

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

In the Matter of: )
School Board of Broward County )
v. ) CSR-6959-M
EchoStar Communications Corporation; DirecTV, ) CSR-6962-M
Inc. ) CSR-6992-M
Petition for Waiver of Section 76.66(e)(3) of the )
Commission's Rules and Request for Mandatory )
Carriage of Television Station WPPB-TV, Boca )
Raton, FL )

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2006

Released: May 24, 2006

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. The School Board of Broward County, Florida ("SBBC"), licensee of noncommercial educational television station WPPB-TV, Boca Raton, Florida ("WPPB-TV"), in the above-captioned request, asks the Commission to waive Section 76.66(e)(3) of the Commission's rules, which provides that the 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (collectively, "Nielsen publications") shall be used for the retransmission consent-mandatory carriage cycle commencing January 1, 2006 and ending December 31, 2008. WPPB-TV seeks instead to base its carriage election for this carriage cycle on its DMA assignment as reported in the 2005-2006 Nielsen publications. Separately, WPPB-TV filed the above-captioned complaints against EchoStar Communications Corporation ("EchoStar") 1 and DirecTV, Inc. ("DirecTV"). 2 Through those complaints, WPPB-TV seeks carriage of its signal by EchoStar and DirecTV in the Miami-Ft. Lauderdale DMA ("Miami DMA"). For the reasons stated below, we deny WPPB-TV's request for waiver and must carry complaints.

II. BACKGROUND

A. Legal Background

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),3 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

1 Public Notice, Special Relief and Show Cause Petitions, Report No. 0165, dated January, 23, 2006.

2 Public Notice, Special Relief and Show Cause Petitions, Report No. 0169, dated February 27, 2006.

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

television broadcast signal pursuant to the statutory copyright license.<sup>4</sup> A station's market for satellite carriage purposes is its designated market area ("DMA"), assigned annually by Nielsen Media Research ("Nielsen").<sup>5</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>6</sup>

3. Under the Commission's 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.<sup>7</sup> To determine the DMA in which a local television station is entitled to carriage during any given mandatory carriage election cycle, the Commission's rules direct satellite carriers to consult specific editions of the Nielsen publications, which associate each local television station with a particular DMA.<sup>8</sup> Focusing on the carriage cycle at issue in this Petition, Section 76.66(e)(3) states that "[t]he 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008."<sup>9</sup>

4. Because it is Section 76.66(e)(3) of the Commission's rules, rather than a statutory provision, that determines which edition of the Nielsen publications is to be used for each carriage cycle, that determination is subject to waiver. Section 76.7 of the Commission's rules allows an interested party to petition the Commission to "waive any provision of this part 76."<sup>10</sup> When analyzing a request for a waiver of Commission rules or policies, agency rules are presumed valid, and "an applicant for waiver faces a high hurdle even at the starting gate."<sup>11</sup> A rule or policy may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>12</sup> In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual

---

<sup>4</sup> See 47 U.S.C. § 338; 17 U.S.C. § 122.

<sup>5</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 [are] 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>6</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>7</sup> See 47 C.F.R. § 76.66.

<sup>8</sup> See *id.* Ordinarily, a local television station's DMA is determined by the location of its community-of-license. Nielsen Media Research, *Local Reference Supplement*, 2004-2005 at 4-5. There are a number of circumstances, however, in which Nielsen uses alternate methods to determine a station's DMA. See *TV 34, Inc.; Petition for Waiver of Section 76.66(e)(3) of the Commission's Rules*, 2005 WL 3590933 (MB 2005), at ¶ 6 ("TV 34 Waiver Order").

<sup>9</sup> 47 C.F.R. § 76.66(e)(3).

<sup>10</sup> 47 C.F.R. § 76.7(a)(1).

<sup>11</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972); see also *Family Stations, Inc. v. DirecTV, Inc.*, 19 FCC Rcd 14777, 14780 (MB 2004) (Order on Reconsideration) (same).

