

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

In the Matter of)	
)	
WRNN License Company, LLC)	MB Docket No. 19-95
)	CSR 8976-A
For Modification of the Television Market of)	
Station WRNN-TV, New Rochelle, New York)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 1, 2019

Released: August 1, 2019

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

I. INTRODUCTION

1. WRNN License Company, LLC (WRNN License Co. or Petitioner), licensee of television station WRNN-TV, New Rochelle, New York (Facility ID No. 74156) (WRNN or Station) filed the above-captioned Petition¹ requesting modification of the Station's television market to include various communities (Communities)² in the New York Designated Market Area (DMA) served by Spectrum's Bergen County, New Jersey cable system (Spectrum).³ The Petition is unopposed. For the reasons stated below, we grant the Petition.

II. BACKGROUND

A. Market Modification Procedures

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 broadcast television stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.⁴ A station's default market for this purpose is its DMA as defined by Nielsen Media Research.⁵

¹ See *WRNN License Company, LLC for Modification of the Television Market for Station WRNN-TV, New Rochelle, New York, Facility ID 74156*, Petition for Special Relief, MB Docket 19-95 (filed April 3, 2019) (*WRNN Petition*). The Media Bureau placed the Petition on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0479 (MB April 5, 2019) (*Public Notice*).

² WRNN is seeking to add the following communities: Fort Lee (NJ0082), Edgewater (NJ0092), Ridgefield (NJ0203), Englewood Cliffs (NJ0208), Cliffside Park (NJ0232), Englewood (NJ0251), Palisades Park (NJ0252), Fairview (NJ0253), Ridgefield Park (NJ0254), Guttenberg (NJ0338), Little Ferry (NJ0339), Moonachie (NJ0427), Leonia (NJ0431), and Teterboro (NJ0484).

³ The Petitioner states that according to the Commission's COALs database, Spectrum does business in the Communities as Time Warner Cable New York City LLC. For ease of reference, however, the Petitioner states that it refers to the relevant cable system as "Spectrum" throughout its pleading. Petition at n.1. We do the same herein.

⁴ *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*).

⁵ 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

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.⁶

3. Under the Act, however, the Commission is also directed to consider changes in a station's local market. 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.⁷

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 State of residence;⁸

(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.⁹

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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*).

⁶ 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*.

⁷ 47 U.S.C. § 534(h)(1)(C).

⁸ 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*).

⁹ 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.

* * * *

(continued...)

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

5. In the *Incentive Auction Report and Order*,¹² the Commission recognized that "relocations made to implement a channel sharing arrangement may have [impacts] on a station's MVPD

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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.

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). 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).

¹² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction Report and Order*).

carriage rights.”¹³ 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 based upon the facts of its specific channel sharing arrangement.”¹⁴ 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... [and] 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.¹⁵

The instant Petition involves a station that has recently relocated its facilities pursuant to a channel sharing arrangement arising from the incentive auction.¹⁶ Thus, as contemplated by the Commission, WRNN seeks to “add communities to its market which it can now reach from its new location,”¹⁷ Which in this case were removed from its market in an earlier market modification proceeding.¹⁸

B. The Station

6. WRNN License Co. states that WRNN is an independent television station that has served the New York DMA for decades.¹⁹ The Station was formerly licensed to Kingston, New York, and broadcast from a transmitter site located in Woodstock, New York, ten miles northwest of Kingston.²⁰ Petitioner states that WRNN’s change in circumstance is the result of its successful bid to relinquish spectrum in the broadcast incentive auction²¹ and a channel sharing arrangement with WWOR-TV, Secaucus, New Jersey (Facility ID No. 74197) (WWOR), pursuant to which WRNN is a channel sharee.²² As a result of that channel sharing arrangement, WRNN now broadcasts from an antenna that is located on top of One World Trade Center in lower Manhattan and has changed its community of license to New Rochelle, New York.²³

C. The Petition

7. The Petitioner claims that the evidence in this proceeding strongly weighs in favor of the requested market modification, and that the considerations that previously resulted in the deletion of the Communities from WRNN’s market more than twenty years ago no longer apply.²⁴ Specifically, the

¹³ *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 708.

