

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

In the Matter of)	
)	
The Electric Plant Board of the City of Russellville,)	MB Docket No. 17-225, CSR 8940-A
Cumberland Cellular, Inc., d/b/a Duo County)	
Telecom, and North Central Telephone)	
Cooperative, Inc.)	
)	
For Modification of the Television Market for)	
WBKO(TV), Bowling Green, Kentucky)	

MEMORANDUM OPINION AND ORDER

Adopted: December 7, 2017

Released: December 7, 2017

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

I. INTRODUCTION

1. The Electric Plant Board of the City of Russellville, Cumberland Cellular, Inc., d/b/a Duo County Telecom, and North Central Telephone Cooperative, Inc. (collectively, Petitioners, and each a Petitioner) filed the above-captioned Petition seeking to modify the television market of WBKO(TV) (Facility ID No. 4692), Bowling Green, Kentucky (WBKO or the Station) to include the communities of Russellville, Scottsville, Burkesville, Columbia, Jamestown, and Russell Springs, Kentucky, along with the surrounding unincorporated areas served (collectively, the Communities).¹ Petitioners state that WBKO meets all statutory criteria applicable to a market modification, and that additional factors also weigh in favor of including the Communities in WBKO’s market.² Scripps Media, Inc. (Scripps) filed an Opposition,³ to which Petitioners and Gray Television Group, Inc. (Gray) each filed a reply.⁴ For the reasons stated below, we grant the Petition.

II. BACKGROUND

2. Pursuant to section 614 of the Communications Act of 1934, as amended (the Act), and implementing rules adopted by the Commission in its *Must Carry Order*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.⁵ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁶ A DMA is a geographic market designation that defines each television market

¹ See Petition at 1.

² *Id.* at 2-3.

³ Opposition of Scripps Media., Inc. to Petition for Special Relief (filed Sept. 20, 2017) (Opposition).

⁴ Petitioners Reply to Opposition (filed Oct. 4, 2017) (Petitioners Reply); Reply Comments of Gray Television Group, Inc. to the Opposition of Scripps Media, Inc. to Petition for Special Relief (filed Oct. 4, 2017) (Gray Reply).

⁵ *Implementation of the Cable Television Consumer Prot. & Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2976-77, paras. 42-47 (1993) (*Must Carry Order*).

⁶ Section 614(h)(1)(C) of the Act, as amended by the Telecommunications Act of 1996, provides that a station’s

exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁷

3. In addition, the Act directs the Commission to consider changes to DMA-based television markets for purposes of a station's mandatory carriage rights. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁸

In considering such requests, the Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;⁹

(IV) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(V) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.¹⁰

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market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 CFR § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (*Modification Final Report and Order*).

⁷ For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁸ 47 U.S.C. § 534(h)(1)(C).

⁹ The STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014, added a new statutory factor, denominated as factor III above. See also *Amendment to the Commission's Rules Concerning Mkt. Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Mod. Order*).

¹⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V). The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access

4. In the *Modification Final Report and Order*,¹¹ the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Grade B¹² contour maps delineating the station's technical service area¹³ and showing the location of the cable system headends 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

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to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.

H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992). In adopting rules to implement Section 614(h)(1)(C), the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market. *Must Carry Order*, 8 FCC Rcd at 2977 n.139.

¹¹ *Modification Final Report and Order*, 14 FCC Rcd at 8406-07, Appx. C (Rule Changes).

