

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

In the Matter of)
)
WRNN License Company, LLC) MB Docket No. 20-357
) CSR 8994-A
For Modification of the Television Market of)
Station WRNN-TV, New Rochelle, New York)

MEMORANDUM OPINION AND ORDER

Adopted: February 17, 2021

Released: February 18, 2021

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 all of the communities located in the New York Designated Market Area (DMA) and served by the Service Electric Cable TV of New Jersey, Inc. (Service Electric) cable system in the following New Jersey counties: Morris, Sussex, and Warren (Communities).² The Petitioner states that Altice USA has consummated the acquisition of Service Electric and has transitioned Service Electric customers to Altice USA’s Optimum brand (Optimum).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 WRNN License Company, LLC Petition for Special Relief for Modification of the Television Market for Station WRNN-TV, MB Docket No. 20-357 (filed Oct. 26, 2020), https://ecfsapi.fcc.gov/file/10261082810565/WRNN-TV%20Petition%20for%20Special%20Relief.pdf (Petition). The Media Bureau placed the Petition on public notice and sought comment. Special Relief and Show Cause Petitions, Public Notice, Report No. 0495 (MB Nov. 3, 2020).

2 The Petitioner states that it “is seeking to add the communities identified on Exhibit A [herein] and any additional communities in the same counties or served by the same system(s) and not presently included in WRNN’s television market.” Petition at n.1. The Communities identified by the Petitioner are listed in the attached Addendum.

3 Petition at 1. Consummation of the acquisition was announced on June 14, 2020. Id. See also Mike Farrell, Altice USA Completes Small System Buy, Multichannel News (July 14, 2020), https://nexttv.com/news/altice-usa-completes-small-system-buy.

4 Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket Nos. 90-4, 92-259, 92-295, Report and Order, 8 FCC Rcd 2965, 2976-77, 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

(continued....)

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 continental 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

publications which delineate television markets based on viewing patterns. 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 CFR § 76.55(e). *See also 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 (1999).

⁶ *See Measurement and Reporting Geographies* (Nielsen Local Reference Supplement 2007-2008), <https://ecfsapi.fcc.gov/file/6519864809.pdf>.

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*, MB Docket No. 15-71, 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;
- (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; and
- (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*, the Commission recognized that "relocations made to implement a channel sharing arrangement may have [impacts] on a station's [multichannel video

[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 See also 47 CFR § 76.59, Note to Paragraph (b)(2) ("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 all of the above evidence, or reflect at least an effort to obtain the evidence, must be dismissed without prejudice at the outset of the proceeding, but may be re-filed at a later date with the appropriate filing fee. *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, 16-369, Memorandum Opinion and Order, 34 FCC Rcd 5030, 5038, para. 16 (2019). See also *STELAR Market Mod Order*, 30 FCC Rcd at 10424, para. 22. Parties may submit whatever additional evidence they deem appropriate and relevant. *Petition of Tobacco Valley Communications to Exclude Eureka and Communities in North Lincoln County from the Local Market of Several Spokane, Washington Broadcasters and Include it [sic] in the Local Market of Several Missoula, Montana Broadcasters*, MB Docket No. 15-152, Memorandum Opinion and Order, 31 FCC Rcd 8972, 8976 n.22 (MB 2016).

programming distributor (MVPD)] carriage rights.”¹² 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.”¹³ 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.¹⁴

The instant Petition involves a station that has recently relocated its facilities pursuant to a channel sharing arrangement arising from the incentive auction, seeking to add communities to its market which it can now reach from its new location.¹⁵ In this case, the communities in question were removed from the Station’s market in earlier market modification proceedings.¹⁶

B. The Petition

6. WRNN License Co. states that WRNN is an independent television station that has served the New York DMA for decades.¹⁷ The Petitioner states that the Station has invested significantly over the years to improve its coverage in the New York DMA and has been the subject of a number of regulatory proceedings.¹⁸ In 1996, the Cable Services Bureau, a predecessor of the Media Bureau, granted a petition filed by Service Electric seeking to remove the Communities served by its New Jersey cable system from WRNN’s television market.¹⁹ The Petitioner states that in granting the Petition, the Bureau focused on WRNN’s geographic distance from the Communities, its one time consideration by Nielsen for the Albany-Schenectady-Troy DMA, its lack of historic cable carriage on the Service Electric system, and its then-failure at the time to place a Grade B contour over the Communities.²⁰

7. The Petitioner claims that the evidence presented in this proceeding 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 no longer apply.²¹ The Petitioner asserts that the Communities

¹² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6857, para. 708 (2014) (*Incentive Auction Report and Order*).

¹³ *Id.* at 6857, para. 709 (internal citations omitted).

¹⁴ *Id.* (internal citations omitted).

¹⁵ *Infra* paras. 8-9 (discussing WRNN’s channel sharing transition).

¹⁶ *Infra* para. 6 (discussing WRNN’s prior market modification that excluded the relevant New Jersey Communities).

¹⁷ Petition at 2. Petitioner states that WRNN signed on the air as WTZA in 1985. *Id.* at n.4.

¹⁸ *Id.*

¹⁹ *In re: Service Electric Cable TV of New Jersey for Modification of the Television Market for Stations: WTBY, Poughkeepsie, NY, WRNN, Kingston, NY, WLLG, Riverhead, NY, WHAI, Bridgeport, CT, CSR-4803-A*, Memorandum Opinion and Order, 11 FCC Rcd 22561 (CSB 1996).

²⁰ *Id.* at 22577, para. 44.

²¹ Petition at 3.

are within WRNN's noise-limited service contour and the Station is geographically proximate to them.²² The Petitioner credits WRNN's change in circumstances to a series of actions taken by the Station to improve its coverage in the Communities, beginning with a modification of its prior transmitter site in 2004,²³ and the more recent channel sharing arrangement with WWOR-TV, Secaucus, New Jersey (Facility ID No. 74197) (WWOR).²⁴ The Petitioner states that the 2004 transmitter site modification expanded WRNN's signal coverage in the DMA to include many of the Communities not reached at the time of the 1996 market modification.²⁵ The Petitioner asserts that WRNN substantially expanded its cable carriage in the DMA after that change, including in many of the subject Communities.²⁶ According to the Petitioner, WRNN's signal currently covers all of Morris County and most of Sussex and Warren Counties, including all but one of the Communities.²⁷ The Petitioner adds that WRNN's new community of license, New Rochelle, New York, is closer to the Communities than its previous community of license.²⁸

8. With regard to its channel sharing arrangement with WWOR, the Petitioner points to recent, relevant precedent. The Petitioner cites the 2018 market modification decision involving Entravision, in which certain communities were added 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 within the same DMA.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

²² *Id.*

²³ FCC File No. BLCDDT-20040908AMF.

²⁴ LMS File No. 0000053803.

²⁵ Petition at 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 3-4.

²⁹ Petition at 6 (citing *Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, MB Docket Nos. 17-306, 17-307, Memorandum Opinion and Order, 33 FCC Rcd 2215 (MB 2018) (*Entravision Order*)).

³⁰ Petition at 6.

³¹ *Id.* *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 No. 17-306 (filed Nov. 7, 2017); *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 No. 17-307 (filed Nov. 7, 2017) .

³² Petition at 6.

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

³⁴ *Id.* at 2229, para. 23.

9. Petitioner also points to its own recent market modification petitions, in which it successfully sought to add communities to WRNN's market after reaching a channel sharing agreement.³⁵ In these cases, the Media Bureau recognized the carriage by these relevant cable systems of WRNN's channel sharing partner in the subject Communities, along with carriage by those cable operators of other co-located and nearby stations, and weighed that in WRNN's favor in analyzing the historic carriage factor.³⁶ The Bureau similarly concluded that the second factor in those cases weighed in WRNN's favor, finding that signal coverage, geographic proximity, and shopping and labor patterns in relation to the Communities overcame the absence of local programming in WRNN's channel lineup.³⁷

III. DISCUSSION

10. Based on our consideration of the statutory factors, as discussed 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."³⁸ The Bureau further stated that the *Entravision Order* "should not be interpreted as prejudging future market modifications filed by relocated channel sharing stations or affected cable systems."³⁹ Accordingly, while we do not discount the relevance of the *Entravision Order* or the Petitioner's previously filed market modification petitions, we evaluate this particular market modification request based on the specific facts and circumstances presented in this proceeding.

