

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

In the Matter of )
Gray Media Group, Inc. ) MB Docket No. 19-131
Petition for Modification of the Satellite Television ) CSR No. 8977-A
Market of WCJB-TV, Gainesville, Florida )

MEMORANDUM OPINION AND ORDER

Adopted: August 30, 2019

Released: August 30, 2019

By the Senior Deputy Chief, Media Bureau, Policy Division

I. INTRODUCTION

1. Gray Media Group, Inc. (Petitioner or Gray), the parent company of the licensee of WCJB-TV, Gainesville, Florida (Fac. ID 16993), has filed this market modification petition to modify the television market of WCJB-TV (Station or WCJB) to include Columbia County, Florida and Marion County, Florida (Counties) as part of the Station’s local television market with respect to satellite carriage on DIRECTV, LLC (DIRECTV) and DISH Network LLC (DISH). With this Memorandum Opinion and Order (Order), the Media Bureau grants the Petition with respect to DISH and grants it in part with respect to DIRECTV, excepting only limited portions of the Counties where it is technically infeasible for DIRECTV to provide service.

2. DIRECTV and DISH each filed Certifications regarding the technical and economic feasibility of the proposed modifications. DIRECTV states that the Gainesville, Florida Designated Market Area (DMA), the home DMA for WCJB, only has a high definition (HD) spot beam for local channels and that it cannot provide service to some of the ZIP codes in the Counties. DISH states that it would be technically feasible for a substantial majority of its subscribers to receive the Station in the Counties. In addition, Cox Media Group, LLC, parent company of the licensee of station WFTV(TV), Orlando, Florida (Cox), filed an Opposition to the Petition.

1 See Gray Media Group, Inc. Petition for Special Relief for Modification of the Television Market of Station WCJB-TV with Respect to DISH Network and DIRECTV, MB Docket 19-131 (filed May 2, 2019) (WCJB-TV Petition). The Media Bureau placed the Petition on public notice and sought comment. Special Relief and Show Cause Petitions, Public Notice, Report No. 0480 (MB May 7, 2019) (Public Notice).

2 Petition at Exhibit A (Letter from DIRECTV to Robert J. Folliard, III, Vice President and Deputy General Counsel, Gray Television and attached Form of Certification Regarding Spot Beam Coverage, dated October 18, 2018) (DIRECTV Certification); Id. at Exhibit B (Letter from Jeffery H. Blum, Senior Vice President and Deputy General Counsel, DISH to Robert J. Folliard, III, Vice President and Deputy General Counsel, Gray Television and attached Feasibility Certification, dated October 22, 2018) (DISH Certification).

3 Id.

4 Id. DIRECTV filed a Response to the Petition. See Response of DIRECTV, LLC to Petition for Special Relief, MB Docket No. 19-131 (filed May 28, 2019) (DIRECTV Response).

## II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite television carriage of local broadcast stations into their local markets, which is called “local-into-local” service.<sup>6</sup> A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.<sup>7</sup> Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).<sup>8</sup> DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.<sup>9</sup>

4. The STELA Reauthorization Act of 2014 (STELAR) added satellite television carriage to the Commission’s market modification authority, which previously applied only to cable television carriage.<sup>10</sup> Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station’s local market for purposes of satellite carriage, following a written request. In the Commission’s 2015 *STELAR Market Modification Report and Order*, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station’s local market to include a new community located in a neighboring local market.<sup>11</sup> The rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

5. By extending the market modification process to satellite television, Congress sought to address the so-called “orphan county” problem. An orphan county is a county that, as a result of the structure of the local television markets, is served exclusively, or almost exclusively, by television

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<sup>5</sup> Opposition to Petition for Special Relief, MB Docket 19-131 (filed May 28, 2019) (*Cox Opposition*). Gray filed a Reply. See Reply to Oppositions, MB Docket No. 19-131 (filed June 7, 2019) (*Gray Reply*).

<sup>6</sup> 47 U.S.C. § 338(a)(1).

<sup>7</sup> 47 CFR § 76.66(a)(6). Pursuant to section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station’s local market (Satellite Home Viewers Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999)). See also 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the “carry one, carry all” requirement.

<sup>8</sup> See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located).

<sup>9</sup> The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

<sup>10</sup> The STELA Reauthorization Act of 2014, § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (STELAR) (adding 47 U.S.C. § 338(l)). “STELA” refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175. 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

stations coming from a neighboring state.<sup>12</sup> Satellite television subscribers residing in an orphan county often are not able to access their home state's news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the structure of, and therefore the stations located within, a local market for purposes of satellite television carriage was a primary factor in Congress' decision to extend market modification authority to the satellite context.<sup>13</sup>

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that already in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to satellite operations.<sup>14</sup> The STELAR carves out an exception to carriage obligations<sup>15</sup> resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification "shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination."<sup>16</sup> In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting carriage obligation under those circumstances.<sup>17</sup> This exception applies only in the satellite context.<sup>18</sup>

7. In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage resulting from a market modification is infeasible.<sup>19</sup> The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.<sup>20</sup> Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.<sup>21</sup> With respect to claims of "spot beam coverage infeasibility," the Commission concluded that "it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the

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is retained" and "adhere to statutory requirements and congressional intent when taking administrative action under STELAR.").

<sup>11</sup> *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

<sup>12</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

<sup>13</sup> See generally Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113<sup>th</sup> Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*).

