

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

RECEIVED

JAN 28 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Johnson Broadcasting, Inc. )  
)  
v. )  
)  
Echostar Communications Corporation, )  
General Motors Corporation, and )  
Hughes Electronics Corporation )

CS Docket No. 01-348

To: The Commission

**Petition to Deny**

Johnson Broadcasting, Inc., ("Johnson") and Johnson Broadcasting of Dallas, Inc. (herein collectively referred to as "Johnson") by its attorneys, hereby files in the above referenced docket this Petition to Deny the applications received by the Commission on December 3, 2001 requesting consent to the transfer of control of licenses and authorizations held by Hughes Electronics Corporation ("Hughes") and its subsidiaries and affiliates and by EchoStar Communications Corporation ("ECC") and its subsidiaries and affiliates (collectively, the "Applicants") to EchoStar Communications Corporation (New Echostar).<sup>1</sup>

**Standing**

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Johnson is the licensee of the television broadcasting stations KNWS in Katy (Houston) and KLDT Lake Dallas (Dallas) Texas. As a competitor in the marketplace it

<sup>1</sup> See, FCC Public Notice issued on December 21, 2001 by the Cable Services Bureau, DA 01-3005. The public notice further notes that the proposed license transfers will result form the spin-off of Hughes from General Motors Corporation (GM), which currently owns all of the capital stock of Hughes, and the merger of ECC with and into Hughes. Hughes will be the surviving corporation, with a new ownership structure, and the merged entity will be renamed Echostar Communications Corporation ("New Echostar").

has standing under the Communication's Act and Commission's Rules because it will be affected by the transfer of licenses in terms of local-into-local mandatory satellite carriage of its broadcast signal.<sup>2</sup>

### **Grant Of The Applications Will Result In Excessive Market Concentration And Will Not Promote The Public Interest**

Currently, ECC and Hughes, through its subsidiary DirecTV, are the two major direct broadcast satellite ("DBS") carriers in the United States. As a combined entity, they would have overwhelming control of the DBS market. As such, combining these two carriers' DBS operations would lead to anti-competitive abuses and lessen competition. Furthermore, recent actions by DirecTV and ECC demonstrate that the merger would not be in the public interest.<sup>3</sup> The evidence indicates that New Echostar, would continue to undermine the ability of local television broadcast stations to serve the public by denying or marginalizing their ability to participate in carriage of their television signals on New EchoStar's satellite service, as required under Section 338 of the Communications Act and Section 76.66 of the Commission's Rules.

In November 1999 Congress passed and the President signed legislation called the Satellite Home Viewer Act ("SHIVA"). SHIVA amended the copyright laws and the Communications Act of 1934 ("Act"). As amended by SHIVA, Section 338 of the Act, 47 U.S.C. § 338 permitted satellite carriers, for the first time, to transmit local television broadcast signals into the local markets together with distant or national broadcast

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<sup>2</sup> See e.g., *Sanders Bros. Radio Station*, 309 U.S. 470 (1940). See also, Declaration of Douglas R. Johnson, Exhibit 1 hereto.

<sup>3</sup> See Exhibit 2, National Association of Broadcasters ("NAB") News Release dated December 19, 2001 noting that a recent telephone survey shows that consumers overwhelmingly oppose the satellite TV merger between DirecTV and ECC.

programming, providing what is known as "local-into-local" service. A satellite carrier electing to carry any one local station in a market under Section 338 of the Act was required to provide carriage by January 1, 2002 for all local television broadcast stations that made similar local-into-local service elections. The FCC adopted rules implementing Section 338 of the Act in Section 76.66 of the Commission's rules.<sup>4</sup>

As the legislative history of the SHVIA indicated, Congress was concerned that, "without must carry obligations, satellite carriers would simply choose to carry only certain stations which would effectively prevent many other local broadcasters from reaching potential viewers in their service areas." During SHVIA's phase-in period the satellite carriers confined their local-into-local offerings almost exclusively to major network affiliates and plainly announced their intention to cherry pick the major network affiliates. Both DirecTV and EchoStar filed suit seeking to have the carry-one, carry-all rule of SHVIA declared unconstitutional and seeking to enjoin enforcement of the rule. In *Satellite Broadcasting and Communications Assoc. v. FCC*, decided December 7, 2001, the Fourth Circuit Court of Appeals held that the carry-one, carry-all provisions of SHVIA were constitutional.

The anti-competitive proclivities of EEC and DirecTV to undermine the important legislative and regulatory policy objectives with respect to SHIVA were made even more evident in a recent Petition filed by the National Association of Broadcasters ("NAB")

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<sup>4</sup> On November 30, 2000 the Commission released a Report & Order that adopted new rules under Section 76.66 of the Commission's Rules and Regulations, 47 C.F.R. 76.66, implementing the provisions of Section 338 of the Act. *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, (2000) ("DBS Must Carry Report & Order"); Order on Reconsideration, 16 FCC Rcd 16544 (2001) ("DBS Must Carry Reconsideration Order").

and the Association of Local Television (“ALTV”).<sup>5</sup> In their Emergency Petition, NAB and ALTV request that the Commission make it explicitly clear within its Rules that ECC must cease its recently proposed discriminatory practice of requiring a second dish for subscribers only to obtain access to certain local broadcast stations. NAB and ALTV note that this action by the Commission is necessary even after DirecTV was denied reconsideration on this specific issue based upon extensive Commission discussion in *DBS Order on Reconsideration*. There can be no doubt of the negative influence of DirecTV on ECC since the filing of their merger applications. As such, the approval of this merger will only exacerbate the cooperative efforts of Congress, the FCC, and other industry participants to create a competitive marketplace. Once this matter is fully investigated, Johnson believes the Commission will have no choice but to deny the merger applications.

**Recent Actions By DirecTV And ECC Demonstrate That It Would Not Be In The Public Interest For The Commission To Approve The Applications For Transfer of Licenses and Authorizations**

On July 2, 2001 Johnson sent certified mail, return receipt requested election notices for mandatory carriage of local-into-local satellite service to both DirecTV and ECC. This was done in accordance with Sections 76.66 and 1.4 of the Commissions Rules. Section 76.66(c)(3) of the Commission’s Rules provides that a local television station must, during the first four-year election cycle, notify a satellite carrier by July 1, 2001 of its carriage election. July 1, 2001 was a Sunday only two days after the Friday June 29, 2001 effective date of Section 76.66(c)(3) of the Rules. Under Section 1.4(j) of

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<sup>5</sup> Emergency Petition of National Association of Broadcasters and Association of Local Television to Modify or Clarify Rule in CS Docket No. 00-96, *In Re Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues* filed on January 4, 2002.

the Rules, if a filing date falls on a Saturday, Sunday or holiday, the date is extended to the next business day.<sup>6</sup> Accordingly, under Section 1.4(j) of the Rules, the Sunday, July 1, 2001 notification date was extended to the next business day, Monday, July 2, 2001. DirecTV and ECC reacted differently to Johnson's certified mail, return receipt requested election notice dated July 2, 2001.

DirecTV denied Johnson mandatory carriage on July 25, 2001 because it was not notified by July 1, 2001.<sup>7</sup> After correspondence between Johnson and DirecTV that discussed the interrelationship of Sections 76.66 and 1.4 of the Commission's Rules, DirecTV reaffirmed its denial of mandatory carriage on September 6, 2001.<sup>8</sup> On September 19, 2001 Johnson filed complaints before the Commission against DirecTV stating that DirecTV wrongfully denied its request for mandatory carriage because of its mistaken belief that the KNWS and KLDT carriage requests were late filed. On December 5, 2001 the Chief of the Cable Services Bureau issued its *Memorandum Opinion & Order (MO&O)* with respect to Johnson's KNWS complaint.<sup>9</sup> The Bureau

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<sup>6</sup> Sec. 1.4 Computation of time:

(a) Purpose. The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission.

(e) Definitions for purposes of this section:

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m.

(j) Unless otherwise provided (e.g. Sec. 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. See paragraph (e)(1) of this section.

Example 14: The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.

<sup>7</sup> See Exhibits 3, letters to Johnson from DirecTV dated July 25, 2001.

<sup>8</sup> See Exhibit 4, letters to DirecTV from Arthur V. Belendiuk, Esq. on behalf of Johnson dated August 3, 2001; and Exhibit 5 letters to Arthur V. Belendiuk from DirecTV dated September 6, 2001.

<sup>9</sup> See, *In the Matter of Johnson Broadcasting, Inc. v. DIRECTV, Inc., Request for Mandatory Carriage of Television Station KNWS-TV, Katy, TX, Memorandum Opinion And Order, CSR-5742-M, DA 01-2822*, released December 5, 2001. (MO&O). The Bureau on recently acted on Johnson's KLDT complaint. See,

denied KNWS's request for mandatory carriage. On January 4, 2002 Johnson filed an Application for Review to the Commission, now pending, demonstrating fully that the Cable Bureau's *MO&O* was in error and should be reversed; and that Johnson's Application for Review should be granted and DirecTV ordered to provide mandatory local-into-local satellite carriage for KNWS.<sup>10</sup>

Initially upon receipt of Johnson's certified mail, return receipt requested, election notice dated July 2, 2001, ECC in a form letter dated July 30, 2001 rejected Johnson's request for mandatory carriage in part because it was postmarked after July 1, 2001.<sup>11</sup> However, after Johnson sent to ECC the same correspondence it sent to DirecTV explaining the interrelationship of Sections 76.66 and 1.4 of the Commission's Rules, ECC on August 29, 2001 in the "spirit of cooperation" withdrew the ground for rejection for a postmark beyond July 1, 2001.<sup>12</sup> On September 19, 2001 ECC sent another letter to Johnson affirming that all other grounds for rejection were withdrawn.<sup>13</sup> All things were then moving forward for purposes of KNWS being carried on January 1, 2002 for local-into-local service over ECC's satellite system.

ECC's "spirit of cooperation" interestingly vanished after ECC, GM, and Hughes filed on December 3, 2001 their merger applications for transfer and control of licenses

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*In the Matter of Johnson Broadcasting of Dallas, Inc. v. DIRECTV, Inc., Request for Mandatory Carriage of Television Station KNWS-TV, Katy, TX, Memorandum Opinion And Order, CSR-5741-M, DA 02-114, released January 17, 2002.*

<sup>10</sup> See Exhibit 6, Application for Review by Johnson Broadcasting in CSR-5742, filed on January 4, 2002. It should be noted that failure of the Commission to act promptly on Johnson's Application for Review would result in an undeserved and substantially harsh penalty and significant damages to Johnson because the next mandatory carriage period does not begin until January 1, 2006.

<sup>11</sup> See Exhibit 7, letters to Doug Johnson from Echostar dated July 30, 2001.

<sup>12</sup> See Exhibit 8, letters to Echostar from Arthur V. Belendiuk, Esq. on behalf of Johnson dated August 7th and 8th 2001; Exhibit 9 letters to Arthur V. Belendiuk, Esq. from Echostar dated August 29, 2001.

<sup>13</sup> See Exhibit 10, letters to Doug Johnson from Echostar dated September 19, 2001.

and authorizations. ECC sent letters to Johnson dated December 7, 2001 noting that ECC would not carry KNWS and KLDT during the 2002 must carry cycle because the must carry election to ECC was postmarked July 2, 2001. ECC stated that this new treatment of Johnson was based on a recent FCC ruling (not identified by ECC, but assumed to be the Cable Bureau's December 5, 2001 *MO&O* in the Johnson complaint against DirecTV).<sup>14</sup>

Based on these facts, the only scenario that Johnson can attribute to the changed "spirit of cooperation" is that DirecTV, which expects to govern satellite operations and treatment of local broadcasters under a New Echostar, has negatively influenced ECC. As a consequence, Johnson believes the actions of ECC and DirecTV undermine the Congress' and the FCC's overriding policy objective under SHIVA and Section 338 of the Communication's Act to promote a more competitive marketplace by allowing local television stations to partake in mandatory local-into-local carriage. The Commission needs to fully investigate this matter before it can make a public interest finding that the transfers will be in the public interest.

Furthermore, based on Johnson's January 4, 2001 Application for Review, Johnson fully believes the erroneous decision made in the Cable Bureau's December 5, 2001 *MO&O* will be reversed. Even so, the Commission cannot find that the proposed transfer in licenses would be in the public interest because of the overall market concentration that would result and the anti-competitive proclivities of DirecTV, which will dominate satellite operations and the treatment of local television broadcasters under a New Echostar, to undermine important legislative and regulatory policy objectives.

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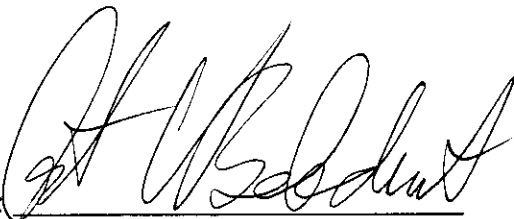
<sup>14</sup> See Exhibit 11, letters to Arthur V. Belendiuk, Esq. from Echostar dated December 7, 2001.

## Conclusion

For the reasons set forth above, the Commission should fully investigate whether the recent actions and anti-competitive proclivities of DirecTV and ECC are in the public interest; immediately grant Johnson's Application for Review reversing the Cable Bureau's December 5, 2001 *MO&O*; and deny the request to transfer control of licenses and authorizations held by Hughes Electronics Corporation and its subsidiaries and affiliates and by EchoStar Communications Corporation and its subsidiaries and affiliates to EchoStar Communications Corporation (New Echostar).

Respectfully submitted,

JOHNSON BROADCASTING, INC.

By: 

Arthur V. Belendiuk  
Anthony M. Alessi  
Its Attorney

January 24, 2002

SMITHWICK & BELENDIUK, P.C.  
5028 Wisconsin Avenue, Suite 301  
Washington, DC 20016



**EXHIBIT 1**

## DECLARATION

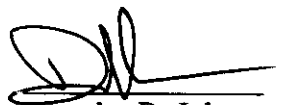
I, Douglas R. Johnson, declare under penalty of perjury that the following is true and correct:

I am the President and Director of Johnson Broadcasting, Inc. licensee of television station KNWS, Katy, Texas and Johnson Broadcasting of Dallas, Inc licensee of television station KLDT, Lake Dallas, Texas.

I have read the foregoing Petition to Deny the application for transfer of control of licenses and authorizations held by Hughes Electronics Corporation and by EchoStar Communications Corporation to EchoStar Communications Corporation.

Except for facts of which official notice may be taken or for which another source is cited, the statements made in the Petition to Deny are true and correct to the best of my knowledge and belief.

Executed this 17 day of January 2002.

  
Douglas R. Johnson

**EXHIBIT 2**

# news



NATIONAL ASSOCIATION OF BROADCASTERS, 1771 N STREET, NW, WASHINGTON, DC 20036-2091

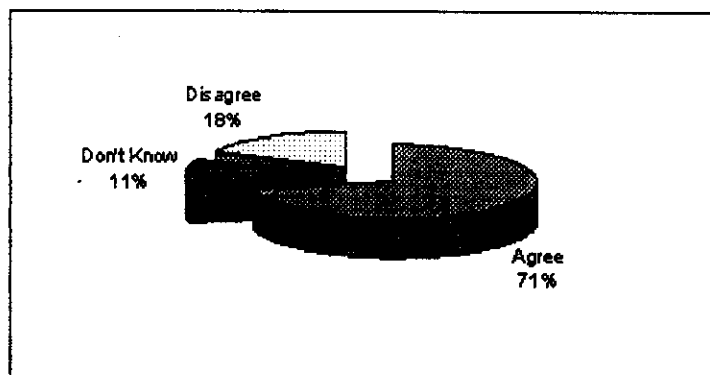
## IMMEDIATE RELEASE

### CONSUMERS OVERWHELMINGLY OPPOSE SATELLITE TV MERGER

WASHINGTON, D.C., December 19, 2001 – A random telephone survey of 1,000 adults has found that more than seven of ten survey respondents believe the federal government should reject the proposed acquisition of the satellite television service DirecTV by its only competitor, EchoStar Communications.

In a recent poll conducted for the National Association of Broadcasters (NAB), 71 percent of respondents said they agree with the statement that, "television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one." The survey was conducted Nov. 26-27 by Luntz Research Companies and has a margin of error of 3.1 percent.

*"Television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one."*



"Consumers are clearly worried that the merger of the nation's only two satellite television providers will negatively impact the choices available to them," said NAB President and CEO Edward O. Fritts. "However the antitrust lawyers choose to define the market, an overwhelming majority of consumers believe that the creation of a single satellite TV service will leave them with no choice at all."

"The reality is that most television homes today may choose only between a single local cable provider and either of the two major satellite TV providers," said pollster Frank Luntz. "The survey also found that, 84 percent of respondents agree that "having three choices of television providers is better for consumers than having two," and 76 percent agree that "there would be greater choice of television programming and better service" if consumers had more cable and satellite television choices."

"This is as big a consumer issue as I have ever seen, and one that knows no party lines," said Luntz. "I have polled on almost every issue facing Congress. Other than support for Social Security, I have not seen such unanimous opinions on anything."

Fritts said, "With the Satellite Home Viewer Act and the nation's transition to digital television, Congress and the Federal Communications Commission have worked hard to put the consumer's interests first. If the satellite merger goes forward, those interests take a huge step backwards. This survey proves that consumers haven't been fooled by the satellite TV industry's claims to the contrary."

NAB serves and represents America's radio and television stations.