¹⁴ *Id.* at 6857, para. 709 (internal citations omitted).

¹⁵ *Id.* (internal citations omitted).

¹⁶ *See infra* para. 6 (discussing WRNN’s channel sharing transition).

¹⁷ *Id.*

¹⁸ *See infra* para. 7 (discussing WRNN’s prior market modification that excluded the Bergen County communities).

¹⁹ Petition at 2. Petitioner states that WRNN signed on the air as WTZA in 1985. *Id.* at n.3.

²⁰ *Id.*

²¹ *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)) (enacting the incentive auction channel sharing process).

²² *See* LMS File No. 0000042455.

²³ Petition at 3.

²⁴ Petition at 3.

Cable Services Bureau issued a decision in 1996 granting a petition filed by Time Warner to remove the Communities at issue here from WRNN's market.²⁵ The Petitioner notes that the prior decision focused on the WRNN's geographic distance from the Communities and its failure at the time to place a Grade B signal contour over them.²⁶ The Bureau found that "Time Warner's cable communities are, on average, 83 miles away from the station and are outside the station's Grade B contour."²⁷ The Petitioner points out that, as a result of its current channel sharing arrangement, the Station now places a noise-limited service contour over the Communities and is also geographically proximate to them.²⁸

8. As relevant precedent for its request to add the Communities back to WRNN's market, the Petitioner cites the 2017 market modification petitions filed by Entravision, seeking to add certain communities to television station WJAL's market.²⁹ WJAL, like WRNN, was a successful bidder in the incentive auction and entered into a channel sharing arrangement as a sharee that resulted in a transmitter site relocation and a change in community of license.³⁰ Based on these changed circumstances, Entravision sought to add certain communities in the Washington, DC DMA served by Comcast and CoxCom to WJAL's market.³¹ Many of these communities had been deleted from WJAL's market as a result of earlier market modification petitions filed by Comcast and CoxCom or their predecessors.³² In granting Entravision's Petitions, the Media Bureau found that the historic carriage of WJAL's channel sharing partner weighed in favor of the requested modification.³³ The Bureau further found that evidence regarding WJAL's signal coverage, geographic proximity, and shopping and labor patterns weighed strongly in favor of a grant of the Petitions.³⁴ WRNN License Co. argues that these same factors weigh in favor of a grant of the instant Petition.³⁵

III. DISCUSSION

9. As discussed in more detail below, we grant the Petition in full. As the Bureau explained in the *Entravision Order*, every market modification must be based on "the specific facts and circumstances presented in [the] proceeding."³⁶ The Bureau further stated that the *Entravision Order*

²⁵ See *Time Warner Entertainment-Advance/Newhouse Partnership for Modification of the ADI of Televisions Stations: WTBY, Poughkeepsie, NY, WRNN, Kingston, NY, WHAI-TV, Bridgeport, CT, WLLG, Riverhead, NY*, Memorandum Opinion and Order, 11 FCC Rcd 6541 (CSB 1996) (*Time Warner Order*). The Petitioner states that this decision deleted each of the fourteen communities that WRNN now seeks to add. The Petitioner also notes that Time Warner is Spectrum's predecessor company. Petition at 2 and n.4.

²⁶ Petition at 2.

²⁷ *Time Warner Order*, 11 FCC Rcd at 6556, para. 31. By contrast, the Bureau noted that "the majority of the New York ADI stations have transmitters located atop of the World Trade Center in lower Manhattan and provide a Grade B contour covering Bergen County and almost every other County in the New York market." *Id.* at 6554, para. 26. ADIs are Arbitron Areas of Dominant Influence, which was the commercial publication the Commission used to delineated television markets based on viewing patterns before switching to Nielsen DMAs. In addition to the considerable geographic distance to the relevant cable communities and the signal coverage issues, the Bureau also noted WRNN's "lack of historical carriage, the dearth of audience in the communities served by Time Warner, and the station's assignment to the Albany-Schenectady-Troy ADI some 90 miles to the north." *Id.* at 6556, para. 31.