<sup>14</sup> See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station's market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) with the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station's market to delete a community, the station is considered "distant" and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

<sup>15</sup> See *supra* note 7 (describing the "carry one, carry all" satellite carriage requirement).

<sup>16</sup> 47 U.S.C. § 338(l)(3)(A).

<sup>17</sup> *Senate Commerce Committee Report* at 11 (recognizing "that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.").

<sup>18</sup> In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station's market, the modification is granted without reference to issues of technical and economic feasibility. As

extent to which it is, outside the relevant spot beam on which that station is currently carried.”<sup>22</sup> With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.<sup>23</sup>

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

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.<sup>24</sup>

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

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explained in the *STELAR Market Modification Report and Order*, Congress recognized “the inherent difference between cable and satellite television service” by adopting certain “provisions specific to satellite,” including 47 U.S.C. § 338(l)(3)(A)’s feasibility exception. 30 FCC Rcd at 10408, n.6.

<sup>19</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

<sup>20</sup> *Id.* at 10435-6, 10438, paras. 39, 42.

<sup>21</sup> *Id.* at 10430, n.162 (quoting DIRECTV to explain that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas” and that “[d]oing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.”) This is in contrast to a “CONUS” beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

<sup>22</sup> *Id.* at 10429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider’s CONUS beam (using spectrum that could otherwise be deployed for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32. The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury. *Id.* at 10435-36, para. 39.

<sup>23</sup> *Id.* at 10438, para. 42. To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility. *Id.*; see also *id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage

particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.<sup>25</sup>

9. Significantly, in the STELAR, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.<sup>26</sup> This new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>27</sup>

10. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.<sup>28</sup> Accordingly, the rules require that the following evidence be submitted:

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

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"through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible").

<sup>24</sup> 47 U.S.C. § 338(l)(2)(B)(i)-(v).

<sup>25</sup> Section 338(h)(1)(C)(ii) of the Act directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). 47 U.S.C. § 338(h)(1)(C)(ii). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, para. 53 (1999) (*Cable Market Modification Second Report and Order*).

<sup>26</sup> See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

<sup>27</sup> *Senate Commerce Committee Report* at 11.

<sup>28</sup> See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

the relevant community.<sup>29</sup>

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.<sup>30</sup> The Bureau may waive the requirement to submit certain evidence for good cause shown.<sup>31</sup> Parties may submit whatever additional evidence they deem appropriate and relevant.

11. In the instant proceeding, Gray filed a Petition seeking modification of the local television market of WCJB-TV, an ABC affiliate, to include Columbia County, Florida and Marion County, Florida.<sup>32</sup> The Counties are not “orphan counties.” During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DIRECTV Certification* states that only customers with HD equipment would be able to receive WCJB and that overall service could not be provided to some ZIP codes in both Counties.<sup>33</sup> The *DISH Certification* says that it would be technically feasible for most of its subscribers to receive the Station in the Counties, but would be economically infeasible for it to accommodate those customers requiring service visits and equipment upgrades in order to receive WCJB.<sup>34</sup> The Commission received comments supporting the Petition from Congressman Ted Yoho of Florida’s 3<sup>rd</sup> District, as well as State Senator Dennis Baxley of Florida’s 12<sup>th</sup> District, State Senator Keith Perry of Florida’s 8<sup>th</sup> District, State Representative Clovis Watson, Jr. of Florida’s 20<sup>th</sup> District, all representing Marion County, and State Representative Chuck Brannan of Florida’s 10<sup>th</sup> District, representing Columbia County.<sup>35</sup> We also received numerous resident comments in support of the Petition,<sup>36</sup> as well as dozens of comments from local businesses.<sup>37</sup> DIRECTV filed a Response to the Petition<sup>38</sup> and Cox filed and Opposition.<sup>39</sup>

12. The Commission must make two determinations with respect to the Petition: (1) whether the carriage of a station resulting from a proposed market modification is technically and economically feasible for each of the satellite carriers; and (2) if so, whether the petition demonstrates that a modification to the station’s television market is warranted, based on the five statutory factors and any

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<sup>29</sup> 47 CFR § 76.59(b)(1)-(7).

<sup>30</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

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

<sup>32</sup> WCJB-TV is licensed to Gainesville, Florida in Alachua County. Columbia County is located directly to the north of Alachua County and Marion County is located directly to the south of Alachua County.

<sup>33</sup> *DIRECTV Certification* at 1-4.

<sup>34</sup> *DISH Certification* at 1-3.

<sup>35</sup> See Letter from Congressman Ted Yoho to Ajit Pai, Chairman, FCC (April 4, 2019) (*Petition* at Exhibit D); Letter from State Senator Dennis Baxley to Ajit Pai, Chairman, FCC (May 20, 2019) (*Petition* at Exhibit D); Letter from State Senator Keith Perry to Ajit Pai, Chairman, FCC (March 15, 2019) (*Petition* at Exhibit D); Letter from State Representative Clovis Watson to Ajit Pai, Chairman, FCC (March 26, 2019) (*Petition* at Exhibit D); and Letter from State Representative Chuck Brannan to Ajit Pai, Chairman, FCC (March 20, 2019) (*Petition* at Exhibit D). A letter of support was also received from State Representative Chuck Clemons serving Dixie, Gilchrist, and part of Alachua counties; Letter from State Representative Chuck Clemons to Ajit Pai, Chairman, FCC (March 21, 2019) (*Petition* at Exhibit D). Support was also received from a number of County, City and Civic officials including, among others, the Sheriff of Columbia County, the Mayor of the City of Ocala, the Sheriff of Marion County, the Executive Director of the Columbia County Chamber of Commerce, and the Superintendent of Marion County Public Schools. See *Petition* at Exhibit D.

