Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	MB Docket No. 16-416
Victory Television Network, Inc.	)	
	)	CSR-8931-A
For Modification of the Television Market	)	
For KVTJ-DT, Jonesboro, Arkansas	)	
Facility Identification Number 2784	)	

DOCKET FILE COPY ORIGINAL

Accepted / Filed

JAN 23 2017

Federal Communications Commission
Office of the Secretary

DIRECTV, LLC RESPONSE TO PETITION FOR SPECIAL RELIEF

DIRECTV, LLC (DIRECTV) has long been sympathetic to the concerns of "orphan counties" that lack access to *in-state* local broadcast stations. It therefore supported legislation extending the cable market modification regime to satellite, and it supported the Commission's proposed rule changes to implement that legislation. And for this reason, DIRECTV does not oppose Victory Television Network, Inc.'s ("Victory's") above-referenced petition to modify the television market of KVTJ-DT, currently assigned to the Jonesboro, Arkansas DMA, to include Crittenden County, AR, Cross County, AR, Mississippi County, AR, Poinsett County, AR, Saint Francis County, AR, Dunklin County, MO, Pemiscot County, MO (collectively, the "Satellite Communities"), with respect to DIRECTV, but only to the extent that such modifications are technically and economically feasible.[1]

---

[1] Victory filed the above-referenced petition on December 16th, and served DIRECTV by U.S. Mail. The Media Bureau issued a public notice regarding the petition on December 22nd, which appears to be the same date DIRECTV received service of the petition. As a consequence, oppositions to the petition were due on January 11, 2017. However, DIRECTV staff responsible for handling and processing Market Modification requests were unaware of the filing of the petition until the week of January 16th due to short staffing over the holidays and the press of work supporting or negotiating renewals of many retransmission consent agreements that were set to expire at year-end, which continues to this day. Accordingly, DIRECTV respectfully requests a waiver of the deadline for filing its response to Victory's petition to the extent necessary.

On March 31, 2016, KVTJ sent DIRECTV a pre-filing coordination letter, requesting that DIRECTV provide a certification regarding the feasibility of carrying the station at issue in the Satellite Communities.[2] As Victory acknowledges, DIRECTV responded by letter dated June 27, 2016, providing a list of zip codes in the Satellite Communities not covered by DIRECTV's Jonesboro, AR spot beam.[3] Specifically, DIRECTV certified that:

- DIRECTV's spot beam does not cover the following **13** zip codes in Crittenden County, AR: 72301, 72303, 72325, 72327, 72331, 72332, 72339, 72346, 72348, 72364, 72376, 72384, and 72386;
- DIRECTV's spot beam does not cover the following **2** zip codes in Cross County, AR: 72331 and 72346;
- DIRECTV's spot beam does not cover the following **4** zip codes in St. Francis County, AR: 72021, 72346, 72348, and 72376;
- DIRECTV's spot beam does not cover the following **2** zip codes in Poinsett County, AR: 72354 and 72386;
- DIRECTV's spot beam does not cover the following **21** zip codes in Mississippi County, AR: 72310, 72313, 72315, 72316, 72319, 72321, 72329, 72330, 72338, 72350, 72351, 72354, 72358, 72370, 72386, 72391, 72395, 72426, 72428, 72438, and 72442;
- DIRECTV's spot beam does not cover the following **12** zip codes in Pemiscot County, MO: 63826, 63827, 63830, 63839, 63840, 63848, 63849, 63851, 63853, 63873, 63877, and 63879; and
- DIRECTV's spot beam does not cover **5** zip codes in Dunklin County, MO: 63849, 63855, 63857, 63875, and 63877.[4]

DIRECTV further certified that it had analyzed, with respect to each zip code associated with KVTJ's request, the following factors: the measured performance of the spot beam covering the stations local market, estimated atmospheric effects for reception of the signal, estimated levels of interference, the amount of capacity currently used and reasonably expected to be used on the spot beam, and the target availability figure used for all stations offered on the spot beam.[5] It

---

[2] Petition at 11.

[3] *Id.* at 11, and Exhibit N.

