



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

September 26, 2014

The Honorable Robert Goodlatte
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Goodlatte:

Thank you for your letter regarding the availability of in-state broadcast television stations to satellite subscribers in "orphan" counties. I appreciate hearing your views and recognize that, although it may be an issue for a relatively small number of consumers, access to in-state information can be a major concern.

You are correct that, generally, Direct Broadcast Satellite (DBS) providers currently are statutorily limited in providing additional stations beyond those local stations that are assigned to the designated market area (DMA) of a given subscriber. Congress, in 2004, provided some additional flexibility by allowing DBS voluntarily to carry "significantly viewed" stations subject to retransmission consent of the station. Statutory changes were made in 2010 in order to help further facilitate the carriage of significantly viewed stations by DBS.

It may be the case, as you note in your letter, that some stations can never meet the criteria for being deemed "significantly viewed" under Commission rules. However, as you may know, when Congress first extended the significantly viewed provisions to DBS, it specifically limited application of the statutory license in the Copyright Act so that it only applies to stations that are determined to be significantly viewed using the FCC rules in effect as of April 15, 1976. *See* 17 U.S.C. §122(a)(2)(A).

Despite this statutory language, Dish Network proposed that the Commission modify its rules to consider "in-state" stations as significantly viewed when the Commission was implementing the significantly viewed provisions in the Satellite Television Extension and Localism Act of 2010 (STELA). The Commission sought comment on the proposal, as well as other recommendations, as part of its proceeding to report to Congress on the availability of in-state broadcast programming as required by Section 304 of STELA. Within the Commission's Report to Congress, it specifically noted that modifications to the significantly viewed rules in the manner requested by Dish would be "inconsistent with the statute's requirement" to use the rules in effect on April 15, 1976. *See In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-238, Report, 26 FCC Rcd 11919, 11953, ¶ 65 (MB 2011) ("Report to Congress").

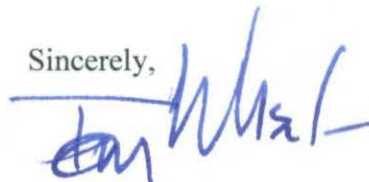
Section 304 of STELA also required the Commission to report on alternatives to the use of Designated Market Areas (DMAs) for defining local markets. Several options were offered: (1) define geographic viewing markets by state; (2) divide states into multiple markets based on station service areas; or (3) modify DMAs so they do not cross state lines. In addition, commenters offered other suggestions, such as expanding or modifying the Commission's statutory authority to grant market modifications for DBS, much like it currently can do for cable where a cable operator or TV station petitions the Commission to show it meets (or fails to meet) specific statutory factors either to add (or remove) a station from a specific local market for purposes of cable carriage. Finally, in the Commission's Report, other commenters recommended creation of a statewide copyright license to allow carriage of in-state signals.

Virtually all of the proposals or recommendations in the Report would require Congress to act to modify statutory provisions to address adequately the orphan county issue. *See Report to Congress* 26 FCC Rcd at 11945, ¶ 45 *et seq.* The only option that did not implicate a statutory change was offered by the broadcasting industry, where it suggested that DBS providers could offer only the local news and information of otherwise distant signals in the orphan county if it could privately negotiate the carriage and copyright permissions. *Report to Congress*, 26 FCC Rcd at 11951-52, ¶ 62.

I understand that the House-passed version of the STELA reauthorization bill (H.R. 4572) would require the Commission to do a similar report to the one referenced above. If such a provision is enacted, I assure you that we will take our reporting obligation seriously and provide Congress with relevant data and information concerning the issue of orphan counties.

I hope this information has been helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a horizontal line drawn through the middle of the signature.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

September 26, 2014

The Honorable Doug Collins
U.S. House of Representatives
513 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Collins:

Thank you for your letter regarding the availability of in-state broadcast television stations to satellite subscribers in "orphan" counties. I appreciate hearing your views and recognize that, although it may be an issue for a relatively small number of consumers, access to in-state information can be a major concern.

You are correct that, generally, Direct Broadcast Satellite (DBS) providers currently are statutorily limited in providing additional stations beyond those local stations that are assigned to the designated market area (DMA) of a given subscriber. Congress, in 2004, provided some additional flexibility by allowing DBS voluntarily to carry "significantly viewed" stations subject to retransmission consent of the station. Statutory changes were made in 2010 in order to help further facilitate the carriage of significantly viewed stations by DBS.

It may be the case, as you note in your letter, that some stations can never meet the criteria for being deemed "significantly viewed" under Commission rules. However, as you may know, when Congress first extended the significantly viewed provisions to DBS, it specifically limited application of the statutory license in the Copyright Act so that it only applies to stations that are determined to be significantly viewed using the FCC rules in effect as of April 15, 1976. See 17 U.S.C. §122(a)(2)(A).

Despite this statutory language, Dish Network proposed that the Commission modify its rules to consider "in-state" stations as significantly viewed when the Commission was implementing the significantly viewed provisions in the Satellite Television Extension and Localism Act of 2010 (STELA). The Commission sought comment on the proposal, as well as other recommendations, as part of its proceeding to report to Congress on the availability of in-state broadcast programming as required by Section 304 of STELA. Within the Commission's Report to Congress, it specifically noted that modifications to the significantly viewed rules in the manner requested by Dish would be "inconsistent with the statute's requirement" to use the rules in effect on April 15, 1976. See *In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-238, Report, 26 FCC Rcd 11919, 11953, ¶ 65 (MB 2011) ("Report to Congress").

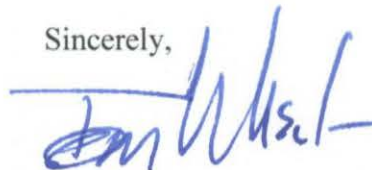
Section 304 of STELA also required the Commission to report on alternatives to the use of Designated Market Areas (DMAs) for defining local markets. Several options were offered: (1) define geographic viewing markets by state; (2) divide states into multiple markets based on station service areas; or (3) modify DMAs so they do not cross state lines. In addition, commenters offered other suggestions, such as expanding or modifying the Commission's statutory authority to grant market modifications for DBS, much like it currently can do for cable where a cable operator or TV station petitions the Commission to show it meets (or fails to meet) specific statutory factors either to add (or remove) a station from a specific local market for purposes of cable carriage. Finally, in the Commission's Report, other commenters recommended creation of a statewide copyright license to allow carriage of in-state signals.

Virtually all of the proposals or recommendations in the Report would require Congress to act to modify statutory provisions to address adequately the orphan county issue. *See Report to Congress* 26 FCC Rcd at 11945, ¶ 45 *et seq.* The only option that did not implicate a statutory change was offered by the broadcasting industry, where it suggested that DBS providers could offer only the local news and information of otherwise distant signals in the orphan county if it could privately negotiate the carriage and copyright permissions. *Report to Congress*, 26 FCC Rcd at 11951-52, ¶ 62.

I understand that the House-passed version of the STELA reauthorization bill (H.R. 4572) would require the Commission to do a similar report to the one referenced above. If such a provision is enacted, I assure you that we will take our reporting obligation seriously and provide Congress with relevant data and information concerning the issue of orphan counties.

I hope this information has been helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish at the end.

Tom Wheeler