<sup>36</sup> *Petition* at Exhibit F, pages 1-303; and Comments filed in the FCC’s Electronic Comment Filing System (*ECFS*) in MB Docket 19-131 (<https://www.fcc.gov/ecfs>).

<sup>37</sup> *Id.* at Exhibit E, pages 1-56.

<sup>38</sup> See *DIRECTV Response*.

other relevant information.<sup>40</sup>

### III. DISCUSSION

13. For the reasons set forth below, we find that it is feasible for DISH to carry WCJB throughout the Counties, and for DIRECTV to do so in HD-only except in six identified ZIP codes. We further conclude that the evidence weighs in favor of expanding the market for the Station to include the Counties. We therefore modify the market of the Station to include Columbia County and Marion County, Florida.<sup>41</sup>

#### A. Technical and Economic Feasibility

14. *DIRECTV*. DIRECTV states that it “cannot provide service to some of the ZIP codes associated with the request because reception of the signal does not meet the minimum performance thresholds for DIRECTV’s service.”<sup>42</sup> DIRECTV provides a list of the ZIP codes in both Columbia and Marion Counties that it is unable to serve.<sup>43</sup> With respect to the remainder of the Counties, DIRECTV states that it transmits WCJB using only a high definition (HD) spot beam, while certain of its customers still rely on standard definition (SD) set-top boxes (and, in some cases, other equipment) in order to receive local broadcast stations.<sup>44</sup> DIRECTV explains that, if it were to carry the Station upon grant of the Petition, those customers with SD equipment would first need to obtain HD equipment before they could receive WCJB.<sup>45</sup> DIRECTV states, however, that it “does not take the position that the mismatch between its spot beam and customers’ equipment in the Counties makes carriage of WCJB-TV technically or economically infeasible.”<sup>46</sup> Nonetheless, DIRECTV asserts that for those customers with SD equipment, significant cost and administrative burdens would be imposed on DIRECTV and its customers alike if it were to carry the Station.<sup>47</sup> DIRECTV states that, in particular, it would need to coordinate outreach to customers with SD equipment and facilitate upgrades.<sup>48</sup> Additionally, DIRECTV states that, in many cases, a customer’s request to upgrade to HD equipment “would require a service appointment and a truck roll, an often-unwelcome inconvenience for customers and a significant expense for

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<sup>39</sup> See *Cox Opposition*.

<sup>40</sup> 47 U.S.C. § 338(l); see also 47 CFR § 76.59.

<sup>41</sup> We note that the parties’ dispute with respect to section 338’s “duplicating signals exception” has no bearing on our decision in this case, and is therefore outside the scope of this proceeding. See, e.g., *DIRECTV Certification* at 1, *Gray Reply* at 2, *DIRECTV Response* at 2, *Cox Opposition* at 7, etc. Section 338 provides an exception to a satellite carrier’s must-carry/“carry-one, carry-all” obligations for duplicating signals and duplicating network affiliates. 47 U.S.C. § 338(c)(1). As the oppositions acknowledge, this does not bear on the question of whether there is a local nexus between WCJB and the Counties. See, e.g., *DIRECTV Response* at 2, *Cox Opposition* at 7. Furthermore, the issue as presented is not ripe for review. Nonetheless, we note that the Commission has addressed the general question of the applicability of “substantial duplication” in the market modification context and has found that “[s]ection 338(c)(1) speaks clearly on this point.” *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10427, n.146.

<sup>42</sup> *DIRECTV Certification* at 2-3.

<sup>43</sup> *Id.* at 4. DIRECTV’s HD spot beam does not cover two ZIP codes in Columbia County (32055 and 32056) and four ZIP codes in Marion County (32134, 32180, 32702 and 32784).

<sup>44</sup> *DIRECTV Response* at 4; *DIRECTV Certification* at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

DIRECTV.”<sup>49</sup> In light of this situation, DIRECTV requests that it “be permitted to ‘roll out service at a more measured, non-dilatory pace’ for customers with SD equipment, consistent with past satellite market modification precedent.”<sup>50</sup>

15. *DISH*. DISH states that it is technically feasible to provide the Station to a substantial majority of subscribers in the Counties.<sup>51</sup> DISH asserts, however, that it would be both technically and economically infeasible for it to provide WCJB to subscribers residing in certain parts of both Marion and Columbia Counties; these areas cover 15 percent of the total geographic area of each of the respective Counties. According to DISH, no subscribers in these geographic areas can receive either HD or SD versions of the Station with their current equipment, but could do so with adjusted and/or new equipment.<sup>52</sup> In addition, DISH states that for both Counties it would be economically infeasible to accommodate customer requests for service visits and equipment upgrades for subscribers desiring to receive WCJB in HD when they could otherwise receive only the Station in SD, or vice versa.<sup>53</sup> DISH claims that this presents a “complex patchwork of different customer scenarios” depending on whether they receive service calls and need to make equipment changes or have to make operational and billing changes in an attempt to manage these different cases.<sup>54</sup>