-30-

Contact: Dennis Wharton  
(202) 429-5350

THE

# LUNTZ RESEARCH COMPANIES

Luntz Research & Strategic Services ■ The Public Opinion Company ■ Luntz Corporate ■ Luntz Worldwide

## TELEVISION CHOICE AND COMPETITION

Poll Summary for Nation, Missouri, Mississippi, Montana, New Hampshire, and 3<sup>rd</sup> Congressional District of Louisiana

1. First, which of the following matters to you the most? That is, which of the following would you least like to live without?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
TELEVISION	59%	67%	56%	55%	59%	55%
COMPUTER	39%	29%	41%	41%	33%	42%
DON'T KNOW/REFUSED	2%	4%	4%	4%	8%	3%

2. When large consumer companies from the same industry merge, it reduces competition, and that hurts consumers.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	77%	79%	76%	77%	75%	72%
DISAGREE	18%	14%	19%	18%	19%	21%
DON'T KNOW/REFUSED	4%	7%	6%	4%	7%	6%

3. Having three choices of television providers is better for consumers than having two.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	83%	91%	87%	88%	87%	85%
DISAGREE	10%	4%	10%	5%	6%	10%
DON'T KNOW/REFUSED	6%	5%	3%	7%	7%	6%

4. If there were more cable and satellite companies, the cost for cable and satellite television service would be lower.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MI</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	76%	79%	77%	74%	73%	74%
DISAGREE	18%	15%	17%	17%	19%	18%
DON'T KNOW/REFUSED	6%	6%	7%	9%	8%	8%

5. Americans who live in rural areas should have similar choice of television providers and programming as those who live in urban or suburban areas.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MI</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	87%	90%	92%	81%	87%	89%
DISAGREE	9%	8%	5%	14%	10%	9%
DON'T KNOW/REFUSED	4%	2%	3%	5%	4%	1%

6. The federal government should not interfere with the business of business. If the only two satellite television companies want to merge, creating just one large satellite television company, they should have the right to do so without federal government interference.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MI</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	45%	42%	47%	38%	33%	43%
DISAGREE	50%	51%	47%	53%	59%	52%
DON'T KNOW/REFUSED	5%	7%	7%	9%	9%	6%

7. Television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MI</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
AGREE	71%	64%	62%	69%	70%	67%
DISAGREE	18%	29%	30%	23%	23%	28%
DON'T KNOW/REFUSED	12%	7%	9%	8%	8%	6%

8. So, if you had to choose, which of the following situations do you think would be better for consumers like yourself?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
TWO MEDIUM SIZED SATELLITE TELEVISION COMPANIES THAT COMPETE WITH CABLE	71%	81%	74%	82%	79%	70%
ONE SINGLE BIG SATELLITE TELEVISION COMPANY THAT COMPETES WITH CABLE	15%	10%	19%	9%	11%	21%
DON'T KNOW/REFUSED	14%	9%	7%	9%	10%	9%

9. And is it more likely for satellite television providers to offer broadband Internet service, high definition television, and upgrade its technology regularly if there is ... a single big satellite television company ... or ... two medium sized satellite television companies?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
TWO MEDIUM SIZE COMPANIES	57%	69%	61%	55%	72%	59%
SINGLE BIG COMPANY	20%	17%	26%	20%	17%	23%
DON'T KNOW/REFUSED	23%	14%	14%	25%	11%	18%

10. Your Congressman wants to know what the people of your community think about the merger of the two satellite TV providers – EchoStar and DirecTV into a single large satellite company. If you had to give advice, would you tell your Congressman to strongly support, somewhat support, somewhat oppose or strongly oppose the merger between the two satellite television companies?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3<sup>rd</sup> DISTRICT</u>
SUPPORT	21%	24%	28%	14%	18%	28%
OPPOSE	55%	64%	60%	72%	62%	57%
DON'T KNOW/REFUSED	24%	11%	13%	14%	20%	15%



**EXHIBIT 3**



July 25, 2001

Doug Johnson  
**Johnson Broadcasting Inc.**  
8440 Westpark  
Houston, TX 77063

Dear Mr. Johnson:

We are in receipt of your letter requesting mandatory carriage for KNWS 51 in Houston TX DMA on DIRECTV.

We were not notified by the July 1, 2001 deadline of your request for mandatory carriage. In accordance with the Federal Communications Commission's Rules, DIRECTV thereby denies KNWS 51's request for carriage.

Any correspondence relating to this matter should be addressed to:

**DIRECTV Local into Local**  
2230 E. Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Sincerely,

**DIRECTV**



July 25, 2001

Doug Johnson  
**Johnson Broadcasting Inc.**  
8440 Westpark  
Houston, TX 77063

Dear Mr. Johnson:

We are in receipt of your letter requesting mandatory carriage for KLDT 55 in Dallas-Ft Worth TX DMA on DIRECTV.

We were not notified by the July 1, 2001 deadline of your request for mandatory carriage. In accordance with the Federal Communications Commission's Rules, DIRECTV thereby denies KLDT55's request for carriage.

Any correspondence relating to this matter should be addressed to:

**DIRECTV Local into Local**  
2230 E. Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Sincerely,

**DIRECTV**

**EXHIBIT 4**

LAW OFFICES  
**SMITHWICK & BELENDIUK, P.C.**

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

GARY S. SMITHWICK  
ARTHUR V. BELENDIUK

DIRECT DIAL NUMBER: (202) 363-4559  
E-MAIL ADDRESS: abelendiuk@fccworld.com

COUNSEL

WILLIAM M. BARNARD  
JAMES K. EDMUNDSON  
HENRY E. CRAWFORD

August 3, 2001

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

DIRECTV Local into Local  
2230 E. Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Re: Johnson Broadcasting, Inc.  
Licensee of KNWS-TV, Channel 51, Houston, Texas

Dear Sir or Madam:

This firm represents Johnson Broadcasting, Inc. We are in receipt of your letter dated July 25, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that DIRECTV was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations.

Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

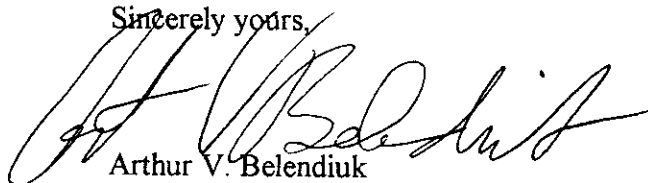
Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to DIRECTV. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.

SMITHWICK & BELENDIUK, P.C.

August 3, 2001  
Page 2 of 2

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Arthur V. Belendiuk', written in black ink.

Arthur V. Belendiuk

AVB\ayp.080301a

cc: Johnson Broadcasting, Inc.

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

7001 0920 006 045A 0945

90245

Postage	\$ 0.34	UNIT ID: 0066  Postmark Here  Clerk: KCEHFC  07/02/01
Certified Fee	2.10	
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	<b>\$ 3.94</b>	

Sent To DirectV  
 Street, Apt. No.,  
 or PO Box No. 2230 E. Imperial Highway  
 City, State, ZIP+4 El Segundo, CA 90245-3531

PS Form 3800, January 2001

LAW OFFICES  
**SMITHWICK & BELENDIUK, P.C.**

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

GARY S. SMITHWICK  
ARTHUR V. BELENDIUK

DIRECT DIAL NUMBER: (202) 363-4559  
E-MAIL ADDRESS: abelendiuk@fccworld.com

COUNSEL

WILLIAM M. BARNARD  
JAMES K. EDMUNDSON  
HENRY E. CRAWFORD

August 3, 2001

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

DIRECTV Local into Local  
2230 E. Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Re: Johnson Broadcasting of Dallas, Inc.  
Licensee of KLDT(TV), Channel 55, Lake Dallas, Texas

Dear Sir or Madam:

This firm represents Johnson Broadcasting of Dallas, Inc. We are in receipt of your letter dated July 25, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that DIRECTV was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations.

Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

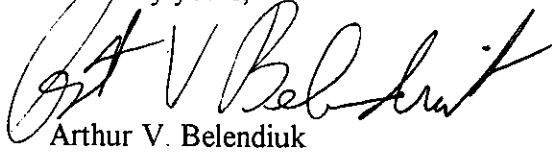
Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to DIRECTV. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.



August 3, 2001  
Page 2 of 2

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Arthur V. Belendiuk". The signature is written in a cursive style with a large initial "A" and "V".

Arthur V. Belendiuk

AVB\ayp.080301b

cc: Johnson Broadcasting of Dallas, Inc.

**EXHIBIT 5**



September 6, 2001

Arthur V. Belendiuk, Esq.  
Smithwick and Belendiuk  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, D.C. 20016

Dear Mr. Belendiuk:

We are in receipt of your letter dated August 3, 2001 concerning the late election of KNWS-TV, Channel 51 in Houston, Texas. Please note that the FCC rules state in Section 76.66 (c) (3) that "A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002". When the Commission established July 1, 2001 as the deadline for the first election cycle, it was aware that date was a Sunday.

Moreover, there is precedent for strict enforcement of the retransmission consent/mandatory carriage deadline. In a case involving a broadcast station whose retransmission consent election was mailed one day beyond the deadline, the Commission stated:

[A] retransmission consent election notification must be postmarked no later than midnight of each retransmission consent election period. While we can concede from the evidence that it was apparently WFXP's intention to request retransmission consent status rather than must-carry status in this instance, the fact of the matter is that its notification was mailed beyond the deadline mandated by the rules. Given the large number of broadcasters and cable operators involved, the Commission recognized the potential for confusion and dispute surrounding the initial must-carry/retransmission [footnote omitted] consent election. Thus the rules and process for making the election, including in particular the requirement that such notifications be sent by a date certain via certified mail, were specifically designed to provide certainty and avoid embroiling the Commission in disputes of this type. . . . As a result, we cannot conclude that WFXP made a timely retransmission consent election for the June 17, 1993 deadline.

In re: Gannon University Broadcasting, Broadcasting, Inc.  
Request for Declaratory Ruling, 10 FCC Rcd 8619, at ¶7 (1995),

In light of this precedent, DIRECTV continues to deny KNWS's request for mandatory carriage.

Official correspondence related to this matter should be sent to:

DIRECTV Local Into Local  
2230 East Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Sincerely,

DIRECTV



September 6, 2001

Arthur V. Belendiuk, Esq.  
Smithwick and Belendiuk  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, D.C. 20016

Dear Mr. Belendiuk:

We are in receipt of your letter dated August 3, 2001 concerning the late election of KLDT-TV, Channel 55 in Lake Dallas, Texas. Please note that the FCC rules state in Section 76.66 (c) (3) that "A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002". When the Commission established July 1, 2001 as the deadline for the first election cycle, it was aware that date was a Sunday.

Moreover, there is precedent for strict enforcement of the retransmission consent/mandatory carriage deadline. In a case involving a broadcast station whose retransmission consent election was mailed one day beyond the deadline, the Commission stated:

[A] retransmission consent election notification must be postmarked no later than midnight of each retransmission consent election period. While we can concede from the evidence that it was apparently WFXP's intention to request retransmission consent status rather than must-carry status in this instance, the fact of the matter is that its notification was mailed beyond the deadline mandated by the rules. Given the large number of broadcasters and cable operators involved, the Commission recognized the potential for confusion and dispute surrounding the initial must-carry/retransmission [footnote omitted] consent election. Thus the rules and process for making the election, including in particular the requirement that such notifications be sent by a date certain via certified mail, were specifically designed to provide certainty and avoid embroiling the Commission in disputes of this type. . . . As a result, we cannot conclude that WFXP made a timely retransmission consent election for the June 17, 1993 deadline.

In re: Gannon University Broadcasting, Broadcasting, Inc.  
Request for Declaratory Ruling, 10 FCC Rcd 8619, at ¶7 (1995),

In light of this precedent, DIRECTV continues to deny KLDT's request for mandatory carriage.

Official correspondence related to this matter should be sent to:

DIRECTV Local Into Local  
2230 East Imperial Highway  
Mail Stop N344  
El Segundo, CA 90245

Sincerely,

DIRECTV

**EXHIBIT 6**

108  
STAMP & RETURN

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
 )  
Johnson Broadcasting, Inc. )  
 )  
 v. )  
 )  
DIRECTV, Inc. )

CSR No. 5742-M

To: The Commission

RECEIVED  
JAN - 4 2002  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**APPLICATION FOR REVIEW**

Arthur V. Belendiuk  
Anthony M. Alessi  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, D.C. 20016  
(202) 363-4050

**Counsel for Johnson Broadcasting, Inc.**

January 4, 2002



## APPLICATION FOR REVIEW

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## SUMMARY

The Cable Service Bureau erred in its decision in *Johnson Broadcasting, Inc. v. DIRECTV*, released on December 5, 2001, when it concluded that Section 1.4 of the Commission's Rules does not apply to Johnson Broadcasting, Inc.'s election of mandatory carriage sent to DIRECTV, Inc. for local-into-local satellite service.

Johnson Broadcasting, Inc. sent its notice of election of mandatory carriage on Monday, July 2, 2001, the first business day after July 1, 2001, the date set forth in Section 76.66 of the Commission's Rules. Johnson could not have met the requirements of Section 76.66 on Sunday, July 1, 2001 because Section 76.66 requires television stations making an election of mandatory carriage to do so in writing by certified mail, return receipt requested, and post offices are not open on Sunday. Section 1.4 provides that when a filing date falls on a Saturday, Sunday or holiday, the deadline is extended to the next business day. As such, the Sunday, July 1, 2001 filing date was extended to Monday, July 2, 2001. If the Bureau's decision is upheld, Johnson will have to wait four years until January 1, 2006 before it can again elect mandatory carriage.

Johnson strongly believes that it has demonstrated its election of mandatory carriage for local-into-local service was made in accordance with the Commission's Rules. Should the Commission decide otherwise, Johnson submits that it is appropriate, under the circumstances of this case, for the Commission, on its own motion, to grant a waiver of Section 76.66 (c)(3) of the Commission's Rules.

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

In the Matter of	)	
	)	
Johnson Broadcasting, Inc.	)	
	)	CSR No. 5742-M
v.	)	
	)	
DIRECTV, Inc.	)	

To: The Commission

**APPLICATION FOR REVIEW**

Johnson Broadcasting, Inc., ("Johnson"), licensee of KNWS (TV), Katy, Texas, by its attorneys, hereby files this Application for Review under Section 1.115 of the Commission's Rules seeking reversal of the decision made by the Chief of the Cable Services Bureau in *Johnson Broadcasting v. DIRECTV, Request for Mandatory Carriage of Television Station, KNWS-TV, Katy, Texas, Memorandum Opinion & Order, DA 01-2822, CSR-5742-M, released December 5, 2001.*

The Bureau erred when it concluded that Section 1.4 of the Commission's Rules did not apply to Johnson's election of mandatory carriage sent to DIRECTV, Inc. ("DIRECTV").<sup>1</sup> Johnson sent its notice of election of mandatory carriage on Monday, July 2, 2001, the first business day after July 1, 2001, the date set forth in Section 76.66 of the Commission's Rules. Johnson could not have met the requirements of Section 76.66 on Sunday, July 1, 2001 because Section 76.66 requires television stations making an election of mandatory carriage to do so in writing by certified mail, return receipt requested, and post offices are not open on Sunday.

---

<sup>1</sup> DIRECTV is a satellite carrier that can retransmit a local television station, such as KNWS, back into the market for reception by subscribers.

Section 1.4 provides that when a filing date falls on a Saturday, Sunday or holiday, the deadline is extended to the next business day. As such, the Sunday, July 1, 2001 filing date was extended to Monday, July 2, 2001. If the Bureau's decision is upheld, Johnson will have to wait four years until January 1, 2006 before it can again elect mandatory carriage.

### **Question Presented For Review**

Whether Johnson's certified mail, return receipt election of mandatory carriage, sent to DIRECTV on the first business day following a Sunday, July 1, 2001 filing date, was timely notice within the meaning of Sections 76.66 and 1.4 of the Commission's Rules.

### **Background**

In November 1999 Congress passed and the President signed legislation called the Satellite Home Viewer Act ("SHIVA"). SHIVA amended the copyright laws and the Communications Act of 1934 ("Act"). As amended by SHIVA, Section 338 of the Act, 47 U.S.C. §338 permitted satellite carriers, for the first time, to transmit local television broadcast signals into the local markets together with distant or national broadcast programming, providing what is known as "local-into-local" service. A satellite carrier electing to carry any one local station in a market under Section 338 of the Act was required to provide carriage by January 1, 2002 for all local television broadcast stations that made similar local-into-local service elections.<sup>2</sup>

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<sup>2</sup> As the legislative history of the SHIVA indicated, Congress was concerned that, "without must carry obligations, satellite carriers would simply choose to carry only certain stations which would effectively prevent many other local broadcasters from reaching potential viewers in their service areas." During SHIVA's phase-in period the satellite carriers confined their local-into-local offerings almost exclusively to major network affiliates and plainly announced their intention to cherry pick the major network affiliates. The must carry satellite carriage rules also reflected Congress's desire to provide satellite subscribers with local television service in as many markets as possible.

On November 30, 2000 the Commission released the *DBS Must Carry Report & Order* that adopted new rules under Section 76.66 of the Commission's Rules and Regulations implementing the provisions of Section 338 of the Act.<sup>3</sup> The new Section 76.66 of the Rules did not become effective until June 29, 2001 when notice was published in Vol. 66, No. 126 of the Federal Register. Under Section 76.66(c)(3) of the Rules, a local television station must, during the first four-year election cycle, notify a satellite carrier by July 1, 2001 of its carriage election. July 1, 2001 was a Sunday only two days after the Friday June 29, 2001 effective date of Section 76.66(c)(3) of the Rules.

Under Section 1.4(j) of the Rules, if a filing date falls on a Saturday, Sunday or holiday, the date is extended to the next business day. Accordingly, under Section 1.4(j) of the Rules, the Sunday, July 1, 2001 notification date was extended to the next business day, Monday, July 2, 2001.<sup>4</sup> In addition, Section 76.66(d)(2)(ii) of the Rules requires that the written election notification be made by certified mail, return receipt requested. This requires that the United States Post Office be open on Sunday, which it is not. Also, under Sections 76.66(c)(1) and (c)(2), if the elections date is missed for the provision of local-into-local satellite service

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<sup>3</sup> *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, (2000) ("*DBS Must Carry Report & Order*").

<sup>4</sup> Sec. 1.4 Computation of time:

(a) Purpose. The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission.

(e) Definitions for purposes of this section:

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m.

(j) Unless otherwise provided (e.g. Sec. 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. See paragraph (e)(1) of this section.

Example 14: The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.

commencing on January 1, 2001, a local television broadcast station will have to wait for carriage for four years, until the next election cycle that commences on January 1, 2006.

On September 4, 2001, barely more than two months after the July 1, 2001 notification date, the Commission released a *DBS Must Carry Reconsideration Order* where, on its own motion, it amended Section 76.66 of the Rules to clarify uncertainty about the filing deadline.<sup>5</sup>

The *DBS Must Carry Reconsideration Order* stated:

In response to numerous telephone inquiries, we clarify that election requests must be sent by the relevant election deadline. In the cable context, Section 76.64(h) provides that “on or before each must carry/retransmission consent deadline, each television broadcast station shall . . . send via certified mail to each cable system in the station’s defined market a copy of the station’s election statement with respect to that operator.” The rules implementing satellite carriage requirements do not contain the same language, and we received no comments on this specific question during the rulemaking proceeding. In light of our general goal of making the satellite carriage rules comparable and parallel to the cable carriage rules, and in the absence of arguments demonstrating why the procedures for election notifications should differ, we clarify our intent that the election request should be sent by certified mail, return receipt by the election date to be effective. We hereby amend Section 76.66(d) of our rules to clarify this intent, as follows:

“(4) Television broadcast stations must send election requests as provided in Sections 76.66(d)(1), (2), and (3) on or before the relevant deadline.”

Unlike the prior Section 76.66 of the Rules, the amended Section 76.66 of the Rules now contained the specific clarifying language of “*on or before*”.

Johnson filed a Complaint before the Commission on September 19, 2001 stating that DIRECTV wrongfully denied its request for mandatory carriage because of its mistaken belief that the KNWS carriage request was late-filed. Johnson pointed out that it had posted its election letter via certified mail, return receipt requested on Monday, July 2, 2001 because the July 1, 2001 filing date under Section 76.66(c)(3) fell on a Sunday when the United States Post Office

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<sup>5</sup> See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) (“*DBS Must Carry Reconsideration Order*”).

was closed. Johnson noted that under Section 1.4(j) when a filing date falls on a Sunday, which is considered a holiday under Section 1.4(e)(1), the filing shall be filed on the next business day. DIRECTV filed an Opposition on October 22, 2001 arguing that the Complaint should be dismissed because Johnson did not comply with the July 1, 2001 election date, the Commission strictly enforces must carry and retransmission consent election dates in the cable television context, and that Section 1.4 of the Rules governs filing dates for documents filed with the Commission, not election notices. Johnson filed a Reply on October 29, 2001 asking for dismissal of DIRECTV's Opposition as late-filed and reaffirming its argument with respect to the applicability of Section 1.4 of the Rules, noting that SHIVA did not suspend or waive Section 1.4 of the Rules.<sup>6</sup>

On December 5, 2001 the Chief of the Cable Services Bureau issued its *Memorandum Opinion & Order* in the above-referenced complaint. The Bureau denied KNWS's request for mandatory carriage. The Bureau found that under Section 76.66 (c)(3), the July 1, 2001 date, which falls on a Sunday, was a "specific predetermined date" by which notification should have been provided to a satellite carrier. As such, the Bureau concluded that Section 1.4 did not apply to KNWS's posting of its must carry election notice on the next business day, Monday, July 2, 2001 because the language "Unless otherwise provided" is used as a preface in Section 1.4 (j) which addresses filing dates when a filing date falls on a holiday. The Bureau also found that DIRECTV had timely filed its Opposition on October 22, 2001, twenty days following public

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<sup>6</sup> DIRECTV's opposition also raised the issue of whether the Commission had jurisdiction to address this complaint. The Bureau stated in its decision that it agreed with KNWS that the Commission had jurisdiction, stating that "we need not consider the jurisdictional issue by DIRECTV because it was considered and resolved by the Commission in the *DBS Must Carry Report & Order*."

DIRECTV also filed a motion to accept a supplemental filing and a sur-reply on November 14, 2001. Johnson filed an opposition to the unauthorized motion and a motion to strike and a motion for sanctions on November 26, 2001. These motions were not addressed in the Cable Division's *Memorandum Opinion & Order*, released on December 5, 2001, in the above referenced complaint proceeding.

notice of KNWS's Complaint on September 28, 2001 and following a public notice that extended filings due at the Commission on October 18, 2001 to October 22, 2001.

## Arguments

### A. The Cable Bureau Erred By Finding That KNWS Did Not Make A Timely Election For Mandatory Carriage for Local-Into-Local Satellite Service

At the outset, the notification language "by July 1, 2001" cannot be viewed as a specific predetermined date that precludes the applicability of Section 1.4 of the Rules. Under Section 76.66(d)(2)(ii) of the Rules the Commission imposed upon the local television station *specific carriage procedures* that required written notification "to the satellite carrier's principal place of business by certified mail, return receipt requested..." The fact that these specific requirements could not be met on Sunday, July 1, 2001 precludes the Commission from now concluding that the July 1, 2001 date is a specific predetermined date. The Commission did include the SHIVA date of July 1, 2001 in its Rules, but a plain reading of the rules makes it clear that the *specific carriage procedures* under Section 76.66(d)(2)(ii) define and supercede the *general* requirement under Section 76.66(c)(3) to provide notification by that date. Under this reading of the rules, Section 1.4 is applicable and the election notice made by KNWS on Monday, July 2, 2001 is in full compliance with the Commission's Rules. Moreover, in this context the Bureau's reliance on the Section 1.4(j) language "Unless otherwise provided..." is without merit.<sup>7</sup>

Furthermore, the Bureau erroneously relies on the decision it made in *Gannon University Broadcasting, Inc.* ("Gannon") as precedent supporting its decision of untimely notification by

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<sup>7</sup> In addition to not addressing the applicability of Section 1.4 in relation to Section 76.66 of the Commission's Rules in the *DBS Must Carry Report and Order*, the Commission chose not to specify any part of Section 76.66 as an exception under Section 1.4(k) with respect to the applicability of the remainder of Section 1.4 of the Commission's Rules.



Johnson to DIRECTV.<sup>8</sup> The facts of the *Gannon* case are distinguishable from the current set of facts. Gannon University had filed a petition for declaratory ruling requesting that the FCC order Coaxial Cable TV to accept its retransmission consent election. The Commission's Rules required that the retransmission consent election be filed by June 17, 1993. June 17, 1993 falls on a Thursday. Gannon University claimed to have submitted its retransmission consent election on June 17, 1993 at the Gannon University Post Office. However, the Gannon University Post Office is not an agent of the United States Postal Service and could not post certified mail. Apparently, the retransmission consent election was forwarded to a regular U.S. postal facility that provided Gannon University with a registered receipt dated June 18, 1993. As such, the Bureau decided against Gannon University.

In the *Gannon* case the issue was not over the correct filing date, but when the retransmission consent election was actually certified by the U.S Postal Service. Unlike *Gannon*, there is no dispute over when Johnson sent the certified mail, return receipt written election. The issue in the Johnson complaint is what is the correct date for filing under Sections 76.66 and 1.4 of the Commission's Rules when the filing date falls on a Saturday, Sunday, or holiday. The filing date noted in *Gannon* fell on a Thursday. As such, the FCC never addressed the applicability of Section 1.4 of the Commission's Rules concerning when a filing date falls on a Saturday, Sunday, or holiday. In fact, nothing in the *Gannon* case suggests that Section 1.4 of the Commission's Rules is abandoned or inapplicable when a notice provision has a certain date and falls on a Saturday, Sunday, or holiday.<sup>9</sup> Therefore, the *Gannon* case provides no support

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<sup>8</sup> *Gannon University Broadcasting, Inc.*, 10 FCC Rcd 8619 (1995).

<sup>9</sup> The only mention of Section 1.4 of the Commission's Rules in the *Gannon* case was in the context of Gannon University arguing that Section 1.4 of the Commission's Rules and Section 6 (e) of the Federal Civil Rules of Procedure stood for the proposition that receipt of its notice within 48 hours is well within the three days considered reasonable when legal documents must be delivered by U.S. Mail. The Bureau never addressed this argument nor is such an argument made in the Johnson complaint. See, *Gannon University Broadcasting, Inc.*, 10 FCC Rcd at 8619.

for the Bureau's decision in the above referenced complaint, since the date for Johnson to elect local-into-local service fell on a Sunday, July 1, 2001 and Johnson correctly relied on Section 1.4 of the Commission's Rules when it sent its certified mail, return receipt written election on the next business day, Monday, July 2, 2001.<sup>10</sup>

In any event, any ambiguity created by the interrelationship of the Commission's Rules must be decided in favor of Johnson. The Commission is required to fairly advise those who would act under its rules what is specifically required.<sup>11</sup> In this instance, it was more than reasonable for KNWS, as a business, to conclude that it would have until July 2, 2001, because the very specific requirements of sending the written notification by certified mail, return receipt requested could not be accomplished on a Sunday, July 1, 2001. Not only is this a reasonable conclusion based on the general practice of the Commission on most all notice matters,<sup>12</sup> but it is a common business practice that a date certain requirement that falls on a non-business day can be satisfied by action on the next business day.<sup>13</sup> Under this set of circumstances, if the Commission did not want the July 1, 2001 date to be meaningful, but wanted to fairly advise local television stations and eliminate any ambiguity in the rules on notification, it either should

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<sup>10</sup> The language quoted by the Bureau from the *Gannon* case that emphasizes the importance of meeting election dates in a timely manner is dicta. See, *Johnson Broadcasting, Inc. v. DIRECTV, Inc., Request for Mandatory Carriage of Television Station KNWS-TV, Katy, TX, DA 01-2822, CSR-5742-M*, released December 5, 2001, par. 10. Johnson does not dispute this policy objective, but in no way agrees that it stands for the proposition that a reasonable reading of the Commission's Rules would deny the applicability of Section 1.4 of the Commission's Rules when a filing date falls on a Saturday, Sunday, or holiday.

<sup>11</sup> See *Banford v. FCC*, 401 F.2d 78, 82 (D.C. Cir.) ("elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected"), *cert. denied*, 429 U.S. 895 (1976); and *Ridge Radio Corp. v. FCC*, 292 F.2d 770, 773 (D.C. Cir. 1961) (In opening and closing the regulatory door it must "fairly advise prospective applicants of what is being cut off..."). See also, *Athens, Inc. v. FCC*, 535 F.2d 398, 401 (D.C. Cir. 1968) ("When the sanction is as drastic as dismissal without any consideration whatever of the merits, elementary fairness compels clarity in the notice of the material required as a condition for consideration.").

<sup>12</sup> See e.g. Section 73.1020, Station License Period. Applications for broadcast license renewal are due, on a state-by-state bases, on the first day of a particular month. For example, applications for license renewal for Florida will be due February 1, 2004. February 1, 2004 is a Sunday; accordingly applications for license renewal filed on Monday February 2, 2004, the next business day will be considered timely filed.

