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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Gray Television Licensee, LLC, Modification of the Television Market for WYMT-TV, Hazard, Kentucky Facility Identification Number 24915, MB Docket No. 18-8*

Dear Mr. Dortch:

DISH Network L.L.C. (“DISH”) submits this letter summarizing a meeting on April 11, 2018 between the undersigned and the following Media Bureau staff: Holly Saurer, Martha Heller, and Evan Baranoff. Also present in the meeting were Stacy Fuller and Amanda Potter for DIRECTV, LLC (“DIRECTV”) and Robert J. Folliard III for Gray Television Licensee, LLC (“Gray”).

In the above-referenced proceeding, Gray seeks a market modification for WYMT-TV, Hazard, KY (“WYMT”) pursuant to the procedures set forth in the Federal Communications Commission’s (“FCC”) rules governing market modifications for satellite carriers under the STELA Reauthorization Act of 2014 (“STELAR”).¹ Gray filed its market modification petition (“Petition”) with the Commission on January 9, 2018.² The Petition requests that the Commission craft a customized local market for WYMT by (1) shaving off certain counties from the Nielsen-defined designated market area (“DMA”) of Lexington, KY where WYMT is assigned, and (2) adding to WYMT’s local market eight counties picked from three neighboring DMAs (the “Additional Counties”).

Prior to filing its Petition, Gray had sent DISH a letter seeking an analysis from DISH regarding whether it would be technically and economically feasible for DISH to commence carrying WYMT in the partial areas of Lexington and the Additional Counties.³ DISH’s response stated

¹ See 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, FCC 15-111, ¶ 47 (Sept. 2, 2015) (“*Satellite Market Modification Order*”). See also STELA Reauthorization Act of 2014 (STELAR), § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (codified at 47 U.S.C. § 338(l)).

² Gray Television Licensee, LLC for Modification of the Television Market for WYMT-TV, Hazard, Kentucky, Petition for Special Relief, filed Jan. 9, 2018 (the “Petition”).

³ Letter from Robert J. Folliard, III, Gray Television Licensee, LLC to Alison A. Minea, DISH, Sept. 29, 2016.

that DISH did not at that time carry WYMT in any DMA (and does not do so today), and that DISH therefore was not in a position to evaluate the technical or economic feasibility of extending or changing the carriage footprint of a non-carried station.⁴

DISH's response relied upon the implementing order for the FCC's market modification rules, which makes explicitly clear that contemporaneous carriage of a given TV station is a prerequisite for a satellite carrier to be required to provide a feasibility response. Under STELAR and the Commission's rules, a satellite carrier is not required to comply with a satellite market modification order if it would be technically or economically infeasible to do so.⁵ When determining if a proposed market modification is technically or economically feasible, the *Satellite Market Modification Order* states that feasibility is determined based on "the relevant spot beam on which th[e] station is currently carried."⁶ To ensure its meaning was clear, the Commission reiterated as follows: "[W]e will refer to the spot beam on which the station is currently carried as the 'relevant spot beam.'"⁷

As stated in DISH's response to Gray's pre-filing coordination letter, DISH did not then (and does not now) carry WYMT on *any* spot beam on DISH's direct broadcast satellite service.⁸ There is thus no "relevant spot beam" on which DISH could have assessed the feasibility of accommodating WYMT's desire to be carried in parts of its current Nielsen-assigned DMA (Lexington) or the Additional Counties. For this reason alone, there is no basis for the Commission to compel DISH to launch WYMT to any areas, whether it be in the station's Nielsen-assigned market or anywhere else. There is, in particular, no basis for the Commission to compel DISH to launch WYMT into all or part of the station's own Nielsen-assigned DMA of Lexington, KY, because any such carriage rights (if they exist) are governed exclusively by the baseline satellite mandatory carriage rules set forth in 47 C.F.R. § 76.66.

While reserving all rights and preserving all arguments for reconsideration and/or appeal, DISH nonetheless provided the following information in response to an information request from the Media Bureau. Based upon DISH's current satellites and spot beam configurations, at this time, DISH is unaware of any factors that render it "technically infeasible" or "economically infeasible" pursuant to 47 C.F.R. § 76.59(e) for DISH to launch WYMT to the following of the Additional Counties: Johnson County, KY; Martin County, KY; Floyd County, KY; Pike County, KY; Bell County, KY; and Harlan County, KY. On the other hand, with respect to Leslie County, KY and Letcher County, KY, DISH would only be able to provide WYMT in standard definition (SD). This response is subject to change at any time due to, among other things, a satellite equipment failure or a different satellite being brought into service for the area that includes the Additional Counties.

⁴ Letter from Alison A. Minea, DISH to Robert J. Folliard, III, Gray Television Licensee, LLC, Dec. 8, 2016.

⁵ *Satellite Market Modification Order* ¶ 4.

⁶ *Id.* ¶ 30 (emphasis added).

⁷ *Id.* ¶ 30 n. 163.

⁸ DISH Response to Gray Pre-Filing Coordination at 1.

As discussed above, however, there are clear legal impediments to granting WYMT's attempted market modification petition, regardless of DISH's voluntary submission of this information.

Please contact me if you have any questions.

Sincerely,

/s/ Alison Minea

Alison Minea

Director & Senior Counsel, Regulatory
Affairs

Cc: Holly Saurer (FCC)
Martha Heller (FCC)
Evan Baranoff (FCC)
Stacy Fuller (DIRECTV)
Amanda Potter (DIRECTV)
Robert J. Folliard III (Gray)