

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

In the Matter of
Hart County, Georgia
Petition for Modification of the Satellite Television
Markets of WSB-TV, WAGA, WXIA and WGCL,
Atlanta, Georgia
MB Docket No. 18-250
CSR No. 8963-A

MEMORANDUM OPINION AND ORDER

Adopted: October 12, 2018

Released: October 12, 2018

By the Senior Deputy Chief, Media Bureau, Policy Division

I. INTRODUCTION

1. Hart County, Georgia (Petitioner or the County), with the support of its residents, has filed a market modification petition to make four Georgia television stations (collectively, the Stations or the Atlanta Stations) available to satellite subscribers in the County. For historical and geographic reasons, residents in the County generally receive only South Carolina and North Carolina television stations, limiting their access to Georgia-specific news, sports, weather, and politics. With this Memorandum Opinion and Order (Order), the Media Bureau grants the Petition in full.

2. Petitioner filed the above-captioned Petition seeking to modify the local satellite carriage television markets of the Stations to include Hart County, currently assigned to the Greenville-Spartanburg-Asheville-Anderson Designated Market Area (DMA). The Stations, all of which are located in the Atlanta, Georgia DMA, are: WSB-TV (ABC) (Facility ID No. 23960), Atlanta, Georgia, WAGA (FOX) (Facility ID No. 70689), Atlanta, Georgia, WXIA (NBC) (Facility ID No. 51163), Atlanta, Georgia, and WGCL (CBS) (Facility ID No. 72120), Atlanta, Georgia. Prior to filing the Petition, Hart reached out to both DBS carriers. In response to Hart, DISH Network LLC (DISH) and DIRECTV, LLC (DIRECTV) filed Certifications regarding the technical and economic feasibility of the proposed modifications. DIRECTV states that its spot beams cover all current zip codes in Hart County and DISH

1 Hart County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), Channel 2, of Station WXIA (NBC), Channel 11, of Station WAGA (FOX), Channel 5, [and] of Station WGCL (CBS), Channel 46, Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket 18-250 (filed August 14, 2018) (Petition). The Media Bureau placed the Petition on public notice and sought comment. Special Relief and Show Cause Petitions, Public Notice, Report No. 0471 (MB August 17, 2018) (Public Notice).

2 Petition at 1, 5.

3 Id. at Exhibits A and B.

4 Id. at Exhibit A (DISH Network L.L.C. STELAR Feasibility Certification, Market Modification Pre-Filing Coordination Letter for Hart County, Georgia (dated Sept. 2, 2016) (DISH Certification)); Petition at Exhibit B (Letter from DIRECTV to Terrell Partain, Hart County Administrator (dated Aug. 9, 2016) (DIRECTV Certification)).

states that it is unaware of any factors, at this time, that would render carriage of the stations technically infeasible.⁵ Neither carrier opposed the Petition. A Joint Opposition was filed against the Petition by local network affiliates in North and South Carolina (collectively, the Opposing Stations).⁶

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.⁷ 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.⁸ 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 (Nielsen).⁹ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹⁰

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.¹¹ 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*, 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

⁵ *Id.*

⁶ Joint Opposition to Petition for Special Relief, MB Docket 18-250 (filed September 6, 2018) (*Joint Opposition*). The Opposing Stations are: WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina (WYFF); Meredith Corporation, licensee of FOX affiliate WHNS(TV), Greenville, South Carolina (WHNS); Nexstar Broadcasting, Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina (WSPA); and WLOS Licensee LLC, licensee of ABC affiliate WLOS(TV), Asheville, North Carolina (WLOS).

⁷ 47 U.S.C. § 338(a)(1).

⁸ 47 CFR § 76.66(a)(6). 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, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 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 (Satellite Home Viewers Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999)). See also 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.

⁹ 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).

¹⁰ 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.

¹¹ 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.

community located in a neighboring local market.¹² 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 sought to address the so-called “orphan county” problem. An orphan county is a county that, as a result of the structure of the local television markets, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.¹³ 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.¹⁴

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that already 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 satellite operations.¹⁵ The STELAR carves out an exception to carriage obligations¹⁶ 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.”¹⁷ 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.¹⁸ This exception applies only in the satellite context.¹⁹

¹² *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).

¹³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

¹⁴ 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*).

¹⁵ 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) with 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.

¹⁶ See *supra* note 8 (describing the “carry one, carry all” satellite carriage requirement).

¹⁷ 47 U.S.C. § 338(l)(3)(A).

¹⁸ *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.”).

¹⁹ 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.

7. 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.²⁰ 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.²¹ Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.²² 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.”²³ 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.²⁴

8. 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

²⁰ *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).

²¹ *Id.* at 10435-6, 10438, paras. 39, 42.

²² *Id.* 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” and that “[d]oing 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).

²³ *Id.* at 10429-30, 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. The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury. *Id.* at 10435-36, para. 39.

²⁴ *Id.* at 10438, para. 42. To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility. *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”).

multichannel video programming distributors in such community.²⁵

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 particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.²⁶

9. 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.²⁷ 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."²⁸

10. 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.²⁹ 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

²⁵ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

²⁶ Section 338(h)(1)(C)(ii) of the Act directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). 47 U.S.C. § 338(h)(1)(C)(ii). 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, para. 53 (1999) (*Cable Market Modification Second Report and Order*).

²⁷ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

²⁸ *Senate Commerce Committee Report* at 11.

²⁹ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

the relevant community.³⁰

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.³¹ The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if it is in a position to resolve the petition without such evidence.³² Parties may submit whatever additional evidence they deem appropriate and relevant.³³

11. In the instant proceeding, the County filed a Petition seeking modification of the local television markets of Atlanta Stations WSB-TV, WXIA, WAGA, and WGCL to include Hart County, Georgia. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that its current satellites and spot beam configurations render carriage technically feasible, but asserts that carriage may become economically infeasible due to additional costs associated with retransmission consent fees.³⁴ The *DIRECTV Certification* says that HD and SD service to all zip codes in the County is currently feasible.³⁵ The Commission received supportive comments from Georgia's United States Senators, Johnny Isakson and David Perdue, Congressman Doug Collins of Georgia's Ninth District, representing Hart, as well as Joey Dorsey, Chairman of the Hart County Board of Commissioners, and the Georgia Association of Broadcasters.³⁶ The County also provided resident comments in support of the Petition.³⁷ A single Joint Opposition was filed by the Opposing Stations.³⁸

12. The Commission must make two determinations with respect to the Petition: (1) whether the carriage of a station resulting from a proposed market modification is technically and economically feasible for each of the satellite carriers; and (2) if so, 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.³⁹

³⁰ 47 CFR § 76.59(b)(1)-(7).

³¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

³² *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

³³ *Id.* We note that although not required by Section 76.59(b), detailed information about programming is extremely important in the orphan county context. Because geographic proximity tests have less significance in orphan county cases than in other market modification cases, programming information 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 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, also demonstrate that such programming is not regularly broadcast by any station currently serving the county.

³⁴ *DISH Certification* at 1-2.

³⁵ *DIRECTV Certification* at 2-5 ("Form of Certification Regarding Spot Beam Coverage" for WSB-TV, WXIA, WAGA and WGCL).

³⁶ See Letter from Senators Johnny Isakson and David Perdue and Congressman Doug Collins to Ajit Pai, Chairman, FCC (May 19, 2017) (*Petition* at Exhibit K); Letter from Joey Dorsey Chairman of the Hart County Board of Commissioners to Ajit Pai, Chairman, FCC (May 7, 2018) (*Petition* at Exhibit K); and Letter from Bob Houghton, President, Georgia Association of Broadcasters to Ajit Pai, Chairman, FCC (November 27, 2017) (*Petition* at Exhibit K).

³⁷ *Petition* at Exhibit L.

³⁸ See *Joint Opposition*.

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

III. DISCUSSION

13. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry WSB-TV, WXIA, WAGA and WGCL throughout the County. We further conclude that the evidence weighs in favor of expanding the markets for each of the Stations to include the County. We therefore modify the markets of the Stations to include Hart County, Georgia.

14. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59(b)⁴⁰ pursuant to the County's request.⁴¹ Specifically, we grant Petitioner's request to waive the requirement to file MVPD channel line-up cards and published audience data.⁴² We also waive the requirement to file Grade B contour maps for each station.⁴³ We find good cause to waive these evidentiary requirements because we have ample evidence to render our decision without them. However, to minimize the danger of a dismissal due to insufficient evidence, we strongly encourage future Petitioners to closely coordinate with the stations at issue in order to provide a full and complete record.⁴⁴

A. Technical and Economic Feasibility

15. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of the County. In their Feasibility Certifications, both satellite providers indicate that there is no "spot beam infeasibility," and that relevant spot beam(s) cover all of the County. DIRECTV states that delivery of the signal to all of the current zip codes in Hart County in both SD and HD is feasible.⁴⁵ DISH states that, at this time, it is unaware of any factors that would make carriage of the Stations technically infeasible; however, it asserts that it "reserves the right to amend this Feasibility Certification at any time due to, among other things, a satellite equipment failure or a different satellite being brought into service for the area that includes the County which has different coverage capabilities than the satellite(s) currently being used."⁴⁶ DISH has not amended its certification. However, DISH contends that if any of the Stations elects retransmission consent and it is unable to reach an agreement with a given Station, then it would not be possible to provide that Station's signal into the County. DISH then asserts that, in such circumstances, it "may be either technically or economically infeasible, or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent."⁴⁷ We clarify that the results of private retransmission consent negotiations play

⁴⁰ 47 CFR § 76.59(b).

⁴¹ *Petition* at 9; *see also supra* note 32 and accompanying text.

⁴² *Id.*; 47 CFR §§ 76.59(b)(5) and (6). As discussed above, this evidence was not necessary in order to render a decision on the Petition. The County asks for a waiver of cable system channel line-up cards and other exhibits establishing historic carriage and specifically states with regard to satellite carriage that "[t]here has not been historic carriage of the Station[s] in the County by satellite carriers, and therefore no evidence is being submitted for this element with respect to satellite." *Petition* at 9. Regarding published audience data for the Stations for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records, the County states that "given the lack of historical carriage of the station[s] in the County, Nielsen rating[s] or other audience data would not be helpful in evaluating this Petition." *Id.*

⁴³ 47 CFR §§ 76.59(b)(2). Petitioner indicated in the text of its Petition that it was providing this information, but did not in fact attach the maps. The Petition's "Listing of Exhibits" identifies an Exhibit E which is not provided in the filing. Exhibit F, "Contour Map," provides a contour map for only one of the four Atlanta Stations.

⁴⁴ *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at 10418, para. 14.

⁴⁵ *DIRECTV Certification* at 1-5.

⁴⁶ *DISH Certification* at 1.

⁴⁷ *Id.*

no part in the Commission's technical and economic feasibility analysis and are not a proper basis for infeasibility. Therefore, we disregard DISH's arguments on this issue.⁴⁸

16. The Opposing Stations challenge the Feasibility Certifications submitted by DIRECTV and DISH because they are "more than two years old."⁴⁹ As a result, the Opposing Stations argue that, particularly with regard to DISH which reserved the right to amend its response, the Petition should be denied or, alternatively, should be required to be supplemented with new certifications from both DISH and DIRECTV.⁵⁰ The Opposing Stations cite no supporting authority for their argument, and we find it unavailing.

B. Orphan County Status

17. Hart is an "orphan county" with insufficient access to in-state programming. The County is assigned to the Greenville-Spartanburg-Asheville-Anderson DMA, which includes four Georgia counties, 14 counties in North Carolina, and 10 South Carolina counties.⁵¹ The Petitioner asserts that Hart County residents who subscribe to satellite television service have been deprived of the ability to receive preferred in-state Georgia television broadcast stations and instead are relegated to local broadcast content oriented to North and South Carolina.⁵² The Petitioner argues that residents of the County are currently underserved by the broadcast stations in the current DMA because they are deprived of in-state news, politics, sports, and weather.⁵³ This claim is supported by comments from County residents and their representatives.⁵⁴

18. With the STELAR's revisions to the market modification process, and its addition of a satellite market modification process, Congress expressly intended to address orphan county situations like that of Hart County.⁵⁵ 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."⁵⁶ 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.⁵⁷ In order to best effectuate the goals of the STELAR, we place a strong emphasis on Congress' concern about orphan county situations in analyzing the factors in this case. We therefore will give substantial weight to the local and in-state programming a petitioner proposes to bring to the orphan counties, as well as to government official and consumer comments supporting a proposed market

⁴⁸ We note that a satellite carrier may not carry a station with which it has not reached retransmission consent, unless that station has expressly elected mandatory carriage.

⁴⁹ *Joint Opposition* at 11.

⁵⁰ *Id.* at 11-12. We note that parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished to the Commission. See 47 CFR § 76.6(a)(6).

⁵¹ See <http://krgspec.com/MarketSearch.aspx?DMAID=191>.

⁵² *Petition* at 1, 5.

⁵³ *Id.* at 10.

⁵⁴ See *supra* notes 36 and 37 and accompanying text.

⁵⁵ 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. See also *supra* para. 5.

⁵⁶ *Senate Commerce Committee Report* at 11.

⁵⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

modification.⁵⁸ In this case, grant of the market modification request would bring much desired in-state programming to Hart County and the request is supported by many comments from government officials and local residents.

C. Market Modification Analysis

19. *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.”⁵⁹ Petitioner offers no evidence with respect to historic MVPD carriage other than to concede that there has been no historic satellite carriage,⁶⁰ but argues that “a lack of historical carriage...should [not] weigh against” the Petition.⁶¹ The Opposing Stations assert that this factor should weigh against the requested market modification because the Atlanta Stations have not been historically carried in the County and the North and South Carolina in-market local affiliates have been carried on the cable and satellite systems in Hart County for many years.⁶² The carriage of the Opposing Stations is not relevant to our analysis, but given the undisputed statement that the Atlanta Stations have no history of carriage in Hart County, we agree that this factor should weigh against the proposed market modification.

20. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”⁶³ Such “local service” can include, for example, the presence of a high quality over-the-air signal; shopping and labor connections between the local community and the station’s community of license; support of the local community by the station; and programming, including news or sports coverage, specifically about or addressing the community. The Petitioner does not demonstrate the presence of high quality over-the-air signals for the Stations and overall geographic proximity measures do not enhance the County’s case.⁶⁴

21. However, the County supports its Petition with evidence concerning local shopping and labor patterns. Specifically, it states that “[b]ased on a survey of Northeast Georgia Orphan County residents, including Hart County, over 91% of respondents stated that they shop locally or within the state of Georgia.”⁶⁵ Additionally, the Petitioner submits that “[o]ver 97% of respondents seek services such as

⁵⁸ *Id.* at 10417, n.61.

⁵⁹ 47 U.S.C. § 338(1)(2)(B)(i).

⁶⁰ *Petition* at 9.

⁶¹ *Id.* at 7.

⁶² *Joint Opposition* at 15 and Exhibits A through D.

⁶³ 47 U.S.C. § 338(1)(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 (CSB 1999) (*Jones Cable*). Additional examples of ways to demonstrate local service beyond coverage and programming are noted above.

⁶⁴ In this regard, the Petitioner identifies an Exhibit E (entitled “Summary of Distance to Transmitters from All Channels”), but as the Opposition notes “no exhibit labeled E was submitted with the as-filed Petition.” *Joint Opposition* at 17. Petitioner also identifies an Exhibit F, “Contour Map.” This exhibit contains a single contour map, apparently for WAGA-TV, but no contour maps for the other three stations. As the Opposing Parties observe and Petitioner does not dispute, even if this evidence had been provided it would not support the Petition. *Joint Opposition* at 17-18.

⁶⁵ *Petition* at 8, Exhibit G.

healthcare and arts/entertainment locally or within the state of Georgia.”⁶⁶ The survey also asked respondents “Would you be interested in receiving in-state television broadcast (Atlanta stations)?” and 94.7% said “Yes.” The survey also asked: “What is the main reason you are interested in switching to in-state television broadcasts?” and the results were Sports (2.00%), News (14.70%), Politics (1.90%), and All of the Above (81.40%).⁶⁷ The Opposing Stations argue that the Petitioner has not demonstrated a sufficient nexus between the Atlanta Stations and Hart County regarding shopping patterns and that the survey shows that the largest percentage of respondents do their shopping locally.⁶⁸ Further, the Opposing Stations assert that the survey lacks any scientific validity because it “fails to provide any information about sample selection or other methodology and no evidence of statistical significance.”⁶⁹ Overall, the Opposing Stations contend that the evidence does not demonstrate that a substantial number of citizens commute to Atlanta for work or rely on Atlanta for shopping and other services that might demonstrate a geographic nexus to Hart County.⁷⁰ While not dispositive, we find that the survey does support the Petition, particularly the avid interest of Hart County residents in receiving the Atlanta Stations.

