

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

ATTORNEYS AT LAW
1201 CONNECTICUT AVENUE, NW
SUITE 200
WASHINGTON, DC 20036
(202) 861-0870
FAX: (202) 517-9185
WWW.RWDHC.COM

JAMES L. WINSTON
PARTNER
JWINSTON@RWDHC.COM

December 30, 2014

Accepted/Files

Marlene H Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20036

DEC 30 2014

Federal Communications Commission
Office of the Secretary

Attention: Chief, Media Bureau

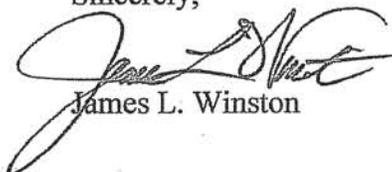
Re: KSQA(TV) Complaint for Carriage – Corrected Certificate of Service

Dear Ms. Dortch:

KSQA, LLC, licensee of television station KSQA, Topeka, Kansas, by its attorneys, hereby transmits an original and four copies of the Complaint for Carriage filed on December 23, 2014, with a corrected copy of the Certificate of Service. As originally filed, the Complaint for Carriage had an incorrect copy of the Certificate of Service. The error in the Certificate of Service was found and corrected in the copy of the Complaint for Carriage that was served on DirecTV and its counsel, but the copies filed with the Commission did not have the correct Certificate of Service. No changes or corrections have been made in the Complaint for Carriage itself.

Please contact undersigned counsel for KSQA, LLC should you require additional information regarding this matter.

Sincerely,



James L. Winston

cc: Michael Nilsson

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

In re)
)
KSQA LLC,)
Licensee of KSQA (TV))
)
Topeka, KS)
)
)

To: Office of the Secretary
Attn.: Chief, Media Bureau

COMPLAINT FOR CARRIAGE

A. Introduction

KSQA L.L.C., licensee of television station KSQA, Channel 12, Topeka, Kansas, (“KSQA, LLC”) by its attorneys, pursuant to 47 U.S.C. 338(a) and 47 U.S.C. 338(f) and Section 76.66 of the Commission’s Rules, hereby files this Complaint for Carriage against DirecTV for its refusal to carry the signal of KSQA. As detailed below, the basis for the refusal of DirecTV to carry the signal of KSQA is not in good faith and is in violation of the statute and the Commission Rules.

B. Background

1. 2012 Election Cycle

KSQA is a relatively new station and one of a handful of independent stations and African American owned stations. It first signed on the air as a digital (post analog) commercial broadcast station in September 2011. Upon sign on, KSQA timely requested mandatory carriage from national satellite carriers, local cable systems and other multichannel program suppliers. All of them provided mandatory carriage, including Dish Network, but not DirecTV.¹ Upon monitoring the KSQA signal in 2012, DirecTV concluded that the KSQA audio signal was in a

¹ Initially, Cox Cable Communications disputed KSQA’s on-channel position rights. However, during the pendency of the carriage complaint filed, the Media Bureau issued a ruling concluding that KSQA, as a post analog station, was authorized to demand on-channel carriage, thereby mooting the carriage complaint. As Cox thereafter commenced carriage, the complaint was dismissed. See MB Docket 12-168, CSR 86-59-M.

MPEG-2 format, one DirecTV alleges is not within the meaning of the “good quality signal” requirement of Section 76.66(g)(2) of the Commission Rules. DirecTV refused carriage. See Letter dated October 20, 2012 of Wiltshire and Grannis LLP, DirecTV, Exhibit A.²

2. *Current Election Cycle*

On September 16, 2014, KSQA LLC notified DirecTV in writing that it elected mandatory carriage.³ As required by the Rules, the carriage request letter was sent via First Class Registered Mail Receipt Requested⁴. On October 24, 2014, DirecTV responded to KSQA LLC, declining carriage. See Letter from “Local Into Local,” Exhibit B.

The basis of the DirecTV refusal for carriage is a repeat of 2012: (a) that as of May 9, 2012 when a DirecTV representative last monitored the KSQA signal, KSQA was transmitting its audio signal in the MPEG2 format, and not the ATSC format, and (b) that DirecTV has no reason to believe anything has changed. See Exhibit B.

C. Discussion

The refusal by DirecTV is not in good faith. The Commission has long required all of its licensees to act in good faith when negotiating compliance agreements. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; 18 F.C.C.R. 19020 (2003); *In re David Oxenford Esq.*, (2008) 23 F.C.C.R. 16630 (Good faith by applicants in LPFM curative amendments.); *In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18.; Par. 45 (Paging agreements). The good faith requirement includes satellite carriers. See. *In re Implementation of Satellite Home Viewer Imp. Act of 1999*, 15 FCC Rcd. 5445, pars. 8-11. (2000) (Retransmission agreements). The good faith requirement reflects an overall policy of self-policing by licensees. *Ibid.*

DirecTV readily concedes that prior to its October 24, 2014 denial letter, it did not monitor the signal of KSQA to determine compliance with the technical rules. Exhibit A, pg. 2. Rather than conduct monitoring, DirecTV concedes it simply did not want to incur the costs of sending a representative to Topeka to conduct measurements. Exhibit A, pg. 2. Also, although notified that other carriers and Cox Cable were carrying the signal without complaint, DirecTV

² The 2012 carriage denial included multiple objections, only one of which currently is interjected.

³ DirecTV does not challenge timeliness of the notification or receipt of the carriage request.

⁴ See Note 3.

simply ignored this. See Declaration of Gregory Talley, dated December 22, 2014, Exhibit D, pars. 2 and 4. This is inconsistent with good faith.

The reception and encoding of broadcast signals by cable and satellite carriers for retransmission or secondary transmissions is accomplished by receivers and encoders, digital equipment that can switch from multiple audio formats, including ATSC and MPEG with the simple touch or push of a button to an alternative setting. See Declaration of Kelly Quan, KSQA consulting engineer, attached as Exhibit C.

Mr. Quan advises that these receivers/decoders, including the Sencore 3187 are standard off-the-shelf equipment items routinely used by satellite and cable providers. Indeed, Dish Network uses an off-the-shelf Sencore encoder. Dish Network receives the KSQA signal, and it has set the encoder to convert the KSQA signal to a format it uses to merge the KSQA signal with other broadcast signals to uplink the combined signals to its satellites for distribution to subscribers. The Dish Network specific decoder is a Sencore one, Model 3187. The Sencore encoder online listed cost is \$1,300 retail. Talley Declaration, Exhibit D, par. 2. This provides satellite carriers with spectrum efficiencies. Quan Declaration, Exhibit C, par. 3.

KSQA also has been informed that Cox Cable utilizes a similar process. Cox Cable receives the KSQA signal and using off the shelf equipment needed for all broadcast signals, converts the KSQA signal to a different format for utilization by its subscribers. See Talley Declaration, See Exhibit D, par. 4.

KSQA wrote DirecTV inquiring as to what makes and models of receiving and encoding equipment it uses. See Email Message from Greg Talley, dated December 19, 2014, Exhibit E, page 1. In response, DirecTV declined to identify the equipment. See, Email from DirecTV, dated December 19, 2014, Exhibit E, page 2. The DirecTV response is pure evasion and further reflects a lack of good faith.

DirecTV argues that the KSQA format cannot be converted or made usable as DirecTV "passes through" the KSQA signal unaltered to its subscribers. Exhibit H. However, KSQA submits that this proves too much. If the KSQA signal is passed through to subscribers unaltered, subscribers would receive not only the KSQA primary mandatory carriage signal, but also its sub-channel non-mandatory carriage video and audio signals. Further, a pass through would require some processing as pass-through are beyond the technical capacity of satellite space technology. Quan Declaration, Exhibit C, pars. 3-4. That would absorb spectrum capacity

needlessly. Representing that it uplinks needless broadcast signals to tens of thousands of subscribers for their non-use is an ultimate expression of a lack of good faith.

DirecTV's only explanation for not carrying KSQA is its assertion that KSQA must broadcast in ATSC in accordance with Section 73.682(d), with which DirecTV claims KSQA is not in compliance. However, 73.682(d) specifically provides an exception for MPEG-2 transmission. Therefore, KSQA is in compliance with that section. Moreover, if the Commission interprets Section 73.682(d) such that KSQA is deemed not to be in compliance with that section, KSQA requests a waiver of that section. As has been demonstrated above, KSQA's signal is deemed to be a "good quality" signal by Cox Cable and Dish TV and other MVPDs. Indeed, given that these MVPDs are currently processing the KSQA signal as is, changing the KSQA signal could cause disruption to carriage by these other MVPDs.

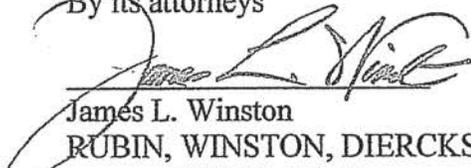
D. Conclusion

It has been much too long -- years -- since DirecTV refused to carry the signal of KSQA, unlike all other carriers and operators in the market which began carrying the signal in the last election cycle. The DirecTV rationale -- use of an alternative audio format dispute -- is a minor problem at best, solved by a minor piece of non-specialized of-the-shelf standard use equipment costing \$1,300 retail. KSQA urges the Commission to order DirecTV to commence carriage of the signal of KSQA immediately and without conditions. Alternatively, KSQA offers to provide DirecTV with a Sencore 3187 encoder to receive and decode and convert its signal to whatever standard format it so chooses. Upon delivery of the equipment, KSQA asks the Commission to order carriage of its signal immediately.

Respectfully submitted,

KSQA, L.L.C.

By its attorneys



James L. Winston

RUBIN, WINSTON, DIERCKS, HARRIS &
COOKE, L.L.P.

1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

(202) 861-0870
jwinston@rwdhc.com

December 23, 2014

EXHIBIT A



WILTSHIRE
& GRANNIS LLP

August 20, 2012

BY CERTIFIED AND ELECTRONIC MAIL

Mr. Gregory Talley
Operations Manager
KSQA-TV 12
800 SW Jackson Street, #1407
Topeka, KS 66612
greg@ksqa12.com

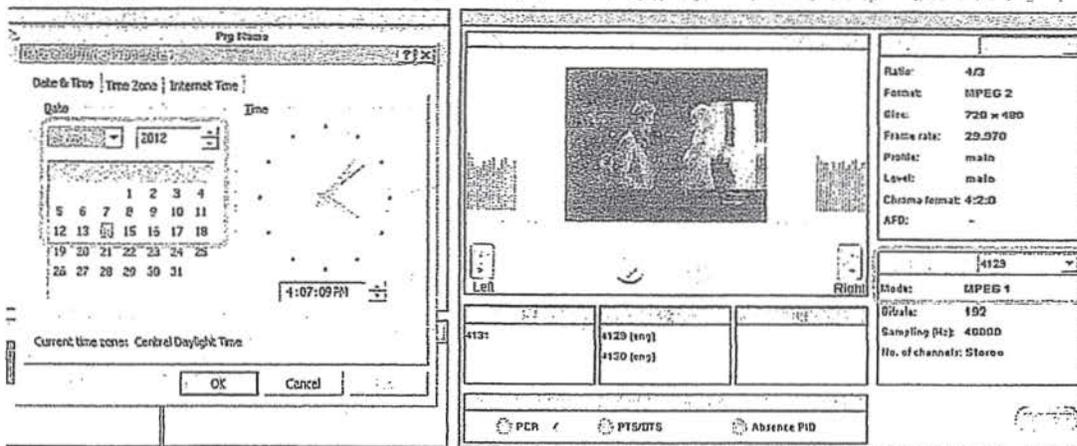
Re: KSQA-TV, Topeka KS

Dear Mr. Talley:

I have received your most recent letter, dated August 10, related to KSQA's request for mandatory carriage on DIRECTV's satellite system. In our prior correspondence, I have described numerous technical problems with KSQA's signal, including: (1) audio transmissions not in the ATSC Standard Digital Audio Compression (AC-3), as required by the Commission, 47 C.F.R. § 73.682(d), and (2) an additional carrier (or a "spike") in KSQA's spectrum, which prevented DIRECTV from decoding the signal at its local receive facility.

In response, you now state that you have made "some adjustments and monitoring," and that you "believe that whatever issues [we] have experienced with the KSQA TV signal have been resolved," and that "this has been confirmed" by other MVPDs. You do not, however, describe at all what "adjustments" have been made.

As a specific matter, it appears that KSQA is still not transmitting in AC-3. Below please find the results of our remote monitoring.



More generally, and as we indicated previously, DIRECTV has incurred substantial expense in flying engineers back and forth to Kansas to repeatedly test KSQA's signals. We indicated to you that DIRECTV will not engage in further testing absent new evidence that would lead a reasonable observer to believe that KSQA is capable of delivering a "good quality" signal to DIRECTV's receive facility, such that its viewers could actually watch KSQA's programming were it carried. We do not believe the Commission's rules require us to fly engineers to Kansas on nothing more than your statement that "some adjustments" have been made without knowing what those adjustments are—particularly when we already know that KSQA's signals are not compliant with respect to its audio feed.

I note that you have also provided a response with respect to licensing issues. Given the technical issues that still appear to remain, I will address those at a later date. At this point, DIRECTV does not waive any other objections it may have to carriage of KSQA, including those with respect to licensing. Should you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Nilsson".

Michael Nilsson
Counsel to DIRECTV, LLC

EXHIBIT B



Via FedEx (785-379-0012)

October 24, 2014

KSQA-TV
800 SW Jackson Street #1407
Topeka, KS 66612
Attn: Gregory Talley, Operations Manager

Re: KSQA-TV (DMA: Topeka, KS)

We are in receipt of your letter requesting mandatory carriage for KSQA-TV in the Topeka, KS local market.

Please be advised that per previous correspondence to KQSA from Wiltshire & Grannis LLP, DIRECTV's outside counsel, dated May 9, 2012, the station was informed that it was transmitting audio in MPEG1 Layer 2 (also known as M1L2 or Musicam) format, which was not in compliance with the FCC mandated ATSC format. To date, DIRECTV is unaware of any changes the station may have made to its signal, and believes that the station continues to transmit audio in such format that is not in compliance with the FCC mandated ATSC format.

Accordingly, unless and until KSQA can deliver a signal in the ATSC format specified by the Commission, DIRECTV denies KSQA's request for mandatory carriage in the Topeka, KS local market.

Technical questions and those related to the local receive facility can be forwarded by email to Locals-Technical@directv.com. General correspondence should be sent to Locals-Business@directv.com or:

DIRECTV
Local-Into-Local
2260 E. Imperial Highway, Mail Stop N321
El Segundo, CA 90245

Sincerely,

DIRECTV

EXHIBIT C

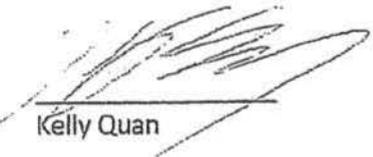
Declaration of Kelly Quan

I, Kelly Quan, declare as follows:

1. I am a broadcast engineering consultant. For more than 30 years, I have worked for over 11 different broadcasters utilizing, installing and servicing satellite equipment on behalf of broadcasters. I am familiar with video and audio receiving and decoding equipment and the various formats utilized.
2. The Sencore MRD3187B Modular Encoder Decoder is an off-the-shelf modular unit that is commonly used in TV Broadcast to receive network and live feeds via RF, ASI, or IP, and simultaneously demodulate, de-encapsulate, encapsulate, and/or decode to multiple output formats such as ASI, SMPTE 310, IP Datagram, or baseband audio/video for further system contribution.
3. If an unaltered ATSC broadcast signal is passed though unaltered to satellite subscribers, the unaltered signal would unnecessary use spectrum space and could cause objectionable interference with subscribers, unless all subscribers' receiving set top boxes are equipped with special equipment to somehow reject or dissipate unwanted signals. A much simpler and less complicated and more reliable alternative would be one unit such as the Sencore encoder.
4. The unaltered ATSC broadcast signal cannot be passed thru to the satellite uplink because it cannot work, unless its signal is first decoded and re-encoded into the format used by the satellite broadcaster. That is the only way that other program streams can be combined together. The satellite in space cannot re-broadcast ATSC signals; but instead uses either dvb-s or dvb-s2 encoding methods which are different from ATSC which is intended for terrestrial broadcast.
5. The Sencore MRD3187B receive various formats and converts to ASI, SMPTE 310, Baseband Audio and Video(analog), IP Datagram (for using network to move video to next item), or digital SDI. Normally the satellite broadcaster takes the output of the Sencore MRD unit in whatever form they use and combines it with all of their other program sources using some kind of multiplexer. That unit makes one signal that contains all of the programs that they send to their uplink encoder which usually makes DVB-S2 and that is transmitted along with conditional access information to the satellite in space. This is why it is not possible to take a raw unaltered ATSC signal and feed it into the uplink stream.
6. The station can provide a Sencore MRD3187B unit configured to receive our signal however as we do not know what signal format is compatible with the Satellite contribution equipment, we must first obtain additional information from satellite company in order to procure the appropriate configuration of MRD3187B.

I declare under oath that the foregoing is true.

December 22, 2014



Kelly Quan

EXHIBIT D

Declaration of Gregory Talley

I, Gregory Talley, declare as follows:

1. I am a Member of KSQA L.L.C. and its Operations Director.

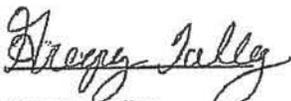
2. On December 22, 2014, I talked with Ben Wilson, a technical representative for Dish Network. I was advised that Dish Network receives the KSQA signal in a MPEG2 format and that Dish Network uses a Sencore 3187 encoder which has been set to convert the audio signal to a different format for merging and encoding with other broadcast signals to be uplinked to subscribers. I was advised that the encoder has audio format settings that can be easily changed. I determined the retail cost of the unit as \$1,300, as shown on the website of a broker, Ace Video and Audio, at <https://www.avace.com/Sencore-MRD%203187B.cfm?gclid=Ci2DjelP2sICFTfp7Aod0QIAVg>.

3. On December 22, 2014, I called the Topeka Walmart store, the local installer for Direct TV at (785) 271-6444. I was advised that the set top boxes mostly installed in Dish Network customers' homes in the Topeka market was the Direct TV D12. I was advised that this equipment lacks the capacity to process broadcast channels off the air and display them to subscribers. The manual for the D12 is online at <http://www.manualowl.com/p/DIRECTV/D12/Manual/117605>. The manual does not show any capacity for selecting audio formats, except as to languages.

4. In 2012 upon sign on of KSQA, I had a conversation with Stacy Colgrove, a technician with Cox Cable Communications in Topeka. Mr. Colgrove confirmed that his company receives the KSQA signal in a MPEG format and that the signal is converted to format with encoding equipment which is used by the company for distribution to its subscribers.

I declare under oath that the foregoing is true.

December 22, 2014


Gregory Talley

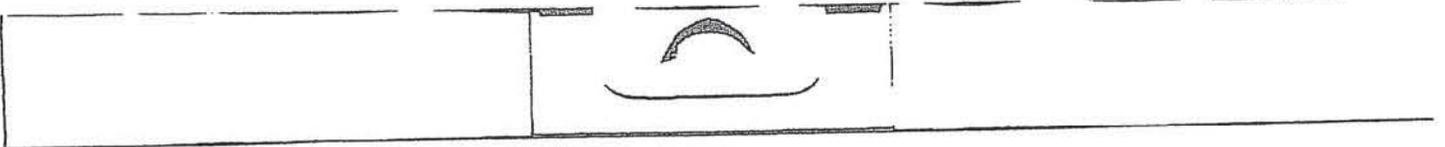


EXHIBIT E

From: greg@ksqa12.com [mailto:greg@ksqa12.com]
Sent: Friday, December 19, 2014 9:22 AM
To: Locals-Technical
Cc: Locals-Business

Subject: KSQA TV-12 Topeka, Ks

This is in further response to your letter of October 24, 2014.

In an effort to resolve equipment issues, Please advise us of the manufacturer, make and model of audio decoder(s) the company utilizes to receive and decode local broadcast signals.

Thank You

Greg Talley
Operations Manager

----- Original message -----

From: Locals-Technical
Date: 12/19/2014 12:14 PM (GMT-06:00)
To: greg@ksqa12.com, Locals-Technical
Cc: Locals-Business

Subject: RE: KSQA TV-12 Topeka, Ks

It has nothing to do with the make/model of the decoder/encoder. It has to do with the fact that you are not airing AC3 audio and our system as a whole is an AC3 pass thru to the set top box. Your stream only has MPEG1 Layer 2 audio, aka Musicam Audio (which is not ATSC Compliant). This is the same reason that last Must Carry Cycle in 2012 when we could not air your station as well. Your station made a number of attempts to correct the non-compliant stream but was never successful.

Until you can provide an ATSC Compliant stream we are unable to carry your station.

Locals-Technical Team

BS

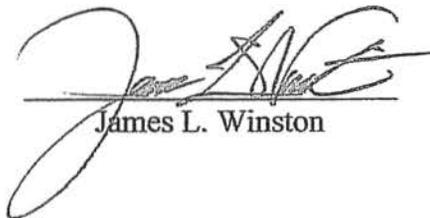
Please be aware that this email address is not monitored real time and is not intended to be used for emergency technical communications to DIRECTV. If you have an emergency that requires immediate assistance please call our Broadcast Operations Center (BOC) at 888-854-5222. This number is for station use only and should not be forwarded off to viewers.

CERTIFICATE OF SERVICE

I, James L. Winston, a partner in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on December 23, 2014, true copies of the foregoing "Complaint for Carriage" were mailed, first class U.S. mail, postage pre-paid to the following:

DirecTV
Local-Into-Local
2260 Imperial Highway,
Mail Stop N321
El Segundo, CA 90245

Michael Nilsson
Wiltshire & Grannis
1200 18th Street, Suite 1200
Washington, DC 20036


James L. Winston

December 23, 2014