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November 7, 2014

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57

Dear Ms. Dortch:

DISH Network Corporation ("DISH") submits this letter in response to the Objections filed November 5, 2014 by Discovery Communications, LLC[1] and the Content Companies[2] (together with Discovery, the "Programmers") to requests for access to Highly Confidential Information ("HCI") and Video Programming Confidential Information ("VPCI") submitted by or on behalf of DISH. DISH requests that the Commission consider its prior Amended Response to Objections to Request for Access to Highly Confidential Information and Video Programming Confidential Information[3] ("Amended Response") expanded to encompass the new Objections, as well as those filed by the Programmers on October 15, 16, 21, 22, and 23, 2014.[4]

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[1] Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-57 (Nov. 5, 2014).

[2] Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-57 (Nov. 5, 2014).

[3] Amended Response to Objections to Request for Access to Highly Confidential Information and Video Programming Confidential Information of DISH Network Corporation, MB Docket Nos. 14-57, 14-90 (Oct. 24, 2014).

[4] Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-57 (Oct. 15,

DISH's arguments against the previously filed Objections raised in its Amended Response apply with equal strength to the Programmers' new Objections. As DISH explained in its Amended Response, DISH Submitting Individuals, and specifically DISH's outside counsel, have not been involved in and are not currently involved in Competitive Decision-Making. The Programmers offer only conjecture to the contrary by citing two pleadings. First, the Programmers cite to comments filed by DISH that addressed matters of general application to the industry in response to a Notice of Inquiry issued by the Copyright Office.[5] They also cite to a letter expressing a grievance regarding the conduct of a broadcaster.[6] The conduct in question, which implicated the Commission's rules regarding retransmission consent, was brought to the

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2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-57 (Oct. 21, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-57 (Oct. 22, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications, LLC, MB Docket No. 14-90 (Oct. 23, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-57 (Oct. 21, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-57 (Oct. 22, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket No. 14-90 (Oct. 23, 2014).

[5] Satellite Television Extension and Localism Act of 2010, Section 302 Report to Congress, Comments of DISH Network LLC, Docket No. RM 2010-10 (Apr. 25, 2011). A copy of the cited pleading is attached as **Exhibit A**.

[6] Letter from Pantelis Michalopoulos, Counsel to DISH Network Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 13-191 (Oct. 25, 2013). A copy of the cited pleading is attached as **Exhibit B**.

attention of DISH's outside counsel by DISH. Outside counsel then filed a letter reporting the grievance to the Commission. None of the DISH Submitting Individuals, including DISH's outside counsel, has participated in that or any other retransmission negotiation on behalf of DISH.

The Programmers fail to raise any new arguments or offer any new reasons for objecting to DISH's requests for access to HCI and VPCI by DISH's outside counsel and experts in the Objections filed yesterday. For the same reasons stated in its Amended Response, DISH urges the Commission to deny the new Objections filed by the Programmers.

Sincerely,

__________/s/______________

Stephanie A. Roy
Counsel for DISH Network Corporation

Exhibit A

Before the
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
	)	
Satellite Television Extension and Localism Act of 2010	)	Docket No. RM 2010-10
	)	
	)	
Section 302 Report to Congress	)	

COMMENTS OF DISH NETWORK L.L.C.

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April 25, 2011

TABLE OF CONTENTS

Before the
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
	)	
Satellite Television Extension and Localism Act of 2010	)	Docket No. RM 2010-10
	)	
Section 302 Report to Congress	)	

COMMENTS OF DISH NETWORK L.L.C.

I. INTRODUCTION AND SUMMARY

DISH Network L.L.C. ("DISH") responds to the U.S. Copyright Office's Notice of Inquiry ("NOI") examining the role of the statutory licensing requirements set forth in Sections 111, 119, and 122 of the Copyright Act.[1] In short, none of the alternatives to statutory licensing proposed in the NOI (sublicensing, private licensing, and collective licensing) are workable. In light of the potential for "hold-outs" by rights holders, statutory licensing remains the only solution available to provide local broadcast stations containing content from multiple copyright sources to millions of consumers nationwide.

After thirty years under the statutory licensing regime, it is apparent that all affected industry players – multichannel video programming distributors ("MVPD"s), broadcasters, and copyright holders – have adapted their businesses to reflect the existence of a statutory license for the retransmission of local broadcast stations. The same goes for the communications

[1] STELA Section 302 Report to Congress, *Notice of Inquiry*, Docket No. RM 2010-10, 76 Fed Reg. 11816 (Mar. 3, 2011).

regulatory infrastructure; if statutory licensing were eliminated, many other related rules and regulations would also have to be overhauled or abolished. For example, Congress would have to extinguish local broadcast mandatory carriage obligations imposed on MVPDs. After all, DISH would be unable to comply with its must-carry obligations, for example, if for some reason it could not secure the necessary copyright permissions for some or all of the programming contained in a given broadcast station's lineup (which copyright holders are not obliged to grant absent some statutory mandate). In a similar vein, the network nonduplication and syndicated exclusivity privileges afforded to broadcasters and others would have to be eliminated if MVPDs were to lose statutory licensing rights.

Instead of looking for alternatives to statutory licensing as a whole, DISH urges the Copyright Office to recommend improvements to what is fundamentally a sound approach to this multiple copyrights problem. Specifically, as DISH urged in 2007, Congress should dispense with the current three-part statutory regime (one license for cable providers and two separate licenses for satellite providers) in favor of a single, consolidated statutory license with bright line rules for the carriage of digital broadcast TV signals applicable to cable and satellite, as well as online video distributors. Cable and satellite providers compete for the same customers, but today are treated differently under copyright and communications law in a number of critical areas. This continued disparate treatment is more attributable to the piecemeal historical development of the law, rather than to current technological or market differences between the video platforms.

II. A STATUTORY LICENSE REMAINS THE ONLY VIABLE ALTERNATIVE

A. Congress Has Repeatedly Found Statutory Licenses Necessary for a Viable MVPD Service

When implementing the various provisions of the Copyright Act, Congress recognized that, in the then-current conditions of the market, the MVPD industry could not function without statutory licenses. In considering the cable statutory license in Section 111 of the Copyright Act, the House Judiciary Committee expressly recognized "that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system."[2] Similarly, when the same Committee considered the Satellite Home Viewer Act in 1988, it recognized that "[n]egotiation of individual copyright royalty agreements is neither feasible nor economic. It would be costly and inefficient for copyright holders to attempt to negotiate and enforce agreements with distributors and individual households when the revenues produced by a single earth station are so small."[3] Both assessments remain true today.

B. Elimination of Statutory Licenses Would Require Wholesale Changes to Related Communications Laws and Regulations

The statutory licenses do not exist in a vacuum. Significant statutory and regulatory obligations revolve around the licenses. If the licenses were eliminated, many other related rules and regulations also would have to be overhauled or eliminated in turn. For example, Congress would have to extinguish local mandatory carriage obligations imposed on MVPDs. Generally, eligible local broadcast stations can require local cable systems and satellite carriers providing local broadcast station service to carry their signal, so long as the stations comply with certain

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[2] H.R. Rep. No. 94-146, at 89 (1976).

[3] H.R. Rep. No. 100-887(I), at 24 (1988).

Federal Communications Commission ("FCC") rules for electing such carriage.[4] But DISH would be unable to comply with its "must-carry" obligations pursuant to the local broadcaster's election of mandatory carriage under communications law if for some reason DISH were unable to secure the necessary copyright permissions for some or all of the programs contained in the broadcast station's lineup.

Similarly, the network nonduplication and syndicated exclusivity privileges afforded to broadcasters and others under FCC rules should be eliminated if MVPDs lose statutory licensing rights. These rules allow local broadcasters and certain program distributors to request that MVPDs delete duplicative programming from imported signals that they retransmit within a local market.[5] Upon such a request, a cable system importing an out-of-market station (and a satellite carrier importing certain superstations) must remove from the imported signal the programming to which the local broadcaster or distributor has exclusive geographic rights. If statutory licenses go away, then there would be no justification for retaining these rules and any associated recourse to the FCC, because the copyright holders could then pursue infringement claims against MVPDs who retransmit the programming beyond the geographic bounds of their license.

Elimination of statutory licensing would also vitiate the FCC's prohibition on exclusive retransmission consent agreements between a broadcaster and an MVPD. Under this rule, broadcasters are forbidden to grant a single MVPD the exclusive right to retransmit that station

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[4] *See, e.g.,* 47 U.S.C. § 338(a)(1) (requiring satellite carriers to retransmit a local broadcast station's signal upon the station's request in any market in which the satellite carrier provides service under 17 U.S.C. § 122).

[5] *See* 47 C.F.R. §§ 76.92-93, 76.101-103 (setting forth the FCC's network nonduplication and syndicated exclusivity restrictions for cable system retransmissions of broadcast programming).

within its local market.[6] But the prohibition would be meaningless if: (a) the broadcaster, while supposedly amenable to granting retransmission consent, holds back the private copyright licenses that would be equally required for any MVPD to retransmit its signal, or (b) an MVPD secures an exclusive copyright license from a third-party copyright holder. Either of these scenarios would undermine the competiveness of the MVPD market. The market would then likely be balkanized as a handful of MVPDs obtain *de facto* geographic exclusives to retransmit particular must-see stations and raise prices accordingly.

C. Discontinuation of Statutory Licenses Would Cripple the Industry and Harm Consumers

The Direct Broadcast Satellite ("DBS") industry, among others, has grown and succeeded in part due to the Copyright Act's statutory licenses. Indeed, Section 122's local-into-local license played a significant part in DBS providers' rapid growth following its enactment in 1999.[7] Despite the proliferation of specialized cable channels, programming on broadcast television channels still accounts for more than one-third of all primetime U.S. television viewing time.[8] Subscribers want and expect to be able to receive this programming as part of their MVPD subscription.

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[6] *See* 47 C.F.R. § 76.65(b)(1)(vi) (making it a violation of the FCC's rules for either a broadcaster or an MVPD to enter into any exclusive agreement for the retransmission of a broadcast signal).

[7] *See Direct Broadcast Satellite Subscribership Has Grown Rapidly, But Varies Across Different Types of Markets*, U.S. Government Accountability Office, GAO-05-257, at 15 (Apr. 15, 2005) (finding that local broadcast signals were critical to the competitiveness of the DBS providers).

[8] Based on 2010-2011 network season-to-date average viewership, the Big 4 networks, plus Univision and the CW, average 42.92 million viewers during primetime. *See* English Broadcaster Nets Continue Down vs. Last Season Among Adults 18-49, *The Nielsen Company*, April 13, 2011, *available at* http://tvbythenumbers.zap2it.com/2011/04/13/english-broadcast-nets-continue-down-vs-last-season-among-adults-18-49/89223 (last accessed April 25, 2011). Based on Nielsen's current estimate of 115.9 million total TV viewers, primetime viewership of

Due to the critical need to offer local broadcast stations, discontinuation of statutory licenses would cause irreparable harm to the industry. Negotiation of copyright licenses with all the owners of broadcast programming content in the private market is not feasible. The transaction costs – in time, manpower, and externalities – would rapidly overwhelm even the largest MVPDs, not to mention what the burden would do to the smaller cable operators. They would also be asymmetric. Each station would only have to deal with a handful – typically no more than four – distributors.

Since the Copyright Office last reviewed the statutory licenses, no workable marketplace mechanisms have emerged to enable copyrighted works to be efficiently licensed absent a statutory licensing regime. DISH currently retransmits nearly 2,200 broadcast television stations. Each station airs, on average, 5,000 separate programs during the year.[9] Yet broadcasters routinely assert that they lack the rights necessary to sublicense these programs for satellite retransmission. DISH urges the Copyright Office to conduct a factual investigation into the scope of sublicensing rights held by broadcasters, because if what the broadcasters report is true, this means that DISH would have to receive licenses for all works directly from the holders of copyright – that is, DISH would have to negotiate millions of licenses on a periodic basis.

Big 4 network programming is about 37% of total primetime viewership. *See* Number of U.S. TV Households Climbs by One Million for 2010-11 TV Season, *The Nielsen Company*, August 27, 2010, *available at* http://blog.nielsen.com/nielsenwire/media_entertainment/number-of-u-s-tv-households-climbs-by-one-million-for-2010-11-tv-season/ (last accessed April 25, 2011).