16. We find that carriage of the Station into both Counties is feasible for both carriers except, as set forth in DIRECTV’s certification, in limited circumstances where DIRECTV cannot carry WCJB into certain ZIP codes because reception of its spot beam signal in those areas does not meet the minimum performance thresholds for service.<sup>55</sup> While DIRECTV alleges “significant cost and administrative burdens” relating from transition of SD to HD equipment for subscribers, the carrier does not dispute that the carriage of WCJB is technically or economically infeasible in the Counties.<sup>56</sup> DISH has not provided a detailed cost analysis in this proceeding. Given this lack of evidence, we find that DISH has not met its burden of demonstrating that the costs of providing subscribers access to the Station, even in the above-noted 15 percent of both Counties, amounts to technical or economic infeasibility.<sup>57</sup> We therefore reject

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* (citing *Monongalia County, West Virginia and Preston County, West Virginia Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, Memorandum Opinion and Order, 33 FCC Rcd 1168, para. 16 (MB 2018)); *Gray Television Licensee, LLC for Modification of the Satellite Television Market for WSAW-TV, Wausau, Wisconsin*, Memorandum Opinion and Order, 32 FCC Rcd 668, para. 20 (MB 2017).

<sup>51</sup> *DISH Certification* at 2-3.

<sup>52</sup> *Id.*

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

<sup>54</sup> *Id.* at 2.

<sup>55</sup> *See supra* para. 14.

<sup>56</sup> *DIRECTV Response* at 5.

<sup>57</sup> *See generally Panola County, Texas, Petitions for Modification of the Satellite Television Markets of KFXK-TV, Longview, Texas and KLTV, Tyler, Texas*, Memorandum Opinion and Order, 34 FCC Rcd 1085, 1092, para. 17 (MB 2019) (*Panola County*). With regard to DISH’s assertion of creating a “complex patchwork of different customer scenarios” as noted in *Panola County* at 1092, n.55, the Media Bureau has stated that the claim is analogous to arguments previously raised by DISH in other market modification cases and rejected, citing *Harrison County, Texas Petitions for Modification of the Satellite Television Markets of KLTV, Tyler, Texas and KFXK-TV, Longview, Texas*, Memorandum Opinion and Order, 33 FCC Rcd at 5278, para. 16, citing *Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, Memorandum Opinion and Order, 32 FCC Rcd 668, paras. 17-19 (MB 2017) (*Gray*); *Victory Television Network, Inc. For Modification of the Satellite Television Market For KVTJ-DT, Jonesboro, Arkansas*, MB Docket No. 17-157, Memorandum Opinion and Order, 32 FCC Rcd 7389, para.16 (MB 2017); *Monongalia County, WV and Preston County, WV Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia*,



DISH's technical and economic infeasibility arguments.

17. Consistent with prior market modification orders, we recognize that “a service change, particularly one involving a service visit and potential new equipment, could create some burden on the few subscribers” who will need additional equipment or services.<sup>58</sup> Accordingly, we again find that if either satellite provider ultimately carries the Station after grant of the Petition, it must do so immediately for subscribers who require only “operational and billing changes” and for new subscribers. If, however, an existing subscriber will require a service visit and/or new equipment in order to receive the Station, the satellite provider may roll out service at a more measured, non-dilatory pace.<sup>59</sup>

## **B. Market Modification Analysis**

18. As noted above, we also conclude that WCJB demonstrates a local nexus with Marion and Columbia Counties. Below we address the evidence of localism based on the five statutory factors set forth in STELAR.

19. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”<sup>60</sup> As evidence of historic carriage, the Petitioner points to the two cable market modification cases in Marion and Columbia Counties to add communities to their local markets over two decades ago.<sup>61</sup> The Petitioner also notes that carriage on the cable systems in the Counties continues today.<sup>62</sup> We find, therefore, that this factor weighs in favor of a grant of the Petition.

20. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>63</sup> Such “local service” can include, for example, the presence of a high quality over-the-air signal; shopping and labor connections between the local community and the station's community of license; support of the local community by the station; and programming, including news or sports coverage, specifically about or addressing the community. Petitioner has submitted a noise-limited service contour map of WCJB showing coverage of nearly all of Marion

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and WBOY-TV and WVFX, Clarksburg, West Virginia, MB Docket Nos. 17-274, 17-275, Memorandum Opinion and Order, 33 FCC Rcd 1168, para. 15 (MB 2018).

<sup>58</sup> *Gray*, 32 FCC Rcd at 677, para. 20.

<sup>59</sup> As we did in *Gray*, we also make clear here that DISH and DIRECTV “must ensure that any new customers in [Marion and Columbia Counties] who subscribe to local-into-local service after grant of this market modification are capable of receiving all local signals [the providers have] the right to provide immediately upon beginning service, including [the Station] if [it is] carried after grant of this Petition.” *Gray*, 32 FCC Rcd 677, para. 20.

<sup>60</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>61</sup> See *Diversified Communications Gainesville, Florida, Petition for Special Relief for Modification of Station WCJB-TV's ADI*, Memorandum Opinion and Order, 10 FCC Rcd 4998 (1995) (*Marion County Cable Market Modification*); *Diversified Communications Gainesville, Florida, Petition for Special Relief for Modification of the Gainesville, Florida ADI*, Memorandum Opinion and Order, 13 FCC Rcd 22331 (1998) (*Columbia County Cable Market Modification*).