22. In determining the extent of local service provided by the Stations, we also consider the support for the modifications from local residents and their official representatives. As the *STELLAR Market Modification Report and Order* made clear, such comments are enormously helpful in demonstrating a nexus between the stations and the local community.⁷¹ In this case, supportive comments urged a grant of this orphan county market modification request, and we find that these comments merit substantial weight under this factor.⁷²

23. With regard to local programming, the Petitioner submits multi-day programming lineups for the Stations for both DISH and DIRECTV and asserts that the Stations broadcast “local news programs[s] with Georgia news, sports, and weather several times a day.”⁷³ However, as the Opposing Stations note,

⁶⁶ *Id.* In response to seeking healthcare and other services, the results were Local (46.00%), Georgia (51.20%), and South Carolina (2.80%).

⁶⁷ *Id.*

⁶⁸ *Joint Opposition* at 18.

⁶⁹ *Id.*

⁷⁰ *Id.*

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

⁷² Supportive comments were received from Members of Congress as well as from local officials and the Georgia Association of Broadcasters. See *supra* para. 11 and note 36. See also generally consumer comments provided in the *Petition* at Exhibit L. See, e.g., Brenda Vail Comments (“I have Direct TV [*sic*], and would love to get Atlanta stations.”); Tommy L Partain Comments (“My preference would be to have access to the Atlanta television stations instead of the Carolina ones. Please do what you can to give us a choice.”); Robert E. Barnard Comments (“I would like to see the Atlanta stations.”); Lynn Thomas Comments (“I graduated from UGA in 1976...I miss the Atlanta channels and especially [UGA] sports.”); Ernest Melton (With DirecTV service “I will not be able to get the Atlanta stations...[s]o I am still stuck with cable for TV services.”); Betty Hohman Comments (“Please do all you can to help get the Dish Network to offer us the Atlanta stations.”); Joyce Hillard Comments (“I’m writing to ask for your help with a longstanding issue...the refusal of Dish Network LLC to provide those of us in my area with Atlanta local stations.”); Lynn Barton Comments (“It is my hope that I...can have a choice in deciding whether [I] want to view Atlanta TV stations.”); Jill and Cliff Walker Comments (“I am a resident of Hart County and support the STELLAR Act [*sic*] in order to receive television stations from Atlanta, rather than the Spartanburg/Greenville area.”); Bowersville Resident Comments (“We would like for Direct TV [*sic*] to be switched from Greenville, SC to Atlanta, GA.”).

⁷³ *Petition* at 8-9; Exhibits H and I.

the Petition appears to rely on “Atlanta programming of ‘Georgia’ news” to demonstrate local service.⁷⁴ We do not find Petitioner’s submissions to constitute compelling evidence that the Stations provide regular programming specifically about or addressing Hart County.

24. As discussed above, evidence related to geographic proximity is not determinative in the consideration of a market modification request involving an orphan county, and we generally expect to look more to evidence of community support or relevant programming than to evidence of proximity in orphan county cases.⁷⁵ In the instant case, the Petitioner has not demonstrated that the Stations offer a significant amount of local programming targeted to Hart County, but it has offered evidence of community support for access to the Stations as well as evidence of shopping and labor links between Hart County and Atlanta. Based on the overall evidence, we find that, on balance, the second statutory factor weighs in favor of the requested modification.

25. *Access to In-State Stations.* The third 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.”⁷⁶ 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.⁷⁷ The Petitioner states that Hart County residents “feel disenfranchised and disadvantaged by the lack of access to Atlanta programming, and want to receive news, as well as educational, sports, and other programming from [their] own state capitol.”⁷⁸ The County also asserts that its Petition is timely because 2018 is a gubernatorial election year.⁷⁹ According to the Petitioner, “[i]n this, and every election year, Hart County residents do not have access to specific public affairs programming such as televised debates of gubernatorial candidates, Congressional candidates, candidates for State office, or statewide ballot issues, which compromises their ability to be well informed and well educated as to issues affecting them as citizens of Georgia.”⁸⁰

26. Petitioner also asserts that sports fans in the County have had insufficient opportunities to enjoy their home state Atlanta Falcons and the inaugural season of the Atlanta United Major League Soccer team, as well as University of Georgia collegiate sporting events.⁸¹ Petitioner further notes the importance of in-state weather reports and that “the County is at a disadvantage for seeing the incoming

⁷⁴ *Joint Opposition* at 19. The Opposing Stations assert that Congress never intended for programming of statewide interest to be a proxy for localized programming specifically targeted to the local community; and, there was no intention for evidence of statewide programming, by itself, to be sufficient to satisfy the second factor. *Id.* at 20.

