

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

In the Matter of	)	
	)	
Entravision Holdings, LLC	)	MB Docket No. 17-306, CSR 8944-A
	)	MB Docket No. 17-307, CSR 8945-A
For Modification of the Television Market for	)	
Station WJAL(TV), Silver Spring, Maryland	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 12, 2018**

**Released: March 12, 2018**

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

**I. INTRODUCTION**

1. Entravision Holdings, LLC (Entravision or Petitioner), licensee of television station WJAL(TV), Channel 9, Silver Spring, Maryland (Facility ID: 10259) (WJAL or Station) filed the above-captioned Petitions<sup>1</sup> requesting modification of the Station’s television market to include those communities in the Washington, D.C. Designated Market Area (DMA) served by the following Comcast and CoxCom, LLC (Cox) cable operators: (1) Comcast of Maryland, LLC, the operator of cable television systems located in Charles County, St. Mary’s County, Prince George’s County, and Calvert County, Maryland;<sup>2</sup> (2) Comcast of Potomac, LLC, the operator of cable television systems in Montgomery

<sup>1</sup> See *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland, Facility ID 10259*, Petition for Special Relief, MB Docket 17-306 (filed Nov. 7, 2017) (*Comcast Petition*); *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland, Facility ID 10259*, Petition for Special Relief, MB Docket 17-307 (filed Nov. 7, 2017) (*Cox Petition*); collectively, *Petitions*. The Media Bureau placed the Petitions on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0460 (MB Nov. 13, 2017) (*Public Notice*).

<sup>2</sup> Entravision seeks to add the following communities served by Comcast of Maryland, LLC to the Station’s market: (i) Bryans Road (MD0916), Charles (MD0178), Cobb Island (MD0267), Indian Head (MD0177), La Plata (MD0352), La Plata Town (MD0176), St. Charles (MD0033), and U.S. Naval Ord. Station-Indian Head (MD0351), Waldorf (MD0263) and St. Mary’s (MD0279) (the “Charles County and St. Mary’s County System”); (ii) Hyattsville (MD0140), Bladensburg (MD0141), Berwyn Heights (MD0142), College Park (MD0143), Cottage City (MD0144), Edmonston (MD0145), Glenarden (MD0146), Landover Hills (MD0147), Mount Rainier (MD0148), North Brentwood (MD0149), Riverdale (MD0150), University Park (MD0151), Prince George’s (MD0163), District Heights (MD0165), Upper Marlboro (MD0167), New Carrollton (MD0171), Prince George’s (N) (MD0172), Greenbelt (MD0173), Cheverly (MD0174), Seat Pleasant (MD0181), Fairmont Heights (MD0182), Capitol Heights (MD0183), Morningside (MD0184), Forest Heights (MD0185), Andrews AFB (MD0186), Bowie (MD0200), Laurel (MD0201), Brentwood (MD0220), Colmar Manor (MD0221), Takoma Park (MD0383), Beltsville (MD0388), Seabrook (MD0389), Lanham (MD0390), and Montpelier (MD0391 (the “Prince George’s County System”); and (iii) Calvert (MD0250), Chesapeake Beach (MD0255), North Beach (MD0256) (the Calvert County System”). Comcast Petition at n.1.

County, Maryland and Arlington County, Virginia;<sup>3</sup> (3) Comcast of Virginia, Inc., the operator of cable television systems in Fairfax, Arlington, Loudoun, Prince William, Stafford, and Spotsylvania Counties, Virginia (together with independently incorporated cities and towns therein);<sup>4</sup> (4) Comcast of the District, LLC, the operator of a cable television system in the District of Columbia;<sup>5</sup> and (5) the Cox cable television systems located in Fairfax, Stafford and Spotsylvania Counties, Virginia (Communities).<sup>6</sup> Comcast filed an Opposition<sup>7</sup> and Entravision filed a Reply.<sup>8</sup> NCTA – the Internet and Television

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<sup>3</sup> Entravision seeks to add the following communities served by Comcast of Potomac LLC to the Station’s market: (i) Gaithersburg (MD0057), Rockville (MD0222), Chevy Chase (MD0223), Silver Spring (MD0224), Washington Grove (MD0225), Takoma Park (MD0226), Somerset (MD0227), Poolesville (MD0228), Barnesville (MD0229), Brookville (MD0230), Garrett Park (MD0231), Glen Echo (MD0233), Kensington (MD0234), Laytonsville (MD0235), Montgomery (MD0236), Chevy Chase (MD0274), Chevy Chase Sect IV (MD0275), Chevy Chase Sect V (MD0276), Chevy Chase Village (MD0277), Germantown (MD0340), Burtonsville (MD0341), Potomac (MD0342), Boyds (MD0343), Wheaton (MD0344), Derwood (MD0345), Olney (MD0346), Cabin John (MD0347), Bethesda (MD0348), West Bethesda (MD0349), North Chevy Chase Village (MD0465), Chevy Chase View (MD0466), Martins Additions Village (MD0467), and Chevy Chase Village Section 3 (MD0472), (the “Montgomery County System”); and (ii) Arlington (VA0108) (the “Arlington County System”). Comcast Petition at n.2.

<sup>4</sup> Entravision seeks to add the following communities served by Comcast of Virginia, Inc. to the Station’s market: (i) Prince William (ETN) (VA0019), Quantico (VA0173), Prince William (VA0241), Quantico (VA0242), Fort Belvoir (VA0267), Dumfries (VA0280), Lake Ridge (VA0287), Manassas Park (VA0315), Manassas Park (VA0316), Prince William (W) (VA0329), Manassas (VA0362), Occoquan (VA0377), Manassas (VA0398), Gainesville (VA0432), Haymarket (VA0433), Dale City (VA0595), Triangle (VA0596), Woodbridge (VA0597), Prince William (VA0616), Prince William (E) (VA0617) (the “Prince William County and Fairfax County System”); (ii) Reston (VA0046) (the “Reston – Fairfax County System”); (iii) Alexandria (VA0220) (the “Alexandria – Arlington County System”); (iv) Fort Meyer (VA0373) (the “Fort Myer – Arlington County System”); (v) Leesburg (VA0255), Loudoun (VA0332), Purcellville (VA0567), Middleburg (VA0568), Round Hill (VA0569), Hamilton (VA0570), and Lovettsville (VA0571) (the “Loudoun County System”), Stafford (VA311) (the “Stafford County System”), and Spotsylvania (VA0283) and Fredericksburg (VA0818) (the “Spotsylvania County System”). Comcast Petition at n.3.

<sup>5</sup> Entravision seeks to add the following communities served by Comcast of the District, LLC to the Station’s market: Washington (DC0002), US Soldiers Home (DC0003), Marine Barracks (DC0006), and Walter Reed Med Ctr (DC0007) (the “District of Columbia System”) (together with the communities in the above listed Comcast Systems, the Comcast Communities). Comcast Petition at n.4. Some or all of these communities were removed from WJAL’s market in an earlier market modification proceeding. *See generally Comcast Order*, 18 FCC Rcd 16510.

<sup>6</sup> Entravision seeks to add the following communities served by Cox to the Station’s market: Fairfax County (VA0301), Vienna (VA0318), Fairfax City (VA0326), Falls Church (VA0327), Herndon (VA0346), Clifton (VA0630), Fredericksburg (VA0020), Spotsylvania (VA0022), and Stafford (VA0023) (the Cox Communities). Cox Petition at n.1.

<sup>7</sup> *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, Opposition to Petition for Special Relief, MB Docket 17-306 (filed Dec. 4, 2017) (*Opposition*).

<sup>8</sup> In its Reply, Entravision asserts that Comcast’s Opposition is procedurally defective and should be dismissed. *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland, Facility ID 10259*, Reply, MB Docket 17-306 (filed Dec. 14, 2017) (*Reply*). Entravision states that the pleading lacks the succinct summary and table of contents mandated by Sections 1.49(b) and (c) of the Commission’s rules, and the verification called for in Section 76.6(a)(4). Reply at 1. In response, Comcast filed its Motion for Leave to Amend, and we grant that motion. *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, Motion for Leave to Amend to Submit Verification, Table of Contents, and Summary, MB Docket 17-306 (filed Dec. 18, 2017).

Association (NCTA) filed Comments in the Comcast Petition docket, and Entravision filed a Motion to Strike them.<sup>9</sup> Cox did not file an Opposition. For the reasons stated below, we grant the Petitions.

## II. BACKGROUND

### A. Market Modification Procedures

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (Act), and implementing rules adopted in the Commission's *Must Carry Order*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>10</sup> A station's market for this purpose is its DMA.<sup>11</sup> A DMA, as defined by Nielsen Media Research, is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>12</sup>

3. In addition, the Act directs the Commission to consider changes to DMA-based television markets for purposes of a station's mandatory carriage rights. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>13</sup>

In considering such requests, the Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their

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<sup>9</sup> *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV)*, Silver Spring, Maryland, Comments of NCTA – the Internet and Television Association, MB Docket 17-306 (filed Dec. 14, 2017) (*NCTA Comments*); *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV)*, Silver Spring, Maryland, Facility ID 10259, Motion to Strike, MB Docket 17-306 (filed Dec. 27, 2017).

<sup>10</sup> *Implementation of the Cable Television Consumer Prot. & Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2976-77, paras. 42-47 (1993) (*Must Carry Order*).

<sup>11</sup> Section 614(h)(1)(C) of the Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 CFR § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (*Modification Final Report and Order*).

<sup>12</sup> For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>13</sup> 47 U.S.C. § 534(h)(1)(C).

State of residence;<sup>14</sup>

(IV) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(V) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>15</sup>

4. In the *Modification Final Report and Order*,<sup>16</sup> the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;

<sup>14</sup> The STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014, added a new statutory factor, denominated as factor III above. See also *Amendment to the Commission's Rules Concerning Mkt. Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Mod. Order*).

<sup>15</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V). The legislative history of the provision states that:

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

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

H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992). In adopting rules to implement Section 614(h)(1)(C), the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market. *Must Carry Order*, 8 FCC Rcd at 2977 n.139.

<sup>16</sup> *Modification Final Report and Order*, 14 FCC Rcd at 8406-07, Appx. C (Rule Changes).

- (2) Grade B<sup>17</sup> contour maps delineating the station's technical service area<sup>18</sup> and showing the location of the cable system headends and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings; and
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>19</sup>

5. In the *Incentive Auction Report and Order*,<sup>20</sup> the Commission recognized that “relocations made to implement a channel sharing arrangement may have [impacts] on a station's MVPD carriage rights.”<sup>21</sup> It noted that the carriage rights of a station moving within its DMA “will not be expanded or diminished through this process, although its ability to exercise these rights may change

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<sup>17</sup> Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>18</sup> While the Grade B contour defined an analog television station's service area, *see* 47 CFR § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited contour service level – which for UHF stations is 41 dBu. *See* 47 CFR § 73.622(e). Accordingly, the Commission has treated a digital station's noise-limited contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, para. 3, 19554, para. 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communic'ns Act*, Report and Order, 20 FCC Rcd 17278, 17292, para. 31 (2005). *See also Lenfest Broad., LLC Petition for Modification of the Television Mkt. of Television Station WMCN-DT, Atlantic City, New Jersey*, Memorandum Opinion and Order, 19 FCC Rcd 8970, 8974, para. 7 n.27 (2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of analog station's Grade B contour.”).

<sup>19</sup> 47 CFR § 76.59(b). Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. *Id.* § 76.59(c). The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant. *Modification Final Report and Order*, 14 FCC Rcd at 8389, para. 52.

<sup>20</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction Report and Order*).

<sup>21</sup> *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 708.

based upon the facts of its specific channel sharing arrangement.<sup>22</sup> In particular, the Commission noted, a full power commercial station that relocates within its DMA may gain carriage on some cable systems, but lose carriage on others, as a result of market modification requests. A broadcaster may seek to add communities to its market which it can now reach from its new location, and, conversely, a cable system may seek to exclude communities from the broadcaster's market that the station no longer serves as a result of its move. Because full power commercial stations have market-wide carriage rights, their movements within their assigned DMA should not automatically result in modification petitions, but unique factual situations may arise... it is thus possible that some cable operators may see a change in the local stations they must carry as a result of channel sharing agreements.<sup>23</sup>

The instant Petition involves a station that, as discussed below, no longer has carriage rights in every community in its DMA,<sup>24</sup> and that has recently relocated its facilities pursuant to a channel sharing arrangement arising from the incentive auction.<sup>25</sup> Thus, as contemplated by the Commission, Entravision's WJAL seeks to "add communities to its market which it can now reach from its new location."<sup>26</sup>

### **B. The Station**

6. Entravision states that WJAL is an independent, minority-controlled television station that has long provided family-friendly general programming to viewers in the Washington, D.C. DMA.<sup>27</sup> The Station was formerly licensed to Hagerstown, Maryland and its transmitter site was located several miles northwest of that city in Mercersburg, Pennsylvania.<sup>28</sup> However, in 2017, the Station was a successful bidder for a license relinquishment in the incentive auction.<sup>29</sup> Entravision states that WJAL is now the sharee in a channel sharing arrangement with Station WUSA(TV), Washington, D.C. (Channel 9) (Facility ID: 65593).<sup>30</sup> As part of the channel sharing arrangement, WJAL has relocated its transmission facilities to the WUSA transmitter site located in Washington, D.C. and modified its community of license to Silver Spring, Maryland.<sup>31</sup>

### **C. Prior Market Modification Proceedings**

7. With regard to Comcast, the Media Bureau issued a decision in 2003 removing certain Comcast Communities from the Station's market.<sup>32</sup> Entravision notes that this decision cited the

<sup>22</sup> *Id.* at 6857, para. 709 (internal citations omitted).