¹² Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹³ While the Grade B contour defined an analog television station's service area, *see* 47 CFR § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited contour service level – which for UHF stations is 41 dBu. *See* 47 CFR § 73.622(e). Accordingly, the Commission has treated a digital station's noise-limited contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, para. 3, 19554, para. 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd 17278, 17292, para. 31 (2005). *See also Lenfest Broad., LLC Petition for Modification of the Television Mkt. of Television Station WMCN-DT, Atlantic City, New Jersey*, Memorandum Opinion and Order, 19 FCC Rcd 8970, 8974, para. 7 n.27 (2004) ("For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of analog station's Grade B contour.").

local edition of the television guide;

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings; and

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁴

III. DISCUSSION

5. Commercial broadcast television station WBKO, Bowling Green, Kentucky, is licensed to Gray Television Licensee LLC.¹⁵ WBKO's primary stream broadcasts programming affiliated with the ABC network, while its two multicast streams broadcast programming affiliated with the FOX and CW networks.¹⁶ Each Petitioner retransmitted WBKO pursuant to a retransmission consent agreement that expired on December 31, 2014, and WBKO informed each Petitioner that after that date pursuant to its new network affiliation agreement with the ABC Television Network it could no longer grant retransmission consent outside of the Bowling Green DMA.¹⁷ Subsequently, each Petitioner reached an agreement through which it carries network and syndicated programming from the in-DMA ABC affiliate for the majority of the day, and then uses equipment it has purchased to switch to prescheduled WBKO local programming.¹⁸

6. In order to end this convoluted arrangement, Petitioners seek to modify WBKO's market to include: Russellville, Scottsville, and Burkesville, Kentucky, which are in the Nashville DMA; Columbia, Kentucky, which is in the Louisville DMA; and Jamestown and Russell Springs, Kentucky, which are in the Lexington DMA.¹⁹ Petitioners assert that all five statutory factors weigh in favor of granting the requested modification, including in particular the fact that granting the modification will substantially increase subscribers' access to an in-state station.²⁰ Scripps, which opposes the Petition, is the licensee of CBS affiliate WTVF(TV), Nashville, Tennessee (WTVF), which airs duplicative

¹⁴ 47 CFR § 76.59(b). Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. *Id.* § 76.59(c). The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant. *Modification Final Report and Order*, 14 FCC Rcd at 8389, para. 52.

¹⁵ Petition at 3.

¹⁶ *Id.* Two of the Petitioners, the Electric Plant Board of the City of Russellville and North Central Telephone Cooperative, appear to carry WBKO's CW multicast stream. Opposition at 7. As we have stated previously, the grant of a market modification "effects a change to the market of an entire station, not just of a particular stream or signal provided by that station." *Gray Television Licensee, LLC, For Modification of the Satellite Television Market for WSAW-TV, Wasau, Wisconsin*, Memorandum Opinion and Order, 32 FCC Rcd 668, 678, para. 23 (MB 2017) (*Gray Market Mod.*).

¹⁷ Petition at 4-5.

¹⁸ Petitioners Reply at 2 n.3, 9-10. *See also* Gray Reply at 2. Petitioners also carry the complete programming from the in-DMA stations on their own dedicated channels. Petitioners Reply at 9, n.25.

¹⁹ Petition at 8-9.

²⁰ *Id.* at 7.

syndicated programming to WBKO.²¹ Scripps asserts that the Petition should be denied because Petitioners already carry WBKO's local programming in the Communities.²² For the reasons discussed below, we find that the television market of WBKO should be modified to include the Communities.

7. The first statutory factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community.”²³ Petitioners state that this factor is met because Commission records indicate that WBKO was carried in Russellville since at least 1980, in Scottsville for at least three decades, and in what Petitioners refer to as the Duo County Communities²⁴ since or close to the commencement of cable service in those areas.²⁵

8. Scripps asserts that historic carriage does not weigh in favor of granting the Petition because WBKO is carried by each applicable cable system today.²⁶ To the contrary, WBKO's current carriage arrangement, whereby a portion of WBKO's local programming is inserted on a channel dominated by the in-market ABC affiliate's programming, is irrelevant to this factor, which is focused solely on historic carriage of WBKO's signal in its entirety. Indeed, the fact that Petitioners are willing to go to such measures to provide a portion of WBKO's local programming to its subscribers only reinforces the importance of WBKO's programming to the Communities. Scripps further claims that this factor does not weigh in favor of granting the Petition because WTVF has been historically carried on cable and satellite systems serving what Scripps refers to as the Nashville Communities.²⁷ We agree with Petitioners that carriage of WTVF is entirely irrelevant to the demonstration that WBKO has been historically carried in the Communities.²⁸ Based on WBKO's long history of carriage in the communities, we thus conclude that the first statutory factor weighs strongly in favor of the requested modification.