[9] *See Copyright Law Revision: Hearing on S. 1361 Before the Subcomm. on Patents, Trademarks, and Copyrights of the S. Comm. On the Judiciary*, 94th Cong. 401 (1973) (Statement of David, Foster, President, National Cable Television Association) ("I would like to answer the question that you asked about why we should have a compulsory license with one flat fee across the board for the industry. The average television station carries approximately 5,000 programs per year. Let's say that the average cable television system carries five television stations. That would mean that the individual cable system operator would have to negotiate a copyright for about 25,000 individual programs.").

Even a small cable operator might have to negotiate thousands of licenses. Even if such a massive licensing effort were possible (the hold-out problem, discussed below, indicates that it is not), the transaction costs would threaten to cripple the industry.

A statutory license works so well because it clears thousands of underlying copyrights in all the programs – copyrights that the network or the local affiliate may not have been able to clear – so that an MVPD need only obtain *one consent* (retransmission consent) from the local broadcaster to provide all the programming. This gives MVPDs a level of certainty – certainty that is critical to business planning – that would be impossible to approach in another system. Market forces have not resulted in an efficient mechanism of private negotiation for these rights. Indeed, as the experience this past year in the retransmission consent arena shows, Congress and the FCC are routinely exhorted to step in when market mechanisms fail. The reason is the hold-out phenomenon: each distributor needs a full complement of the four top networks in each local market. A "no" from any one of them cannot be cured by substituting other programming and would doom the MVPD to being unable to compete. Substitute the thousands of copyright holders that would have to give their consents in private licensing negotiations for the four network stations that have to consent to retransmission, and the result would be chaos.

The "hold-out" problem also creates the potential for a DBS provider to have "holes" in its TV schedule for programs for which it could not negotiate a copyright. The FCC has long noted the fact that a "Swiss cheese" schedule is not in the public interest and has crafted its carriage rules to require MVPDs to carry all of the programming of the broadcast stations they offer, except for very limited deletions under the network nonduplication, syndicated exclusivity, and sports blackout rules.[10]

Private licensing raises yet another risk – the risk of coordination among copyright holders. Again, the retransmission arena can yield pertinent lessons. DISH urges the Copyright Office to assess the extent to which broadcasters align their stances on retransmission consent – even tacitly or with conscious parallelism – because this alignment is a harbinger of how things may play out in a private licensing system.

D. Even if the "Hold-Up" Problem Could Somehow Be Resolved, Sublicensing and Collective Licensing Are Not Viable Alternatives

Both sublicensing and collective licensing proposed in the NOI would require government intervention into the market, and would therefore simply swap one type of intervention for another, less well-known and efficient one. Local broadcast stations routinely assert to DISH that their licensing agreements with third-party copyright holders do not include the right to sublicense copyrighted programming for further distribution. This means that MVPDs would be left to negotiate with a mosaic of different entities to carry a single local broadcast station's signal, including the broadcast network itself, the local broadcast station, major studios, sports leagues and sport teams, independent production companies, and many others. And absent a government mandate for program rights holders to grant sublicensing rights to broadcasters, sublicensing could again result in broadcasters obtaining sublicensing rights for some, but not all, of the content aired by their station, again leaving holes in the broadcasters' signal.

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[10] *See* 47 C.F.R. § 76.62(a) (requiring cable systems to carry the entirety of the broadcast signal); 47 C.F.R. § 76.66(j)(1) (requiring satellite carriers to carry the entirety of the broadcast signal).

But requiring broadcasters to acquire sublicensing rights, and program owners to grant such rights, makes no sense. It creates a problem for the sake of trying to solve it by merely exchanging one form of government intervention (statutory licenses for MVPDs) with another (mandatory sublicensing for broadcasters). Nor is collective licensing the answer. As the NOI acknowledges, the government has recognized the need to regulate collective licensing organizations to discourage monopolistic behavior.[11] Again, such an approach merely replaces one form of government intervention with another.

A critical benefit of statutory licensing is that it permits the carriage of the multitude of copyrighted materials included in a broadcast signal. The MVPD market could not exist without it. And no alternative mechanism proposed in the NOI could come close to ensuring such carriage.

