

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

In the Matter of)	
)	
Raul & Consuelo Palazuelos)	
)	CSR-6303-M
v.)	
)	
EchoStar Communications Corporation)	
)	
Request for Mandatory Carriage of Television)	
Station KTAS-TV, San Luis Obispo, California)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 2004

Released: June 29, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Raul and Consuelo Palazuelos, licensees of television broadcast station KTAS-TV, San Luis Obispo, California (“KTAS”) have filed a complaint against EchoStar Communications Corporation (“EchoStar”) pursuant to Section 338 of the Communications Act, as amended, and Section 76.66 of the Commission’s rules.¹ The complaint is based on EchoStar’s refusal to carry the station’s signals on its satellite system. The complaint alleges that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in the Santa Barbara, Santa Maria, San Luis Obispo, California (“Santa Barbara”) DMA.² The complaint further alleges that the satellite carrier has failed to meet its carriage obligations under the Commission’s satellite broadcast signal carriage rules.³ EchoStar filed an Opposition,⁴ KTAS filed a Reply, and EchoStar filed a Motion to Partially Strike the Reply. For the reasons discussed below, we deny the complaint.

¹ 47 U.S.C. § 338; 47 C.F.R. § 76.66.

² See 17 U.S.C. § 122(a); 47 U.S.C. § 338. 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).

³ Under Section 76.66(m)(3) of the Commission’s rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its carriage obligations may obtain review of such denial or response by filing a “complaint” with the Commission in accordance with Section 76.7. See 47 C.F.R. § 76.66(m)(3). Although styled a “complaint”, a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission’s pleading requirements. See *1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999). Responsive pleadings filed in this context, therefore, must comply with the requirements set forth in Section 76.7(b)(1).

⁴ Contrary to KTAS’s contention, EchoStar’s Opposition was timely because it was filed on March 18, 2004, within 20 days of the public notice of the complaint. See Report No. 0098 (February 27, 2004).

II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),⁵ required satellite carriers, beginning January 1, 2002, to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.⁶ A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.⁷ In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.⁸

3. Under the Commission's broadcast signal carriage rules, each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA.⁹ In DMAs where a satellite carrier launches new local-into-local service, the carrier must notify local television stations in writing of its intent to provide such service at least 60 days in advance and identify the location of its local receive facility.¹⁰ Upon receipt of this notice, local television stations must request carriage within 30 days.¹¹ If a satellite carrier denies a local station's carriage request, it must notify the station within 30 days of its receipt of the carriage request.¹² Otherwise, local television stations must be carried by the later of 90 days from the satellite carrier's receipt of the station's election request or upon commencing local-into-local service in the new television market.¹³

III. FACTUAL BACKGROUND

4. On June 21, 2001, KTAS spontaneously sent a letter to EchoStar stating that it was electing mandatory carriage of its analog television signal on EchoStar's system for the Santa Barbara

⁵ See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

⁶ See 47 U.S.C. § 338.

⁷ A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. See 17 U.S.C. § 122(j)(2)(A)-(C); see also *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Must Carry Report & Order"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and [i]n the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) [i]n the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

⁸ See generally *DBS Must Carry Report & Order*, 16 FCC Rcd at 1918. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("DBS Must Carry Reconsideration Order").

⁹ See 47 C.F.R. § 76.66.

¹⁰ See 47 C.F.R. § 76.66(d)(2); see also *DBS Must Carry Report & Order*, 16 FCC Rcd at 1933.

¹¹ See 47 C.F.R. § 76.66(d)(2).

¹² *Id.*

¹³ See 47 C.F.R. § 76.66(d)(2)(iii); see also *DBS Must Carry Reconsideration Order*, 16 FCC Rcd at 16577.

DMA.¹⁴ EchoStar did not respond to this letter.¹⁵ On August 29, 2003, EchoStar sent a letter to all stations in the Santa Barbara DMA, including KTAS, announcing its intent to begin providing local broadcast stations in the market.¹⁶ KTAS did not respond to EchoStar's announcement of intent.¹⁷ EchoStar began providing local service in the market on November 6, 2003 and when KTAS was not carried, it sent a carriage demand letter to EchoStar on November 24, 2003.¹⁸ EchoStar denied carriage¹⁹ and KTAS filed this complaint.²⁰ In its Reply, KTAS asserts that prior to EchoStar's August 2003 notice of intent, a station employee asked an unidentified EchoStar representative if the station had to take any further action to ensure carriage and was told that it did not.²¹

