

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

In the Matter of:)	
)	
Telemundo Group, Inc.)	CSR-5931-M
)	
v.)	
)	
EchoStar Communications Corporation)	
)	
Request for Mandatory Carriage of)	
Television Stations WNJU(TV), Linden, NJ;)	
KVEA(TV), Corona, CA; KWHY-TV, Los)	
Angeles, CA; WSNS-TV, Chicago, IL;)	
KSTS(TV), San Jose, CA; KXTX-TV, Dallas, TX;)	
KTMD(TV), Galveston, TX; KVDA(TV), San)	
Antonio, TX; and KMAS-TV, Steamboat Springs,)	
CO)	

MEMORANDUM ORDER AND OPINION

Adopted: November 8, 2002

Released: November 12, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Telemundo Group, Inc, on behalf of its subsidiaries which are the licensees of the above-captioned commercial television stations (the “Stations”), filed a must carry complaint¹ with the Commission to require EchoStar Communications Corporation (“EchoStar”) to carry the Stations’ signals on EchoStar’s satellite system in a non-discriminatory fashion, pursuant to Section 338 of the Communications Act of 1934, as amended (the “Act”), and Section 76.66 of the Commission’s rules.² The Stations indicate that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in the relevant designated market areas (“DMAs”), where the Stations operate and that the Stations elected must carry status for the 2002-06 election cycle.³ The Stations allege that EchoStar failed to meet its must carry obligations under the Commission’s satellite broadcast signal carriage rules by placing the Stations on facilities other than EchoStar’s main continental United States (“CONUS”) satellites. EchoStar carries most local stations, including local network affiliates, on its CONUS satellites, allowing these signals to be received through subscribers’ existing receive dishes.

¹ Must carry complaints are treated as Petitions for Special Relief under Section 76.7 of our rules. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

² 47 C.F.R. § 76.66.

³ *See* 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides “local-into-local” satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

Even though the Stations are in the same markets as these affiliates, EchoStar carries the Stations on its “wing” satellites. EchoStar’s wing satellites, which are located at 61.5° W.L. and 148° W.L., do not provide CONUS service and cannot be received by CONUS satellite dish antennas. As a result, EchoStar subscribers who wish to receive the Stations must obtain a second receive dish. The Stations submit that EchoStar’s two dish carriage plan negatively impacts upon “independent broadcast television stations, particularly television stations targeted to a Latino audience,” that are carried on the carrier’s wing satellites.⁴ The Stations ask that the Commission either order EchoStar to carry their signals from the same satellite location as other broadcast stations in their respective markets, or otherwise require the nondiscriminatory carriage of the Stations. EchoStar filed an opposition to the complaint and the Stations filed a reply.

II. DISCUSSION

2. In our *Declaratory Ruling and Order*, we found that EchoStar’s two-dish plan as implemented violated the carrier’s broadcast signal carriage requirements under the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”).⁵ Specifically, we held that EchoStar’s two-dish plan violated the prohibitions contained in Section 338(d) of SHVIA and Section 76.66(i) of the Commission’s rules, which prohibits discrimination in price, channel positioning, and on-screen program guide and menu treatment. The *Declaratory Ruling and Order* concluded that EchoStar was required to remedy the unlawful discrimination⁶ and outlined potential avenues for doing so.⁷ EchoStar was also required to submit a series of Compliance Reports at 30, 90 and 150 day intervals following release of the *Declaratory Ruling and Order* describing the specific remedial actions taken.⁸ EchoStar timely filed its compliance reports, which are under review.

3. In the *Entravision Holdings, LLC* case, eleven stations filed similar must carry complaints challenging the same discriminatory conduct cited in the *Declaratory Ruling and Order*.⁹ We found that such discriminatory conduct violated Section 338(d) of the Act and Section 76.66(i) of the Commission’s rules and required EchoStar to formulate a specific compliance plan for the eleven stations along the lines of the nationwide plan required by the *Declaratory Ruling and Order*.¹⁰ The Stations filed the instant must carry complaint following release of the *Declaratory Ruling and Order* while EchoStar

⁴ Reply at 2.

⁵ See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (2002) (“*Declaratory Ruling and Order*”), *petitions for reconsideration and applications for review pending*.

