

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of DISH Network L.L.C. for)	MB Docket No. 10-124
Qualified Carrier Certification)	
)	

REPLY COMMENTS OF DISH NETWORK L.L.C.

I. INTRODUCTION

Of the 1,782 broadcast stations in the country,¹ 1,781 have not objected to the application of DISH Network L.L.C. (“DISH”) for Certification as a Qualified Carrier pursuant to Section 342(a) of the Communications Act.² Nor has the National Association of Broadcasters, or any other broadcast group. DISH’s application has garnered only one response, a letter filed by Delmarva Broadcast Service, L.L.C. (“Delmarva”).

Delmarva is the licensee for WMDT-TV in the Salisbury, Maryland designated market area (“DMA”). While Delmarva’s letter acknowledges that “there may be some form of local service capability from DISH to the Salisbury market” given that DISH has launched the local Public Broadcasting Service (“PBS”) affiliate, WCPB-TV, under a valid must-carry election, Delmarva seems to argue that DISH is not providing local service in the Salisbury DMA as contemplated by Section 342(a)(1) of the Communications Act, 47 U.S.C. § 342(a)(1), because

¹ FCC, Broadcast Station Totals as of December 31, 2009 (rel. Feb. 26, 2010), *available at* <http://www.fcc.gov/mb/audio/totals/bt091231.html> (last visited July 30, 2010).

² See FCC Public Notice, DA 10-1036, *Commission Seeks Comment on Application by Dish Network for Certification as a Qualified Carrier Pursuant to the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-124 (rel. June 30, 2010).

DISH has not launched any of the commercial stations that are available in the Salisbury DMA today – ABC (primary stream of WMDT-TV), CW (multicast stream of WMDT-TV), CBS (primary stream of WBOC-TV) and FOX (multicast stream of WBOC-TV).³

Delmarva appears to have overlooked the fact that Section 342(a) of the Communications Act of 1934 expressly contemplates the provision of local service *pursuant to the statutory license under Section 122 of the Copyright Act*, and appears to assume that STELA’s qualified carrier certification process somehow modifies the rule providing for an election of mandatory carriage or retransmission consent negotiations. STELA does nothing of the kind. An applicant for qualified carrier certification is not required to retransmit stations that have elected retransmission negotiations but which have refused to give retransmission consent. In fact, a satellite carrier is strictly *forbidden* to retransmit such stations, and STELA does not alter this prohibition.

The almost total lack of objection to DISH’s qualified carrier certification application from the country’s broadcast community speaks volumes. DISH has met the statutory requirements for qualified carrier status under STELA and respectfully requests that the Commission certify that fact promptly.

II. DISH HAS FOLLOWED THE APPLICABLE RULES AND IS PROVIDING LOCAL SERVICE IN THE SALISBURY DMA

Section 342(a) of the Communications Act contemplates the provision of local service *pursuant to the statutory license under Section 122 of the Copyright Act*.⁴ A satellite carrier providing “local service” under Section 122 for the first time in a DMA must provide notice to each television broadcast station licensee within that local market at least 60 days before

³ See Delmarva Comments at 1.

⁴ See 47 U.S.C. § 342(a); 17 U.S.C. § 122.

beginning to provide local service.⁵ Within 30 days of receiving that notice, each local broadcast station licensee must then elect either mandatory carriage (for its primary stream) or retransmission consent negotiations.⁶ Failure of a television broadcast station licensee to make an election for its primary stream results “in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage.”⁷ If a television broadcast station licensee elects to negotiate, it must enter into a retransmission consent agreement with the satellite provider for its signal to be retransmitted. Until then, the satellite carrier is prohibited from retransmitting the signal.⁸ In such negotiations, both parties must negotiate in good faith.⁹ The current cycle is set to expire on December 31, 2011.¹⁰

DISH has complied with these requirements of Section 122 in the Salisbury DMA. On February 19, 2010, some 104 days before DISH commenced local service in the Salisbury DMA, DISH notified Delmarva and all other television broadcast station licensees in the Salisbury DMA that it would be commencing local service.¹¹ As noted above, DISH has launched the local PBS affiliate, WCPB-TV, under a valid must-carry election.¹² DISH has also honored the elections of Delmarva and Draper Holdings Business Trust (“Draper”), the owner of WBOC-TV, to pursue retransmission consent negotiations, and has negotiated with Delmarva and Draper in

⁵ 47 C.F.R. § 76.66(d)(2).

