

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

In the Matter of)	
)	
Franklin County, Georgia)	MB Docket Nos. 18-158, 18-159, 18-160, 18-
Hart County, Georgia)	161
Stephens County, Georgia)	CSR Nos. 8957-A, 8958-A, 8959-A, 8960-A
)	
Petitions for Modification of the Satellite)	MB Docket No. 18-250
Television Markets of WSB-TV, WGCL, WAGA,)	CSR No. 8963-A
and WXIA-TV, Atlanta, Georgia)	
)	MB Docket Nos. 18-358, 18-359, 18-360, 18-
)	361
)	CSR Nos. 8967-A, 8968-A, 8969-A, 8970-A

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 2020

Released: May 20, 2020

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss, and as a separate and independent basis for our decision, deny the Applications for Review (collectively, the AFRs) filed by WYFF Hearst Television Inc., licensee of NBC affiliate WYFF; Meredith Corp., licensee of FOX affiliate WHNS; Nexstar Broadcasting, Inc., licensee of CBS affiliate WSPA-TV; and WLOS Licensee LLC, licensee of ABC affiliate WLOS (collectively, Applicants) in the dockets identified above.¹ Applicants seek review of three decisions by the Media Bureau (Bureau) granting petitions for market modifications filed by the Boards of County Commissioners of Franklin, Hart, and Stephens Counties, Georgia (collectively, the Counties).² The Bureau Orders (collectively, the *Bureau Orders*) modified the local markets of four

¹ WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina; Meredith Corp., licensee of FOX affiliate WHNS(TV), Greenville, South Carolina; Nexstar Broad., Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina; and WLOS Licensee LLC, licensee of ABC affiliate WLOS(TV), Asheville, North Carolina, Joint Application for Review (Nov. 12, 2018) (Franklin County AFR); WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina; Meredith Corp., licensee of FOX affiliate WHNS(TV), Greenville, South Carolina; Nexstar Broad., Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina; and WLOS Licensee LLC, licensee of ABC affiliate WLOS(TV), Asheville, North Carolina, Joint Application for Review (Nov. 12, 2018) (Hart County AFR); WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina; Meredith Corp., licensee of FOX affiliate WHNS(TV), Greenville, South Carolina; Nexstar Broad., Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina; and WLOS Licensee LLC, licensee of ABC affiliate WLOS(TV), Asheville, North Carolina, Joint Application for Review (May 6, 2019) (Stephens County AFR).

² See *Franklin County, Georgia, Petitions for Modification of the Satellite Television Markets of WSB-TV, WGCL, WAGA, and WXIA-TV, Atlanta, Georgia*, MB Docket Nos. 18-158, 18-159, 18-160, 18-161, Memorandum Opinion and Order, 34 FCC Rcd 8742 (MB 2018) (*Franklin County Bureau Order*); *Hart County, Georgia, Petitions for Modification of the Satellite Television Markets of WSB-TV, WGCL, WAGA, and WXIA-TV, Atlanta, Georgia*, MB Docket No. 18-250, Memorandum Opinion and Order, 33 FCC Rcd 9879 (MB 2018) (*Hart County Bureau Order*); *Stephens County, Georgia, Petitions for Modification of the Satellite Television Markets of WSB-TV, WGCL, WAGA, and WXIA-TV, Atlanta, Georgia*, MB Docket Nos. 18-358, 18-359, 18-360, 18-361, Memorandum Opinion

(continued....)

Atlanta television stations, WXIA, WAGA, WGCL, and WSB-TV (collectively, the Atlanta Stations), to include the Counties. Because the Applicants have failed to demonstrate that they are aggrieved by the *Bureau Orders*, we dismiss the AFRs. As a separate and independent basis for our decision, we uphold the Bureau's decisions adding the Counties to the local markets in question for both DISH Network LLC and DIRECTV, LLC (DBS Carriers). As explained below, although we disagree with certain findings made in the *Bureau Orders*, we find that the overall weight of the evidence supports granting the petitions.

II. BACKGROUND

A. The Satellite Market Modification Process

2. The *Bureau Orders* summarize the satellite market modification history and process in detail, parts of which we highlight here.³ A television station's "local market" is initially defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company, but may be modified by the Commission.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.⁵ The Commission implemented the satellite market modification process in the *STELAR Market Modification Report and Order*⁶ consistent with Congress' intent to allow communities "access [to] broadcast stations in their own states via the local television packages offered by satellite carriers"⁷ through a means that is similar to the traditional cable market modification process, while addressing the unique nature of satellite television service.⁸

3. By extending the market modification process to satellite television, Congress sought to address the so-called "orphan county" problem. An orphan county is a county that, as a result of the structure of the local television markets, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.⁹ Satellite television subscribers residing in an orphan county often are not able to access their home state's news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the

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and Order, 33 FCC Rcd 2155 (MB 2019) (*Stephens County Bureau Order*). We note that the Bureau issued a fourth Order, granting a similar market modification filed by the similarly-situated Elbert County, GA, but that this Order was not appealed by the Applicants. *Elbert County, Georgia, Petition for Modification of the Satellite Television Markets of WSB-TV, WXIA, WAGA, and WGCL, Atlanta, Georgia*, MB Docket No. 19-94, Memorandum Opinion and Order, 34 FCC Rcd 4687 (MB 2019) (*Elbert County Bureau Order*).

³ *Franklin County Bureau Order*, 34 FCC Rcd at 8743-48, paras. 3-12; *Hart County Bureau Order*, 33 FCC Rcd at 9880-84, paras. 3-12; *Stephens County Bureau Order*, 33 FCC Rcd at 2156-61, paras. 3-12.

⁴ 17 U.S.C. § 122(j)(2); 47 U.S.C. § 338(l); *see also* 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, "unless such market is amended" by the market modification process).

⁵ 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.

⁶ *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*).

⁷ *Id.* at 10406, para. 1.

⁸ *See generally* Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 at 10 (2014) (*Senate Commerce Committee Report*); *see also* 47 U.S.C. § 338(l)(3)(A), (5) (differentiating between cable and satellite television service with provisions specific to satellite).

⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3, n.5.

structure of, and therefore the stations located within, a local market was a primary factor in Congress' decision to extend market modification authority to the satellite context.¹⁰

4. Satellite service market modification petitions can raise issues of “technical and economic feasibility that are specific to satellite operations.”¹¹ There is no obligation for a satellite service provider to overcome impracticable technical or economic issues to carry a local commercial broadcast station.¹² But when “the threshold issue of technical and economic feasibility is resolved, section 338(l) [of the Communications Act of 1934, as amended (Act),] provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account” five statutory factors:¹³

- (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.¹⁴

¹⁰ See generally *Senate Commerce Committee Report*; 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”).

¹¹ See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must consider when considering satellite market modification requests).

¹² 47 U.S.C. § 338(l)(3)(A) (providing 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”); see also *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10442, para. 50.

¹³ *Elbert County Bureau Order*, 33 FCC Rcd at 4690, para. 8; see also *Franklin County Bureau Order*, 34 FCC Rcd at 8748, para. 12; *Hart County Bureau Order*, 33 FCC Rcd at 9884, para. 12; *Stephens County Bureau Order*, 33 FCC Rcd at 2161, para. 12.

¹⁴ 47 U.S.C. § 338(l)(2)(B)(i)-(v); see generally *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 19; *Victory Television Network, Inc. for Modification of the Satellite Television Market for KVTJ-DT, Jonesboro, Arkansas*, MB Docket No. 17-157, Memorandum Opinion and Order, 32 FCC Rcd 7389, 7399, para. 23 (MB 2017).

5. The statutory factors are not exclusive.¹⁵ The Act, as amended by STELAR, requires close attention to localism generally,¹⁶ which can include consideration of a wide range of information about the particular community and attributes of the local market that may vary depending on the circumstances of each case.¹⁷ While applicants seeking a market modification are not limited from providing any type of evidentiary support, they must include specific evidence the Commission has found particularly relevant, as set forth in the Commission's rules (Rules).¹⁸

¹⁵ See, e.g., *WLNY-TV, Inc. v. FCC*, 163 F.3d 137, 144-45 (2d Cir. 1998).

¹⁶ *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*); see also *Implementation of the Cable Television Consumer Protection & Competition Act of 1992, Broadcast Signal Carriage Issues, etc.*, Report and Order, 8 FCC Rcd 2965, 2976-77 (1993).

¹⁷ *Cable Market Modification Second Report and Order*, 14 FCC Rcd at 8391, para. 59 (finding "it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case"); see also 47 U.S.C. § 338(l)(1).

¹⁸ 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.

47 CFR § 76.59(b)(1)-(7) (governing both cable and satellite market modification petitions); see generally *La Plata County, Colorado, Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, Memorandum Opinion and Order, 34 FCC Rcd 5030, 5033-34, para. 5 (2019) (*La Plata County Order*) (internal citations omitted). We note that in the *La Plata County Order*, we directed the Bureau to "dismiss without prejudice at the outset of the proceeding petitions that fail to either include all required supporting evidence, or reflect at least an effort to obtain that evidence." *La Plata County Order*, 34 FCC Rcd at 5038, para. 16. We expressly applied this directive "only to petitions filed after the release date" of the *La Plata County Order*, which was June 13, 2019.

B. The Bureau Orders and the Applications for Review

6. With the support of their residents, each of the Counties, which are in the Greenville-Spartanburg-Asheville-Anderson DMA, petitioned to be added to the markets of the Atlanta Stations.¹⁹ In each proceeding, the DBS Carriers filed Feasibility Certifications,²⁰ and a Joint Opposition was filed by the Applicants.²¹ In each proceeding, the Commission received supportive comments from Georgia's U.S. Senators, Johnny Isakson and David Perdue, and U.S. Congressman Doug Collins of Georgia's Ninth District.²² Residents of each of the Counties also commented in support of the modification petitions.²³ The record in the proceedings showed that subscribers to satellite television service within the Counties generally receive only South Carolina and North Carolina local commercial broadcast television stations, "limiting their access to Georgia-specific news, sports, weather, and politics."²⁴ Finding that carriage was technically and economically feasible for both DBS carriers throughout these "orphan" Counties, the Bureau granted each of the petitions in full.²⁵ Three AFRs seeking reversal of the *Bureau*

¹⁹ See generally Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), (Channel 2) Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-158 (filed Apr. 27, 2018); Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WAGA (FOX), (Channel 5), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-159 (filed Apr. 27, 2018); Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WXIA (NBC), (Channel 11), Atlanta, Georgia with respect to DISH Network and DIRECTV, MB Docket No. 18-160 (filed Apr. 27, 2018); Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WGCL (CBS), (Channel 46), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-161 (filed Apr. 27, 2018) (collectively, Franklin County Petition); Hart County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), Channel 2, of Station WXIA (NBC), Channel 11, of Station WAGA (FOX), Channel 5, [and] of Station WGCL (CBS), Channel 46, Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-250 (filed Aug. 14, 2018) (Hart County Petition); Stephens County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), (Channel 2) Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-358 (filed Dec. 3, 2018); Stephens County, Georgia Petition for Special Relief for Modification of the Television Market of Station WGCL (CBS), (Channel 46), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-359 (filed Dec. 3, 2018); Stephens County, Georgia Petition for Special Relief for Modification of the Television Market of Station WAGA (FOX), (Channel 5), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-360 (filed Dec. 3, 2018); Stephens County, Georgia Petition for Special Relief for Modification of the Television Market of Station WXIA (NBC), (Channel 11), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket No. 18-361 (filed Dec. 3, 2018) (collectively, Stephens County Petition) (collectively, the Petitions).

²⁰ *Franklin County Bureau Order*, 34 FCC Rcd at 8749, paras. 15-16; *Hart County Bureau Order*, 33 FCC Rcd at 9885, para. 15; *Stephens County Bureau Order*, 33 FCC Rcd at 2161, para. 11.

²¹ Joint Opposition to Petitions for Special Relief, MB Docket Nos. 18-158, 18-159, 18-160, 18-161 (filed June 7, 2018); Joint Opposition to Petition for Special Relief, MB Docket No. 18-250 (filed Sept. 6, 2018); Joint Opposition to Petition for Special Relief, MB Docket Nos. 18-358, 18-359, 18-360, 18-361 (filed Dec. 27, 2018).

²² Letter from Senators Johnny Isakson and David Perdue and Congressman Doug Collins to Ajit Pai, Chairman, FCC (May 19, 2017) (Petitions at Exh. L); see also Letter from J. Thomas Bridges, Chairman of the Franklin County Board of Commissioners, to Ajit Pai, Chairman, FCC (June 12, 2017) (Franklin County Petition at Exh. K); Letter from Joey Dorsey, Chairman of the Hart County Board of Commissioners, to Ajit Pai, Chairman, FCC (May 7, 2018) (Hart County Petition at Exh. K); and Letter from Michelle Ivester, Chairman of the Stephens County Board of Commissioners, to Ajit Pai, Chairman, FCC (Nov. 27, 2018) (Stephens County Petition at Exh. L).

²³ See generally *Franklin County Bureau Order*, 34 FCC Rcd at 8748, para. 11; *Hart County Bureau Order*, 33 FCC Rcd at 9884, para. 11; *Stephens County Bureau Order*, 33 FCC Rcd at 2161, para. 11.

²⁴ *Franklin County Bureau Order*, 34 FCC Rcd at 8742, para. 1; *Hart County Bureau Order*, 33 FCC Rcd at 9879, para. 1; *Stephens County Bureau Order*, 33 FCC Rcd at 2155, para. 1.

²⁵ See generally *Bureau Orders*.

Orders were timely filed by the Applicants.²⁶ Oppositions to the AFRs were filed by the County Boards of Commissioners of Franklin and Stephens Counties.²⁷ Each Application and Opposition was reviewed on its individual merits, although we consider each collectively in our analysis below, differentiating only where necessary.²⁸

7. In their AFRs, Applicants contend that the *Bureau Orders* inaccurately weighed the factors set forth in section 338 of the Act, contrary to our rules and inconsistent with the *STELAR Market Modification Report and Order*.²⁹ They raise the following “Question Presented”: “Whether the [*Bureau Orders*] erred by giving disproportionate and effectively dispositive weight to the ‘access to in-state programming’ factor [and] citizen support for access to such programming, [and] discounting the lack of objective evidence bearing on the local relationship between the Atlanta Stations and [the applicable] County, [producing] a standard under which any county-filed petition seeking market modification based on access to in-state television stations will be granted where, as here, the petitioning county’s residents say that they would like to be able to watch those stations.”³⁰ Applicants also argue that the Bureau “[erred] in waiving certain evidentiary requirements.”³¹

8. Franklin and Stephens Counties oppose the AFRs and support the analyses underlying the *Bureau Orders*, countering that the Bureau “did not weight the in-state factor (factor three) to the exclusion of the other four.”³² They argue that Applicants “attempt[] to minimize and even disregard the overwhelming and compelling evidence brought forth by the citizens and government officials elected to represent the citizens.”³³ The Counties point to specific local facts supporting how the Bureau weighed evidence overall, as well as the Counties’ lack of in-state programming.³⁴ The opposing Counties also dispute that the Bureau erred in its decision to waive certain evidentiary requirements.³⁵

III. DISCUSSION

A. Standing

9. The Applicants have failed to demonstrate that they are aggrieved by the *Bureau Orders* and, therefore, we dismiss the AFRs. Under section 5 of the Act and section 1.115(a) of the Rules, an

²⁶ See *supra* note 1.

²⁷ Franklin County Opposition; Stephens County Opposition; see also Letter from J. Thomas Bridges, Chairman, Franklin County, Georgia, Board of Commissioners; Joey Dorsey, Chairman, Hart County, Georgia, Board of Commissioners; Dean Scarborough, Chairman, Stephens County, Georgia, Board of Commissioners; Lee Vaughn, Chairman, Elbert County, Georgia, Board of Commissioners, to Hon. Ajit V. Pai, Chairman, FCC (Nov. 11, 2019) (on file in MB Docket Nos. 18-358, 18-250).

²⁸ The Petitions, AFRs, and Oppositions are substantively indistinguishable; the Atlanta Stations are similarly situated with respect to carriage into the contiguous Counties; and the Oppositions themselves do not distinguish among the Counties, the Atlanta Stations, or the issues arising in these cases. See *Stephens County Bureau Order*, 33 FCC Rcd at 2156, para. 2 (noting that Franklin, Hart, and Stephens Counties are geographically contiguous, and that the situations in each county are “virtually identical to those in its neighboring Georgia counties,” allowing the Bureau to engage “the same approach” in the *Bureau Orders*).

²⁹ Franklin County AFR at 11-25; Hart County AFR at 11-24; Stephens County AFR at 11-25.

³⁰ AFRs at 2.

³¹ Franklin County AFR at 24-25; Hart County AFR at 24; Stephens County AFR at 24-25.

³² Franklin County Opposition at 7; Stephens County Opposition at 6.

³³ Franklin County Opposition at 3; Stephens County Opposition at 2-3.

³⁴ Franklin County Opposition at 7-10; Stephens County Opposition at 7-10.

³⁵ Franklin County Opposition at 11; Stephens County Opposition at 10-11.

applicant for review must be a “person aggrieved” by an action taken pursuant to delegated authority.³⁶ To show that it is “aggrieved” by an action, an applicant for review must demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested.³⁷ Here, Applicants have not even attempted to show how they are aggrieved by the Bureau’s decisions to grant the petitions for modification filed by the Counties.³⁸ Accordingly, we will dismiss the Applications for Review because the Applicants lack standing to file them.

B. Denial on the Merits

10. As a separate and independent basis for upholding the Bureau’s decisions adding the counties to the local markets in question, for the reasons described below, we deny the AFRs. While we reject the Bureau’s application of the waiver standard in the Hart and Stephens cases, we agree with the Bureau that the overall weight of the evidence supports the grant of all of the underlying Petitions, and therefore uphold the *Bureau Orders*.

1. Evidentiary Waiver

11. Notwithstanding our conclusion that the Bureau erred in waiving certain of the evidentiary requirements of section 76.59 of the Rules in the Hart and Stephens cases, we find that such errors do not compel us to overturn these *Bureau Orders*.³⁹ Although the Bureau should not have resolved these cases in the absence of the required evidence, its decision to weigh the missing evidence against the Petitioners rectified the error in this case, and we affirm that approach here, as we did in the

³⁶ 47 U.S.C. § 155(c)(4); 47 CFR § 1.115(a) (“Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.... Any application for review which fails to make an adequate showing in this respect will be dismissed.”).

³⁷ *Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425 (2012). *Cf. Block Commc’ns, Inc. v. FCC*, __ Fed.Appx. __, 2020 WL 1656173 (6th Cir. Apr. 3, 2020) (not selected for publication in the Federal Reporter) (finding petitioners failed to demonstrate an injury attributable to the FCC’s market modification order and, thus dismissed the case for lack of Article III standing).

³⁸ Even if Applicants had claimed harm, such a claim would be undermined by their own contention that any harm to them is speculative, stating that “there is no evidence that the Atlanta Stations have the authority or desire to secure satellite carriage of their full signal—including network and syndicated programming—in the County” and that the “Count[ies] failed to provide evidence of the Atlanta Stations’ cooperation or participation in a manner that would promote access to in-state station local programming of interest to [the] Count[ies].” *See* Franklin County AFR at 22, 24; Hart County AFR at 22, 23-24; Stephens County AFR at 22, 24. Moreover, granting market modification in this instance would not impact Applicants’ existing carriage rights because the DBS carriers would be obligated to carry both the Applicant stations and the Atlanta stations, pursuant to the “carry one, carry all” provision of the Act. 47 U.S.C. § 338(a) (requiring satellite carriers to carry all television stations in the local television market if they carry one local television signal in that market under the compulsory copyright license). *See also* 47 U.S.C. § 338(c)(1) (“Notwithstanding subsection (a)(1), a satellite carrier shall not be required ... to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States”). The absence of anything more than speculation about any direct causal link between the Commission’s action here and any prospective injury to the Applicants is further underscored by the minimal change in the size of the four Atlanta stations’ markets resulting from the market modification. Because of the small population of these three counties, the modification would potentially affect only 3.1% of the households in the Applicants’ DMA. *See* The Nielsen Company, *2019/2020 Nielsen Universe Estimates* (Jan. 1, 2020) (787,930 television households in the Greenville-Spartanburg-Asheville-Anderson DMA; 24,470 television households in Franklin, Hart, and Stephens combined).

³⁹ *See* 47 CFR § 76.59.

La Plata County Order.⁴⁰ We accordingly deny the argument in the AFRs that grant of the waivers constitutes grounds to overturn the *Bureau Orders*.

12. As an initial matter, we find that the Bureau incorrectly applied the waiver standard in two of the three underlying cases—specifically, the Hart and Stephens cases. In each of the *Bureau Orders*, the Bureau waived “the requirement to file MVPD channel line-up cards and published audience data.”⁴¹ In the *Franklin County Bureau Order*, the waiver of these requirements was based, in part, on that County’s “good faith effort” to coordinate with the Atlanta Stations in order to collect and provide this information.⁴² In the *Hart County Bureau Order* and the *Stephens County Bureau Order*, however, the Bureau’s waivers were broader, and were based solely on the fact that the Bureau had “ample evidence to render [its] decision without” the missing evidence.⁴³ Applicants argue that the Bureau “improperly excused the Count[ies]’ failure to meet the evidentiary requirements necessary to demonstrate a market nexus between the Atlanta Stations and the County that bear upon the application of the statutory factors.”⁴⁴ In opposition, the Counties argue that the Bureau “did not err in its decision to waive certain evidentiary requirements.”⁴⁵

⁴⁰ See *infra* paras. 15, 24. We recognize that section 76.59(c) directs that market modification petitions that do not include the required evidence “shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.” See 47 CFR § 76.59(c). The purpose of this pleading rule is to ensure that the parties lay out their positions on all relevant factors at the outset, in order to expedite the resolution of any disputes about how to apply them. See *Definition of Markets for Purposes of the Cable Television Broad. Signal Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8387-88, para. 49 (1999). Here, however, as in the earlier *La Plata County Order*, there has already been a considerable expenditure of time and resources by Commission staff and the parties in litigating this matter, which will have been wasted if we were to simply dismiss the petitions at the application for review stage. *La Plata County Order*, 34 FCC Rcd at 5038, para. 14 n.55. Under the Rules, the Counties could refile the petitions with the required evidence or, as explained above, seek a waiver of the evidentiary requirement by demonstrating they have undertaken a good-faith effort to obtain any missing evidence from the Atlanta stations. In these unusual circumstances, and consistent with the *La Plata County Order*, we see no benefit in delaying resolution of this matter by dismissing the petition and having the petitioner refile at a later date. Moreover, we find that resolving the matter on review will not prejudice the Applicants because the Bureau weighed the missing evidence against Petitioners by concluding that factors one and five counsel against modification of the markets at issue. *Id.* As noted above, the Commission has directed the Bureau to dismiss market modifications filed after the date of the *La Plata Order* that fail to include all of the evidence required by Section 76.59 unless they meet the foregoing waiver standard.

⁴¹ *Franklin County Bureau Order*, 34 FCC Rcd at 8748, para. 14; *Hart County Bureau Order*, 33 FCC Rcd at 9885, para. 14; *Stephens County Bureau Order*, 33 FCC Rcd at 2162, para. 14; see also 47 CFR § 76.59(b).

⁴² *Franklin County Bureau Order*, 34 FCC Rcd at 8748, para. 14.

⁴³ In addition to a waiver of the requirement to file MVPD channel line-up cards and published audience data, the Bureau also waived the requirement for Hart and Stephens Counties to submit contour maps for the Atlanta stations. *Hart County Bureau Order*, 33 FCC Rcd at 9885, para. 14; *Stephens County Bureau Order*, 33 FCC Rcd at 2162, para. 14; 47 CFR § 76.59(b).

⁴⁴ *Franklin County AFR* at 24; *Hart County AFR* at 24.

⁴⁵ *Franklin County Opposition* at 11; *Stephens County Opposition* at 11. The Counties also present a channel lineup card as new evidence, which “shows that the customer can receive three of the four Atlanta Stations in Stephens County,” and which “was not submitted with the original petition as the County misunderstood the cable line up request for a satellite market modification request.” *Franklin County Opposition* at 11, Exh. H; *Stephens County Opposition* at 11, Exh. H. Section 1.115(c) of the Rules prohibits parties from raising new “questions of fact” on review. 47 CFR § 1.115(c). Accordingly, consistent with the Commission’s *La Plata County Order* (which postdated each of the *Bureau Orders*) we dismiss this new evidence and the Counties’ related arguments as procedurally barred.

