

**MORROW COUNTY BOARD OF COMMISSIONERS MEETING AGENDA**  
**Wednesday, November 8, 2017 at 9:00 a.m.**  
**Irrigon Branch of the Oregon Trail Library District, Community Room**  
**490 N.E. Main Ave., Irrigon, Oregon**

- 1. Call to Order and Pledge of Allegiance - 9:00 a.m.**
- 2. City and Citizen Comments** – This is the time provided for individuals wishing to address the Board regarding issues that are not already on the agenda.
- 3. Open Agenda** – This is the time for the Board to introduce subjects that are not already on the agenda.
- 4. Consent Calendar**
  - a. Approve Claims: Accounts Payable dated November 9<sup>th</sup>; Manual Check dated October 30<sup>th</sup>, Community Bank, Bartholomew Building Loan Payment; Payroll Payables, Monthlies dated November 1<sup>st</sup>; November Retirement Taxes dated November 3<sup>rd</sup>; 2017 Q3 SUTA/WBF Quarterly Payment dated October 26<sup>th</sup>
  - b. Minutes: October 25<sup>th</sup>
- 5. Business Items**
  - a. Update on request to file a Market Modification Petition with the Federal Communications Commission (Richard Tovey, County Counsel)
  - b. Update on proposals submitted for north end facility planning (Kim Cutsforth, Interim Administrative Officer)
  - c. Review temporary Office Assistant position request (Linda Skendzel, Veterans Services Officer)
- 6. Staff Reports**
  - a. Veterans Representative Quarterly Report (Linda Skendzel, Veterans Services Officer)
  - b. Planning Department Monthly Report (Carla McLane, Planning Director)
- 7. Correspondence**
- 8. Commissioner Reports**
- 9. Executive Session:** Pursuant to ORS 192.660(2)(f) – To consider information or records that are exempt by law from public inspection
- 10. Recess**
- 11. 1:30 p.m. - Reconvene at the Port of Morrow Riverfront Center, 2 Marine Drive, Boardman, Oregon**
- 12. Executive Session:** Pursuant to ORS 192.660(2)(a) – To consider the employment of a public officer, employee, staff member or individual agent
- 13. Adjournment**

Agendas are available every Friday on our website ([www.co.morrow.or.us/boc](http://www.co.morrow.or.us/boc) under “Upcoming Events”). Meeting Packets can also be found the following Monday.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Roberta Lutchter at (541) 676-5613.

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the meeting; however, the Board may consider additional subjects as well. This meeting is open to the public and interested citizens are invited to attend. Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media. The Board may recess for lunch depending on the anticipated length of the meeting and the topics on the agenda. If you have anything that needs to be on the agenda, please notify the Board office before noon of the preceding Friday. If something urgent comes up after this publication deadline, please notify the office as soon as possible. If you have any questions about items listed on the agenda, please contact Kim Cutsforth, Interim Administrative Officer at (541) 676-2529.

**Morrow County Board of Commissioners Meeting Minutes**  
**October 25, 2017**  
**Bartholomew Building Upper Conference Room**  
**Heppner, Oregon**

**Present**

Chair Melissa Lindsay  
Commissioner Don Russell  
Kim Cutsforth, Interim Administrative Officer  
Karen Wolff, Human Resources Director  
Kate Knop, Finance Director  
Justin Nelson, County Counsel  
Roberta Lutcher, Executive Assistant

**Excused**

Commissioner Jim Doherty

**Call to Order and Pledge of Allegiance:** 9:00 a.m.

**City and Citizen Comments:** No comments

**Open Agenda:** Add - A discussion on the status of scheduling a team-building session for Department Heads/Elected Officials. County Counsel Justin Nelson requested the Order Initiating Extension Service District be removed from the Consent Calendar so he could obtain additional clarification from Co-County Counsel Richard Tovey.

**Consent Calendar**

*Commissioner Russell moved to approve the following items in the Consent Calendar:*

- 1. Accounts Payable dated October 26<sup>th</sup> in the amount of \$275,914.11; Void Check dated October 12<sup>th</sup>*
- 2. Minutes: October 4<sup>th</sup>; October 18<sup>th</sup> Business Meeting*
- 3. Appointment of Jessica Calderon to The Loop – Morrow County Transportation Advisory Committee, with the term to be October 25, 2017 to December 31, 2020*
- 4. Reappointment of Larry Mills to the Budget Committee, with the term to be through June 30, 2018*
- 5. Approve Quitclaim Deed transferring 0.27 acres to Willow Creek Park District ownership for the basketball court that is part of the multi-use sports park, as described in the legal description, Exhibit A*

*Chair Lindsay seconded. Unanimous approval.*

**Business Items**

**Rabiner Resources Team-Building Session**

Kim Cutsforth, Interim Administrative Officer

Ms. Cutsforth said after polling all 18 of the Department Heads/Elected Officials, the afternoon of November 30<sup>th</sup> appeared to be the best date for 15 of them. The Commissioners agreed Ms. Cutsforth should move forward with planning the seminar for that date.

Second Readings and Adoption of Ordinances

Carla McLane, Planning Director

Ms. McLane provided the Second Readings by title of the following:

Ordinance Number ORD-2017-5

“An Ordinance to Opt Out of Marijuana Activities, Specifically Medical Licenses Identified in Enrolled Senate Bill 1057 (2017) and as Allowed in Enrolled House Bill 2198 (2017)”

*Commissioner Russell moved to adopt Ordinance Number ORD-2017-5, maintaining Morrow County’s opt out of all types of license types available for both medical and recreational marijuana issued by both the Oregon Liquor Control Commission and the Oregon Health Authority, with an effective date of February 1, 2018. Chair Lindsay seconded. Unanimous approval.*

Ordinance Number ORD-2017-6

“An Ordinance Amending the Morrow County Zoning Ordinance, Moving Article 4, Supplementary Provisions, Section 4.170 Site Development Review to Article 3, Use Zones, Section 3.130, Speedway Limited Use Overlay Zone”

*Commissioner Russell moved to adopt Ordinance Number ORD-2017-6 based upon the Planning Commission recommendation and the Board’s Public Hearing, moving the Site Development Review Criteria from Article 4, Supplementary Provisions, Section 4.170 to Article 3, Use Zones, Section 3.130, Speedway Limited Use Overlay Zone, with an effective date of February 1, 2018. Chair Lindsay seconded. Unanimous approval.*

Ordinance Number ORD-2017-7

“An Ordinance Amending the Morrow County Comprehensive Plan, Comprehensive Plan Map and Zoning Ordinance Map, thereby Expanding the Ione Urban Growth Boundary, and Zoning the Subject Properties Rural Light Industrial, and doing so in Cooperation with the City of Ione”

*Commissioner Russell moved to adopt Ordinance ORD-2017-7 based upon the Planning Commission recommendation and the Board’s joint Public Hearing with the City of Ione, amending the Comprehensive Plan Urbanization Element with respect to the City of Ione; amending the Comprehensive Plan Map by both expanding the Urban Growth Boundary and changing the designation on all City of Ione Urban Growth Boundary lands south of Highway 74 and west of the City limits to Industrial; amending the Zoning Map boundaries; and applying the Rural Light Industrial Use Zone to all lands within the Urban Growth Boundary south of Highway 74 and west of the City limits, with an effective date of February 1, 2018. Chair Lindsay seconded. Unanimous approval.*

Order Number OR-2017-9: Initiating the Formation of an Extension Service District

Justin Nelson, County Counsel

Julie Baker, OSU-Morrow County Extension Office, Co-County Leader

Mr. Nelson said his earlier questions were answered by Richard Tovey, Co-County Counsel and he has no concerns with the Order moving forward. Commissioner Russell said he understands there were some concerns noted in the attached Resolutions from the City/Town Councils in the County about the tax compression issue, but this Order allows the question to be put before the voters.

*Commissioner Russell moved to approve Order Number OR-2017-9: In the Matter of Initiating the Formation of an Extension Service District for Morrow County, Oregon. Chair Lindsay seconded. Unanimous approval.*

#### Retirement Benefit Estimate Options

Kate Knop, Finance Director

Current practice has the Morrow County Trust paying for Retirement Benefit Estimates for employees within one year of retirement at a cost of \$750 per request. However, some employees request multiple estimates as they approach retirement. Ms. Knop said while *The Retirement Plan for Employees of Morrow County, Oregon* covers most things very thoroughly, it does not provide policy for day-to-day administration, such as guidelines for providing Retirement Benefit Estimates. She asked the Board to consider such a policy and offered several options.

The Board listened to recommendations from staff and comments from several County employees in the audience and decided the following will become policy, effective today:

1. Trust pays for one estimate within 12 months of retirement (\$750 per request)
2. Trust pays for one estimate within five years of retirement (\$750 per request)
3. Trust and employee share cost for additional requests (\$250 paid by employee; balance by Trust)

*Commissioner Russell moved to create a policy that reflects a shared cost of additional requests for Retirement Benefit Estimates as outlined: 1. Trust pays for one estimate within 12 months of retirement; 2. Trust pays for one estimate within five years of retirement; 3. Trust and employee share cost for additional requests, with \$250 to be paid by the employee and the balance by the Trust; effective today with the written policy to come before the Board on November 1<sup>st</sup>. Chair Lindsay seconded. Unanimous approval.*

#### Review and Award Electrical and Plumbing Contractors

Sandi Pointer, Public Works Management Assistant

Ms. Pointer explained the bid and review processes undertaken and said Public Works recommends awarding the electrical contract to Wight's Electric and the plumbing contract to Blue Mountain Plumbing, LLC. She said the contracts will be ready for review by the Board at its November 1<sup>st</sup> meeting.

*Commissioner Russell moved to award the Electrical Contractor bid to Wight's Electric. Chair Lindsay seconded. Unanimous approval.*

*Commissioner Russell moved to award the Plumbing Contractor bid to Blue Mountain Plumbing, LLC. Chair Lindsay seconded. Unanimous approval.*

## **Department Reports**

### Road Report

Matt Scrivner, Assistant Road Master

Mr. Scrivner reviewed his Road Report and also provided a summary of Public Works/Road Department permits issued since that department took over the approval process.

### Sheriff's Office Report

Melissa Ross, Administrative Lieutenant/Public Information Officer

Lt. Ross reviewed her report, which she said continues to evolve as she attempts to provide more statistics for the Board; she also offered to make further changes. Commissioner Russell requested data compared to previous years in order to discern trends, and Chair Lindsay asked for types of arrests to be delineated.

### Human Resources Quarterly Report

Karen Wolff, Human Resources Director

Ms. Wolff reviewed her report of activities from August-October. She remarked Collective Bargaining with the Teamsters Union (Sheriff's Office employees) has come to a settlement and final documents are being prepared for signature.

### Clerk's Quarterly Report

Bobbi Childers, Clerk

Some of the items in Ms. Childers' report were:

- Statistics for types and numbers of documents recorded into Morrow County Records
- A Primary Election is slated for May 15, 2018 for the Assessor position and Commissioner Position 2 for the Morrow County Board of Commissioners (currently held by Commissioner Russell)
- The 2017 Amended Synopsis of Oregon Election Laws

### Public Health Department Quarterly Report

Sheree Smith, Public Health Director

Shelley Wight, Communicable Disease Coordinator/Eastern Oregon Regional Medical Reserve Corps (EORMRC) Coordinator

Ms. Wight explained that in her capacity as EORMRC Coordinator, she shuttled the medical support trailer to Unity, Oregon for the days surrounding the solar eclipse in August. They were available to provide basic first aid to the large camps that sprang up in the remote area, one of which numbered 1,200 people.

Ms. Smith reviewed her report which outlined the activities of the various programs offered by Public Health. She also discussed the success of the recent visit to Heppner by the OHSU Casey Institute Eye Mobile Outreach Van. She said it may be able to return sometime in 2019.

### **Commissioner Reports**

- Commissioner Russell said he and Chair Lindsay attended a meeting of the Columbia River Enterprise Zone II Board of Directors; another meeting will take place in November to discuss how Enterprise Zone monies are disbursed. He also attended the Solid Waste Advisory Committee meeting.
- Chair Lindsay attended the Military Economic Advisory Committee Meeting where discussions continue on the Boardman to Hemingway Project, as well as the Wheatridge Wind Energy Project.

**Adjourned:** 11:27 a.m.

DRAFT





# AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

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1. **TITLE OF AGENDA ITEM: UPDATE ON REQUEST TO FILE A MARKET MODIFICATION PETITION WITH THE FEDERAL COMMUNICATIONS COMMISSION**
  
  2. **ISSUES, BACKGROUND, AND DISCUSSION:**
    - Intensive process to Petition the Federal Communications Commission for Modification of the Satellite Televisions Markets- change from Morrow County local channels being Tri-Cities to Portland.
  
  3. **OPTIONS:**
    - Option 1: Direct County Counsel to continue investigation and start Petition process.
    - Option 2: Direct County Counsel stop further work on this matter.
  
  4. **FISCAL IMPACT:** Significant time of both County Counsel and Board of Commissioners. Prior petition included significant amount of letters of support from both cities, local elected officials, etc.
  
  5. **STAFF RECOMMENDATIONS:**
  
  6. **SUGGESTED ACTION(S) / MOTION(S):**
    - Attach additional background documentation as needed.

Routing: Original or copies of signed contract or document should be sent to the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Clerk (Original for recording)         | <input type="checkbox"/> Finance Department (Copy for file) |
| <input type="checkbox"/> Board of Commissioners (Copy for file) | <input type="checkbox"/> Department – For distribution      |
| <input type="checkbox"/> Other _____                            |   |

**From:** Roberta Lutchter  
**Sent:** Wednesday, October 11, 2017 4:47 PM  
**To:** Justin Nelson <[jnelson@co.morrow.or.us](mailto:jnelson@co.morrow.or.us)>; Richard Tovey <[rtovey@co.morrow.or.us](mailto:rtovey@co.morrow.or.us)>  
**Subject:** Satellite TV info

The attached STELAR Market Modification was presented by Janet Greenup on September 27<sup>th</sup>. The Commissioners asked that this be scheduled for a follow-up discussion. It's on the agenda in a few weeks. Can you look into this and be prepared to answer questions or if they can do anything to help?

Thanks,

*Roberta Lutchter*  
*Executive Assistant*  
*Morrow County Board of Commissioners*  
*541-676-5613 (5303)*  
*P.O. Box 788*  
*110 N. Court St.*  
*Heppner, OR 97836*  
*Email: [rlutchter@co.morrow.or.us](mailto:rlutchter@co.morrow.or.us)*

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Roberta,

Can you please add these two documents for this discussion.

First attachment- This is the Map that I believe the FCC is going by for what is our "local area".

Second- this is a recent Order from the FCC. A Colorado county petitioned the FCC to have local channels from Colorado, not New Mexico. Seems like the same thing Morrow County would be asking for. This is a good document to read to see our same process.

I am still attempting to locate the actual petition that La Plata County filed in this.

-Justin

*Justin W. Nelson*  
*Morrow County District Attorney*  
*Morrow County Counsel*  
*100 S. Court St.*  
*P.O. Box 664*  
*Heppner, OR 97836*  
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## STELAR<sup>1</sup> MARKET MODIFICATION

### *Overview of Process for Requesting FCC to Modify a Broadcast Station's Local Television Market for Cable or Satellite Carriage Purposes<sup>2</sup>*

*Note: Effective February 25, 2016, the satellite market modification rules are now in effect and the Commission is now accepting satellite market modifications petitions. In addition, prospective petitioners may send "pre-filing coordination" letter requests to satellite operators before filing satellite market modifications petitions, asking whether the prospective petition is technically and economically feasible for the satellite operator.*

#### **BACKGROUND**

The Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELAR) added satellite TV carriage to the Commission's market modification authority, which previously applied only to cable. The legislation recognizes that some satellite TV subscribers are not able to access their home state's news, politics, sports, emergency information, and other television programming. This happens because of the way TV stations are defined as "local" for purposes of satellite carriage. In some cases, it means subscribers may be included in a local television market that is served exclusively, or almost exclusively, by television stations coming from a neighboring state. The STELAR and the Commission's new satellite market modification rules help address this problem by adding flexibility to the current definition of a local television market for satellite carriage. The Commission's market modification rules provide a process for commercial broadcast TV stations, and the cable and now satellite operators that carry them, to request changes to the boundaries of their local television markets to include a new community located in a neighboring local television market. The rules enable a broadcast TV station to be carried on a cable system or satellite operator in such new community if the station can demonstrate a local relationship to such new community.

#### **What Is a Local Television Market?**

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<sup>1</sup> The Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELAR), § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.).

<sup>2</sup> Section 102(c) of the STELAR requires the Commission to "make information available to consumers on its website that explains the market modification process." The information must include: "(1) who may petition to include additional communities within, or exclude communities from, a—(A) local market (as defined in section 122(j) of title 17, United States Code); or (B) television market (as determined under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C))); and (2) the factors that the Commission takes into account when responding to a petition described in paragraph (1)." This document is intended to implement Section 102(c) of the STELAR and is for informational purposes only. This document is intended to help consumers, county governments and industry to understand the market modification process. This document is not intended to replace the Commission's rules and final authority to grant or deny market modification petitions and is based solely on the Commission's rules. The Commission may revise this document without public notice to clarify or update its contents.

Cable systems and satellite operators carry broadcast TV stations that are considered “local” based on local television market assignments. A station’s local television market assignment is initially defined by the Nielsen Company’s Designated Market Area (DMA) in which the station is located. Nielsen’s DMAs describe each local television market in terms of a group of counties based on measured viewing patterns. The United States has 210 DMAs.

### **What Is Market Modification? (What Does It Mean To Modify a Local Television Market?)**

Market Modification is a process established by Congress that allows the FCC to modify the boundaries of a particular commercial broadcast TV station’s local television market assignment for cable or satellite carriage purposes. The Commission’s market modification process recognizes that local television market assignments based on Nielsen’s DMAs are not always providing consumers with the broadcast TV stations of the most local interest to them. Specifically, the process allows the FCC to add a community to a particular commercial broadcast TV station’s local television market, if the station can show it provides local service to such community, in order to allow the station to be carried by a cable system or satellite operator in such community. The process also allows the FCC to delete a community from a particular commercial broadcast TV station’s local television market, if the petitioner can show the station does not provide local service to such community, in order to allow a cable system or satellite operator to stop carrying the station in such community. Through this process, the Commission considers whether the change would better serve the interests of the local community. The change may also include a particular community in more than one television market if it furthers the public interest.

