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JUN 30 2009

Federal Communications Commission
Office of the Secretary

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ATTORNEYS AT LAW

FOR PUBLIC INSPECTION

November 24, 2008

BY HAND DELIVERY

Royce Sherlock
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

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Federal Communications Commission
Bureau / Office

Re: **MB Docket No. 07-18**

Dear Ms. Sherlock:

Condition I to the *Liberty Media-DIRECTV Order* requires that, within nine months from release of that order, the Applicants must provide a description of their plan to sever all of the attributable interests connecting DIRECTV Puerto Rico Ltd. (“DTVPR”) and Liberty Cablevision Puerto Rico, Ltd. (“LCPR”), either by divestiture or by otherwise making the interest non-attributable (the “Divestiture Condition”).¹ In order to meet this requirement, The DIRECTV Group, Inc. (“DIRECTV”) and Liberty Media Corporation (“Liberty Media”) (collectively, “Applicants”) hereby submit a non-redacted copy of that description (the “Response”), attached hereto as Exhibit A. As explained in the Response, DIRECTV has assumed responsibility for satisfying the Divestiture Condition, and the matters discussed in the response relate directly to DIRECTV’s efforts in this regard. DIRECTV respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to redacted portions of the Response shown in Exhibit B hereto, as that material contains sensitive trade secrets, and commercial and financial information that fall within Exemption 4 of the Freedom of Information Act (“FOIA”).²

¹ See *In the Matter of News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, 23 FCC Rcd. 3265, 3343 (2008) (“*Liberty Media-DIRECTV Order*”).

² 5 U.S.C. § 552(b)(4).

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Royce Sherlock
November 24, 2008
Page 2 of 5

Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”³ DIRECTV is voluntarily providing this trade secret and commercial and financial information “of a kind that would not customarily be released to the public” in response to a condition imposed by the Commission; therefore, this information is “confidential” under Exemption 4 of FOIA.⁴ Moreover, DIRECTV would suffer substantial competitive harm if the redacted portions of the Response were disclosed.⁵

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,⁶ DIRECTV hereby states as follows:

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT⁷

DIRECTV seeks confidential treatment of those portions of the Response that have been redacted from the version attached hereto as Exhibit B. These portions of the Response reflect the steps in and results of a confidential sale process for DTVPR, and therefore should be treated as a trade secret.

2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁸

DIRECTV is submitting a non-redacted version of the Response to the Commission, attached hereto as Exhibit A, pursuant to a requirement imposed in a condition of the *Liberty Media-DIRECTV Order* calling for a description of the Applicants’ plans to satisfy the Divestiture Condition. Applicants are also submitting a redacted version of this document as Exhibit B hereto, which has also been filed with the Secretary.

³ *Id.*

⁴ *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁵ *See National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁶ 47 C.F.R. § 0.459(b).

⁷ 47 C.F.R. § 0.459(b)(1).

⁸ 47 C.F.R. § 0.459(b)(2).

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED⁹

The Response contains highly sensitive, confidential, and proprietary commercial information relating to steps in and results of a confidential sale process for DTVPR. DIRECTV treats such information as highly confidential and does not disclose it to third parties, as that could compromise the bidding process. As such, the information qualifies as material that “would customarily be guarded from competitors.”¹⁰ The redacted information contained in the Response would not customarily be released by the persons from whom they are obtained and are therefore covered by Exemption 4 of FOIA when, as here, it is submitted by such persons to the Government.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION¹¹

Confidential information in the Response concerns highly competitive markets in which DIRECTV and DTVPR participate. The Response contains trade secrets and confidential information that is commercially sensitive within the multichannel video programming distribution (“MVPD”) industry and the market for the sale and acquisition of MVPD assets, wherein DIRECTV faces fierce competition from terrestrial and satellite MVPD competitors.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM¹²

Disclosure of the redacted material could compromise the DTVPR divestiture process by providing bidders highly confidential information about the number of other bidders, their level of interest, and DIRECTV’s assessment of the relative merits of their proposals. This could both give one bidder an unfair advantage over other bidders and result in less favorable offers for DTVPR. As a result, DTVPR might not go to the party that could put it to its highest and best use as an MVPD competitor serving the Puerto Rico market.

⁹ 47 C.F.R. § 0.459(b)(3).

¹⁰ 47 C.F.R. § 0.457(d)(2).

¹¹ 47 C.F.R. § 0.459(b)(4).