<sup>23</sup> *Id.* (internal citations omitted).

<sup>24</sup> *See infra* para. 7.

<sup>25</sup> *See infra* para. 6.

<sup>26</sup> *Id.*

<sup>27</sup> Petitions at 2-3, 14-18.

<sup>28</sup> *Id.* at 2-4.

<sup>29</sup> *See* Section 6403 of the Middle Class Tax Relief and Job Creation Act (Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-230 (2012), codified at 47 U.S.C. § 309(j)(8)(G)) (the incentive auction).

<sup>30</sup> WUSA-TV, Inc. is the licensee of WUSA and its transmission facilities are located in Northwest Washington, D.C.

<sup>31</sup> Petitions at 2-4. *See also* FCC File No. 0000029066 (WJAL construction permit for shared television broadcast station).

<sup>32</sup> *See Comcast Cablevision of the District, LLC et al.*, 18 FCC Rcd 16510 (MB 2003) (*Comcast Order*). Appendix

geographic distance between WJAL's transmitter site and the Communities, the absence of Grade B signal coverage and the Station's lack of historical carriage, local programming and viewership in those Communities.<sup>33</sup> With regard to Cox, the Bureau issued a decision in 2000, prior to Entravision's acquisition of WJAL, removing certain Cox communities from the Station's market.<sup>34</sup> That decision similarly cited the Station's lack of historical carriage in the Communities,<sup>35</sup> its geographic distance from the Communities,<sup>36</sup> its lack of local programming, its failure to place a Grade B contour over the Communities and the absence of Station viewership in the Communities.<sup>37</sup>

#### D. The Current Petitions

8. Based on WJAL's relocation within the Washington, D.C. DMA and the guidance provided in the *Incentive Auction Report and Order*, Entravision submits that the Comcast and Cox Communities now belong in WJAL's market and that the market should be modified to reflect the inclusion of the Communities.<sup>38</sup> Entravision further states that, while channel sharing stations may be new to the market modification process, the Commission has dealt with analogous circumstances in other cases.<sup>39</sup> For example, Entravision notes that the Media Bureau has added communities to the markets of

(...continued from previous page)

A to the Comcast Order lists the Communities removed from the Station's market. Entravision seeks to restore those Communities to WJAL's market, as well as any Comcast Communities acquired or created since the *Comcast Order*, including Chesapeake Beach and North Beach (in Comcast's Calvert County System), North Chevy Chase Village, Chevy Chase View, Martins Additions Village and Chevy Chase Village Section 3 (in Comcast's Montgomery County System), Manassas (VA0362) and Occoquan (in Comcast's Prince William County and Fairfax County System), and Washington and US Soldiers Home (in Comcast's District of Columbia System). In addition, Entravision states that certain of the Comcast Communities were not dealt with in the *Comcast Order* and, in an abundance of caution, it seeks to confirm that these communities are now within WJAL's market. Comcast Petition at n.9.

<sup>33</sup> Entravision states that the Media Bureau emphasized in the *Comcast Order* that the distance between WJAL's transmitter site and the Comcast Communities was 80 miles and that the Station only provided peripheral Grade B coverage to two of the Comcast Communities. Comcast Petition at n.10 (citing *Comcast Order*, 18 FCC Rcd at 16514, para. 7).

<sup>34</sup> See *Media General Cable of Fairfax County, Inc.*, 15 FCC Rcd 149 (MB 2000) (*Cox Order*). Entravision states that Cox acquired Media General Cable of Fairfax County, Inc. and Media General Cable of Fredericksburg in November, 1999. Entravision notes that, in the *Cox Order*, Vienna, Fairfax, Falls Church, Herndon and Fairfax County were excluded from WJAL's market. Entravision now seeks to restore these communities to WJAL's market, as well as Clifton, a community added to Cox's system after the *Cox Order* was issued. Entravision states that the Fredericksburg system was not part of the prior market modification proceeding and it is now including it in the instant proceeding in order to avoid any question as to that community being within the market of WJAL. Cox Petition at n.6.

<sup>35</sup> The Media Bureau further noted in the *Cox Order* that WJAL was not carried in any communities adjacent to Fairfax County, and no other Hagerstown stations were carried in Cox Communities or other adjacent communities. Cox Petition at n.7 (citing *Cox Order*, 15 FCC Rcd at 153, para. 11).

<sup>36</sup> In the *Cox Order*, the Media Bureau noted the distance of WJAL's transmitter site from the Cox Communities as 77 miles from the closest Cox Community. Cox Petition at n.8 (citing *Cox Order*, 15 FCC Rcd at 153, para. 12).

<sup>37</sup> *Cox Order*, 15 FCC Rcd at 154, para. 13. Entravision notes the *Cox Order* highlighted the absence of close economic overlap between Hagerstown and Fairfax County. Cox Petition at n. 9 (citing *Cox Order*, 15 FCC Rcd at 154, para. 14).

<sup>38</sup> Petitions at 3-5.

<sup>39</sup> Petitions at 3-5.

digital stations that improved their signal coverage through relocation to new transmitter sites or through the use of distributed transmission systems (DTS).<sup>40</sup> Entravision asserts that WJAL's improved signal coverage to the Communities as a result of the Station's channel sharing arrangement similarly supports restoring the Communities to its market.<sup>41</sup>

9. Comcast opposes the Petition both on the grounds that Entravision failed to demonstrate a nexus with the Comcast Communities as required by the Act, and that the Petition represents an improper use of the incentive auction channel sharing process.<sup>42</sup> We address Comcast's nexus arguments in the Statutory Factors section, below. NCTA's Comments largely echo Comcast's arguments about the channel sharing process.<sup>43</sup> NCTA maintains that the Petition is an attempt to "misuse" the spectrum incentive auction process to "obtain a windfall," and grant would improperly "increase[] must-carry burdens."<sup>44</sup> Entravision filed a Motion to Strike the NCTA Comments on the grounds that they were late-filed, contain other procedural defects, and raise arguments that are not relevant to this proceeding.<sup>45</sup>

### III. DISCUSSION

10. As discussed in more detail below, we grant the Petitions in full with respect to the Cox and Comcast Communities.<sup>46</sup> As an initial matter, we dismiss NCTA's comments as late-filed. As Entravision recognizes in its Motion to Strike, NCTA's comments were filed more than a week after the deadline for filings by interested parties. In the alternative, we reject NCTA's comments as outside the scope of this proceeding. Rather than make any arguments concerning Entravision's satisfaction of the specific statutory factors for market modification petitions, NCTA makes broad policy arguments surrounding the impact of channel sharing.<sup>47</sup> Concerns about the rules and policies surrounding channel

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<sup>40</sup> *Id.* 4-5. These cases will be discussed in more detail below in analyzing the second statutory factor.

<sup>41</sup> *Id.*

<sup>42</sup> Comcast Opposition at 2-5.

<sup>43</sup> NCTA filed only in response to the Comcast Petition in Docket MB 17-306, although the questions it seeks to relitigate appear equally relevant to the Cox Petition.

<sup>44</sup> NCTA Comments at 1, 3.

<sup>45</sup> Motion to Strike at 2-4. The pleading cycle in this proceeding was triggered by the *Public Notice*, which was released on November 13, 2017. The Commission's rules provide that: "Unless otherwise directed by the Commission, interested parties may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on." 47 CFR § 76.7(b)(1). Comments or oppositions were due in this proceeding on December 4, 2017. NCTA filed Comments on December 14, 2017, which Entravision notes was the day its reply pleading was due. Entravision argues that not only were NCTA's Comments late-filed, but they also prejudiced the proceeding in that NCTA sought to avoid having its arguments rebutted by Entravision. Entravision Motion to Strike at 2. Entravision also argues that the Comments were procedurally defective because they were not served upon Entravision directly and were not in compliance with the pleading requirements. *Id.* We note that Entravision's attorney was served with NCTA's Comments. We nonetheless hold that NCTA's filing was procedurally defective, and dismiss it.

<sup>46</sup> See *infra* Section IV, Ordering Clauses.

<sup>47</sup> In response to Comcast's and NCTA's policy arguments regarding the carriage rights of relocating channel sharing stations, Entravision also requested that we change the status of this proceeding from restricted to permit-but-disclose. *Entravision Holdings LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland, Facility ID 10259, Petition to Change Ex Parte Status, MB Docket 17-306* (filed Feb. 6, 2017) (*Status Petition*). As stated above, we agree with Entravision that these policy arguments are outside the scope of this proceeding, and



sharing arrangements are not properly raised in this narrow adjudicatory proceeding. Matters regarding channel sharing arrangements and their impact on stations' carriage rights were considered in the incentive auction rulemaking proceeding and addressed in the *Incentive Auction Report and Order*, where, as discussed above, the Commission explicitly determined that broadcaster relocations could be a basis to seek market modification.<sup>48</sup> We therefore dismiss NCTA's Comments as late-filed, and in the alternative reject the arguments raised in them.<sup>49</sup> For the same reasons, we also reject the channel sharing-related arguments raised by Comcast, although as noted we address Comcast's nexus arguments in the Statutory Factors section immediately below.

**A. Statutory Factors**

**1. Historical Carriage**

11. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."<sup>50</sup> Entravision states that WJAL's current cable carriage reflects the location of its former Mercersburg, Pennsylvania transmitter site outside of the Washington, D.C. DMA.<sup>51</sup> It acknowledges that, as a result, WJAL has no history of cable carriage in either the Comcast or Cox Communities.<sup>52</sup> However, it asserts that broadcast stations can satisfy the historical carriage factor through means other than direct carriage on the subject cable systems.<sup>53</sup> Entravision notes that the Media Bureau has considered carriage of co-located and other stations based in the same area as a petitioner station as evidence of the petitioner's nexus to a community, and that the Bureau has found that lack of carriage may put a petitioner at a disadvantage in a market where other such stations are carried.<sup>54</sup> In the instant case, Entravision states that Comcast and Cox carry WUSA, the Station's channel sharing partner, on their cable systems in the Washington, D.C. DMA.<sup>55</sup> Entravision further states that Comcast and Cox both carry every full-power television station broadcasting from a transmitter site located within the District of Columbia and the immediate surrounding areas.<sup>56</sup> Entravision argues that refusal to carry WJAL by Comcast and Cox would put the Station at a serious disadvantage compared to other stations licensed to the Washington, D.C. area.<sup>57</sup>

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decline to address them. We therefore deny Entravision's Status Change Petition.

<sup>48</sup> See *supra* para. 5 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, paras. 708-709).

<sup>49</sup> See *infra* Section IV, Ordering Clauses. We therefore also dismiss as moot Entravision's Motion to Strike.

<sup>50</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>51</sup> Petitions at 7-9 and Exhibit C (list of WJAL's current cable carriage communities). Mercersburg is located in Franklin County, Pennsylvania in the Harrisburg-Lancaster-Lebanon-York DMA.

<sup>52</sup> Petitions at 5-7.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 6-7, citing *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928, 3932, para. 5 (2008). See also *WSBS Licensing, Inc.*, 32 FCC Rcd 4159, 4163, para. 7 (2017).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* and Exhibit A. In its Reply, Entravision reiterates these arguments, also noting that Comcast failed to address Commission precedent that credits historical carriage to a station when co-located stations have been carried by the cable operator in question. Reply at 7-8.