The Commission determines whether to grant a market modification based on consideration of five statutory factors (discussed below) that allow petitioners to demonstrate that a particular station provides or does not provide local service to a specific community. Significantly, in the STELAR, Congress added a factor requiring consideration of access to television stations that are located in the same state as the community considered for modification. The STELAR, however, does not allow the Commission to grant a market modification if it is not technically and economically feasible (discussed below) for a satellite operator to carry the station in the new community.

*Note:* A market modification applies to a specific broadcast TV station’s local television market and does not change Nielsen’s DMAs for purposes of defining other stations’ local market assignments.

### **Who Can File a Market Modification Petition?**

- Cable market modifications: Commercial broadcast TV stations and cable systems; and
- Satellite market modifications: Commercial broadcast TV stations, satellite operators, and county governments.

*Note:* Individuals cannot file petitions.

### **What Geographic Areas Are Subject to Market Modification?**

Market modifications are generally done on a “community” basis. They apply to individual broadcast TV stations in a specific community and only to the particular cable system or satellite operator named in the petition.

### **How Is “Community” Defined?**

- For cable market modifications, a community is defined as a separate and distinct community or municipal entity, *e.g.*, city, town, or unincorporated area; and
- For satellite market modifications, a community is defined as a county.

### **Can a Single Petition Address More than One Cable and/or Satellite Community?**

Yes, a single petition can request the FCC to add or delete more than one community to or from a station’s local market, as long as the petition provides the required evidence showing the station’s local relationship to each community included in the petition.

*Note:* DIRECTV and DISH Network are the country’s two satellite TV companies. One petition can request the FCC to add or delete a satellite community for purposes of carriage of the station in the community by both companies. However, because of factors affecting each satellite operator, particularly factors of technical and economic feasibility, the Commission could grant the modification as it applies to both operators, deny the modification as to both operators, or grant the modification as to one operator and deny it as to the other.

### **How Do You Demonstrate the Need for a Market Modification?**

A petition must provide evidence in accordance with five statutory factors, which are parallel for satellite and cable.<sup>3</sup> They are:

1. Whether the station or other stations located in the same area have been historically carried on: (a) the cable system or systems within that community; and (b) the satellite carrier or carriers serving that community;
2. Whether the television station provides coverage or other local service to that 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 the community in fulfillment of the requirements provides news coverage of issues of concern to the community or provides carriage or coverage of sporting and other events

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<sup>3</sup> These factors are set forth in Sections 338(1)(2)(B) and 614(h)(1)(C) of the Communications Act of 1934, as amended (the “Act”); 47 U.S.C. §§ 338(1)(2)(B)(i)-(v); 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

- 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 the multichannel video programming distributors in the community.

### **Do You Have to Satisfy Each of the Five Factors?**

No. The five statutory factors are not intended to be exclusive, but demonstrate that a community is part of a particular station's market. No one factor has more importance than any other because each factor is valuable in assessing whether a particular community should be included or excluded from a station's local market. The importance of particular factors will vary depending on the circumstances of the case. The Commission may also consider other relevant information.

### **What Specific Evidence Must Be Provided In a Market Modification Petition?**

A market modification petition must include specific evidence describing the station's relationship to the community at issue. This is the minimum information necessary for the Commission to make a determination. A petition must include:

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<sup>4</sup> 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;<sup>5</sup>
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;

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<sup>4</sup> We note that Class A and low power television (LPTV) stations (which provide locally-oriented television service in small communities and must not cause interference to existing or future full-power television stations) are not entitled to mandatory satellite carriage, *see* 47 U.S.C. § 338(a)(3). Such stations may be entitled to mandatory cable carriage, but only in limited circumstances. *See* 47 U.S.C. § 534(h)(2)(A)-(F); 47 C.F.R. § 76.55(d)(1)-(6). Class A and LPTV stations that are entitled to mandatory cable carriage and that file a cable market modification petition must provide protected contour maps.

<sup>5</sup> Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit and we strongly encourage their inclusion in market modification petitions.

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.

Other evidence based on the statutory factors can also be included to strengthen your case. For example, if you want to show that the in-state factor (the third statutory factor) should be given greater weight, evidence could be offered that the television station provides programming specifically related to the subscribers' state of residence, as well as information showing there are no other in-state stations carried to subscribers in the community where the market modification is sought.

#### **Why Would a Market Modification Petition Be Denied?**

There are three common reasons why a market modification petition would be denied.

- First, the petition might not contain all of the specific evidence required. A petition can be re-filed once it contains all the proper information.
- Second, after considering all of the evidence in the record, the Commission might decide that the request is not consistent with the statutory factors discussed above and that modification of the broadcast TV station's local market is not in the public interest.
- Third, in the case of satellite market modifications only, the Commission might determine the request is not technically and economically feasible for the satellite operator.

#### **What Does "Not Technically and Economically Feasible" Mean?**

The Act does not require a satellite operator to carry a station because of a market modification request if it is not technically and economically feasible for the carrier to accomplish the carriage by means of its satellites in operation at the time of the determination. For example, if the satellite operator currently carries the station on a satellite that does not and cannot cover the new community, then it would not be technically and economically feasible for the satellite operator to provide the station to the new community. Satellite coverage infeasibility can be demonstrated through detailed certifications.

#### **What Can Be Done Before Undertaking the Effort and Expense of Filing a Petition?**

We encourage prospective broadcast station and county government petitioners to contact the relevant satellite operator(s) before filing a satellite market modification petition to determine if the operator foresees any reason why the modification cannot be granted. This voluntary process is referred to as "pre-filing coordination." We also encourage prospective county government petitioners to ask for the cooperation of the station they want carried via satellite before filing a satellite market modification petition. Station carriage relies in part on business

decisions involving broadcasters and satellite operators, and without the willing participation of the affected broadcaster, modifying the market of a particular television station in and of itself would not result in consumer access to that station.

### **Is There a Pre-filing Coordination Process?**

Yes. The Commission has established a process that allows a broadcaster or county government to obtain a certification from a satellite operator about whether or not (and to what extent) carriage is technically and economically feasible for the operator before the petitioner takes the time and expense of preparing and filing a market modification request.

If a written request is filed with the satellite operator, the satellite operator must respond by giving the petitioner a feasibility certification. The satellite operator should generally respond within 45 days, but is allowed up to 90 days if it provides a reason for the delay. A satellite operator must also file a copy of the correspondence and feasibility certification with the FCC in MB Docket No. 15-71.

The satellite operator's feasibility certification is not the final word on whether a market modification can be accomplished. If a petitioner has concerns with – or disagrees with a feasibility certification – the petitioner can challenge the satellite operator's certification. This can be done by filing a petition for special relief on the specific issue of technical or economic infeasibility or by filing a market modification petition.

### **Where Do I Send My Pre-filing Coordination Letter Request? Who is each Satellite Operators' Contact Person?**

The two satellite operators – DIRECTV and DISH Network – have provided the following contact information for receipt of pre-filing coordination letter requests:

- The DIRECTV contact is:  
DIRECTV, LLC  
Local-Into-Local - Market Modification  
2260 East Imperial Highway  
El Segundo, California 90245  
Attention: Vice President, Content & Programming  
Phone: (310) 964-4892  
Email: locals-business@directv.com
  
- The DISH Network contact is:  
Alison A. Minea  
Director & Senior Counsel, Regulatory Affairs  
DISH Network L.L.C.  
1110 Vermont Ave NW  
Suite 750



Washington, DC 20005  
Phone: (202) 463-3709  
Email: Alison.Minea@dish.com

Obtaining a proof of delivery receipt is recommended. We also request that a courtesy copy of your pre-filing coordination letter request be sent via email to Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division.

#### **How Long Does a Market Modification Take?**

- The Commission has 120 days to review and either grant or deny a market modification petition.
- A television station that becomes eligible for cable or satellite carriage as a result of market modification can elect carriage under either the mandatory carriage rules or retransmission consent rules within 30 days after the Commission's market modification order.
- If the station elects mandatory carriage, a satellite carrier must begin carriage within 90 days after receiving the station's request for carriage.

#### **How Will a Station's Choice of Retransmission Consent Over Mandatory Carriage Affect Carriage of the Station?**

A station that elects mandatory carriage is generally entitled to carriage. If a station elects retransmission consent, then the station and the cable system or satellite operator must negotiate the terms of a retransmission consent agreement, which may include monetary or other compensation for carriage of the broadcast signal. If the station and cable system or satellite operator do not reach an agreement, then the station cannot be carried.

#### **How To File a Market Modification Petition?**

1. The petition must be filed in accordance with the procedures for filing Special Relief petitions in Section 76.7 of the rules; see 47 C.F.R. §§ 76.7, 76.59(b).
2. The petition must be filed electronically using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.<sup>6</sup> The petition must be filed via ECFS in MB Docket No. 12-1. This docket serves as a holding area for Special Relief petitions until they have been reviewed and placed on public notice by the Media Bureau.

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<sup>6</sup> See *Media Bureau Announces Commencement of Mandatory Electronic Filing for Cable Special Relief Petitions and Cable Show Cause Petitions Via the Electronic Comment Filing System*, Public Notice, 26 FCC Red 17150 (MB 2011); [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-11-2095A1.doc](https://apps.fcc.gov/edocs_public/attachmatch/DA-11-2095A1.doc). Petitioners should be careful to record the confirmation number generated by ECFS at the time the petition is filed, in case issues arise concerning the status of the filing. If you do not receive a confirmation number, the petition was not successfully filed and you should contact the ECFS customer support staff at 202-418-0193 or [ecfshelp@fcc.gov](mailto:ecfshelp@fcc.gov) for assistance.

3. Upon review and acceptance of the petition, the Media Bureau will assign a new docket number and issue a public notice starting the comment cycle.
  - a. Unless otherwise specified by the Commission, comments and oppositions to petitions are due within 20 days after the date of public notice. 47 C.F.R. § 76.7(b)(1).
  - b. Unless otherwise specified by the Commission, replies to comments/oppositions are due within 10 days after submission of such comment or opposition. 47 C.F.R. § 76.7(c)(3).
4. A fee is generally required for the filing of Special Relief petitions; *see* 47 C.F.R. § 1.1104(9)(g); however, county governments are exempt from this fee; *see* 47 C.F.R. § 1.1116(f). As of December 2015, the filing fee is \$1,465.00, but this fee is subject to change. Payments may be made online using the FCC Fee Filer Online System or via FCC Form 159. Payment verification of the filing fee must be included with the petition. (This will be either an FCC Form 159 or the confirmation documents from Fee Filer.)
5. A copy of the petition must be served on all interested parties. 47 C.F.R. § 76.7(a)(3). This means the petitioner must send a copy of the petition (by mail or email) to the parties. Proof of service must be provided with the petition.
  - a. For cable market modifications, at a minimum, the petition must be served on the affected broadcast station and cable system, other broadcast stations carried on the cable system, and any franchising authorities that regulate the cable system.
  - b. For satellite market modifications, at a minimum, the petition must be served on the affected broadcast station and satellite operator(s), other broadcast stations carried by the satellite operator in the community at issue, and the relevant county government for the community at issue.

#### **Web Link to Decision Document**

The Report and Order (FCC 15-111)<sup>7</sup> adopting the new rules is available on the Commission's website at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-111A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-111A1.pdf).

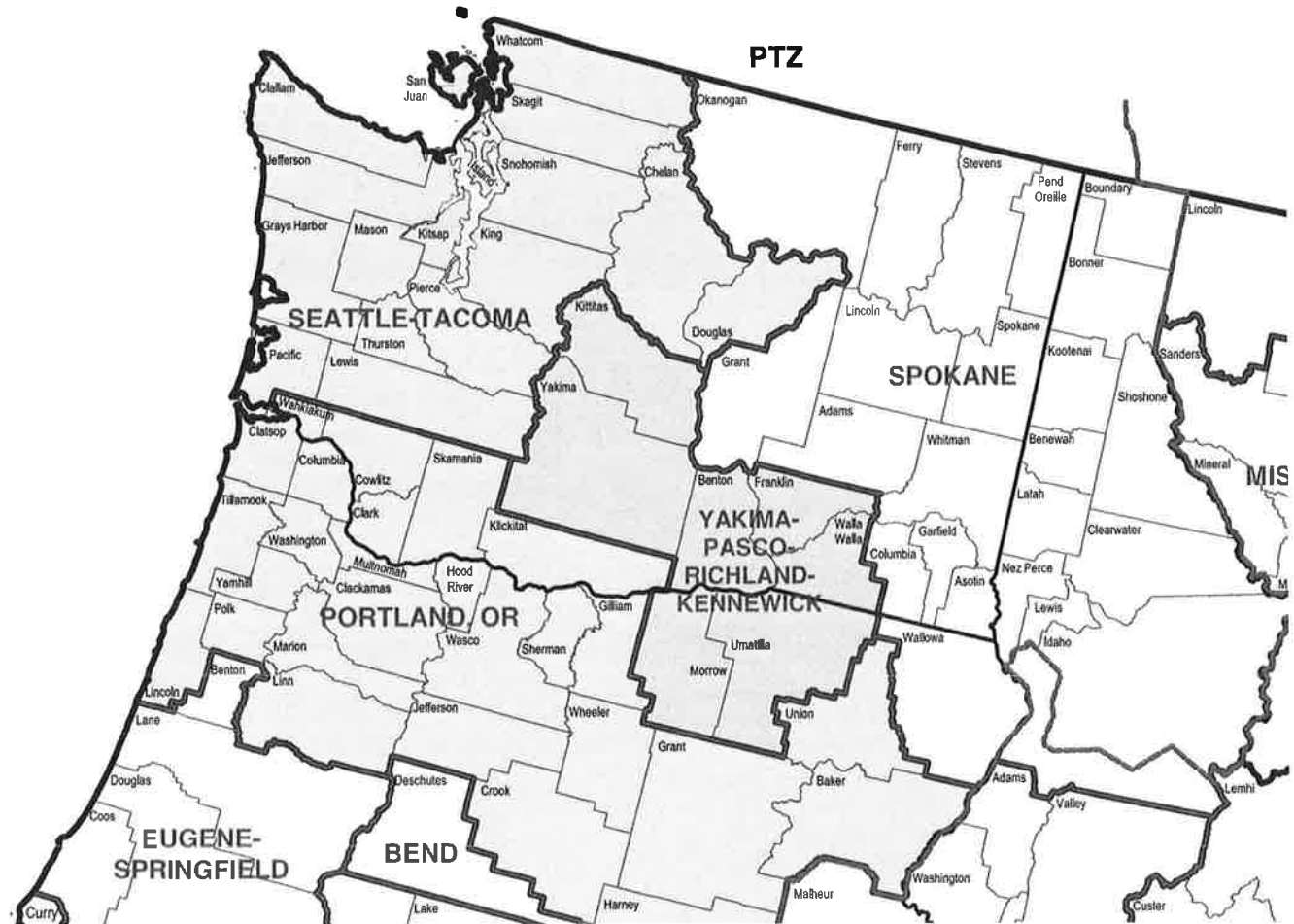
#### **For More Information**

For additional information on this topic, please contact Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division, (202) 418-7142.

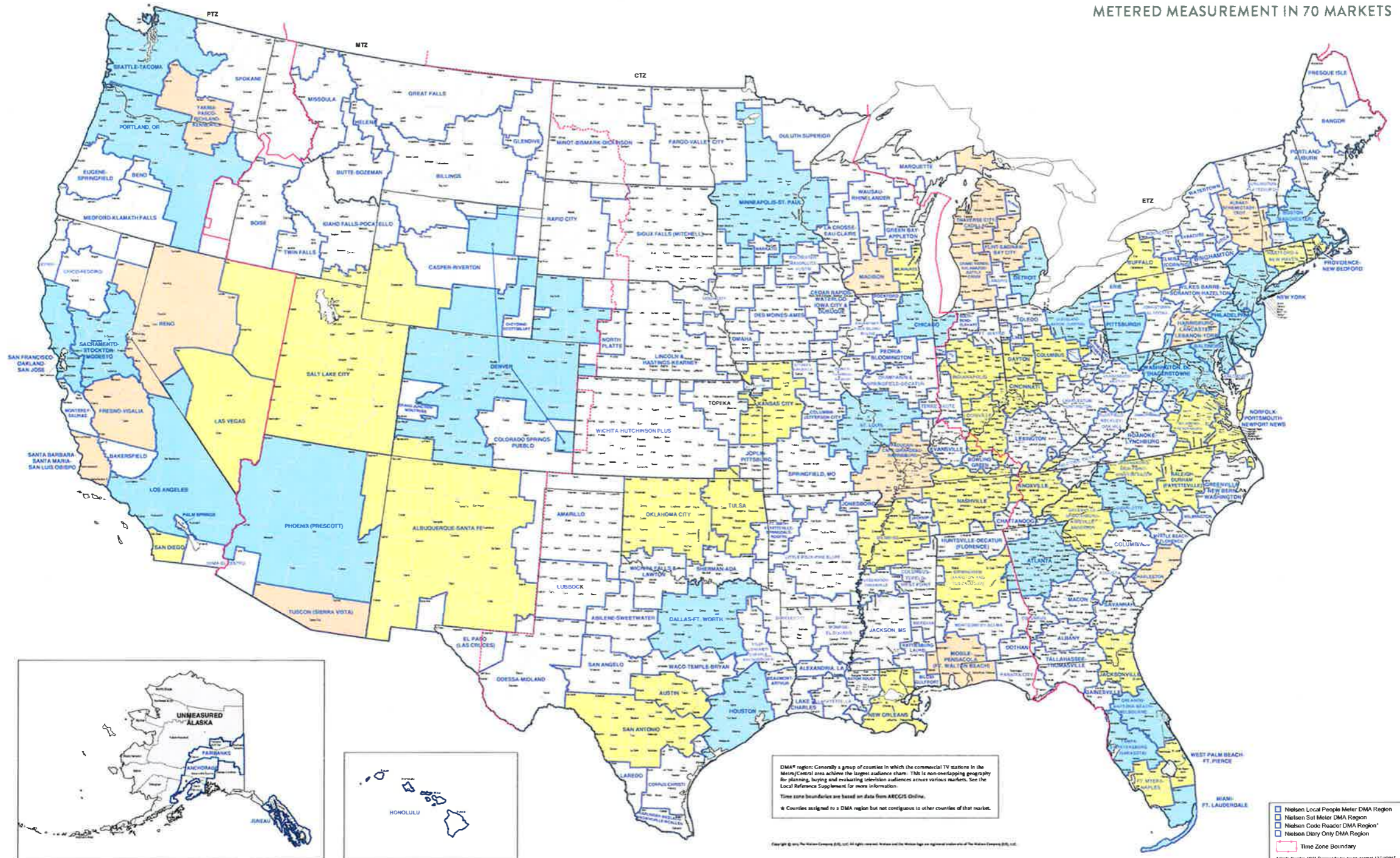
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<sup>7</sup> *Amendment to the Commission's Rules Concerning Market Modification: Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015).

nielsen  
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METERED MEASUREMENT IN 70 MARKETS



DMA\* region: Generally a group of counties in which the commercial TV stations in the Nielsen/Central area achieve the largest audience share. This is non-overlapping geography for planning, buying and evaluating television audiences across various markets. See the Local Reference Supplement for more information.

\* Time zone boundaries are based on data from AECOS Online.

\* Counties assigned to a DMA region but not contiguous to other counties of that market.

- Nielsen Local People Meter DMA Region
  - Nielsen Sol Meter DMA Region
  - Nielsen Code Reader DMA Region\*
  - Nielsen Diary Only DMA Region
  - Time Zone Boundary
- \* Code Reader DMA Region begin: 11/01/2015

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

In the Matter of
La Plata County, Colorado
Petitions for Modification of the Satellite
Television Markets of KDVR-TV, KCNC-TV,
KMGH-TV, and KUSA-TV, Denver, Colorado
MB Docket No. 16-366
CSR No. 8927-A
MB Docket No. 16-367
CSR No. 8928-A
MB Docket No. 16-368
CSR No. 8929-A
MB Docket No. 16-369
CSR No. 8930-A

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2017

Released: March 1, 2017

By the Acting Chief, Media Bureau

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I. INTRODUCTION

1. La Plata County, Colorado ("Petitioner" or "La Plata County"), with the support of hundreds of its residents, has filed market modification petitions to make four Denver television stations (collectively, the "Stations") available to La Plata satellite subscribers. For historical and geographic reasons, La Plata County residents generally receive only New Mexico television stations, limiting their access to Colorado-specific news, sports, weather, and politics. With this Order, the Media Bureau grants these four petitions, and finds satellite carriage to be feasible to the extent described below.

2. Petitioner filed the above-captioned Petitions seeking to modify the local satellite carriage television markets of the Stations to include La Plata County, currently assigned to the Albuquerque-

Santa Fe Designated Market Area (DMA).<sup>1</sup> The Stations are: KDVR-TV, Denver, Colorado (Facility ID No. 126) (“KDVR”); KCNC-TV, Denver, Colorado (Facility ID No. 47903) (“KCNC”); KMGH-TV, Denver, Colorado (Facility ID No. 40875) (“KMGH”); and KUSA-TV, Denver, Colorado (Facility ID No. 23074) (“KUSA”).<sup>2</sup> A consolidated Opposition to the KDVR and KCNC Petitions was filed by LIN of New Mexico, LLC and LIN of Colorado, LLC (“LIN”).<sup>3</sup> A consolidated Opposition to the KMGH and KUSA Petitions was filed by KOAT Hearst Television Inc. and KOB-TV, LLC (“KOAT/KOB”).<sup>4</sup> In addition, DISH Network LLC (“DISH”) has filed a certification indicating that carriage of all of the Stations into La Plata in standard definition (SD) is feasible,<sup>5</sup> and AT&T/DIRECTV, LLC (“DIRECTV”) has filed a certification indicating that SD carriage of all of the Stations into La Plata is feasible at this time, and high definition (HD) carriage is feasible in a portion of the community.<sup>6</sup> Each Petition has been reviewed on its individual merits. Because they were filed simultaneously, and because the Stations are identically situated with respect to the feasibility of their carriage into the county at issue, we have consolidated our decisions into this single Order for the convenience of the parties.<sup>7</sup> For the reasons discussed more fully below, we grant each of La Plata County’s Petitions, and modify the markets of KDVR, KCNC, KMGH, and KUSA, with respect to DISH and DIRECTV, to include La Plata County. We conclude that it is feasible for DISH and DIRECTV to offer the Stations throughout La Plata in SD format, and that it is feasible for DIRECTV to do so in HD format except in the seven identified ZIP codes. As discussed below, we further conclude that after the satellite serving La Plata County in SD is decommissioned, it will continue to be feasible for DIRECTV to offer the Stations in HD except in the seven La Plata County ZIP codes identified herein.

## II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.<sup>8</sup> A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.<sup>9</sup> Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company

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<sup>1</sup> See Petition for Special Relief (KDVR) of La Plata County, Colorado, MB Docket 16-366 (filed Sept. 7, 2016) (*KDVR Petition*); Petition for Special Relief (KCNC) of La Plata County, Colorado, MB Docket 16-367 (filed Sept. 7, 2016) (*KCNC Petition*); Petition for Special Relief (KMGH) of La Plata County, Colorado, MB Docket 16-368 (filed Sept. 7, 2016) (*KMGH Petition*); and Petition for Special Relief (KUSA) of La Plata County, Colorado, MB Docket 16-369 (filed Sept. 7, 2016) (*KUSA Petition*) (collectively, the *Petitions*). The Media Bureau placed the *Petitions* on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0448 (MB Nov. 2, 2016) (*La Plata Public Notice*).

<sup>2</sup> *Petitions* at 1.

<sup>3</sup> *LIN Opposition to Petitions for Special Relief*, MB Dockets 16-366 and 16-367 (filed November 22, 2016) (*LIN Opposition*).

<sup>4</sup> *KOAT/KOB Opposition to Petitions for Special Relief*, MB Dockets 16-368 and 16-369 (filed November 22, 2016) (*KOAT/KOB Opposition*).

<sup>5</sup> *DISH Feasibility Certification* (dated July 14, 2016, filed in MB Docket No. 15-71).

<sup>6</sup> *DIRECTV Feasibility Certification* (dated July 28, 2016, filed in MB Docket No. 15-71). The seven ZIP codes that DIRECTV has certified are not covered by its HD spot beam are 81137, 81301, 81302, 81303, 81326, 81328, and 81329.

<sup>7</sup> See generally *La Plata Public Notice*, *DISH Feasibility Certification*, and *DIRECTV Feasibility Certification*.

<sup>8</sup> 47 U.S.C. § 338(a)(1).

<sup>9</sup> 47 CFR § 76.66(a)(6).

(Nielsen).<sup>10</sup> DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.<sup>11</sup> Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license,<sup>12</sup> it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.<sup>13</sup>

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.<sup>14</sup> Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station's local television market for purposes of satellite carriage, following a written request. In the Commission's 2015 *STELAR Market Modification Report and Order* implementing Section 102 of the STELAR, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station's local television market to include a new community located in a neighboring local market.<sup>15</sup> The rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

5. By extending the market modification process to satellite television, Congress, in part, sought to address the so-called "orphan county" problem. An orphan county is a county that, as a result of the structure of a local satellite market, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.<sup>16</sup> 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 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.<sup>17</sup>

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<sup>10</sup> See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station's local market for purposes of satellite carriage as the DMA in which the station is located).

<sup>11</sup> The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

<sup>12</sup> 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station's local market. See Satellite Home Viewer Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999).

<sup>13</sup> See 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the "carry one, carry all" requirement.

<sup>14</sup> 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.

<sup>15</sup> *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

<sup>16</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

<sup>17</sup> See generally Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113<sup>th</sup> Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*).

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to the satellite context.<sup>18</sup> Notably, the STELAR carves out an exception to carriage obligations<sup>19</sup> resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification “shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”<sup>20</sup> In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting carriage obligation under those circumstances.<sup>21</sup> This exception applies only in the satellite context.<sup>22</sup>

7. Once the threshold issue of technical and economic feasibility is resolved, Section 338(l) provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account the following five factors:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.<sup>23</sup>

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station’s local market. The importance of

<sup>18</sup> See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station’s market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) by the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station’s market to delete a community, the station is considered “distant” and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

<sup>19</sup> See *supra* note 11 and accompanying text (describing the “carry one, carry all” satellite carriage requirement).

<sup>20</sup> 47 U.S.C. § 338(l)(3)(A).

<sup>21</sup> *Senate Commerce Committee Report* at 11 (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.”).

<sup>22</sup> In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station’s market, the modification is granted without reference to issues of technical and economic feasibility. As explained in the *STELAR Market Modification Report and Order*, Congress recognized “the inherent difference between cable and satellite television service” by adopting certain “provisions specific to satellite,” including 47 U.S.C. § 338(l)(3)(A)’s feasibility exception. 30 FCC Rcd at 10408, n.6.

<sup>23</sup> 47 U.S.C. § 338(l)(2)(B)(i)-(v).



particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.<sup>24</sup>

8. Significantly, in the *STELAR*, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.<sup>25</sup> This new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>26</sup>

9. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.<sup>27</sup> Accordingly, the rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.<sup>28</sup>

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<sup>24</sup> 47 U.S.C. § 338(h)(1)(C)(ii) directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, ¶ 53 (1999) (*Cable Market Modification Second Report and Order*).

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

<sup>26</sup> *Senate Commerce Committee Report* at 11.

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

<sup>28</sup> 47 CFR § 76.59(b)(1)-(7).

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.<sup>29</sup> The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if the Bureau is in a position to resolve the petition without such evidence.<sup>30</sup> Parties may submit whatever additional evidence they deem appropriate and relevant.<sup>31</sup>

10. In the instant proceeding, La Plata filed four Petitions seeking modification of the local television markets of Denver Stations KDVR, KCNC, KMGH, and KUSA to include La Plata County, Colorado. The Petitions were placed on public notice on November 2, 2016.<sup>32</sup> During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. DISH's certification states that SD service to the county is feasible, but that HD service is not.<sup>33</sup> DIRECTV's certification explains that: SD service to the county is feasible for the time being, but that the satellite carrying the relevant spot beam is scheduled to be removed from service within the next three years; and HD service is infeasible in seven ZIP codes in La Plata (reflecting the majority of the area of the county) due to insufficient spot beam coverage.<sup>34</sup> We received one joint opposition filed by LIN,<sup>35</sup> and a second filed by KOAT/KOB.<sup>36</sup> These parties argue that the *Petitions* should be dismissed on procedural grounds, and in the alternative that they should be denied based on analysis of the statutory factors. We received supportive comments from local government officials, both of Colorado's United States Senators, and the Congressman representing La Plata County.<sup>37</sup> We also received hundreds of resident comments in support of each of the *Petitions*.<sup>38</sup>

11. The Commission must make two determinations with respect to each of the *Petitions*: (1) whether the petition demonstrates that a modification to the station's television market is warranted, based on the five statutory factors and any other relevant information; and (2) whether the resulting carriage of the station from the proposed market modification is technically and economically feasible for each of the satellite carriers.<sup>39</sup> We consider the latter question first, because we will not grant a market

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

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

<sup>31</sup> *Id.*

<sup>32</sup> Special Relief and Show Cause Petitions, Public Notice (MB November 22, 2016).

<sup>33</sup> *DISH Feasibility Certification*.

<sup>34</sup> *DIRECTV Feasibility Certification*.

<sup>35</sup> *LIN Opposition*.

<sup>36</sup> *KOAT/KOB Opposition*.

<sup>37</sup> Local representatives filing in support of these petitions include: Senator Michael F. Bennett, Senator Cory Gardner, Congressman Scott R. Tipton, Director Phil Campbell of the Durango-La Plata Emergency Communications Center, and the La Plata County Board of County Commissioners (who filed the petitions on behalf of La Plata County). Long before the commencement of this proceeding, government officials were sharing concerns with the Commission about La Plata's lack of access to in-state programming. *See, e.g.*, Letter from Sen. Mark Udall, Sen. Michael Bennet, Rep. Diana DeGette, Rep. Doug Lamborn, Rep. Ed Perlmutter, Rep. Mike Coffman, Rep. Jared Polis, Rep. Cory Gardner, and Rep. Scott R. Tipton, Colorado Delegation, to Julius Genachowski, Chairman, FCC (Feb. 16, 2011) (cited in *In-State Broadcast Programming: Report to Congress Pursuant To Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-238, Report, 26 FCC Rcd 11919 at 10931, n.68 (MB 2011) (*2011 In-State Report*)).

<sup>38</sup> *See generally* MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, and *Petitions* at Exhibit I (some comments were filed in multiple dockets and/or made in reference to more than one station).

<sup>39</sup> 47 U.S.C. § 338(l); *see also* 47 CFR § 76.59.

modification petition if the resulting carriage would be infeasible.<sup>40</sup>

### III. DISCUSSION

12. For the reasons set forth below, we find that the evidence weighs in favor of the expansion of KDVR, KCNC, KMGH, and KUSA's markets to include La Plata County. We therefore modify the markets of KDVR, KCNC, KMGH, and KUSA to include La Plata County, and conclude that it is feasible for DISH and DIRECTV to offer the Stations throughout La Plata in SD format. As discussed below, we further conclude that it is feasible for DIRECTV to offer the Stations in high definition (HD) except in the seven La Plata County ZIP codes identified herein.

13. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59.<sup>41</sup> We find good cause to waive these submissions because we have ample evidence to render our decision without them. Because the petition seeks to rectify an orphan county situation, the need for some traditional market modification evidence is diminished, as discussed in more detail below.<sup>42</sup> Accordingly, we find that La Plata should not be held to the same evidentiary standards in this case as we would apply to a traditional petition for market modification, and we waive certain of the requirements of Section 76.59.<sup>43</sup>

#### A. Technical and Economic Feasibility

14. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of La Plata County. As discussed below, however, we recognize that this feasibility in most cases will be limited to the provision of SD service and in some cases will be of limited duration. Section 338(l)(3) of the Communications Act does not require a satellite operator to carry a station in response to a market modification if it is not technically and economically feasible for the carrier to accomplish the carriage by means of its satellites in operation at the time of the determination.<sup>44</sup> In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage resulting from a market modification is infeasible.<sup>45</sup> The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.<sup>46</sup>

15. Satellite carriers use spot beams to offer local broadcast stations to targeted geographic

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<sup>40</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10442, para. 50.

<sup>41</sup> Specifically, we waive 47 CFR §§ 76.59(b)(2), (3), (5), and (6) to the extent necessary; *see also supra* note 30 and accompanying text.

<sup>42</sup> *Infra* para. 22, discussing the reduced importance, in orphan county cases, of the specific evidence at issue here.

<sup>43</sup> We note that although not required by Section 76.59(b), it has become clear that detailed information about programming is extremely important in the orphan county context. Because of the reduced importance of geographic factors it has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect future petitioners seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, to explain that they are not regularly broadcast by any station currently serving the county.

<sup>44</sup> 47 U.S.C. § 338(l)(3) (A "market determination ... 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* 47 CFR § 76.59(e).

<sup>45</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

<sup>46</sup> *Id.* at 10435-6, 10438, paras. 39, 42.

areas.<sup>47</sup> With respect to claims of “spot beam coverage infeasibility,” the Commission concluded that “it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried.”<sup>48</sup> The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury.<sup>49</sup>

16. With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.<sup>50</sup> To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility.<sup>51</sup>

17. DIRECTV and DISH each filed Feasibility Certifications in response to the County’s Petition. The certifications by each satellite provider were identical for each of the Stations. Both satellite providers indicate that carriage is feasible, with certain qualifications. DISH indicates that due to its “current technical capabilities” it can provide the Stations only in SD format.<sup>52</sup> DIRECTV indicates that the spot beam on which it carries the Stations in HD does not serve seven of the ZIP codes in La Plata County, and that, while it can currently serve the whole county via the spot beam carrying the Stations in SD, the satellite carrying that spot beam is scheduled to be removed from service no later than 2019.<sup>53</sup>

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<sup>47</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10430, n.162 (quoting DIRECTV to explain that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas. Doing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.” This is in contrast to a “CONUS” beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

<sup>48</sup> *Id.* at 10410429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider’s CONUS beam (using spectrum that could otherwise be deployed for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32.

<sup>49</sup> *Id.* at 10435-36, para. 39. The Commission requires satellite carriers claiming that a market modification is technically infeasible based on spot beam coverage to submit a detailed certification that must include the following: (1) an explanation of why carriage is not technically and economically feasible, including a detailed explanation of the process by which the satellite carrier has determined whether or not the spot beam in question covers the geographic area at issue; (2) a statement that the satellite carrier has conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam in question; and (3) a supporting affidavit or declaration under penalty of perjury, as contemplated under Section 1.16 of the Commission’s Rules and 28 USC § 1746, signed and dated by an authorized officer of the satellite carrier with personal knowledge of the representations provided in the certification, verifying the truth and accuracy of the information therein. *Id.* at 10437-8, para. 41.

<sup>50</sup> *Id.* at 10438, para. 42.

<sup>51</sup> *Id.*; *see also id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage “through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible”).

<sup>52</sup> *DISH Feasibility Certification*.

<sup>53</sup> *DIRECTV Feasibility Certification*. *See also DIRECTV, LLC Response to Petition for Special Relief (DIRECTV Response)*.

We find the claims of both satellite providers to be sufficiently supported.

18. We note that, although carriage of the Stations by DIRECTV is feasible at this time, it will cease to be feasible in seven ZIP codes once they are no longer served by a relevant spot beam.<sup>54</sup> Because the removal from service of DIRECTV's satellite could occur as soon as next year and Petitioner has been notified of that schedule, we will not require DIRECTV to petition to remove the seven ZIP codes from the Stations' markets after service becomes infeasible.<sup>55</sup> Instead, DIRECTV may file updated feasibility certifications with the parties and with the Commission once plans and timing for removal of the satellite from service are finalized.<sup>56</sup> If there has been no change in DIRECTV's projected ability to cover the seven ZIP codes with a spot beam carrying the Stations, this updated feasibility certification should provide sufficient information for the Bureau to determine on its own motion that service to these ZIP codes is no longer feasible for DIRECTV, and to remove them from the local market of the Stations as of the date of removal from service of the satellite in question.<sup>57</sup>

### B. Orphan County Status

19. La Plata County is one of the counties the Commission has repeatedly and specifically identified as an "orphan" county with insufficient access to in-state programming,<sup>58</sup> and precisely the type of community that Congress intended to assist by broadening the market modification process.<sup>59</sup> The approach we take in our analysis of the statutory factors, accordingly, reflects the unusual fact patterns present in an orphan county scenario. La Plata County is assigned to the Albuquerque-Santa Fe DMA, which includes 28 New Mexico counties, part of one county in Arizona, and just two Colorado counties (La Plata and Montezuma). La Plata County residents who subscribe to satellite television service are served exclusively by stations licensed to communities within the state of New Mexico.<sup>60</sup> The Petitioner argues that residents of La Plata County are currently underserved by the broadcast stations in the Albuquerque-Santa Fe DMA, due to those stations' focus on news and programming information of

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<sup>54</sup> *DIRECTV Feasibility Certification*. The seven ZIP codes that DIRECTV has certified are not covered by its HD spot beam are 81137, 81301, 81302, 81303, 81326, 81328, and 81329. *See also DIRECTV Response* at 3. Carriage of the stations in HD into eastern La Plata County (ZIP code 81122) is currently feasible, and will remain feasible after the SD spot beam at issue is removed from service. *Id.* This may impact DIRECTV's carriage obligations if it reaches an agreement for carriage with one or more of the Stations. *See* 47 CFR § 76.66(k) ("Material Degradation").

<sup>55</sup> In normal circumstances, a reduction in spot beam coverage that rendered service infeasible would require a new market modification petition or petitions by the satellite carrier. *See STELAR Market Modification Report and Order*, 30 FCC Rcd at 10440, n.231. In these unique circumstances, particularly the apparent certainty that DIRECTV will decommission the satellite as scheduled, requiring DIRECTV to incur the costs of filing such additional petitions would be unnecessary.

<sup>56</sup> These certifications should be filed in the relevant dockets with copies sent electronically to the Chief, Media Bureau and the Chief, Policy Division, Media Bureau.

<sup>57</sup> The Bureau may seek additional information from the parties if there appears to have been any change in relevant circumstances.

<sup>58</sup> *2011 In-State Report*, 26 FCC Rcd at 12480; *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, Report, 31 FCC Rcd 5463 at 5670, Appendix D. (*2016 In-State Report*)

<sup>59</sup> The "core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12.

<sup>60</sup> *2016 In-State Report*, 31 FCC Rcd at 5670. The only full-power commercial broadcast stations serving residents of La Plata County over the air (KRTN-TV and KREZ-TV) are satellites rebroadcasting the signal of New Mexico-based stations.

interest to New Mexicans.<sup>61</sup> This claim is supported by hundreds of comments filed in the docket by county residents and their representatives.<sup>62</sup>

20. Neither Opposition disputes the characterization of La Plata as an “orphan county,” although they argue that the stations assigned to the Albuquerque-Santa Fe DMA “[have] been providing the residents of La Plata County, Colorado with extensive coverage of local news, sports, and weather for decades,”<sup>63</sup> and “regularly provide coverage of local news and events in La Plata County, daily weather information, ski and snowboard reports, and other locally-oriented programming.”<sup>64</sup> Notwithstanding these arguments, we find no ambiguity with respect to La Plata’s status as an orphan county. It is clearly under-served by in-state programming, and is “in one state [] assigned to a neighboring state’s local television market and, therefore, satellite subscribers residing in [La Plata] cannot receive some or any broadcast stations that originate in-state.”<sup>65</sup>

21. With the STELAR’s revisions to the market modification process, and its addition of a satellite market modification process, Congress intended to address orphan county situations like these. Indeed, the legislative history observes 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 instructs us to “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.”<sup>66</sup> As we observed in the *STELAR Market Modification Report and Order*, “each petition for market modification will turn on the unique facts of the case,” and there is no single universal way to weight the statutory factors.<sup>67</sup> We analyze these factors here in light of the importance Congress placed on addressing orphan

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<sup>61</sup> *Petitions* at 3.

<sup>62</sup> See generally MB Docket Nos. 16-366, 16-367, 16-368, and 16-369.

<sup>63</sup> *LIN Opposition* at 2.

<sup>64</sup> *KOAT/KOB Opposition* at 5-6.

<sup>65</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, n.5. We note that immediately prior to the commencement of this proceeding, the Stations submitted a letter to Colorado Senators Michael Bennet and Cory Gardner stating that they would be willing to negotiate with satellite providers for “targeted” carriage of their locally-produced news and public affairs programming, to the extent that this programming is not duplicated by an Albuquerque broadcaster. Letter from Colorado Broadcasters Association Members to Senator Michael Bennet and Senator Cory Gardner (August 29, 2016) (included in *Petitions* at Exhibit H). This kind of targeted DBS carriage would be theoretically possible even absent a market modification, because stations own the copyright in their locally produced programming. This means that a satellite carrier with rights to carry this specific programming would not need the statutory copyright license it uses to redistribute the entirety of an in-market broadcast signal (and that it would be able to rely upon in the event of a market modification). It would, however, need to devote the bandwidth of an entire satellite “channel” to each station for which it carried targeted programming, and show subscribers a blank screen on that channel during any non-local programming. KOAT/KOB argue in their Opposition that the Denver stations’ willingness to negotiate for such “targeted” carriage obviates the need for grant of the Petitions, as they see “no justification why the Denver Stations’ willingness to import their local news and public affairs programming would not achieve the very goals of the Petitions without the need for FCC intervention.” *KOAT/KOB Opposition* at 17. However, as evidenced by passage of the STELAR, Congress did see a significant justification for FCC intervention in precisely this type of scenario. The availability of “targeted carriage” does not, in fact, achieve the “goals of the Petitions,” or of Congress. As La Plata County observes, a satellite provider would be unlikely to even have the capacity to carry a “special, blacked out feed” of the Stations just to ensure that subscribers in a single county could receive a portion of those Stations’ programming. *La Plata Reply to Oppositions to Petitions for Special Relief* at 6-7 (filed in dockets 16-366, 16-367, 16-368, and 16-369) (*Reply to Oppositions*).

<sup>66</sup> *Senate Commerce Committee Report* at 11.

<sup>67</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

counties' inability to receive in-state programming. We conclude that this is necessary in order to best effectuate the goals of the STELAR.<sup>68</sup>

22. In particular, we note that in-state programming is a type of "local" service.<sup>69</sup> Unlike in a traditional market modification process, in which a station might demonstrate a local connection through geographic proximity tests, in-state stations are more likely to demonstrate that they are "local" through evidence showing they seek to provide a community with access to news, politics, sports, emergency and other programming specifically related to their home state. Heavy reliance on geographic proximity tests in the context of an orphan county fact pattern seems especially inappropriate given the "remote geographic location of orphan counties"<sup>70</sup> and the fact that they are by definition on the outskirts of a petitioner's home state. Accordingly, we find that tests based on geographic proximity, which have historically been considered important for demonstrating a market nexus between a station and a community, are of significantly reduced relevance in the orphan county context. Similarly, we would anticipate that historic carriage of a petitioner station would be less common and its viewer ratings would be lower in an orphan county than we have found in prior successful market modification proceedings.<sup>71</sup> To hold orphan county market modification petitions to these pre-STELAR standards would frustrate the will of Congress, which instructed us to "consider the plight" of viewers in these counties. Therefore, in line with Congress' addition of the new third statutory factor, in orphan county situations we will give substantial weight to the local/in-state programming a petitioner proposes to bring to the orphan county

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<sup>68</sup> We will weigh the factors in the same manner in the event of any future cable market modification petition regarding communities within an orphan county. By adding the new statutory factor number three to both new DBS modification processes and existing cable modification processes, Congress made clear that we should do so. *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 17 ("the STELAR added a fifth factor (inserted as the new third statutory factor) for both cable and satellite to 'promote consumers' access to television broadcast station signals that originate in their State of residence.>"). We note, however, that the impact of a market modification may be different in a cable context than in a satellite context, even in situations where the fact patterns are otherwise similar, and this differing impact may lead us to a different result. Although cable operators are not required to carry duplicating stations or more than one local station affiliated with a particular network, if a cable system declines to carry duplicating stations, it must at least carry the station closest to the principal headend of the cable system, even if that station is from another state. *See* 47 CFR § 76.56(b)(5). By contrast, in the satellite carriage context, if two stations are located in the same market but different states and are affiliated with the same network, the satellite carrier must carry both of them. *See* 47 U.S.C. § 338(c)(1); 47 CFR § 76.66(h)(1) (*and see* 47 CFR § 76.66(h)(2)-(3), explaining that if the duplicating stations are both in the same state, the satellite carrier may choose which to carry, regardless of their location). In both the cable and satellite contexts an operator may choose to carry multiple duplicating stations, but is unlikely to do so absent a requirement, due to bandwidth constraints. As a result of these different regimes, a cable market modification could result in the cable system dropping an established station in favor of a new station, but a satellite carrier would either be required to carry both versions of a duplicating station or could choose to carry only the already-established station. Thus, the potential for market disruption of long-established network stations is lower in the satellite context, and we are therefore more likely, even if only marginally more likely, to grant DBS orphan county market modification petitions.

<sup>69</sup> *See Senate Commerce Committee Report* at 15 ("The Committee intends that the FCC's report will interpret local programming to include not only television programming (in particular news, sports, weather, and other programming containing content relevant to a consumer's daily life) originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides."). *See also Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, CSR No. 8926-A, Memorandum Opinion and Order, DA 17-74, para. 27 (MB 2017).

<sup>70</sup> *Id.* at 10418, para. 15.

<sup>71</sup> *See, e.g., Tennessee Broadcasting Partners*, 23 FCC Rcd 3928 (MB 2008). *NB:* like all pre-STELAR market modification cases, *Tennessee* is a cable case, not a DBS case. The most important difference, however, is that Petitioner's case involves an orphan county, not that the markets being modified are satellite rather than cable markets.

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.<sup>72</sup> In particular, as the Commission explained in the *STELAR Market Modification Report and Order*, government official and consumer comments supporting a proposed market modification can be particularly valuable in demonstrating a nexus between the station and the community.<sup>73</sup>

23. Applying this framework to each of the simultaneously-filed KDVR, KCNC, KMGH, and KUSA Petitions, we find that each Station has a significant nexus to La Plata County, primarily demonstrated through the local/in-state programming provided by each Station and the substantial and widespread support of La Plata County residents and government officials for these modifications. We therefore grant the modifications.

### C. KDVR-TV

24. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”<sup>74</sup> We find this factor to be neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context. LIN correctly observes that Petitioner provides no evidence with respect to historic carriage of KDVR in La Plata County.<sup>75</sup> Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”<sup>76</sup> and making no representation with respect to cable carriage.<sup>77</sup> Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

25. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>78</sup> We find that this factor weighs heavily in favor of a grant of the Petition. As explained above, we find that evidence related to distance such as contour maps and “shopping and labor patterns” are not determinative in the consideration of a market modification request involving an orphan county, though they generally must be submitted as part of a market modification

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<sup>72</sup> In contrast, in market modification proceedings that do not involve the addition or deletion of an in-State broadcaster, the Media Bureau has found that the third statutory factor is inapplicable. *See COXCOM, LLC*, 30 FCC Rcd 10978, 10999, para 46 (MB 2015) (“The mere possibility that a cable system might carry in-state programming in place of the deleted station is not sufficient to make use of the in-state enhancement factor.”).

<sup>73</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>74</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>75</sup> *LIN Opposition* at 2.

<sup>76</sup> We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KDVR, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

<sup>77</sup> *KDVR Petition* at 6.

<sup>78</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide “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.” 47 CFR § 76.59(b)(2). A station’s broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).



petition<sup>79</sup> and may enhance a petitioner's case.<sup>80</sup> The LIN Opposition correctly notes that KDVR provides no over-the-air coverage of La Plata County,<sup>81</sup> and Petitioner declined to provide evidence of "shopping and labor patterns" between the county and Denver, KVDR's city of license.<sup>82</sup> LIN suggests that these omissions render support for factor two "either superficial or entirely absent."<sup>83</sup> This, however, is a misreading of the second statutory factor, which is not limited to the narrow presence or absence of over-the-air coverage of the community by the broadcast signal at issue, but requires us to consider the overall "local service to the community" provided by the station.<sup>84</sup>

26. In this case, we find that overall geographic proximity measures do not enhance the Petitioner's case, and we thus consider them neutral. Instead, to determine whether there is a sufficient nexus between KDVR and La Plata County to justify a market modification, we assess whether the programming offered by KDVR meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.<sup>85</sup> In doing so, we are mindful of Congress' intention that "local" programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming "originating from and about" their state.<sup>86</sup> We hold that all programming carried on KDVR and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KDVR.<sup>87</sup> We accordingly find that KDVR carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.<sup>88</sup> We also give substantial weight to the hundreds of comments from residents and their government representatives supporting the Petition.<sup>89</sup> As the Commission noted in the *STELAR Market Modification Report and Order*, "local government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue."<sup>90</sup> These comments show the significance that residents place on Colorado-specific programming, and the specific

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<sup>79</sup> 47 CFR § 76.59(b)(2), (3).

<sup>80</sup> *Supra* para. 22.

<sup>81</sup> *Lin Opposition* at 2, 5.

<sup>82</sup> *KDVR Petition* at 6.

<sup>83</sup> *LIN Opposition* at 1.

<sup>84</sup> This includes, in particular, locally-relevant programming. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

<sup>85</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>86</sup> *Senate Commerce Committee Report* at 11, 15 (explaining that the "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives" and directing the Commission to interpret local programming to include "not only television programming [ . . . ] originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides").

<sup>87</sup> *KDVR Petition* at 6 and Exhibit C.

<sup>88</sup> *See, e.g.,* "New DMV License Rollout" (aired 4/6/16); "Oil Jobs Leaving Colorado" (aired 1/18/16); "Colorado Voters Still Approve Marijuana" (Aired 9/19/16) "Colorado 2016 Ballot Guide" (aired on multiple days and news programs prior to 11/8/2016, and discussing every statewide ballot measure in detail); "CSU Rams Heading to Bowl Game" (Aired 12/28/15).

<sup>89</sup> *See generally* MB Docket no. 16-366 and *KDVR Petition* at Exhibit I.

<sup>90</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

types of coverage they seek (which coverage, as noted immediately above, is available on a regular basis on KDVR).<sup>91</sup>

27. *Access to In-State Stations.* The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>92</sup> We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and therefore that this factor weighs heavily in favor of granting the Petition. This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>93</sup>

28. LIN misunderstands both the purpose and the application of the third statutory factor in saying that “the weight given to the so-called [*sic*] in-state factor is minimized because the Petitioner cannot show that La Plata County residents ‘had little (or no) access’ to programming specifically related to La Plata County.”<sup>94</sup> First, the in-state factor is never “minimized” so long as the station is located in the same state as the local market in question – the Commission was explicit that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”<sup>95</sup> Second, the presence of “programming specifically related to La Plata County” is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”<sup>96</sup> not their *county* of residence.

29. KDVR is a FOX affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,<sup>97</sup> KDVR provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting this petition,<sup>98</sup> La Plata County residents currently have “little (or no) access” to some of the Colorado-specific programming provided by KDVR. As discussed in more detail below, LIN station KRQE has aired some stories relevant to La Plata County residents.<sup>99</sup> LIN does not dispute,

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<sup>91</sup> See, e.g., Robert Winslow Comments (“There were a number of ballot issues in Colorado this year and we were not able to receive news about them since the local network newscasts originate in New Mexico. We would also like to be able to receive current news about our Colorado sports teams - not just the professional ones, but high school and college as well. There are many graduates in our area from the University of Colorado and Colorado State University and other state colleges and they would like to hear coverage of their Alma Maters.”); Malcolm Perkins Comments (“I am a big Colorado sports fan. I try to keep up with the political happenings in my state, not to mention the weather forecasts, entertainment, and news of Colorado. To know more about what goes on in New Mexico than my own state is ludicrous and completely unacceptable.”); Jon Powell and Linda Arndt Comments (“We need access to Denver TV for state-wide news, weather, events, and politics. Currently we receive those items only from Albuquerque NM where we can’t vote”).

<sup>92</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>93</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>94</sup> *LIN Opposition* at 5.

<sup>95</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>96</sup> *Id.* (emphasis added).

<sup>97</sup> *Supra* note 88.

<sup>98</sup> *Supra* note 89.

<sup>99</sup> *Infra* para. 30. LIN appears to argue that its stations’ provision of some locally relevant news and sports programming to La Plata County is, by itself, grounds for denial of the KDVR Petition. See *LIN Opposition* at 4, (continued....)

however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.<sup>100</sup> As discussed above, KDVR offers precisely this type of Colorado-specific public affairs programming.<sup>101</sup>

30. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>102</sup> We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will neither weigh in favor of or against a modification request if another station serves that community.<sup>103</sup> KRQE is an Albuquerque-based broadcast station carrying both CBS and FOX programming on multiple streams. It is the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The LIN Opposition provides evidence that KRQE has aired some stories relevant to La Plata County residents in the past 18 months, though sometimes through a New Mexico-centric lens (e.g., “New Mexico to sue EPA over mine spill,” “Poll names New Mexico railroad best in nation”).<sup>104</sup> The LIN Opposition also states that every regular season Denver Broncos game in the past three years has been carried on KRQE, and has as a result been available to La Plata County viewers.<sup>105</sup> Petitioner does not dispute these claims.<sup>106</sup> Because other stations, including KRQE, provide the county with coverage of local issues and carriage of local sports,

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Section II (entitled “Evidence that LIN’s La Plata County-based stations provide the area with extensive local news, weather, and sports coverage significantly outweighs the paucity of evidence in the petitions and supports denial of the market modification requests.” We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13 (Cable Services Bureau 1997). However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Petition for Modification of the Dayton, OH Designated Market Area with respect to Television Station WHIO-TV, Dayton, OH*, 28 FCC Rcd 16011, 16019 (MB 2013) (“Dayton”). As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

<sup>100</sup> *KDVR Petition* at 4.

<sup>101</sup> *Supra* note 88.

<sup>102</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

<sup>103</sup> See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, para. 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, para. 13 (1997).

<sup>104</sup> *Lin Opposition* at 5-7 (listing 23 stories aired over approximately 18 months that are arguably relevant to La Plata County viewers).

<sup>105</sup> *Id.* at 7.

<sup>106</sup> La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

we find that this factor weighs neither against nor in favor of La Plata County's request to modify KDVR's market, and give it no weight in our consideration of whether to grant the Petition.

31. *Viewing Patterns.* Finally, we 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."<sup>107</sup> This factor also is neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context.<sup>108</sup> The LIN Opposition correctly observes that Petitioner provides no evidence of household viewing patterns. The Petitioner argues that, "given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition."<sup>109</sup> Absent any evidence with respect to viewing patterns, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the KDVR Petition.

32. *Conclusion.* The issue before us is whether to grant Petitioner's request to modify the local satellite carriage market of KDVR—of the Denver DMA—to include Colorado's La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.<sup>110</sup> Section 338(l) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.<sup>111</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>112</sup> We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KDVR and La Plata County. We accordingly grant La Plata's request for market modification, and order the addition of La Plata County to the local market of KDVR on both DISH and DIRECTV.<sup>113</sup>

#### D. KCNC-TV

33. *Historic Carriage.* The first factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community."<sup>114</sup> We find this factor to be neutral in our analysis. As discussed above, we consider this an

<sup>107</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>108</sup> *Supra* para. 22.

<sup>109</sup> *KDVR Petition* at 6.

<sup>110</sup> *KDVR Petition* at 1.

<sup>111</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>112</sup> *Id.*

<sup>113</sup> This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata County to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. See *Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. See, e.g., Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

<sup>114</sup> 47 U.S.C. § 338(l)(2)(B)(i).

enhancement factor in the orphan county context. LIN correctly observes that Petitioner provides no evidence with respect to historic carriage of KCNC in La Plata County.<sup>115</sup> Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”<sup>116</sup> and making no representation with respect to cable carriage.<sup>117</sup> Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

34. *Local Service*. Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>118</sup> We find that this factor weighs heavily in favor of a grant of the Petition. As explained above, we find that evidence related to distance such as contour maps and “shopping and labor patterns” are not determinative in the consideration of a market modification request involving an orphan county, though they generally must be submitted as part of a market modification petition<sup>119</sup> and may enhance a Petitioner’s case.<sup>120</sup> The LIN Opposition correctly notes that KCNC provides no over-the-air coverage of La Plata County,<sup>121</sup> and Petitioner declined to provide evidence of “shopping and labor patterns” between the county and Denver, KVDR’s city of license.<sup>122</sup> LIN suggests that these omissions render support for factor two “either superficial or entirely absent.”<sup>123</sup> This, however, is a misreading of the second statutory factor, which is not limited to the narrow presence or absence of over-the-air coverage of the community by the broadcast signal at issue, but requires us to consider the overall “local service to the community” provided by the station.<sup>124</sup>

35. In this case, we find that overall geographic proximity measures do not enhance the Petitioner’s case, and we thus consider them neutral. Instead, to determine whether there is a sufficient nexus between KCNC and La Plata County to justify a market modification, we assess whether the programming offered by KCNC meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.<sup>125</sup> In doing so, we are mindful of Congress’ intention that “local” programming under this

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<sup>115</sup> *LIN Opposition* at 2.

<sup>116</sup> We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KCNC, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

<sup>117</sup> *KCNC Petition* at 6.

<sup>118</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “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.” 47 CFR § 76.59(b)(2). A station’s broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

<sup>119</sup> 47 CFR § 76.59(b)(2), (3).

<sup>120</sup> *Supra* para. 22.

<sup>121</sup> *Lin Opposition* at 2, 5.

<sup>122</sup> *KCNC Petition* at 6.

<sup>123</sup> *LIN Opposition* at 1.

<sup>124</sup> This includes, in particular, locally-relevant programming. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

<sup>125</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming “originating from and about” their state.<sup>126</sup> We hold that all programming carried on KCNC and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KCNC.<sup>127</sup> We accordingly find that KCNC carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.<sup>128</sup> We also give substantial weight to the hundreds of comments from residents and their government representatives supporting the Petition.<sup>129</sup> As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”<sup>130</sup> These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they seek (which coverage, as noted immediately above, is available on a regular basis on KCNC).<sup>131</sup>

36. *Access to In-State Stations.* The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>132</sup> We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and therefore that this factor weighs heavily in favor of granting the Petition. This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>133</sup>

37. LIN misunderstands both the purpose and the application of the third statutory factor in saying that “the weight given to the so-called [*sic*] in-state factor is minimized because the Petitioner cannot show that La Plata County residents ‘had little (or no) access’ to programming specifically related

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<sup>126</sup> *Senate Commerce Committee Report* at 11, 15 (explaining that the “many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives” and directing the Commission to interpret local programming to include “not only television programming [. . .] originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides”).

<sup>127</sup> *KCNC Petition* at 6 and Exhibit C.

<sup>128</sup> *See, e.g.*, October 20, 2016 story on the first national election in which all Colorado voters could vote by mail; December 9, 2016 story on the uncertain status of several Colorado ballot measures; April 1, 2016 story on a partial end to the Colorado ban on letting a car run without anyone inside to warm it up; July 24, 2015 story on Colorado marijuana legalization leading to CDC warnings about pot edibles.

<sup>129</sup> *See generally* MB Docket no. 16-367 and *KCNC Petition* at Exhibit I.

<sup>130</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>131</sup> *See, e.g.*, Kari Plante Comments (“I do not know what is going on in the state that I live in. It is hard to vote if one does not know who the candidates are.”); Jill Fischer Comments (“How are we expected to be educated voters if the only information we receive comes out of New Mexico! We need Colorado news to know what is going on in our state!”); James Ottman Comments (“We have never seen our Governor on TV, expect [*sic*] when he is on national news.”); Chris Mimmack Comments (“I would like to be able to be educated on the political figures that represent the state of Colorado as well as any law changes or amendments that affect the residents of Colorado.”).

<sup>132</sup> 47 U.S.C. § 338(I)(2)(B)(iii).

<sup>133</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

to La Plata County.”<sup>134</sup> First, the in-state factor is never “minimized” so long as the station is located in the same state as the local market in question – the Commission was explicit that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”<sup>135</sup> Second, the presence of “programming specifically related to La Plata County” is totally unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”<sup>136</sup> not their *county* of residence.

38. KCNC is a CBS owned and operated station licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,<sup>137</sup> KCNC provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting this petition,<sup>138</sup> La Plata County residents currently have “little (or no) access” to some of the Colorado-specific programming provided by KCNC. As discussed in more detail below, LIN station KRQE has aired some stories relevant to La Plata County residents.<sup>139</sup> LIN does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.<sup>140</sup> As discussed above, KCNC offers precisely this type of Colorado-specific public affairs programming.<sup>141</sup>

39. *Other Local Stations*. Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>142</sup> We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will neither weigh in favor of or against a modification request if

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<sup>134</sup> *LIN Opposition* at 5.

<sup>135</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>136</sup> *Id.* (emphasis added).

<sup>137</sup> *Supra* note 128.

<sup>138</sup> *Supra* note 129.

<sup>139</sup> *Infra* para. 39. LIN appears to argue that its stations’ provision of some locally relevant news and sports programming to La Plata County is, by itself, grounds for denial of the KDVR Petition. See *LIN Opposition* at 4, Section II (entitled “Evidence that LIN’s La Plata County-based stations provide the area with extensive local news, weather, and sports coverage significantly outweighs the paucity of evidence in the petitions and supports denial of the market modification requests.” We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

<sup>140</sup> *KCNC Petition* at 4.

<sup>141</sup> *Supra* note 128.

<sup>142</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

another station serves that community.<sup>143</sup> KRQE is an Albuquerque-based broadcast station carrying both CBS and FOX programming on multiple streams. It is the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The LIN Opposition provides evidence that KRQE has aired some stories relevant to La Plata County residents in the past 18 months, though sometimes through a New Mexico-centric lens (e.g., “New Mexico to sue EPA over mine spill,” “Poll names New Mexico railroad best in nation”).<sup>144</sup> The LIN Opposition also states that every regular season Denver Broncos game in the past three years has been carried on KRQE, and has as a result been available to La Plata County viewers.<sup>145</sup> Petitioner does not dispute these claims.<sup>146</sup> Because other stations, including KRQE, provide the county with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County’s request to modify KCNC’s market, and give it no weight in our consideration of whether to grant the Petition.

40. *Viewing Patterns.* Finally, we 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.”<sup>147</sup> This factor also is neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context.<sup>148</sup> The LIN Opposition correctly observes that Petitioner provides no evidence of household viewing patterns. The Petitioner argues that, “given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition.”<sup>149</sup> Absent any evidence with respect to viewing patterns, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the KCNC Petition.

41. *Conclusion.* The issue before us is whether to grant Petitioner’s request to modify the local satellite carriage market of KCNC—of the Denver DMA—to include Colorado’s La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.<sup>150</sup> Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located in their State.<sup>151</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>152</sup> We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no

<sup>143</sup> See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, para. 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, para. 13 (1997).

<sup>144</sup> *Lin Opposition* at 5-7 (listing 23 stories aired over approximately 18 months that are arguably relevant to La Plata County viewers).

<sup>145</sup> *Id.* at 7.

<sup>146</sup> La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

<sup>147</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>148</sup> *Supra* para. 22.

<sup>149</sup> *KCNC Petition* at 6.

<sup>150</sup> *KCNC Petition* at 1.

<sup>151</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>152</sup> *Id.*



weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KCNC and La Plata County. We accordingly grant La Plata's request for market modification, and order the addition of La Plata County to the local market of KCNC on both DISH and DIRECTV.<sup>153</sup>

#### E. KMGH-TV

42. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”<sup>154</sup> We find this factor to be neutral in our analysis. As discussed above, we consider this an enhancement factor in the orphan county context. KOAT/KOB correctly observes that Petitioner provides no evidence with respect to historic carriage of KMGH in La Plata County.<sup>155</sup> Petitioner essentially concedes this point, stating that “there has not been historic carriage of the Station in the County by satellite carriers,”<sup>156</sup> and making no representation with respect to cable carriage.<sup>157</sup> Absent any evidence of historic carriage, and given that this is an enhancement factor in the orphan county context, we give it no weight in our consideration of whether to grant the Petition.

43. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>158</sup> We find that this factor weighs heavily in favor of a grant of the petition. As explained above, distance tests such as contour maps are not determinative in the consideration of a market modification request involving an orphan county, though they may enhance a Petitioner's case.<sup>159</sup> KOAT/KOB notes that KMGH provides no over-the-air coverage of La Plata

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<sup>153</sup> This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. *See Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. *See, e.g.,* Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

<sup>154</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>155</sup> *KOAT/KOB Opposition* at 9. Evidence of historic carriage of KOAT and KOB, however, is irrelevant to our analysis under this factor.

<sup>156</sup> We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KMGH, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

<sup>157</sup> *KMGH Petition* at 6.

<sup>158</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “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.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

<sup>159</sup> *Supra* para. 22.

County<sup>160</sup> and is quite distant from La Plata County geographically,<sup>161</sup> and that Petitioner declined to provide evidence of shopping and labor patterns in the County.<sup>162</sup> Although KOAT/KOB recognizes the importance to our analysis of determining whether KMGH carries programming with a demonstrated nexus to the community,<sup>163</sup> it avers that this nexus can only be demonstrated by “local programming from [KMGH] that is specifically directed to news and issues *in La Plata County*.”<sup>164</sup> As discussed above, this is an overly narrow reading of factor two of our statutory analysis, particularly in the orphan county context.<sup>165</sup> Rather, we must consider all of the “local service to the community” provided by the station, and in doing so we must be mindful of Congress’ intention that “local” programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming “originating from and about” their home state.<sup>166</sup> KOAT/KOB emphasizes a distinction between “*state-related* programming” and “*localized* programming” that simply does not exist in the orphan county context.<sup>167</sup>

44. In this case, we find that overall geographic proximity measures do not enhance the Petitioner’s case, and we thus consider them neutral.<sup>168</sup> Instead, we assess whether the programming offered by KMGH meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.<sup>169</sup> We hold that all programming carried on KMGH and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KMGH.<sup>170</sup> We find that KMGH carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.<sup>171</sup> We also give substantial weight to the hundreds of comments from residents of La Plata County and their government representatives supporting

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<sup>160</sup> *KOAT/KOB Opposition* at 11 (observing that translator coverage is not the same as coverage by the station itself for market modification purposes); see, e.g., *Petition for Reconsideration, Petition of Time Warner Cable for Modification of Market of Television Station WGOT-TV, Merrimack, New Hampshire*, CSR 4917-A, 14 FCC Rcd 12118 at 12119, para. 4 (Cable Services Bureau 1999) (“The Commission has held that translator coverage does not lessen the relevance of the parent station’s failure to place technical signal coverage over the subject communities”).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 11-12 (citing *KMGH Petition* at 6). See also 47 CFR §§ 76.59(2), (3).

<sup>163</sup> *Id.* at 10.

<sup>164</sup> *Id.* at 12 (emphasis added).

<sup>165</sup> *Supra* para. 22.

<sup>166</sup> *Senate Commerce Committee Report* at 11, 15 (explaining that the “many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives” and directing the Commission to interpret local programming to include “not only television programming [. . .] originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides”).

<sup>167</sup> *KOAT/KOB Opposition* at 4 (emphasis in original).

<sup>168</sup> *Supra* para. 22.

<sup>169</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>170</sup> *KMGH Petition* at 6 and Exhibit C.

<sup>171</sup> See, e.g., November 3, 2016 story on a major deployment of Colorado soldiers; November 9, 2016 story on a data breach by the VA involving Colorado veterans; July 1, 2016 story on 25 new statewide laws going into effect that day; April 22, 2016 story on the Republican primary race for Colorado Senate; November 16, 2015 story on Colorado Gov. Hickenlooper welcoming the resettling of Syrian refugees in the state.

the Petition.<sup>172</sup> As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”<sup>173</sup> These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they need (which coverage, as noted immediately above, is available on a regular basis on KMGH).<sup>174</sup>

45. *Access to In-State Stations*. The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>175</sup> We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and that this factor accordingly weighs heavily in favor of granting the Petition. As noted above, this factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>176</sup>

46. KOAT/KOB misapprehends the in-state statutory factor when it argues that “there should be no enhancement for this factor in this case” because “access to in-state Denver Stations” might only give La Plata County residents “certain news programming of statewide interest to all Coloradans in general (including news from the state capitol).”<sup>177</sup> What KOAT/KOB is describing represents the complete fulfillment of Congress’ intent in adopting the new third statutory factor in STELAR.<sup>178</sup> Residents of La Plata County, a quintessential orphan county, have little to no access to programming “of statewide interest to all Coloradans in general (including news from the state capitol),” because all of their broadcast stations originate in New Mexico. Congress saw this as a problem of sufficient significance to justify a change to the entire market modification process, and the Commission was explicit that the in-state connection was so important that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”<sup>179</sup> KOAT/KOB argues that “there is no evidence that [KMGH’s] programming focuses on

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<sup>172</sup> See generally MB Docket no. 16-368 and *KMGH Petition* at Exhibit I.

<sup>173</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>174</sup> See, e.g., Carol Cure Comments (“As a resident of La Plata County, Colorado, I am dismayed that we are unable to access Denver-area/Colorado news, political commentary, public affairs information and sports. ... During the election season this past few months, we were even denied news about our Colorado candidates that could have assisted us in making decisions as voters, and this was deplorable.”); Gail Lovell Comments (“I want to see the news from Denver about issues affecting me. I live in the state of CO and expect to get news about my state.”); Carrie Slifka and Travis Willschau Comments (“We need Colorado news to be aware of government issues, election topics, and so much more.”); Jeannine Angle Dobbins Comments (“We know nothing about the political candidates from Colorado that we are voting for.”).

<sup>175</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>176</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>177</sup> *KOAT/KOB Opposition* at 15.

<sup>178</sup> *Senate Commerce Committee Report* at 11 (“The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a petition filed under the process created by this subsection (as well as a petition filed using the process already in place for cable operators under section 614(h) of the Communications Act, even if granting such modification would pose an economic challenge to various local television broadcast stations.”).

<sup>179</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

responding to local issues, needs and interests—community news, weather, sports, and public affairs—in La Plata.”<sup>180</sup> Such evidence is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”<sup>181</sup> not their *county* of residence. Despite misunderstanding the function of the in-state factor, KOAT/KOB is correct that the “new factor is neither exclusive nor dispositive—rather, it is just one of several statutory factors bearing on the ultimate goal of localism.”<sup>182</sup> The weight given to that factor can be substantial, however, and as the Commission explained in implementing this new statutory factor, “each petition for market modification will turn on the unique facts of the case.”<sup>183</sup>

47. KMGH is an ABC affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,<sup>184</sup> KMGH provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting the Petition,<sup>185</sup> La Plata County residents currently have “little (or no) access” to the types of Colorado-specific programming provided by KMGH. As discussed in more detail below, KOAT and KOB have aired a number of stories relevant to La Plata County residents.<sup>186</sup> KOAT/KOB does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.<sup>187</sup> As discussed above, and as KOAT/KOB acknowledges, KMGH offers precisely this type of Colorado-specific public affairs programming.<sup>188</sup>

48. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>189</sup> We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will weigh neither in favor of nor against a modification request if

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<sup>180</sup> *KOAT/KOB Opposition* at 15.

<sup>181</sup> *Id.* (emphasis added).

<sup>182</sup> *KOAT/KOB Opposition* at ii.

<sup>183</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>184</sup> *Supra* note 171.

<sup>185</sup> *Supra* note 172.

<sup>186</sup> *Infra* para. 48. We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

<sup>187</sup> *KMGH Petition* at 4.

<sup>188</sup> *Supra* note 171; *KOAT/KOB Opposition* at 15.

<sup>189</sup> 47 U.S.C. § 338(1)(2)(B)(iv).

another station serves that community.<sup>190</sup> KOAT and KOB are Albuquerque-based broadcast stations carrying ABC and NBC programming, respectively. They are the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The KOAT/KOB Opposition provides evidence that they have aired dozens of stories relevant to La Plata County residents in the past 18 months (including at least one apparently discussing this very proceeding).<sup>191</sup> Petitioner does not dispute these claims.<sup>192</sup> Because other stations, including KOAT and KOB, provide the County with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County's request to modify KMGH's market, and give it no weight in our consideration of whether to grant the Petition.

