

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

In the Matter of:)	
)	
Encuentro Christian Network,	)	CSR-6951-M
International Broadcasting Corporation, and	)	CSR-6955-M
R y F Broadcasting Inc.	)	CSR-6967-M
	)	CSR-6970-M
v.	)	CSR-6971-M
	)	CSR-6973-M
DirecTV Latin America, LLC, and	)	CSR-6974-M
EchoStar Satellite, LLC	)	CSR-6975-M
	)	CSR-6976-M
Requests for Mandatory Carriage	)	CSR-6977-M
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2006

Released: April 4, 2006

By the Deputy Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. The three above-captioned licensees (the “Petitioners”) of five different television broadcast stations (collectively, the “Stations”)¹ each filed Complaints against DirecTV Latin America, LLC and EchoStar Satellite, LLC (the “Satellite Carriers”) pursuant to Section 338 of the Communications Act of 1934, as amended (the “Act”), and Section 76.66 of the Commission’s rules.² The Complaints are based on the Satellite Carriers’ refusal to carry the Stations’ signals on the Satellite Carriers’ satellite systems, and in light of the similar facts and issues presented in the Complaints, we consolidate them for purposes of this action. Specifically, the Petitioners argue that the Satellite Carriers are required to carry the Stations’ signals pursuant to Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”).³ The Satellite Carriers filed Oppositions to the Complaints, and the Petitioners each filed Replies. For the reasons discussed below, we deny the Complaints.

II. DISCUSSION

2. Section 338(a)(1) of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”),⁴ requires satellite carriers to carry upon request all local television broadcast

¹ The Stations are: WRFB-TV, Carolina, PR; WECN-TV, Naranjito, PR; WTCV-TV, San Juan, PR; WVEO-TV, Aguadilla, PR; and WVOZ-TV, Ponce, PR.

² 47 U.S.C. § 338; 47 C.F.R. § 76.66.

³ The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, § 210, 118 Stat. 2809, 3429-3430 (codified as 47 U.S.C. § 338(a)(4) (2004)).

⁴ See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.⁵ A station's market for satellite carriage purposes is its Designated Market Area, or DMA, as defined by Nielsen Media Research.⁶ Puerto Rico is not listed by Nielsen as a DMA.⁷ In the instant case, the Petitioners do not allege that they are entitled to carriage under Section 338(a)(1), but rather under Section 338(a)(4). The procedure for requesting carriage pursuant to Sections 338(a)(1) and 338(a)(4) is the same under the Commission's rules,⁸ as detailed below.

3. Section 338(a)(4) of the Communications Act, as amended by Section 210 of SHVERA, requires satellite providers with more than 5,000,000 subscribers to retransmit "signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States."⁹ In our *Alaska-Hawaii Report and Order*, we recognized that the phrase "State that is not part of the contiguous United States," is susceptible to different interpretations because the Communications Act defines "State" to include all territories and possessions, whereas the "literal and colloquial" interpretation of "State" would include only the forty-eight contiguous states, the District of Columbia, Alaska and Hawaii.¹⁰ We ultimately concluded that, "Section 338(a)(4)'s use of the phrase 'State that is not part of the contiguous United States' was not meant to include the noncontiguous territories and possessions, but instead was meant to refer only to the States of Alaska and Hawaii."¹¹ The Petitioners filed a petition for reconsideration of that conclusion.¹² Despite the Commission's conclusion, the Petitioners requested carriage on the Satellite Carriers' systems pursuant to Section 338(a)(4), and those requests were denied.¹³

4. 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.¹⁴ 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.¹⁵ 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.¹⁶ Within 30 days after such written notification, the satellite carrier shall respond in writing and comply with

⁵ See 47 U.S.C. § 338.

⁶ 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).

⁷ For the purposes of cable carriage, Puerto Rico, the U.S. Virgin Islands, and Guam are each considered a single market for the purposes of Section 338(a)(1). 47 C.F.R. § 76.55(e)(1). This rule does not apply to satellite local markets.

⁸ See 47 C.F.R. § 76.66.

⁹ 47 U.S.C. § 338(a)(4) (2006).

¹⁰ *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, FCC 05-159, ¶ 9 (rel. Aug. 23, 2005) ("*Alaska-Hawaii Report and Order*").

¹¹ *Id.* at ¶ 10. See also, 47 C.F.R. § 76.66(b)(2).

¹² See *International Broadcasting Corporation et al.*, Petition for Reconsideration, MB Docket No. 05-181 (filed Sept. 22, 2005).

¹³ See, e.g., Complaint of International Broadcasting, licensee of WVOZ-TV, against EchoStar Satellite, LLC at Appendices A & B, Complaint of R y F Broadcasting Inc., licensee of WRFB-TV, against EchoStar Satellite, LLC at Appendices A & B.

¹⁴ See 47 C.F.R. § 76.66(d)(2).

¹⁵ See 47 C.F.R. § 76.66(d)(2)(iii).

¹⁶ See 47 U.S.C. § 338(f)(1); see also 47 C.F.R. § 76.66(m)(1).

such obligations or state its reasons for believing that it is in compliance with such obligations.¹⁷ If Commission action is necessitated, as the Petitioners allege 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.¹⁸ 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.¹⁹

5. The Petitioners assert that they are entitled to carriage pursuant to Section 338(a)(4) of the Communications Act. The Complaints raise no new issues other than those already considered and addressed in the *Alaska-Hawaii Report and Order*, however, nor do the Petitioners allege that the Satellite Carriers are acting inconsistently with our rules. Rather, the Petitioners filed these complaints to preserve their rights to gain must-carry status during the current election cycle.²⁰ These Complaints seek remedies inconsistent with our *Alaska-Hawaii Report and Order* and our rules, and therefore we have no basis on which to grant such relief at this time. In the event that the Commission grants the Petitioners' pending petition for reconsideration of the *Alaska-Hawaii Report and Order*, affected broadcast stations would have the right to request carriage outside of the standard election cycle. This action should not be seen as a review of our rulemaking in the *Alaska-Hawaii Report and Order*, nor as an indication of the outcome of any pending petitions for reconsideration of that item.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. §§ 76.66, that the carriage complaints filed by Encuentro Christian Network, International Broadcasting Corporation, and R y F Broadcasting Inc., against EchoStar Satellite, LLC and DirecTV Latin America, LLC **ARE DENIED**.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ See 47 C.F.R. § 76.66(m)(2).

¹⁸ See 47 C.F.R. § 76.66(m)(6).

¹⁹ See *DBS Mandatory Carriage Reconsideration Order*, 16 FCC Rcd at 16574.

²⁰ See, e.g., Complaint of International Broadcasting, licensee of WTCV-TV, against EchoStar Satellite, LLC at 3, Complaint of R y F Broadcasting Inc., licensee of WRFB-TV, against DirecTV Latin America, LLC at 3, Reply to Opposition to Carriage Complaint of Encuentro Christian Network, licensee of WECN-TV, against EchoStar Satellite, LLC at 2. As the Petitioners assert, Section 76.66(m)(6) of the Commission's rules prohibits television station licensees from filing complaints later than 60 days after a satellite carrier denies that television station's carriage request. 47 C.F.R. § 76.66(m)(6).