

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

In the Matter of	)	
	)	
Raul & Consuelo Palazuelos	)	
	)	CSR-6306-M
v.	)	
	)	
DIRECTV, Inc.	)	
	)	
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 DIRECTV, Inc. (“DIRECTV”) pursuant to Section 338 of the Communications Act, as amended, and Section 76.66 of the Commission’s rules.<sup>1</sup> The complaint is based on DIRECTV’s refusal to carry the station’s signals on its satellite system. The complaint alleges that DIRECTV has announced its intention to begin local-into-local service pursuant to the statutory copyright license in the Santa Barbara, Santa Maria, San Luis Obispo, (“Santa Barbara”), California DMA.<sup>2</sup> The complaint further alleges that DIRECTV has failed to meet its carriage obligations under the Commission’s satellite broadcast signal carriage rules.<sup>3</sup> DIRECTV filed an

<sup>1</sup> 47 U.S.C. § 338; 47 C.F.R. § 76.66.

<sup>2</sup> 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).

<sup>3</sup> 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).

Opposition<sup>4</sup> and KTAS filed a Reply. For the reasons discussed below, we deny the complaint.

## II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),<sup>5</sup> 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.<sup>6</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>7</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> Upon receipt of this notice, local television stations must request carriage within 30 days.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

## III. FACTUAL BACKGROUND

4. On June 21, 2001, KTAS spontaneously sent a letter to DIRECTV electing mandatory

<sup>4</sup> Contrary to KTAS's contention, DIRECTV's Opposition was timely because it was filed on April 5, 2004, within 20 days of the public notice of the Complaint. See Report No. 0100 (March 15, 2004).

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

<sup>6</sup> See 47 U.S.C. § 338.

<sup>7</sup> 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.").

<sup>8</sup> 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").

<sup>9</sup> See 47 C.F.R. § 76.66.

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

<sup>11</sup> See 47 C.F.R. § 76.66(d)(2).

<sup>12</sup> *Id.*

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

carriage of its television signal for the Santa Barbara DMA.<sup>14</sup> DIRECTV states that it responded to KTAS on July 25, 2001, denying the station's request for carriage on the basis that "DIRECTV is not providing secondary transmissions of any local television broadcast stations to subscribers within the Santa Barbara-San Luis Obispo, CA DMA ..."<sup>15</sup> KTAS, however, states, "KTAS staff was not aware of receiving any such letter in 2001."<sup>16</sup> Two years later, on July 11, 2003, DIRECTV sent notice of its intent to commence local-into-local service in the Santa Barbara DMA to all stations including KTAS.<sup>17</sup> The station did not respond to this notice. On November 17, 2003, DIRECTV, apparently in response to informal inquiries, notified KTAS that the June 21, 2001 letter was "not a valid election with regard to the notice letter received from DIRECTV dated July 11, 2003."<sup>18</sup> DIRECTV also noted that it had previously rejected KTAS's request for carriage in 2001 because it was not offering local-into-local service in Santa Barbara at that time. On November 24, 2003, KTAS notified DIRECTV that it had failed to meet its carriage obligations<sup>19</sup> and on December 19, 2003 DIRECTV responded that KTAS had waived its carriage rights by failing to send a timely response to its notice of intent.<sup>20</sup> KTAS then filed this complaint.

#### IV. DISCUSSION

5. The issue here is whether KTAS's June 2001 election was effective as a response to DIRECTV's 2003 notice of intent to provide local service in order to perfect the station's rights to carriage on DIRECTV's system.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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 before satellite carriers announce an intention to serve a market 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 Apogee de Tucson v.*

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<sup>14</sup> Complaint at Exhibit A. KTAS does not contend that this "election" was in response to any announcement of intent to offer local-into-local service in the Santa Barbara market.

<sup>15</sup> Opposition at 1.

<sup>16</sup> Complaint at n.16.

<sup>17</sup> Opposition at 5.

<sup>18</sup> DIRECTV Letter, November 17, 2003.

<sup>19</sup> Complaint at Exhibit E.

<sup>20</sup> Complaint at Exhibit F.

<sup>21</sup> See 47 C.F.R. § 76.66(d)(2).

<sup>22</sup> *DBS Must Carry Report & Order*, 16 FCC Rcd at 1932.

<sup>23</sup> *Id.*

*EchoStar Communications Corporation.*<sup>24</sup> 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 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 DIRECTV announced its intent to serve the Santa Barbara DMA.<sup>25</sup>

8. Because we find that the station's June 2001 letter was not a valid election, we do not reach the parties' other legal arguments regarding the timeliness of DIRECTV's response or the factual issue of whether DIRECTV actually sent, and KTAS received, the July 2001 denial of carriage. We note, however, that both KTAS and DIRECTV 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 when, as it claims, it did not receive a response from DIRECTV in July 2001, it did not file a complaint within the required 60 day period.<sup>26</sup> KTAS also does not explain why it did not respond to DIRECTV's July 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 DIRECTV would be obligated to carry its signal if KTAS were otherwise qualified. Similarly, DIRECTV could have sent its 2001 denial in such a manner as to have proof of receipt or it 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 previous actions to ensure they would be carried.

## V. ORDERING CLAUSES

9. 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 DIRECTV, Inc. **IS DENIED**.

10. 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

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<sup>24</sup> 18 FCC Rcd 5988 (2003).

<sup>25</sup> We reach a similar result in denying KTAS's complaint against EchoStar based on similar facts. See DA# 04-1944, released concurrently.

<sup>26</sup> 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).