

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

In the Matter of:	)	
	)	
WRNN License Company, LLC	)	MB Docket No. 19-271
	)	CSR 8980-A
For Modification of the Television Market of Station	)	
WRNN-TV, New Rochelle, New York	)	
	)	

**ORDER**

**Adopted: January 14, 2020**

**Released: January 14, 2020**

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

**I. INTRODUCTION**

1. WRNN License Company, LLC (WRNN) filed the above-captioned Petition<sup>1</sup> seeking to expand the local television market of WRNN-TV, New Rochelle, New York (Facility ID No. 74156) by adding numerous communities in the New York Designated Market Area (DMA).<sup>2</sup> Each of the Communities is served by Altice cable systems.<sup>3</sup> We find that Licensee's Petition is lacking in one significant area – a map or maps illustrating all of the relevant community locations along with other geographic features relevant to our decision. In light of the Commission's recent decision directing a strict adherence to the evidentiary requirements of the market modification rules,<sup>4</sup> the Bureau is unable to resolve WRNN's Petition at this time. We therefore dismiss the Petition without prejudice, and invite WRNN to refile its petition along with the necessary additional evidence.

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<sup>1</sup> *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 No. 19-271 (filed Aug. 11, 2019) (*Petition*). The Media Bureau placed the Petition on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0483 (MB Sept. 19, 2019) (*Public Notice*).

<sup>2</sup> These New York DMA communities are located across Suffolk County, New York and five counties in New Jersey: Essex, Hudson, Monmouth, Ocean, and Union (the "Communities").

<sup>3</sup> WRNN states that "[a]ccording to the FCC's COALs database, Altice N.V. does business in the communities at issue herein as CSC Holdings LLC, Cablevision Systems East Hampton Corp., CSC Holdings, Inc., CSC Acquisition-NY Inc., Cablevision of Newark, Cablevision of Monmouth LLC, Cablevision of Hudson County LLC, and CSC TKR LLC." For ease of reference, WRNN's Petition consolidated references to these entities as "Altice." For the same reason, we will also refer to these entities as "Altice" throughout this Order.

<sup>4</sup> *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, 34 FCC Rcd 5030, 5038, para. 16 (rel. June 13, 2019) (*La Plata*); *see also infra* para. 3.

## II. BACKGROUND

2. Market modification provides a means for the Commission to expand or contract the local television market of a commercial television broadcast station. Broadcasters and pay TV providers, and in satellite market modification cases county governments, may request changes to the boundaries of a particular commercial broadcast television station's local television market to include a new community or communities in the same or an adjacent DMA. A television station may be carried by a cable operator or satellite carrier in such a new community if the station is shown to have a local relationship to that community based on an analysis of five statutory factors.<sup>5</sup> The Commission requires that any market modification petition include specific evidence describing the station's relationship to the community at issue.<sup>6</sup> Market modification petitions that do not include the required evidence will be dismissed without prejudice and may be refiled with additional supporting evidence.<sup>7</sup>

3. In *La Plata*, the Commission affirmed the Bureau's decision, made on delegated authority, to grant a group of related market modification petitions.<sup>8</sup> The Commission found that the Bureau had erred, however, in waiving the evidentiary requirements of the rules. The Commission's rules direct that petitions failing to make a complete evidentiary showing "shall be dismissed without prejudice."<sup>9</sup> The Commission stated an expectation in *La Plata* that "future petitioners seeking modification of a station's market . . . [would] adhere to the requirements of section 76.59."<sup>10</sup> It therefore directed the Bureau to "dismiss without prejudice" petitions that did not include all evidence required by the Commission's rules, unless the Petition demonstrates that a good-faith effort was made to obtain that evidence in order to justify a waiver of the dismissal requirement.<sup>11</sup> The decision does note that the Bureau should apply this approach "only to petitions filed after [*La Plata*'s] release date."<sup>12</sup>

4. In the instant Petition, filed after the release of *La Plata*, WRNN seeks evidentiary

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<sup>5</sup> The five statutory factors are:

- (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.

47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

<sup>6</sup> The Commission's 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

waivers with respect to two requirements. With respect to section 76.59(b)(1) of our rules, WRNN provides a map featuring “some, but not all, of the Communities.”<sup>13</sup> It argues that provision of a map or maps illustrating the locations of every relevant Community “would be unduly burdensome.”<sup>14</sup> With respect to section 76.59(b)(6), WRNN does not provide published audience data for the Station in the Communities. Although WRNN does not subscribe to Nielsen, it “requested, but did not receive, permission to utilize” that company’s published data.<sup>15</sup> Although it failed to produce useful information to support its Petition, WRNN also conducted a review of its “advertising and sales data” in an attempt to demonstrate specific sales within the Communities. Finally, WRNN worked with its direct response media provider, reviewing their order logs to identify orders from the Communities.<sup>16</sup>

### III. DISCUSSION

5. We find that the evidence submitted by WRNN does not adhere completely to the evidentiary standards established in the Commission’s rules. WRNN must address this deficiency in order for the Commission to fully conduct its analysis.

6. WRNN claims that compliance with the requirements of section 76.59(b)(1), specifically the provision of a map or maps that identify the location of the Communities in relation to other relevant geographic features and locations, would be “unduly burdensome.”<sup>17</sup> WRNN provides no explanation of why the requirement to identify the location of all the communities it proposes to serve would impose a particular burden in this case. It provides no evidence for the existence of such a burden, or indication

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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 the relevant community.

47 CFR § 76.59(b)(1)-(7) (governing both cable and satellite market modification petitions).

<sup>7</sup> *Id.* § 76.59(c).

<sup>8</sup> *La Plata*, 34 FCC Rcd at 5030, para. 1.

<sup>9</sup> 47 CFR § 76.59(c).

<sup>10</sup> *La Plata*, 34 FCC Rcd at 5038, para. 16.

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

<sup>12</sup> *Id.* WRNN filed a previous petition for market modification similar to the instant Petition. That earlier petition, filed prior to the release of *La Plata*, was granted by the Bureau after waiving certain evidentiary requirements. *WRNN License Company, LLC For Modification of the Television Market of Station WRNN-TV, New Rochelle, New York*, MB Docket No. 19-95, Memorandum Opinion and Order, 34 FCC Rcd 6446 (MB 2019).

<sup>13</sup> *Petition* at 13, note 48.

that it even attempted to comply with the rule. More to the point, WRNN makes no argument for why such a burden, even if it existed, would constitute good cause for a waiver of the Commission's rules. If it chooses to refile, we expect WRNN to provide a map or maps responsive to the requirements of section 76.59(b)(1) of the Commission's rules, or a detailed explanation of its efforts to do so and why they were unsuccessful.

7. In contrast, WRNN has made a substantial and good-faith effort to obtain "specific audience information" responsive to the requirements of section 76.59(b)(6). As the Commission has explained, a demonstrated good-faith effort to comply with the evidentiary requirements, even if unsuccessful, can be proper grounds for a waiver.<sup>18</sup> We do not here address the merits of the evidence WRNN was able to collect and provide, but its efforts were clearly made in a genuine attempt to demonstrate specific engagement by viewers in the Communities it hopes to more fully serve. In light of this demonstrated effort, we anticipate that a waiver of the requirements of section 76.59(b)(6) to the extent necessary would be appropriate, and will not expect WRNN to provide new or additional evidence responsive to this section if it chooses to refile.

8. As the rules state and the Commission has affirmed, Petitions for special relief to modify television markets that do not include the required evidence will be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee. Moreover, parties may submit whatever additional evidence they deem appropriate and relevant with the supplemented Petition when it is refiled. In view of the foregoing, we dismiss WRNN's Petition without prejudice, and invite them to refile a supplemented petition that conforms to the guidance provided herein.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 338 of the Communications Act of 1934, as amended, 47 U.S.C. § 338, and section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (MB Docket No. 19-271, CSR 8980-A) filed by WRNN License Company, LLC, **IS DISMISSED WITHOUT PREJUDICE**.

10. This action is taken pursuant to authority delegated by section 0.283, 47 C.F.R. § 0.283, of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 22.

<sup>16</sup> *Id.* at 22- 23. WRNN also provided these order logs to the Commission directly. *Id.* at Exhibit N.

<sup>17</sup> *Petition* at 13, note 48.

<sup>18</sup> *Supra* para. 3.

<sup>19</sup> 47 CFR § 0.283.

Senior Deputy Chief, Policy Division, Media Bureau