⁶ *Id.*

⁷ 47 C.F.R. § 76.66(d)(2)(i)(D); *see also* 47 C.F.R. § 76.66(d)(1)(v).

⁸ 47 U.S.C. § 325(b).

⁹ 47 U.S.C. § 325(b)(3); 47 C.F.R. § 76.65.

¹⁰ 47 C.F.R. § 76.66(c).

¹¹ *See* Declaration of Erin McIlvain, Director of Programming at DISH Network L.L.C., July 30, 2010, at ¶¶ 2-3 (“McIlvain Declaration”).

¹² *See id.* ¶ 6. DISH is not currently retransmitting WDPB-TV, owned by PBS affiliate WHYI, Inc., due to a non-compliant must-carry election. *Id.*

good faith.¹³ As with any television broadcast station licensee that elects to proceed with retransmission consent negotiations, DISH may not retransmit WMDT-TV or WBOC-TV in their home DMAs unless and until DISH reaches a mutually acceptable retransmission consent agreement with them. So far, DISH has been unable to reach such agreements, either with Delmarva for the primary and secondary streams of WMDT-TV or with Draper for the primary and secondary streams of WBOC-TV.

While DISH is more than willing to retransmit WMDT-TV and WBOC-TV on reasonable terms and conditions, DISH is not required to agree to whatever terms Delmarva or Draper demands. Delmarva cites no legal authority that suggests so, and the good faith requirement does not require this result. Significantly, it acknowledges that “[t]here was some negotiation [between Delmarva and DISH] toward a retransmission agreement for carriage over the nine business days up to June 3, but no agreement was reached.”¹⁴ But it goes on to allege that “efforts since that time by Delmarva’s counsel[] to foster further discussion toward an agreement, including as recently as last week, have not been responded to by DISH.”¹⁵ This allegation is vague as well as inaccurate. In fact, DISH offered to begin negotiations with Delmarva as early as April 8, 2010, and since that time, DISH has responded in a timely fashion to calls and correspondence from Delmarva’s outside counsel, has made counteroffers, and has provided reasons why DISH could not accept certain terms and conditions proposed by

¹³ McIlvain Declaration ¶¶ 7-8.

¹⁴ Delmarva Comments at 1.

¹⁵ *Id.*

Delmarva.¹⁶ Indeed, despite the participants' being unable to reach an agreement, these negotiations continue to be cordial.¹⁷

III. CONCLUSION

Because DISH timely provided notice and launched a non-commercial station in the Salisbury DMA (local PBS affiliate WCPB-TV) under a valid must-carry election, and DISH timely provided notice and has been negotiating retransmission consent agreements with the only two commercial television broadcast station licensees in the Salisbury DMA (Delmarva and Draper) under valid retransmission consent negotiation elections, DISH is providing "local service" in the Salisbury DMA pursuant to the license under Section 122 of the Copyright Act, 17 U.S.C. § 122, and DISH's application for qualified carrier certification should be approved without delay.

Respectfully submitted,

/s/

Pantelis Michalopoulos
Christopher R. Bjornson
Andrew Guhr
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for DISH Network L.L.C.

July 30, 2010

¹⁶ McIlvain Declaration ¶¶ 4, 7.

¹⁷ *Id.* ¶ 7.

ATTACHMENT A

DECLARATION OF ERIN MCILVAIN

DECLARATION OF ERIN MCILVAIN

I, Erin McIlvain, declare and affirm the following to the best of my knowledge, information and belief:

1. I am the Director of Programming at DISH Network L.L.C. (“DISH”). In this capacity, I am familiar with matters related to the negotiation of retransmission consent agreements with local broadcast stations. This declaration is based upon my personal knowledge and upon information provided to me.

2. On February 19, 2010, DISH informed all local television broadcast station licensees in the Salisbury, Maryland designated market area (“DMA”) that DISH was planning to begin providing local service in Salisbury. This notice was sent by certified mail to each television broadcast station licensee’s address of record listed with the Federal Communications Commission.

3. In Salisbury, there are a total of four local television broadcast station licensees: Delmarva Broadcast Service, L.L.C. (“Delmarva”), Draper Holdings Business Trust (“Draper”), Maryland Public Television (“MPT”), and WHYI, Inc.

4. On March 11, 2010, Delmarva, the owner of WMDT-TV, which broadcasts the ABC (on its primary stream) and CW (on its multicast stream) networks in the Salisbury DMA, elected retransmission consent status for the duration of the current election cycle. By letter dated April 8, 2010, DISH acknowledged Delmarva’s election of retransmission consent status and offered to begin negotiations. Copies of both letters are attached as Attachment B.

5. On February 24, 2010, Draper Holdings Business Trust (“Draper”), the owner of WBOC-TV, which broadcasts the CBS (on its primary stream) and FOX (on a multicast stream) networks in the Salisbury DMA, elected retransmission consent status for the duration of the

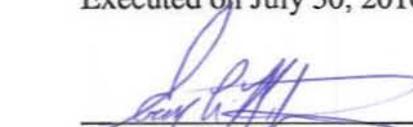
current election cycle. By letter dated March 25, 2010, DISH acknowledged Draper's election of retransmission consent status and offered to begin negotiations. Copies of both letters are attached as Attachment C.

6. On March 1, 2010, Maryland Public Television ("MPT"), the owner of WCPB-TV, a local PBS affiliate, elected must-carry status. DISH began retransmitting WCPB-TV on June 3, 2010. WDPB-TV, owned by WHYI, Inc., also a local PBS affiliate, is not being carried due to a non-compliant must-carry election.

7. DISH has been conducting negotiations in good faith for consent to retransmit WMDT-TV. Because the principals of Delmarva have not been available to negotiate directly, DISH has had numerous discussions with Delmarva's outside counsel, including verbal discussions as recently as June 3, 2010 and written correspondence as recently as July 13, 2010. Throughout the negotiations, DISH has responded in a timely manner to all calls and correspondence from Delmarva's outside counsel, has made counteroffers, and has provided reasons why DISH could not accept certain terms and conditions proposed by Delmarva. Throughout, negotiations have been cordial.

8. DISH has been conducting negotiations in good faith for consent to retransmit WBOC-TV.

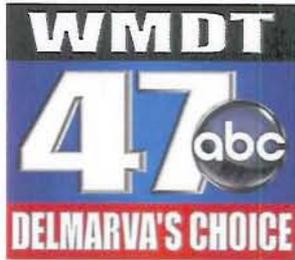
Executed on July 30, 2010.



Erin McIlvain
Director of Programming
DISH Network L.L.C.

ATTACHMENT B

DELMARVA ELECTION LETTERS



March 11, 2010

Via Certified Mail, Return Receipt Requested

Dish Network
9601 South Meridian Boulevard
Englewood, CO 80112
Attention: Stacey Conway, General Manager

Re: **WMDT(TV), SALISBURY, MD**
Retransmission Consent Election

RT
4/10

Dear Ms. Conway:

We received your letter dated February 19, 2010, concerning DISH Network, L.L.C.'s intent to commence local-into-local service in the Salisbury, Maryland, Designated Market Area. Pursuant to Section 338 of the Communications Act of 1934, as amended, and Section 76.66 of the rules of the Federal Communications Commission, Delmarva Broadcast Service, LLC, the licensee of television station WMDT(TV) (the "Station"), hereby elects retransmission consent status for the Station for the three year election cycle that began January 1, 2009, and ends on December 31, 2011. The Station is licensed to Salisbury, Maryland, and is in the Salisbury, Maryland, Designated Market Area.

The station's contact person and address for purposes of receiving official correspondence is as follows:

Delmarva Broadcast Service, LLC – WMDT(TV)
202 Downtown Plaza
PO Box 4009
Salisbury, MD 21803
Attention: Kathleen G. McLain, General Manager

Please contact me as soon as possible to discuss the terms under which the Station may be carried. My telephone number is 410-742-4747 x 303 and my email address is kathleen_mclain@wmdt.com. We look forward to working with you to reach a mutually satisfactory agreement authorizing your carriage of the Station.

Sincerely,

Kathleen G. McLain, General Manager

www.wmdt.com • www.cwdelmarva.com
202 Downtown Plaza P. O. Box 4009 Salisbury, MD 21803-4009
Phone: (410) 742-4747 • Fax: (410) 742-5767



April 8, 2010

Kathleen G. McLain
WMDT-TV
202 Downtown Plaza
P.O. Box 4009
Salisbury, MD 21803

**Re: Retransmission Consent Election
WMDT-TV, Salisbury, MD DMA**

Dear Ms. McLain:

Thank you for your letter postmarked March 11, 2010. Your election for retransmission consent, pursuant to applicable federal laws, rules and regulations has been received and is hereby acknowledged.

If your station is not already subject to a retransmission consent agreement for carriage on the DISH Network, please contact me at 303-723-1511 to discuss the terms of a retransmission consent agreement.

Sincerely,

A handwritten signature in cursive script that reads "Stacey Conway".

Stacey Conway
General Manager

/mso

ATTACHMENT C
DRAPER ELECTION LETTERS

February 24, 2010

BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Stacey Conway
General Manager
DISH Network
9601 South Meridian Blvd.
Englewood, CO 80112

Re: Election of Retransmission Consent Status

Dear Ms. Conway:

WBOC, Inc., licensee of television station WBOC-TV, Salisbury, Maryland (the "Station"), is in receipt of your letter dated February 19th, delivered via certified mail, which provides notice of your intent to commence local-into-local service in the Salisbury, MD, DMA. WBOC, Inc., hereby gives notice to DISH Network that pursuant to Section 325(b)(3)(B) of the Communications Act and Section 76.64(k) and 76.66(d) of the FCC's Rules, WBOC, Inc. elects to assert its right to retransmission consent, under Section 325(b)(1)(A) of the Communications Act and Section 76.64(a) of the FCC's rules, with respect to carriage of the broadcast signal(s) of the Station on your satellite system in the defined market of the Station. Therefore, the broadcast signal(s) of the Station may not be carried on your satellite system in the defined market of the Station without the express written consent of WBOC, Inc. This election of retransmission consent is for the period from the date of launch of your service in the Station's defined market through December 31, 2011.

Pursuant to this election and under the Communications Act and the FCC's rules, it will be necessary for you to enter into a retransmission consent agreement with WBOC, Inc. in order to carry the broadcast signal(s) of the Station on your system to the extent you do not already have such an agreement covering the period from the date of launch of your service in the Station's defined market through December 31, 2011.

I am the contact person for retransmission matters and can be reached at my direct line of: 410-880-9090. Correspondence regarding this election notice may be sent to me at the following address: 1729 North Salisbury Blvd., Salisbury, MD 21801.

Sincerely,



Craig Jahelka
Vice President & General Manager

1729 N. Salisbury Blvd.
Salisbury, MD 21801
(410) 749-1111
FAX (410) 749-2361

1839 S. Dupont Hwy.
Dover, DE 19901
(302) 734-9262
FAX (302) 734-3674

One The Square
Milton, DE 19968
(302) 684-8932
FAX (302) 684-8237



March 25, 2010

Craig Jahelka
WBOC-TV
1729 North Salisbury Blvd.
Salisbury, MD 21801

**Re: Retransmission Consent Election
WBOC-TV, Salisbury, MD DMA**

Dear Mr. Jahelka:

Thank you for your letter postmarked February 24, 2010. Your election for retransmission consent, pursuant to applicable federal laws, rules and regulations has been received and is hereby acknowledged.

If your station is not already subject to a retransmission consent agreement for carriage on the DISH Network, please contact me at 303-723-1511 to discuss the terms of a retransmission consent agreement.

Sincerely,


Stacey Conway
General Manager

/mso