



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 20, 2017

The Honorable Jeff Flake
United States Senate
413 Russell Senate Office Building
Washington, D.C. 20515

Dear Senator Flake:

Thank you for your letter on behalf of your constituents in Saddlebrooke, Arizona, regarding the local broadcast television stations available to consumers who subscribe to satellite television service. I understand that Saddlebrooke community residents are interested in receiving television broadcast stations that are licensed to Tucson, Arizona, from their satellite television companies. I appreciate the opportunity to respond to your questions.

Federal law specifies the local broadcast stations that satellite television companies, DIRECTV and DISH Network, are permitted to carry. Satellite television companies are not required to carry local broadcast stations, but if they choose to do so, they are required to offer subscribers those broadcast stations licensed to the local television market where the subscriber resides (called "local-into-local" service). As you correctly note in your letter, a television station's "local television market" is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen). Nielsen assigns each county to a DMA, based primarily on its measurement of local viewing patterns. Neither the FCC nor the satellite television company play any part in determining which counties are included in particular DMAs.

With respect to the specific situation at issue in the Saddlebrooke community located in Pinal County, DIRECTV and DISH are required by law to carry the Phoenix local broadcast stations because Pinal County is assigned to the Phoenix DMA.¹ Satellite television companies are generally not permitted to carry a broadcast station in a community that is located outside of the station's local television market; however, there are two FCC processes that can allow an out-of-market (or distant) station to be carried as a local market station.

First, if a satellite subscriber receives local-into-local service, the satellite television company may also provide the subscriber an out-of-market broadcast station assigned to a neighboring local television market that is determined by the FCC to be "significantly viewed" in the subscriber's community. These are stations viewable over-the-air by a "significant" number of households in the subscriber's community. It is up to the satellite carrier to decide whether to offer significantly viewed stations, and a subscriber must receive local-into-local service to be eligible to receive them. The FCC posts on its website a list of the stations eligible as

¹ DIRECTV and DISH each offer "local-into-local" service in the Phoenix DMA.

significantly viewed and the communities in which they are significantly viewed. A station can also petition the FCC to be added to the significantly viewed stations list if it can demonstrate it has “significant” viewership in the community, as defined by the FCC’s rules. According to the current significantly viewed stations list,² there are two Tucson stations that are “significantly viewed” in Pinal County: KVOA, an NBC affiliate station, and KTTU, a MyNetworkTV affiliate station. Note, however, that before a satellite television company can carry a significantly viewed station, it must first obtain retransmission consent from the station.³ If negotiations are successful, satellite carriage of one or both stations would be in addition to the Phoenix local stations provided as part of the operator’s local-into-local service.

Second, the FCC can add a community (defined as a county) to a broadcast station’s local television market through the satellite market modification process if the station can show it provides local service to the community, based on five statutory factors, and the satellite television company has the technical ability to provide the station to the community.⁴ This process requires the station, the satellite television company, or the county government to file a request with the FCC. Subscribers cannot directly file requests with the FCC.

I’ll turn now to your specific questions.

1. Regarding the two Tucson stations listed on the FCC’s Significantly Viewed TV Stations List, what are the steps necessary for satellite providers to offer these significantly viewed stations to subscribers?

Response: The two Tucson stations referenced in your question are eligible for satellite carriage in Pinal County. Each satellite television company may, at its discretion, carry one or both of these stations in Pinal County after it obtains retransmission consent from the station. A satellite television company may choose not to carry a significantly viewed station for technical or business reasons (such as an inability to obtain retransmission consent). Each satellite television company would be in a better position to let you know if satellite carriage of the significantly viewed stations would be technically feasible for them and also whether such carriage fits with their business plans.

2. Could a satellite provider offer Tucson stations in Saddlebrooke, even though they may not be on the Significantly Viewed Stations List?

Response: Not presently. Satellite television companies are generally not allowed to carry out-of-market (distant) stations.

² See <https://transition.fcc.gov/mb/significantviewedstations041916.pdf> (last updated Apr. 19, 2016).

³ The Communications Act requires a television station to give its consent to a cable, satellite TV, or other multichannel video programming distributor (MVPD) to carry its broadcast signal. Television stations and MVPDs negotiate for this “retransmission consent” and money or other consideration is generally exchanged between the parties in these private negotiations.

⁴ For more information about the satellite market modification process, see the FCC’s website at <https://transition.fcc.gov/bureaus/mb/policy/STELAR-Market-Modification.pdf>.

3. Is the Market Modification process a viable option for the community of Saddlebrooke to pursue?

Response: Perhaps. There are some challenges in this particular situation, including the need to seek a waiver of certain Commission rules.

First, as you observe, a satellite “community” is defined as a “county” under the FCC’s rules. Thus, the petitioner would need to seek a waiver of this rule to modify a station’s local market to add only the Saddlebrooke community and not the entirety of Pinal County. One factor that would likely be considered in such a waiver request is whether the satellite television company would be burdened by implementing such a waiver. For example, I understand that DIRECTV may have the technical ability to provide satellite service by zip code, but DISH does not. In addition, if the Saddlebrooke community itself wants to file the market modification petition (rather than the station, satellite television company, or Pinal County government), it would also need a waiver of the FCC’s rules to do so. Only county governments, commercial broadcast stations, and satellite television companies may file satellite market modification petitions. Individuals and other local governments cannot file these petitions.

Second, satellite television companies are generally not required to carry a station if the station’s programming “substantially duplicates” the programming of another station carried by the satellite carrier in the DMA. Also, satellite television companies are not required to carry more than one affiliate station of a particular network in a DMA (even if the affiliates’ programming is not substantially duplicated), unless the stations are licensed to communities in different states. Therefore, for example, if a satellite television company is currently carrying in Saddlebrooke an ABC network affiliate station licensed to an Arizona community, then it would not be required to provide additional ABC affiliates in the market that are also licensed to an Arizona community. The satellite television company would, however, be allowed to carry additional ABC affiliates at its discretion, subject to successful retransmission consent negotiations with each station. To require (rather than just permit) carriage of the Tucson ABC affiliate by a satellite market modification, the petition would have to seek to delete from the community the other ABC affiliates in the market. This action, however, may be contrary to the Commission’s policy not to displace service provided by long-established stations in the community.

Finally, a third obstacle to satellite carriage of an out-of-market network station may be the network affiliation agreement between the broadcast station and the broadcast network with which it is affiliated. Television stations affiliated with broadcast networks often receive, through their affiliation agreement, exclusive rights to distribute certain network programming within a specified geographic area. Like the retransmission consent agreements, network affiliation agreements are formed by the parties in private negotiations. The Commission generally does not interfere with these market transactions.

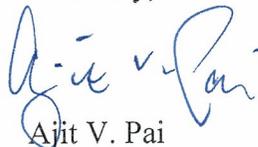
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4. Are there other potential remedies available to Saddlebrooke residents who wish to receive local Tucson stations from their satellite TV providers?

Response: Possibly. For example, it may be possible for the Saddlebrooke community to ask Nielsen to place it in the Tucson DMA, while leaving the remainder of Pinal County in the Phoenix DMA. This decision would be up to Nielsen. Additionally, other Tucson stations can seek to obtain significantly viewed status in Pinal County by demonstrating significant viewership in accordance with the FCC's rules.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai

P.S. Senator, it was so nice catching up with you recently and introducing you to my wife. I hope you and your family enjoy the holidays!