IV. DISCUSSION

5. The issue here is whether KTAS's June 2001 election was effective as a response to EchoStar's 2003 notice of intent to provide local service in order to perfect the station's rights to carriage on EchoStar's system.²² We find that it was not. The Commission's rules in this regard are crafted to require a series of notifications and responses that are triggered by a satellite carrier's decision to begin service to a specific market. Allowing some stations to secure carriage rights before any intent to serve is announced would circumvent the intent of the rules which is to ensure a level playing field for all stations.²³ The Commission has determined that it is important that all stations know, at the same time, that local-into-local service will be provided in a market and that all stations are able to exercise their carriage rights at the same time.²⁴

6. In addition, premature election by stations could unfairly subject satellite carriers to obligations in markets they will not serve in the foreseeable future. Election in response to a notice allows satellite carriers to focus on a specific number of stations and to adequately respond to requests within the requisite 30 day period. If stations are permitted to elect carriage at any time and satellite carriers are required to maintain, sort through, and honor such elections in perpetuity, carriers would be unduly burdened by the necessity to evaluate potentially hundreds of elections at the same time.

7. This case is distinguishable from our previous decision in *Television Apogeo de Tucson v. EchoStar Communications Corporation*.²⁵ In that case, EchoStar sent a notice that it intended to provide local-into-local service and stations responded with carriage elections. EchoStar delayed service in these particular markets for over a year and then refused to honor the stations' earlier elections. In that case, the Bureau held that the stations were entitled to carriage because they had sent a valid response to

¹⁴ Complaint at Attachment 1. There is no allegation that EchoStar expressed an intention to serve the Santa Barbara market and no explanation for KTAS's carriage election.

¹⁵ *Id.* at para. 4 (complaint is not paginated).

¹⁶ *Id.* at Attachment 2.

¹⁷ Opposition at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ KTAS filed a similar complaint against DIRECTV. See CSR 6306-M.

²¹ Reply at Exhibit 1. EchoStar filed a motion to strike this portion of KTAS's Reply because it raises a new argument not set forth in the Complaint. Motion to Strike at 2-4.

²² See 47 C.F.R. §76.66(d)(2).

²³ *DBS Must Carry Report & Order*, 16 FCC Rcd at 1932.

²⁴ *Id.*

²⁵ 18 FCC Rcd 5988 (2003).

EchoStar's notice. We also stated that "[O]ur decision has no bearing on a case in which a station prematurely sends a satellite carrier an election of mandatory carriage." In this case, we find that KTAS's election was premature as it was sent over two years before EchoStar announced its intent to serve the Santa Barbara DMA.²⁶

8. With respect to the telephone conversation between a KTAS employee and an unidentified EchoStar employee, we find that the station cannot rely on vague oral communications to secure carriage on EchoStar's system. The procedural scheme set out in our rules requires that notifications and carriage requests be in writing, and is designed to avoid the type of situation presented here.²⁷

9. We note, however, that both KTAS and EchoStar could have taken simple actions that would have avoided this controversy. The record does not reveal why KTAS sent its request for carriage so early, before it received any notice of intent to serve, nor does KTAS explain why, after receiving no response from EchoStar in 2001, the station did not file a complaint within the required 60 day period.²⁸ KTAS also does not explain why it failed to respond to EchoStar's 2003 notice of intent to commence service. Had it merely repeated its earlier election, its rights would have been perfected and there would be no question that EchoStar would be obligated to carry its signal if KTAS were otherwise qualified. Similarly, EchoStar could have indicated in its 2003 notice of intent that any previous elections were null and void. Stations would then be on notice that they could not rely on any previous actions to ensure they would be carried. Absent any of these potentially corrective actions, however, the record supports a finding that the station's election of carriage prior to a satellite carrier's notice of intent to begin local-to-local service in a particular market cannot be deemed binding.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 338(f) of the Communications Act, as amended, 47 U.S.C. § 338(f), and Section 76.66 of the Commission's rules, 47 C.F.R. § 76.66, that the mandatory carriage complaint of Raul & Consuelo Palazuelos, licensees of television station KTAS, San Luis Obispo, CA, against Echostar Communications Corporation **IS DENIED**.

11. This action is taken by the Deputy Chief, Media Bureau, 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

²⁶ We reach a similar result in denying KTAS's complaint against DIRECTV based on similar facts. See DA # 04-1945, released concurrently.

²⁷ See 47 C.F.R. §76.66 (d)(2); see also *Family Stations, Inc. v EchoStar*, 17 FCC Rcd 982,985 (CSB 2002).

²⁸ See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1975 (Commission stated that silence from a satellite carrier in response to a carriage election triggers the complaint process).