

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

In the Matter of
Pinal County, Arizona
Petition for Modification of the Satellite Television
Markets of KGUN-TV, KVOA, KOLD-TV,
KMSB, Tucson, Arizona
MB Docket No. 24-28

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2024

Released: April 8, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. Pinal County, Arizona (Petitioner or the County), with the support of its residents, has filed a petition to modify the local satellite markets of four Tucson, Arizona television stations (collectively, the Stations or the Tucson stations). Pinal County, which lies between the Phoenix and Tucson metroplexes, has historically received stations only from the Phoenix Designated Market Area (DMA), thereby limiting residents' access to Tucson-related news, sports, politics, and crucial weather alerts. With this Memorandum Opinion and Order (Order), the Media Bureau grants the Petition in full.

2. Petitioner filed the above-mentioned Petition seeking to modify the local satellite carriage television markets of the Stations to include Pinal County, currently assigned to the Phoenix (Prescott) DMA. The Stations, all of which are located in the Tucson (Sierra Vista) DMA, are: KGUN-TV (ABC), KVOA (NBC), KOLD-TV (CBS), and KMSB (FOX). Pinal County conducted pre-filing coordination with both DBS carriers. DISH Network LLC (DISH) and DIRECTV, LLC (DIRECTV) filed Certifications regarding the technical and economic feasibility of the proposed modifications. DIRECTV states that its HD spot beams cover all current zip codes in Pinal County. DISH states that it is unaware of any factors, at this time, that would render carriage of the stations technically infeasible. The Petition

1 Pinal County, Arizona Petition for Special Relief for Modification of the Television Market of Station KGUN-TV (ABC), (Channel 9); KVOA (NBC), (Channel 4); KOLD-TV (CBS), (Channel 13); KMSB (FOX), (Channel 11), Tucson, Arizona with Respect to DISH Network and DIRECTV, MB Docket 24-28 (filed Dec. 20, 2023) (the Petition). The Media Bureau placed the Petition on public notice and sought comment. Special Relief and Show Cause Petitions, Public Notice, Report No. 0509 (MB Jan. 22, 2023).

2 Petition at 1.

3 Id. at 3-4.

4 See generally Petition Exh. 1, Letter from Alison Minea, DISH Network L.L.C. to Kevin Costello, Deputy County Attorney, Pinal County (Sept. 8, 2022) (DISH Certification); Petition Exh. 2, Letter from DIRECTV, LLC to Kevin Costello, Deputy County Attorney, Pinal County (Sept. 27, 2022) (DIRECTV Certification).

5 DIRECTV Certification at 1. DIRECTV notes that only its HD spot beam covers the requested zip codes in Pinal County. We note that lack of standard definition (SD) spot beam coverage does not impact our analysis.

6 DISH Certification at para. 3.

was unopposed.

II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.⁷ 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.⁸ Generally, a television station’s “local market” is defined by the DMA in which it is located, as determined by Nielsen.⁹ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹⁰

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.¹¹ Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television 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 television 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 television market to include a new community located in a neighboring local market.¹² 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.

⁷ 47 U.S.C. § 338(a)(1).

⁸ 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 Viewers 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.

⁹ 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).

¹⁰ 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.

¹¹ 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 is retained” and “adhere to statutory requirements and congressional intent when taking administrative action under STELAR.”).

¹² *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).

5. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that 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 the satellite context.¹³ Notably, the STELAR carves out an exception to carriage obligations¹⁴ 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.”¹⁵ 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.¹⁶ This exception applies only in the satellite context.¹⁷

6. 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.¹⁸ 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.¹⁹ Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.²⁰ 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

¹³ 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) by 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.

¹⁴ See *supra* note 8 and accompanying text (describing the “carry one, carry all” satellite carriage requirement).

¹⁵ 47 U.S.C. § 338(l)(3)(A).

¹⁶ See Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, 11 (2014) (*Senate Commerce Committee Report*) (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate”).

¹⁷ 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 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.

¹⁸ *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).

¹⁹ *Id.* at 10435-36, 10438, paras. 39, 42

²⁰ *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.

extent which it is, outside the relevant spot beam on which that station is currently carried.”²¹ 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.²²

7. 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.²³

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station’s local market. The importance of particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.²⁴

²¹ *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.

²² *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 “through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible”).

²³ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

²⁴ 47 U.S.C. § 338(l)(2)(B) directs the Commission to “afford particular attention to the value of localism by taking into account *such factors as*” those described above (emphasis added). 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*).

8. 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.²⁵ 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."²⁶

9. 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.²⁷ 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 the relevant community.²⁸

Petitions for special relief to modify satellite television markets that do not include the above evidence will be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.²⁹ The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if is

²⁵ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

²⁶ *Senate Commerce Committee Report* at 11.

²⁷ See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

²⁸ 47 CFR § 76.59(b)(1)-(7).

²⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

in a position to resolve the petition without such evidence.³⁰ Parties may submit whatever additional evidence they deem appropriate and relevant.³¹

10. In the instant proceeding, the County filed a Petition seeking modification of the local television markets of the Stations to include Pinal County, Arizona. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that its current satellites and spot beam configurations render carriage technically feasible, but asserts that carriage may become economically infeasible due to additional costs associated with retransmission consent fees.³² The *DIRECTV Certification* says that HD service to all zip codes in the County is currently feasible.³³ In addition, Pinal County residents polled by the County were substantially in favor of filing this Petition.³⁴

11. 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 other relevant information.³⁵

III. DISCUSSION

12. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry the Stations throughout the County. We further conclude that the evidence weighs in favor of expanding the markets for each of the Stations to include the County. We therefore modify the markets of the Stations to include Pinal County, Arizona.

A. Technical and Economic Feasibility

13. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of the County. In their Feasibility Certifications, both satellite providers indicate that there is no "spot beam infeasibility," and that relevant spot beam(s) cover all of the County. DIRECTV states that delivery of the signal to all of the current zip codes in Pinal County in HD is feasible.³⁶ DISH states that, at this time, it is unaware of any factors that would make carriage of the Stations technically infeasible; however, it asserts that it "reserves the right to amend this Feasibility Certification at any time due to, among other things, a satellite equipment failure or a different satellite being brought into service for the area that includes the County which has different coverage capabilities than the satellite(s) currently being used."³⁷

³⁰ *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

³¹ *Id.*

³² *DISH Certification* at paras. 3-4.

³³ *DIRECTV Certification* at 1.

³⁴ See generally *Petition Exh. 7 (Survey)* (polling Pinal County residents for their interest in receiving Tucson broadcasts).

³⁵ 47 U.S.C. § 338(l); see also 47 CFR § 76.59.

³⁶ *DIRECTV Certification* at 1.

³⁷ *DISH Certification* at para. 3. DISH also notes that if any of the Stations elects retransmission consent and it is unable to reach an agreement with a given Station, then it would not be able to provide that Station's signal into the County, and argues that it "may be technically or economically infeasible, or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent." *Id.* at para. 4. The results of these hypothetical private retransmission consent negotiations play no part in the Commission's technical and economic feasibility analysis and would not be a proper basis for a claim of infeasibility. Since no such claim is asserted here, however, we simply disregard these statements.

B. Market Modification Analysis³⁸

14. *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.”³⁹ Petitioner offers no evidence with respect to historic MVPD carriage, and concedes that there has been no historic satellite carriage of the Tucson/Sierra Vista DMA in Pinal County.⁴⁰ Given the lack of evidence as to MVPD carriage and the undisputed statement that the Tucson Stations have no history of satellite carriage in Pinal County, this factor weighs against the proposed market modification.

15. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.” Such “local service” can include, for example, the presence of a high quality over-the-air signal; geographic proximity of the station to the community; 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.

16. With regard to the presence of a high quality over-the-air signal, Petitioner provides noise-limited service contour maps for each of the Stations that demonstrate substantial coverage of the community, including the county seat of Florence, and also submits the results of an over-the-air analysis of the Stations showing ample signal strength in Florence.⁴¹ With respect to geographic proximity, Petitioner submits a map illustrating the distance between the Pinal County seat in Florence and the main transmitter for the Stations in Tucson. While the mountainous terrain means the transmitter is over 100 miles driving distance from the Pinal County Seat in Florence, it is fewer than 60 miles “as the crow flies,” and portions of Pinal County are fewer than 10 miles from the Stations’ transmitters on Mount Bigelow.⁴²

17. With regard to local shopping and labor patterns, Petitioner submits the results of a survey showing an overwhelmingly greater connection to Tucson than Phoenix.⁴³ While the Petition does not provide detailed information about methodology, it does appear to have been an online, self-selected survey specifically addressed only to residents of southern Pinal County. With regard to local programming, the Petitioner submits multi-day programming lineups for the Stations. The Stations

³⁸ Because the Stations are identically situated with respect to carriage into Pinal County, we consider them collectively in our analysis below.

³⁹ 47 U.S.C. § 338(1)(2)(B)(i).

⁴⁰ Petition at 5.

⁴¹ Petition Exh. 5.

⁴² See Petition Exh. 4. In past market modification petitions, we have considered similar distances to demonstrate proximity. See, e.g., *Brenmor Cable Partners, L.P. D/B/A Intermedia Partners for Modification of the Atlanta, Georgia ADI*, Memorandum Opinion and Order, 14 FCC Rcd 11742, 11754, paras. 32, 34 (1999) (denying a petition to delete communities from a market where the average distance between the transmitter and the communities was 62.1 miles); *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, 1177 para. 21 (MB 2018) (approving a satellite market modification for a station 60-70 miles away from the county seat); *WRNN Licensing Company, LLC for Modification of the Television Market of Station WRNN-TV, New Rochelle, New York*, Memorandum Opinion and Order, 36 FCC Rcd 4226, 4234 para. 17 (MB 2021) (approving a cable market modification for a station 75 miles away from the community).

