

July 3, 2007

BY ELECTRONIC FILING

Monica Shah Desai
Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Consolidated Application of News Corporation, The DIRECTV Group, Inc., and Liberty Media Corporation for Authority to Transfer Control (MB Docket No. 07-18)*

Dear Ms. Desai:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The DIRECTV Group, Inc. ("DIRECTV"), News Corporation ("News Corp."), and Liberty Media Corporation ("Liberty Media"), applicants in the above-referenced proceeding, submit this letter to address the need for enhanced confidential treatment for certain materials called for by the Commission's request for information and documents of June 15, 2007, such that only outside counsel and their consultants/employees may have access to such materials. Specifically, (1) DIRECTV seeks enhanced protection for granular customer data (*e.g.* subscriber information by DMA or ZIP code), as well as certain materials related to its exclusive programming contracts, operational metrics, carriage agreements, and business and marketing plans;¹ (2) News Corp. seeks enhanced protection for certain materials related to its programming contracts and retransmission consent agreements with multichannel video programming distributors ("MVPDs"), as well as its business and marketing plans;² and (3) Liberty Media seeks enhanced protection for certain materials relating to its agreements for transition services concerning this transaction, as well as materials concerning programming and marketing plans and agreements, personnel decisions, and budget and operating metrics regarding various services.³

¹ These materials are responsive to items II.A through II.J and III.B of the Information and Document Request for DIRECTV/News Corp.

² These materials are responsive to items III.A.2, III.B, III.D, IV.A, IV.B, and IV.C of the Information and Document Request for DIRECTV/News Corp.

³ These materials are responsive to items I.A, I.D, I.E, II.A, and III.C and III.D of the Information and Document Request for Liberty Media.

These materials constitute some of the most sensitive data requested by the Commission, and is the type of information that has been afforded heightened protection in prior proceedings.⁴ For the reasons set forth below, inadvertent or intentional disclosure of these materials to the Applicants' competitors and customers – some of whom are parties in this proceeding⁵ – would have a devastating effect on their businesses and place the companies at a significant competitive disadvantage. Accordingly, Applicants request that the Commission create an enhanced level of confidentiality as it did in the *News/Hughes Second Protective Order*.⁶

Information on DIRECTV's subscribers on a zip code and DMA basis constitutes some of the most sensitive data requested by the Commission. For the reasons set forth below, inadvertent or intentional disclosure of this data to DIRECTV's competitors would have a devastating effect on its business and place DIRECTV at a significant competitive disadvantage.

DIRECTV uses granular subscriber data to gauge customer demand for its services, as well as to analyze the strengths and weaknesses of its program offerings and promotional offers. This information is an important part of the analysis that the company makes in adjusting its offerings nationwide from time to time to provide better service to their customers, and constitutes the confidential portion of a number of competitive evaluations that are central to DIRECTV's business strategy. Any competitor who is able to obtain access to the proprietary subscriber data that has been collected and sorted by DIRECTV would be able to exploit any perceived weaknesses on a regional basis at the same time or even before DIRECTV was able to react and address those issues. The result would be similar to the result that would occur if a competitor received a copy of the strategic marketing plan for each of DIRECTV's regional service areas.⁷ A company must have the ability to evaluate and improve its own operations

⁴ See, e.g., *General Motors Corp., Hughes Electronics Corp., and The News Corporation, Ltd. – Order Adopting Second Protective Order*, 18 FCC Rcd. 15198 (Med. Bur. 2003) (“*News/Hughes Second Protective Order*”); *Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp. – Order Adopting Second Protective Order*, 20 FCC Rcd. 20073 (Med. Bur. 2005) (“*Adelphia Second Protective Order*”); *EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. – Order Adopting Second Protective Order*, 17 FCC Rcd. 7415 (Med. Bur. 2002) (“*EchoStar/Hughes Second Protective Order*”).

⁵ For example, parties to this proceeding include MVPDs (e.g., EchoStar, RCN, Massillon Cable, and two cable trade associations) that compete with DIRECTV and acquire programming from News Corp.

⁶ Each of the Applicants is currently in the process of identifying materials responsive to the Commission's requests. Accordingly, they have requested herein heightened confidentiality for the types of materials that may be responsive, without regard to whether any such materials have actually been located at this time.

