

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

In the Matter of:)
Corridor Television, LLP)
v.) CSR 8390-M
DISH Network, LLC)
Request for Mandatory Carriage of)
Television Station KCWX-DT Fredericksburg,)
Texas)

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2011

Released: May 27, 2011

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Corridor Television, LLP ("Corridor"), licensee of commercial television station KCWX-DT, Fredericksburg, Texas ("KCWX"), filed the above-captioned must carry complaint against DISH Network, LLC pursuant to Section 338 of the Communications Act of 1934, as amended (the "Act"), and Section 76.66 of the Commission's rules for its refusal to carry the signal of KCWX on its satellite system.

1 47 U.S.C. § 338; 47 C.F.R. § 76.66; see Public Notice, Special Relief and Show Cause Petitions, Report No. 330 (February 4, 2011).

2 See 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides "local-into-local" satellite service when it retransmits a local television signal into the local market of that television station for reception by subscribers located in the market. 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); 47 C.F.R. § 76.7. 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). We find that Corridor's complaint was timely filed. See Complaint at Attachment I; Reply at Exhibits A, B, & C.

4 We grant DISH's Motion for Leave to File a Surreply in order to ensure a complete record in this proceeding. For the same reason, we also consider Corridor's Opposition to DISH's Surreply.

II. BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),⁵ 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 television broadcast signal pursuant to the statutory copyright license.⁶ A station's market for satellite carriage purposes is its DMA, as defined by The Nielsen Company.⁷ In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.⁸

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 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.⁹ Furthermore, under SHVIA, a television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated local-receive-facility ("LRF") of the satellite carrier.¹⁰

III. DISCUSSION

4. In the instant case, the record shows that DISH carried the signal of KCWX since January 1, 2009 pursuant to a mandatory carriage election.¹¹ On October 27, 2010 DISH ceased carrying the station.¹² KCWX asserts that the reason it was dropped from DISH was that it changed network affiliation, changing from the CW Network to the MYTV Network.¹³ DISH denies the station's assertions and states that the reason it dropped the signal was because the station failed to provide a good quality signal to DISH's local receive facility ("LRF") as required by Commission rules.¹⁴

⁵ See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

⁶ See 47 U.S.C. § 338.

⁷ 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 Broadcast Carriage 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 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.").

⁸ See generally *DBS Broadcast Carriage 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 Broadcast Carriage Reconsideration Order").

⁹ See 47 C.F.R. § 76.66.

¹⁰ Although the rules for mandatory satellite carriage do not include a required digital signal level, the rules for cable carriage require that television stations must deliver a digital signal level of at least -61dBm at the input terminals of the signal processing equipment. 47 C.F.R. §76.55 (c)(3). This is the standard that DISH referenced in its test of KCWX's signal. For purposes of the testing required in this Order, the -61dBm standard should be used.

¹¹ Complaint at 1.

¹² *Id.*

¹³ Complaint at 4.

¹⁴ Opposition at 5.

5. We find that DISH has not established that it has a reasonable basis to question KCWX's signal quality.¹⁵ DISH questions KCWX's signal quality on the basis of two signal strength test reports submitted to the record. In its Opposition, DISH's first Engineering Test Report suffers from a number of technical and procedural flaws, including poor documentation of equipment calibration dates, reception conditions, observed picture quality, and whether the receive antenna had been properly oriented.¹⁶ In addition, the test consisted of four samples taken on days spread over the course of five months, rather than the accepted practice of six samples over a single 24-hour period, no more than four hours apart.¹⁷ DISH also performed the test with the receive antenna positioned less than 30 feet above ground level.¹⁸ Finally, DISH improperly subtracted out the receive antenna gain from the measured signal levels. Section 76.66(g)(2) of the Commission's rules states that the signal level should be measured at the input terminal of the signal processing equipment – which would include the effects of antenna gain and cable loss.¹⁹ These flaws render the first test results unreliable. In their Surreply, DISH's second Engineering Test Report corrected several of the flaws found in the first test report, including the test duration and antenna orientation.²⁰ The second report again uses a receive antenna height of less than 30 feet, and does not include equipment calibration dates or a description of observed picture quality.²¹ DISH also again improperly subtracted out the receive antenna gain from the measured signal.²² These flaws render the second test results unreliable as well. We conclude that the tests performed by DISH failed to follow generally acceptable engineering practices, and are insufficient to demonstrate that KCWX's signal is not of "good quality" at DISH's LRF.

6. Based on the foregoing, we grant Corridor's mandatory carriage complaint conditioned upon the station delivering a good quality signal to DISH's local receive facility. DISH will have 20 days from the date of this Order to demonstrate that KCWX does not provide a good quality signal to its LRF. Evidence supporting this finding shall be submitted to the Commission and served upon Corridor at the conclusion of the testing. We note that DISH has twice submitted flawed signal quality engineering reports. If the signal quality engineering report required to be submitted by DISH under this Order fails to fully follow all of the signal testing requirements set forth in the Commission's rules, we will summarily conclude that KCWX provides a signal of good quality to DISH's LRF and order the commencement of carriage of KCWX on DISH's system.

IV. ORDERING CLAUSES

7. 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 mandatory carriage complaint filed by Corridor Television LLP ("Corridor") against DISH Network, LLC **IS CONDITIONALLY GRANTED**.

8. **IT IS FURTHER ORDERED** that DISH Network may conduct signal strength tests consistent with good engineering practices to measure KCWX's signal at DISH's local receive facility

¹⁵ See *Community Television, Inc. v Echostar Communications Corp.*, 17 FCC Rcd 12907, 12911 (MB 2002).

¹⁶ DISH Testing Report.

¹⁷ See *Complaint of Channel 5 Public Broadcasting, Inc., Against Weststar Cable Request for Carriage Memorandum Opinion and Order*, 8 FCC Rcd. 4953 (CSB1993).

¹⁸ See *DBS Broadcast Carriage Report and Order*, 16 FCC Rcd. 1918 ¶ 72, n. 164 (2000).

¹⁹ See 47 C.F.R. § 76.66(g)(2).

²⁰ DISH Surreply Testing Report.

²¹ *Id.*; see also Corridor's Opposition to Surreply at 1-2. We note that the record here indicates that the testing antenna was mounted 25 feet above ground level. Opposition to Surreply at 1.

²² *Id.*

within 20 days from the date that this Order is released and shall submit to the Commission, within 10 days from the date of completion of the station's signal strength survey, evidentiary documentation supporting its findings.

9. **IT IS FURTHER ORDERED** that DISH Network **SHALL COMMENCE CARRIAGE** of the KCWX signal on its satellite system in the San Antonio, Texas market within 60 days absent a showing, as described above, that KCWX does not deliver a good quality signal to DISH's local-receive-facility.

10. 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

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau