

MB 11-14

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

JOINT PETITION FOR DECLARATORY RULING

In the Matter of)
)
Joint Petition For Declaratory Ruling That The)
Liberty Order Does Not Authorize Third-Party)
Subpoenas)
)
To: The Commission)
)
)
)

File No.: _____

FILED/ACCEPTED

JAN 12 2011

Federal Communications Commission
Office of the Secretary

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I. Introduction And Summary

Pursuant to Section 1.2 of the Commission's rules,¹ Comcast Corporation ("Comcast"), DIRECTV, Inc. ("DIRECTV"), and News Corporation ("News Corp.") (collectively, "Petitioners"), jointly request that the Federal Communications Commission ("Commission") issue a declaratory ruling concerning certain arbitration-related conditions of various merger orders, including the *Liberty Order*.² Petitioners specifically request that the Commission issue an order declaring that:

(1) the Federal Arbitration Act ("FAA") and state laws do not govern arbitrations brought pursuant to Commission merger orders, including the *Liberty Order*;

(2) an arbitrator appointed under the orders has no jurisdiction or authority to compel third-party participation in the arbitration proceeding, through discovery, pre-hearing or hearing testimony, or otherwise; and

(3) the arbitration conditions in the merger orders authorize only limited party discovery and do not authorize third-party subpoenas to or discovery of the Petitioners (including as purportedly ordered by the Arbitrator).

The requested declaratory ruling is necessary because Arbitrator Melissa Hubbard (the "Arbitrator") has improperly issued unauthorized subpoenas to Petitioners seeking broad and burdensome third party discovery in an ongoing arbitration initiated pursuant to the *Liberty Order*, styled *Armstrong Utilities, Inc. v. DIRECTV Sports Net Pittsburgh, LLC*, AAA Case No. 55-472-E-00247-10.³ Petitioners are not parties to the arbitration and have not consented to the

¹ See 47 C.F.R. § 1.2 (stating that the Commission "may . . . issue a declaratory ruling . . . removing uncertainty").

² *In the Matter of News Corporation, DIRECTV Group, and Liberty Media Corporation*, 23 FCC Rcd. 3265 (2008) ("*Liberty Order*"); see also *In the Matter of Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, 21 FCC Rcd. 8203 (2006) ("*Adelphia Order*").

³ Petitioners are equally concerned that, absent a declaratory ruling, other arbitrators will similarly attempt to compel third party participation or discovery in proceedings brought pursuant to current or future Commission merger orders that include arbitration conditions.

Arbitrator's jurisdiction. The subpoenas purport to require representatives of each Petitioner to appear at the arbitration hearing, to produce highly confidential documents and information improperly demanded by the subpoenas and to present substantive testimony about those materials.

As more fully shown below, the subpoenas exceed the Arbitrator's authority and are invalid. By its express terms, the *Liberty Order* authorizes only a limited exchange of information in the possession of the parties as part of expedited final offer arbitration. The *Liberty Order* does not authorize the compulsion of third-party participation in the arbitrations, let alone the expansive, invasive and improper requests for highly confidential third-party information contained in the Armstrong subpoenas. A declaratory ruling is necessary to preserve the integrity of the arbitration process and to protect Petitioners and other third parties from the burdens and other harms that would result from such unauthorized and inappropriate discovery in connection with final offer arbitrations initiated under the *Liberty Order* and other similar merger orders.

II. Background

This matter arises from final offer arbitration initiated by Armstrong Utilities, Inc. ("Armstrong") against DIRECTV Sports Net Pittsburgh, LLC ("DSN-P") pursuant to the *Liberty Order*. In late October and early November 2010, the Arbitrator issued original and supplemented subpoenas to Petitioners at the request of Armstrong. The subpoenas cited to the FAA and Pennsylvania or California law as authority for the requested discovery, and together (1) sought the disclosure and production of thousands of pages of highly confidential affiliation agreements and related proprietary documents and business information; and (2) required Petitioners to compile, summarize, or reformat numerous categories of commercially sensitive data, including internal planning and business strategies, license fees by zone, net effective fees,

subscriber numbers, guaranteed events, packaging terms, and penetration rates and games delivered, for up to a seven-year period.⁴

Petitioners Comcast and News Corp. objected to the purported subpoenas on the basis that the Arbitrator does not have jurisdiction to compel discovery from third parties. Petitioner DIRECTV also preserved jurisdictional objections as a non-party to the proceeding.⁵