<sup>62</sup> *Petition* at 14, Exhibit H (Letters from WCJB to various cable companies requesting carriage.).

<sup>63</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide “noise-limited service contour maps . . . delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. See, e.g., *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (CSB 1999). Additional examples of ways to demonstrate local service beyond coverage and programming are noted above.

County and at least half of Columbia County, including its largest and most populous city, Lake City.<sup>64</sup> Gray states that this contour map demonstrates that WCJB-TV's community of license, Gainesville, is about a 45 minute drive from Lake City in Columbia County and less than a 30 minute drive to Ocala, the county seat of Marion County.<sup>65</sup>

21. With regard to local programming, the Petitioner asserts that "WCJB-TV serves residents of the Counties with a wide range of local news, sports, weather, and other important informational programming."<sup>66</sup> It further asserts that WCJB has a history of commitment to localism in both Counties.<sup>67</sup> According to the Petitioner, this commitment continues today as the Station broadcasts more than four hours of local news programming each weekday "with a Florida and County specific focus."<sup>68</sup> The Petitioner further asserts that WCJB is the only local news station with a bureau in Marion County and that it has a dedicated reporter assigned there. In Columbia County, the Petitioner states that it has a partnership with Florida Gateway College in Lake City that provides news content.<sup>69</sup> Gray states that "the Station covers state and local politics, such as [a] County Commissioner not seeking re-election after a State Ethics probe; Columbia County leaders from businesses, government, and academia meeting to develop an economic growth plan; school board election results; law enforcement and crime news; and local weather and traffic updates."<sup>70</sup>

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

23. Shopping and labor patterns can also help establish local service and can weigh in favor of a market modification grant.<sup>73</sup> In terms of "labor and commuter flows," the Petitioner contends that

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<sup>64</sup> *Petition* at 12; Exhibit G (WJCB-TV Gainesville, Florida, FCC Coverage Contour (NLSC), Predicted Longley-Rice Coverage, Detail to Columbia and Maryland Counties – prepared by Chesapeake RF Consultants, LLC for Gray Television Licensee, LLC, January, 2019).

<sup>65</sup> *Id.* In its Opposition, Cox observes that Gray's noise-limited signal contour map does not appear to identify the location of DISH's and DIRECTV's satellite receive facilities, as required by the rules. *Cox Opposition* at 4, n.12; 47 CFR § 76.59(b)(2). Cox further argues that Gray has not submitted the map as required under 47 CFR § 76.59(b)(1). We note, and Cox also observes, that Gray has requested a waiver of the requirement that its contour map identify the location of cable headends, but it did not request such a waiver with respect to satellite receive facilities. *Id.* Citing 47 CFR § 1.3, Gray seeks a waiver of the requirement to include the location of cable headends as part of Exhibit G. Specifically, Gray states "[h]ere the Petition concerns modification of WCJB-TV's market for satellite carriage, not cable carriage. Moreover, information concerning cable headend location is no longer readily available. See *Revisions to Public Inspection File Requirements – Broadcast Correspondence File and Cable Principal Headend Location*, Report and Order, 32 FCC Rcd 1565 (2017) (eliminating requirement that cable operators maintain designation and location of principal headends in their public file). Therefore, good cause exists to waive this requirement." 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 19-55, 2019 WL 2490477, para. 16 (rel. June 13, 2019) (*La Plata County*) (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.").

<sup>66</sup> *Petition* at 6.

<sup>67</sup> *Id.* at 7-8. The Petitioner notes that "[i]n granting the Station's 1995 cable carriage market modification petition to add communities in Marion County, the FCC held that WJCB-TV 'provides coverage of local Marion County news and weather, and that its presence in the community extends beyond its various broadcasts because its

there is a strong connection between the Counties and WCJB.<sup>74</sup> The Petitioner states that the U.S. Census Bureau's commuting patterns show that more than 3,000 Columbia County residents and 2,800 Marion County residents commute to Alachua County, where the Station is located, and more than 2,100 Alachua County residents commute to Columbia and Marion Counties combined.<sup>75</sup>

24. Cox argues that there are evidentiary flaws with regard to Gray's submission on available data on shopping and labor patterns.<sup>76</sup> It claims that the Petition includes "no information as to, for example, whether viewers in WCJB-TV's home county (Alachua County) travel to Marion County to shop, or vice versa."<sup>77</sup> With regard to labor patterns, focusing on Marion County, Cox contends that the Petitioner did not present compelling evidence of a meaningful labor nexus between Marion and Alachua Counties, given that "Marion County has over 140,000 TV households."<sup>78</sup> Regardless of whether these concerns have merit, we find that there is significant evidence weighing in favor of a grant of the requested modification under this factor.

25. In the instant case, the Petitioner has demonstrated that the Station provides considerable over-the-air coverage of the Counties and a significant amount of local programming targeted to Marion and Columbia Counties. It also has offered compelling evidence of community support for the Station. Based on this evidence, we find that the second statutory factor weighs in favor of the requested modification.

