

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

In the Matter of:)	
)	
Channel 38 Christian Television)	
KSCE (TV), El Paso, Texas)	
)	CSR 8151-M
v.)	
)	
DIRECTV, Inc.)	
)	
Signal Carriage Complaint)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 27, 2009

Released: July 27, 2009

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On March 18, 2009, Channel 38 Christian Television (“Channel 38”), licensee of noncommercial television station KSCE, El Paso, Texas, filed a “carriage complaint” against DIRECTV for refusing to carry KSCE’s signal during the current election cycle which began on January 1, 2009. DIRECTV opposed the complaint and Channel 38 filed a reply to DIRECTV’s opposition. For the reasons discussed below, we deny Channel 38’s request to order DIRECTV to carry KSCE’s signal during the current election cycle because Channel 38 failed to renew its request for carriage in a timely fashion.

II. BACKGROUND

2. Section 338 of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”),² requires satellite carriers, by 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.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, 2002.⁴ In November 2000, the Commission

¹ Mandatory carriage complaints are treated as Petitions for Special Relief under Section 76.7 of our rules. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

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

³ *See* 47 U.S.C. § 338.

⁴ *See* 47 C.F.R. § 76.66(c)(3); *see also* 76.66(c)(4).

adopted rules to implement the provisions contained in Section 338.⁵ Pursuant to these rules, commercial television stations are required to make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle.⁶ For the current carriage cycle, that date was October 1, 2008. A noncommercial television station “must renew its carriage request at the same time a commercial television station must make its retransmission consent-mandatory carriage election.”⁷ In adopting these requirements, the Commission found that the statute required television stations to affirmatively request carriage.⁸ The rules governing carriage procedures provide that requests for carriage must be in writing and sent to the satellite carriers’ principal place of business by certified mail.⁹

III. DISCUSSION

3. The record shows that on January 8, 2009, counsel for Channel 38 sent a certified letter to DIRECTV requesting renewal of mandatory carriage of KSCE’s signal in the El Paso, Texas market.¹⁰ DIRECTV responded on January 27, 2009 and denied Channel 38’s request as untimely.¹¹ Channel 38 filed the instant complaint and argues that three circumstances excused it from renewing its mandatory carriage request by October 1, 2008. For the reasons discussed below, we deny Channel 38’s complaint.

4. First, Channel 38 asserts that its notice obligations should be tolled by DIRECTV’s failure to provide certain notices required by Commission rules. Specifically, Channel 38 states that DIRECTV failed to provide timely notice of the location of its local receive facility (“LRF”) and that DIRECTV’s method of providing such information, i.e. posting LRF locations on its web site, was insufficient.¹² Channel 38 also asserts that DIRECTV failed in its obligation to inform stations that failure to renew a carriage request could result in loss of carriage for the entire current election cycle.¹³ We find that DIRECTV complied with Commission rules and thus Channel 38’s argument in this regard is without merit. With respect to its LRF location, DIRECTV provided timely notice on its website more than 120 days prior to commencement of the election cycle.¹⁴ Further, DIRECTV’s method of notifying stations of LRF locations on its web site provides sufficient notice under our rules, particularly where the LRF locations have not changed from the previous cycle.¹⁵ With respect to the notification regarding loss of carriage rights, we agree with DIRECTV that it was only after 2005 that this requirement was imposed and only in cases where a satellite carrier first begins offering local-into-local service in a particular

⁵ See generally *DBS Must Carry Report & Order*, 16 FCC Rcd 1918 (2000). 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*”).

⁶ 47 C.F.R. § 76.66 (c)(4).

⁷ 47 C.F.R. § 76.66 (c)(5).

⁸ See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1931 (reiterating the statutory requirement that all television broadcast stations, including NCE stations, must affirmatively request carriage). See also 47 U.S.C. 338(a)(1).

⁹ 47 C.F.R. § 76.66 (d)(1)(ii).

¹⁰ Complaint at ¶ 2.

¹¹ *Id.*

¹² Complaint at ¶ 4.

¹³ Complaint at ¶ 5.

¹⁴ 47 C.F.R. §76.66(f)(3). Channel 38’s assertion that the deadline is 120 days prior to the election deadline is incorrect. See Complaint at ¶ 4.

¹⁵ See *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918, 1943 (2000) where the Commission stated that the means used by a satellite carrier to notify television stations of LRF locations is within the discretion of the carrier. According to DIRECTV, KSCE knows where the El Paso LRF is located because it had delivered its signal there for three years. Opposition at 7.

market, a requirement that does not apply in this case.¹⁶

5. Second, Channel 38 argues that the Commission's rules are unclear regarding what "formalities" are necessary for a carriage renewal request by a noncommercial station. We disagree. Section 76.66(c)(4) requires commercial television stations to make retransmission consent/mandatory carriage elections by October 1 of the year preceding a new carriage cycle.¹⁷ Noncommercial stations must renew carriage requests at the same time a commercial television station makes its election.¹⁸ We note that the satellite carriage requirement is dependant upon the station making a request for carriage.¹⁹ The Commission rules implementing the carriage request requirement are very clear regarding the timing of elections and renewals, and thus the only question that remains concerns the form that carriage renewals for noncommercial stations must take. Section 76.66(d)(1)(ii) requires that carriage requests must be made in writing and sent to a satellite carrier's principal place of business by certified mail.²⁰ Channel 38 argues that because this rule refers to elections for commercial stations and does not include the term "renewal," it was not required to notify DIRECTV in writing of its renewed carriage request. It states that DIRECTV had actual notice of its desire to continue to be carried pursuant to telephone conversations in September 2008, before the October 1st deadline.²¹ Contrary to Channel 38's assertions, Section 76.66(d)(1)(ii) by its terms applies to "television broadcast stations," not just commercial stations. Therefore, we find that the carriage request requirements in 76.66(d) are general procedural requirements for any television broadcast station's carriage request and apply equally to commercial and noncommercial stations. To find otherwise would leave the manner in which it renews its request to the discretion of each noncommercial station and would undermine the intent of the rules to provide certainty to satellite carriers in determining their carriage obligations and configuring their satellite systems accordingly.²²

6. Finally, Channel 38 urges the Commission to eliminate altogether the obligation for noncommercial television stations to renew carriage requests.²³ It argues that this solution would reduce the burden on satellite carriers to review renewal requests and would conserve Commission resources by eliminating the need to process carriage complaints such as the one at issue here. It argues that noncommercial stations only have one option, mandatory carriage, and thus an automatic renewal absent notification that a noncommercial station did not intend to renew, would be more reasonable and efficient than requiring renewal notifications every three years.²⁴ We find that this proposal is beyond the scope of

¹⁶ See Opposition at 6. On December 8, 2004, Congress amended 47 U.S.C. §338 by adding Section 338(h)(2)(B) requiring that satellite carriers notify television stations when they are planning to launch new local-into-local service. This notification must include a statement that failure to make an election of must carry or retransmission consent will result in the loss of the right to be carried for the next election cycle. The Commission revised its rules to implement this portion of SHVERA in March 2005. *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 20 FCC Rcd 7780, 7785-6 (2005). Although the record does not indicate when DIRECTV first provided local-into-local service in El Paso, neither party asserts it was after 2005.

¹⁷ 47 C.F.R. § 76.66 (c)(4). See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1929.

¹⁸ 47 C.F.R. § 76.66(c)(5).

¹⁹ See *DBS Must Carry Reconsideration Order*, 16 FCC Rcd 16544 at ¶ 64; *DBS Must Carry Report & Order*, 16 FCC Rcd at 1929-31. We note that the requirement to request satellite carriage differs from the statutory cable carriage requirements for must carry. Compare 47 U.S.C. § 338(a)(1) and § 535(a).

²⁰ 47 C.F.R. § 76.66(d)(1)(ii).

²¹ Complaint at note 4.

²² *Family Stations, Inc. v DIRECTV, Inc.*, Order on Reconsideration, 19 FCC Rcd. 14777, 14779 (MB 2004). See also *Johnson Broadcasting of Dallas, Inc. v DIRECTV, Inc.*, 17 FCC Rcd. 886, 889-10 (CSB 2002).

²³ Reply to Opposition at ¶ 7.

²⁴ *Id.* at ¶ 6.

this carriage proceeding and would require a rulemaking and consideration of whether such a change could be consistent with the statutory requirement for stations to affirmatively request satellite carriage.²⁵

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, that the complaint filed by Channel 38 **IS DENIED**.

8. 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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²⁵ Similarly, Channel 38's argument that requiring noncommercial stations to request carriage is unconstitutional is not appropriate for consideration in this carriage complaint proceeding.