

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

In the Matter of Petition of)	
)	
Telepak Networks, Inc., d/b/a C Spire Fiber)	
)	MB Docket No. 18-381
For Modification of the Television Markets of)	CSR 8971-A
Stations WLOX(DT), Biloxi, MS (Facility ID No.)	
13995) and WXXV-TV, Gulfport, MS (Facility ID)	
No. 53517) to include Diamondhead, MS)	

MEMORANDUM OPINION AND ORDER

Adopted: April 18, 2019

Released: April 18, 2019

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

I. INTRODUCTION

1. On December 4, 2018, Telepak Networks, Inc., d/b/a C Spire Fiber (C Spire) filed a Petition for Special Relief (Petition) seeking to modify the local television markets of Stations WLOX(DT), Biloxi, Mississippi, and WXXV-TV, Gulfport, Mississippi, to include the community of Diamondhead, Mississippi. C Spire, the grantee of a cable franchise in Diamondhead, states that Diamondhead is located in Hancock County, which it characterizes as an “orphan county” within the New Orleans Designated Market Area (DMA).¹ C Spire maintains that the local markets of the two television stations should be modified to include Diamondhead because Diamondhead suffers from a dearth of local, in-state programming. In addition, C Spire claims that Stations WLOX(DT) and WXXV-TV have historically been carried in Diamondhead, provide local programming directed to viewers in Diamondhead, and have reportable ratings in Diamondhead. C Spire asserts that Diamondhead represents a “quintessential example” of a community warranting market modification to “promote consumers’ access to television broadcast station signals that originate in their state of residence.”² C Spire’s Petition is unopposed. For the reasons stated below, we agree with C Spire and grant its Petition.

¹ Petition at 1. C Spire is a wholly-owned subsidiary of Telapex, Inc., a Ridgeland, Mississippi-based telecommunications company. C Spire holds a franchise to operate a cable television system and offer video services in Diamondhead. Station WLOX(DT) is a full-power television station licensed to Gray Television Licensee, LLC. It transmits on virtual channel 13 from Biloxi, Mississippi, in the Biloxi-Gulfport DMA. At the time C Spire filed its Petition on December 4, 2018, Station WLOX(DT) was licensed to WLOX Licensee Subsidiary, LLC. The Commission subsequently granted its consent to the assignment of the license for Station WLOX(DT) to Gray Television Licensee, LLC. *See In the Matter of Applications for Consent to Transfer Control of Certain License Subsidiaries of Raycom Media, Inc. to Gray Television, Inc.*, Memorandum Opinion and Order, MB Docket No. 18-230, DA 18-1286 (Chief, Media Bur., rel. Dec. 20, 2018) (granting, among other applications, File No. BALCDT-20180709ADK). The parties consummated the transaction on January 1, 2019. Station WXXV-TV is a full-power television station licensed to Morris Network of Mississippi, Inc. It transmits on virtual channel 25 from Gulfport, Mississippi, also in the Biloxi-Gulfport DMA. The community of Diamondhead, Mississippi, is located in Hancock County which, in turn, is part of the New Orleans DMA.

² *Id.* (citing *Satellite Television Extension and Localism Reauthorization Act of 2014*, Pub. L. 113-200, 128 Stat. 2059 (2014) (“*STELA Reauthorization Act of 2014*”).

II. BACKGROUND

2. Pursuant to section 614 of the Communications Act of 1934, as amended (the Act), and implementing rules adopted by the Commission in its *Must Carry Order*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.³ A station's default market for this purpose is its DMA as defined by Nielsen Media Research.⁴ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which stations receive a preponderance of total viewing hours in the county.⁵

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁶

In considering such market modification 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 State of residence.

(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;

³ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977, paras. 42-47 (1993) (“*Must Carry Order*”).

⁴ 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) 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*”).

⁵ For purposes of Nielsen's calculation, both over-the-air and cable television viewing are included. For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁶ 47 U.S.C. § 534(h)(1)(C).