49. *Viewing Patterns.* Finally, we 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."<sup>193</sup> As discussed above, we consider this an enhancement factor in the orphan county context.<sup>194</sup> This factor also is neutral in our analysis. KOAT/KOB correctly observes that Petitioner provides no evidence of household viewing patterns.<sup>195</sup> The Petitioner argues that, "given the lack of historical [*sic*] carriage of the Station in the County, Nielsen rating or other audience data would not be helpful in evaluating this Petition."<sup>196</sup> KOAT/KOB has provided Nielsen data showing low (but measurable) ratings for KMGH in La Plata County.<sup>197</sup> We agree with the opposition that these ratings "do not support any enhancement" under this factor.<sup>198</sup> Accordingly, we give this factor no weight in our consideration of whether to grant the KMGH Petition.

50. *Conclusion.* The issue before us is whether to grant Petitioner's request to modify the local satellite carriage market of KMGH—of the Denver DMA—to include Colorado's La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.<sup>199</sup> Section 338(l) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.<sup>200</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>201</sup> We have found that the second and third statutory factors weigh heavily in favor of a grant. We have found that the first and fifth factors do not support grant of the Petition, but are given no

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<sup>190</sup> See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

<sup>191</sup> *KOAT/KOB Opposition* at Exhibit A, Attachments 1-3 and Exhibit B, Attachments 1-2.

<sup>192</sup> La Plata County states that they are "unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County." *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of "concern" and "interest" to the county.

<sup>193</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>194</sup> *Supra* para. 22.

<sup>195</sup> *KOAT/KOB Opposition* at 14.

<sup>196</sup> *KMGH Petition* at 6.

<sup>197</sup> *KOAT/KOB Opposition* at 14, Exhibit E.

<sup>198</sup> *KOAT/KOB Opposition* at 14.

<sup>199</sup> *KMGH Petition* at 1.

<sup>200</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>201</sup> *Id.*

weight because they serve exclusively as enhancement factors in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors two and three that a sufficient market nexus exists between KMGH and La Plata County. We accordingly grant La Plata's request for market modification, and order that La Plata County be added to the local market of KMGH on both DISH and DIRECTV.<sup>202</sup>

#### F. KUSA-TV

51. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”<sup>203</sup> We find that this factor weighs slightly in favor of granting the Petition. As discussed above, we consider this an enhancement factor in the orphan county context. KOAT/KOB argues that Petitioner provides no evidence with respect to historic carriage of KUSA in La Plata County.<sup>204</sup> Petitioner, however, points out that while “there has not been historic carriage of the Station in the County by satellite carriers,”<sup>205</sup> the local cable system does simulcast a daily news program broadcast by KUSA.<sup>206</sup> As noted above, we would expect historic carriage to be uncommon in orphan county situations. And indeed, the historic carriage demonstrated by Petitioner is minimal. Nonetheless, that KUSA has any historic carriage at all is noteworthy evidence of a nexus between the Station and the county.

52. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>207</sup> We find that this factor weighs heavily in favor of a grant of the petition. As explained above, we find that distance tests such as contour maps are not determinative in the consideration of a market modification request involving an orphan county, though they may enhance

<sup>202</sup> This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. *See Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. *See, e.g.,* Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

<sup>203</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>204</sup> *KOAT/KOB Opposition* at 9. Evidence of historic carriage of KOAT and KOB, however, is irrelevant to our analysis under this factor.

<sup>205</sup> We note that the lack of historic satellite carriage will generally be irrelevant in any market modification petition, given that DBS providers are generally authorized to carry broadcast stations only in their local markets. 17 U.S.C. § 119(a)(3) (explaining that there are only narrow circumstances under which a DBS provider may receive a statutory copyright license for the importation of out-of-market (or “distant”) signals). It would have been extremely difficult and unlikely for KUSA, assigned to the Denver DMA, to have obtained satellite carriage in the Albuquerque-Santa Fe DMA prior to the advent of satellite market modification.

<sup>206</sup> *KUSA Petition* at 6.

<sup>207</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to the communities at issue in a market modification petition, parties must provide “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.” 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (Cable Services Bureau 1999).

a Petitioner's case.<sup>208</sup> KOAT/KOB notes that KUSA provides no over-the-air coverage of La Plata County<sup>209</sup> and is quite distant from La Plata County geographically,<sup>210</sup> and that Petitioner declined to provide evidence of shopping and labor patterns in the County.<sup>211</sup> Although KOAT/KOB recognizes the importance to our analysis of determining whether KUSA carries programming with a demonstrated nexus to the community,<sup>212</sup> it avers that this nexus can only be demonstrated by "local programming from [KUSA] that is specifically directed to news and issues in La Plata County."<sup>213</sup> As discussed above, this is an overly narrow reading of factor two of our statutory analysis, particularly in the orphan county context.<sup>214</sup> Rather, we must consider all of the "local service to the community" provided by the station, and in doing so we must be mindful of Congress' intention that "local" programming under this factor should, particularly in the case of orphan counties like La Plata, be interpreted to include all programming "originating from and about" their home state.<sup>215</sup> KOAT/KOB emphasizes a distinction between "state-related programming" and "localized programming" that simply does not exist in the orphan county context.<sup>216</sup>

53. In this case, we find that overall geographic proximity measures do not enhance the Petitioner's case, and we thus consider them neutral.<sup>217</sup> Instead, we assess whether the programming offered by KUSA meets the informational and service needs of the local residents of La Plata County, based both on our review of specific programming and on government and consumer comments.<sup>218</sup> We hold that all programming carried on KUSA and specifically targeted to either the State of Colorado or La Plata County is relevant to our consideration of factor two, including the multiple daily Colorado-produced and Colorado-focused news programs aired by KUSA.<sup>219</sup> We find that KUSA carries a significant amount of local programming of interest to La Plata, particularly Colorado-specific public affairs programming, demonstrating a local connection.<sup>220</sup> We also give substantial weight to the

<sup>208</sup> *Supra* para. 22.

<sup>209</sup> *KOAT/KOB Opposition* at 11 (observing that translator coverage is not the same as coverage by the station itself for market modification purposes); see, e.g., *Petition for Reconsideration, Petition of Time Warner Cable for Modification of Market of Television Station WGOT-TV, Merrimack, New Hampshire*, CSR 4917-A, 14 FCC Rcd 12118 at 12119, para. 4 (Cable Services Bureau 1999) ("The Commission has held that translator coverage does not lessen the relevance of the parent station's failure to place technical signal coverage over the subject communities").

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 11-12 (citing KUSA Petition at 6). See also 47 CFR §§ 76.59(2), (3).

<sup>212</sup> *Id.* at 10.

<sup>213</sup> *Id.* at 12 (emphasis added).

<sup>214</sup> *Supra* para. 22.

<sup>215</sup> *Senate Commerce Committee Report* at 11, 15 (explaining that the "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives" and directing the Commission to interpret local programming to include "not only television programming [. . .] originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides").

<sup>216</sup> *KOAT/KOB Opposition* at 4 (emphasis in original).

<sup>217</sup> *Supra* para. 22.

<sup>218</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>219</sup> *KUSA Petition* at 6 and Exhibit C.

<sup>220</sup> See, e.g., October 12, 2016 coverage of the only televised 2016 Colorado Senate debate, sponsored by KUSA; August 16, 2016 coverage of Colorado marijuana taxes; September 24, 2016 story on wildfire danger throughout Colorado; May 11, 2016 story on passage by Colorado House of grocery store sales bill; March 14, 2016 story on the Colorado Senate race and an upcoming Republican Senate primary debate; November 18, 2015 story on

(continued....)

hundreds of comments from residents of La Plata County and their government representatives supporting the Petition.<sup>221</sup> As the Commission noted in the *STELAR Market Modification Report and Order*, “local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”<sup>222</sup> These comments show the significance that residents place on Colorado-specific programming, and the specific types of coverage they need (which coverage, as noted immediately above, is available on a regular basis on KUSA).<sup>223</sup>

54. *Access to In-State Stations.* The third, post-STELAR factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>224</sup> We find that a market modification would promote La Plata County’s access to an in-state television broadcast signal and enhance viewers’ access to in-state local programming that is otherwise of limited availability, and that this factor accordingly weighs heavily in favor of granting the Petition. As noted above, this factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>225</sup>

55. KOAT/KOB misapprehends the in-state statutory factor when it argues that “there should be no enhancement for this factor in this case” because “access to in-state Denver Stations” might only give La Plata County residents “certain news programming of statewide interest to all Coloradans in general (including news from the state capitol).”<sup>226</sup> What KOAT/KOB is describing represents the complete fulfillment of Congress’ intent in adopting the new third statutory factor in STELAR.<sup>227</sup> Residents of La Plata County, a quintessential orphan county, have little to no access to programming “of statewide interest to all Coloradans in general (including news from the state capitol),” because all of their

(Continued from previous page) \_\_\_\_\_  
potential future Colorado water shortage.

<sup>221</sup> See generally MB Docket no. 16-369 and *KUSA Petition* at Exhibit I.

<sup>222</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10417, n.61.

<sup>223</sup> See, e.g., Gretchen T. Wilson Comments (“As a 40 year resident and educator in La Plata County ... [i]t is challenging to teach our students about state affairs when we can only receive Albuquerque, New Mexico stations.”); Mike and Lois Demming Comments (“We vote in Colorado, pay taxes in Colorado and yet we only see what the elections are doing in New Mexico. We would like to be informed voters. ... We want to see what is going on in our state capital.”); Tom Petit Comments (during the recent election season “all television news we received on political candidates, campaign initiatives, updates, early voter results and final election results came from [New Mexico]... Beyond that there is also important news [we] miss on public safety such as forest fires, flooding, extreme winter storms, drought, virus alerts, crime alerts, Amber Alerts, government updates from Denver, etc. Last we also do not get the updates we deserve on the sports teams that SW Colorado residents follow such as the NFL World Champion Denver Broncos, NBA Denver Nuggets, MLB Denver Rockies, NHL Denver Avalanche as well Colorado colleges, high schools, etc.”); Jeff Weiss and Jocelyn Skill Comments (“We have no visibility into the candidates in our home state”).

<sup>224</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>225</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>226</sup> *KOAT/KOB Opposition* at 15.

<sup>227</sup> *Senate Commerce Committee Report* at 11 (“The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a petition filed under the process created by this subsection (as well as a petition filed using the process already in place for cable operators under Section 614(h)) of the Communications Act, even if granting such modification would pose an economic challenge to various local television broadcast stations.”).



broadcast stations originate in New Mexico. Congress saw this as a problem of sufficient significance to justify a change to the entire market modification process, and the Commission was explicit that the in-state connection was so important that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”<sup>228</sup> KOAT/KOB argues that “there is no evidence that [KUSA’s] programming focuses on responding to local issues, needs and interests—community news, weather, sports, and public affairs—in La Plata.”<sup>229</sup> Such evidence is unnecessary in order for this factor to receive the greatest possible weight, because that weight is applied as a result of the provision of limited availability programming “specifically related to subscribers’ *state* of residence,”<sup>230</sup> not their *county* of residence. Despite misunderstanding the function of the in-state factor, KOAT/KOB is correct that the “new factor is neither exclusive nor dispositive—rather, it is just one of several statutory factors bearing on the ultimate goal of localism.”<sup>231</sup> The weight given to that factor can be substantial, however, and as the Commission explained in implementing this new statutory factor, “each petition for market modification will turn on the unique facts of the case.”<sup>232</sup>

56. KUSA is an NBC affiliate licensed to Denver, Colorado, a community within the same state as La Plata County, Colorado. As discussed above,<sup>233</sup> KUSA provides programming specifically related to Colorado, the state of residence of La Plata County residents. As is made clear from the hundreds of comments supporting the Petition,<sup>234</sup> La Plata County residents currently have “little (or no) access” to the types of Colorado-specific programming provided by KUSA. As discussed in more detail below, KOAT and KOB have aired a number of stories relevant to La Plata County residents.<sup>235</sup> KOAT/KOB does not dispute, however, nor does its proffered evidence refute, the claims by Petitioner and commenters that La Plata County residents lack the opportunity to regularly view state and local political and public affairs coverage specific to the State of Colorado.<sup>236</sup> As discussed above, and as KOAT/KOB acknowledges, KUSA offers precisely this type of Colorado-specific public affairs programming.<sup>237</sup>

57. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage

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<sup>228</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

<sup>229</sup> *KOAT/KOB Opposition* at 15.

<sup>230</sup> *Id.* (emphasis added).

<sup>231</sup> *KOAT/KOB Opposition* at ii.

<sup>232</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

<sup>233</sup> *Supra* note 220.

<sup>234</sup> *Supra* note 221.

<sup>235</sup> *Infra* para. 57. We note that the amount of local service provided by other stations is relevant to our consideration of this factor only to the extent that it allows us to determine the degree of weight to grant it. Local service provided by other stations primarily comes into play in our consideration of factor four, below. We have previously concluded that what is now the fourth factor of market modification assessments, which concerns local programming provided by other stations, was intended to “enhance a station’s [market modification] claim where it could be shown that other stations do not serve the communities at issue.” *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, at para. 13. However, in cases where other stations do serve the communities, “this factor neither weighs against nor in favor of [Petitioner’s] modification request.” *Dayton*, 28 FCC Rcd at 16019. As such, no simple demonstration that other stations offer the community at issue access to local programming can serve as sufficient basis for the rejection of a petition for market modification.

<sup>236</sup> *KMGH Petition* at 4.

<sup>237</sup> *Supra* note 220; *KOAT/KOB Opposition* at 15.

of sporting and other events of interest to the community.”<sup>238</sup> We conclude that this factor is neutral in our analysis. The Commission has held that, in all market modification petitions, the fourth factor may serve to enhance a petitioner’s claim if it is demonstrated that there is no other station serving the community at issue, but that the factor will weigh neither in favor of nor against a modification request if another station serves that community.<sup>239</sup> KOAT and KOB are Albuquerque-based broadcast stations carrying ABC and NBC programming, respectively. They are the primary and in most cases sole source of those networks for cable and satellite television subscribers in La Plata County. The KOAT/KOB Opposition provides evidence that they have aired dozens of stories relevant to La Plata County residents in the past 18 months (including at least one apparently discussing this very proceeding).<sup>240</sup> Petitioner does not dispute these claims.<sup>241</sup> Because other stations, including KOAT and KOB, provide the County with coverage of local issues and carriage of local sports, we find that this factor weighs neither against nor in favor of La Plata County’s request to modify KUSA’s market, and give it no weight in our consideration of whether to grant the Petition.

58. *Viewing Patterns.* Finally, we 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.”<sup>242</sup> As discussed above, we consider this an enhancement factor in the orphan county context.<sup>243</sup> This factor also is neutral in our analysis. KOAT/KOB correctly observes that Petitioner provides no evidence of household viewing patterns.<sup>244</sup> The Petitioner argues that, “given the lack of historical [*sic*] carriage of the Station in the County (other than the limited evening news broadcast [*sic*] on Charter), Nielsen rating or other audience data would not be helpful in evaluating this Petition.”<sup>245</sup> KOAT/KOB has provided Nielsen data showing low (but measurable) ratings for KUSA in La Plata County.<sup>246</sup> We agree with the opposition that these ratings “do not support any enhancement” under this factor.<sup>247</sup> Accordingly, we give this factor no weight in our consideration of whether to grant the KUSA Petition.

59. *Conclusion.* The issue before us is whether to grant Petitioner’s request to modify the local satellite carriage market of KUSA—of the Denver DMA—to include Colorado’s La Plata County, which is currently assigned by Nielsen to the Albuquerque-Santa Fe (New Mexico) DMA.<sup>248</sup> Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located

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<sup>238</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

<sup>239</sup> See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

<sup>240</sup> *KOAT/KOB Opposition* at Exhibit A, Attachments 1-3 and Exhibit B, Attachments 1-2.

<sup>241</sup> La Plata County states that they are “unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.” *Reply to Oppositions* at 11. We note that, with respect to factor four, it is not important that the coverage be provided by an in-state broadcaster, or that the broadcaster in question actually be carried by a satellite provider. What matters is whether any station eligible for satellite carriage into the county provides coverage of matters of “concern” and “interest” to the county.

<sup>242</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>243</sup> *Supra* para. 22.

<sup>244</sup> *KOAT/KOB Opposition* at 14.

<sup>245</sup> *KUSA Petition* at 6.

<sup>246</sup> *KOAT/KOB Opposition* at 14, Exhibit E.

<sup>247</sup> *KOAT/KOB Opposition* at 14.

<sup>248</sup> *KUSA Petition* at 1.

in their State.<sup>249</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>250</sup> We have found that the second and third statutory factors weigh heavily in favor of a grant, and that the first weighs slightly in favor of a grant. We have found that the fifth factor does not support grant of the Petition, but is given no weight because it serves exclusively as an enhancement factor in a petition relating to an orphan county. We have found that the fourth factor is neutral. Overall, we are persuaded by the strength of the evidence supporting factors one, two, and three that a sufficient market nexus exists between KUSA and La Plata County. We accordingly grant La Plata's request for market modification, and order that La Plata County be added to the local market of KUSA on both DISH and DIRECTV.<sup>251</sup>

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<sup>249</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>250</sup> *Id.*

<sup>251</sup> This grant is subject to the limits described in the Technical and Economic Feasibility section, *supra*. We note that, importantly and contrary to the claims made by KOAT/KOB (*KOAT/KOB Opposition* at 1-2, 5, 15), the expansion of this Station's market to include La Plata County neither adds La Plata to the Denver DMA, nor removes it from the Albuquerque-Santa Fe DMA. *See Reply to Oppositions* at 5. It also will not result in the loss of Albuquerque stations' ability to seek DBS carriage into La Plata County. *Supra* note 68 (discussing 47 U.S.C. § 338(c)(1) and 47 CFR § 76.66(h)(1)). Nor will it in any way limit access to existing pay-TV or over-the-air service from the New Mexico stations, the only concern raised by the small number of consumer commenters who did not support the Petitions. *See, e.g.*, Dell Wells Comments (Docket no. 16-366) and Greg Spradling Comments (Docket nos. 16-366, 16-367, 16-368, 16-369). Accordingly, grant of this Petition will only give more choices to viewers in La Plata County.

**IV. ORDERING CLAUSES**

60. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KDVR-TV, Denver, Colorado (Facility ID No. 126), **IS GRANTED**.

61. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KCNC-TV, Denver, Colorado (Facility ID No. 47903), **IS GRANTED**.

62. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KMGH-TV, Denver, Colorado (Facility ID No. 40875), **IS GRANTED**.

63. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 16-366, CSR-8927-A), filed by La Plata County, Colorado with respect to KUSA-TV, Denver, Colorado (Facility ID No. 23074), **IS GRANTED**.

64. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.<sup>252</sup>

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Acting Chief, Media Bureau

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<sup>252</sup> 47 CFR § 0.283.



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

Item #
50

This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.

Staff Contact: Linda Skendzel
Department: Vetrans Services
Person Attending BOC Meeting (REQUIRED):
Short Title of Agenda Item:

Phone Number (Ext): 541-922-6420
Requested Agenda Date: 11/8/2017
Linda Skendzel
Discuss Part time office assistance hire for Veteran Services

This Item Involves: (Check all that apply for this meeting.)
Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Discussion Only
Discussion & Action
Estimated Time: 15 Minutes
Department Report
Other:

N/A For Contracts and Agreements Only
Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No
If Yes, Attach Purchase Pre-Authorization Request if Applicable

Reviewed By:
Linda Skendzel 11/31/2017 Department Head Required for all BOC meetings
Admin. Officer/BOC Office Required for all BOC meetings
County Council Required for all legal documents
Finance Office Required for all contracts; Other items as appropriate.
Human Resources If appropriate

Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests must be received by the Board's office by 5:00 PM on the Thursday prior to the Board of Commissioners Wednesday meeting. This form needs to be completed, including County Counsel and Finance review for all contracts, and submitted to the Board of Commissioners Office by noon on the Monday preceding the Board's Wednesday meeting.

# AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. **TITLE OF AGENDA ITEM:**

Create a new position , approve the job discription , approve the pay range

2. **ISSUES, BACKGROUND, AND DISCUSSION:**

Veteran's Services has received funding. this allows the department to create a support position for Linda. the cost of the position will be completely funded by outside revenue. this will be part time (16 hours per week). I would like to get approval to add this position, approval of the job description and approval of the pay range and budgetary impacts. I would like to begin advertising for this person.

3. **OPTIONS:**

4. **FISCAL IMPACT:**

the budgetary impact would be \$8,299.20

5. **STAFF RECOMMENDATIONS:**

Approval as per above

6. **SUGGESTED ACTION(S) / MOTION(S):**

Motion to create a part time Veteran's Services Assistant position  
Motion to approve the part time Veteran's Services Assistant position job description  
Motion to approve the pay range for the Veteran's Services Assistant position

- Attach additional background documentation as needed.

Routing: Original or copies of signed contract or document should be sent to the following:

<input type="checkbox"/>	Clerk (Original for recording)	<input type="checkbox"/>	Finance Department (Copy for file)
<input type="checkbox"/>	Board of Commissioners (Copy for file)	<input type="checkbox"/>	Department – For distribution
<input type="checkbox"/>	Other _____		



## Human Resources

P.O. Box 788 • Heppner OR 97836  
(541) 676-5620

Karen Wolff  
Human Resources Director  
kwolff@co.morrow.or.us

TO: Morrow County Commissioners

FROM: Karen Wolff, Human Resources Director 

DATE: November 6, 2017

RE: Veteran's Services New Position – Office Assistant

Linda Skendzel, Veteran's Service Officer has asked to add an additional FTE to her department to assist with clerical and routine duties. Veteran's Services has received additional funding, which is expected to continue, that will fund this position.

Linda and I met to review the draft Job Description. It is attached.

Based on the draft Job Description, the JobMeas© matrix system assigned the position to Pay Range 3 on the General Employee wage scale. Step 1 of Pay Range 3 equates to \$13.49 per hour.

At the present time, Linda is requesting a 0.4 FTE, or 16 hours per week. This would be a permanent position.

One of the issues that Linda and I discussed was space requirements. Linda is currently in an office leased from the City of Irrigon. Linda stated that she believes they can work together for the limited number of hours that is proposed. Once the Office Assistant has had some training and is able to work on their own, Linda plans to schedule work hours to coincide with her hours out of the office. The City of Irrigon has also offered some additional work space that could be used on a temporary basis, day to day, as needed. This would not be a space that would be set up for only Veteran's Services, but would be a shared work space. This is one of my biggest concerns with this new position, is the need to work in such tight quarters. Linda has assured me that she is willing to make the effort to work with the person selected to find a working solution.

### Next Steps:

1. Commissioners approve/decline creating the new position and the related Job Description.

If approved, "I move to approve creating a new position of Office Assistant – Veteran's and the Job Description as submitted."

2. If approved, Commissioners assign a wage scale. Based on the JobMeas© matrix, I recommend Pay Range 3 of the General Employee wage scale.

If approved, "I move to assign the Office Assistant – Veteran's to Pay Range 3 of the General Employee wage scale."

3. If approved, direct staff to begin recruitment. No motion necessary.

Once the approvals are in place, Linda will need to work with General Maintenance regarding equipment, such as desk and chair and such. Linda will contact the City of Irrigon regarding an additional key and any building security requirements. Linda will contact IMESD regarding email and computer access. Linda will also work with the State Veteran's Department regarding any needed trainings or clearances.

I will draft a classified advertisement and ask Linda to review it. Once that is complete, we will begin advertising for the position.

Thank you to Linda Skendzel, Veteran's Service Officer for her assistance and diligence in working on this position.





GENERAL SCALE  
2017 - 2018

COLA 3.000%

\$2,120.31

RANGE	POSITION	Hire 0 A	1 year B	1 year C	1 year D	1 year E	1 year F	
1		1	\$2,120	\$2,226	\$2,338	\$2,455	\$2,577	\$2,706
2		2	\$2,226	\$2,338	\$2,455	\$2,577	\$2,706	\$2,841
3		3	\$2,338	\$2,455	\$2,577	\$2,706	\$2,841	\$2,983
4		4	\$2,455	\$2,577	\$2,706	\$2,841	\$2,983	\$3,133
	JC Court Clerk Veterans Service Officer							
5		5	\$2,577	\$2,706	\$2,841	\$2,983	\$3,133	\$3,289
6		6	\$2,706	\$2,841	\$2,983	\$3,133	\$3,289	\$3,454
	Office Assistant Accounting Clerk							
7		7	\$2,841	\$2,983	\$3,133	\$3,289	\$3,454	\$3,626
	A&T Clerk Chief Deputy Clerk Juvenile Director Asst.							
8		8	\$2,983	\$3,133	\$3,289	\$3,454	\$3,626	\$3,808
	Planning Dept. Office Mgr. Office Support Spec. (JV) Appraiser Trainee Court Clerk							
9		9	\$3,133	\$3,289	\$3,454	\$3,626	\$3,808	\$3,998
	A&T Office Specialist Health Dept. Office Mgr. Public Works Office Mgr. Accounting Technician							
10		10	\$3,289	\$3,454	\$3,626	\$3,808	\$3,998	\$4,198
	Legal Secretary							
11		11	\$3,454	\$3,626	\$3,808	\$3,998	\$4,198	\$4,408
	Victims Advocate							
12		12	\$3,626	\$3,808	\$3,998	\$4,198	\$4,408	\$4,628
	Support Enforcement Officer							
13		13	\$3,808	\$3,998	\$4,198	\$4,408	\$4,628	\$4,860
	Appraiser I Tobacco Educator							
14		14	\$3,998	\$4,198	\$4,408	\$4,628	\$4,860	\$5,103
15		15	\$4,198	\$4,408	\$4,628	\$4,860	\$5,103	\$5,358
	Appraiser II Associate Planner							
16		16	\$4,408	\$4,628	\$4,860	\$5,103	\$5,358	\$5,626
	RN							
17		17	\$4,628	\$4,860	\$5,103	\$5,358	\$5,626	\$5,907
18		18	\$4,860	\$5,103	\$5,358	\$5,626	\$5,907	\$6,202
	Lead Appraiser							
19		19	\$5,103	\$5,358	\$5,626	\$5,907	\$6,202	\$6,513

$$\$2,338 \times 12 \text{ months} = \$28,056$$

$$\$28,056 \div 2080 \text{ hrs} = \$13.49 \text{ per hour}$$

## **JOB DESCRIPTION**

**Date Prepared:** September 2017

**Position Title:** Office Assistant (Veteran's) (Draft)

**Department:** Veteran's Services

**Supervisor:** Veteran's Service Officer

**Position Overview:** Under the general supervision of the Veteran's Service Officer (VSO), the Office Assistant is responsible for the administrative duties of the Veteran's Services office. Duties include providing excellent customer service while: screening phone calls, making appointments, assessing veteran and family member's needs, providing general information and resources, and maintaining all office files and records. Practice confidentiality and privacy protocols in accordance with Veteran's Administration policies and HIPAA requirements. Maintain case management database. Maintain social media websites.

**Resources Influenced:**

**Annual Operating Budget:**

**Total Employees in your chain-of-command: 0**

**Reporting Positions:** none

**Working Environment:** The work and responsibilities are performed primarily in the Veteran's Service offices. Occasional lifting is required including boxes of paper. There are some deadlines to meet.

**Qualifications:**

1. Education & Experience - High School graduation or equivalent plus at least one year of experience in an office requiring the use of general office skills and equipment. Additional education may be substituted for experience.
2. Office Skills – Basic to intermediate computer knowledge and skills, basic office practices and procedures.
3. Equipment used - Telephone, calculator, personal computer, printer, copier, fax machine, scanner, automobile.
4. Must have a valid driver license.
5. Ability to multi-task in an occasionally hectic environment
6. Ability to learn and understand the federal and state veterans laws in order to explain basic rules and guidelines.
7. Experience using Microsoft Office Suite to generate correspondence, create documents, and generate reports to track information. Experience with Excel to create forms and generate reports to track data. Ability to learn specific software.

8. Communication skills and the use of tact and diplomacy with diverse or difficult individuals.
9. Works collaboratively in a team setting; willingness to collaborate, share information, and contribute to the team's success as necessary.
10. Use of positive customer service skills for both internal and external customers in answering inquiries or requests for information, explaining procedures, policies, rules and regulations.
11. Ability to organize and maintain files according to federal, state and county standards.
12. Ability to effectively use oral and written communication in the performance of duties and responsibilities.
13. Ability to learn and implement procedures, regulations and requirements with respect to procurement, budget, safety, operations and organization.
14. Must satisfactorily pass a background screening.

### **Essential Job Functions**

#### **Physical:**

1. Ability to push, pull and lift up to 40 pounds (box of paper).
2. Ability to sit for extended periods of time.
3. Ability to word process at 30 wpm.
4. Regular and predictable attendance.
5. Ability to enter and retrieve data from County computers and software.
6. Ability to answer phones and transfer calls if appropriate.
7. Ability to operate an automobile independently.

#### **Mental:**

1. Ability to understand and comprehend written and oral instructions.
2. Ability to read, write and comprehend English.
3. Ability to communicate effectively in both written and verbal form.
4. Ability to perform basic math functions.
5. Ability to comprehend complex issues and commit these issues to writing.
6. Ability to maintain confidentiality of work related information and materials.
7. Ability to maintain confidentiality under HIPAA standards.
8. Ability to greet clients and the public in the office and on the phone in a courteous and professional manner.
9. Ability to work with clients and the public in occasionally stressful situations.
10. Ability to explain Veteran's Services practices and policies to a wide range of audiences, with diplomacy and tact, some of whom may be angry or agitated.
11. Ability to use persuasiveness or assertiveness skills, as well as sensitivity to the point of view of others.
12. Ability to understand medical terminology.

### **Job Duty Outline:**

- I. Manage the office functions and procedures of the Veteran's Services office.
  - A. Provide administrative support for the Veteran's Services Officer.
  - B. Respond to informational inquiries from the public, agencies and organizations.
  - C. Distribute mail.
  - D. Manage the office supplies and materials.
    - 1. Maintain inventory of office supplies and materials.
    - 2. Order supplies and materials as needed.
  - E. Maintain inventory of office equipment.
  - F. Respond to phone, email, and walk-in inquiries from veterans and family members, schedule appointments and/or make proper referrals.
  - G. Stay current on federal and state veterans laws in order to explain basic rules and guidelines to aid in understanding possible eligibility for benefits.
  - H. May assist clients to complete necessary forms to obtain discharge papers, health care claims for VA benefits or explaining procedures to complete forms.
  - I. Provide necessary information to veterans, family members, general public, and VSO in order to address concerns that may arise.
  - J. Submit and sign invoices for the Finance Department for payment.
  - K. Record and compile data on the nature and quantity of inquiries and referrals; review and compile data reports as requested; complete required forms and performs data entry to track client intake and referrals in order to assist the VSO in supporting the veteran community.
  - L. Assist in organizing various events and activities throughout the year; assist in the coordination of various community forums and outreach events.
  - M. Must work well under pressure and with minimal supervision. Proven flexibility and willingness to handle a variety of tasks.
  - N. Utilize exercise planning, problem-solving and conflict resolution skills.
  - M. The listed job duties are not inclusive of all assigned work. Administration reserves the right to assign other duties as needed and necessary.
  
- I. Department Organization
  - A. Communicate with other department employees to effectively and efficiently coordinate work programs.
  - B. Communicate with employees from other departments and agencies in order to coordinate and implement the work program.
  - C. Communicate with members of the general public in order to coordinate work programs and provide appropriate information about county activities.

## Roberta Lutcher

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**From:** Morrow Co Veterans Office  
**Sent:** Monday, November 06, 2017 2:31 PM  
**To:** Roberta Lutcher  
**Subject:** Additional information related to the part time Veterans Services position  
**Attachments:** Quote TC00-68402.pdf; 20171106100125085.pdf

Summary:

Veteran specific case management software, used by all Oregon Veteran Service Officers, Vetraspec- allows 5 months at no charge for an additional temporary staff person to access the software. If we hire a permanent person, the fee will be \$499.00 annually, for each user.

See attached:

IT Dept quote for the wireless access point at accost of \$148.53 I'm awaiting an answer from Jordan re: turnaround time for receipt of the item and installation.

Memo in support of Veterans Services staffing needs and allowing use of additional office space from City of Irrigon, Aaron Palmquist, City Manager.

Thank you,

Linda Skendzel, CVSO  
**Morrow County Veterans Services**  
PO Box 560  
Irrigon OR 97844

541-922-6420

Confidentiality Notice: This email message, including any attachments, is for the sole use of the intended recipient's and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.



**InterMountain ESD**  
**InterMountain Technology**  
**2001 SW Nye Avenue**  
**Pendleton, OR 97801**  
 Phone: (541) 966-3182  
 Fax: (541) 966-3231

<b>Quote Number:</b>	TC00-68402
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Morrow County Gov  Wireless AP for Linda Skendzels Office, Irrigon City Hall
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**Customer:** Account #0000000338  
 Morrow County Government  
 Attn: Karen Wolff  
 100 Court Street  
 Heppner, OR 97836

**Deliver To:** Jordan Standley  
 InterMountain ESD - IT Dept  
 2001 SW Nye Ave  
 Pendleton, OR 97801

Quantity	Description	Unit Price	Extended
1	Access Point, 2.4/5GHz US, Ubiquiti, UAP-AC-PRO, EACH	148.53	148.53
<b>Total</b>			<b>\$ 148.53</b>



A neighborly community providing safe services, developing innovative partnerships, focusing on quality and life giving opportunities.

November 3, 2017

MC Veteran Services Office

RE: Morrow County Veteran Services Space

This brief memo is for the record that the City of Irrigon greatly appreciates all that is provided for Veterans in Morrow County. We are aware of the growing service needs and staffing increase capabilities to meet the need(s). The City has space that can be used should and when the MC VSO is in need of such space for providing various levels of support and service for our veterans.

We look forward to doing all we can regarding this matter.

Sincerely,

Aaron Palmquist  
City Manager  
PO Box 428  
Irrigon, OR 97844  
541-922-3047  
[manager@ci.irrigon.or.us](mailto:manager@ci.irrigon.or.us)



**AGENDA ITEM COVER SHEET**  
 Morrow County Board of Commissioners  
 (Page 1 of 2)

Item #  
*6a*

**This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.**

Staff Contact: Linda Skendzel Phone Number (Ext): 541-922-6420  
 Department: Veterans Services Requested Agenda Date: Nov. 8, 2017  
 Person Attending BOC Meeting (Required): Linda Skendzel  
 Short Title of Agenda Item: Quarterly Report

**This Item Involves:** (Check all that apply for this meeting.)

<input type="checkbox"/> Order or Resolution	<input type="checkbox"/> Appointments
<input type="checkbox"/> Ordinance/Public Hearing:	<input type="checkbox"/> Update on Project/Committee
<input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading	<input type="checkbox"/> Discussion Only
<input type="checkbox"/> Public Comment Anticipated:	<input type="checkbox"/> Discussion & Action
Estimated Time:	Estimated Time:
<input type="checkbox"/> Document Recording Required	<input checked="" type="checkbox"/> Department Report
<input type="checkbox"/> Contract/Agreement	<input type="checkbox"/> Other:

N/A **For Contracts and Agreements Only**

Contractor/Entity:  
 Contractor/Entity Address:  
 Effective Dates – From: Through:  
 Total Contract Amount: Budget Line:  
 Does the contract amount exceed \$5,000?  Yes  No  
 If Yes, Attach Purchase Pre-Authorization Request if Applicable

Reviewed By: *[Signature]* 10/27/17 Department Head Required for all BOC meetings  
DATE

\_\_\_\_\_ Admin. Officer/BOC Office Required for all BOC meetings  
DATE

\_\_\_\_\_ County Counsel Required for all legal documents  
DATE

\_\_\_\_\_ Finance Office Required for all contracts; Other items as appropriate.  
DATE

*[Signature]* 11/6/17 Human Resources If appropriate  
DATE

**Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests, including this completed form and supporting documents, must be received by the Board's office by Noon on the Friday prior to the Board of Commissioners Wednesday meeting. County Counsel and Finance review is required for all contracts.**



**AGENDA ITEM COVER SHEET**  
**Morrow County Board of Commissioners**  
**(Page 2 of 2)**

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1. TITLE OF AGENDA ITEM: Veterans First Quarter Activity Report

2. ISSUES, BACKGROUND, AND DISCUSSION:

3. OPTIONS:

4. FISCAL IMPACT:

5. STAFF RECOMMENDATIONS:

6. SUGGESTED ACTION(S) / MOTION(S):

- Attach additional background documentation as needed.

