

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

In the Matter of )
Channel 3 TV Company, LLC (KCDO-TV, ) MB Docket No. 20-99
Sterling, Colorado) )
v. ) CSR-8989-M
DISH Network L.L.C. )

MEMORANDUM OPINION AND ORDER

Adopted: August 7, 2020

Released: August 10, 2020

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Channel 3 TV Company, LLC (Channel 3), licensee of full power television station KCDO-TV, Sterling, Colorado, and Class A low power television station KSBS-CD, Denver, Colorado, filed the above-captioned must carry complaint (Complaint) against DISH Network L.L.C. (DISH) pursuant to Section 338 of the Communications Act of 1934, as amended (Act), and Section 76.66 of the Commission’s rules for its refusal to accept KCDO-TV’s signal delivery by digital translator on its satellite system.1 DISH filed an opposition to the complaint to which KCDO-TV filed a reply.2 For the reasons discussed below, we conditionally grant the Complaint.

II. BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),3 requires 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.4 A station’s market for satellite

1 47 U.S.C. § 338; 47 CFR § 76.66; see Complaint of Channel 3 TV Company, LLC (Complaint), filed Apr. 2, 2020; Public Notice, Special Relief and Show Cause Petitions, Report No. 0491 (Apr. 10, 2020). 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 of the Commission’s rules. 47 CFR §§ 76.66(m)(3), 76.7.

2 Opposition of DISH Network L.L.C. (Opposition), filed Apr. 22, 2020; KCDO-TV Reply (Reply), filed Apr. 28, 2020.

3 47 U.S.C. § 338. In November 2000, the Commission adopted rules to implement the provisions contained in Section 338. See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, CS Docket No. 00-96, Report and Order, 16 FCC Rcd 1918, 1934, para. 15 (2000) (SHVIA Order).

4 47 CFR § 76.66(a)(6). Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular designated market area (DMA) in reliance on the local statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 17 U.S.C. § 122. Satellite (continued....)

carriage purposes is its DMA, as defined by The Nielsen Company.<sup>5</sup>

3. As required by the Act, 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, unless the station's programming is duplicative of the programming of another station carried by the satellite carrier in the DMA.<sup>6</sup> Furthermore, under the Act, 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.<sup>7</sup>

4. DISH has carried KCDO-TV since 2006 pursuant to mandatory carriage elections.<sup>8</sup> KCDO-TV's tower is located in Fort Morgan, Colorado, which is northeast of central Denver.<sup>9</sup> KCDO-TV's signal has been delivered to DISH's LRF by a leased closed circuit fiber line (fiber line).<sup>10</sup> KSBS-CD's transmitter is located on Lookout Mountain in Jefferson County, Colorado, which is to the west of Denver.<sup>11</sup> KSBS-CD originates its own "programming and commercial matter for [the] general public," but it also uses a multiplexed subchannel to retransmit KCDO-TV's primary high-definition signal "without alteration or omissions" to the metropolitan Denver area.<sup>12</sup>

5. On July 30, 2019, Channel 3 sent DISH an email to notify it of an upcoming change in KCDO-TV's signal delivery method -- from a fiber line to over-the-air (OTA) delivery -- to DISH's LRF.<sup>13</sup> The transition would be effective on October 1, 2019, so that the existing fiber line could be discontinued.<sup>14</sup> Channel 3 requested that DISH conduct testing to determine whether it can receive KCDO-TV's OTA signal at its LRF from either: 1) "A LPTV signal of Virtual Channel 3.1 that will be found on RF Channel 19.1 as transmitted from our Lookout Mountain KSBS transmitter . . . ; or 2) A Full Power signal of Virtual Channel 3.1 that will be found on RF Channel 23.1 as transmitted from our Morgan County KCDO transmitter. . . ." <sup>15</sup> Channel 3 also requested that DISH provide it with any "findings and documentation, screen grabs or other evidence once testing is concluded."<sup>16</sup>

6. On July 31, 2019, DISH replied to Channel 3's email stating that it is not able to receive KCDO-TV's signal from RF Channel 23 because DISH does not carry LPTV stations pursuant to

(Continued from previous page) \_\_\_\_\_

carriers have a statutory copyright license under SHVIA for carriage of stations to any subscriber within a station's local market. Pub. L. No. 106-113, 113 Stat. 1501 (1999); *see also* 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the "carry one, carry all" requirement.

<sup>5</sup> *See* 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station's local market for purposes of satellite carriage as the DMA in which the station is located).

<sup>6</sup> 47 U.S.C. §§ 338(a)(1), (c)(1); 47 CFR § 76.66(h).

<sup>7</sup> 47 U.S.C. § 338; 47 CFR § 76.66(g).

<sup>8</sup> Complaint at 2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 2-3 and Exhibit A (email from Ron Anderson, Operations Manager, KCDO-TV, to Teresa Cain and James Breitenbach) (Ron Anderson email).

<sup>11</sup> *Id.*; *see* 47 CFR § 76.66(e)(2).

<sup>12</sup> Complaint at 2.

<sup>13</sup> *Id.*, Exhibit A.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*, Exhibit A.

<sup>16</sup> *Id.*

the must carry regulations.<sup>17</sup> DISH further stated that “[s]ince we are unable to receive your OTA signal, please let me know if you will be able to continue to provide your signal to DISH via the current fiber circuit.”<sup>18</sup>

7. On February 18, 2020, Channel 3’s attorney sent DISH a letter to clarify its position because DISH’s email response reflected “some confusion.”<sup>19</sup> Channel 3 restated the facts contained in the email regarding the signal change from fiber line to KSBS-CD’s use as a translator for KCDO-TV’s primary programming stream.<sup>20</sup> The letter reiterated Channel 3’s desire to deliver KCDO-TV’s signal to DISH’s LRF over-the-air through translator KSBS-CD,<sup>21</sup> but unlike the email, did not provide a signal transition date.<sup>22</sup> Channel 3 indicated it does not dispute DISH’s position that KSBS-CD does not have must carry rights.<sup>23</sup> Channel 3 restated that KSBS-CD subchannel RF 19.3 would be used to *translate* Channel 3’s full-power signal of KCDO-TV rather than act as an originating station.<sup>24</sup> Channel 3 further explained that DISH had previously carried, without any signal degradation, KCDO-TV using KSBS-CD subchannel RF 19.3 for translation in September 2018, when the fiber line failed.<sup>25</sup>

8. Channel 3’s letter acknowledged that under the must carry rules it is responsible for the costs of delivering a good-quality signal to DISH’s LRF.<sup>26</sup> Yet it also asserted that such signal may be provided to a multichannel video programming distributor (MVPD) in any manner chosen by it, such as “microwave facilities, fiber optics, or even a translator station to improve the quality of its signal.”<sup>27</sup> Channel 3 claimed that DISH is obligated to carry KCDO-TV’s good-quality signal delivered by a digital translator, in this case, KSBS-CD subchannel RF 19.3.<sup>28</sup> According to Channel 3, OTA reception of KCDO-TV’s signal is not likely to cause any inconvenience to DISH because it is currently receives OTA signals for other Denver DMA stations, including some that originate from Lookout Mountain.<sup>29</sup> Channel 3’s letter requested that DISH respond within 30 days pursuant to 47 CFR § 76.66(m)(2).<sup>30</sup>

9. On March 19, 2020, DISH responded to Channel 3’s letter and denied its request to switch delivery of KCDO-TV to KSBS-CD because LPTV stations are not entitled to carriage.<sup>31</sup> DISH

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<sup>17</sup> Complaint, Exhibit B (email from Teresa Cain, DISH Network Programming, Locals Operations, to Ron Anderson (July 31, 2019)) (Teresa Cain email).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, Exhibit C at 1-2.

<sup>20</sup> *Id.*, Exhibit C at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.*, Exhibit D at 1 (Letter from Jeffrey H. Blum, Senior Vice President, Public Policy & Government Affairs, DISH, to David H. Pawlik (Mar. 19, 2020)).

relied on the fact that the term “television broadcast station” excludes LPTV stations.<sup>32</sup> Moreover, DISH asserted that KCDO-TV, as “a parent station,” may not confer its must-carry rights to KSBS-CD because doing so would render its “programming ineligible for must carry status.”<sup>33</sup> However, DISH stated that it would continue to carry KCDO-TV’s primary channel on its system through the end of the upcoming election cycle as long as Channel 3 “complies with all federal regulations applicable to mandatory carriage.”<sup>34</sup> DISH stated that if KCDO-TV moved its high-power antenna from Fort Morgan to KSBS-CD’s facility on Lookout Mountain, which would convert it into a high-power station, “DISH would be able to continue carriage of KCDO[-TV] pursuant to the FCC’s must carry rules.”<sup>35</sup> The letter concluded by stating that DISH would be happy to address any questions or “discuss permissible solutions for KCDO[-TV] to provide a good quality signal to the designated local receive facility for DISH.”<sup>36</sup>

10. Subsequently, KCDO-TV filed its Complaint with the Commission on April 2, 2020, alleging that DISH’s refusal to accept KCDO-TV’s signal delivery by digital translator violates the Commission’s must carry rules.<sup>37</sup> DISH’s opposition responds that Channel 3’s request “would improperly circumvent the rule that low-power stations are not entitled to mandatory carriage,”<sup>38</sup> and that the Complaint is time-barred because the 60-day period to file a complaint began on July 31, 2019, the date on which DISH responded to Channel 3’s initial email, rather than the date of its response to Channel 3’s February 18, 2020 letter, over 8 months after the email denial.<sup>39</sup> DISH states that after the email exchanges, there was no additional dialogue or communication between the parties until Channel 3’s letter.<sup>40</sup> DISH argues that its response to Channel 3’s February 18, 2020 letter cannot “serve as a denial by DISH.”<sup>41</sup> In reply, Channel 3 argues that the Complaint was timely because its July 30, 2019 email was “exploring possibilities” for alternative signal delivery methods, which is why it requested testing for either signal translation on KSBS-CD, or OTA reception of KCDO-TV.<sup>42</sup> Channel 3 maintains that under the must carry rules, DISH’s response to this type of informational communication cannot be “interpreted as implicitly or explicitly denying a station’s carriage request” for the “initiation of the countdown clock to a complaint.”<sup>43</sup> Channel 3 argues that it followed the procedures outlined in the Commission rules by notifying DISH in writing of its alleged failure to carry KCDO-TV via KSBS-CD in its February 18, 2020 letter and identifying the reasons for believing that DISH was not in compliance.<sup>44</sup> According to Channel 3, DISH denied the demand and provided its rationale in its March 19, 2020 letter,

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<sup>32</sup> *Id.* at 2; *see* 47 CFR § 76.66(a)(4) (“A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.”).

<sup>33</sup> Complaint at 1.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 2.

<sup>36</sup> *Id.*

<sup>37</sup> *See generally* Complaint.

<sup>38</sup> Opposition at 6.

<sup>39</sup> *Id.* at 1, 5.

<sup>40</sup> *Id.* at 6.

<sup>41</sup> *Id.*

<sup>42</sup> Reply at 1.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.*

which started the countdown that led to the timely filing of the Complaint on April 2, 2020.<sup>45</sup>

### III. DISCUSSION

11. For the reasons discussed below, we conditionally grant Channel 3's must carry Complaint. As an initial matter, we conclude that Channel 3's Complaint is timely and reject DISH's arguments to the contrary. Second, we conclude that Channel 3 is permitted to deliver its full power commercial station, KCDO-TV, to DISH's LRF using KSBS-CD, finding that use of an LPTV translator is an acceptable alternate method of delivering a good quality signal to DISH for purposes of exercising must carry rights.

12. First, we conclude that Channel 3's Complaint was timely filed. Under our rules, a carriage complaint must be filed "no more than sixty days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request."<sup>46</sup> The 60-day clock does not begin running until a satellite carrier denies a formal demand for carriage; negotiations between parties do not start the clock.<sup>47</sup> A formal demand for carriage is made when a local television broadcast station notifies a satellite carrier, in writing, of their belief that the carrier has failed to meet its obligations under Section 76.66 and identifies its reasons for believing that the satellite carrier failed to comply with such obligations.<sup>48</sup> Channel 3's July 30, 2019 email stated that it was exploring new options for its signal delivery because it would have to cease delivery by fiber line in the future and requested that DISH conduct signal testing. DISH's email in response did not address Channel 3's request for testing, but instead rejected a proposed change in signal delivery method using KSBS-CD as a translator based on the premise that DISH is not required to carry LPTV signals. Because Channel 3's email requested signal delivery testing and provided information about alternative delivery methods for KCDO-TV, we do not view it as a formal request for carriage. Thus, we find that the time period for filing a carriage complaint did not commence when DISH sent its email response to Channel 3's July 30, 2019 email. Rather, Channel 3's February 18, 2020 letter invoking section 76.66(m)(2) of the Commission's rules was a formal demand for carriage, and DISH's March 19, 2020 response denying that formal demand for carriage commenced the 60-day period for filing a complaint under our rules. Therefore, Channel 3's April 2, 2020 Complaint was timely filed.

13. Second, we conclude that Channel 3's use of KSBS-CD as a translator for full power station KCDO-TV is an acceptable alternate means to deliver a good quality signal to DISH's LRF. Thus, we find that DISH is obligated to carry KCDO-TV's signal as translated by KSBS-CD, provided that KSBS-CD provides a good quality signal to DISH's LRF. At the outset, we note that it is settled precedent that LPTV stations have no must carry rights under any circumstances on satellite providers; however, this precedent is not relevant to the instant inquiry.<sup>49</sup> Although DISH attempts to frame Channel 3's Complaint as an attempt to gain LPTV carriage rights for KSBS-CD, we disagree.<sup>50</sup> The pertinent issue is whether Channel 3 is permitted to exercise its must carry rights for full power station KCDO-TV by employing an LPTV translator as an alternate means to deliver a good quality signal to DISH's LRF.

14. As a preliminary matter, we agree with Channel 3 that the Communications Act and its

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<sup>45</sup> *Id.* at 3.

<sup>46</sup> 47 CFR § 76.66(m)(6).

<sup>47</sup> *Primetime Christian Broadcasting, Inc. v. TCI Cablevision of New Mexico Request for Carriage*, DA Docket No. 01-906, Memorandum Opinion and Order, 16 FCC Rcd 7919, 7921, para. 9 (2001) (*Primetime Christian*).

<sup>48</sup> 47 CFR § 76.66(m)(1).

<sup>49</sup> *In the Matter of Michael Karr d/b/a WVUX-LD*, Memorandum Opinion and Order, 34 FCC Rcd 9562 (MB 2019), *Application for Review Denied*, MB Docket No. 20-84, 35 FCC Rcd 6859 (June 20, 2020) (*Michael Karr*).

<sup>50</sup> Opposition at 6.

implementing rules do not expressly prohibit delivery of a full power broadcast signal through use of a LPTV translator.<sup>51</sup> Thus, we look to Commission precedent on this issue. Channel 3 cites prior Media Bureau (Bureau) decisions as well as statements by the Commission that, it argues, support the contention that it is permitted to use a LPTV translator to retransmit its full power station's signal without alteration to DISH's LRF. In particular, Channel 3 discusses cable mandatory carriage cases where the Bureau held that a broadcast station can use a translator to retransmit its signal to a cable provider.<sup>52</sup> Channel 3 also cites to the Commission order implementing SHVIA and adopting satellite carriage rules, which rejected a satellite carrier's request to define a good quality signal as only a dedicated fiber line, to generally support the notion that alternative delivery methods are permissible.<sup>53</sup>

15. DISH refutes the relevance of these prior cases and statements, but we do not find their arguments persuasive. First, DISH argues that the cases cited by Channel 3 are not applicable to satellite carriers, and thus do not support a finding that use of an LPTV translator to deliver a good quality signal is permitted in this context. In particular, DISH argues that although the legislative history to SHVIA provides that section 338 provisions should parallel those applicable to cable,<sup>54</sup> it ignores the fact that the Commission has treated satellite carriers and cable operators differently over the last 20 years.<sup>55</sup> Channel 3 contends that the legislative history of SHVIA indicates that "the procedural provisions of [s]ection 338 generally parallel those applicable to cable systems," which is evidenced by the fact that cable and satellite must carry rules "rely on the same statutory definition of television broadcast station."<sup>56</sup> Thus, according to Channel 3, statements made by the Commission with regard to the definitional treatment of LPTV and translator stations in the cable must carry context are applicable to the satellite must carry rules.<sup>57</sup>

16. While we note that DISH is correct in its assertion that Congress and the Commission have treated satellite carriers differently in certain instances because of the technical limitations of a

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<sup>51</sup> Complaint at 4.

<sup>52</sup> Reply at 5, citing *In the Matter of Telefutera Partnership of Douglas v. Comcast Cable Communications, Inc.*, DA Docket No. 05-1547, Memorandum Opinion and Order, 20 FCC Rcd 9966, 9968 (MB 2005) (*Telefutera*); see also Complaint at 6, citing *In the Matter of Guenter Marksteiner v. Comcast Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 8320 (MB 2008) (holding that "a full-power station may use alternative delivery methods to provide a good quality signal, such as the simulcasting of its signal by a low power station to the cable system's principal headend"); *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994 (2007), para. 173, note 514 (holding that "a broadcast signal may be provided to a MVPD in any manner chosen by the broadcaster, so long as its cost is borne by the broadcaster").

<sup>53</sup> Complaint at 7-8, citing *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, CS Docket No. 00-96, Report and Order, Order on Reconsideration, 16 FCC Rcd 16544, para. 28-29, n.20 (2001) (*SHVIA Recon Order*).

<sup>54</sup> See *SHVIA Order*, 16 FCC Rcd at 1946, para. 66; Complaint at 4.

<sup>55</sup> Opposition at 8. DISH also argues that section 614(h) "specifically excludes translators from the definition of a local commercial station. Accordingly, we cannot permit a parent station to confer its must-carry rights on a translator retransmitting its signal." *Id.* at 5-6, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, n.104 (1993). However, as Channel 3 points out, the remainder of that section states that "[b]ut a parent station otherwise qualified for must-carry purposes may use a translator to deliver a good quality signal to the cable operator's principal headend, just as it is entitled to use a microwave link for this purpose." Complaint at 5-6.

<sup>56</sup> See Complaint at 4-5, citing *SHVIA Order*, 16 FCC Rcd at 1946, para. 66.

<sup>57</sup> *Id.*

satellite carrier's system capacity,<sup>58</sup> DISH has failed to provide evidence that Congress intended that satellite providers be treated differently specifically with regard to the delivery of a good quality signal. In fact, the Commission precedent is quite to the contrary. In adopting the satellite must carry rules, the Commission stated that "the signal testing practices in the cable carriage context should be generally applied in the satellite carriage context."<sup>59</sup> The Commission further stated that "broadcasters in the cable context may meet the good quality signal standard by delivering their station's signals via microwave or fiber at their expense. We anticipate that the same will hold true in the satellite context."<sup>60</sup> The Commission expected that the satellite must carry rules would have the "same good quality signal as required in the cable context."<sup>61</sup>

17. DISH also argues that in the absence of a retransmission agreement between DISH and KSBS-CD, the Bureau's decision in *Telefutura* has no bearing in this case. Specifically, DISH points to language in that order indicating that even though "broadcast stations may use alternative means, including translator stations, to deliver their signal to distributors," "using the signal of a low-power station as such an alternative requires that the low-power station have in place a retransmission consent agreement."<sup>62</sup> Thus, DISH argues, even if the *Telefutura* decision applied, it would make no difference because KSBS-CD does not have a retransmission agreement with DISH, and thus would not be entitled to carriage.<sup>63</sup> We disagree. The requirement in *Telefutura* for obtaining retransmission consent for the LPTV station is not applicable because LPTV stations do not have must carry rights on a satellite carrier's system, unlike on a cable operator's system.<sup>64</sup>

18. While it is clear that LPTV stations do not have must carry rights on the systems of satellite carriers, that is not germane to our determination here.<sup>65</sup> Instead, the relevant issue is whether

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<sup>58</sup> Compare, e.g., 47 U.S.C. § 534(h)(1)(C) with 47 U.S.C. § 338(l)(3)(A) (unlike cable operators, satellite providers need not implement a market modification determined to be technically or economically infeasible); 47 U.S.C. § 534(a) with 47 U.S.C. § 338(a)(1) (cable operators must carry all local broadcast signals, whereas satellite providers need only carry local broadcast signals when it provides local-into-local service in a market); 47 CFR § 76.64(f)(3) with 47 CFR § 76.66(d)(vii) (cable default for failure to elect carriage is mandatory carriage, whereas satellite default is retransmission consent).

<sup>59</sup> *SHVIA Recon Order*, 16 FCC Rcd at 16572, para. 58.

<sup>60</sup> *Id.* at n.129.

<sup>61</sup> *Id.* at 16560, para. 29. Moreover, the Commission stated that the "good quality signal standard -- in either the cable or satellite context -- ensures that a signal available to over-the-air viewers will receive carriage." *Id.* at 16561, para. 32. The Commission also reiterated language from the *Cable Must Carry Report and Order* that broadcasters may provide "improved antennas" to deliver a good quality signal, that the cable operator may not refuse to allow the broadcaster to provide such types of equipment, either for measurements or delivery of signals, and that broadcasters "shall be responsible for the cost of such specialized antennas or equipment." *Id.* at 16580, para. 74.

<sup>62</sup> Opposition at 10.

<sup>63</sup> *Id.*

<sup>64</sup> Even assuming that the retransmission consent requirement in *Telefutura* does apply, the record indicates that in a prior instance KCDO-TV's fiber line to DISH's LRF failed and DISH temporarily switched to carriage of KCDO-TV using the signal on KSBS-CD. If, as DISH argues, such carriage of KCDO-TV via KSBS-CD could be accomplished only via retransmission consent, then the Commission's rules would have required that DISH and KSBS-CD enter into a written retransmission consent agreement. As the record does not reflect the existence of such an agreement, the only conclusion we can draw is that DISH believed that it was carrying KCDO-TV via KSBS-CD as an acceptable alternate delivery method, rather than carrying KSBS-CD.

<sup>65</sup> *Michael Karr*, 34 FCC Rcd 9562, *Application for Review Denied*, Docket No. 20-84, 35 FCC Rcd 6859. Channel 3 has never asserted any must carry rights for its LPTV station and concedes that it does not have any.

Channel 3 is permitted to use a digital translator to deliver its full power station signal to DISH's LRF, and the Commission's prior statements in the cable must carry context and the *SHVIA Order* lend support to the conclusion that they do. In this instance, Channel 3 owns a LPTV station that also rebroadcasts the signal of its full power station on a subchannel in full and without alteration. As such, the LPTV station is serving only as a translator retransmitting the signal of KCDO-TV. As Channel 3 rightly asserts, the Commission has concluded that a broadcaster can provide a signal in any manner it has chosen provided that it bears the cost.<sup>66</sup>

19. For the above reasons, we conclude that KCDO-TV may provide its signal to DISH's LRF through use of a subchannel on KSBS-CD as a translator provided that KSBS-CD provides a good quality signal to DISH's LRF. In this regard, we require DISH to expeditiously perform signal quality measurements of KSBS-CD's signal at its LRF. Channel 3 shall be given prior notice of, and the right to have representatives present, at such testing. The parties shall place a copy of such testing results in the docket of this proceeding and by separate email cover to [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov), and [Kenneth.Lewis@fcc.gov](mailto:Kenneth.Lewis@fcc.gov).

#### IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 338, and Section 76.66(b)(1) of the Commission's rules, that the must carry complaint filed by Channel 3 TV Company, LLC, licensee of full power television station KCDO-TV, Sterling, Colorado **IS CONDITIONALLY GRANTED**.

21. **IT IS FURTHER ORDERED** that DISH Network L.L.C. **SHALL COMMENCE CARRIAGE** of the KCDO-TV signal on its Denver DMA satellite system within sixty (60) days after KCDO-TV delivers a good quality signal to DISH's local receive facility via KSBS-CD.

22. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Media Bureau, Policy Division

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<sup>66</sup> Complaint, Exhibit C at 2. DISH also states that it has offered Channel 3 other options for continuing carriage pursuant to the must carry rules. But Channel 3 contends that since DISH is already carrying KCDO-TV's signal, switching from fiber to an OTA translator would not affect the system's bandwidth. DISH has OTA reception capabilities at its LRF that pick-up the signals of other stations from Lookout Mountain and KCDO-TV has used KSBS-CD signals as a backup in the past, so there should be minimal additional costs or inconvenience to DISH's LRF. Channel 3 indicates that using KSBS-CD as a translator would result in little cost to either party, while options suggested by DISH such as maintaining the fiber line delivery, which will not be possible in the future, or moving the KCDO-TV transmitter to Lookout Mountain, which would be expensive and could require changing the community of license. We appreciate DISH's offer to consider other carriage possibilities through which it could continue carriage of KCDO-TV, but the choice of carriage method belongs to the broadcaster as long as it complies with our rules.