²⁸ Petition at 3.

²⁹ *Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, Memorandum Opinion and Order, 33 FCC Rcd 2215 (MB 2018) (*Entravision Order*).

³⁰ Petition at 4.

³¹ *Id.* 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 *Entravision Petitions*.

“should not be interpreted as prejudging future market modifications filed by relocated channel sharing stations or affected cable systems.”³⁷ Accordingly, while we do not discount the relevance of the *Entravision Order*, we evaluate this market modification request based on the specific facts and circumstances presented in this proceeding.

A. Statutory Factors

1. Historical Carriage

10. 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.”³⁸ The Petitioner states that WRNN has not previously been carried as a must-carry station on Spectrum’s Bergen County, New Jersey system.³⁹ The Petitioner notes, however, that as the Bureau recognized in the *Entravision Order*, carriage of co-located stations in a particular community also is relevant in the context of a market modification request.⁴⁰ The Bureau found in that case that the historic carriage factor weighed in favor of WJAL’s modification request because WJAL relocated its transmission facilities to its channel sharing partner’s transmitter site, and the cable operators at issue carried WJAL’s channel sharing partner WUSA(TV).⁴¹ The Petitioner notes that, just as in the case of WJAL, WRNN has relocated its transmission facilities to the transmission site used by its channel sharing partner, WWOR,⁴² and that Spectrum carries WWOR on its Bergen County, New Jersey system.⁴³ Additionally, Spectrum carries a number of other co-located stations, as well as stations broadcasting from nearby locations in lower Manhattan.⁴⁴ The Petitioner contends that if Spectrum did not carry WRNN in the Communities, the Station would be “an outlier amongst its peers” and be placed “at a severe competitive disadvantage.”⁴⁵

11. In addition, the Petitioner notes that WRNN is currently carried on Verizon FiOS, DISH, and DIRECTV throughout Bergen County, New Jersey, including in the Communities,⁴⁶ and that such

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³² *Id.*

³³ *Entravision Order*, 33 FCC Rcd at 2225, para. 15.

³⁴ *Id.* at 2229, para. 23.

³⁵ Petition at 5.

³⁶ *Entravision Order* at 2231, para. 28.

³⁷ *Id.*

³⁸ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

³⁹ Petition at 6. As discussed below, the Petitioner is currently leasing access for some of its programming on Spectrum’s Bergen County, New Jersey system for 58 hours per week. *See also id.* at n.18.

⁴⁰ *Entravision Order* at 2225, para. 15.

⁴¹ *Id.*

⁴² Petition at 6 (noting that the transmission site is the top of One World Trade Center).

⁴³ *Id.* at 6-7 and Exhibit A (Spectrum Cable Lineup Card).

⁴⁴ For example, the Petitioner states that Spectrum carries WCBS-TV, WPXN-TV, and WNET(DT), all of which broadcast from One World Trade Center, as well as WABC(DT), WNBC(DT) and WNYW(DT), which broadcast from lower Manhattan. *Id.* at n.22 and Exhibit A.

⁴⁵ *Id.* at 7.

carriage by competitors is relevant for purposes of the historic carriage factor.⁴⁷ The Petitioner also asserts that although it was determined in the *Entravision Order* that WJAL not be accorded new station status in order to properly analyze its market modification petitions, it should be noted that WRNN's relocation to a new transmitter site and change in community of license make it resemble a new station in many respects and the Bureau could deem WRNN new to the Communities.⁴⁸

12. With regard to this statutory factor, our precedent recognizes the relevance of carriage of co-located stations in a particular community. In addition to its findings in the *Entravision Order*, the Media Bureau has 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 [gives] weight to this factor when another station based in the same area has been carried in the community."⁴⁹ Because Spectrum is carrying WRNN's channel sharing partner on its Bergen County system, this precedent applies to the instant case. Moreover, since Spectrum also carries other co-located and nearby stations, we believe that WRNN would be at a competitive disadvantage if Spectrum did not also carry WRNN in the Communities.⁵⁰ Although we need not accord WRNN new station status to properly analyze its market modification Petition, consistent with our precedent, 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.⁵¹ We find that this first statutory factor weighs in favor of the requested modification.