Routing: Original or copies of signed contract or document should be sent to the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Clerk (Original for recording)         | <input type="checkbox"/> Finance Department (Copy for file) |
| <input type="checkbox"/> Board of Commissioners (Copy for file) | <input type="checkbox"/> Department – For distribution      |
| <input type="checkbox"/> Other _____                            |   |



## MORROW COUNTY VETERANS' SERVICES

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P.O. Box 560  
Irrigon, Oregon 97844  
(541) 922-6420

### First Quarterly Report to BOC 2017

7/1/17 - 9/29/17

The office assisted 14 new veterans this quarter.

6 VA decisions in VetraSpec (1 was deferred, then denied- due to no medical records available/no nexus)

5 Decisions awarding Veterans benefits.

Retroactive payments in the amount of \$20,801.37.

The 5 new monthly benefits translate to annual federal compensation in the amount of \$99,560.04.

2 Additional veterans received increases in monthly benefits.

One resulted in added compensation that began in August, without retro, for \$327.00 per month. The other increase was due to an additional dependent, adding \$340.00 monthly to the award.

Annual total increase for both \$8,437.

The Veterans new monthly compensation total of \$1,998.25= \$23,982.00, and \$1,973.13 amounts to a total of \$23,677.56 annually.

Adding the five decisions and the two increased compensation awards results in seven veterans/families receiving \$147,219.60 in annual compensation benefits. Not taking into account the retroactive amounts.

## COUNTY VETERANS' SERVICES PROGRAM QUARTERLY REPORT OF ACTIVITIES

**Important Submission Instructions**

ODVA Form VS0914 COUNTY VETERANS' SERVICES PROGRAM QUARTERLY REPORT OF ACTIVITIES is used to report the work load and outreach for a county's veterans' services program each quarter. Please submit, along with your report of expenditures, to the address below, fax to 1-503-373-2393, or email to: [CVSO-NSOFunding@ODVA.state.or.us](mailto:CVSO-NSOFunding@ODVA.state.or.us)

**Reports are due NO LATER THAN the last working day of the month following the end of the fiscal quarter.**

Submit to: Oregon Department of Veterans' Affairs Statewide Veteran Services 700 Summer Street NE Salem, Oregon 97301-1285	<input checked="" type="checkbox"/> 1 <sup>st</sup> Quarter (July, August, September) <input type="checkbox"/> 2 <sup>nd</sup> Quarter (October, November, December) <input type="checkbox"/> 3 <sup>rd</sup> Quarter (January, February, March) <input type="checkbox"/> 4 <sup>th</sup> Quarter (April, May, June)
Name of County	Fiscal Year
Morrow	2017 - 2018

### INTERVIEW PROCESS

Interviews are face-to-face interactions with a veteran and/or family member, either in the office or out of the office. These are not requests for information handled by a receptionist or casual conversations held at an outreach event. Enough information must be gathered to document the interaction into VetraSpec.

Total In-Office Interviews	Total Out-of-Office Interviews	Total Interviews for Quarter
67	1	68

### CLAIMS/APPEALS/BENEFIT AWARDS

**Claims information is gathered from VetraSpec reports only, for clients under ODVA Power of Attorney.**

Original USDVA Form 526, 527, or 534 filed this quarter:	16
All other new claims filed this quarter	3
Original USDVA Form 1010EZ filed this quarter:	10
NODs/VA Form 9s filed this quarter:	0
Total Recoveries for Quarter	\$ 20,801.37 retro per VS

### OUTREACH CONDUCTED

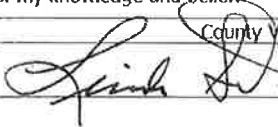
Outreach events are outside normal locations. Time spent in a scheduled satellite office is not counted as outreach. Outreach must be to more than one person. No matter the number of VSOs present, one location equals one event. A home visit is not outreach; it is an out-of-office interview.

The goal of outreach is an eventual increase in subsequent interviews, claims filed, and benefits awarded, as well as connecting that veteran or family member with other beneficial programs in your county.

Location of Event	Other Departments/services Attending	Approximate Number of People Attending
Irrigon, Music in the Park	none	128+

## COUNTY VETERANS' SERVICES PROGRAM QUARTERLY REPORT OF ACTIVITIES

OUTREACH CONDUCTED (continued)		
Location of Event	Other Departments/services Attending	Approximate Number of People Attending
<p>Please list below any non-veteran specific meetings attended. These meetings serve to get veteran information in more subtle ways to other county offices, as well as assist the VSO to become familiar with services available outside the USDVA. Examples are Rotary Club, Lions Club, Elks Club, or County Transportation Boards.</p>		
<p>GSH Healthy Communities, Local Public Safety Committee Meeting, Local Community Action Council, Board of Commissioners, Heppner Chamber of Commerce, Special Transportation Committee meeting, <i>Project</i></p>		
<p><i>Community Connect - Umatilla/Morrow Stand Down - Planning meeting</i></p>		
<p>Please list below any Conferences or Training events attended.</p>		
<p>Eastern Oregon Region, one day training- Wallowa County. TMS online courses. Pension Management Training, The Dalles.</p>		

CERTIFICATION AND SIGNATURE	
<p>This report is submitted to qualify for funds available from the Oregon Department of Veterans' Affairs and is certified to be true and correct to the best of my knowledge and belief.</p>	
<p>County Veterans' Service Officer Signature</p> 	<p>Date Signed</p> <p style="text-align: center;">October 3, 2017</p>



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

Item #
6b

This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.

Staff Contact: Carla McLane
Department: Planning
Person Attending: Carla McLane
Short Title of Agenda Item: Planning Update

Phone Number (Ext): 541-922-4624 or 5505
Requested Agenda Date: November 8, 2017

This Item Involves: (Check all that apply for this meeting.)
Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Discussion Only
Discussion & Action
Estimated Time:
Department Report
Other:

N/A For Contracts and Agreements Only
Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No
If Yes, Attach Purchase Pre-Authorization Request if Applicable

Reviewed By:
Carla McLane 11/6/17 Department Head Required for all BOC meetings
Admin. Officer/BOC Office Required for all BOC meetings
County Counsel Required for all legal documents
Finance Office Required for all contracts; Other items as appropriate.
Human Resources If appropriate

Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests, including this completed form and supporting documents, must be received by the Board's office by Noon on the Friday prior to the Board of Commissioners Wednesday meeting. County Counsel and Finance review is required for all contracts.

**AGENDA ITEM COVER SHEET**  
**Morrow County Board of Commissioners**  
**(Page 2 of 2)**

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1. TITLE OF AGENDA ITEM: Planning Update.

2. ISSUES, BACKGROUND, AND DISCUSSION:

- Clarification of Road Names: Columbia Lane and Columbia Avenue.
- Natural Hazards Mitigation Plan Advisory Committee – Proposed Wildfire Response Exercise.
- Columbia River Heritage Trail Stakeholders Reengagement.
- Zoning Ordinance proposed amendment: Article 4 and 5 Update – Splitting road information apart from other aspects and adding rural addressing, road naming and road vacations to the Zoning Ordinance.

3. OPTIONS:

4. FISCAL IMPACT:

5. STAFF RECOMMENDATIONS:

- Forward the proposed Order to your Consent Agenda within the next couple of weeks.
- Support the proposed wildfire response exercise.
- Support the reengagement efforts around the Columbia River Heritage Trail.
- Support the proposed Article 4 and 5 Update

6. SUGGESTED ACTION(S) / MOTION(S):

- By consensus place the proposed Order on a future Consent Agenda.
- By consensus support the proposed wildfire response exercise.
- By consensus support the reengagement of the Columbia River Heritage Trail.
- By consensus support the proposed Article 4 and 5 Update.

- Attached is the following:

- Road Name Change Clarification memorandum with attached map and proposed Order.

Routing: Original or copies of signed contract or document should be sent to the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Clerk (Original for recording)         | <input type="checkbox"/> Finance Department (Copy for file) |
| <input type="checkbox"/> Board of Commissioners (Copy for file) | <input type="checkbox"/> Department – For distribution      |
| <input type="checkbox"/> Other _____                            |   |



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

### MEMORANDUM

To: Board of Commissioners  
Cc: Public Works; County Clerk; Assessor's Office; Sheriff's Office; Arron Palmquist, City of Irrigon; Barry Beyler, City of Boardman; Marc Rogelsted, Boardman Rural Fire Protection District; Larry Burns, Irrigon Rural Fire Protection District; Lana Eckman, Irrigon Postmaster; Deborah Coffman, Boardman Postmaster.  
From: Carla McLane, Planning Director  
Date: November 06, 2017  
RE: Road name inconsistencies on Columbia Avenue and Columbia Lane

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It has been brought to the attention of Planning staff that there are naming inconsistencies along Columbia Avenue and Columbia Lane. These inconsistencies concern predirection and street suffixes along Columbia Lane from Irrigon City Limits to Patterson Ferry Road, and Columbia Avenue from west of the wildlife refuge to Boardman City Limits.

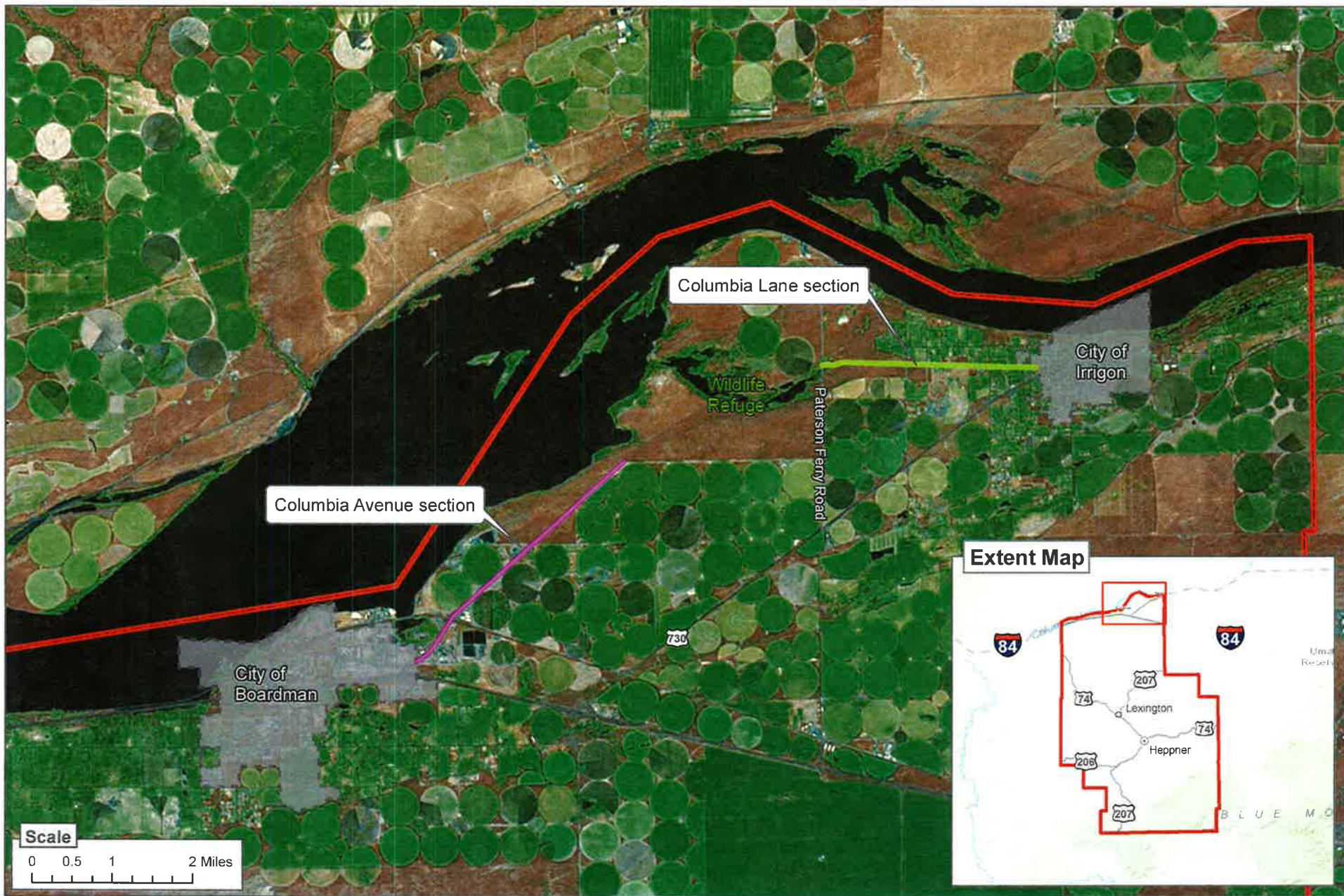
After investigating addressing practices and seeking some historical reference it appears that distinctions need to be made between the two sections of the old highway currently referred to, inconsistently, as either Columbia Lane or Columbia Avenue. It is the intention of Planning staff based on our research to have the Morrow County Board of Commissioners consider an Order containing the following recommendations to rectify these addressing inconsistencies:

- Clarify that the portion of Columbia from Patterson Ferry Road east to the Irrigon city limits be named Columbia Lane.
- Clarify that the portion of Columbia from Boardman city limits east to the wildlife refuge as Columbia Avenue.
- Clarify that no portion of Columbia Lane or Columbia Avenue within unincorporated Morrow County contain predirections, e.g., west or east.

The intention of this Order would be to ensure consistency with the prefixes addressed by Morrow County in accompaniment to the prefixes issued by the cities of Boardman and Irrigon along their respective sides of Columbia Avenue and Columbia Lane. This Order will allow us to make these corrections in county records and prevent any future addressing conflicts as well as give our customers reliable addressing information.

The attached map shows which portions of Columbia will be named Lane or Avenue. Please contact Stephen Wrecsics at 541.922.4624 or via email at [swrecsics@co.morrow.or.us](mailto:swrecsics@co.morrow.or.us) if you have any questions.

Attachments: Columbia Lane/Avenue Area Map  
Proposed Order



**Columbia Lane/Avenue Area Map**

**Legend**

	City Limits		Columbia Lane		Morrow County Boundary
	Taxlots		Columbia Avenue		

Cartography By: Stephen Wrecsics  
 Morrow County Planning Department  
 Date Saved: 11/1/2017 11:18:46 AM  
 Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601  
 Projection: Lambert Conformal Conic  
 Datum: North American 1983 HARN  
Source Layer/Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, Geobase, IGN, Kagame, NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, Mapbox, © OpenStreetMap contributors, and the GIS User Community. Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community.



**BEFORE THE BOARD OF COMMISSIONERS  
FOR MORROW COUNTY, OREGON**

IN THE MATTER OF CORRECTING        )  
ROAD NAME INCONSISTENCIES        )  
ALONG COLUMBIA AVENUE AND        )  
COLUMBIA LANE.                        )

Order Number \_\_\_\_\_

The matter coming before the Morrow County Board of Commissioners, sitting as the governing body for Morrow County, Oregon, during its regularly scheduled business meeting on November 08, 2017; and

**WHEREAS**, the County Court adopted Ordinance MC-C-3-92 on May 13, 1992, titled the “Road Naming and Rural Addressing Procedures Ordinance” which established the policy by which the names of roads in Morrow County are determined and established the procedures to name such roads; and

**WHEREAS**, the County Court adopted Ordinance MC-C-9-96 on August 7, 1996, titled the “Rural Road Naming Ordinance” which adopted the list of approved roads within Morrow County and their names; and

**WHEREAS**, it was brought to the attention of Planning staff that naming inconsistencies exist along Columbia Avenue and Columbia Lane. These inconsistencies concern predirection and street suffixes along Columbia Avenue from west of the wildlife refuge to Boardman city limits, and Columbia Lane from Irrigon city limits to Patterson Ferry Road; and

**WHEREAS**, during research of addressing practices and seeking some historical reference it appears that distinctions need to be made between the two sections of the old highway currently referred to, inconsistently, as either Columbia Avenue or Columbia Lane; and

**NOW THEREFORE BE IT ORDERED**

- That the portion of Columbia from Patterson Ferry Road east to the Irrigon city limits be named Columbia Lane.
- That the portion of Columbia from Boardman city limits east to the wildlife refuge be named Columbia Avenue.
- That no portion of Columbia Lane or Columbia Avenue within unincorporated Morrow County contain predirections, e.g., west or east.

**ADOPTED BY THE MORROW COUNTY BOARD OF COMMISSIONERS THIS 29th DAY OF NOVEMBER 2017.**

**BOARD OF COMMISSIONERS OF  
MORROW COUNTY, OREGON**

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Melissa Lindsay, Chair

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Don Russell, Commissioner

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Jim Doherty, Commissioner

Attest:

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Bobbi Childers, County Clerk

Approve as to Form:

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Morrow County Counsel

# Heppner Gazette-Times

188 Willow PO Box 337  
Heppner, OR 97836  
541-676-9228

Dear Commissioners:

This letter is regarding a decision by the Commission to hold Business Meetings in addition to Board of Commissioner's meetings. I have three questions I would request the commissioners address.

1. In your minutes of October 11, 2017, it was stated that "The purpose of the public Business Meetings is to allow for a less formal exchange of information with no specific agenda topics listed." Could you please define exactly what is a "less formal" meeting, and why the Commission finds it necessary to hold them, and not just address the topics during the regular meeting?
2. In those same minutes it was noted that there will be no agenda made available to the public prior to the meetings. My reading of the State of Oregon Public Meetings law (see below) says that every meeting requires the public body to provide notice which includes "a list of the principal subjects anticipated to be considered at the meeting." I understand there will be no voting at the Business Meetings, however the Public Meetings law does not say a list of the principal subjects anticipated to be voted on, but "considered". Is the Commission saying the Business Meetings are exempt from this requirement, and if so why?
3. Please explain how holding these "less formal" meetings will benefit the citizens of Morrow County?

**192.640 Public notice required; special notice for executive sessions, special or emergency meetings.** (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

Thank you for your consideration  
Sincerely



David Sykes  
Publisher