- (V) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁷

The STELA Reauthorization Act of 2014 (STELAR) added 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.⁸ This new factor and the legislative history of STELAR reflect Congress's intent to promote consumer access to in-state and other relevant television programming, particularly in "orphan counties" whose residents have insufficient access to in-state programming.⁹

4. In order to establish a station's relationship to the community at issue as required by the Act, Section 76.59(b) of the Commission's rules requires requests for market modification to be supported by the following evidence:

- (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 (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the

⁷ 47 U.S.C. §534(h)(1)(C)(ii)(I)-(V). 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. The legislative history of Section 614 of the Act states:

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.

* * * *

[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 of the Act, 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; *see also* 47 CFR § 76.59. While requests for cable market modifications continue to be considered on a community-by-community basis, requests for satellite market modifications are considered on a county-by-county basis. *See STELAR Market Mod*

cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.¹⁰

(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 indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.¹¹

III. DISCUSSION

5. For the reasons set forth below, we find that Hancock County is an orphan county, and conclude that the evidence with respect to each of the stations weighs in favor of expanding its market. We therefore modify the markets of both Stations WLOX(DT) and WXXV-TV to include the community of Diamondhead, Mississippi.

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Order, 30 FCC Rcd at 10444-47, paras. 55-58.

⁸ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(l)(C)(ii)(III). See also *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (“*STELAR Market Mod Order*”). See also Consolidated Appropriations Act of 2019, Pub. L. No. 116-6 (Feb. 15, 2019); Conference Report (H. Rept. 116-9) at 673 (noting that “despite the reforms made in STELAR, many communities continue to struggle with market modification petitions,” and directing the Commission to continue to “provide a full analysis to ensure decisions on market modification are comprehensively reviewed and STELAR’s intent to promote localism is retained” and “adhere to statutory requirements and congressional intent when taking administrative action under STELAR.”).

⁹ See *infra* para. 6.

¹⁰ Section 76.59(b)(2) contains the following note: “Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.”

¹¹ 47 CFR § 76.59(b)(1)-(7). Petitions for special relief to modify 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. *STELAR Market Mod Order*, 30 FCC Rcd at 10424, para. 22. 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. *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n. 22 (MB 2016); 47 CFR § 1.3. Parties may submit whatever additional evidence they deem appropriate and relevant. *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n. 22 (MB 2016). 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

A. Orphan County Status

6. Hancock is an “orphan county” with insufficient access to in-state programming. An orphan county is a county that, as a result of the structure of a local market, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.¹² Viewers residing in an orphan county often are unable to access their home state’s news, politics, sports, emergency information, and other television programming. With the STELAR’s revisions to the market modification process, Congress expressly intended to address orphan county situations like that of Hancock County, of which the community of Diamondhead is a part.¹³ Indeed, the legislative history observed 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.”¹⁴ 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 modification.¹⁵

7. In the instant case, we find that Hancock County, within which Diamondhead is located, is an orphan county with insufficient access to in-state programming. Hancock is currently within the New Orleans DMA. C Spire demonstrates that Diamondhead residents have been deprived of the ability to receive their preferred in-state Mississippi television broadcast stations and instead are relegated to local broadcast content that is oriented to Louisiana. In particular, C Spire shows that residents of Diamondhead are currently underserved by the broadcast stations in the current DMA because they are deprived of in-state news, politics, sports, and weather. Notably, the requested modification is supported by comments from government officials, business leaders, and local residents.¹⁶ Thus, grant of the Petition would bring much desired in-state programming to residents of Diamondhead.

B. Station WLOX(DT), Biloxi, Mississippi Market Modification Analysis

8. *Historic Carriage.* 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.”¹⁷ According to C Spire, “Commission records indicate that WLOX was carried in Diamondhead by the incumbent cable system since its inception in 1985. WLOX was dropped January 1, 2018 from the incumbent cable system in Diamondhead, and the remaining portions of Hancock

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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.

¹² *STELAR Market Mod Order*, 30 FCC Rcd at 10408, note 5.

¹³ 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 Mod Order*, 30 FCC Rcd at 10415, para. 12.

¹⁴ Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 at 11 (2014).

¹⁵ *STELAR Market Mod Order* at 10417, n.61.

¹⁶ See Petition at 1-2, 3-4, 11-12, 14-16, 24, and 28; Exhibits 10-13.

¹⁷ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

County.”¹⁸ C Spire maintains that the historical carriage of Station WLOX(DT) in Diamondhead is a factor that weighs in favor of granting its Petition.¹⁹ We agree. In the ordinary course, we do not necessarily expect strong evidence of historic carriage in orphan counties.²⁰ However, it is uncontested that Station WLOX(DT) was carried by the incumbent cable system in Diamondhead on a continuing basis for more than three decades. We therefore find that this factor weighs in favor of granting the Petition with respect to Station WLOX(DT).

9. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to such community.”²¹ In evaluating this factor, we consider the extent to which Station WLOX(DT) places its noise-limited contour over Diamondhead, its geographical proximity to Diamondhead, and its programming nexus to that community. According to C Spire’s undisputed evidence, Station WLOX(DT)’s noise-limited contour encompasses entirely the Diamondhead community.²² In addition, C Spire asserts that there are no natural terrain features or obstacles between Station WLOX(DT) and Diamondhead that would interfere with its signal.²³ C Spire further demonstrates that Biloxi, Mississippi, the community of license of Station WLOX(DT), is located only 35 miles from Diamondhead,²⁴ while New Orleans, Louisiana is located nearly 59 miles away from Diamondhead.²⁵ C Spire also states that WLOX(DT) provides substantial local programming, including news programming, aimed at the Diamondhead community.²⁶ C Spire references various news articles appearing on the station’s website related to Diamondhead,²⁷ a survey of Diamondhead residents showing a preference for Station WLOX(DT)’s programming over that provided by New Orleans television stations,²⁸ and testimonial letters in support of the requested market modification from Diamondhead’s mayor and the Hancock County Chamber of Commerce.²⁹ Indeed, according to C Spire, few people in Diamondhead regard the television stations in New Orleans as their “local stations,” and they look to Station

¹⁸ Petition at 7-8 (footnotes in original omitted).

¹⁹ *Id.* at 8.

²⁰ See, e.g., *In the Matter of Monongalia County, WV, and Preston County, WV, Petitions for Modification of the Satellite Television Markets of WDTV, Weston, WV, and WBOY-TV and WVFX, Clarksburg, WV*, Memorandum Opinion and Order, 33 FCC Rcd. 1168 (MB, Policy Div., rel. Feb. 7, 2017), at para 20.

²¹ 47 U.S.C. § 534(h)(1)(C)(ii)(II).

²² Petition at Exhibit 5.

²³ *Id.* at 8.

²⁴ *Id.* at Exhibits 6 and 7.

²⁵ *Id.* at Exhibit 1.

²⁶ See, e.g., Petition at 10-11 (“In 2018 alone, WLOX has covered a new visitors center coming to Diamondhead, the opening of a public pumpkin patch in Diamondhead, a 9 mile water trail and the introduction of kayaks that launched this past summer in Diamondhead, coverage of a plane crash in Diamondhead, including raw footage of the wreckage, and the hosting of the Blessing of the Classics in Diamondhead, just to mention a few. Since 2009 there have been over 100 stories that directly relate to the small Diamondhead community, besides hundreds more that apply to the entire region of southern Mississippi. This local coverage included highly important and timely messages such as whether or not Diamondhead would become a city, information on burglars that robbed 7 businesses in Hancock County, including some in Diamondhead, that were still at large (which included identifying information about the suspect), up to date traffic information, such as when the major highway that runs through

WLOX(DT) to provide regular coverage of local news, sports, emergency information, and weather.³⁰ In addition, C Spire maintains that there exists a strong economic connection -- including shopping and labor -- between Station WLOX(DT)'s community of license, Biloxi, Mississippi, and Diamondhead. We find that this factor weighs in favor of the inclusion of the Diamondhead community in Station WLOX(DT)'s local market.

10. *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.”³¹ 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.³² Station WLOX(DT) is licensed to Biloxi, Mississippi, which is within the same state as Diamondhead. Moreover, Station WLOX(DT) provides considerable programming, including news programming, produced in and about the State of Mississippi.³³ However, C Spire concedes that the station is available over-the-air to Diamondhead residents.³⁴ Accordingly, this factor weighs heavily in favor of the requested market modification, but is not given the greatest possible weight.

11. *Other Local Stations.* 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 events of interest to the community.”³⁵ In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the community at issue; however, other stations’ service to the communities rarely has counted against a petition.³⁶ According to C Spire, “while the New Orleans stations offer some minimal local coverage to Diamondhead, the coverage falls well short of the local service needed to adequately inform

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Diamondhead reopened after a large crash at the Diamondhead exit, and information about Diamondhead’s new curbside recycling program. Additionally, WLOX covers Hancock High School sports teams (the high school where most Diamondhead teenagers attend), Diamondhead traffic accidents, crime and human interest stories about residents.”) (citations omitted).

²⁷ *Id.* at 10-11.

²⁸ *Id.* at 11-12.

²⁹ *Id.* at 12-13.

³⁰ *Id.* at 19-22.

³¹ 47 U.S.C. § 338(l)(2)(B)(iii).

³² *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

³³ Petition at 10 and Exhibit 22 (“A review of the WLOX programming guide indicates the vast amount of content directed at Mississippi residents. On a typical day, from 4:30 AM to 7 AM WLOX ABC airs “Good Morning Mississippi.” WLOX ABC also provides daily local news coverage from: 11:00 AM to 11:30 AM, 5:00 PM to 5:30 PM, 6:00 PM to 6:30 PM, and 10:00 PM to 10:30 PM, with a rerun of the 10 o’clock news at 1:00 AM. WLOX CBS also airs “Good Morning Mississippi” from 4:00 to 7:00 AM and provides local news coverage from 5 to 5:30 PM, 6 to 6:30 PM, and 10 to 10:30 PM.”) (citations omitted); *see also supra* para 9.

³⁴ *Id.* at 7, 8, 22, and 23.

³⁵ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

³⁶ *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*

Diamondhead residents about local news, weather, sports and community affairs.”³⁷ C Spire further observes that “New Orleans is not just in a different congressional district, but a different state with politics of little or no impact to the Diamondhead residents.”³⁸ Nonetheless, C Spire does not dispute that the stations currently serving Diamondhead provide at least some “news coverage of issues of concern” to Diamondhead, and carriage or coverage of at least some “sporting and other events of interest” to the community. On balance, therefore, we find that this factor weighs neither against nor in favor of the Petition, and we consider it to be neutral in our analysis of the requested modification.

12. *Viewing Patterns.* 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.”³⁹ C Spire provides Nielsen data demonstrating that Station WLOX(DT) enjoys measurable viewing patterns among residents in Hancock County, where Diamondhead is located.⁴⁰ Based on the information before us, we find that Station WLOX(DT) enjoys moderate viewership in Hancock County. Accordingly, we find that the fifth statutory factor weighs in favor of the requested market modification.

C. Station WXXV-TV, Gulfport, Mississippi Market Modification Analysis

13. *Historic Carriage.* According to C Spire, “Commission records indicate that WXXV has been carried in Diamondhead by the incumbent cable operator since at least 2006 and has been consistently carried in Diamondhead during the past 12 years.”⁴¹ In the ordinary course, we do not necessarily expect strong evidence of historic carriage in orphan counties.⁴² Consequently, evidence that Station WXXV-TV has been carried locally for more than a dozen years is notable.⁴³ We therefore find that this factor weighs in favor of granting the Petition with respect to Station WXXV-TV.

14. *Local Service.* C Spire demonstrates with sufficient evidence that Diamondhead falls entirely within Station WXXV-TV’s noise-limited contour.⁴⁴ In addition, C Spire asserts that there are no natural

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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).

³⁷ Petition at 16.

³⁸ *Id.*

³⁹ 47 U.S.C. § 543(h)(1)(C)(ii)(V).

⁴⁰ According to C Spire, “Nielsen data shows that WLOX reached 48% of Hancock County in a typical 24 hour measured window. There are 17,270 TV Households in Hancock County. This report indicates that WLOX is shown to have approximately 4,400 viewers in Hancock County, qualifying as a measurable viewing pattern. In the morning, WLOX had 1,151 viewers in Hancock County, accounting for 14% of the DMA viewing. In the Total Day 3a-3a ratings, WLOX had approximately 440 viewers, accounting for 5% of the DMA viewing. WLOX’s stations were the most popular broadcast stations in Hancock County. Approximately 81% of Hancock County’s residents stated they get their daily TV news from WLOX ABC. In addition, WLOX is on the FCC’s Significantly Viewed TV Stations list for Hancock County. WLOX station representatives indicate that approximately 23% of the population in Hancock County are over the air (antenna) viewers of WLOX, further indicating that individuals in Hancock County turn to these two channels for their local news coverage needs.” Petition at 18.

⁴¹ *Id.* at 22.

⁴² See *supra* note 23.

⁴³ See e.g., *In the Matter of WSBS Licensing, Inc. For Modification of the Television Market for WSBS-TV, Key West, FL*, Memorandum Opinion and Order, 32 FCC Rcd. 4159 (MB, Policy Div., rel. May 25, 2017), at para 7 (carriage since “at least 2006” found to satisfy “historical carriage” criterion).

⁴⁴ Petition at 23, Exhibit 18.

terrain features or obstacles between Diamondhead and Station WXXV-TV that would interfere with or otherwise obstruct the station's service.⁴⁵ C Spire also shows that Station WXXV-TV is geographically close to Diamondhead. According to C Spire, Gulfport, the community of license of WXXV-TV, is located less than 23 miles from Diamondhead, compared to the nearly 59 miles that separate New Orleans and Diamondhead.⁴⁶ C Spire further maintains that Station WXXV-TV has consistently provided programming of interest to the residents of Diamondhead.⁴⁷ It claims that Station WXXV-TV provides "extensive coverage" of local public high school sports (including football, basketball, volleyball and softball), local high school performing arts, and weather-related school closings impacting residents of Hancock County. C Spire also states that Station WXXV-TV covers Diamondhead traffic accidents, crime and human interest stories.⁴⁸ In addition, C Spire asserts that there exists a strong economic connection -- including shopping and labor -- between Station WXXV-TV's community of license, Gulfport, Mississippi, and Diamondhead. C Spire maintains that Diamondhead and Gulfport are connected by a major interstate, and census data reveal that a substantial percentage of people residing in Diamondhead commute to work in Gulfport.⁴⁹ We find that this factor weighs in favor of the inclusion of the Diamondhead community in Station WXXV-TV's local market.

15. *Access to In-State Stations.* As discussed above, this factor is satisfied "by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows 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."⁵⁰ C Spire argues that we should give this factor the greatest possible weight due to Station WXXV-TV's "extensive programming for and about the residents of Mississippi"⁵¹ and the limited coverage of Mississippi provided by stations in the New Orleans DMA.⁵² C Spire concedes, however, that Station WXXV-TV is available to Diamondhead cable subscribers, and is available over-

⁴⁵ *Id.* at 23.

⁴⁶ *Id.*

⁴⁷ In this regard, C Spire states: "In 2018 alone, WXXV has covered the opening of the Diamondhead Bayou Drive Kayak Launch, a fatal accident on I-10 near Diamondhead, a Diamondhead businessman running for U.S. Senate, and a story introducing the new city manager for Diamondhead. Since 2009 there have been over 130 stories that directly relate to the small Diamondhead community, besides over 220 more that apply to Hancock County. This local coverage included highly important and timely messages such as announcements containing the time and location of town hall meetings, coverage of an accident causing delays on I-10, the review process for the Diamondhead mayoral election, information on the primary runoff elections, and updates on economic improvement projects in Diamondhead, including when the projects would be finished." *Id.* at 25, Exhibit 21 (citations omitted).

⁴⁸ *Id.* at 25-26.

⁴⁹ *Id.* at 30-31. According to the Hancock Chamber of Commerce: "Diamondhead is 39 minutes from Biloxi and only 30 minutes from Gulfport. Diamondhead residents are much more likely to work, shop, and visit these two Mississippi cities on a regular basis. On the other hand, New Orleans is over an hour from Diamondhead, and the only reasonable means of accessing the city is across Lake Pontchartrain. Since the citizens of Diamondhead are much more likely to turn to Biloxi and Gulfport for their everyday needs, it is only natural they would be more interested in the coverage that the Biloxi/Gulfport stations provide them, especially since the stations consider Diamondhead an important part of their coverage." *Id.* at 31, Exhibit 13.

⁵⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁵¹ Petition at 27 and at 24-25 ("A review of WXXV's Programming Guide indicates the vast amount of content directed at Mississippi residents. WXXV Fox provides daily local news coverage 7 to 9 AM, 5 to 5:30 PM, and 9 to 10 PM. WXXV NBC provides daily local news from 5 to 7 AM, 12 to 12:30 PM, 5:30 to 6 PM, and 10 to 10:30.")

the-air to Diamondhead residents.⁵³ Accordingly, this factor weighs heavily in favor of the requested market modification, but is not given the greatest possible weight.

16. *Other Local Stations.* As it does with respect to Station WLOX(DT), C Spire argues that the New Orleans DMA stations offer little local programming aimed at Diamondhead, but does not dispute that these stations provide at least some “news coverage of issues of concern” to Diamondhead, and carriage or coverage of at least some “sporting and other events of interest” to the community.⁵⁴ Accordingly, we find that this factor weighs neither against nor in favor of the Petition, and we consider it to be neutral in our analysis of the requested modification.

17. *Viewing Patterns.* C Spire provides Nielsen data showing that Station WXXV-TV enjoys measurable viewing patterns among residents in Hancock County, where Diamondhead is located.⁵⁵ Based on the information before us, we find that Station WXXV-TV enjoys moderate viewership in Hancock County. Accordingly, we find that that the fifth statutory factor weighs in favor of the requested market modification.

IV. CONCLUSION

18. The issue before us is whether to grant Petitioner’s requests to modify the local markets of Stations WLOX(DT) and WXXV-TV, both of which are located in the Biloxi-Gulfport (Mississippi) DMA, to include the cable community of Diamondhead in Hancock County, Mississippi, which is currently assigned by Nielsen to the New Orleans (Louisiana) DMA. Section 614 of the Communications Act 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.⁵⁶ Under this statutory provision, the Commission must afford particular attention to the value of localism.⁵⁷

19. With respect to both of the stations, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the station and Diamondhead. We accordingly grant the requests for market modification, and order the addition of Diamondhead to the local markets of Stations WLOX(DT) and WXXV-TV.⁵⁸

(...continued from previous page)
(citations omitted).

⁵² *Id.* at 27.

⁵³ *Id.* at 7, 8, 22, and 23.

⁵⁴ *See supra* para. 11 (Discussing the Commission’s treatment of this factor as enhancing a party’s market modification petition if other stations do not sufficiently serve the community at issue.).

⁵⁵ According to C Spire: “Based upon the Nielsen Coverage Report, in the morning WXXV had 301 viewers in Hancock County, which accounts for 4% of DMA viewers. Based upon the Total Day 3a-3a data, there are 125 households viewing WXXV, for 1% of the New Orleans DMA viewing. Based Approximately 38.7% of Hancock County’s residents stated they get their daily TV news from WXXV ABC. WXXV station representatives indicate that approximately 23% of the population in Hancock County are over the air (antenna) viewers of WXXV, further indicating that individuals in Hancock County turn to these two channels for their local news coverage needs.” Petition at 29-30, Exhibits 14 and 15 (footnotes omitted).

⁵⁶ 47 U.S.C. § 534(h)(1)(C).

⁵⁷ *Id.*

⁵⁸ We remind Stations WLOX(DT) and WXXV-TV of their individual obligations to elect retransmission consent or mandatory carriage with respect to Diamondhead within 30 days of the release of this Order. We also remind C Spire and Cable One, Diamondhead’s incumbent cable operator, of their obligation to commence carriage within 90

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days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.64(f)(5).

V. ORDERING CLAUSES

20. 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, that the captioned Petition for Special Relief, filed on December 4, 2018, by C Spire, for modification of the local markets of Stations WLOX(DT), Biloxi, MS, and WXXV-TV, Gulfport, MS, to include the community of Diamondhead, MS, **IS GRANTED**.

21. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁵⁹

FEDERAL COMMUNICATIONS COMMISSION

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

⁵⁹ 47 CFR § 0.283.