *Supra* para. 22.

²¹⁵ *Senate Commerce Committee Report* at 11, 15 (explaining that the "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives" and directing the Commission to interpret local programming to include "not only television programming [. . .] 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").

²¹⁶ *KOAT/KOB Opposition* at 4 (emphasis in original).

²¹⁷ *Supra* para. 22.

²¹⁸ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

²¹⁹ *KUSA Petition* at 6 and Exhibit C.

²²⁰ *See, e.g.*, October 12, 2016 coverage of the only televised 2016 Colorado Senate debate, sponsored by KUSA; August 16, 2016 coverage of Colorado marijuana taxes; September 24, 2016 story on wildfire danger throughout Colorado; May 11, 2016 story on passage by Colorado House of grocery store sales bill; March 14, 2016 story on the Colorado Senate race and an upcoming Republican Senate primary debate; November 18, 2015 story on

(continued....)

hundreds of comments from residents of La Plata County and their government representatives supporting the Petition.²²¹ As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”²²² These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they need (which coverage, as noted immediately above, is available on a regular basis on KUSA).²²³

54. *Access to In-State Stations*. The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”²²⁴ We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and that this factor accordingly weighs heavily in favor of granting the Petition. As noted above, this factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.²²⁵

55. KOAT/KOB misapprehends the in-state statutory factor when it argues that “there should be no enhancement for this factor in this case” because “access to in-state Denver Stations” might only give La Plata County residents “certain news programming of statewide interest to all Coloradans in general (including news from the state capitol).”²²⁶ What KOAT/KOB is describing represents the complete fulfillment of Congress’ intent in adopting the new third statutory factor in STELAR.²²⁷ Residents of La Plata County, a quintessential orphan county, have little to no access to programming “of statewide interest to all Coloradans in general (including news from the state capitol),” because all of their

(Continued from previous page) _____
potential future Colorado water shortage.

²²¹ See generally MB Docket no. 16-369 and *KUSA Petition* at Exhibit I.

²²² *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

²²³ See, e.g., Gretchen T. Wilson Comments (“As a 40 year resident and educator in La Plata County ...[i]t is challenging to teach our students about state affairs when we can only receive Albuquerque, New Mexico stations.”); Mike and Lois Demming Comments (“We vote in Colorado, pay taxes in Colorado and yet we only see what the elections are doing in New Mexico. We would like to be informed voters. ... We want to see what is going on in our state capital.”); Tom Petit Comments (during the recent election season “all television news we received on political candidates, campaign initiatives, updates, early voter results and final election results came from [New Mexico]... Beyond that there is also important news [we] miss on public safety such as forest fires, flooding, extreme winter storms, drought, virus alerts, crime alerts, Amber Alerts, government updates from Denver, etc. Last we also do not get the updates we deserve on the sports teams that SW Colorado residents follow such as the NFL World Champion Denver Broncos, NBA Denver Nuggets, MLB Denver Rockies, NHL Denver Avalanche as well Colorado colleges, high schools, etc.”); Jeff Weiss and Jocelyn Skill Comments (“We have no visibility into the candidates in our home state”).

²²⁴ 47 U.S.C. § 338(l)(2)(B)(iii).

²²⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

²²⁶ *KOAT/KOB Opposition* at 15.

²²⁷ *Senate Commerce Committee Report* at 11 (“The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a petition filed under the process created by this subsection (as well as a petition filed using the process already in place for cable operators under Section 614(h) of the Communications Act, even if granting such modification would pose an economic challenge to various local television broadcast stations.”).

broadcast stations originate in New Mexico. Congress saw this as a problem of sufficient significance to justify a change to the entire market modification process, and the Commission was explicit that the in-state connection was so important that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”²²⁸ KOAT/KOB argues that “there is no evidence that [KUSA’s] programming focuses on responding to local issues, needs and interests—community news, weather, sports, and public affairs—in La Plata.”²²⁹ Such evidence is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”²³⁰ not their *county* of residence. Despite misunderstanding the function of the in-state factor, KOAT/KOB is correct that the “new factor is neither exclusive nor dispositive—rather, it is just one of several statutory factors bearing on the ultimate goal of localism.”²³¹ The weight given to that factor can be substantial, however, and as the Commission explained in implementing this new statutory factor, “each petition for market modification will turn on the unique facts of the case.”²³²

56. KUSA is an NBC affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,²³³ KUSA provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting the Petition,²³⁴ La Plata County residents currently have “little (or no) access” to the types of Colorado-specific programming provided by KUSA. As discussed in more detail below, KOAT and KOB have aired a number of stories relevant to La Plata County residents.²³⁵ KOAT/KOB does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.²³⁶ As discussed above, and as KOAT/KOB acknowledges, KUSA offers precisely this type of Colorado-specific public affairs programming.²³⁷

57. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage

²²⁸ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

²²⁹ *KOAT/KOB Opposition* at 15.