9. Second, we consider “whether the television station provides coverage or other local service to such community.”²⁹ This factor includes the consideration of “a station's signal contour coverage and whether the station places at least a Grade B contour over the cable communities, the station's proximity to the communities in terms of mileage, and whether it broadcasts local programming with a distinct nexus to the Communities.”³⁰ Petitioners state that all of the Communities are either within or just outside of WBKO's service contour.³¹ Although three of the Duo County Communities (Jamestown, Russell Springs, and Columbia) are just outside of WBKO's service contour, Petitioners assert that “the Commission should assign far more weight to the local nexus established by the close

²¹ Opposition at 1.

²² *Id.* at 6. Scripps acknowledges “that Nashville stations are substituted during certain times of the day.” *Id.* at 7.

²³ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

²⁴ The Duo County Communities are: Burkesville, Columbia, Jamestown, Russell Springs, and rural areas outside these incorporated communities. *See* Petition at 5.

²⁵ *Id.* at 9-10.

²⁶ Opposition at 9.

²⁷ *Id.* at 10. The Nashville Communities are the communities located in the Nashville DMA: Russellville, Scottsville, and Burkesville. *Id.* at ii.

²⁸ Petitioners Reply at 17, *see* 47 U.S.C. § 534(h)(1)(C)(ii)(I).

²⁹ 47 U.S.C. § 534(h)(1)(C)(ii)(II).

³⁰ *See Mountain Broadcasting Corporation; For Modification of the Television Market for WMBC-TV, Newton, New Jersey*, Memorandum Opinion and Order, 27 FCC Red 2231, 2236, para. 10 (MB 2012).

³¹ Petition at 10-11.

geographic proximity of the Duo County Communities and Bowling Green, and the abundance of local programming that WBKO directs at the Duo County Communities.³² Petitioners state that Russellville and Scottsville are located within 30 miles of WBKO's transmitter and Bowling Green, WBKO's community of license, and that the Duo County Communities are located between 60 and 80 miles from WBKO's transmitter and Bowling Green.³³ Petitioners also note that the FOX, ABC, CBS, and NBC affiliates that are considered "local" in the Nashville, Louisville, and Lexington DMAs where the Communities are located are more than 50 miles, and sometimes more than 100 miles, from the Communities.³⁴ In addition, Petitioners demonstrate that WBKO broadcasts local programming with a distinct nexus to the Communities, including political coverage and "a substantial amount of local programming, including news programming, aimed at the Communities and their residents."³⁵ WBKO's coverage of the Communities includes weather alerts, coverage of high school sports teams, local crime, and stories of interest about residents.³⁶

10. Scripps sets forth arguments about WTVF's signal coverage of the Nashville Communities, its advertisers' interest in reaching the Nashville Communities, and the volume of stories it airs that are relevant to the Communities.³⁷ We agree with Petitioners that Scripps' arguments regarding its own station are irrelevant to our consideration of this factor, which evaluates WBKO's service to the Communities.³⁸ Petitioners clearly have demonstrated that the Communities are either within or just outside of WBKO's service contour, that WBKO is located in close proximity to the Communities, and that WBKO broadcasts local programming with a distinct nexus to the Communities. Again, the lengths to which Petitioners have gone to retain a portion of WBKO's local programming indicates the importance of such programming to the Communities. In addition, we agree with Gray that carriage of WBKO's local news programming by Petitioners' cable systems weighs in favor of grant of the Petition because Commission precedent provides that "carriage of a station by the cable system serving the subject communities is considered evidence of a close economic relationship between the station and the communities."³⁹ We thus find that the second statutory factor weighs in favor of the requested modification.