<sup>57</sup> *Id.*

12. In addition, Entravision observes that the Media Bureau considers carriage of a station by other MVPDs in the pertinent communities, or carriage in communities that overlap or are adjacent to the communities, as evidence of market ties between the station and the subject community.<sup>58</sup> Entravision notes that WJAL is presently carried throughout the Washington, D.C. DMA by DISH Network, including in the areas constituting both the Comcast and Cox Communities.<sup>59</sup> With regard to carriage in adjacent or overlapping communities, Entravision states that WJAL is carried on Comcast's Frederick County and Carroll County system<sup>60</sup> near Comcast Communities served by Comcast's Montgomery County system.<sup>61</sup> In addition, Entravision notes that WJAL is carried on Comcast's Frederick County and Clarke County system in communities<sup>62</sup> near Comcast Communities served by Comcast's Prince William County and Fairfax County system.<sup>63</sup>

13. Finally, Entravision contends that WJAL is analogous to a new station because of its channel-sharing arrangement with WUSA(TV).<sup>64</sup> It notes that the Commission has long recognized that new stations will not have a history of carriage and this factor is therefore accorded less weight in the market modification process.<sup>65</sup> While Entravision concedes that WJAL is not new to broadcast television service, it argues that its relocation to a transmitter site in Washington, D.C. and its community of license change to Silver Spring, Maryland, render it the equivalent of a new station for purposes of analysis here.<sup>66</sup>

14. In opposition, Comcast disagrees that WJAL should be considered as a new station, arguing that it is an established station that has been in operation for 30 years.<sup>67</sup> Accordingly, Comcast argues that WJAL's lack of historic carriage in the Communities should weigh heavily against it.<sup>68</sup> Comcast further maintains that Entravision's failings under this factor cannot be overcome by the Station's carriage on adjacent or nearby Comcast systems because the examples Entravision provides do not provide evidence that the Station has a nexus to the Communities.<sup>69</sup> Comcast also notes that WJAL is

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<sup>58</sup> *Id.* at 6-8 (citing *Petition for Modification of Philadelphia, PA Designated Market Area With Regard to Station WACP, Atlantic City, NJ*, 29 FCC Rcd 1835, 1845, para. 19, n.77 (2014); *WRNN v. Cablevision*, 22 FCC Rcd 21054, 21056, para. 4, n.15 (2007); *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087, 20100, para. 34 (1998); *Christian Faith Broadcast, Inc. v. Cox Communications*, 22 FCC Rcd 16919, 16923, para. 7 (2007)).

<sup>59</sup> *Id.* at 7-9 and Exhibit B. WJAL is not carried by DirecTV due to a retransmission consent agreement pursuant to which DirecTV retransmits Entravision's Station WMDO-CD, Washington, D.C., in return for Entravision not seeking must-carry treatment for WJAL. *Id.*; see also Comcast Petition at n.20, Cox Petition at n.19.

<sup>60</sup> These include the Maryland communities of Frederick, Walkersville, Middletown, Jefferson, Braddock Heights, Brunswick, Fort Detrick, Rosemont, Thurmont, New Market, Woodsboro, Myersville, Emmitsburg, Burkittsville, and Mount Airy. Comcast Petition at n.21.

<sup>61</sup> Comcast Petition at 9.

<sup>62</sup> These include the Virginia communities of Winchester, Berryville, Boyce, Middletown, and Stephens City. Comcast Petition at n.22.

<sup>63</sup> Comcast Petition at 9.

<sup>64</sup> Petitions at 7-10.

<sup>65</sup> *Id.* (citing *Petition for Modification of Philadelphia, PA Designated Market Area With Regard to Station WACP, Atlantic City, NJ*, 29 FCC Rcd 1835, 1845, para. 19 (2014); *Time Warner Entertainment-Advance/Newhouse Partnership*, 22 FCC Rcd 13642, 13649, para. 14 (2007)).

<sup>66</sup> *Id.*

<sup>67</sup> Comcast Opposition at 10-11.

<sup>68</sup> *Id.* at 11.

<sup>69</sup> *Id.* Comcast contends that while Entravision cites Comcast's carriage of WJAL in Frederick and Carroll Counties

not carried by competing cable operators, even though Comcast faces competition from Verizon and RCN in the Communities.<sup>70</sup> Comcast further claims that satellite carriage by DISH is of little relevance to demonstrate a community-specific nexus because once a broadcast station is launched the carrier has no additional burden in providing the station throughout the entire DMA, unlike cable.<sup>71</sup> In addition, Comcast maintains that Entravision voluntarily agreed to forego carriage of WJAL on DirecTV in favor of another Entravision-owned local station, WMDO-CD.<sup>72</sup> Comcast claims that this concession confirms that Entravision has not fully committed WJAL to serving the D.C. market.<sup>73</sup> Finally, Comcast argues that because WJAL is not carried on the Comcast systems serving the Communities, the continued exclusion of the Communities from the market would not disrupt viewing patterns or deprive the Station of any existing cable audience.<sup>74</sup>

15. We agree with Entravision that our precedent recognizing carriage of co-located stations in a particular community is relevant to this case. In a recent decision, the Media Bureau reinforced the premise that such carriage is evidence of a petitioner station's nexus with a community by stating that "[e]ven when a station has no history of carriage in a community, the Commission has given weight to this factor when another station based in the same area has been carried in the community."<sup>75</sup> In that case, the Bureau accorded weight to the first statutory factor in favor of the requested modification.<sup>76</sup> Here, WJAL is now the channel sharee station in a channel sharing arrangement with WUSA(TV) and has relocated its transmission facilities to the WUSA transmitter site in the heart of the Washington, D.C. DMA. Because Comcast and Cox carry WUSA, along with every other full-power television station in the area, we believe that WJAL would be at a competitive disadvantage if these cable operators did not also carry WJAL in the Communities. Although we agree that WJAL, in many respects, resembles a new station, we need not accord WJAL new station status to properly analyze its market modification Petitions. However, we will consider the Station's dramatic change in circumstances due to its change in community of license and transmitter site relocation as mitigating circumstances with respect to the Station's lack of historic carriage. We find that this first statutory factor weighs in favor of the requested modification.

## 2. Local Service

16. Second, we consider "whether the television station provides coverage or other local

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in Maryland, that carriage does not prove a nexus with Montgomery County (or the rest of the Washington, D.C. DMA). Further, Comcast argues that Carroll County is not even in the Washington D.C. DMA. Moreover, Comcast asserts that while Entravision cites Comcast's carriage of WJAL in Frederick and Clark Counties in Virginia, that carriage does not reflect any nexus to Prince William and Fairfax Counties. Comcast argues that these Counties are not even adjacent, as Loudoun and Fauquier Counties separate them. *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 11-12.

<sup>73</sup> *Id.* at 12.

<sup>74</sup> *Id.*

<sup>75</sup> *Woods Communications Corporation*, 32 FCC Rcd 6597, 6600, para. 6 (MB 2017) (citing *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928, 3934, para. 10 (2008) (finding that carriage of a competing station in the same community provides evidence to support market modification)).

<sup>76</sup> *Id.*

service to such community.”<sup>77</sup> Entravision provides maps showing WJAL’s new signal contour in relation to the Comcast and Cox Communities and their respective headends.<sup>78</sup> These maps demonstrate that the Station’s 36 dBu contour encompasses the Communities.<sup>79</sup> Therefore, based on the signal coverage gains achieved by WJAL’s new channel sharing arrangement, Entravision argues that this second market modification factor strongly supports inclusion of the Communities in WJAL’s market.<sup>80</sup>

17. Additionally, Entravision points to recent cases, which it contends are analogous to the instant case, where the Media Bureau restored once-deleted communities to a Station’s market based on similar gains in signal coverage.<sup>81</sup> Entravision cites *KAZN-TV Licensee, LLC*, in which the Bureau returned a number of communities to the market of a Los Angeles DMA-based station after the communities were removed from the market a decade earlier.<sup>82</sup> In reversing its earlier decision, the Bureau relied almost entirely on the station’s improved signal coverage due to its use of a new DTS transmission facility.<sup>83</sup> Entravision notes that the Bureau credited the station’s investment in its DTS facility as evidence of its desire to serve the communities and granted the market modification.<sup>84</sup> Comcast claims that *KAZN-TV* can be distinguished from the instant case because the market expansion was based on multiple factors, including the broadcaster’s investment in new transmission facilities to improve the scope of over-the-air signal coverage.<sup>85</sup>

18. Entravision also cites *KJLA, LLC*, another case in which a station previously had communities deleted from its market because of insufficient signal coverage but later had them restored.<sup>86</sup> There, in the course of the transition to digital service, the station moved its transmitter site from Ventura, California to the Mount Wilson antenna farm, the location for most Los Angeles television stations, and significantly improved its signal coverage to the communities in question.<sup>87</sup> Entravision notes that the Media Bureau found that deficits in historical carriage and viewership were offset by its much improved signal coverage and the fact that cable operators carried every other station co-located with *KJLA* at the Mount Wilson antenna farm.<sup>88</sup> As it does with respect to *KAZN-TV Licensee, LLC*, Comcast argues that

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<sup>77</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(II).

<sup>78</sup> Petitions at 10-12 and Exhibit E. Entravision also provides a contour map which shows a side-by-side comparison of WJAL’s old and new contours that demonstrates the significant difference in the communities reached by WJAL. See Exhibit D.

<sup>79</sup> A digital television station’s service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited contour service level, which for channels 7-13 is 36 dBu. See 47 CFR § 73.622(e).

<sup>80</sup> Petitions at 10-12.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* (citing *KAZN-TV Licensee, LLC*, 30 FCC Rcd 8126 (MB 2015)).

<sup>83</sup> *KAZN-TV Licensee, LLC*, 30 FCC Rcd at 8135, 8137, paras. 20, 25.

<sup>84</sup> *Id.* at 8137, para. 25.

<sup>85</sup> Comcast Opposition at 7 (citing *KAZN-TV*, 30 FCC Rcd at 8137, para. 25 (“This history of carriage coupled with the fact that [the station] has invested to improve its over-the-air signal coverage through the implementation of a three site DTS transmission facility demonstrate a sincere desire to serve the Communities and narrowly supports a grant of the Petition.”)).

<sup>86</sup> Petitions at 11-14 (citing *KJLA, LLC*, 26 FCC Rcd 12652 (2011)).

<sup>87</sup> *KJLA, LLC*, 26 FCC Rcd at 12656, para. 8.

<sup>88</sup> *Id.* at 12660, para. 16.

in *KJLA, LLC*, the decision discussed the station's improved performance under multiple factors that are not present in the instant case, not just improved signal coverage.<sup>89</sup>

19. Entravision also states that WJAL is geographically proximate to the Comcast and Cox Communities.<sup>90</sup> A sampling of the examples submitted by Entravision show the average and median distances between the Station's transmitter site and the Comcast Communities served by Comcast's Prince William County and Fairfax County system, Reston-Fairfax County system, Alexandria-Arlington County system, Fort Myer-Arlington County system, Loudoun County system, Stafford County system and Spotsylvania County system range between 29.4 and 31 miles respectively (the farthest distances of the examples);<sup>91</sup> the average and median distances between the transmitter site and the Comcast Communities served by Comcast's District of Columbia system are virtually non-existent, as the transmitter site is located in the District of Columbia (shortest distance).<sup>92</sup> Entravision further states that the average and median distances between the Station's transmitter site and the Cox Communities are 25 and 16 miles, respectively.<sup>93</sup>

20. Additionally, Entravision addresses shopping and labor patterns and states that the Station's community of license, Silver Spring, Maryland, and WJAL share strong economic connections throughout the Washington, D.C. market, including in all of the Communities.<sup>94</sup> Entravision submits several Exhibits to demonstrate that Silver Spring borders Washington, D.C. and is connected to both the city and the larger metro area by interstate highways, including the Capital Beltway, and the Washington regional Metro System.<sup>95</sup> Entravision asserts that Silver Spring supports many business, entertainment and shopping districts that attract residents from all over the Washington metropolitan area, including the Communities.<sup>96</sup> In addition, Entravision notes that the U.S. Census information indicates that 42.7 percent of Silver Spring residents work outside of Maryland, thus highlighting the connection between

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<sup>89</sup> Comcast Opposition at 7 (citing *KJLA, LLC*, 26 FCC Red at 12660, para. 16). Entravision replies that its expenditures in the furtherance of the channel sharing arrangement, WJAL's new community of license, new transmitter site and equipment, and newly expanded signal coverage are the results of investments in the Station and warrant the return of the Communities to WJAL's market. Reply at 8-9.

<sup>90</sup> Petitions at 13-16.

<sup>91</sup> Comcast Petition at 15, Exhibit F. Entravision also submits sample driving distances, using Google Maps, between the Station's community of license, Silver Spring, Maryland and the individual Comcast Communities. For instance, an example of the average and median driving distances between Silver Spring and the Communities served by these systems is 41.2 and 42 miles, respectively (farthest driving distances of the examples). *Id.* at 16-17, Exhibit G.

<sup>92</sup> *Id.* at 15, Exhibit F. Entravision states that the average and median driving distances between Silver Spring and the Comcast Communities served by Comcast's District of Columbia system are virtually non-existent as Silver Spring immediately abuts the District of Columbia (shortest driving distance example). *Id.* at 17, Exhibit G.

<sup>93</sup> Cox Petition at 13, Exhibit F. Entravision states that the average and median driving distances between Silver Spring and the Cox Communities are 37.2 and 27 miles, respectively. *Id.* at 14, Exhibit G.

<sup>94</sup> Petitions at 16-20.