13. As our recent *La Plata County Order* made clear, “petitioners must demonstrate a good-faith effort to obtain any missing evidence from the relevant stations before a petition is filed,” even if that effort is unsuccessful, in order for the Bureau to have sufficient grounds to waive the requirement to submit that evidence.⁴⁶ We therefore uphold the Bureau’s evidentiary waivers in the Franklin case. The record in the *Hart County* and *Stephens County Bureau Orders* does not demonstrate that these counties made an effort to obtain the missing evidence, from any source, prior to seeking waivers. Given the absence of any effort to obtain missing evidence in these cases, the Bureau did not have sufficient grounds to waive the requirement to submit that evidence and to resolve these petitions without such evidence. Nonetheless, given the Bureau’s decision to weigh the missing evidence against Petitioners, the evidence supporting the Petitions, and the already-considerable expenditure of time and resources in this proceeding,⁴⁷ these errors, consistent with the *La Plata County Order*, do not compel us to overturn the *Hart County* and *Stephens County Bureau Orders*.⁴⁸

2. Statutory Factors

14. Below, we briefly consider the Bureau’s analysis of each statutory factor in the *Bureau Orders* and affirm the Bureau’s analysis and conclusions. Because our discussion touches largely on the treatment and weight of types of evidence, rather than the Station- or County-specific evidence itself, we consider each factor only once and direct readers to the detailed discussion of the record in the *Bureau Orders*.⁴⁹

15. *Historic Carriage.* The first statutory factor considered 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.”⁵⁰ The Bureau found the Counties “offer[ed] no evidence with respect to historic MVPD carriage other than to concede that there has been no historic satellite carriage” of the Atlanta Stations in the Counties, which the Bureau concluded, in each case, “weigh[ed] against the proposed market modification.”⁵¹ The Applicants do not dispute these conclusions, and we affirm them.⁵²

16. *Local Service.* We next consider “whether the television station provides coverage or other local service to the community.”⁵³ The Bureau found that “overall geographic proximity measures [did] not enhance” the Counties’ Petitions,⁵⁴ and that the Counties “ha[d] not demonstrated that the

⁴⁶ *La Plata County Order*, 34 FCC Rcd at 5038, para. 16.

⁴⁷ See *supra* note 40.

⁴⁸ As stated in the *La Plata County Order*, any petition filed after June 13, 2019 will be dismissed without prejudice at the outset of the proceeding if the petition fails to either include all required supporting evidence, or reflect at least a good-faith effort to obtain that evidence. *La Plata County Order*, 34 FCC Rcd at 5038, para. 16.

⁴⁹ See generally *Bureau Orders*.

⁵⁰ 47 U.S.C. § 338(1)(2)(B)(i).

⁵¹ *Franklin County Bureau Order*, 34 FCC Rcd at 8750-51, para. 19; *Hart County Bureau Order*, 33 FCC Rcd at 9887, para. 19; *Stephens County Bureau Order*, 33 FCC Rcd at 2164, para. 19.

⁵² As discussed in note 45, *supra*, we reject the new information filed with the Oppositions.

⁵³ 47 U.S.C. § 338(1)(2)(B)(ii); see also 47 CFR § 76.59(b)(2). As the Bureau observed, evidence of “local service” includes “for example, the presence of a high quality over-the-air signal; shopping and labor connections between the local community and the station’s community of license; support of the local community by the station; and programming, including news or sports coverage, specifically about or addressing the community.” *Franklin County Bureau Order*, 34 FCC Rcd at 8751, para. 20; *Hart County Bureau Order*, 33 FCC Rcd at 9897, para. 20; *Stephens County Bureau Order*, 33 FCC Rcd at 2164, para. 20.

⁵⁴ *Id.*

[Atlanta] Stations offer a significant amount of local programming targeted to [each] County.”⁵⁵ The Bureau also found, however, substantial evidence of “community support for access to the Atlanta Stations as well as evidence of shopping and labor links between [each] County and Atlanta.”⁵⁶ In each case, the Bureau found that “on balance, the second statutory factor weigh[ed] in favor of the requested modification.”⁵⁷

17. The AFRs claim that “without basis, the [*Bureau Orders*] assert[] that geographic proximity tests have less significance in orphan county cases.”⁵⁸ Applicants further assert that the Bureau erred by “giv[ing] undue weight to the subjective comments of citizens and government officials, [by] characterizing these comments as ‘enormously helpful’ and stat[ing] that they ‘merit substantial weight.’”⁵⁹ Applicants argue that the “heightened emphasis afforded citizen and official comments is not supported by STELAR, Commission precedent, or the [*Bureau Orders*]’ own focus on local programming under factor two.”⁶⁰ Applicants also dispute the value of surveys concerning local shopping and labor patterns the Counties submitted in support of their modification petitions, arguing that the Bureau gave “increased weight” to the survey evidence.⁶¹ The Counties respond that the residents of the communities are best positioned to speak to their needs and point out that the surveys in question reflect responses from a significant percentage of the local voter population.⁶²

18. As the Commission explained in the *La Plata County Order*, geographic “factors must be given negative weight when they do not support a market modification.”⁶³ At the same time, however, the Commission emphasized that “[l]ack of geographic proximity. . . [is] not a basis for denial in orphan county cases when, on balance, other factors support a grant,” as they do in this case.⁶⁴ Thus, although the Bureau erred in saying that “geographic proximity tests have less significance in orphan county cases,”⁶⁵ we find that the Bureau correctly concluded that, on balance, the second statutory factor weighed in favor of the requested modification.

19. We reject the Applicants’ attempt to minimize the record evidence showing community support for access to the Atlanta Stations as well as local shopping and labor patterns. Applicants describe and attempt to dismiss comments from community members and leaders showing support for

⁵⁵ *Franklin County Bureau Order*, 34 FCC Rcd at 8753, para. 24; *Hart County Bureau Order*, 33 FCC Rcd at 9889, para. 24; *Stephens County Bureau Order*, 33 FCC Rcd at 2166, para. 24.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ AFRs at 14.

⁵⁹ *Id.* at 15 (quoting *Franklin County Bureau Order*, 34 FCC Rcd at 8752, para. 22; *Hart County Bureau Order*, 33 FCC Rcd at 9888, para. 22; *Stephens County Bureau Order*, 33 FCC Rcd at 2165, para. 22).

⁶⁰ *Id.*

⁶¹ *Franklin County AFR* at 8, 16 n.52; *Hart County AFR* at 8, 16 n.52; *Stephens County AFR* at 8, 17 n.52 (“The County’s survey fails to provide any information about sample selection or other methodology and no evidence of statistical significance.”; “[T]he Order wrongly credits the survey responses as evidence of ‘shopping and labor patterns.’ The unreliable survey, which polled little more than two percent of all county residents, shows that almost half of them shop or receive services ‘locally,’ as opposed to in Atlanta.”).

⁶² *Franklin County Opposition* at 2-4; *Stephens County Opposition* at 2-3.

⁶³ *La Plata County Order*, 34 FCC Rcd at 5039, para. 18.

⁶⁴ *Id.*

⁶⁵ *Franklin County Bureau Order*, 34 FCC Rcd at 8747, para. 10 n.33; *Hart County Bureau Order*, 33 FCC Rcd at 9884, para. 10 n.33; *Stephens County Bureau Order*, 33 FCC Rcd at 2161, para. 10 n.34.

access to the stations as “self-interested.”⁶⁶ But, just as we found in the *La Plata County Order*, we find here that “the Bureau correctly gave positive weight” to the comments supporting the Petitions.⁶⁷ The Bureau did err in giving “substantial” weight to consumer comments. Nonetheless, contrary to Applicants’ arguments, “such comments are helpful in demonstrating a nexus between the stations and the local community, [specifically] because local residents and their official representatives are best positioned to judge what programming will serve the needs of their local community.”⁶⁸ Furthermore, as in *La Plata*, there is record evidence, “offered by numerous commenters, that the [Atlanta] Stations carry programming of specific local interest or import to viewers in the County.”⁶⁹ Additionally, even assuming the AFRs are correct that the survey was a flawed statistical instrument, we note that Applicants do not argue such evidence should be discounted entirely; rather, they argue it should have been afforded “less weight, not more.”⁷⁰ Here, the Bureau did not, as Applicants contend, give “increased weight” to the survey presented by the Counties;⁷¹ instead, considering the totality of evidence, the Bureau concluded that the surveys were “not dispositive,” but did buttress comments indicating “the avid interest of [the] County residents in receiving the Atlanta Stations.”⁷² We find that the Bureau correctly gave the consumer comments positive weight, buttressed by the survey evidence, and affirm the Bureau’s conclusion that, on balance, the second statutory factor weighs in favor of the grant.

20. *Access to In-State Stations.* The third statutory factor the Bureau was required to consider was “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.”⁷³ This factor is “found to weigh more heavily in favor of modification if the petitioner shows the involved station

⁶⁶ Franklin County AFR at 20; Hart County AFR at 20; Stephens County AFR at 21.

⁶⁷ *La Plata County Order*, 34 FCC Rcd at 5041, para. 23.

⁶⁸ *Id.* (citing *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, para. 15 n.61 (“[L]ocal government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”)).

⁶⁹ Local representatives who filed in support of the Petitions included: Senators Johnny Isakson and David Perdue, Congressman Doug Collins, J. Thomas Bridges, Chairman of the Franklin County Board of Commissioners, Joey Dorsey, Chairman of the Hart County Board of Commissioners, and Letter from Michelle Ivester, Chairman of the Stephens County Board of Commissioners (who filed the Petitions on behalf of the Counties). In addition, as discussed immediately above, local residents supported the Petitions. *Franklin County Bureau Order*, 34 FCC Rcd at 8752, para. 22 n.74; *Hart County Bureau Order*, 33 FCC Rcd at 9888, para. 22, n.72; *Stephens County Bureau Order*, 33 FCC Rcd at 2165, para. 22, n.76. See also consumer comments filed electronically in the FCC’s ECFS, and in the Petitions at Exhibit L, e.g., Hugh Caudell Comments (“I am a heart patient, and travel to Emory in Atlanta. Traffic and weather updates are very beneficial to us during frequent trips.”); Lisa Bryant Comments (“I shop in Commerce and the Atlanta area. Our doctors are in Gainesville. We go to sporting events and entertaining events in Atlanta.”); Rebecca M. Shaver Comments (“Since we travel to Atlanta frequently, it is good to know about traffic situations and the weather there ...”); Beth Rider Comments (“We need to travel [to] Atlanta for events.... Therefore, the Atlanta news concerning traffic conditions are helpful in planning our route.”). Applicants also argue that “[b]y elevating the subjective wishes of some citizens to receive certain programming over the lack of objective evidence of whether the Atlanta Stations actually provide such programming, the Order turns the local service factor on its head.” AFRs at 16. There is no dispute in the record, however, about the fact that the Atlanta Stations provide information about Atlanta-area traffic, weather, sports, and politics, which are precisely the types of information sought by residents of the Counties.

⁷⁰ Franklin County AFR at 16; Hart County AFR at 16; Stephens County AFR at 17.

⁷¹ AFRs at 10.

⁷² *Franklin County Bureau Order*, 34 FCC Rcd at 8751, para. 21; *Hart County Bureau Order*, 33 FCC Rcd at 9888, para. 21; *Stephens County Bureau Order*, 33 FCC Rcd at 2165, para. 21.

⁷³ 47 U.S.C. § 338(l)(2)(B)(iii).

provides programming specifically related to subscribers' state of residence, and may be given even more weight if such subscribers in the new community had little (or no) access to such in-state programming."⁷⁴ The Bureau found that each of the proposed modifications would promote the Counties' access to an in-state television broadcast signal and enhance viewers' access to in-state local programming that is otherwise of limited availability, and gave this factor the greatest possible positive weight in the consideration of the Petitions.⁷⁵

21. Because modification would promote consumers' access to in-state television broadcast stations and the evidence indicates that the Atlanta Stations provide programming specifically related to Georgia, we conclude that this factor weighs heavily in favor of modification. However, we do agree with Applicants that the Bureau erred in attributing the "greatest" possible weight to this factor. According to Applicants, the Bureau acknowledged that the out-of-state market stations "provide some coverage of in-state news and sporting events," but relied on comments supporting the modification from residents of the Counties that "consider this coverage to be inadequate."⁷⁶ Applicants assert that evidence of "some coverage of in-state news and sporting events," which "citizen comments do not contradict," "on its face preclude[] giving the in-state programming factor the 'greatest weight.'"⁷⁷ In response, the Counties emphasize the "inadequacy" of the Applicants' Georgia coverage, as evidenced by the widespread calls for Georgia-specific supplements to local news, sports, and weather coverage.⁷⁸ While we agree that Applicants' coverage of Georgia issues is inadequate, the third factor is given greatest weight when it is shown that subscribers have "little (or no) access to such in-state programming,"⁷⁹ and the record in this case indicates that this showing has not been made.⁸⁰ The Bureau's reasoning and the "greatest possible" weight accorded to this factor are therefore inconsistent with the Commission's guidance in the *STELAR Market Modification Report and Order*. There is no dispute, however, that the major network affiliates in Atlanta provide Georgia-specific programming, so we therefore afford this factor "greater" weight in favor of modification.⁸¹

⁷⁴ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁷⁵ *Franklin County Bureau Order*, 34 FCC Rcd at 2753-54, para. 26; *Hart County Bureau Order*, 33 FCC Rcd at 9889-90, para. 26; *Stephens County Bureau Order*, 33 FCC Rcd at 2166-67, para. 26.

⁷⁶ Franklin County AFR at 18 (citing *Franklin County Bureau Order*, 34 FCC Rcd at 8753, para. 25); Hart County AFR at 18 (citing *Hart County Bureau Order*, 33 FCC Rcd at 9890, para. 25); Stephens County AFR at 18 (citing *Stephens County Bureau Order*, 33 FCC Rcd at 2166, para. 25).

⁷⁷ AFRs at 18.

⁷⁸ *See id.* at 18-19; Franklin County Opposition at 7-9; Stephens County Opposition at 7-9; *Franklin County Bureau Order*, 34 FCC Rcd at 8753-54, paras. 25-26; *Hart County Bureau Order*, 33 FCC Rcd at 9889-90, paras. 25-26; *Stephens County Bureau Order*, 33 FCC Rcd at 2166-67, paras. 25-26. The Counties also provide new evidence regarding the mix of programming provided by the Applicant stations, which we have not considered. *See* 47 U.S.C. § 155(c)(5), and 47 CFR § 1.115(c) (no application for review shall be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass).

⁷⁹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁸⁰ Although, as discussed above, the Counties and commenters argue that some important Georgia-specific political and sports coverage is not available from the Applicant Stations, the Petitioners do not dispute evidence that the Applicant Stations provide an array of Georgia-related programming and news coverage. AFRs at Exhibit A; *see also, e.g., Hart County Bureau Order*, 33 FCC Rcd at 9890, paras. 26-27.

⁸¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18 (stating that the third factor may be "found to weigh more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers' state of residence"). *See also, e.g., Hart County Bureau Order*, 33 FCC Rcd at 9890, para. 26 ("In addition, with regard to in-state programming, Petitioner asserts, citing multichannel lineup cards for DISH and DIRECTV, that the Atlanta Stations broadcast 'local news program[s] with Georgia news, sports, and weather several times a day.' The Opposing Stations do not refute the Petitioner's assertion, but

(continued....)

22. *Other Local Stations.* Fourth, the Bureau considered “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.”⁸² Historically, the Commission has considered factor four to be an “enhancement factor” – it may serve to support a petitioner’s request to expand a market, but will virtually never weigh against an expansion request.⁸³ The *La Plata County Order* clarified, however, that compelling evidence of a significant unmet community need is grounds to give this factor positive weight even when existing stations provide some coverage.⁸⁴ The Bureau found “evidence of at least some ‘news coverage of issues of concern’ ... and carriage or coverage of at least some ‘sporting and other events of interest’ to the Count[ies].”⁸⁵ The limited coverage “weigh[ed] neither against nor in favor of the Petitions,” and the Bureau “consider[ed] it to be neutral in [its] consideration of the Petition[s].”⁸⁶

23. Applicants concede that this has historically been understood an “enhancement factor,”⁸⁷ but nonetheless argue that the Bureau’s finding “ultimately discounts all th[e] evidence” of local coverage.⁸⁸ We find that on the contrary, the record shows a wide range of “issues of concern” to County residents that are not sufficiently addressed by any broadcast station currently serving the Counties. In supporting the Petitions, many commenters expressly and strongly state that they are not satisfied with the coverage of issues of concern to them that they are able to receive today, including a lack of adequate carriage and coverage of sporting and other events.⁸⁹ These demonstrated unmet community needs compel us to overturn the Bureau’s finding that this factor should be neutral, and instead give this factor positive weight.⁹⁰

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they argue that they already provide sufficient coverage of ‘local news, weather, sports, issues, and events of interest’ to Hart County and that factor three should therefore be given no additional weight”).

⁸² 47 U.S.C. § 338(l)(2)(B)(iv).

⁸³ See, e.g., *Great Trails Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC Rcd 8629, 8633, para. 23 (1995); *Paxson San Jose License, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17520, 17526, para. 13 (1997).

⁸⁴ *La Plata County Order*, 34 FCC Rcd at 5043, para. 26.

⁸⁵ *Franklin County Bureau Order*, 34 FCC Rcd at 8754, para. 27; *Hart County Bureau Order*, 33 FCC Rcd at 9890, para. 27; *Stephens County Bureau Order*, 33 FCC Rcd at 2167, para. 27.

⁸⁶ *Id.*

⁸⁷ AFRs at 19-20.

⁸⁸ Franklin County AFR at 20; Hart County AFR at 19-20; Stephens County AFR at 20.

⁸⁹ See consumer comments filed electronically in the FCC’s ECFS, and in the Petitions at Exhibits L/M, e.g., Judy Clay Comments (“They don’t even give us the local high school sports.”); Melissa Holcomb Comments (“We need to see the political ads that pertain to our races. We need traffic and weather for our area.”); Jean Owens Comments (“I am a frustrated Franklin County Citizen because [I] am forced to watch Carolina news and weather everyday.”); Vickie Goss Comments (“We are interested in the reports of traffic and happenings in DeKalb and Gwinnett as we still have family there. Also, my sister in law and brother in law drive daily to work at their jobs.”); Roberta Faucett Comments (“I need to know the weather forecast for my area. South Carolina rarely reports about the Stephens County, GA weather/warnings.”); Sharon Pitts Comments (“We are able to keep up with the political races if we can pick up the Atlanta stations.”); John and Jan Bertrang Comments (“Receiving the Atlanta channels would help us be more informed voters.”); Lisa Bryant Comments (“We also vote in Georgia and prefer to see campaign ads strictly for our candidates and not candidates of our neighboring states.”).

⁹⁰ See *La Plata County Order*, 34 FCC Rcd at 5042, para. 27.

24. *Viewing Patterns.* Fifth, the Bureau was required to consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”⁹¹ The Counties offered no evidence with respect to household viewing patterns for any of the Atlanta Stations. In fact, with no firm evidence of viewing patterns in the record, the Counties “conceded that ‘audience data would not be helpful’ to its case even if it had been provided.”⁹² The Bureau concluded that this factor weighs against the market modification request,⁹³ and the Applicants do not dispute these conclusions, which we affirm.

3. Other Arguments

25. We reject Applicants’ argument that the *Bureau Orders* “fail[] to appropriately weigh the lack of support or cooperation of the Atlanta Stations as a factor against modification,”⁹⁴ and find that the Bureau appropriately gave no weight to this argument.⁹⁵ According to Applicants, “the Commission should reverse the [*Bureau Orders*]’ grant of the [Counties]’ Petitions and should do so, among other reasons, because the Count[ies] failed to provide evidence of the Atlanta Stations’ cooperation or participation in a manner that would promote access to in-state station local programming of interest to [the] Count[ies].”⁹⁶ The Bureau concluded that “our rules do not require the participation or support of the stations, much less commitments with respect to their future programming.”⁹⁷ As we explained in the *La Plata County Order*, “[t]here is no requirement that the Stations ‘cooperate,’ and thus no legal basis for a reversal based on their limited participation in the proceeding.”⁹⁸ We therefore affirm the Bureau’s decision to afford no weight to this argument.

26. Finally, Applicants assert that the Bureau has created a regime under which a market modification will be granted for any in-state station based on “a few select self-interested comments from citizens and government officials expressing a desire to receive those television signals,” and that this “result cannot be squared with the Commission’s own requirement that all five factors be considered and weighed in totality.”⁹⁹ As discussed above, however, the Bureau considered and weighed each of the statutory factors, and its errors in weighing certain evidence do not change the fact that the totality of evidence supports the Counties’ market modification requests.

IV. CONCLUSION

27. For the reasons discussed above, we dismiss the AFRs for lack of standing. As a separate and independent basis for our decision, we affirm the Bureau’s decisions to expand the markets of the four Atlanta Stations to include the Counties. Section 338(1) of the Act permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to

⁹¹ 47 U.S.C. § 338(1)(2)(B)(v).

⁹² *Franklin County Bureau Order*, 34 FCC Rcd at 8754-55, para. 28; *Hart County Bureau Order*, 33 FCC Rcd at 9890-91, para. 28; *Stephens County Bureau Order*, 33 FCC Rcd at 2167-68, para. 28.

⁹³ *Id.*

⁹⁴ AFRs at 21-24.

⁹⁵ *Franklin County Bureau Order*, 34 FCC Rcd at 8755, para. 29; *Hart County Bureau Order*, 33 FCC Rcd at 9891, para. 29; *Stephens County Bureau Order*, 33 FCC Rcd at 2168, para. 29.

⁹⁶ AFRs at 24 (citing *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10439, para. 46).

⁹⁷ See *Franklin County Bureau Order*, 34 FCC Rcd at 8755, para. 29; *Hart County Bureau Order*, 33 FCC Rcd at 9891, para. 29; *Stephens County Bureau Order*, 33 FCC Rcd at 2168, para. 29.

⁹⁸ *La Plata County Order*, 34 FCC Rcd at 5044, para. 29.

⁹⁹ AFRs at 20.

promote access to local programming from broadcasters located in their State.¹⁰⁰ Although the first and fifth factors weigh against each of these proposed market modifications, the second, third, and fourth factors in each case weigh in favor of a grant.¹⁰¹ As the Bureau observed, affirming the *Bureau Orders* best serves Congress' purpose of providing in-state programming to orphan counties.¹⁰² Accordingly, after examining all the relevant evidence and considering the statutory factors in their proper context, we find that the requisite nexus exists between the Atlanta Stations and the Counties and that the interests of localism are advanced by grant of the requested market modifications.

28. We therefore sustain the Bureau's decisions that Franklin, Hart, and Stephens Counties be added to the local markets of: WSB-TV (ABC) (Facility ID No. 23960); WGCL (CBS) (Facility ID No. 72120); WXIA (NBC) (Facility ID No. 51163); and WAGA (FOX) (Facility ID No. 70689), on both DISH and DIRECTV, for the reasons discussed above.

V. ORDERING CLAUSE

29. Accordingly, **IT IS ORDERED** that, pursuant to sections 1, 4(i), 5(c), and 338(l) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 338(l) and sections 1.115 and 76.59 of the Commission's rules, 47 CFR §§ 1.115, 76.59, the captioned Applications for Review **ARE DISMISSED** and, as a separate and independent basis for our decision, **ARE DENIED**, as discussed herein.

30. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket Nos. 18-158, 18-159, 18-160, 18-161, 18-250, 18-358, 18-359, 18-360, and 18-361 **SHALL BE TERMINATED** and their dockets closed

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

¹⁰¹ See *La Plata County Order*, 34 FCC Rcd at 5045, para. 31 (finding a combination of second, third and fourth factors in favor of market medication outweigh combination of first and fifth against modification).

¹⁰² See generally *Senate Commerce Committee Report*; Conference Report (H. Rept. 116-9) at 11 (noting 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 indicating Congress' 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.").