11. The third statutory factor is "whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of

³² *Id.* at 11-12.

³³ *Id.* at 12. Scripps responds that Petitioners understate the mileage from the WBKO transmitter to Scottsville (25 miles, not 22) and Russellville (29 miles, not 24). Opposition at 11. We find that this difference in mileage is so small that, even if accurate, it does not change our analysis of this factor.

³⁴ Petition at 12. Scripps responds that Petitioners overstate the mileage from the WTVF transmitter to Russellville (40 miles), Scottsville (47 miles), and Burkesville (87 miles). Opposition at 12. We find that this difference in mileage, even if accurate, does not impact our analysis of this factor, which is focused on the service provided by WBKO and not WTVF.

³⁵ Petition at 13.

³⁶ *Id.* at 13-15.

³⁷ Opposition at 10-12.

³⁸ Petitioners Reply at 18. For this same reason, Scripps' statement that other Kentucky stations also serve the Nashville Communities does not alter our analysis of this factor. Opposition at 11.

³⁹ Gray Reply at 2 (quoting *Complaints of Christian Faith Broadcast, Inc. v. Cox Communications, Time Warner Cable, Orwell Cable Television, Rapid Cable, GLW Broadband for Carriage of WGGN-TV, Sandusky, Ohio Time Warner Cable and CoxCom LLC d/b/a Cox Cable Cleveland Area Petitions for Modification of the Designated Market Area of Television Broadcast Station WGGN-TV, Sandusky, Ohio*, 22 FCC Rcd 16919, 16923, para. 7 (MB 2007)).

residence.⁴⁰ This factor is intended to ensure that multichannel video programming distributor subscribers are “receiving news, politics, sports, emergency information and other television programming relevant to their home state” and “relevant to their everyday lives.”⁴¹ A petitioner is considered to satisfy this factor if the station at issue is licensed to a community within the same state as the new community.⁴² It is undisputed that WBKO is licensed to Bowling Green, Kentucky, and the Communities are located in Kentucky.⁴³ For that reason alone, the third statutory factor is satisfied.

12. The Commission may give this factor increased weight if the station provides programming specifically related to subscribers’ state of residence, and may give the factor even more weight if subscribers in the existing market have little or no access to such in-state programming.⁴⁴ The Petition demonstrates that WBKO provides programming specifically related to Kentucky.⁴⁵ For that reason, we may give this third statutory factor increased weight. In addition, the Petition states that the Nashville Communities are not served by any other station licensed to a community in the Commonwealth of Kentucky.⁴⁶ Scripps argues that multiple Kentucky stations are available over-the-air in the Nashville Communities.⁴⁷ We agree with Petitioners that this factor does not require any showing that the DMA at issue lacks any, or lacks a certain number of, in-state stations.⁴⁸ However, because the record on this issue is insufficient to conclude whether subscribers in the Nashville Communities have little or no access to in-state programming, we will not accord the maximum weight available under factor three in this case.

13. Scripps claims that granting the Petition would not promote consumers’ access to television broadcast station signals that originate in Kentucky because WBKO’s local programming already is carried in the Communities through privately negotiated agreements.⁴⁹ Petitioners respond that they currently carry network and syndicated programming from the in-DMA ABC affiliate for the majority of the day, and they use expensive equipment they have purchased to switch to prescheduled

⁴⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(III).

⁴¹ *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, para. 1, 10420, para. 18 (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)); *Gray Market Mod.*, 32 FCC Rcd at 681, para. 27 (in cases involving “orphan” counties, the Commission “will give substantial weight to the in-state programming a petitioner proposes to bring to the orphan county when determining whether a nexus to a new community has been demonstrated, and will consider the other factors, when they apply, as enhancements to a petitioner’s case”).