⁷ For this reason, DIRECTV seeks enhanced protection for highly sensitive operational data related to subscribers in Puerto Rico – including average revenue, costs of revenue, and operating profit per subscriber in Puerto Rico.

without exposing its internal analyses to its competitors. Thus, while DIRECTV will, of course, supply the data to the Commission, we respectfully request a heightened level of confidentiality. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *News/Hughes Second Protective Order*.⁸

DIRECTV also seeks enhanced protection for its future business and marketing plans, as well as internal studies related to subscriber behavior. Disclosure of such highly sensitive materials could place DIRECTV at a severe competitive disadvantage *vis-à-vis* MVPD and broadband competitors, which would be able to react to this information in their own business and marketing strategies. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *News/Hughes Second Protective Order*.⁹

As a distributor of MVPD programming, DIRECTV is continually negotiating with video programming providers to achieve the most diverse and attractive programming possible on the most favorable financial terms possible. The Commission has requested information regarding the details of certain DIRECTV video programming agreements. This information is highly proprietary and maintained in the strictest confidence by DIRECTV. Any competing MVPD provider that is able to obtain access to such proprietary data would be able to determine the terms, conditions and pricing structure by which DIRECTV was able to obtain these agreements, and would be in a position to search for perceived vulnerabilities and to act strategically just as contracts are nearing expiration. In addition, programmers with access to this information would have a significant advantage over DIRECTV in future programming contract negotiations – placing DIRECTV at a competitive disadvantage that no other MVPD provider would share. Accordingly, such access would result in long-term damage to DIRECTV, as the information will continue to be strategically relevant for some time.

As a producer of cable programming, News Corp. is continually negotiating with MVPDs to achieve the broadest distribution of its programming possible on the most favorable financial terms possible. The programmers in which DIRECTV holds a much more limited interest are similarly engaged. The Commission has requested information on each of the News Corp.- and DIRECTV-affiliated programming networks, including data related to carriage contracts with DIRECTV, EchoStar, and Liberty Media, and copies of such contracts. This information is highly proprietary and maintained in the strictest confidence. Any competing cable programmer that is able to obtain access to such proprietary data would be able to divine the cost and pricing structure and negotiation strategy of these affiliated entities, and would be in a position to search for perceived vulnerabilities and to act strategically just as contracts are nearing expiration. In addition, MVPDs with access to this information would have a significant advantage over News Corp. and DIRECTV, and programmers in which either holds an interest in

⁸ See *News/Hughes Second Protective Order*, ¶ 3. See also *Adelphia Second Protective Order*, ¶¶ 3-7.

⁹ See *News/Hughes Second Protective Order*, ¶ 3. See also *Adelphia Second Protective Order*, ¶¶ 3-7.

future programming contract negotiations – placing News Corp. and DIRECTV at a competitive disadvantage that no other cable programmer would share. Accordingly, such access would result in long-term damage for News Corp. and DIRECTV, as the information will continue to be strategically relevant for some time.

News Corp. also bargains with many of the MVPDs operating in the areas served by its owned and operated broadcast stations (“O&Os”) over the terms of and compensation for authority to retransmit the O&O signals. The Commission has requested information on these O&Os, including information about the terms of certain retransmission consent agreements and copies of such agreements. It has also requested information related to communications between News Corp. and MVPDs related to potential arbitration of retransmission consent agreements for the O&Os. This contractual information is highly proprietary and maintained in the strictest confidence by News Corp. (and, presumably, by MVPDs as well in accordance with confidentiality provisions in retransmission consent agreements), as it bears on the terms and conditions of carriage and reflect the results of confidential negotiations with MVPDs. If this information were inadvertently or intentionally disclosed, News Corp. would be placed at a significant competitive disadvantage in future negotiations. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *News/Hughes Second Protective Order*.¹⁰

Liberty Media seeks enhanced protection with respect to certain financial and other terms contained in the ancillary agreements relating to the Transaction, including those relating to the operation of the regional sports programming services included in the Transaction. These agreements concern matters, including advertising sales, programming and production services, technical services and other operational, financial and technical information, that are not made available to third parties. Disclosure to competitors of the financial and other terms of these agreements would result in competitive harm to Liberty Media and to the regional sports services involved. Among other things, it would enable competitors to determine what services Liberty Media has contracted for with respect to the operation of these regional sports programming services, at what cost and for what term. Clearly, such information is not normally provided to third parties, particularly competitors and customers. Liberty Media will produce redacted versions of these agreements for the public file, but the unredacted versions produced to the Commission should be subject to greater protection pursuant to the further protective order requested here.

Liberty Media also seeks enhanced protection for documents and information responsive to requests concerning its financial and management relationships with Discovery Holding Company and Discovery Communications, including any involvement by Dr. Malone or other Liberty Media officers, directors or employees in discussions and decisions concerning management, operation, budget, programming and

¹⁰ *See id.*

personnel. The production of such materials and information without additional protection pursuant to the requested order would permit Discovery's competitors to obtain access to highly sensitive financial, marketing and operational information, resulting in significant potential competitive harm to Discovery. Liberty Media also seeks enhanced confidential treatment of documents and information responsive to item I.E, which seeks similar information concerning Liberty Media's involvement with Liberty Cablevision of Puerto Rico. Among other things, Liberty Media is contractually obligated to maintain the confidentiality of information that it may have regarding the businesses that were spun off to Liberty Global, Inc., which is a separate, publicly traded company.

Liberty Media also seeks enhanced protection for documents and information concerning subscriber, revenue, programming, planning and other similar data regarding Liberty Cablevision of Puerto Rico or any other MVPD as described in items II.A through II.L of the request to Liberty Media for reasons similar to those set forth above with respect to similar requests directed to DIRECTV. Liberty Media is contractually obligated to maintain the confidentiality of information that it may have concerning businesses that were spun off to Liberty Global, Inc., particularly information concerning marketing, programming, revenue, margins, pricing, promotion, planning, demand analysis, and plans and proposals for future services on a system-specific basis, the disclosure of which would likely result in competitive harm to Liberty Cablevision of Puerto Rico.

Finally, Liberty Media seeks enhanced protection for documents and information concerning its agreements with sports teams, leagues or organizations as well as its deliberations and decisions about launching new sports programming networks. Information concerning sports rights is highly sensitive competitive information and disclosure of that information will result in competitive harm to Liberty Media and to the sports rights holders involved. In addition, information concerning Liberty Media's deliberations and decisions about launching new sports programming networks is proprietary to Liberty Media. Disclosure of such information to other entities that may seek to obtain sports rights in competition with Liberty Media would be severely detrimental to the competitive interests of Liberty Media.

In addition, to the extent any of the Applicants produces data in electronic spreadsheet format,¹¹ they request that the Commission establish access procedures similar to those used in the *Adelphia* proceeding.¹² Specifically, outside counsel and consultants for parties to this proceeding would be granted access to such spreadsheets at

¹¹ The information requests specifically direct production of data responsive to Requests II.A, II.B, and II.E to DIRECTV and Requests II.A through II.E to Liberty Media only in machine-readable spreadsheet format.

¹² *Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp. – Data Access Order*, 21 FCC Rcd. 1161, ¶¶ 6-9 (Med. Bur. 2006).

the offices of Applicants' outside counsel, where they will be provided with a private and secure workplace with adequate and secure computer capacity to load and run their analytical software. Such outside counsel and consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as-needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. They may print two copies of their analysis, one that is to be submitted to the Commission for purposes of this proceeding and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the terms of the protective order(s) in this proceeding. They may also take notes as necessary to perform their analysis. While such outside counsel and consultants may also print any intermediate steps or work produce necessary to perform their analysis, those materials must remain at the private, secured workplace at the offices of Applicants' outside counsel and may not be removed therefrom. If any analysis based upon this data is submitted in this proceeding, the party will also have to file an affidavit at the time of such submission certifying that its outside counsel and consultants have removed from Applicants' outside counsel's office only their notes and two copies of the final work product that will be submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes) that they have removed.

If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.

Sincerely yours,

|s\
William M. Wiltshire
Counsel for The DIRECTV Group, Inc.

|s\
John C. Quale
Counsel for News Corporation

|s\
Robert L. Hoegle
Counsel for Liberty Media Corporation

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July 3, 2007

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cc: Tracy Waldon
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