On November 19, 2010, the Arbitrator nonetheless ruled that she had authority “under Section 7 of the FAA” to require the subpoenaed documents “to be produced at the actual hearing by an authorized representative from each third party entity who can testify as to the material terms and conditions of such documents.”⁶ Based on this ruling, Armstrong amended its discovery subpoenas to demand that witnesses from each of the Petitioners appear at the scheduled hearing with the requested documents and information. Although Armstrong professed to narrow the subpoena’s requests, the amended subpoenas to Comcast and DIRECTV included new requests for expanded information which were not propounded in the original subpoenas.⁷

Arbitrator Hubbard signed and reissued the amended subpoenas to Petitioners on December 30, 2010. The amended subpoenas purport to require Petitioners to appear at the

⁴ Copies of the initial subpoenas are attached as Exhibit A.

⁵ Copies of Petitioners’ correspondence objecting to the subpoenas are attached as Exhibit B.

⁶ *See Armstrong Utilities, Inc. v. DIRECTV Sports Net Pittsburgh, LLC*, AAA Case No. 55-472-E-00247-10, Order (Nov. 19, 2010) (attached as Exhibit C).

⁷ Specifically, with respect to Comcast, Armstrong makes five new requests in the amended subpoena related to Versus, L.P., a national network which contracts on a stand-alone basis with distributors, independent of Comcast’s RSNs. With respect to DIRECTV, Armstrong makes six new requests in the amended subpoena related to such varied topics as Versus, L.P., compliance with most favored nations clauses, the number of games delivered by various RSNs, and moneys paid and received in connection with carriage of various services.

arbitration hearing, with their highly confidential documents and information, at the AAA's regional offices in Philadelphia on January 24, 2011 at 9:00 a.m.⁸

III. Argument

A. The Liberty Order And Similar Merger Orders Do Not Authorize Arbitrators To Compel Third-Party Participation In These Final Offer Arbitrations.

The proceeding between Armstrong and DSN-P was not originated under a contract or agreement to arbitrate, but instead arises solely from an arbitration condition imposed by the Commission in approving a merger transaction in the *Liberty Order*.⁹ The *Liberty Order* provides an avenue for multichannel video programming distributors ("MVPDs") to initiate final offer or "baseball-style" arbitration against certain regional sports networks ("RSNs"). The arbitration condition is modeled on similar remedies imposed in other merger orders.¹⁰ Under the condition, the arbitrator is required to select whichever party's final offer most closely reflects the fair market value of the programming rights at issue.

The *Liberty Order* contains specific procedures governing these final offer arbitrations.¹¹ The arbitrations are to be conducted "under the expedited procedures of the [commercial arbitration rules, then in effect, of the AAA] . . . *but including the modifications* to the Rules" set forth in the order.¹² Most relevant here, Section IV.B.5 of Appendix B provides that, in making

⁸ Copies of the amended subpoenas are attached as Exhibit D.

⁹ The applicable arbitration condition is Appendix B, § IV, titled "Additional Conditions Concerning Access to Regional Sports Networks."

¹⁰ See *Liberty Order* ¶ 5 ("[W]e require the Applicants to abide by . . . arbitration conditions modeled on the conditions imposed in the News Corp.-Hughes proceeding."); *Adelphia Order* ¶ 156 ("[W]e impose a remedy based on commercial arbitration such as that imposed in the *News Corp.-Hughes Order*.").

¹¹ *Liberty Order*, App. B § IV.B.3.

¹² *Id.* at App. B, § IV.B.1 (emphasis added).

the required fair market valuation, an arbitrator “may consider any relevant evidence (and may require the *parties* to submit *such evidence to the extent that it is in their possession*)”¹³

The Commission further clarified that “‘possession’ . . . mean[s] *actual possession or control*.”¹⁴

Similarly, Part F of Appendix B modifies certain other expedited procedures of the commercial arbitration rules and again authorizes only a limited “[e]xchange of [i]nformation” among the parties, consistent with Section IV.B.5.¹⁵ Together, these express terms restrict discovery in the arbitrations to a limited exchange of information in the “actual possession or control” of the parties.

In support of its request for the subpoenas, Armstrong relied on AAA Rule 31(d) as the basis for its position that third parties such as the Petitioners could be subject to subpoenas in connection with the arbitration hearing. Armstrong’s reliance on AAA Rule 31(d) is misplaced for several reasons.

First, Section IV.B.5. and Part F of the *Liberty Order* expressly limit arbitration discovery to an exchange of affiliation agreements and related information in the actual possession of the parties. These provisions thus modify (*i.e.*, supersede) AAA Rule 31(d), to the extent that it can be read to authorize any third-party discovery.¹⁶

¹³ *Id.* at App. B, § IV.B.5 (emphasis added).

