

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)	
)	
Petition for Declaratory Ruling Regarding)	MB Docket No. 18-274
Mandatory Satellite Carriage of Qualified)	
LPTV and Demand for Carriage by)	
Michael Karr d/b/a WVUX-LD)	

PETITIONER’S REPLY TO OPPOSITION

COMES NOW Michael Karr, owner and operator of WVUX-LD, in response to the Opposition filed by DISH and DIRECTV. Petitioner maintains its request for this Federal Communications Commission (“Commission”) to issue a declaratory ruling that confirms and clarifies the key aspects of the federal code and regulatory regime requiring mandatory carriage of “qualified low power stations” by satellite providers who choose to carry local television. For the reasons set forth herein, Petitioner urges this Commission to grant this Petition.

I. DECLARATORY RULING IS THE APPROPRIATE PROCEDURE AND IS
NECESSARY TO CLARIFY MUST-CARRY RIGHTS OF QUALIFIED LOW
POWER STATIONS ON DBS SYSTEMS

Petitioner owns and operates WVUX-LD, a television station in the community of Fairmont, West Virginia and in the Clarksburg/Weston-DMA. Petitioner’s station is a “qualified low power station” as defined in 47 USC §534(h)(2). Petitioner has successfully exercised its must-carry rights with the cable provider located within thirty-

five miles of its transmission site and sought to do the same in regards to the satellite carriers in its area, to wit: DIRECTV and DISH Network.

Petitioner notified both carriers of his election and demand for carriage in the Clarksburg-DMA as a must-carry election. Both satellite providers have denied Petitioner's demand for carriage in the Clarksburg-DMA on the basis that they are not required to carry *any* low power television stations – not even *qualified* low power stations. In their "Joint Opposition", the satellite carriers argue that the distinction between low power television stations and qualified low power stations like WVUX-LD "is of no consequence to DBS providers in terms of their mandatory carriage obligations." Petitioner adamantly disagrees.

It does not serve any governmental interest to further limit these qualified low power stations by denying carriage via satellite. Moreover, the fact that the United States General Accounting Office ("GAO") cited 47 USC §§ 534 and 535 in reporting to Congress, "Federal law requires cable and satellite operators to carry the signal of qualified LPTV stations serving their markets" is evidence that the law sides with Petitioner. (See Footnote 17, *in part*, GAO-17-135, Dec. 2016).

At the very minimum, Petitioner has shown that confusion exists in interpreting the statutes. Thus, a ruling by this body is necessary to clarify the rights of qualified low power stations to DBS providers.

There are serious repercussions for accountants worldwide who "mistakenly" do something and there has been no redressing by Congress which indicates that the GAO was not mistaken in its report to Congress. Satellite carriers must-carry qualified low power stations.

In this matter, the Petitioner is not seeking a new rule or amendment thereof. All that is required to resolve this matter is to clarify whether qualified low power stations are entitled to insist on mandatory carriage by satellite providers or whether the carriage is optional under 47 USC §338(a)(3). This Commission is empowered in 47 USC §338(f) to order satellite companies to carry qualified low power stations. Hence, the Petition and relief sought are appropriate.

II. THERE ARE MINIMAL TECHNICAL LIMITATIONS

Recent additions of orphaned counties to the Clarksburg-DMA as ordered by this Commission released February 7, 2018 show that any technical limitations of satellite carriers in adding stations in WVUX's area are minimal. In the Matter of Monongalia Co., WV and Preston Co., WV, MB Docket No. 17-274, CSR No. 8941-A and Petitions for Modification of the Satellite Television Markets of WDTV, Weston, WV and WBOY-TV and WVFX, Clarksburg, WV, MB Docket No. 17-275, CSR No. 8942-A, both DISH and DIRECTV filed Feasibility Certifications that there is no "spot beam infeasibility" in adding stations of the Clarksburg, West Virginia, Monongalia County, West Virginia and Preston County, West Virginia area. This Commission went further and found that there was also no economic infeasibility to the satellite carriers in adding local stations to the Clarksburg-DMA. (Id., DA 18-113, p. 8).

The same must be concluded in the area near the Clarksburg-DMA, which is the Parkersburg/Marietta DBA. There, low power television stations, WIYE and WOVA, were added to both DBS systems without having the distinction of being either a Class

A or qualified low power station; thereby removing the decision-making power of the FCC and giving it squarely to the DBS industry.

By virtue of the definition of “qualified low power stations” in 47 USC §534(h)(2), only those LPTVs in the smallest markets – meaning the bottom 50 markets whose population in the county or city is less than 35,001 – have the possibility of meeting the criteria of a qualified low power station. It does not serve any governmental interest to further limit these qualified low power stations by denying carriage via satellite.

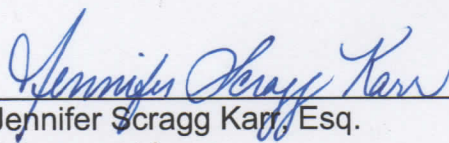
DISH and DIRECTV want the DBS industry to decide the criteria in adding must-carry stations instead of the FCC. Moreover, the power of the DBS industry dramatically increased only a few weeks ago when Nielsen chose to utilize DISH and DIRECTV viewers’ ratings almost exclusively while abandoning their former diary surveys.

III. CONCLUSION

Respectfully, this Petitioner urges the FCC to act upon the question of whether qualified low power stations have mandatory carriage rights with regard to satellite carriers and to order satellite carriage of Petitioner’s qualified low power station. A brief clarification of the present rules is all that is necessary to guarantee those rights and to equalize the treatment of satellite carriers with cable providers. No amendment or new rule is required to make this declaration. Thus, the Petitioner requests that the FCC grant this Petition, issue a Declaratory Ruling as requested herein and order satellite carriage of Petitioner’s qualified low power television station.

Respectfully submitted,

Michael Karr d/b/a WVUX-LD
By counsel,

A handwritten signature in blue ink, reading "Jennifer Scragg Karr", is written over a horizontal line.

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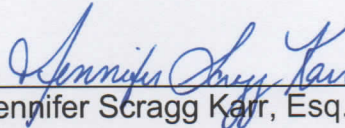
Dated: February 14, 2019

CERTIFICATE OF SERVICE

I, Jennifer Scragg Karr, Esq., counsel for Petitioner Michael Karr, do hereby certify that I have this 14th day of February 2019, served the foregoing "Petitioner's Reply to Opposition" by depositing a true copy thereof in the US Mail, First-Class postage paid, upon interested parties, Directv and Dish Network, addressed as follows:

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