2. Local Service

13. Second, we consider "whether the television station provides coverage or other local service to such community."⁵² The Petitioner argues that this statutory factor is satisfied because of WRNN's signal coverage, its geographic proximity to the Communities, its shopping and labor patterns between the Station and the Communities, as well as locally-focused programming broadcast by the Station.⁵³

14. Regarding contour and signal strength, the Petitioner asserts that because WRNN is now broadcasting from atop the One World Trade Center, the Station's 41 dBu noise-limited service contour encompasses the Communities.⁵⁴ The Petitioner submits a map showing WRNN's current signal contour (Continued from previous page) _____

⁴⁶ *Id.* and Exhibit B (Verizon FiOS, DISH, and DIRECTV Channel Lineup Cards). The Petitioner also notes that WRNN is carried on the predominant cable systems in all of the counties that surround Bergen County with the exception of Bergen County itself. *Id.* at n.24.

⁴⁷ *Id.*, citing *Petition for Modification of Philadelphia, PA Designated Market Area With Regard to Station WACP, Atlantic City, NJ*, Memorandum Opinion and Order, 29 FCC Rcd 1835, 1845, para. 19, n.77 (MB 2014) (*WACP Order*).

⁴⁸ *Id.* at n.25. The Petitioner notes that if WRNN were considered to be a new station in the Communities, then its signal coverage of the Communities would be afforded the most weight in the Bureau's analysis. *See WACP Order*, 29 FCC Rcd at 1848, para. 27. *Id.*

⁴⁹ *Woods Communications Corporation*, Memorandum Opinion and Order, 32 FCC Rcd 6597, 6600, para. 6 (MB 2017) (citing *Tennessee Broadcasting Partners*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3934, para. 10 (MB 2008) (finding that carriage of a competing station in the same community provides evidence to support market modification)).

⁵⁰ *See Entravision Order* at 2225, para. 15 ("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.").

⁵¹ *Id.*

⁵² 47 U.S.C. § 534(h)(1)(C)(ii)(II).

⁵³ Petition at 8.

⁵⁴ *Id.* at 9.

in relation to the Communities and the relevant Spectrum headend.⁵⁵ Accordingly, the Petitioner asserts that WRNN's signal contour supports the inclusion of the Communities in the Station's market.

15. The Petitioner also states that WRNN is geographically proximate to the Communities.⁵⁶ The Petitioner notes that WRNN's new transmitter site is approximately 12.6 miles driving distance to Fort Lee, one of the Communities the Petitioner seeks to add to WRNN's local market.⁵⁷ Similarly, New Rochelle, New York, WRNN's new community of license, is approximately 15.9 miles driving distance from Fort Lee.⁵⁸ Using Terrain Maps, the Petitioner states that "[a]s the crow flies," WRNN's transmitter site is approximately 9.80 miles from Fort Lee while its community of license is approximately 10.75 miles from that Community.⁵⁹ The Petitioner states that Teterboro is the most distant Community from WRNN at issue in this case, with a 15.6 mile driving distance from One World Trade Center and a 22.1 mile driving distance from New Rochelle.⁶⁰ Consistent with relevant precedent, the Petitioner asserts that the distance of WRNN's transmitter and community of license from the Communities weighs in favor of its requested market modification.⁶¹

16. Additionally, the Petitioner addresses shopping and labor patterns and states that WRNN's new community of license shares strong economic connections with the Communities.⁶² The Petitioner notes that New Rochelle sits across the Hudson River from the Communities to the north-northeast.⁶³ New Rochelle and the Communities are part of the larger New York/New Jersey Metropolitan area and are connected by a large number of interstate and state highways, in addition to public transportation.⁶⁴ As an example, the Petitioner states that "Fort Lee can be reached from New Rochelle via a 26-minute drive along NY-9A, a 24 minute drive along I-87, or a 20-minute drive along I-95."⁶⁵ Additionally, Fort Lee is accessible from New Rochelle by way of the New York City Subway and through bus service in just over an hour.⁶⁶ The Petitioner also notes that Teterboro can be reached from New Rochelle in a 35 minute drive on NY-9A or a 55 minute drive on I-95.⁶⁷ Moreover, the Petitioner states that New Rochelle has numerous businesses and shopping outlets, as well as entertainment and sports venues that attract residents from the New York/New Jersey metropolitan area, including the

⁵⁵ *Id.* and Exhibit C (FCC & Longley-Rice Predicted Coverage Map for Station WRNN-TV, New Rochelle, New York, RF Ch. 25, 57.8 kW, 520 m HAAT, by du Treil, Lundin & Rackley, Inc., Sarasota, Florida). The Petitioner states that the locations of the cable headends are no longer publicly available through cable operators' online public inspection files. We are informed that WRNN License Co.'s engineer called his counterpart at Spectrum to determine the location of the headend for Bergen County, New Jersey. The Petitioner states that the engineer was told that there is no headend in Bergen County and that subscribers there are serviced by Spectrum's Network Operations Center (NOC) in Manhattan. The location of the NOC is plotted on the Contour Map submitted. The Petitioner also notes that the Contour Map contained in Exhibit C identifies some, but not all, of the Communities. *Id.* at n.32.

⁵⁶ *Id.* at 9-11.

⁵⁷ *Id.* at 10 and Exhibit D (Driving Distances Chart).

⁵⁸ *Id.*

⁵⁹ *Id.* and Exhibit E (Terrain Maps).

⁶⁰ *Id.*, Exhibit D. The Petitioner further states that Guttenberg is the closest Community to the Station's transmitter site and is a 7.9 mile drive from the World Trade Center. Fort Lee, as noted above, is the closest Community to WRNN's community of license with a 15.9 mile drive from New Rochelle, New York. Therefore, on average, the the Petitioner states that Communities are a 12.7 mile drive from One World Trade Center and an 18.9 mile drive from New Rochelle, New York. *Id.* at n.38, Exhibit D.

⁶¹ *Id.* at 10-11. As an example, the Petitioner states that "in granting WJAL's Petitions for Market Modification, the Commission noted that Entravision submitted evidence demonstrating that its station's transmitter site was an average of 29.4 miles from the furthest community it sought to add." Additionally, the Petitioner states that "Entravision also submitted evidence that WJAL's community of license was, on average, 41.2 miles from the furthest community at issue." *Id.* The Petitioner also cites *WACP Order*, 29 FCC Rcd 1835, 1846-47, paras. 20, 22 (declining to modify WACP's market so as to exclude cable communities located 62 miles from WACP's

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Communities.⁶⁸

17. Finally, we consider the question of locally relevant programming. WRNN “airs paid programming, regional and international news, and syndicated programming.”⁶⁹ The Petitioner notes, however, that WRNN is “the local broadcast partner of Fujisankei Communications International (‘FCI’), which distributes Japanese programming including FCI News Catch! and Kuishinbo! Banzai.”⁷⁰ According to the Petitioner, this programming is valued by all of the Communities, but particularly by the residents of Fort Lee, “which has a sizeable Asian-American population.”⁷¹

18. WRNN predominantly airs general interest programming and the Petitioner has not established that this programming has any local nexus to the Communities. While the Petitioner is currently leasing 58 hours a week on Spectrum’s Bergen County system for FCI’s niche Japanese television programming, we cannot conclude that WRNN provides local programming about and targeted to the Communities.⁷² Nevertheless, we find substantial evidence regarding WRNN’s signal coverage, geographic proximity, and shopping and labor patterns in relation to the Communities that overcomes the absence of local programming in WRNN’s channel lineup. We therefore find that the second statutory factor weighs in favor of WRNN’s Petition.

3. Promoting Consumer Access to Local Stations

19. 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.”⁷³ 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.”⁷⁴ 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.⁷⁵ This factor may be given 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

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transmitter site and 88 miles from the station’s city of license); *In re KJLA, LLC for Modification of the Television Market for Station KJLA-DT, Ventura, California*, Memorandum Opinion and Order, 26 FCC Rcd 12652, para. 11 (MB 2011) (modifying KJLA’s market to include communities located between 35 and 76 miles from KJLA’s transmitter site and between 64 and 108 miles from the station’s community of license). *Id.* at n.40.

⁶² *Id.* at 11.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* and Exhibit F (Driving and Public Transportation Routes). The Petitioner further states that from One World Trade Center, the trip to Fort Lee is a 22 minute drive on NY-9A or a 26 minute drive on I-95. *Id.* at n.42, Exhibit F.

⁶⁶ *Id.* at 11-12, Exhibit F.

⁶⁷ *Id.* at 12, Exhibit F (also noting that it can be reached from New Rochelle by public transportation in under two hours). The Petitioner further states that from One World Trade Center, Teterboro is a 30 minute drive on NJ-3 or I-95. *Id.* at n.44, Exhibit F.

⁶⁸ *Id.* and Exhibit G(a) (New Rochelle Chamber of Commerce Business Directory). U.S. Census Data, according to the Petitioner, shows that New Rochelle and the Communities have many common characteristics. *Id.* and Exhibit I (U.S. Census American FactFinder Data). These include, for instance, that New Rochelle and Fort Lee have median household incomes of \$77,320 and \$76,578. *Id.*

⁶⁹ *Id.* at 13.

⁷⁰ *Id.*

⁷¹ *Id.* and Exhibit J (U.S. Census Demographic and Housing Estimates). *See also* Exhibit K (Letter from Katsuyoshi Aota, President & COO, FCI, to Ajit Pai, Chairman, FCC, January 10, 2019) (Aota Letter) (arguing that local

(continued...)

market have little or no access to such in-state programming.⁷⁶ However, this new in-state factor was not intended to bar a market modification because it did not result in increased consumer access to an in-state station's programming.⁷⁷ In such cases, it was determined that the "in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors."⁷⁸

20. WRNN is licensed to New Rochelle, New York and broadcasts from a transmitter located on top of One World Trade Center in Lower Manhattan. The Communities involved here are all located in New Jersey and WRNN does not originate in the state of residence of those living in the Communities. Accordingly, we consider this statutory factor inapplicable and assign it no weight in evaluating WRNN License Co.'s market modification request.

4. Carriage of Other Eligible Stations

21. 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."⁷⁹ In general, this factor is generally interpreted 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.⁸⁰ The Petitioner states that "[u]pon information and belief, Spectrum's Bergen County, New Jersey system carries other television stations that provide coverage of news, sports, and other issues of interest to the Communities."⁸¹ Accordingly, consistent with our precedent, we assign no weight to this factor.

5. Viewing Patterns

22. 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.⁸² The Petitioner submits that it "understand[s] that WRNN reached more than a quarter of the households in Bergen

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viewers "would benefit from having [the] certain, ongoing access to WRNN" that would result from carriage rights on Spectrum.)

⁷² The Petitioner is seeking to add fourteen Communities in the New York DMA served by Spectrum's Bergen County system. *See supra* n.2. FCI's President & COO states that "FCI's programming is targeted toward Japanese-speaking viewers, many of whom are concentrated in Fort Lee, NJ and the surrounding Bergen County. In that area, 42% of residents are Asian – many are Japanese." *See Aota Letter*. While this specialty programming may appeal to a small number of residents, particularly some residing in Fort Lee, we cannot conclude that it is local programming of interest to all of the subject Communities. *See also CoxCom, LLC For Modification of the Market of WMDE, Dover, Delaware*, Memorandum Opinion and Order, 30 FCC Rcd 10978, 10999, para. 45 (MB 2015) ("[W]ithout more, programming tailored to specific ethnic groups, is general interest programming and we decline to credit such programming which may be minority-owned and culturally diverse as local programming that can establish a specific market nexus.").

⁷³ 47 U.S.C. § 534(h)(1)(C)(ii)(III).

⁷⁴ *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)).

⁷⁵ *Id.* at 10420, para. 18.

⁷⁶ *Id.*

⁷⁷ *Id.* at 10421, para. 19.

⁷⁸ *Id.*

⁷⁹ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

⁸⁰ *See Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV*, (continued...)

County, New Jersey during a recent three-month period.”⁸³ The Petitioner asserts that this indicates that the programming that the Station provides is of interest to residents of the Communities because this audience was earned despite not having must-carry rights on Spectrum’s Bergen County cable system.⁸⁴ The Petitioner additionally notes that, despite its asserted viewership of WRNN in the Communities, the Bureau has also given this factor limited weight in similar circumstances where the petitioning station’s market was previously modified to exclude the relevant communities.⁸⁵ In that regard, to the extent that the Bureau may consider WRNN’s viewership to be low or nonexistent, it should similarly consider that level of viewership to be unsurprising because the Station’s market was also modified to exclude the Communities many years ago and therefore this factor should be accorded, at most, limited weight.⁸⁶ Moreover, the Petitioner asserts that the Station’s recent modifications to its community of license, transmitter site relocation, and signal coverage improvement should be viewed as mitigating circumstances with respect to any lack of viewership in the Communities.⁸⁷

23. We find that WRNN’s recent changed circumstances regarding its community of license and transmitter site relocation and improved signal coverage are mitigating circumstances with respect to a lack of viewership in the Communities. Any lack of WRNN viewership would not be surprising given that its market was modified to exclude the Communities over two decades ago.⁸⁸ We nonetheless cannot conclude that there is viewership of WRNN in the Communities because the Petitioner has not submitted any published audience data or other specific audience indicia to demonstrate viewership of the Station.⁸⁹ Accordingly, we find that the fifth statutory factor weighs against WRNN License Co.’s modification request.

6. Conclusion

24. We conclude that the facts support the grant of the Petitioner’s request to modify the market of Station WRNN-TV, New Rochelle, New York, to include the Spectrum Bergen County, New Jersey cable system Communities. We find that the first and second statutory factors weigh in favor of the market modification request. We assign no weight to the third and fourth statutory factors. We find that the fifth statutory factor does not support a grant of the market modification request, but recognize that there are mitigating circumstances related to this finding. For the reasons discussed herein, we grant the Petition. Finally, we note that the decision to modify WRNN’s market to include the Communities is based on the specific facts and circumstances presented in this proceeding. It should not be interpreted as

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Dayton, OH, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *see also Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947, para. 49.

⁸¹ Petition at 15.

⁸² 47 U.S.C. § 534(h)(1)(C)(ii)(V).

⁸³ Petition at 15. WRNN states that it does not subscribe to Nielsen or any other rating service. *Id.* at n.60.

⁸⁴ *Id.* at 15-16.

⁸⁵ *Id.* at 16, citing *Entravision Order* at 2231, para. 27.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See supra* para. 7 (discussing WRNN’s prior market modification that excluded the Bergen County communities).

⁸⁹ 47 CFR § 76.59(b)(6). Because we weigh the missing evidence against Petitioners, and it is not necessary in order to resolve the Petition, we waive this rule to the extent necessary. *N.B. La Plata County, Colorado Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, Memorandum Opinion and Order, ___ FCC Rcd ___, para. 16 (rel. Jun. 13, 2019) (directing the Bureau to “dismiss without prejudice at the outset of the proceeding petitions that fail to either include all required supporting evidence, or reflect at least an effort to obtain that evidence,” but noting “that this directive will apply only to petitions filed after the release date of this order.”).

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*.⁹⁰

IV. ORDERING CLAUSES

25. 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 (MB Docket No. 19-95, CSR 8976-A) filed by WRNN License Company, LLC **IS GRANTED**.

26. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁹¹

FEDERAL COMMUNICATIONS COMMISSION

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

⁹⁰ See *supra* para. 5 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 709).

⁹¹ 47 CFR § 0.283.