

MEMORANDUM

Docket # 18-8

Accepted / Filed

To: Chairman Rogers
From: Austin Gage
Re: Meeting with Neil Middleton (WYMT)
Date: May 1, 2018

MAY 03 2018

Federal Communications Commission
Office of the Secretary**Attendees**

Neil Middleton, VP-General Manager of WYMT

*Corporate Attorney for WYMT may also be in attendance

Topics of Discussion

Neil and his attorney would like to update you on WYMT's pending FCC petition to include WYMT on satellite television providers.

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As you know, due to the terrain in Eastern Kentucky, satellite is often the preferred (and sometimes only) option for your constituents. Satellite subscribers constitute 50 percent (or more) of the viewers in WYMT's viewing area. This problematic for both viewers and the station: (1) without access to WYMT, satellite customers in many of your counties receive "local" news from Johnson City, Knoxville or Charleston – which is not the best option for news, weather or community information; (2) additionally, WYMT is concerned that advertisers may be reluctant to engage with the station if they are not reaching homes in Bell, Floyd, Harlan, Johnson, Leslie, Letcher, Martin, and Pike counties. WYMT has therefore petitioned FCC to modify the station's market to actually match the station's viewing area in Eastern Kentucky.

Update on WYMT's FCC Petition

On April 26, 2018, the FCC staff hosted a call with WYMT's representatives and with the lawyers for Dish Network and DirecTV. On the call, the FCC staff stated they would deny WYMT's petition and that the formal decision will be issued by mid-May. The FCC explained that it is relying on 47 USC 338(c)(1) to deny the petition. Section 338(c)(1) states that satellite carriers are not required to carry two stations in the same local market if the stations are affiliated with the same network. Though FCC's full reasoning is not yet apparent, the insinuation seems to be that Dish and DirecTV already carry a CBS affiliate in the counties where WYMT is seeking carriage (Bell, Floyd, Harlan, Johnson, Leslie, Letcher, Martin, and Pike). According to FCC, therefore, they are not bound by statute or regulation to also carry WYMT.

However, WYMT argues that FCC should make an exception that is explicitly permitted under Section 338(c)(1), which states that the section does not apply if the "stations are licensed to communities in different States." Indeed, the CBS affiliates carried in these counties are based in different states. In Leslie and Letcher, the CBS affiliate is WJHL-TV (Johnson City, TN). In Bell and Harlan, the CBS affiliate is WVLT-TV (Knoxville, TN). In Floyd, Johnson, Martin, and Pike, the CBS affiliate is WOWK-TV (Charleston, WV). Thus, WYMT believes that Section 338(c)(1) should not be a bar to WYMT, the CBS affiliate in Hazard, from gaining carriage.

Congressional Intent in STELAR

WYMT believes it is stations like theirs – which don't neatly conform to Nielsen boundaries — that motivated Congress to amend the law in 2014. Section 338(l), which is the provision Congress added to the Communications Act as part of the 2014 Satellite Television Extension and Localism Act Reauthorization (STELAR) Act to allow the FCC to modify a station's satellite carriage market, calls for a two-pronged approach. First, the FCC must consider 5 statutory factors to determine whether the affected communities are part of a station's local market. Second, the FCC must determine whether satellite carriage as modified by the petition is "technically and economically feasible."

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1. The WYMT petition demonstrated that it satisfied the 5 statutory factors, and neither Dish nor DirecTV challenged WYMT's showing on these points. Adding to WYMT's petition were over 2,300 comments from Kentucky residents urging the FCC to grant the petition. In fact, WYMT's petition is among the most commented-upon proceedings at the FCC in 2018.
2. As WYMT lawyers read the statute, the only question remaining is whether carriage is technically and economically feasible. On a conference call with the FCC on April 11, a representative from Dish acknowledged that carriage is feasible and it could provide WYMT to all of its subscribers in the affected counties. On that same call, DirecTV acknowledged that it could launch WYMT in standard definition in the affected counties, but could not launch it in high definition (HD) with its existing equipment. On the call and subsequent filing with the FCC, WYMT challenged DirecTV to demonstrate whether it could perform a routine hardware upgrade at its local receiver facility in Kentucky to achieve capability to launch WYMT in the affected counties in HD. DirecTV never disputed WYMT's assertion that a simple hardware upgrade would allow it to launch WYMT in HD. As such, WYMT does not believe either satellite carrier has demonstrated that carriage of WYMT is "technically and economically infeasible." It is at a loss to explain why the FCC appears poised to deny the petition.

Staff has begun to explore options to assist WYMT. On Wednesday, May 2, we are meeting with the Appropriations Subcommittee on Financial Services (which funds FCC; clerk = Dena Baron), as well as the House Energy and Commerce Committee (which would have jurisdiction over any authorizing language), to gauge support for a legislative fix and/or other approaches. We will keep you and Neil posted as these discussions progress. Financial Services has not confirmed its full committee markup date, but it could be as early as in the next couple of weeks.