

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

In the Matter of: )
Entravision Holdings, LLC ) CSR-6011-M
v. )
EchoStar Communications Corporation )
Request for Mandatory Carriage of )
Television Station WJAL(TV), Hagerstown, MD )

MEMORANDUM ORDER AND OPINION

Adopted: February 19, 2003

Released: February 21, 2003

By the Deputy Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Entravision Holdings, LLC, licensee of commercial television station WJAL, Hagerstown, Maryland (the "Station" or "WJAL"), filed a must carry complaint with the Commission to require EchoStar Communications Corporation ("EchoStar") to carry the Station's signal 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. The Station indicates that EchoStar is providing "local-into-local" satellite service pursuant to the statutory copyright license in the Washington, DC/Hagerstown, MD designated market area ("DMA") where the Station operates and that the Station elected must carry status for the 2002-06 election cycle.

2. The Station alleges that EchoStar failed to meet its must carry obligations under the Commission's satellite broadcast signal carriage rules by placing the Station 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. Even though it is in the same market as these affiliates, EchoStar carries the Station on one of its "wing" satellites. As a result, EchoStar subscribers who wish to receive the Station must obtain a second receive dish. The Station asks that the Commission either order EchoStar to carry its signal from the same satellite location as other broadcast stations in its market, or

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).

otherwise require the nondiscriminatory carriage of the Station. EchoStar filed an opposition to the complaint and the Station filed a reply.

## II. DISCUSSION

3. In a recent *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 (the "SHVIA").<sup>4</sup> Specifically, we held that EchoStar's two-dish plan violates the prohibitions contained in Section 338(d) of the Act and Section 76.66(i) of the Commission's rules against discrimination in price, channel positioning, and on-screen program guide and menu treatment. The *Declaratory Ruling and Order* concluded that EchoStar must remedy each instance of unlawful discrimination specified<sup>5</sup> and outlined appropriate remedial actions.<sup>6</sup> Consistent with the *Declaratory Ruling and Order*, EchoStar could take the steps outlined and/or other actions provided that it ends the unlawful discrimination. 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* that described the specific remedial actions taken.<sup>7</sup> EchoStar timely filed its compliance reports, which are under review by the Commission.

4. In an earlier *Entravision Holdings, LLC* case, eleven stations filed similar must carry complaints challenging the same discriminatory conduct cited in the *Declaratory Ruling and Order*.<sup>8</sup> 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*.<sup>9</sup> WJAL filed the instant must carry complaint following release of the *Declaratory Ruling and Order* while EchoStar was in the midst of establishing its nationwide compliance plan. The Station does not allege that EchoStar's compliance efforts fail to meet the requirements of the *Declaratory Ruling and Order*. Rather, the Station suggests that the remedial provisions of the *Declaratory Ruling and Order* should have mandated a one-dish carriage system for local television stations.<sup>10</sup> WJAL's complaint raises no new issues other than those already considered and addressed in the *Declaratory Ruling and Order*. To the extent that WJAL's complaint seeks a remedy inconsistent with our *Declaratory Ruling and Order*, we have no basis on

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<sup>4</sup> 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.

<sup>5</sup> *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).

<sup>6</sup> 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).

<sup>7</sup> EchoStar filed its 30 day compliance report on May 6, 2002, its 90 day compliance report on July 3, 2002, and its 150 day compliance report on September 2, 2002.

<sup>8</sup> *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).

<sup>9</sup> *Id.* at 7018.

<sup>10</sup> Complaint at 2; Reply at 3.

which to grant such relief. To the extent that WJAL's complaint is in reality a petition for reconsideration of the *Declaratory Ruling and Order*, it is late-filed and is dismissed.<sup>11</sup>

5. This action should not be seen as a review or approval of EchoStar's compliance efforts 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 Station in the Washington DMA. The Commission's resolution of the pending petitions for reconsideration and applications for review of the *Declaratory Ruling* shall have similar nationwide effect.

### 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 Entravision Holdings, LLC **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

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<sup>11</sup> EchoStar also alleges that the Station's complaint is late-filed pursuant to Section 76.66(m)(6) of the Commission's rules, under which the "Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request." 47 C.F.R. § 76.66(m)(6). In light of our resolution herein, we need not address this procedural issue.