A. Statutory Factors

1. Historical Carriage

11. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."⁴⁰ The Petitioner states that WRNN has not been carried on Service Electric's New Jersey system and, therefore, has no history of carriage in the Communities.⁴¹ Nevertheless, the Petitioner asserts that historical carriage still weighs in WRNN's favor.⁴²

12. In that regard, the Petitioner states that Service Electric carries WRNN's sharee station WWOR on its system serving the Communities.⁴³ In addition, the Petitioner further states that Service Electric also carries other stations that are co-located with WRNN and WWOR at One World Trade

³⁵ Petition at 7 (citing *Petition of 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) (*WRNN-Spectrum Order*); *Petition of WRNN License Company, LLC for Modification of the Television Market of Station WRNN-TV, New Rochelle, New York*, MB Docket No. 20-26, Memorandum Opinion and Order, 35 FCC Rcd 1838 (MB 2020) (*WRNN-Altice Order*); *Petition of WRNN License Company, LLC for Modification of Station WRNN-TV, New Rochelle, New York*, MB Docket No. 20-153, Memorandum Opinion and Order, 35 FCC Rcd 9363 (MB 2020) (*WRNN-Comcast Order*)).

³⁶ *WRNN-Spectrum Order* at 6452, para. 12; *WRNN-Altice Order* at 1845, para. 14; *WRNN-Comcast Order* at 9369, para. 12.

³⁷ *WRNN-Spectrum Order* at 6454, para. 18; *WRNN-Altice Order* at 1848, para. 20; *WRNN-Comcast Order* at 9372-9373, para. 18.

³⁸ *Entravision Order*, 33 FCC Rcd at 2231, para. 28.

³⁹ *Id.*

⁴⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

⁴¹ Petition at 8.

⁴² *Id.*

⁴³ *Id.* at 9 and Exhibit B (Current Service Electric Cable Lineup Card).

Center.⁴⁴ The Petitioner argues that WRNN would be an outlier among its peers and would be competitively disadvantaged if Service Electric were to refuse to carry the Station in the Communities.⁴⁵

13. In addition, the Petitioner notes that WRNN currently is carried by various MVPD competitors including “Comcast, Optimum (legacy systems), Spectrum, Verizon FiOS, DISH and DIRECTV in Morris, Sussex, and Warren Counties, including the Communities (as applicable),”⁴⁶ and that such carriage by competitors is relevant for purposes of the historic carriage factor.⁴⁷ Moreover, addressing WRNN’s cable carriage by systems within the New York DMA, the Petitioner further asserts that “the Communities at issue are not isolated communities far removed from WRNN’s audience, but rather ‘donut holes’ within WRNN’s distribution footprint.”⁴⁸ The Petitioner specifically notes that Optimum itself already carries WRNN on all of its other systems serving the DMA pursuant to a Bureau decision released last year.⁴⁹

14. We find that this first statutory factor weighs in favor of the requested modification. While we recognize that Service Electric has not historically carried WRNN itself on its New Jersey system in the Communities, we also recognize that WRNN has been and is currently carried in the Communities by other competing MVPDs and find such carriage relevant to our analysis of this factor. Moreover, we find the carriage of co-located stations in these Communities gives positive weight to this factor.⁵⁰ Because Service Electric is carrying WRNN’s channel sharing partner on its system serving the Communities, as well as other co-located and nearby stations, we believe that WRNN would be at a competitive disadvantage if Service Electric were to refuse to carry WRNN in the Communities.⁵¹

⁴⁴ For example, the Petitioner points out that Service Electric carries WABC(DT), WCBS-TV, WNBC(DT), WNET(DT), and WPXN-TV, all of which broadcast from One World Trade Center. *Id.* at n.26.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* and Exhibit C (other MVPD Lineup Cards).

⁴⁷ *Id.* (citing *Petition for Modification of Philadelphia, PA Designated Market Area With Regard to Station WACP, Atlantic City, NJ*, MB Docket Nos. 12-364, 13-245, Memorandum Opinion and Order, 29 FCC Rcd 1835, 1845, para. 19, n.77 (MB 2014)).

⁴⁸ *Id.* and Exhibit D (WRNN Cable Carriage Map). By referring to “donut holes,” it appears that the Petitioner is observing that WRNN currently has carriage rights on other systems in the Communities and in surrounding communities, just not on this particular system.

⁴⁹ *WRNN-Altice Order*, 35 FCC Rcd at 1850, para. 26.

⁵⁰ See, e.g., *WRNN-Spectrum Order*, 34 FCC Rcd at 6451, para. 10; *WRNN-Altice Order*, 35 FCC Rcd at 1844, para. 12; *WRNN-Comcast Order*, 35 FCC Rcd at 9369, para. 12. See also *Entravision Order*, 33 FCC Rcd at 2225, para. 15; *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)).

⁵¹ *Entravision Order*, 33 FCC Rcd 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.”); *WRNN-Spectrum Order*, 34 FCC Rcd at 6452, para. 12 (“Because Spectrum is carrying WRNN’s channel sharing partner on its Bergen County system . . . [and] since Spectrum also carries other co-located and nearby stations, we believe that WRNN would be at a competitive disadvantage if Spectrum did not carry WRNN in the Communities.”). See also *WRNN-Altice Order*, 35 FCC Rcd 1845, para. 14; *WRNN-Comcast Order*, 35 FCC Rcd at 9369, para. 12. The Petitioner also notes that while the Bureau determined in the *WRNN-Spectrum Order* and in the *WRNN-Altice Order* that it need not accord WRNN new station status in order to properly analyze its market modification petitions, “it nevertheless ‘consider[ed] 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.’” *WRNN-Spectrum Order* at 6452, para. 12; *WRNN-Altice Order* at 1845, para. 14. See also *Petition* at n.32. We take this into consideration here just as we have in previous market modification cases involving WRNN.

2. Local Service

15. Second, we consider “whether the television station provides coverage or other local service to such community.”⁵² This statutory factor can be satisfied by demonstrating the Station’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. Less significance, however, may be accorded to locally-focused programming when these other factors evidence a sufficient nexus to the Communities.⁵³

16. The Petitioner asserts that WRNN’s signal contour supports the inclusion of the Communities in the Station’s market. Regarding contour and signal strength, the Petitioner states that WRNN’s 41 dBu noise-limited service contour “clearly encompasses most of the Communities.”⁵⁴ The Petitioner states that even before its move to One World Trade Center, the Station’s 41 dBu noise-limited service contour encompassed many of the Communities as a result of its 2004 transmitter site relocation.⁵⁵ The Petitioner submits maps showing WRNN’s current signal contour in relation to the Communities and the relevant Service Electric headend,⁵⁶ which, according to the Petitioner, demonstrate that “WRNN’s signal contour covers all of the Communities in Service Electric’s cable system except for one (Knowlton) that is just barely outside WRNN’s 41 dBu contour.”⁵⁷ Moreover, the Petitioner states that WRNN’s coverage of the Communities is nearly identical to the other major stations co-located on One World Trade Center – all of which are deemed local to the Communities.⁵⁸

17. The Petitioner also contends that WRNN is geographically proximate to the Communities.⁵⁹ The Petitioner submits information that reflects the driving and “as the crow flies”

⁵² 47 U.S.C. § 534(h)(1)(C)(ii)(II).

⁵³ *WRNN-Spectrum Order*, 34 FCC Rcd at 6454-55, para. 18.

⁵⁴ Petition at 11.

⁵⁵ FCC File No. BLCDDT-20040908AMF.

⁵⁶ Petition at 11 and Exhibit E (Contour Maps – WRNN). The Petitioner states that the locations of the cable headends are no longer publicly available through the cable operators’ public inspection files. However, the Petition states that Service Electric’s Director of Engineering confirmed that Service Electric’s headend is located at 917 Harmony Brass Castle Road, Washington, NJ 07882, as depicted on the maps provided in Exhibit D. The Petitioner further states that “[g]iven the number of Communities at issue, including all of the Communities on a single map would have rendered the map illegible.” *Id.* at n.40. In that regard, the Petitioner provides “an overview map identifying all of the counties in which the Communities are located and more detailed maps reflecting the location of each of the Communities.” *Id.* at n.40 and Exhibit E. The detailed maps of the “WRNN-TV Longley-Rice 41dBu f(50,90) Coverage” of the Service Electric Communities are those located in Morris County, NJ, Sussex County, NJ, and Warren County, NJ. *Id.* at Exhibit E.

⁵⁷ *Id.* at 11.

⁵⁸ *Id.* at 12 and Exhibit F (Contour Map of Stations Located at One World Trade Center). In the *WRNN-Altice Order*, the Bureau noted after examining its submission of maps that “there are a number of Communities that are not encompassed within the WRNN-DT Longley-Rice 41+ DBU Coverage of Altice Communities in Suffolk County, NY and there is one Community in Ocean County, NJ that is not within the 41+ DBU coverage.” *WRNN-Altice Order* at para. 20, n.82. Nonetheless, the Petitioner notes that the Bureau determined that because the stations co-located with WRNN were carried by Altice in the communities at issue, “WRNN would be an outlier if we did not treat all of these stations the same in these circumstances.” Petition at n.41 (citing *WRNN-Altice Order* at para. 20, n.82). In the instant case, the Petition demonstrates that “all but one of the Communities are encompassed by WRNN’s 41 dBu contour, providing even stronger evidence of WRNN’s service to the Communities than the evidence the FCC found sufficient in *Altice*.” Petition at n.41 and Exhibit E. *See also WRNN-Comcast Order*, para. 18 and n.75.

⁵⁹ Petition at 12 and Exhibit G.

distances from WRNN's transmitter and community of license to each of the Communities.⁶⁰ In terms of the transmitter site, the Petitioner states that the furthest Community is only 56.27 miles as the crow flies and 65.95 miles driving, while the closest Community is less than 40 miles both as the crow flies and driving.⁶¹ In terms of WRNN's community of license, the Petitioner notes that the furthest Community is less than 65 miles as the crow flies from New Rochelle, while the closest Community is just 34 miles from New Rochelle.⁶² Similarly, the Petitioner states that the furthest Community in terms of driving distance is about 75 miles from New Rochelle, while the closest is less than 45 miles.⁶³ The Petitioner asserts that the above-noted distances are comparable to distances that were previously found geographically proximate to the station at issue in other market modification cases, including other communities served by Optimum in the DMA.⁶⁴

18. Additionally, the Petitioner addresses shopping and labor patterns and maintains that WRNN's community of license shares strong economic connections with the Communities.⁶⁵ The Petitioner observes that 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. In particular, the Communities are all part of New York/New Jersey's interconnected public transportation system, which connects New Rochelle and most of the Communities through Penn Station.⁶⁶ The Petitioner also asserts that New Rochelle is easily accessible by car from any of the Communities.⁶⁷

19. 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 Communities.⁶⁸ Residents of New Rochelle, according to the Petitioner, also regularly visit the Communities for recreational activities.⁶⁹ In addition, the Petitioner asserts that U.S. Census Data shows that New Rochelle and the Communities share many common characteristics.⁷⁰

⁶⁰ *Id.* at 13 and Exhibit G.

⁶¹ *Id.* at 13.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 14 (citing *WRNN-Altice Order* at 1846, para. 17 (adding a community that was 101.7 miles away from New Rochelle); *WRNN-Comcast Order* at 9371, para. 15 (adding communities up to 77 miles from New Rochelle as the crow flies and 86 miles driving); *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 64 and 108 miles from the station's community of license); *KNTV License, Inc.*, 16 FCC Rcd 6785 (2001) (adding communities that were 35-55 miles away); *Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087 (1998) (adding communities that were 50 miles away); *Burnham Broadcasting, Inc.*, 10 FCC Rcd 7117 (1997) (adding a community that was 48 miles away); *Time Warner Cable*, 11 FCC Rcd 8047 (1996) (refusing to delete communities that were 60 miles away); *Cablevision Systems Corporation*, 11 FCC Rcd 6453 (1996) (refusing to delete communities that were 48-55 miles away); *Time Warner Cable*, 11 FCC Rcd 3510 (1996) (refusing to delete communities that were 45 miles away)).

⁶⁵ Petition at 14.

⁶⁶ *Id.* at 15 and Exhibit H (Driving and Public Transportation Routes).

⁶⁷ *Id.* at 14 and Exhibit H.

⁶⁸ *Id.* at 15 and Exhibit J (New Rochelle Chamber of Commerce Business Directory).

⁶⁹ *Id.* at 15 and Exhibit K2 (Recreation in the Communities).

⁷⁰ *Id.* at 15-16.

The Petitioner asserts that the interconnection between New Rochelle and the Communities supports weighing the second statutory in favor of the requested modification.⁷¹

20. We find that the second statutory factor weighs in favor of WRNN's Petition. The substantial evidence regarding WRNN's signal coverage,⁷² geographic proximity, and shopping and labor patterns in relation to the Communities conclusively demonstrates WRNN's coverage and local service to the Communities. Although we note that WRNN airs, almost exclusively, general interest programming such as "regional and international news, paid programming, and syndicated programming," rather than locally relevant programming,⁷³ we accord limited significance to this factor given that the other factors evidence a sufficient nexus to the Communities.

3. Promoting Consumer Access to Local Stations

21. The third statutory factor we consider 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."⁷⁴ This factor is intended to ensure that MVPD subscribers are "receiving news, politics, sports, emergency information, and other television programming relevant to their home state" and "relevant to their everyday lives."⁷⁵ 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.⁷⁶ This factor may be given increased weight if the station provides programming specifically related to subscribers' state of residence, and may be given even more weight if subscribers in the existing market have little or no access to such in-state programming.⁷⁷ However, this 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.⁷⁸ In such cases, the Commission determined that the "in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors."⁷⁹

22. We assign no weight to this factor with regard to the Communities. WRNN is licensed to New Rochelle, New York and broadcasts from a transmitter located on top of One World Trade Center in Lower Manhattan, whereas the Communities are located in New Jersey, and thus the in-state factor does not apply.

4. Carriage of Other Eligible Stations

23. 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

⁷¹ *Id.* at 16.

⁷² We note that pursuant to the Petitioner's submission of maps in Exhibit E, WRNN's 41 dBu noise-limited service contour encompasses all of the Communities, except for one. Additionally, however, we note that as demonstrated by Exhibit F, WRNN's coverage of the Communities is nearly identical to the other major stations co-located on One World Trade Center. The noted stations are WABC(DT), WCBS-TV, WNBC(DT), WNET(DT), and WPXN-TV, all of which are deemed local to the Communities. As such, we find that WRNN would be an outlier if we did not treat all of these stations similarly.

⁷³ Petition at 17.

⁷⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(III).

⁷⁵ *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, para. 1, 10420, para. 18 (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)).

⁷⁶ *STELAR Market Mod. Order*, 30 FCC Rcd at 10420, para. 18.

⁷⁷ *Id.*

⁷⁸ *Id.* at 10421, para. 19.

⁷⁹ *Id.*

events of interest to the community.”⁸⁰ In general, this factor is 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.⁸¹ The Petitioner states that “[u]pon information and belief, Service Electric’s New Jersey system carries other television stations that provide coverage of news, sports, and other issues of interest to the Communities.”⁸² Accordingly, consistent with our precedent, we assign no weight to this factor.

5. Viewing Patterns

24. 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.⁸³ The Petitioner states that WRNN “still does not subscribe to Nielsen or any other ratings service and has requested, but did not receive, permission to utilize published audience data relevant to this factor.”⁸⁴ The Petitioner, however, asserts that “WRNN’s direct response media provider maintains logs of orders received in response to programming broadcast on WRNN, which have included numerous orders from the counties in which the Communities are located – evidencing WRNN’s viewership in those [C]ommunities.”⁸⁵ In addition, the Petitioner reiterates that WRNN’s market was previously modified to exclude the relevant Communities.⁸⁶ In that regard, the Petitioner asserts that to the extent that the Bureau may consider WRNN’s viewership to be low or nonexistent, it should consider that level of viewership to be unsurprising, and therefore, according to the Petitioner, this factor should then be accorded limited weight.⁸⁷ 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.⁸⁸ The Petitioner asserts that this factor should either weigh in favor of WRNN, or be afforded limited weight.⁸⁹

25. 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 any lack of viewership in the Communities. We also recognize Petitioner’s evidence of direct sales to viewers in the Communities and the demonstrated effort to provide additional evidence of viewership within the Communities. In light of these circumstances, we find that the fifth statutory factor weighs in favor of WRNN License Co.’s modification request.

⁸⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

⁸¹ *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). *See also Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947, para. 49.

⁸² Petition at 19.

⁸³ 47 U.S.C. § 534(h)(1)(C)(ii)(V).