<sup>12</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

basis.<sup>13</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule or policy, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>14</sup>

## B. Factual and Procedural History

5. WPPB-TV is a noncommercial educational television station licensed to the School Board of Broward County, Florida. WPPB-TV's programming is intended to address matters "of specific interest to the educational needs of K-12 students attending the Broward County public schools and their families."<sup>15</sup> Broward County, where WPPB-TV's transmitter is located, is in the Miami DMA. However, WPPB-TV's community of license, Boca Raton, is located in the West Palm Beach-Ft. Pierce ("West Palm Beach") DMA. Accordingly, Nielsen originally assigned the station to the West Palm Beach DMA.

6. Pursuant to Section 76.66 of the rules, the markets in which the signals of local television broadcast stations are entitled to assert satellite carriage rights for the period between January 1, 2006 and December 31, 2008 are determined by reference to the 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates. The Nielsen publications referenced deliberately lag behind the carriage period so that the parties involved have an adequate period of time to negotiate for and prepare for satellite distribution. Reference to these publications indicates that WPPB-TV was physically located, assigned to, and entitled to assert carriage rights in the West Palm Beach market for the 2006-2008 carriage cycle.

7. In August 2005, the Commission granted WPPB-TV a construction permit to modify its licensed facilities.<sup>16</sup> That permit allows WPPB-TV to upgrade its 565 kW facilities to broadcast with an effective radiated power of 5,000 kW.<sup>17</sup> With that increase, WPPB-TV will be able to provide Grade A service throughout Broward County.<sup>18</sup> However, WPPB-TV has yet to build the permitted facilities. Indeed, WPPB-TV is currently "dark" and does not broadcast over the air.<sup>19</sup> In April 2006, WPPB-TV requested an extension until October 2006 of its authorization to remain silent.<sup>20</sup> Before going dark, WPPB-TV's Grade B contour covered about half of the area of Broward County.

8. On September 12, 2005, WPPB-TV asked Nielsen to reassign the station to the Miami DMA.<sup>21</sup> Ten days later, prior to any action by Nielsen, WPPB-TV sent letters to EchoStar and DirecTV,

<sup>13</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>14</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>15</sup> Request for Waiver, at 1-2.

<sup>16</sup> File No. BPET-20000301ALL (August 9, 2005).

<sup>17</sup> *Id.*

<sup>18</sup> Request for Waiver, at 2.

<sup>19</sup> See EchoStar Opposition to Request for Waiver at 2 & n.5. Hurricane Wilma destroyed the station's antenna, making WPPB-TV's programming available to only those residents of Broward County who subscribed to cable. Request for Waiver at 6. On October 31, 2005, WPPB-TV notified the Commission that it had suspended operations, BLTSA-20051031 ABP (Notification of Suspension of Operation). In its Reply to EchoStar's Opposition to Request for Waiver, WPPB-TV clarifies that, although not currently on air, it provides a good quality signal to cable operators in Broward County that are carrying its programming on a voluntary basis. Reply to EchoStar Opposition to Request for Waiver, at 2.

<sup>20</sup> "Request to Extend STA" filed by WPPB-TV, File No. BLESTA-20060418ADH (April 18, 2006). In its request, WPPB-TV explains that a delay in the Federal Emergency Management Administration's approval of funds to reconstruct facilities following Hurricane Wilma, and a delay in the School Board's internal fund allocation process led to the station's inability to return to air by May 2006.

<sup>21</sup> Request for Waiver, at 2.

informing them of WPPB-TV's pending request for reassignment and requesting that each satellite carrier carry the station in the Miami DMA.<sup>22</sup> On September 28, 2005, WPPB-TV sent a second letter to both EchoStar and DirecTV, noting that a Nielsen representative had telephoned WPPB-TV's counsel to inform him that the station "is now assigned to the Miami-Ft. Lauderdale DMA."<sup>23</sup> The letters asserted that "[w]ith this DMA assignment, WPPB-TV meets all of the requirements for local-into-local carriage, as we have requested. We expect that you will carry the station on your system, effective as of January 1, 2006."<sup>24</sup>

9. By letter dated October 17, 2005, EchoStar denied WPPB-TV's request for carriage in the Miami DMA, noting that Section 76.66(e)(3) of the Commission's rules required stations to base their carriage elections on the 2003-2004 Nielsen Publications, which placed the station in the West Palm Beach DMA.<sup>25</sup> On November 7, 2005, DirecTV similarly denied WPPB-TV's request, but noted that it would carry the station in the West Palm Beach DMA upon delivery of a good quality signal.<sup>26</sup> On November 21, 2005, WPPB-TV received an email from a Nielsen vice president confirming that the station "will be re-assigned from West Palm Beach to the Miami-Ft. Lauderdale DMA effective with the October 2005 Miami survey period."<sup>27</sup> WPPB-TV is listed in the Miami DMA in the 2005-2006 Nielsen publications.<sup>28</sup> However, no Nielsen publication in circulation at the time that WPPB-TV requested carriage listed the station in the Miami DMA.

10. Having failed to secure carriage from the satellite carriers, WPPB-TV filed the instant Request for Waiver on December 13, 2005. The satellite carriers filed separate Oppositions to the Request and WPPB-TV filed separate Replies to those Oppositions.<sup>29</sup> In addition, WPPB-TV filed separate Must Carry Complaints against EchoStar and DirecTV on December 19, 2005 and January 9, 2006, respectively. The parties filed separate Oppositions and Replies in those proceedings as well.<sup>30</sup>

---

<sup>22</sup> See Letter from Paul H. Brown, Counsel for SBBC, to Toby Berlin, DirecTV, September 22, 2005 (Request for Waiver, Attachment B). It is unclear from WPPB-TV's initial requests whether the station sought carriage in both the West Palm Beach and Miami DMAs or in specific areas of one or both DMAs. DirecTV interpreted the request as one for carriage in both DMAs. Letter from DirecTV to Dr. Phyllis Schiffer-Simon, Director, Broward Education Communications Network ("BECON"), November 7, 2005 (Request for Waiver, Attachment E). From later filings, however, it is clear that WPPB-TV sought, and continues to seek, carriage only in the Miami DMA. At present, neither EchoStar nor DirecTV carries the station in the West Palm Beach DMA.

<sup>23</sup> Letter from Paul H. Brown, Counsel for SBBC, to Toby Berlin, DirecTV, September 28, 2005 (Request for Waiver, Attachment C).

<sup>24</sup> *Id.*

<sup>25</sup> Letter from James E. Dunstan, Counsel for EchoStar, to Paul H. Brown, Counsel for SBBC, October 17, 2005 (Request for Waiver, Attachment D).

<sup>26</sup> Letter from DirecTV to Dr. Phyllis Schiffer-Simon, Director, BECON, November 7, 2005 (Request for Waiver, Attachment E).

<sup>27</sup> E-mail from Stephen Posnock, Nielsen, to Paul Brown, Counsel for SBBC, November 21, 2005 (Request for Waiver, Attachment A).

<sup>28</sup> Request for Waiver, at 8.

<sup>29</sup> EchoStar filed a Motion for Extension of Time and Request to Accept Late-Filed Pleading in connection with its Opposition to the Request for Waiver. In view of some understandable confusion concerning the file number associated with each proceeding, we grant the motion and accept the late-filed Opposition.

<sup>30</sup> As explained below, the Must Carry Complaints present more or less the same arguments as WPPB-TV's Request for Waiver and appear to be premised on an assumption that the Waiver will be granted, thus conferring immediate carriage rights in the Miami DMA upon WPPB-TV. Because the Complaints are closely related to, and dependent on, the Request for Waiver, we consolidate those proceedings in this order.

### III. DISCUSSION

11. Based on the rules, WPPB-TV, when operating, would have been entitled to carriage in the West Palm Beach market, where its community of license is located. Its principal request, as reflected in the waiver petition, is that the rules pointing toward the 2003-2004 Nielsen publications as the source of the market where it is entitled to carriage be waived and its carriage rights transferred to the Miami market. Although it filed separate carriage complaints against EchoStar and DirecTV, seeking carriage in the Miami market, WPPB-TV filed those complaints primarily to avoid any procedural bar on the assertion of carriage rights in the event that its waiver request were granted. In other words, the carriage complaints rise or fall with the waiver request.

12. The timing of various actions on the part of WPPB-TV and Nielsen in this case lead us to conclude that the waiver request so directly conflicts with the procedures and policies reflected in the rules that it cannot be granted. The most critical factor weighing against grant of the requested waiver is that Nielsen's reassignment of the station to the Miami DMA appears to have come too late for the satellite carriers to premise the carriage of WPPB-TV's signal on that reassignment. Section 338 of the Act, by reference to Section 122 of the Copyright Act, equates a station's local market for carriage purposes with its "designated market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication."<sup>31</sup> When a station seeks to change the DMA in which it may exercise carriage rights, our discretion extends to determining which edition of the Nielsen publications may supply the basis for a station's carriage election at the beginning of the carriage cycle.<sup>32</sup>

13. With that in mind, the various "confirmations" of the DMA reassignment by telephone, email, or letter, are of little relevance to our analysis, which necessarily focuses on the specific Nielsen publications referenced in statute. The record is unclear with respect to precisely when the 2005-2006 Nielsen Station Index Directory, the first Nielsen publication listing WPPB-TV in the Miami DMA, became available to the satellite carriers. EchoStar asserts that the 2005-2006 Nielsen publications were not available until after the beginning of the current carriage cycle<sup>33</sup> and WPPB-TV does not contest that assertion.<sup>34</sup> If EchoStar is correct, then neither satellite carrier would have been capable of carrying the station in the Miami DMA at the beginning of the current carriage cycle because there would have been no qualifying "Nielsen publication" listing the station in that DMA. WPPB-TV's carriage election, then, would be contingent on a publication that would appear, if at all, after the carriage cycle commenced. Mandating carriage in these circumstances would be equivalent to the kind of mid-cycle market

---

<sup>31</sup> 17 U.S.C. § 122(j)(2)(C) (emphasis added). SHVIA incorporates by reference Section 122's definition of local markets. 47 U.S.C. § 338(a)(1), (k)(3).

<sup>32</sup> *TV 34 Waiver Order*, 2005 WL 3590933 at ¶ 11.

<sup>33</sup> EchoStar Opposition to Request for Waiver, at 6. DirecTV also takes this position, arguing that "carriage obligations [should] be based on market designations available to DBS providers in advance of the carriage election cycle rather than on changes to market designations that have occurred at a later date." DirecTV Opposition to Request for Waiver, at 2. For its part, WPPB-TV does not speculate whether the Nielsen publications were available before that "later date." Tellingly, however, WPPB-TV's request for waiver states that the station "will be listed in the Miami DMA in the [2005-2006 Nielsen publications,]" suggesting that that listing had yet to occur when the station filed its request for waiver. Request for Waiver, at 8 (emphasis added).

<sup>34</sup> Although WPPB-TV's silence on this issue need not be taken as a concession, "[t]he burden is on the applicant seeking waiver of these rules to plead specific facts and circumstances which would make the general rule inapplicable." *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (DC Cir. 1971); see also *Federal-State Joint Bd. on Universal Service v. Dixon Tel. Co.*, 2006 WL 452383 at ¶ 6 (WCB February 23, 2006) (noting that "in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner").

modification that Congress specifically made unavailable in the context of satellite carriage.<sup>35</sup>

14. Even assuming that the 2005-2006 Nielsen publications were available at the start of the carriage cycle, it is nonetheless extremely unlikely that they were available by the deadline for carriage elections, given that Nielsen first telephoned WPPB-TV about the reassignment a mere four days before the deadline. At that point, the most recent Nielsen publications still listed WPPB-TV as a station in the West Palm Beach DMA. Again, the publication of that reassignment came too late to provide anything like the kind of firm list of stations entitled to carriage that the rules contemplate will be available at the start of each election cycle. In implementing SHVIA, the Commission strove to provide ample time to arrange for carriage of local signals and thereby “avoid overburdening satellite carriers.”<sup>36</sup> The Commission accomplished that goal by, among other things, setting a three-year interval for carriage cycles and anchoring carriage elections to Nielsen publications issued far enough in advance to give satellite carriers sufficient time to review the carriage election and to arrange for carriage. The purpose of the rules adopted would be thwarted if a station could premise a carriage election on a DMA assignment that most likely became valid – for purposes of Section 76.66 – *after* the date on which a station was required to make its carriage election. Particularly in view of the dilemma faced by DirecTV, discussed below,<sup>37</sup> the lack of adequate preparation time amounts to a burden on satellite carriers inconsistent with SHVIA and the Commission’s implementing regulations.

15. In this respect, the present case stands in stark contrast to the *TV 34 Waiver Order*<sup>38</sup> and the *Nevada Channel 3, Inc.*<sup>39</sup> decisions where the stations requested DMA reassignments more than a year before the current carriage cycle and the Nielsen publications listing the DMA reassignments were in circulation a year before the deadline for carriage elections.

16. Both EchoStar and DirecTV maintain that by waiting until the carriage election deadline had passed before filing its Request for Waiver, WPPB-TV has violated a rule established in the *TV 34 Must Carry Order*.<sup>40</sup> The satellite carriers place particular emphasis on a sentence in that order that states: “KWFT could file a waiver request to be considered eligible for mandatory carriage in the Ft. Smith market *before* KWFT is required to make a carriage election for the next cycle.”<sup>41</sup> Focusing on that sentence, EchoStar and DirecTV contend that the *TV 34 Must Carry Order* established an absolute rule barring the grant of any waiver request filed after the carriage election deadline.

17. We read our order differently. Although the order suggested that, as an alternative to asserting carriage rights in its former DMA, KWFT could file a waiver before the carriage deadline, nowhere does the order assert that the deadline for carriage elections also functions as a deadline for waiver requests. Indeed, the Bureau noted that in the likely event that any waiver request filed would still be pending at the carriage election deadline, KWFT could “assert carriage rights in the Ft. Smith market,

---

<sup>35</sup> *DBS Must Carry Report and Order*, 16 FCC Rcd at 1937; *TV 34 Must Carry Order*, 2005 WL 3590933 at ¶ 9.

<sup>36</sup> *DBS Must Carry Report and Order*, 16 FCC Rcd at 1936.

<sup>37</sup> See *infra*, ¶ 19.

<sup>38</sup> See *TV 34, Inc.; Petition for Waiver of Section 76.66(e)(3) of the Commission’s Rules*, 2005 WL 3590933 (MB 2005).

<sup>39</sup> *Nevada Channel 3, Inc.; Petition for Waiver of Section 76.66(e)(3) of the Commission’s Rules*, 2006 WL 487897 (MB 2006).

<sup>40</sup> EchoStar Opposition to Request for Waiver, at 5; DirecTV Answer and Motion to Dismiss, at 3. Pursuant to 47 C.F.R. § 76.66(c), the election deadline for the current carriage cycle was October 1, 2005. WPPB-TV filed its waiver request on December 13, 2005.

<sup>41</sup> *TV 34 Must Carry Order*, 20 FCC Rcd at 8749 (emphasis added).

as well as the Springfield market, contingent on the outcome of its request.”<sup>42</sup> In other words, the *TV 34 Must Carry Order* recognized that carriage elections and waiver requests would proceed on separate tracks.

18. Nevertheless, the timing of a waiver request is highly relevant. The longer that a party waits to make a request, the more likely it becomes that the uncertainty and burden on satellite carriers and the services they offer in other markets occasioned by the delay will outweigh any benefits to be gained by granting the waiver. Moreover, if a party delays the request so long that it becomes, in essence, a request for a mid-cycle market modification, SHVIA’s implicit proscription of such modifications in the context of satellite carriage would prevent the Commission from granting that request.<sup>43</sup>

19. In *TV 34 Waiver Order* and *Nevada Channel 3*, assertions that carrying stations ahead of the Section 76.66 schedule would be burdensome were not found to be an insurmountable barrier. Here, however, DirecTV points to a very specific burden that it would face were we to grant the waiver:

the spot beam of its DIRECTV 4S satellite, which serves the Miami-Ft. Lauderdale DMA, presently operates at full capacity . . . To provide WPPB-TV in the Miami DMA . . . DIRECTV would need to place the WPPB-TV signal on its national beam (the “CONUS beam”), or move another Miami station to that beam. This, of course, would be a substantial misallocation of scarce CONUS capacity. Reserving CONUS capacity for a Miami station necessarily would foreclose future uses of CONUS capacity, which otherwise would go toward providing news, information or entertainment programming of wide interest and appeal to millions of viewers.<sup>44</sup>

20. DirecTV’s predicament underscores the importance of adequate notice to satellite carriers. Carrying a station in one DMA may come at the expense of stations or viewers in other locations and satellite carriers therefore must balance the interest of multiple constituencies of viewers when arranging for signal carriage. Here, granting WPPB-TV’s request would negate the process set up in the rules and satellite carriers “would be forced to absorb the substantial costs of diverting valuable CONUS capacity to accommodate SBBC” while their subscribers “would be denied additional national content.”<sup>45</sup> Those detriments could have been avoided had adequate notice of a valid carriage request been provided. Accordingly, this consideration, which is directly reflected in the rules, weighs decidedly against granting the waiver.

#### IV. CONCLUSION

21. Owing to the timing of Nielsen’s decision to move WPPB-TV from the West Palm Beach DMA to the Miami DMA, DirecTV and EchoStar faced considerable uncertainty with respect to the validity of WPPB-TV’s carriage request and consequently were left with inadequate time to arrange for carriage of the station in its new DMA. In that circumstance, we conclude that a waiver of Section 76.66(e)(3) would not serve the public interest.

---

<sup>42</sup> *Id.* at 8749 n.18.

<sup>43</sup> See *DBS Must Carry Report and Order*, 16 FCC Rcd at 1937 (explaining that Congress intentionally omitted a mid-cycle market modification procedure from Section 338 of the Act); see also *TV 34 Must Carry Order*, 2005 WL 3590933 at ¶ 9 (same).

<sup>44</sup> DirecTV Opposition to Request for Waiver, at 2-3.

<sup>45</sup> *Id.* at 3. DirecTV goes on to note that, if allowed to put off carriage of WPPB-TV until the next carriage cycle, the ongoing upgrade of its distribution technology and its launch of additional satellites with improved capacity will enable the carrier to accommodate with ease the station on a spot beam targeted at the Miami DMA. *Id.*

**V. ORDERING CLAUSES**

22. Accordingly, **IT IS ORDERED**, pursuant to Section 338(f) of the Communications Act, as amended, 47 U.S.C. § 338(f), and Section 76.7 of the Commission's rules, 47 C.F.R. § 76.7, that the petition for waiver and must carry complaints filed by School Board of Broward County, licensee of noncommercial television station WPPB-TV, Boca Raton, Florida, **ARE DENIED**.

23. 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