

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

In the Matter of )
CNZ Communications SE, LLC ) MB Docket No. 24-27
v. ) CSR-9013-M
DISH Network L.L.C. )

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2024

Released: April 4, 2024

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

I. INTRODUCTION

1. CNZ Communications SE, LLC (CNZ) licensee of full-power commercial television station WGBP-TV, Opelika, Alabama (WGBP or Station), filed the above-captioned complaint (Complaint) against DISH Network L.L.C. (DISH), seeking mandatory carriage throughout the Columbus-Opelika Designated Market Area (DMA) on DISH's systems during the current election cycle, pursuant to section 338 of the Communications Act of 1934, as amended (Act), and sections 76.66(m)(3) and 76.7 of the Commission's rules. DISH filed an Answer to the Complaint to which CNZ filed a Reply. For the reasons discussed below, we find that WGBP is entitled to carriage throughout the Columbus-Opelika DMA and grant the Complaint.

II. BACKGROUND

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

1 CNZ Commc'ns SE, LLC v. DISH Network L.L.C., Must-Carry Complaint Regarding Carriage of WGBP-TV Opelika, AL, MB Docket No. 24-27, CSR-9013-M (rec. Dec.13, 2023) (Complaint Erratum); see CNZ Commc'ns SE, LLC v. DISH Network L.L.C., Must-Carry Complaint Regarding Carriage of WGBP-TV Opelika, AL, Public Notice, Special Relief and Show Cause Petitions, Report No. 0509, MB Docket No. 24-27 (Jan. 22, 2024).

2 47 U.S.C. § 338.

3 47 CFR §§ 76.66(m)(3), 76.7.

4 CNZ Commc'ns SE, LLC v. DISH Network L.L.C., Must-Carry Complaint Regarding Carriage of WGBP-TV Opelika, AL, MB Docket No. 24-27, Answer of DISH at 1 (rec. Jan. 2, 2024) (DISH Answer); CNZ Commc'ns SE, LLC v. DISH Network L.L.C., Must-Carry Complaint Regarding Carriage of WGBP-TV Opelika, AL, MB Docket No. 24-27, Reply of CNZ Communications SE, LLC (rec. Jan. 5, 2024) (CNZ Reply).

5 47 U.S.C. § 338. See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues, Report and Order, 16 FCC Rcd 1918, 1934, para. 15 (2000) (SHVIA Order); Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues, Order on Reconsideration, 16 FCC Rcd 16544 (2001).

television broadcast signal pursuant to the statutory copyright license.<sup>6</sup> Generally, a television station must request carriage by electing either retransmission consent or mandatory carriage with the satellite carrier serving its local market by October 1st of the year preceding each three-year carriage election cycle.<sup>7</sup> A station's local market for satellite carriage purposes is generally its DMA, as defined by The Nielsen Company (Nielsen).<sup>8</sup> The Commission in 2000 grappled with SHVIA's definition of "Local Market" in a case like the instant one, explaining that "the satellite compulsory license includes not only television stations licensed to a local market, but also extends to stations licensed in one market but assigned by Nielsen to another market" and providing multiple examples to clarify its reading of the statutory requirements.<sup>9</sup>

3. WGBP is licensed to Opelika, Alabama, which is located in Lee County, Alabama.<sup>10</sup> Lee County is assigned to the Columbus-Opelika DMA.<sup>11</sup> The Station filed an application on September 29, 2017 with the Commission, which allowed it to convert to a distributed transmission system (DTS) by installing two transmitters, one in Warm Springs, Georgia (Atlanta DMA), and the other in Cusseta, Georgia (Columbus-Opelika DMA).<sup>12</sup> The conversion was completed on December 9, 2020.<sup>13</sup> At some point thereafter, Nielsen assigned the Station to the Atlanta DMA.<sup>14</sup>

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<sup>6</sup> 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 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. 47 U.S.C. § 338. This is commonly referred to as the "carry one, carry all" requirement. Satellite carriers have a statutory copyright license under SHVIA for carriage of stations to any subscriber within a station's local market. *See* 17 U.S.C. § 122.

<sup>7</sup> 47 CFR § 76.66(c)(4).

<sup>8</sup> 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>9</sup> *SHVIA Order*, 16 FCC Rcd at 1934-35, para. 36 ("We find that the term 'local market,' as it is used for satellite carriage purposes, includes all counties within a market, as well as the home county of the television station if that county is not physically located in the DMA. We believe that the satellite compulsory license includes not only television stations licensed to a local market, but also extends to stations licensed in one market but assigned by Nielsen to another market. For example, a television station licensed to a community in Jefferson County, Missouri, which is in the Paducah DMA, but assigned by Nielsen to the St. Louis DMA, would be considered within the St. Louis market under Section 338. In this case, Jefferson County is the home county, and such a county should be treated as part of the St. Louis DMA for satellite carriage purposes. Moreover, since this station is licensed to a community in the Paducah market, it may assert its carriage rights in that market as well, if satellite carriers decide to provide local-into-local service there. If there happens to be another television station licensed to a community in Jefferson County, that station will also be considered in the St. Louis DMA and eligible to assert its right to carriage against a satellite carrier. In addition, if a station is licensed to a community that is inside one DMA, but is assigned to another DMA by Nielsen, the station could assert its right to carriage in the market where its community of license is located. For example, KNTV is licensed to San Jose, CA, which is in the San Francisco DMA, but is assigned by Nielsen to the Salinas-Monterey DMA. In this case, KNTV can assert its carriage rights in the San Francisco DMA because that is where its community of license is located. These interpretations are consistent with the SHVIA's goals of preserving over-the-air broadcasting and providing satellite subscribers with a full complement of local station signals.").

<sup>10</sup> Complaint at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

4. On September 28, 2023, CNZ submitted its election of mandatory carriage for WGBP to DISH for the 2024-2026 election cycle, demanding carriage in both the Atlanta and Columbus-Opelika DMAs.<sup>15</sup> On September 29, 2023, CNZ received an email response from DISH indicating that a further response would be forthcoming.<sup>16</sup> On October 11, 2023, DISH provided a further response stating that, pursuant to its reading of the Commission's rules, it would carry WGBP in the Atlanta DMA and in Lee County, Alabama (Columbus-Opelika DMA), for the election cycle commencing on January 1, 2024.<sup>17</sup> DISH otherwise denied CNZ's request for mandatory carriage of WGBP throughout the Columbus-Opelika DMA, stating that the area of the DMA beyond Lee County was "outside its Niels[e]n-assigned DMA."<sup>18</sup> That same day, CNZ's legal counsel replied to DISH's letter and stated that DISH was misinterpreting the Commission's rules.<sup>19</sup> On October 31, 2023, DISH responded to CNZ's legal counsel, refuting this contention.<sup>20</sup> The Station filed the above-captioned complaint in December 2023.

#### A. The Filings

5. The parties agree that the relevant provisions governing this dispute are section 338 of the Communications Act and section 76.66 of the Commission's rules, adopted in the Commission's 2000 *SHVIA Order*.<sup>21</sup> CNZ asserts that, per the order, "a station's local market is not limited to the county of license itself, but includes the designated market area in which the county is located."<sup>22</sup> DISH, however, argues that the Commission's language only provides a station flexibility to "choose whether to assert must-carry rights in its Nielsen-assigned DMA plus the county where its community of license is located, *or* the entire DMA where its community of license is located."<sup>23</sup>

6. CNZ also contends that the Bureau's recent order involving WGBP supports its reading of the 2000 *SHVIA Order* on what constitutes a station's local market. In *CNZ v. DIRECTV LLC*, WGBP filed a petition seeking mandatory carriage on DIRECTV LLC's systems serving the Atlanta DMA based upon its assertion that it was a new station after converting its facility to a DTS in October 2020.<sup>24</sup> Although the Bureau denied CNZ's petition, CNZ argues that *CNZ v. DIRECTV* supports the station's interpretation of the Commission's rules by stating that "based on the Station's present Nielsen DMA assignment in the Atlanta DMA, and the fact that its community of license of Opelika, AL is in the Columbus, GA (Opelika, AL) DMA, we agree with the Station that it could assert mandatory carriage rights in both the Atlanta and Columbus markets."<sup>25</sup> DISH in its answer emphasizes the absence of the

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<sup>15</sup> *Id.*; Complaint Attachment 2 (WGBP's Initial 2024-2026 Election Notice).

<sup>16</sup> Complaint at 2; Complaint Attachment 2 (Email from Local Operations, DISH L.L.C. to Ari Meltzer, Wiley Rein LLP (Sep. 29, 2023)).

<sup>17</sup> Complaint at 2; Complaint Attachment 3 (Letter from Teresa Cain, DISH Programming, Locals Operations, to Randy E. Nonberg, Manager, CNZ Communications SE, LLC (Oct. 11, 2023)).

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

<sup>19</sup> Complaint 3-5; Complaint Attachment 4 (Letter from Ari Meltzer, Wiley Rein, LLP, to Teresa Cain, DISH Programming, Locals Operations (Oct. 11, 2023)).

<sup>20</sup> Complaint, Complaint Attachment 5 (Letter from Hadass Kogan, Vice President & Associate General Counsel, Regulatory Affairs, DISH, to Ari Meltzer, Wiley Rein, LLP (Oct. 31, 2023)).

<sup>21</sup> Complaint at 3-5; DISH Answer at 4-8; CNZ Reply at 2-5 (all citing 47 U.S.C. § 338 and 47 CFR § 76.66(b)(1)).

<sup>22</sup> Complaint at 3.

<sup>23</sup> DISH Answer at 5 (emphasis in original).

<sup>24</sup> Complaint at 4, citing *In the Matter of CNZ Commc'ns SE, LLC v. DIRECTV, LLC*, MB Docket No. 21-153, *Memorandum Opinion and Order*, 37 FCC Rcd 48 (MB 2022) (*CNZ v. DIRECTV*).

<sup>25</sup> *Id.* at 4 (quoting *CNZ v. DIRECTV*, 37 FCC Rcd at 51-52).

word “simultaneous,” and argues that the Bureau could not find WGBP had simultaneous rights across two DMAs because it would be a revision of a “long-standing Commission rule.”<sup>26</sup>

7. Finally, DISH turns to policy arguments against CNZ’s interpretation of the rule, contending that it would deny the flexibility afforded to “satellite carriers in the case of changing boundaries,” fail to recognize the “realities of limited satellite carrier capacity,” and “open the floodgates” of stations seeking assignment to DMAs in which they are not located.<sup>27</sup> CNZ argues that DISH’s claims are overstated not least because Commission rules for DTS “would preclude most stations from serving two different DMAs” and thus being reassigned.<sup>28</sup>

### III. DISCUSSION

8. We find that, consistent with the Commission’s 2000 *SHVIA Order*, the Station may simultaneously elect mandatory carriage throughout both the Atlanta and Columbus-Opelika DMAs. The issue presented in this case is whether WGBP is entitled to mandatory carriage throughout both its Nielsen assigned DMA (Atlanta) and the DMA where its community of license is located (Columbus-Opelika). We find that it is. As the Bureau previously explained in *CNZ v. DIRECTV LLC*, a station with a Nielsen DMA assignment in the Atlanta DMA and with a community of license in the Columbus DMA “could assert mandatory carriage rights in both the Atlanta and Columbus markets.”<sup>29</sup> Thus, we agree with the Petitioner’s interpretation of the *SHVIA Order*, and the consequent requirement for carriage, upon demand, throughout both DMAs by DBS providers. A station assigned by Nielsen to one DMA but physically located in another, as is WGBP, has two local markets in which it may simultaneously demand carriage – one market consisting of the county in which it is licensed and the DMA to which it is assigned, and another overlapping market consisting of the DMA in which it is located.

9. Contrary to DISH’s assertion, this conclusion does not alter any existing rule. Nonetheless, we reiterate our additional observations from *CNZ v. DIRECTV*. To the extent a provider has concerns about Nielsen’s reassignment of a DMA, we encourage the provider to raise those concerns with Nielsen directly.<sup>30</sup> Furthermore, to the extent a provider objects to carriage throughout both DMAs due to concerns about localism, it may file a satellite market modification petition with the Commission seeking to modify the local television market of a station to exclude counties with which the Station has no local connection.<sup>31</sup>

### IV. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED**, that 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 CFR § 76.66, the mandatory carriage complaint filed by CNZ Communications SE, LLC, licensee of WGBP-TV, Opelika, AL, is **GRANTED**. DISH Network L.L.C. **IS ORDERED** to commence carriage of WGBP-TV on its satellite systems serving the Columbus-Opelika designated market area within sixty (60) days of the release of this Order. This action is taken pursuant to the authority delegated in section 0.283 of the Commission’s rules, 47 CFR § 0.283.

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<sup>26</sup> DISH Answer at 6 (failing to cite a specific Commission rule).

<sup>27</sup> DISH Answer at 7.

<sup>28</sup> CNZ Reply at 5.

<sup>29</sup> *CNZ v. DIRECTV*, 37 FCC Rcd at 52.

<sup>30</sup> *Id.* at 52, n. 35.

<sup>31</sup> *Id.* at 52, n. 36.

FEDERAL COMMUNICATIONS COMMISSION

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