⁸⁴ Petition at 20. The Petitioner has requested a waiver of the requirement of 47 CFR § 76.59(b)(6) to provide published audience data for the Station. We waive this rule to the extent necessary because the Petitioner, although unsuccessful, made the effort to secure such published audience data and submitted in the alternative WRNN Direct Response Logs as evidence of viewership. *See supra* note 11.

⁸⁵ Petition at 20 and Exhibit N (WRNN Direct Response Order Logs).

⁸⁶ *Id.*; *supra* para. 6 (discussing WRNN’s previous market modification history).

⁸⁷ *Id.* (citing *Entravision Order* at 2231, para. 27; *WRNN-Spectrum Order* at 6456, para. 23; *WRNN-Comcast Order* at 9374 at para. 22).

⁸⁸ *Id.* at 21.

⁸⁹ *Id.*

6. Conclusion

26. 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 all of the Communities served by Service Electric's system in the following New Jersey counties: Morris County, Sussex County, and Warren County.⁹⁰ We find that the first, second, and fifth statutory factors weigh in favor of the market modification request. We assign no weight to the third and fourth statutory factors. 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 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*.⁹¹

IV. ORDERING CLAUSES

27. 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. 20-357, CSR 8994-A) filed by WRNN License Company, LLC **IS GRANTED**.

28. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁹²

FEDERAL COMMUNICATIONS COMMISSION

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

⁹⁰ Addendum (listing all affected Communities).

⁹¹ *Supra* para. 5 (citing *Incentive Auction Report and Order*, 29 FCC Rcd at 6857, para. 709).

⁹² 47 CFR § 0.283.

ADDENDUM¹

PSID 001705

CUID	COUNTY	COMMUNITY NAME	LEGAL NAME
NJ0088	Sussex	Andover	Service Electric Cable TV of NJ, Inc.
NJ0056	Sussex	Andover	Service Electric Cable TV of NJ, Inc.
NJ0562	Warren	Blairstown	Service Electric Cable TV of NJ, Inc.
NJ0538	Sussex	Branchville	Service Electric Cable TV of NJ, Inc.
NJ0057	Sussex	Byram	Service Electric Cable TV of NJ, Inc.
NJ0453	Sussex	Frankford	Service Electric Cable TV of NJ, Inc.
NJ0058	Sussex	Franklin	Service Electric Cable TV of NJ, Inc.
NJ0089	Sussex	Fredon	Service Electric Cable TV of NJ, Inc.
NJ0627	Warren	Frelinghuysen	Service Electric Cable TV of NJ, Inc.
NJ0488	Sussex	Green	Service Electric Cable TV of NJ, Inc.
NJ0059	Sussex	Hamburg	Service Electric Cable TV of NJ, Inc.
NJ0336	Sussex	Hampton	Service Electric Cable TV of NJ, Inc.
NJ0626	Warren	Hardwick	Service Electric Cable TV of NJ, Inc.
NJ0060	Sussex	Hardyston	Service Electric Cable TV of NJ, Inc.
NJ0625	Warren	Hope	Service Electric Cable TV of NJ, Inc.
NJ0501	Morris	Jefferson	Service Electric Cable TV of NJ, Inc.
NJ0624	Warren	Knowlton	Service Electric Cable TV of NJ, Inc.
NJ0337	Sussex	Lafayette	Service Electric Cable TV of NJ, Inc.
NJ0061	Sussex	Newton	Service Electric Cable TV of NJ, Inc.
NJ0062	Sussex	Ogdensburg	Service Electric Cable TV of NJ, Inc.
NJ0540	Sussex	Sandyston	Service Electric Cable TV of NJ, Inc.
NJ0063	Sussex	Sparta	Service Electric Cable TV of NJ, Inc.
NJ0087	Sussex	Stillwater	Service Electric Cable TV of NJ, Inc.
NJ0013	Sussex	Sussex	Service Electric Cable TV of NJ, Inc.
NJ0064	Sussex	Vernon	Service Electric Cable TV of NJ, Inc.
NJ0110	Sussex	Wantage	Service Electric Cable TV of NJ, Inc.

¹ Petitioner noted that “[a]lthough the *Service Electric Order* purported to delete from WRNN-TV’s market all of the communities that Service Electric served in Sussex and Warren counties, the enumerated list of communities did not include the Warren county communities.” We have nonetheless included those communities in this Addendum, to clarify and confirm that they are now included within WRNN’s local market.