<sup>95</sup> *Id.* at 16-19; Exhibit I (pages from the websites of the Montgomery County Economic Development Corporation and Silver Spring Downtown), Exhibit J (Metro Map from the Washington Metropolitan Area Transit Authority) and Exhibit K (U.S. Census Commuting Characteristics datasheet). Entravision notes that the Silver Spring Metro stop is the first stop north of the District of Columbia, on that portion of the Metro's Red Line in Montgomery County. *Id.*

<sup>96</sup> *Id.* Entravision particularly notes that Silver Spring's home county, Montgomery County, is also the home of Comcast's Montgomery County system. In addition, Entravision points out that Silver Spring shares state and federal representatives in common with the Comcast Communities. Comcast Petition at 19.

Silver Spring, Washington, D.C. and the metro area in which the Communities are located.<sup>97</sup> Moreover, Entravision states that in connection with its channel sharing relocation, WJAL has moved its studio to Washington, D.C., thus further enhancing the common economic, social and cultural ties to the wider Washington, D.C. metro marketplace.<sup>98</sup>

21. Comcast does not dispute WJAL's improved signal coverage from its new transmitter site in Washington, D.C. or the Station's geographic proximity to the Communities from its new community of license in Silver Spring. Under the traditional market modification analysis, the Media Bureau has consistently recognized that signal coverage<sup>99</sup> and geographic proximity<sup>100</sup> are solid measures of the scope of a station's market and help establish the relevant nexus between the station and the market. Comcast appears to urge denial of Entravision's Petition regarding the Comcast Communities primarily on the grounds that a "grant of the Petition would invite troubling efforts to manipulate of (*sic*) the Commission's authorization of [channel sharing arrangements] under the Incentive Auction."<sup>101</sup> As noted by the Petitioner, however, the *Incentive Auction Report and Order* expressly contemplates that certain relocating channel sharing stations may seek to add communities to their market that can now be reached from their new locations.<sup>102</sup> Furthermore, while channel sharing may be a new reason to invoke the market modification process, it is similar to cases in which the Media Bureau restored once-deleted communities to a station's market based on improvement in signal coverage.<sup>103</sup> Comcast argues that if the Bureau "grants this Petition, it should, at a minimum, affirm that it will also grant market modification requests filed by cable operators to *contract* must-carry rights for particular stations where the statutory factors applied to new [channel sharing agreement] circumstances favor such contraction."<sup>104</sup> As noted above, the Commission expressly provided for such scenarios in the *Incentive Auction Report and Order*.<sup>105</sup>

22. Finally, with respect to the question of programming, WJAL currently broadcasts the LATV network.<sup>106</sup> Entravision does not claim that the programming is locally-targeted to the

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<sup>97</sup> Petitions at 16-19; Exhibit K.

<sup>98</sup> *Id.* at 16-20.

<sup>99</sup> See *CoxCom, LLC*, 30 FCC Rcd at 10978, 10985, para. 11 (2015) ("the Commission has long recognized that Grade B contour coverage, in the absence of other determinative facts, is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal"); see also *Market Modifications and the New York Area of Dominant Influence Petitions for Reconsideration and Applications for Review*, 12 FCC Rcd 12262, 12267, para. 10, 12271, para. 17 (1997) ("[G]rade B coverage, in the absence of other determinative market facts . . . is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular station's signal").

<sup>100</sup> See *Comcast Cable Communities, Inc.*, 19 FCC Rcd 5245, 5252, para. 17 (2005) ("Given the station's coverage and the station's closer geographic proximity, it appears that it is [the station's] intent to serve these communities. As such, carriage of the station's signal is reasonable and appropriate under the [Communications Act] and the Commission's rules").

<sup>101</sup> Comcast Opposition at 13.

<sup>102</sup> See *supra* para. 5; *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 709.

<sup>103</sup> See *supra* paras. 17-18.

<sup>104</sup> Comcast Opposition at 5 (emphasis original).

<sup>105</sup> See *supra* para. 5 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 709). Comcast has not filed such a petition to date, but any cable operator may do so with respect to any broadcast station. 47 CFR § 76.59(a).

<sup>106</sup> Reply at 5-6. Both Petitions attached an inaccurate programming schedule that was no longer valid at the time

Communities, but argues that the LATV network programming, which contains both English and Spanish language content, is well suited to the significant Latino population of the Washington, D.C. DMA.<sup>107</sup> Entravision states that it is “committed to including superior local programming on the Station,”<sup>108</sup> and that it is “hopeful that WJAL’s relocation to Silver Spring and its new channel sharing operation will foster opportunities to provide local programming” to the communities it is required to serve.<sup>109</sup>

23. Although the Petitioner states that it is committed to providing more local programming to the Communities, market modification decisions must be made based on current programming, rather than a licensee’s stated intentions with respect to future programming.<sup>110</sup> Despite Entravision’s claims that LATV would appeal to the Latino population in the area, we cannot conclude that WJAL provides local programming about and targeted to the Communities. Nevertheless, we find that the ample evidence regarding WJAL’s signal coverage, geographic proximity, and shopping and labor patterns in relation to the Communities overcomes the absence of local programming in WJAL’s channel lineup and that the second statutory factor weighs strongly in favor of WJAL’s Petition.

### 3. Promoting Consumer Access to Local Stations

24. The third statutory factor is “whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>111</sup> This factor is intended to ensure that multichannel video programming distributor (MVPD) subscribers are “receiving news, politics, sports, emergency information, and other television programming relevant to their home state” and “relevant to their everyday lives.”<sup>112</sup> A petitioner is considered to satisfy this factor if the involved station is licensed to a community within the same state as the new community.<sup>113</sup> The Media Bureau may give this factor increased weight if the station provides programming specifically related to subscribers’ state of residence, and may give it even more weight if subscribers in the existing market have little or no access to such in-state programming.<sup>114</sup>

25. The Petitioner asserts that because WJAL is licensed to Silver Spring, Maryland, this

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the Petitions were filed, and failed to identify the network programming then being carried on WJAL. Petitions at 18, Appendix H. The record was not corrected until Comcast called attention to the discrepancy. Comcast Opposition at 8. We remind licensees that they have a duty to make truthful and accurate statements to the Commission. 47 CFR § 1.17; *see also Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1210 (1985) (as amended). WJAL’s current programming is the only information relevant to the instant proceeding.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 6.

<sup>109</sup> Petitions at 18.

<sup>110</sup> *See KAZN-TV Licensee, LLC*, 30 FCC Rcd at 8136, para. 22 (citing *Time Warner Cable Petition for Modification of Television Station KHIZ(TV), Barstow, California*, 18 FCC Rcd 20536 (MB 2003)).

<sup>111</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(III).

<sup>112</sup> *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, para. 1, 10420, para. 18 (2015) (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)).

<sup>113</sup> *Id.* at 10420, para. 18.

<sup>114</sup> *Id.*

factor is satisfied with respect to the Comcast Communities located in the state of Maryland.<sup>115</sup> Otherwise, Entravision states in both Petitions that the Virginia-Maryland-D.C. metropolitan area that comprises the Washington, D.C. DMA is well-served by several in-state broadcast signals and this factor is inapplicable in this case.<sup>116</sup> Comcast argues that “failing a particular statutory factor ordinarily might not be disqualifying, but that does not mean that the factor should be ignored entirely.”<sup>117</sup> Comcast contends that “failure under this factor” should, “at a minimum,” increase scrutiny of the remaining factors.<sup>118</sup> We disagree. The Commission has explicitly stated that, to the extent a Petition does not involve an “in-state” station, the “in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors.”<sup>119</sup> Further, the Act establishes that our fundamental obligation in the market modification context is to ensure that cable subscribers have access to their local television broadcast stations, and the statutory market modification factors are simply a non-exclusive list of tests of localism.<sup>120</sup> The inability to satisfy one factor does not serve to increase scrutiny under any of the other four factors, any more than *satisfaction* of one factor would *diminish* scrutiny under the others. Consequently, we find that this third statutory factor weighs in favor of WJAL’s Petition with regard to Comcast’s Communities in the state of Maryland, but we assign it no weight with regard to the remaining Communities.

#### 4. Carriage of Other Eligible Stations

26. Fourth, we consider “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>121</sup> In general, the Media Bureau 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.<sup>122</sup> Entravision states that in the instant case this statutory factor “should simply drop out of” the market modification analysis.<sup>123</sup> Comcast asserts that carriage of WJAL would not improve programming coverage of the Communities as it already carries a panoply of local broadcast channels and WJAL does not even claim to offer local programming.<sup>124</sup> Nonetheless, Comcast argues again that “WJAL’s failure under this factor should prompt the Commission to increase scrutiny of WJAL’s performance under the other factors.”<sup>125</sup> As discussed in the preceding paragraph, we disagree with this argument, and decline to adopt Comcast’s proposed approach. As Entravision presents no analysis under this factor, and consistent

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<sup>115</sup> Comcast Petition at 17.

<sup>116</sup> *Id.*, Cox Petition at 20.

<sup>117</sup> Comcast Opposition at 9-10.

<sup>118</sup> *Id.* at 10.

<sup>119</sup> *STELAR Market Mod. Order*, 30 FCC Rcd at 10420, para. 19.

<sup>120</sup> 47 U.S.C. § 534(h)(1)(C)(i) and (ii).

<sup>121</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

<sup>122</sup> See *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); see also *Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947, para. 49.

<sup>123</sup> Comcast Petition at 21; Cox Petition at 18.

<sup>124</sup> Comcast Opposition at 9.

<sup>125</sup> *Id.*



with our precedent, we accord it no weight.

#### 5. Viewing Patterns

27. The fifth statutory factor focuses on “evidence of viewing patterns” in cable and noncable households “within the areas served by” the cable system or systems in such community.<sup>126</sup> Entravision submits that WJAL’s low to nonexistent viewership in the Washington, D.C. market reflects its former position on the periphery of the market.<sup>127</sup> Entravision argues that the radical changes in WJAL’s circumstances “make it something of a new station” for market modification purposes and therefore the viewership factor, as with the historical carriage factor, is of less probative value than for ordinary stations.<sup>128</sup> Comcast argues that this factor weighs against Entravision’s request because WJAL is not a new station and after three decades of operation the Station has achieved no meaningful over-the-air viewership in the Communities.<sup>129</sup> WJAL’s lack of viewership is unsurprising given that its market was modified to exclude the Communities almost two decades ago.<sup>130</sup> We find that WJAL’s recent modifications regarding its community of license and transmitter site relocation and signal coverage improvement are mitigating circumstances with respect to a lack of viewership in the Communities. Accordingly, although this fifth statutory factor weighs against Entravision’s modification requests, we give this factor limited weight.

#### 6. Conclusion

28. We conclude that the facts support the grant of the Petitioner’s requests to modify the market of Station WJAL(TV), Silver Spring, Maryland, to include the Comcast and Cox Communities. We find that the first statutory factor weighs in favor of the market modification requests. We find that the second statutory factor strongly weighs in favor of a grant of the requests. With regard to the third statutory factor, we find that it weighs in favor of Comcast’s Communities in the state of Maryland, but we assign no weight to this factor with regard to the remainder of the Communities. We also accord no weight to the fourth factor. We find that the fifth statutory factor does not support a grant of the market modification requests, but give this factor limited weight due to mitigating circumstances. For the reasons discussed herein, we grant the Petitions. Finally, we note that the decision to modify WJAL’s market to include the Communities is based on the specific facts and circumstances presented in this proceeding. It should not be interpreted as prejudging future market modifications filed by relocated channel sharing stations or affected cable systems. All market modifications are evaluated on the specific facts and circumstances presented in those proceedings, including those arising from channel sharing as expressly contemplated by the Commission in the *Incentive Auction Report and Order*.<sup>131</sup>

### IV. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission’s rules, 47 CFR § 76.59,

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<sup>126</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(V).

<sup>127</sup> Petitions at 18-22.

<sup>128</sup> *Id.* (citing *the Chronicle Publishing Company*, 10 FCC Rcd 9474, 9482, para. 22 (1995) (With respect to the overlap of the historical carriage and viewership factors, the Commission has expressly stated that “viewership is difficult to separate from historic cable carriage,” and the factors mitigating any lack of historic carriage apply equally in the viewership context.)). Comcast Petition at n.65; Cox Petition at n.55.

<sup>129</sup> Comcast Opposition at 12.

<sup>130</sup> *See supra* para. 7.

<sup>131</sup> *See supra* para. 5 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 709).

that the captioned Petitions for Special Relief (MB Docket No. 17-306, CSR 8944-A and MB Docket No. 17-307, CSR 8945-A) filed by Entravision Holdings, Inc. **ARE GRANTED**.

30. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.6 and 76.7 of the Commission's rules, 47 CFR §§ 76.6 and 76.7, that Comments of NCTA – The Internet & Television Association **ARE DISMISSED**

31. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.7 of the Commission's rules, 47 CFR § 76.7, that the Motion to Strike of Entravision **IS DISMISSED**.

32. **IT IS FURTHER ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.7 of the Commission's rules, 47 CFR § 76.7, that the Petition to Change Ex Parte Status of Entravision **IS DENIED**.

33. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>132</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>132</sup> 47 CFR § 0.283.