<sup>13</sup> The most commonly known example is the filing of federal tax returns and payments. Putting aside specific IRS rules, it is generally understood by the business community, as well as the general public that returns and payments due on a date certain, e.g. April 15<sup>th</sup>, that falls on a Sunday, or holiday are required to be postmarked on the next business day.

have chosen a notification date of June 30, 2001 or specified within its order or its rules that Section 1.4 of the Commission's Rules would not be applicable. Elementary fairness would require as much, considering the harsh consequences a decision such as that made by the Bureau will have on KNWS if it is not reversed. KNWS will suffer damages since it will not be able to commence local-into-local satellite service until January 1, 2006.<sup>14</sup>

Furthermore, the Commission must not allow satellite companies to argue an unreasonable interpretation of the Rules that leads to a harsh and unjust decision that undermines an overall policy objective of the Commission. One policy objective of the Commission was to have appropriate and timely notice given to satellite carriers of a local television station's decision for "local-into-local" carriage.

Equally, if not more important, is the overriding policy objective of allowing local television stations to partake in "local-in-local" carriage to avoid undermining the competitive marketplace. KNWS has been serving the community since 1992. Under the current set of circumstances, to the extent there is any ambiguity in the Commission's Rules, it would be most egregious to abandon this overriding competitive policy objective because KNWS reasonably concluded that sending notification on July 2, 2001 met the Commission's notification requirements.

#### **B. The DBS Must Carry Reconsideration Order Supports Johnson's Rules Interpretation**

In addition, the *DBS Must Carry Reconsideration Order* in which the Commission clarified the specific carriage procedures in Section 76.66 (d) bolsters Johnson's rules

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<sup>14</sup> The Court of Appeals has held that the FCC acts arbitrarily and capriciously "when it rejects an application as untimely based on an ambiguous cut-off provision, not clarified by FCC interpretations, if the applicant made a reasonable effort to comply." *Florida Inst. of Technology v. FCC*, 952 F.2d 549 (D.C. Cir. 1992). The harsher the consequences of failing to timely meet a deadline, the clearer the deadline must be. In this case the consequences of missing the deadline by one day are very severe -- the next must carry election cycle is in four years.

interpretation argument. In the *DBS Must Carry Reconsideration Order*, the Commission, on its own motion, clarified the election notice provisions by adding Section 76.66 (d) (4) to the Rules which states:

“Television broadcast stations must send election requests as provided in paragraphs (d)(1), (2), and (3) of this section *on or before* the relevant deadline.” (Emphasis added).

With the addition of this language, there can be no doubt that Section 1.4 is applicable because KNWS could not have provided notification “on” July 1, 2001 and meet the *specific carriage procedures* that the written election notice be made by certified mail return receipt requested.

**C. At A Minimum, Federal Register Publication Of The Original Section 76.66 Rule Amendments Is Grounds For A Waiver Because It Did Not Provide A Reasonable Notice Period For Applicant To Legally Comply**

Even more troubling is the fact that KNWS was under no obligation to file any notification before Friday, June 29, 2001, the date on which the original rule amendments to Section 76.66(c)(3), (c)(5), (d), and (m) became effective through publication in the Federal Register. Johnson had no more than two days to legally comply with the Commissions Rules. Certainly this is an unreasonable notice time period. At a minimum, the date on which the rules became effective through publication in the Federal Register, coupled with any ambiguity in the rules, should provide the Commission with grounds to justify a waiver of the Rules on its own motion with respect to KNWS’s election notification to DIRECTV.

**D. The Bureau Incorrectly Concluded That DIRECTV’s Motion For Summary Dismissal And Answer Was Timely Filed**

In the Bureau’s *Memorandum Opinion & Order*, the Bureau failed to fully address arguments on the timeliness of DIRECTV’s answer to the complaint made by Johnson in its Reply to Motion for Summary Dismissal and Answer of DIRECTV and in its Opposition to

Unauthorized Motion to Accept Motion to Strike and Motion for Sanctions. In these pleadings, the applicant demonstrated that DIRECTV filed an untimely Opposition under Sections 76.66(m) and 76.7(b)(2) of the Commission's Rules. These rules required that DIRECTV file its Opposition within twenty days of service of the Complaint.

The fact is that DIRECTV filed its Opposition thirteen days late on October 22, 2001. The Bureau ignores this argument without discussion or mention and relies on the unsupported statement of DIRECTV that recent Public Notices support that DIRECTV's Answer was due within 20 days of the issuance of the Public Notice. As pointed out by Johnson in its pleadings, the Public Notices referenced by DIRECTV neither changed nor waived the requirements of Sections 76.66(m) and 76.7(b)(2) of the Rules that DIRECTV's Opposition was due within twenty days of service of the Complaint or by October 9, 2001. It would be both ironic and unjust for the Commission to make a strict interpretation of notice rules for KNWS that would undermine an overriding Commission competitive policy and public interest objective and take no action with respect to DIRECTV's egregious violation of the notice rules. As such, the Commission should dismiss DIRECTV's Opposition, reverse the Bureau's order, and find for Johnson.

**E. If The Commission Does Not Find On The Merits For Johnson, In The Alternative, Johnson Should Be Granted A Waiver Of The Rules**

Johnson strongly believes that it has demonstrated its election of mandatory carriage for local-into-local service was made in accordance with the Commission's Rules. Should the Commission decide otherwise and uphold the Bureau's decision that denies the applicability of Section 1.4 of the Commission's Rules, Johnson submits that it is appropriate for the Commission, on its own motion, to grant a waiver of Section 76.66 (c)(3) of the Commission's

Rules that requires notification as of Sunday, July 1, 2001, such that Johnson's Monday, July 2, 2001 certified mail, return receipt written notification is considered timely notice made to DIRECTV for local-into-local service.

The FCC has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. §1.3. The FCC may waive a rule where particular facts or special circumstances would make strict compliance with a general rule inconsistent with the public interest and the waiver is granted only pursuant to a relevant standard that is best expressed in a rule that obviates discriminatory approaches. *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

In the current instance, there is a compelling set of circumstances that would make strict compliance with Section 76.66 (c)(3) of the Commission's Rules inconsistent with the public interest. These circumstances include the following:

- The filing date fell on a Sunday, July 1, 2001 when it was not possible to meet the requirements of sending a certified mail, return receipt written election.
- There was no delay on the part of Johnson in complying with the specific requirements of Section 76.66 (d)(2)(ii) of the Commission's Rules when it was able to send a certified mail, return receipt written election on the next business day, Monday, July 2, 2001, under the reasonable belief that Section 1.4 of the Commission's Rules was applicable.
- There was insufficient notice of the effectiveness of Section 76.66 (c)(3) of the Commission's Rules, which was not published in the Federal Register until June 29, 2001, just two days prior to the Sunday election date July 1, 2001.
- Any ambiguity in the Commission's Rules with respect to election notification, which the Commission recognized and sought to clarify on its own motion by adding Section 76.66 (d)(4) in the *DBS Reconsideration Order*, should weigh heavily in favor of granting a waiver to avoid discriminatory treatment and promote the overriding competitive public interest concern of providing mandatory local-into-local service through a satellite carrier.

Granting a waiver of Section 76.66 (c)(3) under the special set of circumstances as noted above will not eviscerate the general rules regarding written election notification under Section

76.66 of the Commission's Rules. These are a unique set of circumstances that should neither encourage a flood of waiver requests, nor occur again; especially if the Commission in the future fairly advises those who would act under its Rules what is specifically required.<sup>15</sup> Furthermore, the Commission must take into account the hardship that will be created for KNWS if the waiver is not granted. KNWS will have to wait until January 1, 2006 before the next election cycle commences. Also, failure to grant a waiver on its own motion would be discriminatory and undermine the effective implementation of the overall policy as set forth in the *DBS Must Carry Report & Order*. As the court in *Wait Radio* noted:

The courts insistence on the agency's observance of its obligation to give meaningful consideration to waiver applications emphatically does not contemplate that an agency must or should tolerate evisceration of a rule by waivers. On the contrary a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis. The limited safety valve permits a more rigorous adherence to an effective regulation. (Footnote 16 omitted)

As such, "good cause" has been shown for the Commission to grant on its own motion to the extent appropriate a waiver of Section 76.66 (c)(3) pursuant to Section 1.3 of the Commission's Rules and allow mandatory carriage for KNWS by DIRECTV.

### **Relief Requested**

Johnson Broadcasting, Inc. has demonstrated herein that it is entitled to mandatory carriage of local-into-local satellite service by DIRECTV because Johnson's certified mail,

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<sup>15</sup> See footnote 12 above. Also, Section 76.66 allows a local commercial television broadcast station to elect mandatory carriage by October 1<sup>st</sup> of the year preceding the new cycle for all election cycles following the first election cycle. The next election date will be October 1, 2005 that falls on a Saturday. To avoid a recurrence of this type notification issue arising again, the Commission should prospectively in this order, a public notice, or the DBS Must Carry proceeding, clarify application of the rules to avoid public confusion in the future. Interestingly, the subsequent election date will fall on a Wednesday, October 1, 2008 lending support to Johnson for the applicability of Section 1.4 of the Commission's Rules or, in the alternative, granting Johnson a waiver.

