

STELAR¹ MARKET MODIFICATION

Overview of Process for Requesting FCC to Modify a Broadcast Station’s Local Television Market for Cable or Satellite Carriage Purposes²

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?

¹ 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.).

² 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.³ 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

³ These factors are set forth in Sections 338(l)(2)(B) and 614(h)(1)(C) of the Communications Act of 1934, as amended (the “Act”); 47 U.S.C. § 338(l)(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 maps⁴ 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;⁵
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;

⁴ 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.

⁵ 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, 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/>.⁶ 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.

⁶ 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 Rcd 17150 (MB 2011); 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 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)⁷ adopting the new rules is available on the Commission's website at 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, of the Media Bureau, Policy Division, (202) 418-7142.

⁷ *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).