III. RATHER THAN ELIMINATE STATUTORY LICENSES, THE COPYRIGHT OFFICE SHOULD RECOMMEND TRANSITIONING TO A SINGLE STATUTORY LICENSE

Although statutory licensing should not be eliminated outright, the Copyright Office should recommend to Congress certain adjustments to make the system fairer and easier to implement. Given that cable and satellite now compete for the same customers through, among other things, the provision of local broadcast stations, the current marketplace no longer calls for different licensing regimes between the different types of video distributors. As a result, the Copyright Office should recommend that Congress consider dispensing with the current three-part statutory regime (one license for cable providers and two separate licenses for satellite providers) in favor of a single, consolidated statutory license with bright line rules for the

[11] *NOI*, 76 Fed. Reg. at 11819.

carriage of digital broadcast TV signals applicable to cable and satellite, as well as online video distributors.

Bringing cable and satellite video competitors under a single regime will level the playing field and foster competition. Such an approach should allow any cable or satellite provider to retransmit any broadcast station subject to: (i) retransmission consent for local stations; (ii) in certain circumstances, deletion of duplicative programming from an imported station's signal upon request; and (iii) payment of the appropriate royalty for distant stations.

Such a licensing regime would eliminate variations between the cable and satellite licenses that are unsupported by the current marketplace. These differences are both financial and structural. For example, cable providers continue to pay royalties based on an antiquated system tied to cable system size and gross receipts, whereas satellite providers pay a flat, per-subscriber fee. In addition, cable has a single statutory license, Section 111, while its satellite counterpart is divided between the "local-into-local" rights under Section 122 and distant signal rights under Section 119. This dual license approach for satellite providers is far less relevant today, given that technological development and investment have enabled the DBS industry to compete directly with cable by offering local broadcast stations. In fact, DISH is the only MVPD to offer local-into-local service in all 210 designated market areas.

Cable providers also have the certainty that both their "local" and "distant" signal authority is permanent, while DBS must renew the Section 119 license every five years. Not only that, cable providers have significantly broader authority to provide out-of-market signals to customers under the Copyright Act. In contrast, DBS providers are subject to the unwieldy "unserved household" limitation, which is more restrictive than the limits involved under nonduplication and syndicated exclusivity provisions applicable to cable systems.[12] Moreover, satellite operators are prohibited from providing any distant programming when a household is served by a local affiliate, while a cable system can provide any distant programming it likes to the same household, so long as the cable operator honors valid, program-specific deletion requests from the local affiliate.[13]

Disparate treatment of cable and satellite under copyright law could also have the perverse effect of disadvantaging DBS providers if and when the FCC updates its rules governing retransmission consent. A recent Notice of Proposed Rulemaking asks whether "eliminating the [FCC]'s network nonduplication and syndicated exclusivity rules, without abrogating any private contractual provisions, would have a beneficial impact on retransmission consent negotiations."[14] Although such a move could enable cable systems to bring in an out-of-market station of the same network affiliation during a retransmission consent dispute, any such reforms would not benefit DBS providers. Section 122 allows local-into-local retransmission only, and the Section 119 license would be unavailable except for a minority of consumers – those qualifying as unserved households. The satellite statutory licensing regime would thus

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[12] *Compare* 17 U.S.C. § 119(a)(2)(B)(i) (licensing the retransmission of distant signals by satellite providers to unserved households), *with* 17 U.S. C. § 111(c) (licensing the retransmission of all broadcast stations by cable systems subject only to compliance with FCC rules) *and* 47 C.F.R. §§ 76.92-93, 76.101-103 (setting forth the FCC's network nonduplication and syndicated exclusivity restrictions for cable system retransmissions of broadcast programming).

[13] *Compare* 47 U.S.C. § 339(a)(2)(B)-(C) (precluding the retransmission by satellite carriers of a distant network signal to a household when the satellite carrier also retransmits the local network affiliate to the household, subject to limited exceptions), *with* C.F.R. §§ 76.94, 76.105 (requiring stations to comply with notification requirements in order to exercise their nonduplication and syndicated exclusivity rights with cable systems).

[14] Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, MB Docket No. 10-71, at 25 ¶ 44 (rel. Mar. 3, 2011).

prevent DISH from taking advantage of rule changes intended to offset the leverage broadcasters enjoy today as a result of their monopoly in their local market.

IV. CONCLUSION

Statutory licenses have played central roles in the development of a vibrant MVPD marketplace. There are no viable alternatives to some form of statutory copyright licenses. Instead of looking to eliminate them, DISH urges the Copyright Office to look for ways to improve on the current system by doing away with disparities between the cable and satellite licenses and exploring a unitary licensing regime.

Respectfully submitted,

/s/

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April 25, 2011

Exhibit B

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October 25, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Proposed Merger of Media General Communications Holdings, LLC and New Young Broadcasting Holding Co., Inc., MB Docket No. 13-191

Dear Ms. Dortch:

Through this letter, DISH Network L.L.C. ("DISH") submits an objection to the proposed merger of Media General Communications Holding, LLC ("Media General") and New Young Broadcasting Holding Co., Inc. ("Young"). In retransmission negotiations with DISH, Media General has attempted to extend the retransmission terms it demands for its stations to the Young stations, too. This conduct:

- may reflect improper coordination between the two companies, as the two applicants are still separate competitors;
- constitutes a breach of the duty to negotiate in good faith, as DISH has pled in a Verified Retransmission Complaint filed on October 18, 2013 with the Commission;[1] and
- shows a propensity to engage in further anticompetitive behavior that is relevant to the Commission's public interest evaluation.

Media General controls licenses for 18 broadcast stations, of which 17 are affiliated with one of the four major networks and 6 operate in the top 40 markets. DISH had an agreement with Media General that extended to all of these stations. That agreement expired on September 30, 2013. DISH has been trying to negotiate an extension with Media General. During the course of

[1] DISH Network L.L.C., Verified Retransmission Complaint, MB Docket No. 12-1 (filed Oct. 18, 2013) ("Verified Retransmission Complaint").

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these negotiations, however, Media General has informed DISH that it will not agree to an extension unless the terms demanded by Media General also extend to Young's 14 broadcast stations upon consummation of the merger.[2] The requested extension of the terms to Young moreover marks a departure from the previous and now expired agreement between Media General and DISH. This demand comes despite the fact that DISH and Young have a valid, binding contract that governs their rights and obligations and does not expire for more than a year.

Unless they receive the requisite regulatory approvals to merge, and until they merge, Media General and Young are separate companies that compete with one another.[3] Media General's demand suggests a conclusion on the part of Media General that the terms it is demanding are more onerous to DISH than the terms set forth in the Young agreement. This in turn raises the question of what information has been exchanged between the two companies. What does Media General know about the Young terms and how does Media General know it? It also raises the important question of whether Media General and Young are coordinating Media General's negotiations with DISH.

The Commission should therefore request information on all communications between the applicants regarding retransmission agreements and negotiations with DISH in particular, and regarding retransmission strategy in general, and any documents relating to an expectation of higher retransmission fees as a result of the merger, and in particular the possibility of extracting higher fees for the Young stations. If this information proves the merger to be primarily a device for achieving higher fees, the Commission should designate it for a hearing. At a minimum, the Commission should condition the proposed merger on baseball-style arbitration and a standstill provision in the event of retransmission impasses, modeled on the corresponding condition imposed in NBC-Comcast.[4]

In summary, DISH believes that Media General's conduct raises important issues that are relevant to whether the Commission should approve the merger. The Commission should closely examine Media General's conduct by either designating this merger application for a hearing or asking searching questions. It should also condition the conduct of the merged company as indicated above.

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[2] *Id.* at 7-8.

[3] The relevant geographic retransmission markets include not only the local markets, where each network-affiliated station has no perfect substitutes, but also the national market where large broadcast groups do compete with one another.

[4] *See* Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., *Memorandum Opinion and Order*, 26 FCC Rcd. 4238, 4260 ¶ 60 (2011).

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Sincerely,

Pantelis Michalopoulos
Christopher Bjornson
Counsel to DISH Network Corporation

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of October 2013, a copy of the foregoing Letter was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via First Class† and/or electronic mail*:

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/s/ Christopher Bjornson
Christopher Bjornson

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2014, I caused true and correct copies of the foregoing to be served by electronic mail upon the following counsel of record:

Mace Rosenstein
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
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Counsel for Discovery Communications LLC,
CBS Corp., Scripps Networks Interactive, Inc.,
The Walt Disney Company, Time Warner Inc.,
TV One, LLC, Twenty First Century Fox, Inc.,
Univision Communications Inc., and Viacom Inc.

Sincerely,

__________/s/_____________
Stephanie A. Roy
Steptoe & Johnson LLP