⁴³ Petition at 5 and Exh. 7 (indicating that 99% of respondents shop and seek services in Tucson rather than Phoenix, almost none work in Phoenix while many work in Tucson, and almost all would like to receive television service from Tucson).

regularly broadcast news, weather, and sports for the Tucson local area where many Pinal County residents commute, work, and shop.⁴⁴ Specifically, Petitioner explains that Pinal County is primarily desert and particularly susceptible to flash floods, and therefore residents of southern Pinal County need access to critical weather advisories and alerts from the Tucson area.⁴⁵ Additionally, Petitioner asserts that despite having a large alumni base for both schools within Pinal County, residents are “unable to follow events involving the [Tucson-area] University of Arizona even though it is much closer than [Phoenix-based] Arizona State University.”⁴⁶

18. The record demonstrates that the Stations are not only geographically proximate to the bulk of the community, but provide significant over-the-air coverage of the community within their service contours and extensive and important local programming. We thus find that the second statutory factor weighs strongly in favor of the requested modification.

19. *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.”⁴⁷ 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.”⁴⁸ 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.⁴⁹ As Petitioner explains, the proposed market modification would promote access to in-state broadcast signals because each of the Stations’ signals originates in Arizona, where Pinal County is located.⁵⁰ We therefore find that this factor weighs in favor of the modification.

20. *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 or other events of interest to the community.”⁵¹ In general, the Commission has interpreted this factor 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 has rarely counted against a petition.⁵² The Petitioner argues that “whether other television stations carried by a satellite carrier in Pinal County provide coverage of issues of concern or interest to the community, depends primarily upon where within Pinal County the resident resides.”⁵³ Nonetheless, we must consider the county as a whole in our analysis. Given the large number of Phoenix stations carried by the DBS providers, we cannot agree that absolutely none serve the interests of the residents at issue and that the Tucson Stations are

⁴⁴ See Petition Exh. 8; Petition 8-10.

⁴⁵ Petition at 6.

⁴⁶ *Id.*

⁴⁷ 47 U.S.C. § 338(l)(2)(B)(iii).

⁴⁸ *STELAR Market Modification Report and 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)).

⁴⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁵⁰ Petition at 5.

⁵¹ 47 U.S.C. § 338(l)(2)(B)(iv).

⁵² See, e.g., *Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIOTV, 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).

⁵³ Petition at 5.

uniquely qualified to serve the Community. Accordingly, consistent with our precedent, we assign no weight to this factor.

21. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”⁵⁴ Petitioner submits combined MVPD and non-MVPD information provided by Nielsen based on the 2023-2024 Television season. Viewing shares for the Sunday-Saturday, 6 AM-2 AM daypart for MVPD and non-MVPD sources were as follows: KGUN-TV at 0.27, KMSB at 0.08, KVOA at 0.15, and KOLD-TV at 0.10.⁵⁵ This evidentiary submission is not indicative of significant viewership. Nonetheless, it is rare to find any evidence of viewership at all in a DBS market modification petition, and we have taken into consideration the likelihood that viewership is higher in the portions of the county closer to Tucson. We therefore find that this factor weighs against modification of the Stations’ market, but give it limited weight.

IV. CONCLUSION

22. The issue before us is whether to grant Petitioners’ requests to modify the local satellite carriage markets of KGUN-TV, KMSB, KVOA, and KOLD-TV, all of which are located in the Tucson (Sierra Vista) DMA, to include Pinal County, Arizona, which is currently assigned to the Phoenix (Prescott) DMA. Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located in their State.⁵⁶ Under this statutory provision, the Commission must afford particular attention to the value of localism.⁵⁷

23. With respect to each of the Stations, after considering each of the statutory factors and other indicia of localism, we are persuaded by the overall strength of the evidence that a sufficient nexus exists between the Station and Pinal County. The outcome that best serves the intent of Congress in promoting localism is to include the petitioning county within the local markets of the Stations.⁵⁸ We therefore grant the requests for market modification, and order the addition of Pinal County to the local markets of KGUN-TV, KMSB, KVOA, and KOLD-TV on both DISH and DIRECTV.⁵⁹

⁵⁴ 47 U.S.C. § 338(l)(2)(B)(v).

⁵⁵ Petition Exh. 9, Letter of Don Lowery, Senior Vice President of Community Engagements, The Nielsen Company to Ian Daranyi, Deputy County Attorney, Pinal County (Nov. 6, 2023).

⁵⁶ *STELAR Market Modification Report and Order*, 30 FCC Red at 10412-13, para. 7.

⁵⁷ *Id.*

⁵⁸ *Id.*; 47 U.S.C. § 338(l)(2)(B) (directing the Commission to “afford particular attention to the value of localism” when considering requests to modify a satellite market).

⁵⁹ We remind KGUN-TV, KMSB, KVOA, and KOLD-TV of their individual obligations to elect retransmission consent or mandatory carriage with respect to Pinal County within 30 days of release of this item. We also remind DISH and DIRECTV of their obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.66(d)(6).

V. ORDERING CLAUSES

24. 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. 24-28) filed by Pinal County, Arizona, with respect to KGUN-TV, Tucson, Arizona, KMSB, Tucson, Arizona, KVOA, Tucson, Arizona, and KOLD-TV, Tucson, Arizona, **IS GRANTED**.

25. This action is taken pursuant to authority delegated by section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau