

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Panola County, Texas)	
)	
For Modification of the Television)	MB Docket No. 18-337
Market of Station KFXK-TV (FOX)	File No. CSR-8965-A
Channel 51), Tyler/Longview, TX)	
)	
For Modification of the Television)	MB Docket No. 18-338
Market of Station KLTU (ABC, Channel)	File No. CSR-8966-A
7), Tyler/Longview, Lufkin, and)	
Nacogdoches, TX)	

**PARTIAL OPPOSITION OF DISH NETWORK L.L.C. TO
PETITIONS FOR SPECIAL RELIEF**

DISH Network L.L.C. (“DISH”) submits this partial opposition to the Petitions for Special Relief (“Petitions”) submitted by Panola County, Texas (“Panola County”) in the above-captioned proceedings.¹ In particular, DISH incorporates its response² to Panola County pursuant to the pre-filing coordination procedures set forth in the *Market Modification Order*.³ As demonstrated in the DISH Pre-Filing Coordination Response and explained further below, it would be both

¹ See Petition for Special Relief of Panola County, Texas for Modification of the Television Market of Station KFXK-TV (FOX), Tyler/Longview, TX, MB Docket No. 18-337 (filed Nov. 6, 2018) (“KFXK-TV Petition”); Petition for Special Relief of Panola County, Texas for Modification of the Television Market of Station KLTU (ABC), Tyler/Longview, Lufkin, and Nacogdoches, TX, MB Docket No. 18-338 (filed Nov. 6, 2018) (“KLTU Petition”).

² Letter from Alison A. Minea, Director and Senior Counsel, Regulatory Affairs, DISH Network L.L.C. to Lee Ann Jones, County Judge, County of Panola, TX (June 26, 2018) (“DISH Pre-Filing Coordination Response”) (attached as Exhibit A).

³ See Amendment to the Commission’s Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, *Report and Order*, 30 FCC Rcd. 10406, 10440 ¶ 47 (2015) (“*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)).

technically and economically infeasible pursuant to 47 C.F.R. § 76.59(e) for DISH to provide the broadcast stations in question in high definition (“HD”) to DISH subscribers in Panola County.⁴ If the Commission nonetheless grants the Petitions, it should limit DISH’s carriage obligations in Panola County to standard definition (“SD”) carriage only.

I. BACKGROUND

Panola County seeks market modifications for two broadcast stations – KFXK-TV, Longview, TX (“KFXK”) and KLTV, Tyler, TX (“KLTV”) (together, the “Stations”) – pursuant to the procedures set forth in the Federal Communications Commission’s (“FCC” or “Commission”) rules governing market modifications for satellite carriers under the STELA Reauthorization Act of 2014 (“STELAR”).⁵ KFXK is a FOX affiliate that is assigned to the Nielsen-defined designated market area (“DMA”) of Tyler-Longview, TX. KLTV is an ABC affiliate that is also assigned to the Tyler-Longview, TX DMA. The Petitions ask the Commission to add Panola County, TX, which is assigned to the Shreveport, LA DMA, to each Station’s local market with respect to both DISH and DIRECTV.⁶

Prior to filing the Petitions, Panola County requested pre-filing coordination with DISH to determine whether it would be technically and economically feasible for DISH to commence carrying the Stations in Panola County.⁷ DISH responded that it would be technically feasible for DISH to provide the Stations in SD to subscribers in Panola County, but it would be both technically and economically infeasible pursuant to 47 C.F.R. § 76.59(e) to provide the Stations in

⁴ DISH Pre-Filing Coordination Response ¶ 9.

⁵ See *supra* n. 3.

⁶ See KFXK-TV Petition at 1; KLTV Petition at 1.

⁷ Letter from Lee Ann Jones, County Judge, County of Panola, TX to Alison A. Minea, Director and Senior Counsel, Regulatory Affairs, DISH Network L.L.C. (June 13, 2018) (attached as Exhibit 8 to each Petition).

HD.⁸ DISH also explained that economic infeasibility could arise if a Station elects retransmission consent with respect to DISH for carriage in Panola County.⁹

II. DISH HAS DEMONSTRATED THAT IT IS BOTH TECHNICALLY AND ECONOMICALLY INFEASIBLE FOR DISH TO PROVIDE THE STATIONS IN HD TO ITS SUBSCRIBERS IN PANOLA COUNTY

Congress prohibited the Commission from adopting market modifications that “create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”¹⁰ Carriage is *per se* infeasible where a satellite carrier demonstrates that the relevant spot beam does not cover the relevant market.¹¹ Carriage of a station may also be infeasible based on other technical or economic impediments to carriage, such as when carriage would require a satellite carrier to install a second satellite dish, or replace or reposition an existing satellite dish, at “all or most households” in a market seeking a modification.¹² The Commission determines such assertions of infeasibility on a case-by-case basis.¹³

DISH’s response to Panola County’s pre-filing coordination letter sufficiently demonstrated that carriage of the Stations in HD in Panola County is technically and economically infeasible. The DISH Pre-Filing Coordination Response notes that DISH uses a spot beam located at the 61.5° W.L. orbital slot to transmit the Stations in HD.¹⁴ While this spot beam is predicted to provide adequate coverage of Panola County, less than 1 percent of DISH’s subscribers in Panola

⁸ DISH Pre-Filing Coordination Response ¶ 9.

⁹ *Id.* ¶¶ 11-13.

¹⁰ 47 U.S.C. § 338(1)(3).

¹¹ *Market Modification Order*, 30 FCC Rcd. at 10433 ¶ 32.

¹² *Id.* ¶ 33 (emphasis added).

¹³ *Id.*

¹⁴ DISH Pre-Filing Coordination Response ¶ 8.

County have satellite antennas and in-home equipment that were installed to be able to receive service from the 61.5 W.L. orbital slot.¹⁵ Therefore, DISH would need to schedule a service visit and change out customer equipment for virtually 100 percent of its subscribers in Panola County in order for them to receive the Stations in HD, which would impose a very substantial cost burden on DISH in addition to being an inconvenience to customers.¹⁶ For this reason, HD carriage of the Stations in Panola County would be infeasible within the meaning of 47 C.F.R. § 76.59(e).¹⁷

III. CONCLUSION

For the foregoing reasons, DISH partially opposes the Petitions. At a minimum, the Commission should find that DISH carriage of the Stations in HD in Panola County is technically and economically infeasible within the meaning of 47 C.F.R. § 76.59(e). If the Commission nonetheless grants the Petitions, it should limit DISH's carriage obligations with respect to the Stations in Panola County to SD carriage only.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 9. DISH also demonstrated that infeasibility could arise if a Station elects retransmission consent with respect to DISH for carriage in Panola County. In particular, to the extent a market modification results in two different stations affiliated with the same broadcast network being authorized for satellite local-into-local carriage in Panola County, DISH could be required to pay retransmission consent fees twice for the same broadcast network. Unless DISH is able to offset such fees, complying with the market modifications as proposed would be economically infeasible for DISH. *Id.* ¶¶ 11-13.

Respectfully Submitted,

/s/

Pantelis Michalopoulos
Matthew R. Friedman
Steptoe & Johnson LLP
1330 Connecticut Ave, N.W.
Washington, D.C. 20036
(202) 429-3000

Alison Minea, Director and Senior Counsel,
Regulatory Affairs
DISH Network L.L.C.
1110 Vermont Avenue, N.W., Suite 750
Washington, D.C. 20005
(202) 463-3709

Counsel for DISH Network L.L.C.

November 28, 2018

CERTIFICATE OF SERVICE

I, Matthew R. Friedman, certify that on this 28th day of November, 2018, I caused a copy of the foregoing Partial Opposition of DISH Network L.L.C. to Petitions for Special Relief, filed electronically with the Commission this day, to be served by overnight and electronic delivery on the following:

Lee Ann Jones
County Judge, Panola County
110 S. Sycamore
Room 216-A
Carthage, TX 75633
leeann.jones@co.panola.tx.us

Randy Bain
Station Manager, KTBS (ABC)
312 E. Kings Highway
Shreveport, LA 71104
rbain@ktbs.com

Donecia Pea
Station Manager, KTAL (NBC) and
KMSS (FOX)
3150 N. Market St.
Shreveport, LA 71107
dpea@ktalnews.tv

Joe Sciortino
Station Manager, KSLA (CBS)
1812 Fairfield Avenue
Shreveport, LA 71101
jsciortino@ksla.com

Ward Huey
Station Manager, KFXK (FOX)
4300 Richmond Rd.
Tyler, TX 75703
whuey@eastexas matters.com

Pat Stacey
Station Manager, KLTV (ABC)
105 West Ferguson
Tyler, TX 75702
pstacey@kltv.com

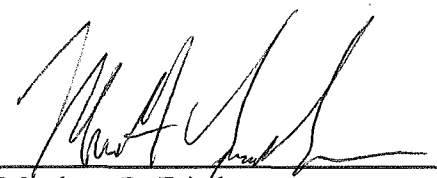

Matthew R. Friedman

EXHIBIT A



Alison A. Minea
Director & Senior Counsel, Regulatory Affairs
(202) 463-3709
Alison.Minea@dish.com

June 26, 2018

VIA ECFS AND FIRST CLASS MAIL

Lee Ann Jones, County Judge
County of Panola
110 S. Sycamore Room 216-A
Carthage, TX 75633

Re: *STELAR Feasibility Certification, Market Modification Pre-Filing Coordination Letter for Panola County, Texas*, MB Docket No. 15-71

Dear Judge Jones:

DISH Network L.L.C. (“DISH”) is in receipt of your pre-filing coordination letter (“Letter”),¹ pursuant to the procedures set forth in the Federal Communications Commission’s rules governing market modifications for satellite carriers under the STELA Reauthorization Act of 2014.²

The Letter requests information regarding carriage of local broadcast stations from the Tyler-Longview, Texas Designated Market Area into Panola County, Texas. The attached Feasibility Certification pursuant to 47 C.F.R § 76.59(e) reflects DISH’s response to the Letter. Please contact me if you have any questions.

Sincerely,

Alison Minea

Alison Minea
Director & Senior Counsel, Regulatory
Affairs
DISH Network L.L.C.

Attachment: Feasibility Certification Pursuant to 47 C.F.R. § 76.59(e)

¹ Letter from Lee Ann Jones, County Judge, Panola County, Texas, to Alison A. Minea, DISH, June 4, 13, 2018.

² 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) (“*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)).

STELAR FEASIBILITY CERTIFICATION PURSUANT TO 47 C.F.R § 76.59(e)

1. This Feasibility Certification is issued by DISH Network L.L.C. (“DISH”) pursuant to the pre-filing coordination procedures contained in the Federal Communications Commission’s (“FCC”) Order¹ governing market modifications for satellite carriers under the STELA Reauthorization Act of 2014 (“STELAR”).²
2. This Feasibility Certification responds to the letter (“Letter”) dated June 13, 2018 from Judge Lee Ann Jones requesting information regarding carriage of local broadcast stations from the Tyler-Longview, Texas Designated Market Area (“Tyler-Longview DMA”) into Panola County, Texas (the “County”).
3. DISH carries local broadcast stations for the Tyler-Longview DMA on spot beams located on two different satellites: from the 110° W.L. orbital slot (in standard definition or “SD”) and from the 61.5° W.L. orbital slot (in high definition or “HD”).
4. The ability of an individual DISH subscriber in the County to receive local broadcast stations from a given orbital slot depends on, among other things, how the subscriber’s individual satellite antenna was originally installed and pointed, and whether that subscriber is predicted to have adequate spot beam coverage from one of our two satellites that carry the Tyler-Longview DMA stations.
5. In general, a DISH customer’s satellite antenna, when installed, is pointed so that it can receive satellite signals from specific orbital slots. Receiving service from orbital slots not planned for in the original equipment installation at the subscriber’s home typically would require DISH to send a truck and technician to adjust equipment or install different equipment, which would impose a very substantial cost burden on DISH.
6. For DISH subscribers in the County, DISH must first determine whether the particular spot beam on each of our two satellites that carry the Tyler-Longview DMA stations provides adequate spot beam coverage. In determining whether a given spot beam covers the County, DISH evaluates whether the spot beam’s signal, as designed by the satellite manufacturer, is predicted to achieve reception and demodulation of the signals at the same availability levels that DISH ordinarily uses to assess spot beam coverage for the local markets to which DISH provides service. In so doing, DISH has “conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam.”³ The calculation methodology takes into account the following principal parameters: (i) the uplink and downlink portions of the end-to-end satellite signal, (ii)

¹ 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) (“*Market Modification Order*”).

² 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)).

³ *Market Modification Order* ¶ 41.

rain loss using the International Telecommunication Union (“ITU”) 618.6 rain rate data and ITU rain region boundaries, (iii) atmospheric loss, (iv) carrier to interference ratio (“C/I”) terms due to adjacent satellite interference, (v) C/I terms due to aggregate adjacent beam interference, (vi) cross polarization degradation, (vii) forward error correction, and (viii) modulation.

7. **Spot Beam Coverage – 110° W.L. orbital slot:** The spot beams at the 110° W.L. orbital slot that transmit the Tyler-Longview **SD** local stations are predicted to provide adequate coverage to the County. DISH customers in the County already have in-home equipment to allow them to receive DISH service from the 110° W.L. orbital slot.
8. **Spot Beam Coverage – 61.5° W.L. orbital slot:** The spot beams at the 61.5° W.L. orbital slot that transmit the Tyler-Longview **HD** local stations are predicted to adequately cover the County. However, less than 1% of DISH’s customers in the County have satellite antennas and in-home equipment that were installed to be able to receive service from the 61.5° W.L. orbital slot. DISH therefore would need to schedule a service visit for virtually 100% of its subscribers in the County, which would impose a very substantial cost burden on DISH in addition to being an inconvenience to customers.
9. **Feasibility Determination:** Given the lack of necessary customer at-home equipment and installation, DISH has determined that it would be both technically and economically *infeasible* within the meaning of 47 C.F.R. §76.59(e) to provide the **HD** Tyler-Longview DMA local stations to the County. However, it would be feasible within the meaning of 47 C.F.R. §76.59(e) for DISH to provide the Tyler-Longview DMA local stations in **SD only** to DISH subscribers in the County.
10. DISH reserves the right to amend this Feasibility Certification at any time due to, among other things, a satellite equipment failure or a different satellite(s) being brought into service for the area that includes the County which has different coverage capabilities than the satellites currently being used.
11. In addition, to the extent that a Tyler-Longview DMA local broadcast station impacted by a market modification elects retransmission consent with respect to DISH for carriage of its station in the County, DISH cannot be certain whether it will be able to successfully reach an agreement with the station. If DISH is unable to reach a retransmission consent agreement with a given station, it will be impossible for DISH to provide that station’s signal into the County. If an impacted station were to deny DISH the right to retransmit its signal into the County, it may be either technically or economically infeasible,⁴ or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent.
12. As DISH noted in its comments during the development of the market modification rules,⁵ an FCC grant of a market modification could result in, among other things, two

⁴ See 47 C.F.R. § 76.59(e).

⁵ Comments of DISH Network L.L.C. at 9, MB Docket No. 15-71 (May 13, 2015).

different stations affiliated with the same broadcast network being authorized for satellite local-into-local carriage in the County. This could result in DISH being required to pay retransmission consent fees twice for the same broadcast network. Therefore, we must reserve the right to charge additional fees to subscribers in the County who elect to receive any Tyler-Longview local broadcast stations that DISH may be authorized to offer as a result of any market modification.

13. Without the ability to offset the additional costs associated with a market modification, it would be “economically infeasible” pursuant to 47 C.F.R. § 76.59(e) for DISH to comply with a market modification ordered by the FCC consistent with the request described in the Letter.

The foregoing has been prepared using facts of which I have personal knowledge or upon information provided to me. I certify under penalty of perjury that the foregoing is true and correct to the best of my current knowledge, information, and belief.



Alison Minea
DISH Network L.L.C.

Executed on June 26, 2018