[4] *Id.* at Exhibit N. KVTJ's pre-filing coordination letter also requested information regarding the feasibility of carrying its signal in Woodruff County, AR, but did not include Woodruff County in its market modification petition. In response, DIRECTV certified that its spot beam does not cover 1 zip code in Woodruff County. *Id.*

[5] *Id.*

also certified that, from this analysis, it derived the following metrics used to evaluate the potential to provide service in such zip codes: signal availability, clear sky signal margin, and total carrier-to-interference ratio.[6] And, it certified that it had conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam.[7] Finally, an officer of DIRECTV declared under penalty of perjury that each of the foregoing certifications were true and correct.[8]

Victory challenges the adequacy of DIRECTV's certification. Specifically, it asserts that, "[t]o the extent DIRECTV claims that it is technically infeasible to provide KVTJ to [the zip codes at issue], DIRECTV should be required to provide additional details as to its methodology for determining spot beam coverage."[9] It further claims that "DIRECTV's response did not indicate that providing KVTJ to any of the Satellite Communities would be economically infeasible."[10] It argues that DIRECTV has not demonstrated that adding the Satellite Communities is technically or economically infeasible, and thus the Commission should modify KVTJ's local market for satellite carriage to include those communities.[11]

Victory's claims are unsupported by the Commission's *Market Modification Order*.[12] In that order, the Commission concluded that "it is *per se* not technically and economically feasible

---

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Petition at 11.

[10] *Id.* at 12.

[11] Petition at 2.

[12] *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, MB Docket No. 15-71, 30 FCC Rcd 10406 (2015) (*Market Modification Order*).

for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried."[13] And, although it found that a satellite carrier has the burden to demonstrate that carriage resulting from a market modification is not technically and economically feasible,[14] based on a proposal by DIRECTV, the Commission held that a satellite carrier could meet that burden by providing a detailed and specialized certification, under penalty of perjury, containing the following elements[15]:

1. An explanation of the process by which a satellite carrier has determined whether the spot beam in question covers the geographic area at issue;

2. A statement that the satellite carrier conducted the analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam; and

3. A declaration under penalty of perjury, signed and dated by an officer of the carrier, verifying the truth and accuracy of the information therein.[16]

It further held that the proposed certification form submitted by DIRECTV with its proposal, which DIRECTV used to certify the feasibility of adding KVTJ to its Jonesboro, AR, spot beam, "would meet a satellite carrier's burden to demonstrate spot beam coverage infeasibility," absent evidence such certification is inaccurate.[17]

Here, Victory makes no claim, much less proffers any evidence, that DIRECTV's certification is inaccurate. Nor does it offer any other justification for looking behind DIRECTV's certification and requiring it to submit supporting documentation regarding its spot beam coverage in the counties at issue. Accordingly, the Commission should reject Victory's

---

[13] *Id.* at ¶ 30.

[14] *Id.*

[15] *Id.* at ¶ 41, citing DIRECTV *ex parte* (dated Jul. 9, 2015) at 3-4.

[16] *Id.* at ¶ 41, citations omitted.

[17] *Id.* ¶ 41, n. 216, citation omitted.

unfounded claims that DIRECTV's certification was inadequate, and that DIRECTV failed to demonstrate that adding the zip codes in the Satellite Communities identified above is technically or economically infeasible.[18] To the contrary, the Commission should find that DIRECTV has met its burden to demonstrate that it would be technically and economically infeasible to carry KVTJ's signal in the following Zip Codes:

- In Crittenden County, AR: 72301, 72303, 72325, 72327, 72331, 72332, 72339, 72346, 72348, 72364, 72376, 72384, and 72386;
- In Cross County, AR: 72331 and 72346;
- In St. Francis County, AR: 72021, 72346, 72348, and 72376;
- In Poinsett County, AR: 72354 and 72386;
- In Mississippi County, AR: 72310, 72313, 72315, 72316, 72319, 72321, 72329, 72330, 72338, 72350, 72351, 72354, 72358, 72370, 72386, 72391, 72395, 72426, 72428, 72438, and 72442;
- In Pemiscot County, MO: 63826, 63827, 63830, 63839, 63840, 63848, 63849, 63851, 63853, 63873, 63877, and 63879; and
- In Dunklin County, MO: 63849, 63855, 63857, 63875, and 63877.

Respectfully submitted,

/s/ Christopher M. Heimann

Christopher M. Heimann
Gary L. Phillips
David L. Lawson

AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036
202-457-3058 - phone

Its Attorneys

January 23, 2017

[18] *In the Matter of Gray Television Licensee, LLC, for Modification of the Satellite Television Market for WSAW-TV, Wausau, WI*, Memorandum Opinion and Order, MB Docket No. 16-293, CSR No. 8926-A, DA 17-74 at ¶ 16 (Media Bureau rel. Jan. 17, 2017) (concluding that DIRECTV's certification, identical in all relevant respects to its certification here, sufficiently demonstrated the infeasibility of carrying WSAW-TV's signal in seven zip codes in Ashland County, WI, and rejecting Gray's claim that DIRECTV's certification was insufficiently detailed to meet Commission requirements because Gray had presented no evidence to persuade the Bureau to look behind that certification).