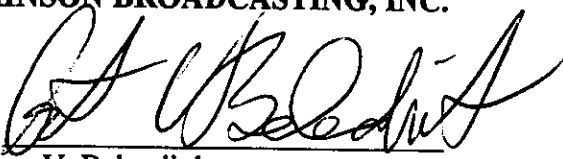
return receipt election of mandatory carriage, sent to DIRECTV on the first business day following a Sunday, July 1, 2001 filing date, was timely notice within the meaning of Sections 76.66 and 1.4 of the Commission's Rules. As such, the Commission should grant Johnson's Application for Review, reverse the Cable Bureau's *Memorandum Opinion & Order*, released on December 5, 2001, and order DIRECTV to provide mandatory local-into-local satellite carriage for KNWS.

In the alternative, the Commission should, on its own motion, grant Johnson a waiver of Section 76.66 (c)(3) of the Commission's Rules because Johnson has shown "good cause" pursuant to Section 1.3 of the Commission's Rules and order DIRECTV to provide mandatory local-into-local satellite carriage for KNWS.

Johnson Broadcasting, Inc. would appreciate the Commission's prompt review and positive action within 120 days on its application for review, or in the alternative, on its own motion, grant Johnson a waiver of the Commission's rules. This matter is time sensitive to Johnson Broadcasting, Inc. because the date, January 1, 2002, for the initial four year carriage cycle, has now past.

Respectfully submitted,

**JOHNSON BROADCASTING, INC.**

By: 

Arthur V. Belendiuk  
Anthony M. Alessi  
Its Attorneys

January 4, 2002

SMITHWICK & BELENDIUK, P.C.  
5028 Wisconsin Avenue, Suite 301  
Washington, DC 20016

P:\ABelendiuk\JOHNSON\Knws\ApplicationforReview.doc



**CERTIFICATE OF SERVICE**

I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on January 4, 2002, copies of the foregoing Application for Review were sent via First Class Mail, postage pre-paid, to the following parties:

W. Kenneth Ferre, Chief \*  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Michael K. Powell, Chairman \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

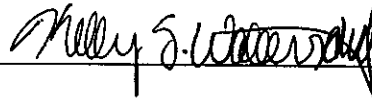
Kathleen Q. Abernathy \*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Michael J. Copps \*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Kevin J. Martin \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jane E. Mago, Esq. \*  
General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Gary M. Epstein  
James H. Barker  
Tonya Rutherford  
Latham & Watkins  
555 11<sup>th</sup> Street, NW  
Suite 1000  
Washington, DC 20004

A handwritten signature in black ink, appearing to read "Kelly S. Waltersdorf", is written over a horizontal line.

Kelly S. Waltersdorf

\* By Hand

**EXHIBIT 7**



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001

Doug Johnson  
KLDT  
8440 Westpark  
Houston, TX 77063

Re: KLDT Mandatory Carriage Election

Dear Mr. Johnson:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- Duplicate Network Affiliate in Designated Market Area ("DMA")
- Duplicate Non-Network Affiliate Located in State other than State of DMA
- Election Postmarked after July 1, 2001 Deadline
- Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- Failure to Provide Affirmative Carriage Election
- Failure to Provide Community of License
- Failure to Provide DMA Assignment
- Failure to Send Election via Certified Mail Return Receipt Requested
- Low Power & Class A Stations Not Entitled to Must Carry Election
- Must Carry Election Rescinded/Waived by Elector
- Nielsen DMA Assignment and Community of License not in DISH DMA
- Terms of Pre-existing Retransmission Consent Agreement

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahl  
Director of Programming

/nr:



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001

Doug Johnson  
KNWS  
8440 Westpark  
Houston, TX 77063

Re: KNWS Mandatory Carriage Election

Dear Mr. Johnson:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- Duplicate Network Affiliate in Designated Market Area ("DMA")
- Duplicate Non-Network Affiliate Located in State other than State of DMA
- Election Postmarked after July 1, 2001 Deadline
- Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- Failure to Provide Affirmative Carriage Election
- Failure to Provide Community of License
- Failure to Provide DMA Assignment
- Failure to Send Election via Certified Mail Return Receipt Requested
- Low Power & Class A Stations Not Entitled to Must Carry Election
- Must Carry Election Rescinded/Waived by Elector
- Nielsen DMA Assignment and Community of License not in DISH DMA
- Terms of Pre-existing Retransmission Consent Agreement

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahil  
Director of Programming

Enc

5701 S. Santa Fe Drive • Littleton, CO 80120



**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

July 1, 2001

Echostar Communications Corporation  
90 Inverness Circle East  
Englewood, CO 80112

Re: Must Carry Request

To Whom It May Concern:

Johnson Broadcasting Inc. is the licensee of television station KLDT-TV, Channel 55, Lake Dallas, Texas. The purpose of this letter is to advise you that the station requests must carry status, to the extent your satellite system provides local-into-local service in the Dallas-Fort Worth DMA, pursuant to Section 76.66 of the rules of the Federal Communications Commission ("FCC"). 47 C.F.R. § 76.66.

KLDT-TV is located in the Dallas-Fort Worth DMA according to the applicable 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates published by Nielsen Media Research. See 47 C.F.R. § 76.66(e)(3). Further, KLDT-TV is committed to doing whatever necessary to deliver a good quality signal to the local receive facility as required by FCC Rule 76.66(g)(1).

We believe that KLDT-TV will be a valuable addition to your local-into-local service and look forward to working with you in the future. Please feel free to contact me if you have any questions concerning this matter. In any event, we request that you respond within 30 days regarding your intent to comply with this request, pursuant to Section 76.66 of the FCC's Rules.

Sincerely,

Doug Johnson  
General Manager



8440 Westpark • Houston, Texas 77063 • Office: 713 974-5151 • Fax: 713 974-5188



**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

July 1, 2001

Echostar Communications Corporation  
90 Inverness Circle East  
Englewood, CO 80112

Re: Must Carry Request

To Whom It May Concern:

Johnson Broadcasting Inc. is the licensee of television station KNWS-TV, Channel 51, Katy, Texas. The purpose of this letter is to advise you that the station requests must carry status, to the extent your satellite system provides local-into-local service in the Houston DMA, pursuant to Section 76.66 of the rules of the Federal Communications Commission ("FCC"). 47 C.F.R. § 76.66.

KNWS-TV is located in the Houston DMA according to the applicable 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates published by Nielsen Media Research. See 47 C.F.R. § 76.66(e)(3). Further, KNWS-TV is committed to doing whatever necessary to deliver a good quality signal to the local receive facility as required by FCC Rule 76.66(g)(1).

We believe that KNWS-TV will be a valuable addition to your local-into-local service and look forward to working with you in the future. Please feel free to contact me if you have any questions concerning this matter. In any event, we request that you respond within 30 days regarding your intent to comply with this request, pursuant to Section 76.66 of the FCC's Rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Johnson', written over a horizontal line.

Doug Johnson  
General Manager



8440 Westpark • Houston, Texas 77063 • Office: 713 974-5151 • Fax: 713 974-5188

**EXHIBIT 8**



LAW OFFICES  
**SMITHWICK & BELENDIUK, P.C.**

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

GARY S. SMITHWICK  
ARTHUR V. BELENDIUK

COUNSEL

DIRECT DIAL NUMBER: (202) 363-4559  
E-MAIL ADDRESS: abelendiuk@fccworld.com

WILLIAM M. BARNARD  
JAMES K. EDMUNDSON  
HENRY E. CRAWFORD

August 7, 2001

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Eric Sahl  
Director of Programming  
EchoStar Communications Corporation  
5701 S. Santa Fe Drive  
Littleton, CO 80120

Re: Johnson Broadcasting of Dallas, Inc.  
Licensee of KLDT(TV), Channel 55, Lake Dallas, Texas

Dear Mr. Sahl:

This firm represents Johnson Broadcasting of Dallas, Inc. We are in receipt of your letter dated July 30, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that EchoStar was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations. You further claim that Johnson Broadcasting failed to identify the community of license of its station. A careful reading of Johnson Broadcasting's letter will show that in the first sentence of the letter the station's community of license was identified as Lake Dallas, Texas.

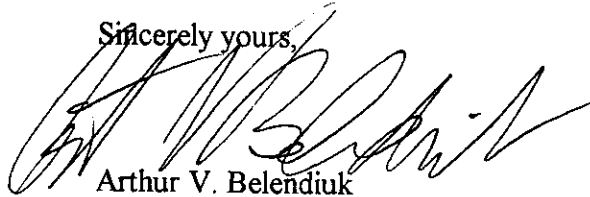
Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

Mr. Eric Sahl  
August 7, 2001  
Page 2 of 2

Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to Echostar. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'A. V. Belendiuk', written over the typed name below.

Arthur V. Belendiuk

AVB\ayp.080701a

cc: Johnson Broadcasting of Dallas, Inc.

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

7003 0320 0006 0458 0976

80112

Postage	\$ 0.34	UNIT ID: 0066
Certified Fee	2.10	
Return Receipt Fee (Endorsement Required)	1.50	Postmark Here
Restricted Delivery Fee (Endorsement Required)		Clerk: KCBFC
Total Postage & Fees	\$ 3.94	07/02/01

Sent To ECHOSTAR Communications  
 Street, Apt. No. or PO Box No. 90 Inverness Circle East  
 City, State, ZIP+4 Englewood, CA 90112

PS Form 3800, January 2001

LAW OFFICES  
**SMITHWICK & BELENDIUK, P.C.**

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

GARY S. SMITHWICK  
ARTHUR V. BELENDIUK

COUNSEL

DIRECT DIAL NUMBER: (202) 363-4559  
E-MAIL ADDRESS: abelendiuk@fccworld.com

WILLIAM M. BARNARD  
JAMES K. EDMUNDSON  
HENRY E. CRAWFORD

August 7, 2001

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Eric Sahl  
Director of Programming  
Echostar Communications Corporation  
5701 S. Santa Fe Drive  
Littleton, CO 80120

Re: Johnson Broadcasting, Inc.  
Licensee of KNWS-TV, Channel 51, Katy, Texas

Dear Mr. Sahl:

This firm represents Johnson Broadcasting, Inc. We are in receipt of your letter dated July 30, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that Echostar was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations. You further claim that Johnson Broadcasting failed to identify the community of license of its station. A careful reading of Johnson Broadcasting's letter will show that in the first sentence of the letter the station's community of license was identified as Katy, Texas.

Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

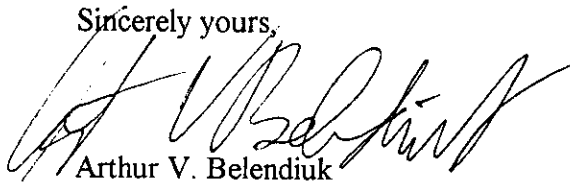
SMITHWICK & BELENDIUK, P.C.

Mr. Eric Sahl  
August 7, 2001  
Page 2 of 2

Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to Echostar. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'A. V. Belendiuk', written over a horizontal line.

Arthur V. Belendiuk

AVB\ayp.080701b

cc: Johnson Broadcasting, Inc.

**EXHIBIT 9**



ECHOSTAR COMMUNICATIONS CORPORATION

SENT VIA FACSIMILE (202/363-4266) & FIRST CLASS MAIL

August 29, 2001

Arthur V. Belendiuk  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016

RE: KNWS-TV Carriage

Dear Mr. Belendiuk:

Thank you for your letter regarding carriage of KNWS-TV. We respond as follows and look forward to assisting you and your client.

Community of License

Many broadcasters' physical address or mailing address differs from their community of license. Thank you for confirming that Katy, TX is KNWS-TV's community of license; it was not previously evident. Rejection for failing to provide community of license is withdrawn.

Election Postmarked July 2, 2001

In the spirit of cooperation we withdraw the ground of rejection for a postmark beyond July 1, 2001.

Signal Strength

As you know, we are required to include in our local channel offerings a must-carry station that, among other things, delivers a "good quality signal" to our receive facility. Assuming that you meet all the appropriate legal standards, we are prepared to complete our must-carry compliance with respect to your station.

Before commencing carriage, however, we must be assured that your signal meets the objective signal strength test-based engineering criteria as well as subjective picture quality-related criteria such as ghosting, noise and interference as set forth in FCC regulations. To that end, we are scheduling times at which you may perform signal testing at our receive facility and will inform you shortly about such availability. **[A notice was mailed on August 20, 2001 from Colorado regarding the test schedule at our local receive facility in the Houston DMA on Sept. 7, 2001.]**

If you elect to deliver your signal to our receive facility via fiber, proof of a good quality over-the-air signal will not be necessary, assuming that the signal delivered by fiber is unimpaired. Similarly, if you already have test-based data proving that your signal meets the "good quality signal" standard applied by the FCC, this might be sufficient proof of an acceptable signal. Please forward such dated test results, including a description of how the test was performed, to:

**Must Carry Engineering Group  
EchoStar Communications Corp.  
530 Echostar Drive  
Cheyenne, WY 82007**

Sincerely,



Eric Sahl  
Director of Programming

/nr

5701 S. Santa Fe Drive • Littleton, CO 80120



ECHOSTAR COMMUNICATIONS CORPORATION

SENT VIA FACSIMILE (202/363-4266) & FIRST CLASS MAIL

August 29, 2001

Arthur V. Belendiuk  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016

RE: KLDT(TV) Carriage

Dear Mr. Belendiuk:

Thank you for your letter regarding carriage of KLDT(TV). We respond as follows and look forward to assisting you and your client.

Community of License

Many broadcasters' physical address or mailing address differs from their community of license. Thank you for confirming that Lake Dallas, TX is KLDT(TV)'s community of license; it was not previously evident. Rejection for failing to provide community of license is withdrawn.

Election Postmarked July 2, 2001

In the spirit of cooperation we withdraw the ground of rejection for a postmark beyond July 1, 2001.

Signal Strength

As you know, we are required to include in our local channel offerings a must-carry station that, among other things, delivers a "good quality signal" to our receive facility. Assuming that you meet all the appropriate legal standards, we are prepared to complete our must-carry compliance with respect to your station.

Before commencing carriage, however, we must be assured that your signal meets the objective signal strength test-based engineering criteria as well as subjective picture quality-related criteria such as ghosting, noise and interference as set forth in FCC regulations. To that end, we are scheduling times at which you may perform signal testing at our receive facility and will inform you shortly about such availability. **[A notice was mailed recently regarding the test schedule at our local receive facility in the Dallas DMA on Sept. 13, 2001.]**

If you elect to deliver your signal to our receive facility via fiber, proof of a good quality over-the-air signal will not be necessary, assuming that the signal delivered by fiber is unimpaired. Similarly, if you already have test-based data proving that your signal meets the "good quality signal" standard applied by the FCC, this might be sufficient proof of an acceptable signal. Please forward such dated test results, including a description of how the test was performed, to:

**Must Carry Engineering Group  
EchoStar Communications Corp.  
530 Echostar Drive  
Cheyenne, WY 82007**

Sincerely,



Eric Sahl  
Director of Programming

/nr



**EXHIBIT 10**



ECHOSTAR COMMUNICATIONS CORPORATION

September 19, 2001

Mr. Doug Johnson  
KLDT  
8440 Westpark  
Houston, TX 77063

Dear Mr. Johnson:

Pursuant to the Order on Reconsideration, adopted by the FCC on September 4, 2001, the failure to prove your ability to deliver a good quality signal as a basis for rejection of your must-carry election for carriage is hereby rescinded. EchoStar will carry your signal pursuant to must carry regulations, assuming no grounds for rejecting your signal arise.

Although your off-air signal meets the minimum federal standards, your signal may experience intermittent impulse interference or ghosting which can be eliminated by your provision of your station's signal via fiber optic line to preserve signal quality comparable to other stations providing fiber delivery in your DMA.

Any other grounds for rejection are withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Sahl". The signature is stylized with a large, sweeping initial "E" and a long, horizontal flourish at the end.

Eric Sahl  
Director of Programming



ECHOSTAR COMMUNICATIONS CORPORATION

September 19, 2001

Mr. Doug Johnson  
KNWS  
8440 Westpark  
Houston, TX 77063

Dear Mr. Johnson:

Pursuant to the Order on Reconsideration, adopted by the FCC on September 4, 2001, the failure to prove your ability to deliver a good quality signal as a basis for rejection of your must-carry election for carriage is hereby rescinded. EchoStar will carry your signal pursuant to must carry regulations, assuming no grounds for rejecting your signal arise

Although your off-air signal meets the minimum federal standards, your signal may experience intermittent impulse interference or ghosting which can be eliminated by your provision of your station's signal via fiber optic line to preserve signal quality comparable to other stations providing fiber delivery in your DMA.

Any other grounds for rejection are withdrawn.

Sincerely,

Eric Sahl  
Director of Programming

**EXHIBIT 11**



ECHOSTAR COMMUNICATIONS CORPORATION

SENT VIA FACSIMILE (202/363-4266) & FIRST CLASS MAIL

December 7, 2001

Arthur V. Belendiuk  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016

RE: KLDT(TV) Election Rejection

Dear Mr. Belendiuk:

As you may be aware, the FCC's recent ruling denies carriage for broadcasters sending must carry elections postmarked beyond the July 1, 2001 deadline. Based on the fact that KLDT(TV)'s must carry election to EchoStar was postmarked July 2, 2001, EchoStar will not carry KLDT(TV) during the 2002 must carry cycle.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Sahl". The signature is stylized and includes a large flourish at the end.

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

SENT VIA FACSIMILE (202/363-4266) & FIRST CLASS MAIL

December 7, 2001

Arthur V. Belendiuk  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016

RE: KNWS-TV Election Rejection

Dear Mr. Belendiuk:

As you may be aware, the FCC's recent ruling denies carriage for broadcasters sending must carry elections postmarked beyond the July 1, 2001 deadline. Based on the fact that KNWS-TV's must carry election to EchoStar was postmarked July 2, 2001, EchoStar will not carry KNWS during the 2002 must carry cycle.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Sahl". The signature is stylized and somewhat cursive.

Eric Sahl  
Director of Programming

/nr

**CERTIFICATE OF SERVICE**

I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on January 28, 2002, copies of the foregoing Petition to Deny were sent via First Class Mail, postage pre-paid, to the following parties:

W. Kenneth Ferre, Chief           \*  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Michael K. Powell                 \*  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Kathleen Q. Abernathy           \*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Michael J. Copps                 \*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Kevin J. Martin                   \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jane E. Mago, Esq.               \*  
General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Qualex International           \*\*  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554

Royce Sherlock               \*\*  
Cable Services Bureau  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, SW  
Room 3-A729  
Washington, DC 20554

Marcia Glauberman           \*\*  
Cable Services Bureau  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, SW  
Room 3-A738  
Washington, DC 20554

Barbara Esbin               \*\*  
Cable Services Bureau  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, SW  
Room 3-C458  
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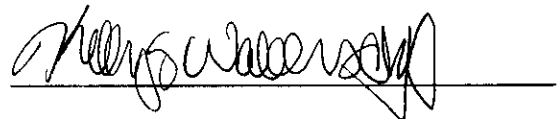
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