⁴² *STELAR Market Mod. Order*, 30 FCC Rcd at 10420, para. 18.

⁴³ Petition at 7.

⁴⁴ *STELAR Market Mod. Order*, 30 FCC Rcd at 10420, para. 18.

⁴⁵ Petition at 7.

⁴⁶ *Id.* at 8. Although the three other Communities (Columbia, Jamestown, and Russell Springs) have access to other stations licensed to communities in Kentucky, those stations are licensed to communities in the Louisville and Lexington DMAs, which are far from Bowling Green and thus broadcast in-state programming with limited relevance to Bowling Green residents. *Id.* at 8-9. See also Opposition at 15-16 (stating that Columbia, Jamestown, and Russell Springs are served by multiple Kentucky stations). Although the Nashville Communities are located in an out-of-state DMA, see Petitioners Reply at 6-7, we will not accord additional weight for this factor due to that fact alone.

⁴⁷ Opposition at 14.

⁴⁸ Petitioners Reply at 6.

⁴⁹ Opposition at 5-6, 8, 15-16.

WBKO local programming.⁵⁰ Petitioners assert that this approach deprives people in the Communities from accessing unscheduled local programming such as breaking news and emergency and weather alerts.⁵¹ Consistent with market modification precedent, “an operator’s ability to achieve a burdensome and limited work-around so that it may provide some local programming does not weigh against modification under the in-state access factor.”⁵² Granting the Petition will ensure that the Communities receive WBKO’s complete in-state signal.⁵³ To the extent Scripps is concerned about duplicative syndicated programming on WBKO and WTVF, we agree with Petitioners that any such concern can be addressed through the Commission’s syndicated exclusivity rules.⁵⁴ For all of the above reasons, we conclude that the third statutory factor weighs in favor of the requested modification, with some additional weight given to this factor because WBKO provides programming specifically related to Kentucky.

14. Fourth, we consider “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”⁵⁵ 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 rarely has counted against a petition.⁵⁶ According to the Petition, in-DMA stations provide limited local programming aimed at the Communities, whereas WBKO “overwhelmingly provides more local coverage to the Communities.”⁵⁷ Scripps responds that this factor does not weigh in favor of the Petition because WTVF routinely airs programming aimed at the Nashville Communities including weather and emergency information, school closings, traffic, EAS alerts, and news stories and events.⁵⁸ Petitioners respond that at a minimum this factor should receive neutral weight.⁵⁹ Because other stations provide at least some coverage of the Communities, we will not weigh this factor either in favor of or against the Petition.

15. The fifth statutory factor focuses on “evidence of viewing patterns” in cable and noncable households “within the areas served by” the cable system or systems in such community.⁶⁰ Petitioners cite data from 2014, when they were still permitted to retransmit WBKO in its entirety, which

⁵⁰ Petitioners Reply at 2 n.3, 9-10. *See also* Gray Reply at 2. Petitioners also carry the complete programming from the in-DMA stations on their own dedicated channels. Petitioners Reply at 9, n.25.

⁵¹ Petitioners Reply at 2, 10. *See also* Gray Reply at 3.

⁵² Petitioners Reply at 5 (citing *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, 32 FCC Rcd 1474, para. 20 (2017)).

⁵³ *Id.* at 8, 14-15.

⁵⁴ *Id.* at 3.

⁵⁵ 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

⁵⁶ *See, e.g., Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *see also, e.g., 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).

⁵⁷ Petition at 16-17; Petitioners Reply at 19.

⁵⁸ Opposition at 18.

⁵⁹ Petitioners Reply at 20.

