

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)	
Minority Television Project, Inc.)	CSR-8946-M
Licensee of Noncommercial Television Station)	MB Docket No. 17-313
KMTP-TV, Channel *32, for Satellite Carriage of)	
KMTP-TV, San Francisco, California)	

Attn: Media Bureau
Policy Division, Senior Deputy Chief

APTS COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

America's Public Television Stations ("APTS")¹ submits these comments in support of the Petition for Reconsideration filed on February 5, 2018, by Minority Television Project, Inc. ("MTP"), licensee of noncommercial television station KMTP-TV, San Francisco, California, which sought reconsideration of a decision on January 23, 2018 by the Deputy Chief, Policy Division, Media Bureau, denying MTP's Complaint for Carriage against DISH Network ("DISH") based on the delivery method used by MTP to send its request for continued carriage to DISH.²

APTS is not a party to this proceeding, but files these comments because APTS believes that the Order, by ruling that actual notice to DISH by the pertinent deadline was insufficient, did not take into account the public interest, as expressed in Section 396(a) of the Communications Act.

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation's CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American people.

Section 396(a) of the Communications Act provides, in pertinent part:

The Congress hereby finds and declares that—

(9) it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies,³

Given Section 396(a) and the pendency of a rulemaking proceeding to reform and modernize the very rule upon which the *Order* is premised, the public interest would be well served by the Bureau determining, on reconsideration, that “actual notice” by MTP was sufficient to preserve KMTP’s continued satellite carriage by DISH for the next three year cycle from January 1, 2018 - December 31, 2020.

Actual Notice. The record in this proceeding reflects that (a) MTP made a timely request for mandatory carriage containing all the information required by the FCC’s rules; (b) DISH timely received the request; and (c) DISH denied the request because it was not sent by USPS “certified mail, return receipt requested,” but by USPS Priority Mail.⁴ Thus, there is no dispute in the record -- DISH received “actual notice” of MTP’s carriage request by USPS. APTS submits that the *Order* places form over substance, allowing DISH to play a game of regulatory “gotcha” with KMTP in a way that greatly disserves the public interest.

Pending Rulemaking in MB Docket No. 17-313. APTS joined in Comments to the FCC last week in MB Docket No. 17-313 urging the FCC to reform this very rule to preclude its use for regulatory “gotchas” that deprive citizens of public TV service by satellite distribution. APTS

...continued

² Minority Television Project, Inc., Licensee of Noncommercial Television Station KMTP, Channel *32, *Memorandum Opinion and Order*, DA 18-63, MB Docket No. 17-313 (Jan. 23, 2018)(Media Bureau) (the “*Order*”).

³ 47 U.S.C. Section 396(a)(9).

⁴ *Order* at paragraph 3.

reiterates portions of those Comments that are pertinent to the Bureau's reconsideration of the *Order* as follows.

Every three years, public TV stations are required by FCC rules to re-notify satellite carriers and renew their requests to continue to be carried by the satellite carrier.⁵ Failure to make such notifications subjects the public TV station to a denial of carriage by the satellite operator for the next three-year election cycle.⁶ At present, Section 76.66(b) of the FCC rules requires that public TV stations renew their carriage requests using a very specific delivery method:

“An election request made by a television station must be in writing and sent to the satellite operator's principal place of business, by certified mail, return receipt requested.”⁷

Thus, failure to use the specified certified mail delivery method can result (and has resulted) in loss of satellite carriage -- a game of regulatory “gotcha” with the draconian result of loss of NCE-TV satellite carriage rights for a three year period.

In today's world, FCC's rules for broadcaster notifications to MVPDs should not specify “certified mail, return receipt requested” – electronic communications (including by email) should be permitted, as should traditional non-USPS (FedEx, UPS, etc.) and USPS delivery services (USPS Priority Mail), including overnight services. Any of these methods should be deemed sufficient for purposes of the FCC's carriage election process, provided that the method used allows the broadcaster to demonstrate timely delivery to the MVPD by the election deadline. The

⁵ As discussed elsewhere in APTS's joint Comments in MB Docket No. 17-313, NCE-TV stations are not required to re-notify or renew their carriage requests for other MVPD carriage, including cable carriage. Such carriage simply continues absent a change in carriage circumstances.

⁶ See 47 CFR Section 76.66(d)(v).

⁷ 47 CFR Section 76.66(d)(i).

key regulatory points are actual notice to the MVPD and the broadcaster's ability to demonstrate election by the deadline (not the method of delivery).

Conclusion. To best serve the public interest, including those citizens that would otherwise be deprived of KMTP's public TV service for the next three years, APTS respectfully requests that the Bureau reconsider its denial of MTP's Complaint for Carriage against DISH and find that "actual notice" using a USPS delivery method was sufficient to preserve KMTP's mandatory carriage on DISH for the next three years.

Respectfully submitted,

/s/ Lonna Thompson

Executive Vice President, Chief Operating Officer, and General Counsel
AMERICA'S PUBLIC TELEVISION STATIONS
2100 Crystal Drive, Suite 700
Arlington, VA 22202

February 21, 2018

CERTIFICATE OF SERVICE

I certify that, on this 21st day of February 2018, a copy of the foregoing “APTS Comments in Support of Petition for Reconsideration” were served by first class US Mail, postage prepaid, on the following:

Allison A. Minea
Director and Senior Counsel, Regulatory Affairs
DISH Network, LLC
1110 Vermont Avenue, N.W.
Suite 750
Washington, DC 20005

James L. Winston, Esq.
Rubin, Winston, Diercks, Harris & Cooke, LLP
1201 Connecticut Avenue, NW
Suite 200
Washington, DC 20036



By: Margaret L. Miller

Date: February 21, 2018