26. *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."<sup>79</sup> 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.<sup>80</sup> The Petitioner asserts that adding the Counties to WCJB's local market will increase access to in-state stations.<sup>81</sup> The Petitioner correctly notes that it is afforded credit for satisfying this

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sponsors community events and station personnel are actively involved in those events." *Id.* (quoting *Marion County Cable Market Modification*, 10 FCC Rcd at 5000, para. 13). Similarly, the Petitioner states that "in granting the Station's petition to add Columbia County three years later, the agency held that WCJB-TV 'takes an interest in and provides coverage of events, weather and local affairs relevant to' Columbia County, which 'clearly indicates that there is a specific market connection between WCJB and the communities at issue.'" *Id.* (quoting *Columbia County Cable Market Modification*, 13 FCC Rcd at 22338-22339, para. 24).

<sup>68</sup> *Id.* at 8. WCJB broadcasts local news on weekdays from 5:00-7:00 am, 12:00-12:30 pm, 5:00-6:30 pm, and 11:00-11:35 pm; on weekends, news airs twice at 6:00-6:30 pm and 11:00-11:30 pm.

<sup>69</sup> *Id.* at 8.

<sup>70</sup> *Id.* at 9-10; Exhibit C, at 1-4. Other county-specific stories covered by WCJB earlier this year include a Lake City Hall meeting in Columbia County to discuss city funding issues and the need to enhance the compatibility of a newly upgraded emergency radio system, as well as a piece informing local residents of the activation of a cold weather shelter at a local church. *Id.* at 10; Exhibit C, at 1. Other local human interest stories reported by the Station include "a Lake City man designing a speed boat with underwater submarine capabilities; a Columbia County high school graduate playing in the 2018 Super Bowl; a corrections officer recovering from a kidney transplant; and coverage of local deaths and accidents." *Id.* at 10-11; Exhibit C, at 1-2. The Petitioner also argues that Florida Gateway College in Columbia County and the College of Central Florida in Marion County are involved in important community and research development projects of interest to residents of the Counties. *Id.* at 10. Illustrative stories that WCJB has covered include: "news about a \$860,000 state grant to enhance and develop programs at Florida Gateway; an event at the College of Central Florida meant to inspire middle school student interest in the science, technology, engineering, and math ("STEM") fields; Florida Gateway College and its [P]resident's request to state lawmakers for a new STEM building on campus; and innovative medical training equipment allowing students to perform surgical procedures on 3D digital bodies; among others." *Id.*; Exhibit C, at 1-4.

factor simply by showing that it is licensed to a community within the same state as the new community.<sup>82</sup> Additionally, the Petitioner states that it should be accorded additional weight under this factor because it provides programming for and about Florida and residents of the Counties.<sup>83</sup> Accordingly, the Petitioner argues that this factor “weighs heavily in favor of the [P]etition.”<sup>84</sup>

27. Cox contends that the Media Bureau should not assign any weight under this factor and disputes the Petitioner’s assertion that this factor weighs heavily in its favor.<sup>85</sup> It argues that this is not an orphan county case where in-state subscribers have been assigned to a neighboring state and cannot receive in-state television stations.<sup>86</sup> Cox points out that Marion County satellite subscribers live in the Orlando, Florida DMA, have access to Florida stations today, and will continue to have such access regardless of a grant of the instant Petition.<sup>87</sup> The Petitioner responds that this factor does not just apply to orphan counties, but any in-state county.<sup>88</sup>

28. The *STELAR Market Modification Report and Order* makes clear that this factor is satisfied by introduction of an in-state station to a community, and that it weighs more heavily when there is a showing, as in this case, that the station is providing programming specifically related to the state at issue.<sup>89</sup> We therefore agree with Petitioner that a market modification would promote the Counties’ access to an in-state television broadcast signal providing Florida-specific programming, but we find that the record does not demonstrate that WCJB is providing a type or quality of Florida-specific programming not otherwise available. Accordingly, we find that this factor weighs heavily in favor of a grant, but we do not assign it the highest possible weight.

29. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>90</sup> The Commission has recently explained that “this factor supports a market expansion whenever significant community needs are being unmet by existing stations,”<sup>91</sup> but that other stations’ service to the communities should rarely count against a

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

<sup>72</sup> Supportive comments were received from Members of Congress as well as from local Florida officials. *See supra* para. 11 and note 38. *See, e.g.*, U.S. Congressman Ted Yoho Comments (“Adding WCJB to the satellite companies will allow Marion residents to view live local community news, weather, sports, and emergency information . . . WCJB is the only broadcast station with a full-service news bureau in Marion County.”); Columbia County Sheriff Mark Hunter Comments (“WCJB routinely partners with the Columbia County Sheriff’s Office to relay information to our citizens regarding local law enforcement activities and public safety news.”) *See also generally* consumer comments filed electronically in the FCC’s *ECFS* in MB Docket 19-131 and the *Petition* at Exhibit F. *See, e.g.*, Barbara Gilbert Comments (“We need more local news and weather coverage than those of us in Marion County can get from Orlando. WCJB can meet a need that has existed for decades by helping residents get to a safe shelter in good time during severe weather.”); David Johnson Sheree Comments (“Want to watch WCJB TV20 on satellite because it provides more relevant and timely news, weather, sports, emergency information and community events compared to Orlando or Jacksonville stations.”); Dick Shipston Comments (“Being a resident of North Central Florida WCJB has more relevant news, weather, and other information for me than an Orlando station. In order to get their signal now I have to use an OTA antenna which at times can be difficult.”); Ronald Harden Comments (“We would like to have WCJB as our ABC station. We live much closer to Gainesville than we do Jacksonville and we need to know what is going on in our area”); Laura Gardner Comments (“WCJB TV 20 is unavailable in counties adjacent to Alachua County, forcing residents of Columbia and Marion County to avoid using satellite television . . . local and public television channels in Gainesville should be available in all their neighboring counties.”); D. Drake Comments (“WCJB has been our best local news for decades, they should be on satellite”); Julie Kenyon Comments (“I would love to have this channel with news more directly impacting Marion County. Orlando news and weather is not all that relevant this far away.”). Comments of James Quinlan (“Currently, my household can only receive TV 20 news ‘online,’ even though Gainesville is the closest broadcasting city to my

petition.<sup>92</sup> With regard to this factor, the Petitioner simply states that “[t]he Counties receive limited local programming from stations in their current DMA – current programming is simply less relevant to County residents.”<sup>93</sup> The Petitioner further states that even if those stations provided some local programming, the factor would weigh neither for or against the modification request.<sup>94</sup>

30. Cox asserts that its licensed station, WFTV(TV), has provided news coverage of Marion County for years.<sup>95</sup> It says that the WFTV(TV) regards the County as one of its major sources of news in the Orlando DMA, and it extensively covers Marion County news.<sup>96</sup> According to Cox, WFTV(TV)’s news crews are in the County multiple times a week and Marion County news is always in its seven daily newscasts.<sup>97</sup> In addition, Cox notes that for at least twenty years, the WFTV(TV) Eyewitness News Department has assigned a full-time reporter and photographer to the Marion County beat, and the station often leads its 10:00 pm and 11:00 pm newscasts from County locations.<sup>98</sup> Cox provides examples of Marion County news stories aired by WFTV(TV),<sup>99</sup> in addition to providing a list of issues of interest to Marion County viewers that it devotes its resources to as a demonstration of its commitment to those viewers.<sup>100</sup> Cox argues that Gray should receive no credit under this factor because there is no merit to Gray’s assertion that Orlando, Florida DMA stations are not committed to providing news and other issues of interest to Marion County viewers.<sup>101</sup> In reply, the Petitioner states that even if it were to be assumed that WFTV(TV) provides local coverage to Marion County, this factor would still be considered neutral in this case.<sup>102</sup> We agree with the Petitioner and find that this factor weighs neither against nor in favor of the Petition, and therefore we consider it to be neutral in our consideration of the requested modification.

31. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”<sup>103</sup> The Petitioner states that current information regarding viewership of WCJB is not available.<sup>104</sup> Gray states that it subscribes to Comscore for its ratings information, but that the ratings methodology used by that

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community (Williston). Due to current regulation, my ‘local’ news channel is out of Orlando, which is 100 miles away.”)

<sup>73</sup> See *Franklin County, Georgia Petitions for Market Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA and WGCL, Atlanta, Georgia*, Memorandum Opinion and Order, 33 FCC Rcd 8742, 8751-8753, paras. 21 and 24 (MB 2018).

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

<sup>75</sup> *Id.* at 11-12, referring to U.S. Census Bureau, *Residence County to Workplace County Flows for Florida*, available at <https://www.census.gov/data/tables/2010/demo/metro-micro/commuting-employment-2010.html>.

<sup>76</sup> *Cox Opposition* at 4, n.12.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>80</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>81</sup> *Petition* at 13.

<sup>82</sup> *Id.*, citing *STELAR Market Modification Report and Order* at para. 18.

<sup>83</sup> *Id.* at 13-14.

<sup>84</sup> *Id.*

<sup>85</sup> *Cox Opposition* at 6.

<sup>86</sup> *Id.* at 6-7.

company relies heavily on data received from DISH and DIRECTV.<sup>105</sup> Consequently, it explains, Comscore cannot provide any ratings for a station if it is not carried on satellite and that, because WCJB is not carried on satellite in either of the Counties, ratings cannot be provided.<sup>106</sup> Additionally, Gray states that it does not subscribe to Nielsen and therefore ratings from that service is not an option.<sup>107</sup> However, Gray asserts that when a station does not subscribe to Nielsen, other indicia of viewership will be considered and here there is substantial support from community leaders, advertisers, and viewers in the Counties that provides sufficient evidence that the Station has strong viewership in the Counties.<sup>108</sup> In the alternative, Gray requests a waiver of the requirement that it provide ratings information with respect to the Counties.<sup>109</sup>

32. Cox responds that Gray is required to submit quantitative data rather than “self-selected anecdotal material” in order to satisfy this factor.<sup>110</sup> Cox argues that, according to Nielsen, Marion County has “140,950 TV households” and the fact that a select group of community leaders, advertisers, and viewers have expressed interest in having WCJB carried by satellite in the County does not speak to how many of those Nielsen viewers have actually been watching the station.<sup>111</sup> Cox asserts that such evidence is not a reliable indicator of strong viewership, or any other level of viewership.<sup>112</sup> We agree with Cox that we cannot conclude that there is evidence of viewing patterns of WCJB in the Counties.<sup>113</sup> Accordingly, we find that the fifth statutory factor weighs against Gray’s modification request.

