

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

In the Matter of:)	
)	
New Life Evangelistic Center, Inc.)	
)	CSR-6381-M
v.)	
)	
Echostar Satellite LLC)	
)	
Request for Carriage of Station KNLJ(TV))	
Jefferson City, Missouri)	

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 2004

Released: December 27, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. New Life Evangelistic Center, Inc. (“New Life”), licensee of television station KNLJ(TV), Jefferson City, Missouri (Ch. 25) (“KNLJ” or “Station”) has filed a complaint (“Complaint”) against Echostar Satellite LLC (“Echostar”) pursuant to Section 338 of the Communications Act, as amended (“Act”).¹ Echostar filed an opposition to the Complaint and New Life filed a reply. For the reasons discussed below, we find in favor of Echostar and deny the Complaint.

II. BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”),² requires satellite carriers, beginning January 1, 2002, to carry upon 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.³ For the initial election cycle, broadcast stations were required to notify satellite carriers by July 1, 2001 of their mandatory carriage election for carriage to commence by January 1, 2002. A station’s market for satellite carriage purposes is its Designated Market Area, or DMA, as defined by Nielsen Media Research.⁴ In November 2000, the Commission adopted rules to implement the carriage provisions contained in Section 338.⁵

¹47 U.S.C. § 338.

²See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

³See 47 U.S.C. § 338.

⁴A 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).

⁵See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) (“*DBS Mandatory Carriage Report & Order*”). The Commission later affirmed and clarified its satellite carriage rules. See *Implementation of the Satellite Home*

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 has 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.⁶ In a DMA 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.⁷ Upon receipt of this notice, local television stations must request carriage within 30 days.⁸ If a satellite carrier denies a local station's carriage request, it must notify the station within 30 days of the carrier's receipt of the carriage request.⁹ 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.¹⁰

4. If a local television broadcast station believes that a satellite carrier has failed to meet its obligations under Section 338 of the Act or the Commission's implementing regulations, such station shall first notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.¹¹ Within 30 days after such written notification, the satellite carrier shall respond in writing and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.¹² If Commission action is necessitated, as the station alleges here, a broadcast station may file a complaint with the Commission within 60 days after the satellite carrier submits a final rejection of a broadcast station's carriage request.¹³ If a satellite carrier provides no response to a mandatory carriage election, the 60 days commences after the time for responding as required by the rule has elapsed.¹⁴

III. DISCUSSION

5. EchoStar currently provides local-into-local satellite service in the Columbia-Jefferson City DMA, pursuant to the statutory copyright license.¹⁵ New Life states that by letter dated October 16, 2003 ("October 16 Letter"), EchoStar purported to notify KNLJ that it would commence local-into-local service in the Columbia-Jefferson City DMA.¹⁶ The letter was sent to New Life, licensee of KNLJ, at its St.

Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues, 16 FCC Rcd 16544 (2001) ("*DBS Mandatory Carriage Reconsideration Order*").

⁶ See 47 C.F.R. § 76.66. 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).

⁷ See 47 C.F.R. § 76.66(d)(2).

⁸ See *id.*

⁹ See *id.*

¹⁰ See 47 C.F.R. § 76.66(d)(2)(iii).

¹¹ See 47 U.S.C. § 338(f)(1); see also 47 C.F.R. § 76.66(m)(1).

¹² See 47 C.F.R. § 76.66(m)(2).

¹³ See 47 C.F.R. § 76.66(m)(6).

¹⁴ See *DBS Mandatory Carriage Reconsideration Order*, 16 FCC Rcd at 16574.

¹⁵ Complaint at 1-2; Opposition at 1.

¹⁶ Complaint at 6, Exhibit 1.

Louis, Missouri address, and was received on October 17, 2003.¹⁷ The KNLJ station facilities are located in New Bloomfield, Missouri,¹⁸ and, according to New Life, the October 16 Letter arrived there at some point, but the General Manager of the Station does not recall how or when the letter arrived.¹⁹ New Life did not respond to the October 16 Letter until May 21, 2004, at which time New Life informed Echostar that the Station was electing mandatory carriage.²⁰ Echostar responded to the carriage request by letter dated June 16, 2004, rejecting New Life's demand for carriage as untimely.²¹ Counsel for New Life responded by letter dated June 29, 2004, to which Echostar replied by letter dated July 14, 2004.²² New Life filed its Complaint on August 20, 2004.

6. As a preliminary matter, we address the timeliness of New Life's Complaint. Echostar argues that New Life's Complaint is late-filed and must be dismissed.²³ As discussed above, a broadcast station may file a complaint with the Commission within 60 days after the satellite carrier submits a final rejection of a broadcast station's carriage request.²⁴ If the parties are negotiating a carriage dispute, the 60-day period does not begin to run until resolution efforts have failed.²⁵ In the instant case, Echostar rejected New Life's request for carriage by letter dated June 16, 2004.²⁶ However, the record indicates that the parties continued to communicate regarding carriage by an exchange of correspondence, and it appears in this case that the Station reasonably could have assumed that negotiations were ongoing until it received Echostar's letter of July 14, 2004.²⁷ The 60-day period for filing a complaint commences with the final rejection of a carriage request.²⁸ In this case, Echostar's final rejection was dated July 14, 2004 and postmarked July 26, 2004. The Complaint was filed on August 20. Thus, New Life's Complaint was timely filed.

7. The remaining issue in this case is also one of timeliness: whether the October 16 Letter constituted valid notice and, if so, whether New Life timely elected mandatory carriage. New Life argues that the October 16 Letter did not constitute notice under Section 338 of the Act and Section 76.66 of the

¹⁷ *Id.* New Life is a church organized under the non-profit laws of the state of Missouri and staffed by volunteers. Complaint at 6. New Life also is the licensee of commercial television station KNLC, which is located at the same St. Louis address. *Id.* Receipt at the St. Louis address is demonstrated by certified mail receipt dated October 17, 2003. *See* Opposition, Exhibit 1.

¹⁸ Complaint at 6.

¹⁹ *Id.*

²⁰ *Id.*; Opposition, Exhibit 2. New Life states that in April 2004, the Station received a letter from DIRECTV announcing its intention to commence local-into-local service in the Columbia-Jefferson City market. Complaint at 6-7. The General Manager of the Station was prompted by the DIRECTV letter to contact DIRECTV and, subsequently, New Life's broadcast consultant and communications counsel. *Id.* New Life states that, upon advice of counsel, the General Manager then sent letters to both DIRECTV and Echostar on May 21, 2004, stating that the Station was electing mandatory carriage. *Id.*

²¹ Reply at 2; Complaint, Exhibit 7.

²² Opposition at 2; Complaint, Exhibits 6, 8.

²³ Opposition at 3-4.

²⁴ *See* 47 C.F.R. § 76.66(m)(6).

²⁵ *See DBS Mandatory Carriage Reconsideration Order*, 16 FCC Rcd at 16574.

²⁶ Complaint, Exhibit 7.

²⁷ *See* Complaint, Exhibits 6, 8.

²⁸ *DBS Mandatory Carriage Reconsideration Order*, 16 FCC Rcd at 16574.

Commission's rules because it was not sent to the proper address and it was intentionally misleading.²⁹ First, New Life claims that Echostar was required to send its notice of new local-into-local service to KNLJ at the Station's New Bloomfield address, which is the physical location of the Station and which New Life asserts is listed in the Broadcasting and Cable Yearbook, Netscape Yellow Pages, and Microsoft Network Yellow Pages.³⁰ New Life contends that Echostar could have ascertained the correct address by consulting any of these directories or calling the station.³¹ New Life argues that if the notice did arrive by certified mail, it would have been signed for by a church volunteer who "could not possibly be expected to differentiate" between KNLJ and its sister station, KNLC, which is in fact located at the St. Louis address.³² In opposition, Echostar states that it sent the October 16 Letter by certified mail to the address listed in a number of publications, including the Commission's database, and that return of the certified mail receipt reasonably indicated to Echostar that the Station had received proper notice.³³ Echostar argues that the St. Louis address it used is the address of the Station's licensee and its sister station, KNLC, and that an "extremely close relationship" exists between KNLJ, KNLC, and New Life.³⁴

8. New Life also claims that the October 16 Letter did not provide any indication that it was from a satellite carrier or triggered the need for action within a particular timeframe, making it unreasonable to expect New Life to have responded with a carriage election.³⁵ New Life claims that Echostar is intentionally taking advantage of the lower level of sophistication of small market, independent stations to avoid carrying such stations.³⁶ In opposition, Echostar argues that the October 16 Letter contained all relevant information under Section 76.66(d)(2) and that there is no requirement that a satellite provider put a station on notice that a letter triggers important rights.³⁷ Echostar also notes that

²⁹ New Life also alleges that the October 16 Letter did not constitute notice because the Echostar entity that purported to provide notice is not a satellite carrier. Complaint at 2-3, 7-8. The October 16 Letter was sent to KNLJ by Echostar Communications Corporation. The Media Bureau previously has found notice provided by Echostar Communications Corporation to be valid under Section 338 of the Act and Section 76.66 of the Commission's rules. *See, e.g., Raul & Consuela Palazuelos v. Echostar Communications Corporation*, 19 FCC Rcd 12027 (MB 2004); *Entravision Holdings, LLC v. Echostar Communications Corporation*, 18 FCC Rcd 19268 (MB 2003) ("*Entravision*").

³⁰ Complaint at 8.

³¹ *Id.*

³² *Id.* at 8-9.

³³ Opposition at 6. Echostar states that other documents filed by the Station with the Commission indicate New Life's St. Louis address as the Station's mailing address. *Id.* at 7. Echostar also notes that the KNLJ website does not provide guidance as to a mailing address because it provides only a P.O. Box, to which Echostar will not deliver notices. *Id.* Further, Echostar asserts that nothing on the KNLJ website reveals the New Bloomfield address that New Life claims as its official correspondence address. *Id.*

³⁴ *Id.* at 3. Echostar asserts that the President of New Life and General Manager of KNLC, Rev. Larry Rice, is married to Penny Rice, the General Manager of KNLJ. *Id.*

³⁵ Complaint at 9. New Life states that neither the text of the October 16 Letter nor the letterhead uses the word "satellite" and the letter does not mention the Commission or the Act. *Id.* New Life states that KNLJ "had never before dealt with Echostar" and that when the General Manager first saw the October 16 Letter, "she did not know who or what Echostar was." *Id.* at 6-7. New Life further claims that the General Manager did not know what "local-into-local service" was. *Id.*

³⁶ *Id.* at 10.

³⁷ Opposition at 8.

KNLC made a carriage election in 2001 and currently is carried by Echostar in the St. Louis DMA, and that KNLC, Rev. Rice, and New Life therefore were familiar with Echostar.³⁸

9. Section 76.66(d)(2) calls for a satellite carrier to “notify local television stations of its intent to provide local-into-local service” at least 60 days in advance and to identify the location of its local receive facility, but does not specify the location where such notice must be directed.³⁹ We find that Echostar acted reasonably in directing its notice to the licensee’s St. Louis address. We note that Echostar received a return receipt of acceptance from this address. More importantly, the St. Louis address is the address of record for Commission purposes. It is the address to which the Commission would direct correspondence to KNLJ, and thus must be an acceptable address for purposes of Section 76.66.⁴⁰ We also find that the October 16 Letter contained all information required under Section 76.66(d)(2) and that Echostar had no obligation under the Commission’s rules to mark the notice as having legal implications.⁴¹ Accordingly, we conclude that Echostar satisfied its obligations under Section 76.66(d)(2) in delivering the October 16 Letter to New Life at its St. Louis address. It is undisputed that KNLJ did not respond to the October 16 Letter until May 21, 2004. The Commission’s rules require a television station to request carriage within 30 days of receiving notice that a satellite carrier intends to commence local-into-local service.⁴² KNLJ clearly failed to request carriage within 30 days of Echostar’s October 16 Letter and, therefore, its election was untimely.

IV. 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 New Life Evangelistic Center, Inc., licensee of commercial television station KNLJ(TV), Jefferson City, Missouri, **IS DENIED**.

³⁸ Opposition at 3.

³⁹ 47 C.F.R. § 76.66(d)(2); *see also Ho’Ana’Auao Community TV, Inc. v. Echostar Communications Corporation*, 18 FCC 2487, 2489 (MB 2003). We note that the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), enacted December 8, 2004, directs the Commission to revise 47 C.F.R. § 76.66 to require a satellite carrier’s local-into-local notice to inform television stations (i) of the right of the licensee to elect carriage or grant retransmission consent, (ii) that the licensee has 30 days from the date of receipt of such notice to make such election, and (iii) that failure to make such election will result in the loss of the right to demand carriage for the remainder of the three-year carriage cycle. SHVERA, Pub. L. No. 108-447, § 205 (Dec. 8, 2004). SHVERA also directs the Commission to revise 47 C.F.R. § 76.66 to require that a satellite carrier’s local-into-local notice be sent by certified mail to the licensee address listed in the Commission’s database. *Id.* The Commission is required to revise its rules within 180 days of the enactment of SHVERA.

⁴⁰ We note that, upon revision of the Commission’s rules as directed by SHVERA, the licensee address listed in the Commission database will be the only acceptable address for purposes of Section 76.66.

⁴¹ *See Entravision*, 18 FCC Rcd at 19271.

⁴² 47 C.F.R. § 76.66(d)(2).

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.⁴³

FEDERAL COMMUNICATIONS COMMISSION

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⁴³47 C.F.R. § 0.283.