¹² 47 C.F.R. § 0.459(b)(5).

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE¹³

In order to participate fully in the DTVPR sale process, prospective bidders were required to execute a Non-Disclosure Agreement obligating them not to disclose information about that process.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES¹⁴

The information redacted from the Response is not available to the public and, to the best of DIRECTV's knowledge, has not been disseminated to non-DIRECTV personnel without the execution of a Non-Disclosure Agreement. Accordingly, DIRECTV requests that the Commission accord the information covered by this Request confidential treatment under Sections 0.457 and 0.459 of the Commission's rules.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE¹⁵

DIRECTV requests that the information redacted from the Response be withheld from public disclosure for a period of two years. DIRECTV's divestiture efforts are ongoing, and given the highly unfavorable economic conditions currently prevailing, it may be some time before a transaction can be finalized that will satisfy the Divestiture Condition. Release of the redacted information prior to that time could undermine DIRECTV's efforts and further prolong the divestiture process.

* * *

For the foregoing reasons, DIRECTV respectfully requests that the redacted portions of the Response be granted confidential status and be withheld from public inspection. If confidential treatment is not granted for all or any part of this confidential material, DIRECTV requests that all non-redacted copies of the Response be returned to DIRECTV.

¹³ 47 C.F.R. § 0.459(b)(6).

¹⁴ 47 C.F.R. § 0.459(b)(7).

¹⁵ 47 C.F.R. § 0.459(b)(8).

HARRIS, WILTSHIRE & GRANNIS LLP

Royce Sherlock
November 24, 2008
Page 5 of 5

If you have any questions, please do not hesitate to contact undersigned counsel.

Respectfully submitted,


William M. Wiltshire
Counsel for DIRECTV, Inc.

Enclosures

cc: Marlene H. Dortch, Secretary

Exhibit A

REDACTED

Exhibit B

REDACTED – FOR PUBLIC INSPECTION

November 24, 2008

BY HAND DELIVERY

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

Re: *MB Docket No. 07-18*

Dear Ms. Dortch:

Condition 1 to the *Liberty Media-DIRECTV Order* requires that, within one year from release of that order, all of the attributable interests connecting DIRECTV Puerto Rico Ltd. (“DTVPR”) and Liberty Cablevision Puerto Rico, Ltd. (“LCPR”) be severed, either by divestiture or by otherwise making the interest non-attributable (the “Divestiture Condition”).¹ As also required under that condition, The DIRECTV Group, Inc. (“DIRECTV”), Liberty Media Corporation (“Liberty Media”), and News Corporation hereby submit to the Commission a description of DIRECTV’s plan for compliance.

As set forth in the Separation Agreement previously filed with the Commission,² because neither News Corporation nor Liberty Media would be able to satisfy the Divestiture Condition, DIRECTV agreed to do so within the specified time period in exchange for an additional capital contribution. Accordingly, DIRECTV has assumed responsibility for compliance by either divesting its interest in DTVPR or rendering that interest non-attributable under the Commission’s rules, and neither Liberty Media, News Corporation, nor their counsel has participated in the process described below.

In an effort to identify potential purchasers of DTVPR, DIRECTV hired
REDACTED
DIRECTV began to contact strategic and financial investors that might be interested in
acquiring DTVPR this summer, REDACTED

¹ See *In the Matter of News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, 23 FCC Rcd. 3265, 3343 (2008) (“*Liberty Media-DIRECTV Order*”).

² See Letter from Robert L. Hoegle, William M. Wiltshire, and John C. Quale to Marlene H. Dortch, MB Docket No. 07-18, Exhibit B (filed Mar. 13, 2008).

REDACTED

In order to meet the timetable established in the *Liberty Media-DIRECTV Order*, DIRECTV set November 5, 2008 as the deadline for final bids.

REDACTED

Accordingly, DIRECTV anticipates that it will pursue one of two options to satisfy the Divestiture Condition. The first alternative would be to sell the asset.

REDACTED

The second alternative would be to place DTVPR in a non-attributable trust, consistent with past Commission precedent. DIRECTV is currently reviewing its options, and will make a timely decision to satisfy the Divestiture Condition within the next three months.

If you have any questions, please do not hesitate to direct them to undersigned counsel.

Respectfully submitted,

/s/

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/s/

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November 24, 2008
Page 4 of 4

cc: Sarah Whitesell
Mania Baghdadi
Royce Sherlock
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