¹⁴ *Id.* at App. B, § IV.B.5 & n.15 (emphasis added).

¹⁵ *Id.* at App. B, § IV.F.4.

¹⁶ *Id.* at App. B, § IV.B.1 (expressly noting that the Appendix B provisions govern the arbitrations and modify any inconsistent AAA rules).

Second, as a general arbitration rule, AAA Rule 31(d) cannot be invoked when it conflicts with AAA's expedited procedures, which are expressly adopted in the *Liberty Order*.¹⁷ The *Liberty Order* itself imposes additional expedited time periods for conducting the arbitrations, requiring, among other things, a final decision by the arbitrator within 30 days of her appointment.¹⁸ To facilitate these expedited proceedings, the Commission necessarily restricted the scope of discovery that might otherwise have been available under the traditional program access rules, general AAA rules, or other regimes. The expedited nature of the arbitration condition precludes any inference that the Commission authorized the kind of extensive and invasive third-party evidence demanded by the Armstrong subpoenas. By choosing to invoke final offer arbitration under the *Liberty Order*, rather than to bring a program access complaint, Armstrong relinquished whatever rights it may have had to seek broad-ranging third-party discovery in exchange for a more streamlined, expedited remedy.¹⁹

Finally, courts have made clear that an arbitrator's authority under AAA Rule 31(d) "is best seen . . . as nothing more than authorization by the parties -- *binding only upon the parties* -- for an arbitrator to order non-party discovery, subject to the willingness of the non-party voluntarily to comply with such order." *Life Receivables Trust v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 218 (2d Cir. 2008) (emphasis added) (citation omitted). "[W]hen a non-party refuses to comply voluntarily . . . the party seeking discovery is limited to" the FAA as the only "vehicle to enforce the subpoena." *Id.* The FAA is not applicable to these final offer

¹⁷ See AAA R-1(b) ("The Expedited Procedures shall be applied . . . in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.").

¹⁸ *Liberty Order*, App. B, § IV.B.1.

¹⁹ To date, Comcast and DIRECTV have collectively been involved in nearly a dozen final offer arbitrations under the applicable merger orders and have dealt with similar discovery issues. No third-party discovery has ever been permitted in any of those arbitrations.

arbitrations for the reasons shown below. Thus, the Arbitrator lacks authority to enforce the subpoenas against Petitioners under AAA Rule 31(d) -- even assuming the rule (a) was not expressly modified by other parts of the *Liberty Order* (which it was) and (b) did not otherwise conflict with the expedited nature of the arbitration proceedings (which it plainly does).²⁰

B. Neither The FAA Nor State Law Applies To Or Authorizes Third-Party Discovery In The Final Offer Arbitrations.

The Arbitrator likewise erred in relying on the FAA to issue third-party subpoenas in connection with the Armstrong/DSN-P proceeding. Arbitration is typically a matter of voluntary agreement. The FAA governs private arbitration contracts that implicate interstate commerce and, as the Supreme Court has held, requires courts to “enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms.”²¹

Given that the Armstrong/DSN-P arbitration arises from a federal agency order, not a private contract, the FAA has no application and is not a valid basis for issuance of the subpoenas. Specifically, in seeking issuance of the subpoenas by the Arbitrator here, Armstrong

²⁰ The amended subpoena issued to DIRECTV is also invalid under the FAA. Specifically, the subpoena to DIRECTV purports to require DIRECTV, a non-party California corporation, to send a substantive witness with confidential documents to a hearing in Philadelphia, Pennsylvania. But the FAA does not provide for such nationwide service of process, *see Dynegy Midstream Servs. v. Trammochem, L.P.*, 451 F.3d 89, 96 (2d Cir. 2006), and the Arbitrator lacks personal jurisdiction over DIRECTV to compel a cross-country trip by a DIRECTV witness to attend the hearing, *see Legion Ins. Co. v. John Hancock Mut. Life Ins. Co.*, 33 F. App’x 26 (3d Cir. 2002); *Dynegy Midstream Servs.*, 451 F.3d at 96. Thus, even if the FAA were to apply (which it does not), the subpoena issued to DIRECTV would not conform with its requirements. The subpoena issued to News Corp. likewise is improper in that it seeks to compel News Corp. to turn over information in the files of Fox Sports Net, Inc., which – although affiliated and indirectly owned by News Corp. – is nonetheless a distinct operating company. Because Fox Sports Net, Inc. does not operate as a mere agency or instrumentality of News Corp., and because, as an operational matter, News Corp. is not even Fox Sports Net, Inc.’s direct corporate parent, it is false to assume that Fox Sports Net, Inc.’s records are in the possession, custody or control of News Corp. for purposes of gaining subpoena access to such records.

²¹ *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989).

wrongly described the *Liberty Order* as an “agreement to arbitrate” subject to the FAA.²² As the Commission well knows, a merger order is a regulatory grant of approval of an application -- not a contract.²³ The final offer arbitration initiated by Armstrong is authorized solely under the conditions imposed in the *Liberty Order*. Section IV.F.2. of Appendix B reflects this fact, providing that the “[a]rbitration shall be initiated as provided in Rule R-4 except that, . . . the MVPD shall not be required to submit copies of the arbitration provisions of the contract, *but shall instead refer to this Order* in the demand for arbitration. Such reference shall be sufficient for the AAA to take jurisdiction.”²⁴ Accordingly, the FAA is not applicable and cannot provide a basis for the Arbitrator’s issuance of the subpoenas to Petitioners.

Indeed, the Commission has distinguished the arbitration conditions imposed in the *Liberty Order* and other merger orders from the kind of voluntary, private contract arbitration governed by the FAA. In overturning the award in another final offer arbitration, the Media Bureau specifically noted that “*in contrast to an arbitration clause agreed upon by private parties in a contract negotiation*, the arbitration provision at issue here was adopted by the Commission, thus making the Commission uniquely qualified to interpret its scope.”²⁵ The Commission has also noted that arbitration conditions imposed in the merger orders provide for

²² Letter from J. Scullion and K. Harkins to Melissa Hubbard, Arbitrator, *Armstrong Utilities, Inc. v. DIRECTV Sports Net Pittsburgh, LLC*, AAA Case No. 55-472-E-00247-10, at 4 (Nov. 18, 2010) (attached as Exhibit E).

²³ See *Liberty Order* ¶¶ 1-5 (“we approve, subject to conditions, the application . . . for consent for the transfer of control of various Commission licenses and authorizations”; “[a]pproval of the Application is necessary”; “we grant the instant Application subject to certain conditions”).

²⁴ *Id.* at App. B., § IV.F.2 (emphasis added). AAA Rule R-4 describes the arbitration initiation procedures under a contractual arbitration provision.

²⁵ *Fox Sports Net Ohio, LLC v. Massillon Cable TV, Inc.*, DA 10-2203, n.45 (Nov. 18, 2010) (emphasis added) (“*Massillon Order*”).

de novo review of arbitration awards by the agency.²⁶ In contrast, arbitrations subject to the FAA are final and the grounds for judicial review of an arbitration award are strictly limited.²⁷ And, most recently, the Commission rejected an argument that the federal policy favoring arbitration, as codified in the FAA, applies to the merger order arbitration conditions. The Commission instead again clarified that the arbitration conditions are creatures of the merger orders and are *not* governed by the FAA.²⁸

Thus, the Arbitrator erred by relying on the FAA as authority for the third-party subpoenas issued to Petitioners. Her authority to order discovery derives solely from the *Liberty Order*, which, as shown, confines the exchange of information in the arbitrations to the parties alone.

The Arbitrator further erred by invoking Pennsylvania law as authority for the revised subpoenas.²⁹ The arbitration provisions of the Pennsylvania Consolidated Statutes apply only

²⁶ See *Liberty Order*, App. B § IV.C.1. The Commission has explained that providing for *de novo* review of an arbitrator's award reflects both constitutional and statutory limits on a federal agency's delegation authority and use of arbitration under the Alternative Dispute Resolutions Act ("ADRA"), 5 U.S.C. § 575 *et seq.* See *In the Matter of Comcast Corporation Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, 22 FCC Rcd. 17938, ¶ 4 n.13 (2007); accord *In the Matter of Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, 23 FCC Rcd. 15783, ¶ 52 (2008).

²⁷ See 9 U.S.C. §§ 9-11; *Hall St. Assocs., LLC v. Mattel, Inc.*, 522 U.S. 576, 584-86 (2008) (holding that "[9 U.S.C.] §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification" and that these grounds are for "extreme arbitral conduct" such as "corruption," "fraud," "evident partiality," "misconduct," "misbehavior," and other such "egregious" behaviors).

²⁸ See *Massillon Order* ¶¶ 7-8, n.45 (rejecting the claimant's argument that the FAA and its presumption of arbitrability applied to the arbitration, and reaffirming that the arbitration remedy is a creature of the agency's creation).

²⁹ Although the original subpoena issued to DIRECTV invoked California law and called for production of documents in California, all three revised subpoenas invoke Pennsylvania law and require production and attendance in Pennsylvania.

where there is (1) an agreement to arbitrate, in writing; and (2) the agreement expressly provides for arbitration under the Pennsylvania Uniform Arbitration Act.³⁰ Neither of these prerequisites exists here. As shown, the arbitration condition in the *Liberty Order* is not an agreement to arbitrate; nor does it provide for Pennsylvania law to apply as the governing law.³¹

C. A Declaratory Ruling Is Needed To Preserve The Effectiveness Of The Final Offer Arbitrations And To Protect Third Parties From The Harms And Burdens Of Unauthorized Discovery.

A declaratory ruling by the Commission is critical to preserve the integrity of the arbitration process and to protect third parties from unauthorized, highly invasive and potentially harmful discovery of their highly confidential information. The sweeping scope of the wide-ranging subpoenas propounded by Armstrong, and wrongly authorized by the Arbitrator, amply demonstrate the burdens, costs and delays that would result if third-party discovery were permitted in final offer arbitrations conducted under the Commission's merger orders.

To illustrate, the Armstrong subpoena to Comcast alone demands, among other things, the following:

- documents "sufficient to show, for *each* distributor of *any* Comcast RSN programming," the relevant per subscriber rates, license fees, numbers of subscribers by zone, number of guaranteed pro events, required packaging, subscriber penetration, and the number of pro and collegiate events "actually delivered, in each case, for the period January 1, 2008 to present (or, if available, any future years through 2015);

³⁰ 42 Pa. Cons. Stat. Ann. § 7302; *see also Midomo Co. v. Presbyterian Hous. Dev.*, 739 A.2d 180, 183 (Pa. Super. Ct. 1999).

³¹ Pennsylvania state law also provides for compulsory arbitration, but only when ordered by a state court in a case properly falling within its jurisdiction, and only then where the value of the claim is less than \$50,000 or involves title to real property. 42 Pa. Cons. Stat. Ann. § 7361. To the extent that 42 Pa. Cons. Stat. Ann. § 7309 grants any subpoena power to arbitrators, therefore, the provision has no application and is not a valid basis for issuance of the subpoenas in this arbitration.

- “complete agreements, in whatever form . . . concerning the carriage of *any* Comcast sports programming by DIRECTV, including *any* Comcast RSN or Versus”;
- documents “sufficient to show all monies paid to or received from *any* entity in connection with *each* of the [demanded affiliation] agreements”; and
- all documents “that actually discuss Armstrong from January 1, 2008 to present.”³²

Responding to these requests would require the production of dozens of highly confidential affiliation agreements and thousands of pages of other commercially sensitive information, much of which would have to be searched for and compiled from multiple sources.³³ The subpoenas propounded to DIRECTV and News Corp. contain similarly invasive, overly broad, and unduly burdensome requests.³⁴

Requiring disclosure of this highly confidential information would also result in significant competitive harm to Petitioners. The Commission has previously acknowledged that affiliation agreements are the most sensitive, highly confidential information that non-party MVPDs and networks possess.³⁵ Thus, “disclosure of programming contracts between

³² See Exhibit A, Subpoena Reqs. 1, 3, 6, and 7 (emphasis added).

³³ Even apart from being wholly unauthorized, the Armstrong subpoenas contravene federal discovery rules designed to protect third parties from overly burdensome discovery. *Cf.* Fed. R. Civ. P. 45(c)(1) (“A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.”); Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii) (stating the court must limit the extent of discovery if it determines that “the burden or expense of the proposed discovery outweighs its likely benefit” or is unreasonably cumulative or duplicative, among other reasons).

³⁴ See Exhibits A and B.

³⁵ See *In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd. 24816, ¶ 61 (1998) (stating that the Commission has “consistently recognized that disclosure of programming contracts between [MVPDs] and programmers can result in substantial competitive harm to the information provider”). The Commission’s Media Bureau has given such contracts enhanced confidential treatment due to their “highly sensitive” nature. *In the Matter of EchoStar Satellite*

multichannel video program distributors and programmers can result in substantial competitive harm to the information provider . . .”³⁶ Ultimately, consumers would bear this harm in the form of higher rates.

The potential burdens and harms that would be imposed by the subpoenas are further compounded by the purported requirement that representatives of each Petitioner must personally attend the arbitration hearing in Philadelphia to present all of the demanded documents and information and provide testimony. The Arbitrator has allowed one additional day of hearings to “accommodate” these personal appearances and disclosures of highly confidential information by multiple competitors. Apart from the impracticality of this approach, no amount of time or procedural safeguards would alleviate the immense and ultimately irreparable burden of forcing Petitioners to produce such vast amounts of information based on wholly unauthorized, improper subpoenas.³⁷

L.L.C. v. Home Box Office, Inc., 21 FCC Rcd. 14197, ¶ 9 (2006); *Adelphia Order* ¶ 7. Commission rules likewise provide that affiliation agreements between programmers and MVPDs are generally exempt from disclosure under the Trade Secrets exemption of the Freedom of Information Act. *See* 47 C.F.R. § 0.457(d)(1)(iv).

³⁶ *See, e.g., In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd. 24816, ¶ 61 (1998).

³⁷ Apart from the potential harms caused by these unauthorized third-party subpoenas, there is inadequate protection for third-party information in the parties’ possession that is exchanged in discovery. The protective order in the Armstrong arbitration lacks adequate safeguards for such third party information. The Commission and other arbitrators have properly restricted outside counsel and experts who receive highly confidential information in these kind of proceedings from engaging in negotiations and other competitive decision-making activities for a reasonable time period. *See, e.g., In re TCR Sports Broadcasting Holding, L.L.P., d/b/a/ Mid-Atlantic Sports Network v. Comcast Corporation*, Protective Order, ¶ 8(e), MB Docket No. 08-214; Second Confidentiality and Protective Order ¶ 8(e), entered in *DIRECTV, Inc. v. Comcast Corporation*, AAA Case No. 71-472-E-00122-09 (including expert and outside counsel restrictions from October 20, 2009 until February 1, 2012) (excerpt attached as Exhibit F); Confidentiality and Protective Order ¶ 8(f), entered in *DISH Network L.L.C. v. Comcast Corporation, Comcast SportsNet California, Comcast SportsNet Chicago*, AAA Case Nos. 16-472-E-00118-10 and 16-472-E-00211-10 (containing restrictions on outside counsel and experts

IV. Conclusion

For all of these reasons, Petitioners respectfully request that the Commission issue an order (1) declaring that (a) the FAA and state laws do not govern arbitrations brought pursuant to the *Liberty Order* and similar merger orders; (b) an arbitrator appointed under the orders has no jurisdiction or authority to compel third-party participation in the arbitration proceeding, through discovery, pre-hearing or hearing testimony, or otherwise; and (c) the arbitration conditions in the merger orders authorize only limited party discovery and do not authorize third-party subpoenas to or discovery of the Petitioners (including as purportedly ordered by the Arbitrator); and (2) granting such other relief as the Commission deems just and appropriate to protect Petitioners and other potential third parties from the potential harms, burdens and costs that would result from discovery such as the unauthorized subpoenas issued in *Armstrong Utilities, Inc. v. DIRECTV Sports Net Pittsburgh, LLC*, AAA Case No. 55-472-E-00247-10.

for a period of approximately twenty months) (excerpt attached as Exhibit G); *see also* Comments of DIRECTV, Inc., Exhibit B ¶ 8(e), MB Docket No. 10-56 (June 21, 2010) (urging the Commission to adopt a two-year restriction on experts and outside counsel in Comcast's pending acquisition of NBC-Universal). The protective order in the Armstrong arbitration contains no such restrictions. Thus, any information that Petitioners were forced to produce pursuant to the unauthorized subpoenas could be disclosed to the parties' counsel and experts without any restriction on their future involvement in competitive decision-making or negotiations adverse to Petitioners. Such information cannot be "purged" from these persons' memories, giving significant unfair advantages to the party who possesses such inside information if used in subsequent matters involving Petitioners.

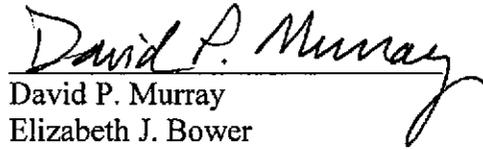
These concerns are not theoretical. Although the parties have not disclosed their full slate of anticipated experts to Petitioners, Comcast is aware of at least one of the parties' experts who has been, and is expected to be, involved in competitive decision-making and negotiations directly adverse to Comcast on behalf of another RSN.

Respectfully submitted,



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CERTIFICATE OF SERVICE

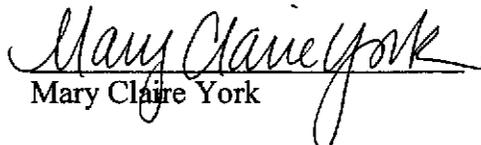
I, Mary Claire York, hereby certify that on January 12, 2011, I caused true and correct copies of the enclosed Joint Petition For Declaratory Ruling and supporting exhibits were served via hand delivery to the following, except for those marked with (*), which were served via overnight delivery:

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ARBITRATION PROCEEDINGS IN AND BEFORE
AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between:

----- x

ARMSTRONG UTILITIES INC., :

Case No. 55 472 E 00247 10

Claimant, :

-against-

**SUBPOENA TO
DIRECTV**

DIRECTV SPORTS NET PITTSBURGH, LLC., :

Respondent. :

----- x

THE PEOPLE OF THE STATE OF CALIFORNIA

TO: DIRECTV
2230 E. Imperial Hwy
El Segundo, CA 90245

Pursuant to the laws of the State of California and the Federal Arbitration Act, at the request of one or more parties to this arbitration and having found good cause for the issuance of this subpoena, the undersigned hereby **ORDERS** and **COMMANDS** you to produce for inspection and copying, at the offices of Proskauer Rose LLP, 2049 Century Park East 32nd Floor, Los Angeles, CA 90067-3206 (or such other place as may be agreed upon) on or before November 22, 2010, the documents described in Exhibit A, appended hereto.

Dated: October 28, 2010

Signed: Melissa Hubbard
Melissa Hubbard, Arbitrator

Requested by: Jennifer Scullion
Cal. Bar. No. 183476
PROSKAUER ROSE LLP
1585 Broadway
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(212) 969-3000
Attorneys for Claimant

EXHIBIT A

INSTRUCTIONS AND DEFINITIONS

1. "FCC Order" means the FCC Memorandum and Order in *News Corp and DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee*, FCC 08-66, MB Docket No. 07-18.
2. "Document" shall mean any and all writings, graphics, or data compilations of any kind, including, but not limited to: paper and other physical documents and materials; electronically stored information, including, for example, Word documents, Excel spreadsheets, PowerPoint presentations, Adobe Acrobat files, emails (and any attachments thereto); jpeg, bitmap, HTML, and other graphical files and materials; digital and hard copy pictures; audio and visual recordings in whatever format; and revisions and former or alternative versions of any of the foregoing. The term "document" extends to and specifically encompasses all non-identical copies of any responsive document and all such non-identical copies should be produced.
3. "Armstrong" shall mean Armstrong Utilities Inc.
4. "Bundled Agreement" has the same meaning as that term is used in the FCC Order, Appendix B, Part IV, para. B.5.
5. "Comcast" means Comcast Corporation and its subsidiaries.
6. "Concerning" means relating to, referring to, describing, evidencing or constituting.
7. "DirecTV" has the meaning used in the 10-K submitted by DIRECTV for the fiscal year ended December 31, 2009.
8. "Fox" means Fox Entertainment Group, Inc. and its programming and distribution interests, including Fox Broadcasting Company and Fox Sports Net, Inc.

9. "FSN Pittsburgh" means Fox Sports Net Pittsburgh, LLC.
10. "Pittsburgh DMA" means the geographic area containing the counties of Allegheny, Armstrong, Butler, Beaver, Clarion, Fayette, Forest, Garrett (MD), Greene, Indiana, Lawrence, Monongalia (WV), Preston (WV), Verango, Westmoreland and Washington.
11. "Previous Contract" means the contract (and any amendments or addenda) that governed immediately prior to the most recent contract.
12. "RSN" has the same meaning as used in the FCC Order.

DOCUMENT REQUESTS

1. The complete agreements, in whatever form (including any bundled agreements, contracts, memoranda of understanding, letter/email agreements, side letters/emails, term sheet agreements, stipulations, protocols, or rate cards), concerning the carriage of the following services for the period October 24, 2005 to the present: (*i.e.* the period covered by Claimant's most current agreement with Respondent): FSN Pittsburgh, FSN Rocky Mountain, or FSN Northwest.

2. With respect to the current agreements for any of the services listed in Request 1, offers, counteroffers, proposals, terms sheets and similar documents, and any accompanying emails or cover letters, that were actually exchanged concerning the rates, fees, advertising, or number of events to be provided, including with respect to any surcharge.

3. The complete agreements, in whatever form (including any bundled agreements, contracts, memoranda of understanding, letter/email agreements, side letters/emails, term sheet agreements, stipulations, protocols, or rate cards), concerning the carriage of the following services for the period October 24, 2005 to the present::

- a) Fox RSNs (including Fox Sports Arizona, Fox Sports Carolinas, Fox Sports Detroit, Fox Sports Florida, Fox Sports Houston, Fox Sports Indiana, Fox Sports Kansas City, Fox Sports Midwest, Fox Sports North, Fox Sports Ohio, Fox Sports Oklahoma, Fox Sports West, Fox Sports South, Fox Sports Southwest, Fox Sports Tennessee, Fox Sports Wisconsin);
- b) Comcast RSNs (including Comcast SportsNet Bay Area, Comcast SportsNet California, Comcast SportsNet Chicago, Comcast SportsNet Philadelphia, Comcast SportsNet New England, Comcast SportsNet Washington, and Comcast/Charter Sports Southeast);

- c) Cox Sports TV;
- d) Mid-Atlantic Sports Network
- e) SportsTime Ohio;
- f) Altitude Sports & Entertainment;
- g) New England Sports Network;

4. With respect to the services listed in Request 3, offers, counteroffers, proposals, terms sheets and similar documents, and any accompanying emails or cover letters, that have actually been exchanged concerning the rates, fees, advertising, or number of events to be provided, including with respect to any surcharge during the period October 1, 2010 to the present.

5. With respect to the agreements described in Requests 1 and 3, quarterly summaries or reports that reflect (for each individual service) the number of DirecTV subscribers in the zones or DMAs covered.

6. With respect to the agreements described in Requests 1 and 3, summaries or reports that reflect (for each individual service) advertising revenues generated.

7. Substantive reports, analyses, projections, or strategy plans for the period January 1, 2008 to the present concerning the U.S. RSN programming market, including analyses or discussions of the Pittsburgh DMA or FSN Pittsburgh specifically.

8. Documents, if any, that actually discuss Armstrong as a competitor of DirecTV from January 1, 2008 to the present.

ARBITRATION PROCEEDINGS IN AND BEFORE
AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between:

----- X

ARMSTRONG UTILITIES INC., :

Claimant, :

-against-

DIRECTV SPORTS NET PITTSBURGH, LLC., :

Respondent. :

----- X

Case No. 55 472 E 00247 10

SUBPOENA TO
COMCAST CORPORATION

THE PEOPLE OF THE COMMONWEALTH OF PENNSYLVANIA

TO: Comcast Corporation
One Comcast Center
Philadelphia, PA 19103

Pursuant to the laws of the State of Pennsylvania and the Federal Arbitration Act, at the request of one or more parties to this arbitration and having found good cause for the issuance of this subpoena, the undersigned hereby **ORDERS** and **COMMANDS** you to produce for inspection and copying, at the offices of the American Arbitration Association, 230 South Broad Street, 12th Floor, Philadelphia, PA 19102 (or such other location as may be agreed upon), on or before November 22, 2010, the documents described in Exhibit A, appended hereto.

Dated: October 28, 2010

Signed: 
Melissa Hubbard, Arbitrator

Requested by: Jennifer Scullion
PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036
(212) 969-3000
Attorneys for Claimant

EXHIBIT A

INSTRUCTIONS AND DEFINITIONS

1. "Armstrong" shall mean Armstrong Utilities Inc.
2. "Document" shall mean any and all writings, graphics, or data compilations of any kind, including, but not limited to: paper and other physical documents and materials; electronically stored information, including, for example, Word documents, Excel spreadsheets, PowerPoint presentations, Adobe Acrobat files, emails (and any attachments thereto); jpeg, bitmap, HTML, and other graphical files and materials; digital and hard copy pictures; audio and visual recordings in whatever format; and revisions and former or alternative versions of any of the foregoing. The term "document" extends to and specifically encompasses all non-identical copies of any responsive document and all such non-identical copies should be produced.
3. "Comcast" means Comcast Corporation and any subsidiary or division, including without limitation any "cable systems" and any "regional sports networks," as each of those terms is used in Part I, Item 1 of the Comcast Corporation Form 10-K filed February 23, 2010.
4. "Concerning" means relating to, referring to, describing, evidencing or constituting.
5. "Pittsburgh DMA" means the geographic area containing the counties of Allegheny, Armstrong, Butler, Beaver, Clarion, Fayette, Forest, Garrett (MD), Greene, Indiana, Lawrence, Monongalia (WV), Preston (WV), Verango, Westmoreland and Washington.
6. "RSN" means the "regional sports networks" referenced in Part I, Item 1 of the Comcast Corporation Form 10-K filed February 23, 2010.

DOCUMENT REQUESTS

1. The complete agreements, in whatever form (including any bundled agreements,