#### IV. CONCLUSION

33. The issue before us is whether to grant Petitioner’s request to modify the local satellite carriage market of WCJB-TV, located in the Gainesville, FL DMA, to include Florida’s Marion County, which is currently assigned by Nielsen to the Orlando-Daytona Beach-Melbourne DMA, and to include Columbia County, currently assigned to the Jacksonville-Brunswick DMA. Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect

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<sup>87</sup> *Id.* at 7.

<sup>88</sup> *Gray Reply* at 10(citing *Victory Television Network, Inc. for Modification of the Satellite Television Market for KVTJ-DT, Jonesboro, Arkansas*, 32 FCC Rcd 7389, para. 22 (2017)). We note that in that case the station’s community of license was Jonesboro, Arkansas, located in the same state as the subject Arkansas Satellite Communities, and that the petition therefore satisfied the in-state factor with regard to those communities. The Media Bureau also found that the station offered programming specifically related to the Arkansas Communities. In that regard, the Bureau found that the third statutory factor “weigh[ed] heavily in favor” of the Arkansas Satellite Communities. *Id.* at para. 23. See also *Petition for Modification of Dayton, OH Designated Market Area With Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 33 FCC Rcd 8943, 8949, para. 15 (2018) (The Commission found that “[h]ere WHIO is afforded credit for satisfying factor [III] because it is licensed to a community within the same state as the new community, *i.e.*, Ohio, and the factor weighs more heavily in favor of modification because WHIO provides programming specifically related to Ohio.”).

<sup>89</sup> See *infra* note 80.

<sup>90</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

<sup>91</sup> *La Plata County*, 2019 WL 2490477, para. 26.

<sup>92</sup> See, *e.g.*, *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

<sup>93</sup> *Petition* at 14. The Petitioner makes reference to a single commenter, speaking on behalf of her aunt and uncle, stating “ ‘they both would prefer receiving [WCJB-TV’s] TV20 News as they do a tremendous amount of business in Gainesville and the surrounding areas [but] their only source of news is from [the] Tampa/Orlando area.’ ” *Id.*, Exhibit F, page 21.

<sup>94</sup> *Id.* at 15.

market realities and to promote residents' access to local programming from broadcasters located in their State.<sup>114</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>115</sup>

34. We conclude that the facts support the grant of the Petitioner's request to modify the satellite television market of Station WCJB-TV, Gainesville, Florida, to include Marion County, Florida and Columbia County, Florida, in part with respect to DIRECTV and in whole with respect to DISH.<sup>116</sup> On balance, the statutory and non-statutory factors support a grant of the market modification request. For the reasons discussed herein, we grant the Petition.

## V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 19-131, CSR No. 8977-A) filed by Gray Media Group, Inc., parent company of the licensee of WCJB-TV, Gainesville, Florida (Facility ID No. 16993), **IS GRANTED** with regard to DISH, and **IS GRANTED IN PART** with regard to DIRECTV, for Columbia County except ZIP codes 32055 and 32056 and for Marion County except ZIP codes 32134, 32180, 32702 and 32784.

36. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.<sup>117</sup>

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<sup>95</sup> *Cox Opposition* at 5.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*, Exhibit A.

<sup>100</sup> *Id.* Examples of issues of interest covered include: special Marion County weather graphics in all WFTV(TV) newscasts and weather reports; assignment of a special news team to cover hurricanes and severe weather; election coverage of local and statewide campaigns relevant to the County; coverage of the growing city of Ocala, the county seat of Marion County, to name just a few issues of interest to Marion County.

<sup>101</sup> *Id.* at 6.

<sup>102</sup> *Gray Reply* at 12.

<sup>103</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>104</sup> *Petition* at 15.

<sup>105</sup> *Id.*

## FEDERAL COMMUNICATIONS COMMISSION

Martha E. Heller  
Chief, Media Bureau, Policy Division

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<sup>106</sup> *Id.*

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

<sup>108</sup> *Id.* at 16 (citing *Victory Television Network, Inc. for Modification of the Satellite Television Market for KVTJ-DT, Jonesboro, Arkansas*, 32 FCC Rcd 7389, 7399, para. 25 (2017)). We note, however, that the petitioning station in that case submitted substantial donor contribution information that identified the percentage of donations originating in the communities the station was seeking to add to its market. The submission of that kind of “indicia of viewership” is directly provided for in our rules. See 47 CFR § 76.59(b)(6) (“Published audience data for the relevant station showing its average all day audience . . . or other specific audience information, such as station advertising and sales data or viewer contribution records.”). In contrast to that case, the Petitioner has not provided such donor contribution information. Gray has provided some evidence of an interest by local advertisers desiring to reach potential satellite viewers with their advertising. See *supra* para. 11, note 37. We do not consider this evidence sufficient to demonstrate viewing patterns in this case.

<sup>109</sup> *Id.*

<sup>110</sup> *Cox Opposition* at 3.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> 47 CFR § 76.59(b)(6). Because we weigh the missing evidence against the Petitioner, and it is not necessary in order to resolve the Petition, we waive this rule to the extent necessary. *N.B.* discussion *re: La Plata County*, *supra* note 65.

<sup>114</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>115</sup> *Id.*

<sup>116</sup> As commenters note, certain evidence submitted by Gray is incomplete or insufficient to meet the requirements of the rules. 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*, 2019 WL 2490477, para. 16 (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.”).

<sup>117</sup> 47 CFR § 0.283.