⁶⁰ 47 U.S.C. § 534(h)(1)(C)(ii)(V).

demonstrates that WBKO was measurably viewed in the Communities and in some was the most-watched local newscast, at least during certain timeslots.⁶¹ Scripps responds that the 2014 Nielsen data is outdated, and more recent data demonstrates that WTVF's average rating in Allen County (where Scottsville is located) and Logan County (where Russellville is located) "far surpasses the average rating of WBKO, and WBKO's direct ABC-affiliated competitor WKRN-TV also has significantly more viewers than WBKO."⁶² Scripps claims that the preference of viewers in the Communities for stations other than WBKO is further demonstrated by the fact that WTVF and other Nashville stations are "significantly viewed" in Allen County, Logan County, and Cumberland County (where Burkesville is located), while WBKO and other stations in the Bowling Green DMA are not.⁶³ Petitioners respond that the data is unreliable because WBKO's signal was not watermarked until July 2017, and Nielsen gathers ratings data in the Nashville DMA primarily through the use of watermarking.⁶⁴ In addition, the more recent data provided by Scripps would only register viewership for WBKO during the limited hours that it provides local news programming, since Petitioners' systems otherwise carry programming from the in-market ABC affiliate that would have registered for that other station.⁶⁵ Although we acknowledge the limited utility of the data provided for the reasons stated above, we assign greater weight to the slightly dated Nielsen data from the period that WBKO was aired in its entirety. Petitioners have demonstrated that WBKO has been measurably viewed in the Communities, and its local newscasts in particular have garnered significant viewership in the recent past. We thus find that the fifth statutory factor weighs in favor of the requested modification.

16. In addition to the enumerated statutory factors, Petitioners point to other factors that demonstrate a connection between the Communities and Bowling Green, WBKO's community of license. Allen County, where Scottsville is located, is considered part of the Bowling Green Metropolitan Statistical Area.⁶⁶ Allen County, Logan County (where Russellville is located), and Warren County (where Bowling Green is located) all are part of the South Central Kentucky Economic Development Partnership.⁶⁷ Many people who live in the Communities commute to jobs in Bowling Green, and vice versa.⁶⁸ The closest major hospitals to the Communities are in Bowling Green, and all of the counties in which the Communities are located are part of the same National Weather Service office as Bowling Green.⁶⁹ The Bowling Green Daily News covers news relevant to the Communities, and after graduation many alumni of colleges in Bowling Green live in the counties in which the Communities are located.⁷⁰

17. We conclude that the facts support the grant of Petitioners' request to modify the market of the Station to include the Communities. Section 614(h)(1)(C) of the Act authorizes the Commission to include or exclude particular communities from a television station's market for the purposes of ensuring

⁶¹ Petition at 18-19. Petitioners note that the data for Cumberland County, where Burkesville is located, falls below the minimum sample size likely because there are few diaries in this unmetred area. *Id.* at 19 n.64.

⁶² Opposition at 19.

⁶³ *Id.*

⁶⁴ Petitioners Reply at 20.

⁶⁵ Gray Reply at 7.

⁶⁶ Petition at 20.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 20-21.

⁷⁰ *Id.* at 21.

that a television station is carried in the areas which it serves and which form its economic market.⁷¹ Section 614(h)(1)(C)(ii) directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking certain specific factors into account.⁷² We have considered those factors and, other than the fourth factor to which we assign neutral weight, we find that all of the other factors weigh in favor of granting the Petition. In particular, we agree with Petitioners that grant of the Petition will promote consumers' access to television broadcast station signals that originate in their home state of Kentucky, in furtherance of the third statutory factor. For the reasons discussed herein, we grant the Petition.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, pursuant to section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 17-225, CSR 8940-A) filed by the Electric Plant Board of the City of Russellville, Cumberland Cellular, Inc., d/b/a Duo County Telecom, and North Central Telephone Cooperative, Inc. **IS GRANTED**.

19. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁷³

FEDERAL COMMUNICATIONS COMMISSION

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

⁷¹ 47 U.S.C. § 534(h)(1)(C).

⁷² *Id.* § 534(h)(1)(C)(ii).

⁷³ 47 CFR § 0.283.