⁷⁵ *See supra* para. 18.

⁷⁶ 47 U.S.C. § 338(l)(2)(B)(iii).

⁷⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁷⁸ *Petition* at 5 and Exhibit L.

⁷⁹ *Id.* at 5.

⁸⁰ *Id.*

⁸¹ *Id.* at 1, 11. The Petitioner asserts that in the past year, Georgia’s sports teams filled national headlines. The County notes that while the inaugural season of the Atlanta United Major League Soccer team broke multiple records for attendance, due to the lack of sports coverage in Hart County, participation in youth soccer programs decreased while there was a 37% average increase in participation in the rest of the State. Regarding professional football, the Petitioner contends that “our residents are forced to watch the Carolina Panthers over their in-state team, Atlanta Falcons.” In addition, the Petitioner asserts that the University of Georgia (UGA) is a short 45 mile ride from the County seat and some of the County’s high school students attend a dual enrollment program there (“Move on When Ready”), yet during UGA’s path to the National Championship game, the local broadcasts were filled with Clemson news and sports updates. *Id.* at 11.

weather from the other portions of [the] state.”⁸² In addition, with regard to in-state programming, Petitioner asserts, citing multichannel lineup cards for DISH and DIRECTV, that the Atlanta Stations broadcast “local news program[s] with Georgia news, sports, and weather several times a day.”⁸³ The Opposing Stations do not refute the Petitioner’s assertion, but they argue that they already provide sufficient coverage of local news and issues of interest to Hart County and that factor three should therefore be given no additional weight.⁸⁴ Although the Opposing Stations demonstrate that they provide some coverage of in-state news and sporting events, it is clear from the comments supporting the modification that Hart County residents consider this coverage to be inadequate.⁸⁵ Based on the record before us, we therefore give this third statutory factor the greatest possible weight in favor of the requested modification.

27. *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.”⁸⁶ In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations’ service to the communities rarely has counted against a petition.⁸⁷ The Petitioner states that it is “unaware of another in-state local broadcast station that is carried by a satellite provider in the County that offers Atlanta- and Georgia-oriented news coverage of issues of concern to residents of the County.”⁸⁸ This is a misreading of factor 4, however, which is not concerned with the “in-state” location or focus of the existing eligible stations. Instead, under this factor we look only for the presence of locally-relevant content in the news and events coverage of the existing in-market stations. The Opposing Stations provide evidence of at least some “news coverage of issues of concern” to Hart County, and carriage or coverage of at least some “sporting and other events of interest” to the County.⁸⁹ This is sufficient for us to find that this factor weighs neither against nor in favor of the Petition, and therefore we consider it to be neutral in our consideration of the Petition.

28. *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.”⁹⁰ We do not expect to find strong evidence of regular viewing in orphan counties, and Petitioner offers no evidence relevant to this factor.⁹¹ By way of explanation, Petitioner notes that “[b]ecause the County has long been assigned by Nielsen to an out-of-state DMA, STELAR’s market modification provision marks the first opportunity for the County to receive the Station[s]’ signal over satellite. Given this lack of

⁸² *Id.* at 1-2.

⁸³ *Id.* at 9-9, Exhibits H and I.

⁸⁴ *Joint Opposition* at 23.

⁸⁵ *See supra* notes 37 and {76}.

⁸⁶ 47 U.S.C. § 338(l)(2)(B)(iv).

⁸⁷ *See, e.g., Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

⁸⁸ *Petition* at 7-8.

⁸⁹ *Joint Opposition* at 23-26 and Exhibits A through D.

⁹⁰ 47 U.S.C. § 338(l)(2)(B)(v).

⁹¹ *Petition* at 9 (“[G]iven the lack of historical carriage of the station[s] in the County, Nielsen rating[s] or other audience data would not be helpful in evaluating this Petition. Therefore, to the extent necessary, we respectfully request a waiver of this item.”).

carriage, residents of the County have had scant opportunity to develop any viewing patterns for the Station[s].”⁹² The Opposing Stations argue that, based on their review of Nielsen data that they have not submitted into the record, viewers in Hart County simply “prefer the In-Market Stations over the Atlanta Stations.”⁹³ Although there is no firm evidence of viewing patterns in the record, Petitioner concedes that “audience data would not be helpful” to its case even if it had been provided.⁹⁴ We therefore hold that this factor weighs against the market modification request.⁹⁵

29. *Non-statutory Factors.* The Opposing Stations argue that the Petitioner has not established the intent of the Atlanta Stations to authorize carriage of their signals in Hart County or that the programming the Stations would provide in the future would be specifically targeted to viewers in Hart County even if the Petition is granted.⁹⁶ The Commission has encouraged county petitioners to “enlist the aid and cooperation of the [stations] they wish to bring to their county.”⁹⁷ Even if they do not, however, our rules do not require the participation or support of the stations, much less commitments with respect to their future programming. As the Commission has indicated, the active opposition of a station might be a relevant consideration, at least for the county seeking the modification,⁹⁸ but none of the four Atlanta Stations have opposed the Petition. We therefore give no weight to these arguments by the Opposing Stations.

IV. CONCLUSION

30. The issue before us is whether to grant Petitioner’s requests to modify the local satellite carriage markets of WSB-TV, WAGA, WXIA, and WGCL, all of which are located in the Atlanta, GA DMA, to include Georgia’s Hart County, which is currently assigned by Nielsen to the Greenville-Spartanburg-Asheville-Anderson DMA. 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.⁹⁹ Under this statutory provision, the Commission must afford particular attention to the value of localism.¹⁰⁰

31. With respect to each of the Stations, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the Station and Hart County. As the foregoing analysis indicates, this is a close case. In such circumstances, we believe that the outcome that best serves the intent of Congress in enacting Section 338(l) is to provide the petitioning orphan county with the access

⁹² *Id.* at 7.

⁹³ *Joint Opposition* at 26.

⁹⁴ *Petition* at 9.

⁹⁵ See, e.g., *Genesee County Video Corp. and Tri-County Cablevision, Inc. For Modification of the Jamestown, New York ADI*, Memorandum Opinion and Order, 12 FCC Rcd 13792 at 13800 (CSB 1997) (“While WNYB’s apparent lack of audience share is not outcome determinative, it weighs in favor of deletion.”). See also *California-Oregon Broadcasting, Inc. D/B/A Crestview Cable Communications For Modification of the DMA for Stations: KFXO, NPG of Oregon, Inc., Bend, OR; KOHD, Three Sisters Broadcasting LLC, Bend, OR; KVTZ, NPG of Oregon, Inc., Bend, OR.*, Memorandum Opinion and Order, 29 FCC Rcd 3833 at 3841 (MB 2014) (“Crestview has failed to supply the evidence we requested, nor was its filing complete ... Given this conflicting information on KOHD, we assume that ... KOHD’s carriage history is not extensive and remains unsubstantiated”).

⁹⁶ *Joint Opposition* at iii-iv, 7-8, 19.

⁹⁷ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10418, para. 14.

⁹⁸ *Id.*

⁹⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

¹⁰⁰ *Id.*

to in-state programming it is requesting.¹⁰¹ We accordingly grant the requests for market modification, and order the addition of Hart County to the local markets of WSB-TV, WAGA, WXIA, and WGCL on both DISH and DIRECTV.¹⁰²

V. ORDERING CLAUSES

32. 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. 18-250, CSR No. 8963-A) filed by Hart County, Georgia with respect to WSB-TV, Atlanta, Georgia (Facility ID No. 23960), WAGA (Facility ID No. 70689), Atlanta, Georgia, WXIA (Facility ID No. 51163), Atlanta, Georgia, and WGCL (Facility ID No. 72120), Atlanta, Georgia, **IS GRANTED**.

33. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.¹⁰³

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰¹ See *supra* para. 18.

¹⁰² We remind WSB-TV, WAGA, WXIA, and WGCL of their individual obligations to elect retransmission consent or mandatory carriage with respect to Hart County within 30 days of the release of this Order. We also remind DISH and DIRECTV of their obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.66(d)(6).

¹⁰³ 47 CFR § 0.283.