²³⁰ *Id.* (emphasis added).

²³¹ *KOAT/KOB Opposition* at ii.

²³² *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

²³³ *Supra* note 220.

²³⁴ *Supra* note 221.

²³⁵ *Infra* para. 57. We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

²³⁶ *KMGH Petition* at 4.

²³⁷ *Supra* note 220; *KOAT/KOB Opposition* at 15.

of sporting and other events of interest to the community.”²³⁸ We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will weigh neither in favor of nor against a modification request if another station serves that community.²³⁹ KOAT and KOB are Albuquerque-based broadcast stations carrying ABC and NBC programming, respectively. They are the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The KOAT/KOB Opposition provides evidence that they have aired dozens of stories relevant to La Plata County residents in the past 18 months (including at least one apparently discussing this very proceeding).²⁴⁰ Petitioner does not dispute these claims.²⁴¹ Because other stations, including KOAT and KOB, provide the County with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County’s request to modify KUSA’s market, and give it no weight in our consideration of whether to grant the Petition.

58. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”²⁴² As discussed above, we consider this an enhancement factor in the orphan county context.²⁴³ This factor also is neutral in our analysis. KOAT/KOB correctly observes that Petitioner provides no evidence of household viewing patterns.²⁴⁴ The Petitioner argues that, “given the lack of historical [*sic*] carriage of the Station in the County (other than the limited evening news broadcast [*sic*] on Charter), Nielsen rating or other audience data would not be helpful in evaluating this Petition.”²⁴⁵ KOAT/KOB has provided Nielsen data showing low (but measurable) ratings for KUSA in La Plata County.²⁴⁶ We agree with the opposition that these ratings “do not support any enhancement” under this factor.²⁴⁷ Accordingly, we give this factor no weight in our consideration of whether to grant the KUSA Petition.

59. *Conclusion.* The issue before us is whether to grant Petitioner’s request to modify the local satellite carriage market of KUSA—of the Denver DMA—to include Colorado’s La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.²⁴⁸ Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located

²³⁸ 47 U.S.C. § 338(l)(2)(B)(iv).

²³⁹ See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

²⁴⁰ *KOAT/KOB Opposition* at Exhibit A, Attachments 1-3 and Exhibit B, Attachments 1-2.

²⁴¹ La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

²⁴² 47 U.S.C. § 338(l)(2)(B)(v).

²⁴³ *Supra* para. 22.

²⁴⁴ *KOAT/KOB Opposition* at 14.

²⁴⁵ *KUSA Petition* at 6.

²⁴⁶ *KOAT/KOB Opposition* at 14, Exhibit E.

²⁴⁷ *KOAT/KOB Opposition* at 14.

²⁴⁸ *KUSA Petition* at 1.

in their State.²⁴⁹ Under this statutory provision, the Commission must afford particular attention to the value of localism.²⁵⁰ We have found that the second and third statutory factors weigh heavily in favor of a grant, and that the first weighs slightly in favor of a grant. We have found that the fifth factor does not support grant of the Petition, but is given no weight because it serves exclusively as an enhancement factor in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors one, two, and three that a sufficient market nexus exists between KUSA and La Plata County. We accordingly grant La Plata's request for market modification, and order that La Plata County be added to the local market of KUSA on both DISH and DIRECTV.²⁵¹

²⁴⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

²⁵⁰ *Id.*

²⁵¹ This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. *See Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. *See, e.g.*, Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

IV. ORDERING CLAUSES

60. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KDVR-TV, Denver, Colorado (Facility ID No. 126), **IS GRANTED**.

61. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KCNC-TV, Denver, Colorado (Facility ID No. 47903), **IS GRANTED**.

62. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KMGH-TV, Denver, Colorado (Facility ID No. 40875), **IS GRANTED**.

63. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KUSA-TV, Denver, Colorado (Facility ID No. 23074), **IS GRANTED**.

64. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.²⁵²

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Acting Chief, Media Bureau

²⁵² 47 CFR § 0.283.