

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Gray Media Group, Inc. |) | MB Docket No. 19-131 |
| |) | |
| Petition for Special Relief for Modification |) | CSR-8977-A |
| of the Television Market of Station WCJB- |) | |
| TV with Respect to DISH Network and |) | |
| DIRECTV |) | |

RESPONSE OF DIRECTV, LLC TO PETITION FOR SPECIAL RELIEF

DIRECTV, LLC (“DIRECTV”) hereby submits this response to the Petition for Special Relief (“Petition”) submitted by Gray Media Group, Inc. (“Gray”) in the above-captioned proceeding to request that the Commission incorporate recent market modification precedent into any order modifying the satellite market of WCJB-TV to include Columbia and Marion Counties in Florida (the “Counties”). The Commission has already confirmed—in direct response to previous efforts by Gray—that broadcast stations may not use the satellite market modification process to circumvent the rights afforded to direct broadcast satellite (“DBS”) providers under the “duplicating signals” exception codified in Section 338(c)(1) of the Communications Act of 1934, as amended (the “Act”). In the event the Commission were to conclude that granting the instant Petition is consistent with its rules and the *Satellite Market Modification Order*, DIRECTV urges the Commission to correct Gray’s misunderstanding of the law once again and make clear that DIRECTV would not be required to carry WCJB-TV in the Counties.

In addition, DIRECTV requests that the Commission acknowledge the significant cost and administrative burden associated with upgrading customer equipment that would be imposed on DIRECTV in the event Gray’s requested satellite market modification were granted *and*

DIRECTV chose to carry WCJB-TV in Columbia and Marion Counties. More specifically, DIRECTV asks that it be permitted to “roll out service at a more measured, non-dilatory pace” for customers with standard-definition (“SD”) equipment in the Counties, consistent with Bureau precedent.

ARGUMENT

I. TO THE EXTENT THE REQUESTED SATELLITE MARKET MODIFICATION IS LEGALLY PERMISSIBLE, THE COMMISSION SHOULD MAKE CLEAR THAT GRANT OF THE PETITION DOES NOT OBVIATE DIRECTV’S RIGHTS UNDER SECTION 338(C)(1)

Columbia County is assigned to the Jacksonville, Florida designated market area (“DMA”), while Marion County is assigned to the Orlando-Daytona Beach-Melbourne, Florida DMA. Consistent with those assignments, DIRECTV currently offers in-state broadcast service to DIRECTV customers residing in the Counties, including WJXX (TV), the ABC affiliate in the Jacksonville, Florida DMA (i.e., Columbia County), and WFTV(TV), the ABC affiliate in the Orlando-Daytona Beach-Melbourne, Florida DMA (i.e., Marion County). The Petition seeks to add the Counties to the local market of WCJB-TV, which currently is assigned to the Gainesville, Florida DMA.

These facts present the classic “duplicating signals” scenario. Specifically, to the extent the Commission were to grant the requested market modification, each of the Counties would be served by two in-market, in-state ABC affiliates—WJXX (TV) in Columbia County and WFTV(TV) in Marion County (stations that DIRECTV has carried since 2002 and 2000, respectively) in addition to Gray-owned WCJB-TV, the station at issue in the Petition. As such, Section 338(c)(1) of the Act and Section 76.66(h) of the Commission’s rules provide that, in the event the Commission were to grant the Petition, DIRECTV may *choose* whether to carry

WCJB-TV.¹ The statute and the Commission’s rules provide that DIRECTV may not be *compelled* to carry WCJB-TV.²

Gray advances a tortured reading of the “duplicating signals” exception that would negate DIRECTV’s statutorily granted discretion over carriage of duplicating, in-state network affiliates.³ Significantly, it is precisely the same reading of Section 338(c)(1) that Gray advocated in the rulemaking proceeding that culminated in the *Satellite Market Modification Order*. In that proceeding, Gray proposed that the Commission should ignore the “duplicating signals” exception in cases where the Commission determined that a broadcast station in a neighboring DMA is “more ‘local’” than the same, in-state affiliate in a county’s home DMA.⁴ While the Petition selectively quotes the *Satellite Market Modification Order*, suggesting that the precedent supports Gray’s preferred view of the “duplicating signals” exception, the Commission expressly rejected Gray’s proposal in the *Satellite Market Modification Order* when Gray raised it there, including in the same paragraph from which the Petition now quotes.⁵ Indeed, the Commission minced no words: “Section 338(c)(1) speaks clearly on this point in permitting but not requiring a satellite carrier to carry more than one network affiliate licensed to the same

¹ 47 U.S.C. § 338(c)(1); 47 C.F.R. § 76.66(h).

² 47 U.S.C. § 338(c)(1); 47 C.F.R. § 76.66(h).

³ *Gray Media Group, Inc. Petition for Special Relief for Modification of the Television Market of Station WCJB-TV with Respect to DISH Network and DIRECTV*, Petition for Special Relief, at 4-5 (filed May 2, 2019) (“Petition”).

⁴ *See* Comments of Gray Television Inc., MB Docket No. 15-71, at 8 (filed May 13, 2015) (“Gray 2015 Comments”) (asserting that DBS providers should not be able to rely on their statutory rights under the “duplicating signals” exception in Walker County, Texas, which is assigned to the Houston, Texas DMA, if the Commission expanded the market of Gray’s CBS affiliate KBTX-TV (licensed to Bryan, Texas in the Waco-Temple-Bryan, TX DMA) to include Walker County).

⁵ *Compare* Petition at 6 & n.18 (quoting *Amendment to the Commission’s Rules Concerning Market Modification*, Report and Order, 30 FCC Rcd 10406 ¶ 18 (2015) (“*Satellite Market Modification Order*”)) *to Satellite Market Modification Order* ¶ 18 n.88 (reiterating that, “in the satellite carriage context, a satellite carrier must carry two stations affiliated with the same network if they are from different states, and otherwise may select which duplicating station or network affiliate in a market it will carry” (internal citations omitted) (emphasis added)).

state.”⁶ Likewise, the Bureau has denied similar attempts by Gray to “effectively circumvent Section 338(c)(1).”⁷ Gray’s latest salvo involving WCJB-TV warrants the same treatment.

Notably, Gray acknowledged in the rulemaking preceding the *Satellite Market Modification Order* that its preferred reading of Section 338(c)(1) would necessitate a modification of the “duplicating signals” exception.⁸ That history makes the new line of argument that Gray advances in the Petition all the more improper and self-serving. In essence, Gray has asked the Commission to violate its own rules—and federal law—to grant the requested relief and enable Gray to force expanded carriage of WCJB-TV. Nevertheless, because the Commission has already rejected Gray’s efforts twice over, DIRECTV takes no position with respect to the lawfulness of Gray’s Petition insofar as any grant makes clear that DIRECTV’s rights regarding “duplicating signals” remain intact.

II. CONSISTENT WITH PRECEDENT, THE COMMISSION SHOULD TAKE STEPS TO AVOID IMPOSING UNNECESSARY BURDENS ON DIRECTV AND ITS CUSTOMERS RELATED TO SD EQUIPMENT

Independent of the “duplicating signals” issue, DIRECTV transmits WCJB-TV using only a high-definition (“HD”) spot beam, while certain DIRECTV customers in the Counties continue to rely on SD set-top boxes (and, in some cases, other equipment) to receive local broadcast stations. As a result, in the event the Commission were to grant the Petition *and* DIRECTV were to carry WCJB-TV in the Counties, customers with SD equipment would first need to obtain HD equipment before they could receive WCJB-TV.

⁶ *Satellite Market Modification Order* ¶ 28 n.146.

⁷ *Gray Television Licensee, LLC for Modification of the Television Market for WYMT-TV, Hazard, Kentucky*, 33 FCC Rcd 4889 ¶¶ 21-22 (MB 2018) (stating that “DIRECTV and DISH get to decide which of these two duplicating affiliates to carry on their Lexington DMA spot beams”).

⁸ See Gray 2015 Comments at 8 (recognizing that the Commission’s “duplicating signals” rule would apply post-market modification “unless the ‘substantial duplication’ rules were modified”).

DIRECTV does not take the position that the mismatch between its spot beam and customers' equipment in the Counties makes carriage of WCJB-TV technically or economically infeasible. On the contrary, DIRECTV currently serves many customers within the Counties who already have the equipment necessary to receive WCJB-TV in the event DIRECTV were to carry the station. But for customers with SD equipment, implementing the proposed market modification (should DIRECTV choose to carry WCJB-TV) would impose significant cost and administrative burdens—on DIRECTV and its customers, alike. In particular, DIRECTV would need to coordinate outreach to customers with SD equipment and facilitate upgrades. In addition, in many cases, a customer's request to upgrade to HD equipment would require a service appointment and a truck roll, an often-unwelcome inconvenience for customers and a significant expense for DIRECTV.

While DIRECTV will take every reasonable step to ensure its customers in the Counties receive all local broadcast stations carried in a particular area, DIRECTV requests that, in the event the Commission grants the Petition and DIRECTV ultimately chooses to carry WCJB-TV in the Counties, DIRECTV be permitted to “roll out service at a more measured, non-dilatory pace” for customers with SD equipment, consistent with past satellite market modification precedent.⁹

CONCLUSION

While DIRECTV has long been sympathetic to the concerns of “orphan counties” that lack access to in-state local broadcast stations, the instant Petition does not involve orphan

⁹ See, e.g., *Monongalia County, West Virginia and Preston County, West Virginia Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, Memorandum Opinion and Order, 33 FCC Rcd 1168 ¶ 16 (MB 2018); *Gray Television Licensee, LLC for Modification of the Satellite Television Market for WSAW-TV, Wausau, Wisconsin*, Memorandum Opinion and Order, 32 FCC Rcd 668 ¶ 20 (MB 2017).

counties. DIRECTV urges the Commission to evaluate and resolve the Petition consistent with the considerations identified herein and, in all events, reaffirm that the proposed market modification, if granted, in no way diminishes DIRECTV's rights with respect to "duplicating signals."

Respectfully submitted,

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May 28, 2019

CERTIFICATE OF SERVICE

I, Laura Taylor, hereby certify that on this twenty-eighth day of May, 2019, a true and correct copy of the foregoing Response of DIRECTV, LLC to the Petition for Special Relief was served, via first-class mail, upon the following:

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