⁶ *Declaratory Ruling and Order*, 17 FCC Rcd at 6081-84 (describing requirement to remedy all forms of discrimination found: discrimination in terms of price; discriminatory access to stations on the on-screen program guide and menu; and failure to offer stations on contiguous channels).

⁷ See, e.g., *id.* at 6082 (must make immediate and direct communication with any affected subscribers who need additional equipment, and automatically provide free second antenna to new subscribers); 6082-83 (on-screen program guide and menu must present a complete list of all local channels in nondiscriminatory manner and subscriber’s tuner must provide access to every local channel). See also *id.* at 6082 (consolidating all local stations in a market from the same satellite location would remedy need for additional equipment and, thereby, remedy unlawful discriminatory conduct).

⁸ EchoStar filed its 30 day compliance report on May 6, 2002 (“*30 Day Compliance Report*”), its 90 day compliance report on July 3, 2002, and its 150 day compliance report on September 2, 2002.

⁹ *Entravision Holdings, LLC*, 17 FCC Rcd 7016 (2002) (finding that EchoStar’s two-dish plan as implemented violated the prohibitions against discrimination in price, channel positioning and on-screen program guide and menu treatment contained in Section 338(d) of the Act and Section 76.66(i) of the Commission’s rules).

¹⁰ *Id.* at 7018.

was in the midst of establishing its nationwide compliance plan. The Stations allege that EchoStar's compliance efforts as reported in its *30 Day Compliance Report* fail to meet the requirements of the *Declaratory Ruling and Order* because they do not include the consolidation of all broadcast stations in a particular market on the same satellite system.¹¹ The Stations suggest that the remedial provisions of the *Declaratory Ruling and Order* should have mandated a one-dish carriage system for local television stations.¹² At the same time, the Stations concede that "it might be possible for EchoStar to implement a two-dish plan that does not have a discriminatory effect."¹³

4. In the *Declaratory Ruling and Order*, we required EchoStar to craft a compliance plan to rectify the underlying unlawful discrimination.¹⁴ We proposed several approaches that EchoStar could take and recognized that EchoStar could formulate "various ways [to] remedy the situation."¹⁵ Although we suggested that EchoStar could take actions that result in subscribers having access to all local stations in their market without the need for additional equipment, we afforded EchoStar the ability to select the specific approaches to be used in its compliance plan, so long as it eliminated the discriminatory conduct.¹⁶ In so doing, we expressly declined to decide whether requiring additional equipment to view some but not all local stations in a market is *per se* discriminatory.¹⁷ On this basis, we are unable to conclude that EchoStar's failure to consolidate onto a single dish all local stations in the markets where the Stations operate demonstrates a failure to comply with the *Declaratory Ruling and Order*. To the extent that the Stations' complaint seeks a remedy inconsistent with our *Declaratory Ruling and Order*, we therefore have no basis upon which to grant such relief. The other issues raised by the Stations in the Petition were previously addressed in the *Declaratory Ruling and Order*.¹⁸ Thus, to the extent that the Stations' complaint is in reality a petition for reconsideration of the *Declaratory Ruling and Order*, it is late-filed and is dismissed.

5. This conclusion should not be interpreted as a review or approval of EchoStar's compliance efforts thus far with respect to the *Declaratory Ruling and Order*, nor as an indication of the outcome of the pending petitions for reconsideration and applications for review of that item. To the extent that EchoStar's compliance record is found to be insufficient, any further remedial action mandated by the Commission would apply to EchoStar's local-into-local operations nationwide, including carriage of the Stations in the relevant DMAs. The Commission's resolution of the pending petitions for reconsideration and applications for review of the *Declaratory Ruling and Order* shall have similar nationwide effect.

¹¹ Complaint at 6.

¹² *Id.* at 6-7.

¹³ Reply at 3.

¹⁴ *Declaratory Ruling and Order*, 17 FCC Rcd at 6081-84.

¹⁵ *Id.* at 6081.

¹⁶ *Id.* at 6082.

¹⁷ *Id.* at 6066 n.5, 6082 n.111.

¹⁸ See Petition at 6-7; Reply at 10 (citing reports of second dish reception problems raised in application for review of *Declaratory Ruling and Order* filed by Univision Communications, Inc.); *Declaratory Ruling and Order*, 17 FCC Rcd at 6071 n.42.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. §§ 76.66, that the must carry complaint filed by Telemundo Group, Inc. **IS DISMISSED**.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau