

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

In the Matter of

DIRECTV, LLC; AT&T Services, Inc.,

Complainants,

v.

Deerfield Media, Inc.; Deerfield Media (Port
Arthur) Licensee, LLC; Deerfield Media
(Cincinnati) Licensee, LLC; Deerfield Media
(Mobile) Licensee, LLC; Deerfield Media
(Rochester) Licensee, LLC; and Deerfield Media
(San Antonio) Licensee, LLC; GoCom Media of
Illinois, LLC; Howard Stirk Holdings, LLC; HSH
Flint (WEYI) Licensee, LLC; and HSH Myrtle
Beach (WWMB) Licensee, LLC; Mercury
Broadcasting Company, Inc.; MPS Media of
Tennessee Licensee, LLC; MPS Media of
Gainesville Licensee, LLC; MPS Media of
Tallahassee Licensee, LLC; MPS Media of
Scranton Licensee, LLC; Nashville License
Holdings, LLC; KMTR Television, LLC; Second
Generation of Iowa, LTD; Waitt Broadcasting,
Inc.,

Defendants.

MB Docket No. 12-1

File No. _____

**PETITION FOR LIMITED WAIVER AND EXTENSION OF TIME TO ANSWER
GOOD FAITH COMPLAINT FROM DIRECTV AND AT&T**

On June 18, 2019, Deerfield Media, Inc.; Deerfield Media (Port Arthur) Licensee, LLC;
Deerfield Media (Cincinnati) Licensee, LLC; Deerfield Media (Mobile) Licensee, LLC;
Deerfield Media (Rochester) Licensee, LLC; and Deerfield Media (San Antonio) Licensee, LLC
(collectively, “Deerfield”) received two versions of a redacted complaint (“Complaint”) from
DIRECTV, LLC and AT&T Services, Inc. (collectively, “AT&T”) that appear to allege that
Deerfield and the other broadcast station groups referenced in the above caption (collectively,

“Defendants”) have failed to negotiate in good faith with AT&T for retransmission of their stations’ signals, supposedly in violation of Section 76.65 of the Commission’s rules.¹ The “public” version of the complaint purports to redact both confidential and highly confidential information, and the “confidential” version redacts highly confidential information. In other words, AT&T did not serve an unredacted version of their Complaint on Deerfield at all. Instead, AT&T appears to expect Defendants to subscribe to a proposed Protective Order, which has not been entered, in order to obtain belated access to the claims against them. As a consequence of this deficient service, and pursuant to Sections 1.3 and 76.7(a)(1) of the Commission’s rules,² Deerfield is left with no choice but to respectfully request a limited waiver of 47 C.F.R. § 76.7(b)(2)(ii) to provide an answer within 20 days of receipt of service of an unredacted version of the Complaint and all related confidential materials, but no earlier than July 22, 2019 (two weeks from July 8, 2019).³ As further discussed below, this request is warranted by the circumstances and consistent with Commission precedent regarding extensions of time to respond following the service of only redacted pleadings. For the same reasons, Deerfield opposes AT&T’s request for expedited treatment, the urgency of which required the expeditious filing of this petition.

The Commission may waive any provision of its rules for good cause.⁴ In its 2005 order imposing good faith bargaining obligations on multichannel video programming distributors

¹ See Verified Complaint of DIRECTV, LLC and AT&T Services, Inc. for the Station Groups’ Failure to Negotiate in Good Faith, MB Docket No. 12-1 (filed June 18, 2019) (“Confidential Complaint”).

² 47 C.F.R. §§ 1.3 & 76.7(a)(1).

³ In the interest of time, Deerfield has obtained the consent of the other Defendants to file this Petition and respectfully requests that any action taken by the Commission on this Petition apply to all of the Defendants in this proceeding.

⁴ 47 C.F.R. § 1.3; *see also* 76.7(a)(1) (On petition, the Commission may waive any provision of Part 76 or impose different requirements, which petition may be submitted informally by letter).

(“MVPDs”) in retransmission consent negotiations, the Commission confirmed that it would “entertain individual requests for extensions of time [to respond to a good faith complaint] on a case-by-case basis through which MVPDs and broadcasters, large and small, *can establish that the existing pleading cycle set forth in Section 76.7 of the Commission’s rules is inadequate to allow that party to present an effective defense to [such] complaint.*”⁵ Accordingly, where circumstances serve to prejudice the recipient of a good faith complaint in its preparation of an effective defense to the arguments therein, the Commission has recognized that relief from the 20-day answer deadline is warranted.

Such circumstances are present here. *First*, Deerfield’s longstanding communications regulatory counsel is conflicted from representing Deerfield in this matter. As a result, following receipt of the redacted Complaints on June 18, 2019, Deerfield spent several days searching for and interviewing alternate counsel to represent it in this proceeding. The undersigned have only recently become engaged as counsel and only now have been able to review the redacted “confidential” version of the Complaint served on Deerfield. We understand that many of the other Defendants are in the process of obtaining counsel as well.

Second, Deerfield still has not been served with a complete unredacted Complaint and, thus, is not on proper notice of the claims made against it. The public version of the Complaint that Deerfield received from AT&T is heavily redacted, and even the “confidential” version of the Complaint contains extensive “highly confidential” redactions, including in much of the Statement of Facts.⁶ AT&T also admits it did not attach as exhibits to the Complaint various apparently relevant agreements, draft proposals, and e-mails with the common agent representing

⁵ *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd. 10339, 10346 (¶ 16) (2005) (emphasis added).

⁶ See, e.g., Confidential Complaint at 12-14.

Defendants.⁷ All of this appears to be part of an complicated confidential information strategy created by AT&T to compartmentalize each of the Defendants in this proceeding, despite having elected to file a single Complaint against all Defendants at once.⁸

In other words, although AT&T bears the burden of proof as to the existence of a good faith violation,⁹ it has materially prejudiced Defendants by withholding significant and extensive information — based on the apparent argument that none of the Defendants should be permitted to review sensitive information related to other Defendants. Complaints must also be “clear, concise, *and explicit*,” and all matters concerning a claim should be pleaded “fully and with specificity.”¹⁰ AT&T has fallen well short of these requirements.¹¹ While AT&T has submitted a proposed Protective Order that might grant Defendants access to the claims against them at some point in the future, that order has not yet been adopted by the Commission, and it may suffer its own infirmities related to AT&T’s strategy to combine Defendants for the ease of its Complaint but separate them for the purposes of information sharing. In short, AT&T’s failure to serve Defendants with the full Complaint and supporting information prejudices not only Defendants’ ability to answer, but also the Commission’s management of this proceeding within the prescribed time periods under Section 76.7. An extension will be in the public interest by allowing for proper service and information sharing, which would benefit both the parties and

⁷ *Id.* at 3 n.8.

⁸ See DIRECTV, LLC and AT&T Services, Inc., Request for Confidential Treatment at 1, 5 (filed June 18, 2019) (“AT&T Request for Confidential Treatment”) (arguing that the information AT&T elected to withhold from view “is to be kept strictly confidential from the other Station Groups named in the Complaint” and requesting that the “unedited” version of the Complaint that it apparently filed with the Commission be shared only with outside litigation counsel under a proposed protective order).

⁹ 47 C.F.R. § 76.65(d).

¹⁰ *Id.* § 76.6(a)(1) (emphasis added).

¹¹ Deerfield reserves the right to file any other appropriate pleadings to address the procedural deficiencies in AT&T’s Complaint and related filings.

the Commission's efficient management and use of its resources in this matter by enabling Defendants to review the full claims against them and properly prepare responsive pleadings. Due process requires that the clock on Defendants' answers remain suspended unless and until they receive a complete and unredacted copy of the Complaint and related confidential materials.

An analogous situation was addressed by the Media Bureau in *WaveDivision Holdings, LLC v. Comcast Corp.*,¹² an order cited by AT&T in its Request for Confidential Treatment.¹³ In *WaveDivision*, the defendant served only a redacted version of its answer on the complainants and sought a protective order, and the Bureau therefore granted an extension of time for the subsequent reply for a certain period *from the date on which the redacted highly confidential materials were delivered to complainants' counsel*.¹⁴ The same considerations apply in equal measure here, namely that Deerfield should fairly receive an extension of its time to answer or otherwise respond until 20 days after its counsel have received an unredacted Complaint and all related confidential materials withheld by AT&T.

Finally, even if Defendants had properly received all of the information they needed to prepare an adequate response, the Complaint appears to present complex issues and disputed facts involving numerous different television broadcast licensees, which will require significant coordination amongst many if not all of the Defendants. In addition, the availability of Deerfield personnel whose input or approval will be necessary to facilitate an answer may be limited as a result of the Independence Day holiday next week.

In light of the foregoing, Deerfield respectfully requests that the Commission grant it a limited extension of 20 days from the date of receipt of service of an unredacted version of the

¹² 25 FCC Rcd 2231, 2234 (¶ 12) (2010) ("*WaveDivision*").

¹³ AT&T Request for Confidential Treatment at 2 n.2, 3 n.6.

Complaint and related confidential materials to respond to AT&T's allegations consistent with Section 76.7(b)(2)(ii), but no earlier than July 22, 2019 (two weeks from July 8, 2019). For the reasons described herein, Deerfield further opposes AT&T's request for expedited treatment.

Dated: June 26, 2019

Respectfully submitted,



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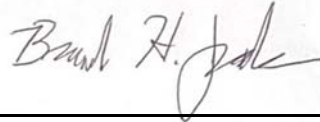
¹⁴ WaveDivision at 2234 (¶ 12).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2019, a true and correct copy of the foregoing Petition for Limited Waiver and Extension of Deadline to Answer Good Faith Complaint from DIRECTV and AT&T was submitted electronically to the Federal Communications Commission and served via electronic mail upon the following:

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