

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

In the Matter of:)	
)	
Tri-State Christian TV, Inc.)	
WTCT(TV), Marion , Illinois)	
)	CSR 6210-M
v.)	
)	
EchoStar Communications Corporation)	
)	
Request for Mandatory Carriage of)	
Television Station WTCT(TV), Marion, IL)	

MEMORANDUM OPINION AND ORDER

Adopted: February 2, 2004

Released: February 5, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Tri-State Christian TV, Inc. (TCT), licensee of commercial television station WTCT(TV), Marion, Illinois (WTCT) filed the above-captioned must carry complaint against EchoStar Communications Corporation (EchoStar), pursuant to Section 338 of the Communications Act of 1934, as amended (the "Act"), and Section 76.66 of the Commission's rules to require EchoStar to carry the station in a nondiscriminatory manner.¹ TCT states that EchoStar is providing "local-into-local" satellite service pursuant to the statutory copyright license in the Paducah, Kentucky-Cape Girardeau, Missouri-Mount Vernon, Illinois, DMA.² In its complaint, TCT alleges that EchoStar has failed to meet its carriage obligations under the Commission's satellite broadcast signal carriage rules.³

2. On April 30, 2003, EchoStar began providing local-into-local service to the Paducah,

¹ 47 U.S.C. §338; 47 C.F.R. § 76.66; see Public Notice, Special Relief and Show Cause Petitions, Report No. 0082, dated July 21, 2003.

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 must carry obligations may obtain review of such denial or response by filing a "complaint" with the Commission in accordance with Section 76.7. 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).

Kentucky DMA pursuant to the statutory copyright license.⁴ TCT elected must carry status on behalf of WTCT(TV) and EchoStar proceeded to carry the station on its satellite system. However, because WTCT is carried on a “wing” satellite and not on a full CONUS satellite where EchoStar’s core programming and the other local stations in the Paducah DMA are carried, viewers must use a second satellite dish antenna to receive WTCT. TCT in its complaint states that this arrangement constitutes discriminatory treatment in violation of Section 338 of the Communications Act and Section 76.66 of the Commission’s rules and of the remedial measures outlined in the Media Bureau’s *Declaratory Ruling and Order*.⁵ TCT also states that actions taken by EchoStar’s customer service representatives (CSR’s) were an attempt to dissuade customers from installing the second dish antenna and thus were discriminatory. TCT requests that the Commission order EchoStar to place WTCT on a CONUS satellite with the other Paducah stations or move all of the Paducah stations to the same “wing” satellite.⁶ EchoStar filed an opposition to the complaint and TCT filed a reply.⁷

II. DISCUSSION

3. The *Declaratory Ruling* found that EchoStar’s “two-dish” plan, as implemented, violated both the requirements of the Satellite Home Viewer Improvement Act of 1999 (the “SHVIA”) and the Commission’s rules.⁸ Specifically, it concluded that EchoStar’s two-dish plan failed to comply with the carriage requirements contained in Section 338(d) of the Act which relate to discrimination in price, channel positioning, and on-screen program guide and menu treatment.⁹ EchoStar was directed to remedy each of the instances of unlawful discrimination specified as expeditiously as possible. The *Declaratory Ruling* discussed a variety of measures EchoStar could implement to address the violations; it indicated, however, that EchoStar had the flexibility to implement other measures of its own choosing as long as they served to end the unlawful discrimination.¹⁰ Automatically providing the additional equipment to any existing or new subscriber to local-into-local service was listed as one means for avoiding the discriminatory price violation found in the *Declaratory Ruling*.¹¹ Promptly notifying affected subscribers that they are not receiving all the local stations for which they are paying unless EchoStar has installed the necessary additional equipment, and that EchoStar will provide the necessary equipment and installation free of charge was also listed as a means to address the price discrimination violations.¹² Educating CSRs, distributors, and retailers to ensure that subscribers and potential subscribers are given clear, accurate, and complete information concerning the free second dish offer was also found to be a potential

⁴ EchoStar Opposition at 11.

⁵ 47 U.S.C. §338; 47 C.F.R. §76.66; *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 (MB 2002) (“*Declaratory Ruling*”).

⁶ TCT suggests that the Commission consider enforcement action against EchoStar.

⁷ TCT filed a motion on November 11, 2003 requesting permission to submit a late reply. EchoStar agreed to TCT’s request. We grant TCT’s motion and consider its Reply in making our decision in this case.

⁸ *Declaratory Ruling*, 17 FCC Rcd at 6066. See also Pub. Law 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

⁹ See *id.* at 6072-81.

¹⁰ See *id.* at 6081-83 (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).

¹¹ See *id.* at 6082.

¹² See *id.* at 6073, 6082.

remedy.¹³

4. In order to allow the Commission to monitor and evaluate its compliance efforts, EchoStar was required to submit a series of compliance reports at 30, 90, and 150 day intervals following release of the *Declaratory Ruling*.¹⁴ EchoStar timely filed the compliance reports, which are under review.¹⁵ Also under review are petitions for reconsideration and applications for review of the *Declaratory Ruling*.

5. In reviewing TCT's complaints, we find that it charges EchoStar with the same discriminatory conduct already alleged and considered in the *Declaratory Ruling*. To the extent the complaint is effectively a petition for reconsideration of the *Declaratory Ruling*, it is late-filed and subject to dismissal on that ground. At this time, in the context of the *Declaratory Ruling*, we have no basis upon which to grant the station's request that we order EchoStar to carry its signals from the same satellite location as other local broadcast stations in the Paducah market, nor any other relief inconsistent with the *Declaratory Ruling*.¹⁶ The fact that WTCT-TV is the only station in the Paducah DMA assigned to a wing satellite does not sufficiently distinguish this case from the issues raised in the *Declaratory Ruling* to warrant separate consideration in this Order. These same issues have been raised by parties in the pending petitions for reconsideration and applications for review of the *Declaratory Ruling*. As such, it would be inappropriate to address TCT's arguments here and thereby prejudge the Commission's eventual ruling on that issue. After that decision is reached it will be applicable on a general basis to all "local-into-local" satellite service provided by EchoStar covered by Section 338 of the Communications Act, and TCT may reassert its request for relief or sanctions if such relief is then appropriate and remains necessary.

6. Although for the reasons noted we find that granting the requested relief at this time would not be appropriate, we are nevertheless concerned about the interaction between EchoStar CSRs and potential EchoStar subscribers seeking to receive WTCT's broadcast signal. Several individuals in "Verified Statements" complain that both CSRs and installers associated with EchoStar actively tried to discourage customers from obtaining and installing a second dish antenna for "just one channel."¹⁷ In addition, one customer was told that he had to purchase a second antenna,¹⁸ another was not informed of the need for a second antenna and had to make several extra telephone calls to obtain one,¹⁹ a third was told that the second antenna could not be installed during the original installation "because the must carry channels are usually secondary and independent channels."²⁰ EchoStar asserts that its CSR's were merely being extra cautious to assure that customers received the service they wanted and argues that this does

¹³ See *id.* at 6082-83.

¹⁴ See *id.* at 6083.

¹⁵ See "EchoStar's Local Station Carriage Compliance Plan: 30 Day Report" in CSR-5865-Z (filed May 6, 2002); "EchoStar' Local Station Carriage Compliance Plan: 90 Day Report" in CSR-5865-Z (filed July 3, 2002); "EchoStar's Local Station Carriage Compliance Plan: 150 Day Report" in CSR-5865-Z (filed Sept. 3, 2002).

¹⁶ The Bureau has dismissed similar must-carry complaints on this ground. See, e.g., *Telemundo Group, Inc.*, 17 FCC Rcd 22693 (MB 2002).

¹⁷ Both Michael and Ruth Ann Daly detail the conversations that they had with EchoStar representatives. See TCT Complaint at Exhibits 2 and 3; TCT Reply at Exhibits A and B. TCT also complains that on EchoStar's web site, WTCT is listed as a religious station rather than by its network affiliation like the other local stations listed for the Paducah DMA. Complaint at 6.

¹⁸ TCT Reply at Exhibit C.

¹⁹ *Id.* at Exhibit D.

²⁰ *Id.* at Exhibit E.

not amount to discrimination.²¹

7. Because the record in this proceeding indicates that EchoStar has not cured the specific violations cited in the *Declaratory Ruling* in the Paducah market related to WTCT, we are ordering EchoStar to submit a Compliance Report and Plan detailing the specific actions it has taken concerning WTCT-TV within 30 days of the release of this Order. The Compliance Report and Plan should provide the same types of information requested in the *Declaratory Ruling*. In addition, the Report should provide the percentage of local-into-local subscribers who requested a second dish in the Paducah market, the number of second dish installations completed, an explanation as to why any requests could not be completed, and an estimated date of completion for the remaining installation requests. EchoStar should also provide details about current and future customer notification efforts, advertisements about its local package offering, and CSR training efforts (including sample scripts). In this regard, EchoStar should state whether it directly notified (*e.g.*, by letter) individual local-into-local subscribers in Paducah that they are not receiving all of their local stations and that EchoStar, as part of its local package offering, will provide the additional satellite dish antenna, including its installation, free of charge. EchoStar's Compliance Report and Plan should provide details of the steps it has taken (or will be taking) to ensure that potential local-into-local subscribers in the Paducah market are fully aware of the availability of local stations and EchoStar's free second dish and installation offer. This information should also include EchoStar's efforts to ensure that potential local-into-local subscribers at the retail level are fully aware of the need for a second dish.

8. Our actions here should not be viewed as a review or approval of EchoStar's overall compliance efforts with respect to the *Declaratory Ruling*, or as an indication of the outcome of the pending petitions for reconsideration and applications for review of that Order. 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 WTCT in the Paducah market. Accordingly, we will defer consideration of any enforcement action in this proceeding until Commission resolution of these related matters.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66(d)(2)(ii) of the Commission's rules, 47 C.F.R. § 76.66(d)(2)(ii), that the carriage complaint filed by Tri-State Christian TV on behalf of WTCT(TV), Marion, Illinois **IS GRANTED** to the extent indicated herein.

10. **IT IS FURTHER ORDERED** that within 30 days after the release of this Memorandum Opinion and Order, EchoStar shall submit a Compliance Report and Plan with respect to WTCT-TV describing the specific actions EchoStar has taken and plans to take to come into compliance with its carriage obligations for the station, as outlined in the *Declaratory Ruling*, 17 FCC Rcd 6065 (MB 2002), and this Memorandum Opinion and Order.

11. **IT IS FURTHER ORDERED** that Tri-State Christian TV, Inc.'s motion to file a late Reply **IS GRANTED**.

12. 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.

²¹ Opposition at 8. EchoStar replied only to the verified statements of the Dalys attached to the Complaint. The other statements from customers were appended to TCT's Reply and thus were not addressed in Echostar's Opposition.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau