

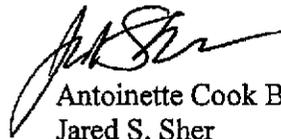
Melissa Hubbard, Esq.  
November 16, 2010  
Page 7

supposedly shorter and cheaper system of arbitration,"<sup>20</sup> and that observation applies with especial force here.

\* \* \*

For the foregoing reasons, News Corp respectfully declines to take any further action with respect to the purported subpoenas. News Corp reserves all, and waives none, of its rights and defenses.

Respectfully submitted,



Antoinette Cook Bush  
Jared S. Sher  
*Counsel to News Corporation*

cc: Armstrong Utilities, Inc. (c/o David Jamieson)  
DIRECTV Sports Net Pittsburgh, LLC (c/o Robert Hoegle)

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<sup>20</sup> *Hay Group*, 360 F.3d at 409 (internal citation omitted); *see also id.* ("A hallmark of arbitration – and a necessary precursor to its efficient operation – is a limited discovery process.").



**AMERICAN ARBITRATION ASSOCIATION**

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**In the Matter of the Arbitration between:**

**Armstrong Utilities Inc. ("Claimant")**

**and**

**DIRECTV Sports Net Pittsburgh LLC ("Respondent")**

**Case Number: 55 472 E 00247 10**

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**ORDER – November 19, 2010**

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**At the request of Claimant, on October 28, 2010, the undersigned Arbitrator signed various subpoenas to News Corporation, DirecTV, and Comcast Corporation, to produce certain documents identified in an attached Exhibit A. The Arbitrator understands that none of these separate legal entities has agreed to participate in the arbitration hearing voluntarily and that their submissions of objections to the subpoenas are for informational purposes only. However, the Arbitrator does not agree that the subpoenas are improper or unenforceable, IF as Claimant states on page 2 of its November 18<sup>th</sup> letter to the Arbitrator: "the subpoenas that you signed at Armstrong's request are not discovery subpoenas", but rather are deemed hearing subpoenas.**

**It is the Arbitrator's position that the subpoenas have been issued pursuant to authority granted pursuant to Section 7 of the Federal Arbitration Act (the "FAA"). Since the FCC Order that governs RSN arbitrations does not expressly address the issue of applicability of the FAA, the Arbitrator will strictly construe Section 7 of the FAA and only require the documents covered by the subpoenas (as amended by Claimant on page 7 of its letter to the Arbitrator) 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, to the extent Claimant wishes them to do so. This will naturally restrict the ability of the respective experts to consider and factor into their opinions the terms and conditions of such documents. However, the Arbitrator believes that the highly confidential nature of the documents being requested, as well as the fact that the entities that have been subpoenaed are not parties to the arbitration, must be respected. While the documents may be relevant to the issue at hand, the competing jurisdictional and confidentiality concerns raised by counsel for the third parties are compelling. Unless the parties mutually agree otherwise, the Arbitrator will not order a prehearing in advance of the actual hearing. The Arbitrator also denies Claimant's request to amend the complaint to join DirecTV as a party.**

**For scheduling purposes, the Arbitrator requests that the subpoenas be amended to require the third party representatives who will be producing the documents to arrive at the hearing at AAA's offices in Philadelphia at 9 a.m. on Monday, January 24, 2011 and to remain available to testify at the hearing that day and throughout the next day. To the extent expert witnesses would like to hear such testimony and review the documents produced, they will be subject to the Confidentiality Agreement and Protective Order in place. No documents will leave the hearing room. If Claimant believes a fourth hearing day is needed to allow it the extra time that may be needed at the start of the hearing to review the documents to be produced, the Arbitrator shall so order that the hearing dates be extended to include Thursday, January 27, 2011, with equal time afforded to each party to present its case, including cross examination. To the extent it may alleviate the need for a fourth hearing day, both parties are directed to enter into good faith, direct negotiations with the third parties in an effort to resolve their objections to production of the various documents identified by Claimant prior to the hearing.**

**Finally, the Arbitrator acknowledges Claimant's last request that Respondent produce all of the affiliation and rights agreements to which it is a party by the discovery deadline set forth in the prior scheduling order.**

**Respectfully submitted,**

***/s/ Melissa Hubbard***

**Melissa Hubbard, Arbitrator  
Dated: November 19, 2010**



**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, :  
 : **AMENDED SUBPOENA TO**  
 : **COMCAST CORPORATION**  
 :  
-against- :  
 :  
DIRECTV SPORTS NET PITTSBURGH, LLC., :  
 :  
 : Respondent. :  
----- x

THE PEOPLE OF THE COMMONWEALTH OF PENNSYLVANIA

TO: Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103

Pursuant to the laws 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 the documents described in Exhibit A (the "Documents"), along with a custodian or records or other suitable officer, director, or authorized representative of COMCAST CORPORATION (which, throughout this Subpoena, includes Comcast Cable Communications, LLC) (the "Witness") who can attest to the authenticity of the documents as documents retrieved from the business records and files of COMCAST CORPORATION and to the means by which such documents were created and/or maintained, as well as the means by which COMCAST CORPORATION undertook to search for documents responsive to this subpoena. The Documents shall be brought by the Witness to the hearing at 9 a.m., January 24, 2011 at American Arbitration Association, Philadelphia Regional Office, 230 South Broad Street, 12th Floor, Philadelphia, PA 19102 (or such other place and time as the Arbitrator may order) and both the Witness and the Documents

shall be remain available through 5 p.m. January 25, 2010 (or such other, later time as the Arbitrator may order) for inspection, examination, and presentation at hearing under the terms and conditions of the Confidentiality and Protective Order in this matter. No Documents shall leave the Hearing Room.

Dated: December 30, 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. "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.
2. "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.
3. "Concerning" means relating to, referring to, describing, evidencing or constituting.

4. "Guaranteed Major Events" means the number of National Basketball Association, National Hockey League, Major League Baseball, National Football League, and Division 1 Collegiate games to be delivered during each annual term of the applicable RSN license agreement, taking into account any "shortfall" allowance that may exist before contractual penalties or rebates are triggered.

5. "Net Effective License Fee" means the per subscriber rate or license fee after taking into account any rebates or allowances; volume or other discounts; fee waivers, credits, reimbursements or other like adjustment; free periods; cash payments; marketing support; launch incentives or support; channel position fees; and any other economic consideration relating to the pertinent RSN.

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. Documents sufficient to show, for each distributor of any Comcast RSN programming (a) the per subscriber rates or license fees, by zone, region, or applicable DMA, (b) the Net Effective License Fees per subscriber, by zone, region or applicable DMA, (c) the number of subscribers by zone, region or applicable DMA, (d) the number of Guaranteed Major Events, (e) required packaging, (f) subscriber penetration, and (g) the number of MLB, NHL, NBA, NFL, or Division 1 collegiate events actually delivered, in each case, for the period January 1, 2008 to present (or, if available, any future years through 2015). The names of distributors may be excluded or redacted.

2. 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 by Comcast of the following services for the period October 24, 2005 to the present: FSN Pittsburgh, FSN Rocky Mountain, or FSN Northwest.

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 any Comcast sports programming by DirecTV, including any Comcast RSN or Versus.

4. All communications among any representative of Versus, L.P. and any representative of Comcast Cable Communications LLC or DirecTV Sports Net Pittsburgh concerning (a) the March 15, 2010 Affiliation Agreement among Comcast Cable

Communications LLC and Directv Sports Net Pittsburgh LLC, (b) the two March 15, 2010 letter agreements among Comcast Cable Communications LLC and Directv Sports Net Pittsburgh LLC, or (c) the agreement among DirecTV and Comcast for the carriage of Versus, announced by DirecTV on March 15, 2010.

5. All communications among any representative of Versus L.P. and any representative of DirecTV (as distributor) concerning (a) the March 15, 2010 Affiliation Agreement among Comcast Cable Communications LLC and Directv Sports Net Pittsburgh LLC, (b) the two March 15, 2010 letter agreements among Comcast Cable Communications LLC and Directv Sports Net Pittsburgh LLC, or (c) any services or advertising to be provided under any of the foregoing agreements.

6. Documents sufficient to show all monies paid to or received from any entity in connection with each of the agreements referenced in Requests 2-4.

7. Documents, if any, that actually discuss Armstrong 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., :  
 : Case No. 55 472 E 00247 10  
 :  
 : Claimant, :  
 : **AMENDED SUBPOENA TO**  
 : **DIRECTV**  
 :  
 : -against- :  
 :  
 : DIRECTV SPORTS NET PITTSBURGH, LLC., :  
 :  
 : Respondent. :  
----- x

THE PEOPLE OF THE COMMONWEALTH OF PENNSYLVANIA

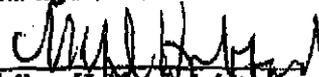
TO: DIRECTV  
2230 E. Imperial Hwy  
El Segundo, CA 90245

Pursuant to the laws 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 the documents described in Exhibit A (the "Documents"), along with a custodian or records or other suitable officer, director, or authorized representative of DIRECTV (the "Witness") who can attest to the authenticity of the documents as documents retrieved from the business records and files of DIRECTV and to the means by which such documents were created and/or maintained, as well as the means by which DIRECTV undertook to search for documents responsive to this subpoena. The Documents shall be brought by the Witness to the hearing at 9 a.m., January 24, 2011 at American Arbitration Association, Philadelphia Regional Office, 230 South Broad Street, 12th Floor, Philadelphia, PA 19102 (or such other place and time as the Arbitrator may order) and both the Witness and the Documents shall be remain available through 5 p.m. January

25, 2010 (or such other, later time as the Arbitrator may order) for inspection, examination, and presentation at hearing under the terms and conditions of the Confidentiality and Protective Order in this matter. No Documents shall leave the Hearing Room.

Dated: December 2, 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. "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 ("FSNP"), FSN Rocky Mountain ("FSNRM"), or FSN Northwest ("FSNNW").

2. Documents sufficient to show all monies paid to or received from any entity in connection with the carriage of the above services, including all monies paid to or received from Fox Sports Direct.

3. Documents sufficient to show all amounts paid or to be paid under any Additional Events Addendum entered into with Fox Sports Direct from January 1, 2008 to present, including documents sufficient to show any allocation of such payments with respect to FSNP, FSNW, and FSRM programming (or any anticipated method for making such allocation) and including all documents concerning any actual or potential "true up" of amounts owed.

4. All documents concerning (a) the March 15, 2010 Affiliation Agreement among Comcast Cable Communications LLC and Directv Sports Net Pittsburgh LLC, (b) the two March 15, 2010 letter agreements among Comcast Cable Communications LLC and Directv Sports Net Pittsburgh LLC, (c) any of the services or advertising purchases provided for under the foregoing agreements and side letters, and (c) the agreement among DirecTV and Comcast for the carriage of Versus, announced by DirecTV on March 15, 2010.

5. All documents concerning compliance or non-compliance with any "most favored nations" provision in any of the agreements referenced in Request 1 or 4.

6. 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.

7. Documents sufficient to show all monies paid to or received from any entity in connection with the carriage of the above services.

8. With respect to the services listed in Request 6, 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.

9. With respect to the services described in Requests 1 and 6, documents sufficient to show (for each individual service) the number of DirecTV subscribers in the zones or DMAs covered for 2008, 2009, and the most recent data available for 2010.

10. With respect to the services described in Requests 1, documents sufficient to show (for each individual service) the number of MLB, NHL, NBA, NFL and/or Division I Collegiate Events actually delivered during the respective league seasons for 2008, 2009, and the most recent data available for 2010.

11. For the period January 1, 2008 to the present (a) formal strategy plans and board presentations and (b) substantive reports and analyses that analyze/project per subscriber rates/license fees, number of major events provided/aired, packaging requirements and subscriber penetration, or the consequences or anticipated effects of the failure to carry RSN programming, each of (a) and (b) with respect to the U.S. RSN programming market as a whole or the Pittsburgh DMA or FSN Pittsburgh specifically.

12. 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

**AMENDED SUBPOENA TO  
NEWS CORPORATION**

**THE PEOPLE OF THE COMMONWEALTH OF PENNSYLVANIA**

TO: News Corporation  
1211 Avenue of the Americas  
New York, NY 10036

Pursuant to the laws 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 the documents described in Exhibit A (the "Documents"), along with a custodian or records or other suitable officer, director, or authorized representative of **NEWS CORPORATION** (the "Witness") who can attest to the authenticity of the documents as documents retrieved from the business records and files of **NEWS CORPORATION** and to the means by which such documents were created and/or maintained, as well as the means by which **NEWS CORPORATION** undertook to search for documents responsive to this subpoena. The Documents shall be brought by the Witness to the hearing at 9 a.m., January 24, 2011 at American Arbitration Association, Philadelphia Regional Office, 230 South Broad Street, 12th Floor, Philadelphia, PA 19102 (or such other place and time as the Arbitrator may order) and both the Witness and the Documents shall be remain available through 5 p.m. January 25, 2010 (or such other, later time as the Arbitrator may

order) for inspection, examination, and presentation at hearing under the terms and conditions of the Confidentiality and Protective Order in this matter. No Documents shall leave the Hearing Room.

Dated: December 30, 2010

Signed:   
Melissa Hubbard, Arbitrator

Requested by: *Claimant*  
Armstrong Utilities Inc.  
c/o David Jamieson  
General Counsel  
Armstrong Holdings, Inc.  
One Armstrong Place  
Butler, PA 16001  
(724) 283-0925

**EXHIBIT A**

**INSTRUCTIONS AND DEFINITIONS**

1. "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.

2. "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), a copy of which is appended to this Subpoena as Appendix 1.

3. "Fox Sports Net" means Fox Sports Net, Inc., the entity referenced at page 10 of the FCC Order, and any predecessors or successors during the relevant periods referenced below.

4. "Concerning" means relating to, referring to, describing, evidencing or constituting.

5. "Guaranteed Major Events" means the number of National Basketball Association, National Hockey League, Major League Baseball, National Football League, and Division I Collegiate games to be delivered during each annual term of the applicable RSN license agreement, taking into account any "shortfall" allowance that may exist before contractual penalties or rebates are triggered.

6. "Net Effective License Fee" means the per subscriber rate or license fee after taking into account any rebates or allowances; volume or other discounts; fee waivers, credits,

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reimbursements or other like adjustment; free periods; cash payments; marketing support; launch incentives or support; channel position fees; and any other economic consideration relating to the pertinent RSN.

7. "RSN" has the same meaning as used in the FCC Order.

#### DOCUMENT REQUESTS

1. Summary documents reflecting the rates and subscribers for distributors of Fox Sports Net programming for the period 2005 to 2008 and the full amount of all consideration transferred in connection with such programming (whether under an affiliation agreement or side agreement) including any MSO summaries for the period.

2. Summary documents reflecting rates and packaging terms for Fox Sports Net programming by region and zone.

3. Summary documents reflecting, for each distributor of any Fox Sports Net RSN programming (a) the per subscriber rates or license fees, by zone, region, or applicable DMA, (b) the Net Effective License Fees per subscriber, by zone, region or applicable DMA, (c) the number of subscribers by zone, region or applicable DMA, (d) the number of Guaranteed Major Events, (e) required packaging, and (f) subscriber penetration, in each case, for the period January 1, 2008 to present (or, if available, any future years through 2015). The names of distributors may be excluded or redacted.

4. Summary documents reflecting analyses or annual audit of any "most favored nations" relating to any Fox Sports Net RSN programming, for the period January 1, 2008 to present (or, if available, any future years through 2015). The names of distributors may be excluded or redacted.



November 18, 2010

**BY E-MAIL**

Melissa Hubbard  
Arbitrator  
American Arbitration Association

Re: Armstrong Utilities Inc. v. DIRECTV Sports Net Pittsburgh (No. 55 472 E 00247 10)

Dear Arbitrator Hubbard:

The undersigned counsel write together on behalf of Claimant, Armstrong Utilities, Inc. ("Armstrong") to respond to the submissions that have been made concerning the subpoenas that you issued, at Armstrong's request, to DirecTV, Comcast, and News Corp. (the "Submissions").

There are a number of Submissions. Our response aims to respond to them efficiently and succinctly. If a telephonic conference is needed to answer any additional questions or concerns, we are happy to participate.

Our response is organized as follows. First, we summarize what we understand the objections are to the subpoenas. Second, we show that the subpoenas are valid and enforceable. Third, we address the substance of the information covered by the subpoenas. Fourth, we show that the current Confidentiality Agreement and Protective Order ("CAPO") is sufficient.

**I. THE NATURE OF THE OBJECTIONS**

As a threshold matter, it is helpful to recall that Armstrong is seeking the production of information through two main avenues.

First, in addition to the agreed exchange of documents with DirecTV Sports Net ("DSN"), we have sought information from DirecTV itself. It remains Armstrong's position that the integrated DirecTV entity can be required to provide information as a party to this arbitration because, *inter alia*, DirecTV is the entity that agreed to the arbitration Conditions in the FCC Order and because DirecTV is a vertically integrated entity. *See* Armstrong 10/15/10 ltr. re: Preliminary Hearing. Nonetheless, in accordance with your order, we proceeded to serve a subpoena on DirecTV and to meet and confer with counsel for DirecTV on that subpoena. The subpoena seeks, among other things, copies of DirecTV's affiliation agreements with non-DirecTV RSNs, including RSNs owned by Comcast, News Corp. (FOX), and New England Sports Network ("NESN").

Second, Armstrong also has served independent subpoenas on Comcast and News Corp. themselves. (Armstrong served original and supplemental subpoenas.) Armstrong served these subpoenas because, like DirecTV, Comcast and News Corp. are major buyers and sellers of RSN programming in the U.S. Armstrong has sought data and other market information from them to obtain a full picture of the RSN market to help determine the "fair market value" of RSN programming rights.

The objections to the subpoenas also come in two main forms.

First, DirecTV objects to the DirecTV subpoena to the extent that it seeks production of DirecTV's contracts with Comcast, News Corp. (FOX), and NESN. DirecTV does not contend that the contracts are irrelevant or otherwise beyond the proper scope of your subpoena powers. Rather, DirecTV argues that it cannot produce its contracts with those entities because those entities are alleging that production will violate their contractual confidentiality rights based on arguments that those entities (not DirecTV) have raised concerning jurisdiction.<sup>1</sup>

The second set of objections is from Comcast and News Corp. to the subpoenas served on those entities directly. Those entities purport to raise jurisdictional objections, objections to the substance of the information being sought, and objections to the CAPO protections.

We address all of these objections below.

## II. THE SUBPOENAS WERE VALIDLY ISSUED

### A. The FAA Authorizes Arbitrators to Subpoena Evidence to Hearing

The Submissions' fundamental argument is that non-party discovery is not permitted in this arbitration and that the subpoenas are invalid because they supposedly seek non-party discovery. It is on this basis that the Submissions (a) object to the subpoenas served directly on Comcast and News Corp. and (b) also argue that there is no lawful requirement for DirecTV to produce the documents and, therefore, that any production by DirecTV allegedly would violate its contractual confidentiality obligations.

The arguments asserted are simply wrong. The subpoenas that you signed at Armstrong's request are not discovery subpoenas. The subpoenas are issued pursuant to your authority under Section 7 of the Federal Arbitration Act ("FAA"), which empowers arbitrators to subpoena witness and documents for hearing, including for preliminary hearings. 9 U.S.C. § 7 ("arbitrators . . . may summon in writing any person to attend before them . . . as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case."); *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 411, 413 (3rd Cir. 2004) (Section 7 permits arbitrator to subpoena evidence to an initial hearing date and "adjourn" the remainder to the hearing to a later date); *Life Receivables Trust v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 218 (2d Cir. 2008) (Section 7 permits

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<sup>1</sup> DirecTV purports to hold in abeyance alleged "jurisdictional" objections of its own (which it has never raised in its discussions with Armstrong). And, despite the fact that Armstrong's November 12, 2010 submission also addresses Subpoena Item 7, and despite the fact that you directed that all submissions on these issues be made by 11 a.m. today, DirecTV chose not to respond to Armstrong's arguments concerning Subpoena Item 7. Respectfully, it is neither appropriate nor fair for DirecTV to purport to hold back any objections or arguments, jurisdictional or otherwise. We show below that there are no jurisdictional issues here. And Armstrong already has shown that Item 7, especially as narrowed, is a reasonable request for core information necessary to a fair assessment of the real market value of RSN programming rights. Armstrong therefore respectfully requests that its request for an order requiring DirecTV to comply with Item 7 as narrowed.

arbitrator to subpoena evidence to a “preliminary” hearing to receive evidence, as well as to a later evidentiary hearing). As such, the documents are called for by law – namely, the FAA, as well as the FCC Order itself.

As *Hay* and *Life Receivables* explain, the technical requirements of Section 7 are easily met. *E.g.*, *Hay* at 413-14 (Chertoff, J., concurring). First, as we indicated from the outset in seeking these subpoenas, you may set preliminary hearings for Philadelphia and California in late November/early December for the purpose of receiving the documents in response to the subpoenas. We are agreeable to having you preside over those preliminary hearings telephonically (or by video, if there is a convenient video conference facility for you). Second, although it is implicit in the subpoenas (which are directed to entities), to the extent that any subpoenaed entity insists on strict compliance with the provision of Section 7 for subpoenas to have “witnesses” and documents “brought with them,” the subpoenas can be amended to call for the subpoenaed entities to produce a custodian of records to bring the documents with him or her. Third, Armstrong of course is willing to pay reasonable witness fees.

(Even if there were any legitimate challenge to these subpoenas on the ground that they are directed to “non-parties,” (1) Armstrong would ask you to revisit your order directing that DirecTV be served with a subpoena, rather than simply being required to respond to document requests within the context of party pre-hearing exchanges or (2) Armstrong should be permitted to amend its claim in this action to expressly name DirecTV to the extent that you rule that DirecTV is not already a party to this proceeding, as it is to the underlying FCC Order. *See, e.g.*, *Life Receivables*, 549 F.3d at 218 (suggesting that joinder of party to the arbitration agreement may avoid question of Section 7 powers as to non-parties.))

B. The FAA Applies to this Arbitration

Knowing that the FAA in fact authorizes hearing subpoenas such as those at issue here, the Submissions argue that the FAA does not apply because, they claim, the arbitration Conditions allegedly do not constitute an “agreement” within the jurisdiction of the FAA.

That argument too is demonstrably incorrect. The Conditions are an agreement for purposes of the FAA.

When Liberty Media and DirecTV approached the FCC in 2007 to request approval of their plan to transfer FCC licenses, they voluntarily offered to agree to the arbitration Conditions in order to convince the FCC to bless the transaction. The FCC accepted that offer and, in turn, Liberty Media and DirecTV accepted the resulting FCC Order, including the agreed Conditions. The record of the resulting agreement is plain:

- On February 16, 2007, Liberty Media Corporation voluntarily “offered to comply” with the Conditions for RSN arbitration that were included in the earlier *News Corp.-Hughes* Order. Exh. A (2/16/07 ltr. from Robert L. Hoegle to FCC) at p.2.
- On April 9, 2007, in responding to petitions that asked the FCC to deny approval for the transaction, The DirecTV Group, Inc. likewise confirmed that the incoming shareholder had “agreed to be bound by all of the relevant conditions” that then applied to News Corp. under the *News Corp.-Hughes* Order. Exh. B (4/9/07 Consolidated Opposition to Petitions to Deny and Response to Comments) at p. iii.
- The FCC Order confirms that “[t]o address and eliminate concerns regarding access to RSNs owned now or in the future by Liberty Media or DirecTV, Liberty Media and

DirecTV have agreed to comply with the conditions” in the *News Corp.-Hughes* Order regarding access to RSNs and also that Liberty Media had “agreed to comply with the RSN arbitration condition” of the *News Corp.-Hughes* Order. FCC Order, at p. 43, ¶ 88.

The FCC has twice confirmed that it regards such Conditions in an order granting approval of a transfer of an FCC license as consensual agreements. Applicants (such as Liberty Media and DirecTV) that are requesting FCC approval to transfer a license obviously are free to withdraw their applications if they deem Conditions unacceptable. (Here, that would have been extraordinary since Liberty and DirecTV voluntarily offered the Conditions.) But, as the FCC ruled in *In re TCR Sports Broadcasting Holding, L.L.P. D/B/A Mid-Atlantic Sports Network v. Time Warner Cable*, 2008 WL 4758773 (F.C.C. Oct. 30, 2008) (attached here as Exh. C) and in *In re Comcast Corp.* (attached to Comcast’s 11/15/10 submission), once the applicants accept the Conditions under which FCC permission is granted to transfer a license, they cannot later challenge the agreed and accepted Conditions. *TCR Sports*, \*19, ¶¶ 52-53; *Comcast*, p. 3, n.13.

Caselaw too holds that such agreed agency conditions – including FCC tariffs – are agreements to arbitrate subject to the FAA. In *Metro East Center for Conditioning and Health v. Qwest Comm. Int’l, Inc.*, 294 F.3d 924, 926-927 (7th Cir. 2002) the Seventh Circuit held that an arbitration provision in an FCC tariff was an agreement to arbitrate governed and enforceable under the FAA. The Seventh Circuit held that “an ‘agreement’ for purposes of [FAA] Section 3 means no more than an offer and acceptance that produces a legally binding document.” *See also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001) (“the FAA was a response to hostility of American courts to the enforcement of arbitration agreements . . . . To give effect to this purpose, the FAA compels judicial enforcement of a wide range of written arbitration agreements.) In *Metro East Center*, the court held that the “offer” was the tariff and that the acceptance was the customer’s use of the product. Here, it is even easier. The offer to submit to RSN arbitration was express (see *supra*) and it was accepted (a) by the FCC when it granted approval to transfer the licenses and (b) by all of the parties subject to the FCC Order when they accepted the FCC’s conditional grant.

By contrast, there is no support for Comcast’s claim (*Comcast ltr.*, p. 3, n. 10) that the FCC purportedly has ruled that these arbitrations are not FAA arbitrations. The decision Comcast cites merely held that the arbitration does not violate the Administrative Procedures Act or the Alternative Dispute Resolution Act, which are federal laws separate from the FAA. The FCC made no ruling on whether these RSN arbitrations are subject to the FAA. In fact, the agreed Conditions expressly contemplate that “Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter . . . .” (Conditions, IV.B.9) a clear indication that the FCC (and the parties that agreed to the Conditions) contemplated that the arbitration is subject to the FAA, including eventual (albeit limited) judicial review and enforcement.

The mere fact that the Conditions permit a party to seek *de novo* FCC review of an award issued by the AAA does not negate application of the FAA. It merely means that the parties agreed to a two-stage arbitral process that includes an arbitral review, a procedure that is common in many industries, including professional and amateur sports. Indeed, to the extent that a party does seek FCC second level review, the Conditions treat the resulting FCC award itself as an “award entered by the arbitrator [that] may be entered by any court having competent jurisdiction over the matter.” Conditions, IV.C.5.

C. The Agreed Conditions of Arbitration Do Not Restrict the Subpoena Power

There also is no basis to suggest that the agreed Conditions restrict your FAA Section 7 Subpoena power.

First, because Section 7 Subpoenas are a means to call forth non-party evidence at an arbitral hearing (preliminary or otherwise), the provisions in the Conditions concerning pre-hearing discovery are irrelevant (and do not expressly preclude third party information requests in any event).

Second, the Conditions expressly authorize this arbitration to proceed under the AAA's Expedited Procedures of the Commercial Arbitration Rules, except as expressly modified by the Conditions, Part F. AAA Commercial Rule 31(d) provides that an arbitrator may "subpoena witnesses or documents . . . upon the request of any party or independently." Again, Rule 31 concerns the power to subpoena evidence at hearing and is distinct from Rule 21, which concerns pre-hearing production of documents and information – *i.e.* discovery. Thus, again, any limitations on pre-hearing discovery that were agreed to as part of the Conditions are irrelevant to the subpoena power granted under Rule 31.

Third, Rule 31 applies in expedited proceedings, such as these. The AAA Commercial Arbitration Rules provide that, where the Expedited Procedures apply, Sections E-1 through E-10 apply "in addition to" the other Commercial Arbitration Rules (R-1 through R-54, L-1 through L-4, and O-1 through O-8) unless there is an actual "conflict" with Sections E-1 through E-10. Nothing in Sections E-1 through E-10 even addresses, let alone conflicts with, the hearing subpoena powers of Rule 31. Thus, your Rule 31 powers apply fully here.<sup>2</sup>

(We also note that there is no inconsistency between the fact that this is a somewhat expedited proceeding and the need to subpoena evidence from non-parties. The subpoenas were served with ample time for the entities to comply and still fall within the current schedule – *i.e.* the subpoenas are returnable on November 22 and November 30. Obviously, the mere fact that these entities have objected to the subpoenas, thereby requiring Armstrong to seek your assistance, cannot itself be seen as evidence that the subpoenas (which were lawfully issued) are inconsistent with the current schedule. That said, additional time can be granted for production once the current disputes are resolved.)

D. Because the Subpoenas are Lawful, There is No Contractual Argument to Prevent Disclosure

The Submissions argue that DirecTV's contractual confidentiality obligations allegedly prohibit DirecTV from disclosing RSN affiliation agreements absent a "valid court order" (DirecTV 11/16/10 ltr. to Arbitrator at p. 3). None of the Submissions provided the actual confidentiality provisions of any of the contracts, however. Armstrong requested those

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<sup>2</sup> We note that the Conditions themselves acknowledge that Sections E-1 through E-10 are not the only applicable Rules here. Knowing that all of the Commercial Rules apply unless there is an actual conflict with E-1 through E-10, the Conditions (a) went out of their way to exclude application of the rules (L-1 through L-4) for "large, complex cases" (Conditions, IV.B.1)), (b) acknowledged the application of R-4, albeit modified to facilitate the commencement of the arbitration (Conditions, IV.F.2)

provisions so that it and you could know what the relevant confidentiality obligations actually are.

In response, Armstrong has been provided with the confidentiality provisions from the relevant agreements among DSN, DirecTV, and Comcast. Exh. D.<sup>3</sup> The Comcast confidentiality provisions expressly permit disclosure where, *inter alia*, required by “law” or “in connection with any arbitration proceeding,” provided that notice is given to Comcast and that adequate confidentiality protections are sought. Notably, no specific form of confidentiality order is required.

Assuming, as is fair here, that the other confidentiality provisions for the other objectors contain similar provisions, production of the RSN agreements (and related information) will not violate any contractual confidentiality rights. First, notice has been given by DirecTV. Second, because the subpoenas are validly issued under the FAA, compliance with them is required by “law” (and, we submit, by the FCC Order, which required this arbitration and also may be deemed a “regulation”). Third, the subpoenas also seek information “in connection with an[] arbitration proceeding,” and therefore satisfy any contracts that permit disclosure in those circumstances. Fourth, as shown below in Part IV, the existing CAPO provides more than adequate protection for the information at issue and is as protective as the FCC Protective Orders cited by Comcast.

Finally, we are informed that Comcast, Dish, and potentially others have raised or are raising similar objections with respect to DSN’s production of agreements from its files. Again, this is an issue that DSN should be raising with you to allow it to produce the agreed documents under the party document exchange process. Nonetheless, because we assume that all of the issues are the same as those that have been raised expressly here, your order finding that (a) the subpoenas as lawful under the FAA and (b) the CAPO protections are sufficient should permit DSN to produce the required affiliation agreements. If DSN has a different position, we assume it will say so.

### **III. THE SUBPOENAS CALL FOR INFORMATION NECESSARY FOR A FULL AND FAIR ASSESSMENT OF FAIR MARKET VALUE**

This arbitration must determine which of the proffered Final Offers is closest to fair market value for the programming rights at issue. Because the Final Offers are in the form of full contracts and because the value of programming rights is determined by the per subscriber rates or fees as well as by the overall terms and conditions on which those rights are granted (e.g., the tier on which the programming will be carried, the definition and guaranteed number of major events, most favored nation rights, advertising avails, etc.), it is critical to see the actual range of prices and terms that exist in the market. *See, e.g., In the Matter of TCR Sports Broadcasting Holding, L.L.P. D/B/A Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, 2008 WL 4758773 (F.C.C. October 30, 2008) (hereinafter “MASN”) (Exh. C) (FCC broad ranging review of data and evidence offered in RSN arbitration).

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<sup>3</sup> Because even the Confidentiality provisions have been designated as Highly Confidential (we believe wrongly), we are required to omit this exhibit from the copies of this letter other than the copy provided to you and to counsel for DSN.

The “market” obviously is not limited to the handful of operators to which DirecTV sells FSN Pittsburgh. (If it were so limited, this proceeding would be pointless because DirecTV (with its vertical integration) already has set the “market” price for its own product. As you already have recognized in granting the right to subpoena DirecTV (and Comcast and News Corp.), the point of the agreed RSN arbitration Conditions is to try to assess the actual fair market value of the rights from some objective perspective that is not skewed by DirecTV’s vertical integration and resulting market power in selling RSN programming.)

Likewise, a determination of fair market value is not limited to an analysis of the Pittsburgh area. Rather, as in *MASN*, the analysis must include comparisons of the Final Offers to the prices, terms and conditions of carriage in comparable markets nationwide. *MASN*, 2008 WL 4758773 at \*16, para. 46 (FCC reviewing RSN licensing fees in markets both within North Carolina “and in various markets nationwide”). What constitutes a “comparable” market for purposes of assessing the Final Offers is an issue that, we expect, will be the subject of expert testimony from both sides. It cannot and should not be prematurely determined in the context of challenges to subpoenas.

That said, Armstrong recognizes that Comcast and News Corp. are not parties to this proceeding. Armstrong did not ask those entities to undertake the burden to produce all of their affiliation agreements. Rather, the Supplemental Subpoenas specifically seek only summary documents or information (*i.e.* “Master Lists,” spreadsheets, tables, and the like) that are typically kept by such entities to allow them to easily compare and track their own distributor agreements and prices.<sup>4</sup> Armstrong specifically provided that actual distributor names could be redacted or omitted if necessary.

Finally, in light of the responses to date, Armstrong is willing to withdraw/modify the following requests:

- Armstrong will withdraw Requests 1-3 of the original subpoenas – concerning contracts with DSN – provided that DSN confirms that it will provide that information from its own files.
- Armstrong will narrow Request 5 of the original subpoenas to call only for items similar to those covered by its narrowed Item 7.b in the DirecTV subpoena – *i.e.* substantive reports and analyses that analyze/project: 1. per subscriber rates/license fees, 2. number of major events provided/aired, 3. packaging requirements, or 4. subscriber penetration with respect only to the U.S. RSN programming market as a whole, or the Pittsburgh DMA or FSN Pittsburgh specifically. To the extent that these items are covered by Request 4, they may be produced in response to that request.
- Armstrong will withdraw Request 6 of the original subpoena to Comcast since it appears that Comcast has no such information.

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<sup>4</sup> Armstrong is not asking anyone to create information in response to the subpoenas. It is not credible, however, to suggest that these entities do not maintain some Master Lists or similar summaries of this information. We invite the Arbitrator to inquire on these issues if you desire to do so.

#### **IV. THE CURRENT CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER PROVIDES AMPLE PROTECTION FOR THE INFORMATION AT ISSUE**

The current Confidentiality Agreement and Protective Order (“CAPO”) provides more than enough protection against misuse of the Confidential and Highly Confidential information to which it applies. In particular, Highly Confidential information (including, automatically, all RSN agreements) can be disclosed only to Outside Counsel, Outside Experts, and the Arbitrator (CAPO ¶ 9(a)). Even those individuals are required to use the information only for these proceedings (CAPO ¶ 13). And all such information is to be destroyed after these proceedings conclude (CAPO ¶ 17). Therefore, Highly Confidential RSN agreement information cannot be misused for competitive business reasons by Armstrong personnel or anyone else. (Also, for the avoidance of doubt, the CAPO expressly permits that any third party may invoke the CAPO protections and enforce them (CAPO ¶¶ 1 and 2(n).)

Armstrong’s reliance on the CAPO is hardly an extreme, outlier position, as Comcast would suggest. DSN agreed to this CAPO even though it, like the other entities, is producing RSN affiliation agreements that contain certain potentially sensitive business information. Similarly, the integrated DirecTV entity does not itself raise any objections to the adequacy of the CAPO to protect its information.

Moreover, in the two FCC matters that Comcast cites as showing the level of protection that the FCC deems appropriate for such “highly sensitive” information (Comcast 11/15/10 ltr. at p. 5, n. 15), the FCC entered Protective Orders that provided the same level of protections as the CAPO here – namely, restricting Highly Confidential information to Outside Counsel, Outside Experts, and the FCC. See Exh. E *Echostar Satellite L.L.C. v. Home Box Office, Inc.*, 21 FCC Rcd. 14197, Appendix A (Protective Order) Section 4; Exh. F *Adelphia Comm. Corp.*, 20 FCC Rcd. 20073, ¶ 7 (2006) (cited by Comcast) (referring to Second Protective Order); Exh. G (Second Protective Order in *Adelphia*).

Like the current CAPO, the Protective Orders that Comcast cites require any individual reviewing the Highly Confidential information to affirm and agree that they will not use the Highly Confidential information for “competitive commercial or business purposes, including competitive decision-making.” (CAPO, Declaration). Neither of the cited Protective Orders in the *Echostar* or *Adelphia* matters went beyond the above, standard stipulation to also restrict Outside Experts, prospectively, from working in connection with RSN programming rights, as Comcast suggests is needed. To impose such prospective employment restrictions (especially in the context of Comcast, News Corp. and NESN (and potentially others) all raising objections) would unduly – and unnecessarily, as shown by the above FCC Protective Orders – impede the ability of Armstrong (and, we suspect, DSN) to retain suitable, experienced expert advice and testimony in these proceedings. (Again, we note that Armstrong was willing to consider such potential restrictions with respect to Comcast alone in order to facilitate and expedite proceedings, but now that there are multiple objecting parties, Armstrong cannot agree to hamstringing its ability to retain and consult with the experts that it needs in this proceeding.)

November 18, 2010

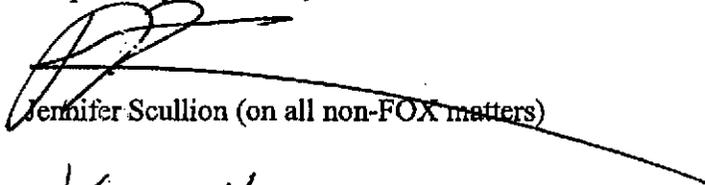
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## V. CONCLUSION

For all of the above reasons, Armstrong respectfully requests that you issue an order:

- Finding that the each of the subpoenas has been lawfully issued under FAA Section 7 and Rule 31;
- Finding that the current CAPO is sufficient to protect any legitimate confidentiality obligations under the relevant agreements;
- Requiring DirecTV to comply with the Subpoena served on it, including producing the documents called for by the narrowed Item 7.b outlined in Armstrong's initial letter, with any modifications you deem appropriate to satisfy the technical requirements of FAA Section 7;
- Requiring each of Comcast and News Corp. to comply with the Subpoenas and Supplemental Subpoenas served on them, with the substantive modifications outlined in this letter and any modifications you deem appropriate to satisfy the technical requirements of FAA Section 7; and
- Requiring DSN to produce all of the affiliation and rights agreements agreed to in the party exchange of documents.

Respectfully submitted,



Jennifer Scullion (on all non-FOX matters)



Kevin Harkins (on all FOX-related matters)

Encls.

cc by email w/encl.: Paris Earp (AAA)  
Robert Hoegle (DSN)  
Timothy Fitzgibbon (DSN)  
Robert Freeman (Armstrong)  
Kevin Harkins (Armstrong)  
William Wiltshire (DirecTV US) (w/o Exh. D)  
Jared Sher (FOX Newscorp) (w/o Exh. D)  
Ellen Agress (FOX Newscorp) (w/o Exh. D)  
Mitchell Brecher (NESN) (w/o Exh. D)  
David Murray (Comcast)



**Before the  
AMERICAN ARBITRATION ASSOCIATION**

In the Matter of Arbitration Between )  
 )  
DIRECTV, Inc., )  
 )  
                    Claimant, )  
 )  
-and- )  
 )  
Comcast Corporation, )  
 )  
                    Respondent. )  
\_\_\_\_\_ )

Case No. 71-472-E-00122-09  
Stephen S. Strick, Arbitrator

**SECOND CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

1. This Second Confidentiality Agreement and Protective Order (the "Agreement") is intended to protect trade secrets and other commercially sensitive confidential information contained in (i) documents that are produced, given or exchanged by and among the Parties, or produced by non-parties, and deposition testimony provided, as part of discovery in the Proceeding, and (ii) documents and testimony submitted as part of the record in the course of the Proceeding or any review of the Proceeding by the Commission or a court of competent jurisdiction.

2. Definitions.

(a) Arbitrator. "Arbitrator" means Stephen S. Strick, Esq. or any successor arbitrator assigned to this proceeding.

(b) Authorized Representative. "Authorized Representative" means an individual who has signed and filed a Declaration in the form of Attachment A to this Agreement and is one of the following:

(i) Outside Counsel of Record for a Reviewing Party to this Proceeding, or any associated attorney, paralegal, clerical staff member or other employee of counsel of record's law firm reasonably necessary to render professional services in this Proceeding;

(ii) Outside Experts engaged by a Reviewing Party to this Proceeding, or any associated clerical or support staff member or other employee of engaged expert's firm reasonably necessary to render professional services in this Proceeding; and

(iii) the Arbitrator.

(c) Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

(d) Confidential Information. "Confidential Information" means information, whether in oral or written form, so designated by a Designating Party

confidentiality is maintained. Examination of a witness, or other oral presentation, concerning Highly Confidential Information shall be conducted in camera and closed to all persons except Authorized Representatives of Reviewing Parties and the Arbitrator, a witness then testifying, and any reporter engaged to transcribe the Proceeding. Persons present at the Proceeding may not disclose any Highly Confidential Information to any person that is not an Authorized Representative of a Reviewing Party.

6. Designation of Confidential Information in Transcripts.

(a) Deposition testimony relating to RSN Agreements shall be designated as Highly Confidential Information by (i) a statement on the record, by counsel, at or before the conclusion of the deposition, or (ii) by written notice, sent by counsel to all parties within five (5) business days after the receipt of the preliminary transcript of the deposition. All deposition testimony shall be considered Highly Confidential Information until five (5) business days from the receipt by counsel of the preliminary transcript, so as to allow for possible designation under subparagraph (a)(ii).

(b) Any portion of the transcripts of oral testimony and oral argument during the Proceeding shall be considered Highly Confidential Information, unless otherwise expressly agreed to by all of the parties to this Agreement whose Highly Confidential Information is contained in any such transcript. The reporter of the Proceeding shall not provide transcripts to anyone other than Outside Counsel of Record for the Parties in this Proceeding and the Arbitrator.

7. Storage of Confidential Information at the Commission. The Arbitrator and any other person to whom Highly Confidential Information is provided shall place the Highly Confidential Information in a non-public file. Highly Confidential Information shall be segregated in the files of the Arbitrator, and shall be withheld from inspection by any person not bound by the terms of this Agreement, unless such Highly Confidential Information is released to the Commission or a court of competent jurisdiction pursuant to paragraphs 11 and 18 hereto.

8. Access to Confidential Information.

(a) Other than in accordance with Paragraph 11 below, Highly Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to Authorized Representatives. Before an Authorized Representative may obtain any access to Highly Confidential Information, such person must execute a Declaration.

(b) Notwithstanding anything herein to the contrary, RSN Agreements or summaries, descriptions, or characterizations of the substance thereof shall not be disclosed to any DIRECTV or Comcast in-house personnel, including, but not limited to, any in-house counsel.

(c) Except as otherwise provided in this paragraph, Highly Confidential Information shall not be disclosed to any other person. All persons who obtain Highly Confidential Information in this Proceeding shall ensure that access to that Highly Confidential Information is strictly limited as prescribed in this Agreement and is used only as provided in this Agreement. For the avoidance of doubt, all persons who obtain any Named RSN's Highly Confidential Information in this Proceeding shall comply with the procedures prescribed in paragraphs 4-13 of this Agreement concerning the ongoing designation and use of Named RSNs' Highly Confidential Information as such, including,

without limitation, any testimony, transcripts, pleadings, or documents containing or derived from Named RSNs' Highly Confidential Information.

(d) Prior to the disclosure of any RSN Agreement, a Named RSN may redact certain portions of such RSN Agreement (i) that are not relevant to this Proceeding; or (ii) to the extent relevant, as necessary to assure the highest level of confidentiality practicable to protect the Named RSNs' confidential and proprietary information to the extent not inconsistent with the purposes of this Proceeding.

(e) Highly Confidential Information shall only be disclosed to an Outside Expert according to the terms of this subparagraph. If Highly Confidential Information is disclosed to an Outside Expert, for the period extending from the date of the disclosure until February 1, 2012, such Outside Expert will not work for any Regional Sports Network, or any other network that primarily distributes sports programming, in connection with securing distribution on DIRECTV or any Comcast cable system; nor, for such period, shall such Outside Expert work for any party (i) in connection with any agreement for the distribution of a Named RSN by a multichannel video programming distributor ("MVPD"); or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where a Named RSN also is interested in acquiring the relevant programming (regardless of whether the Named RSN previously had any rights to carry such programming). Before any Highly Confidential Information is disclosed to any such Outside Expert, each Outside Expert so retained or employed shall sign and file a Declaration in the form of Attachment A to confirm that he or she has read this subparagraph, meets the requirements of this subparagraph, and is bound by the obligations set forth herein. Nothing in this paragraph shall preclude an Outside Expert from advising, assisting, or otherwise participating on behalf of a Reviewing Party or a Named RSN in future arbitrations or program access proceedings that are not adverse to a Named RSN (except for any Named RSN that is owned by, affiliated with, or under common ownership with a Reviewing Party) and that are initiated by any MVPD (and any following proceedings at the FCC or in federal court) relating to RSN carriage agreements, subject to any and all restrictions on the use of confidential information applicable in this, as well as any such future, arbitration or proceeding.

(f) If Highly Confidential Information is disclosed to a person who is Outside Counsel of Record, and such person subsequently becomes an employee of any of the Parties or any Named RSN, such person shall not be allowed to work for such Party or such Named RSN (i) in connection with any agreement for the distribution of a Named RSN by an MVPD; or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where a Named RSN also is interested in acquiring the relevant programming (regardless of whether the Named RSN previously had any rights to carry such programming) until February 1, 2012. Nothing in this paragraph shall preclude such counsel from advising, assisting, or otherwise participating on behalf of a Reviewing Party in future arbitrations or program access proceedings initiated by any MVPD (and any following proceedings at the FCC or in federal court) relating to RSN carriage agreements, subject to any and all restrictions on the use of confidential information applicable in this, as well as any such future, arbitration or proceeding.

9. Procedures for Obtaining Access to Confidential Information. In all cases where access to Highly Confidential Information by Authorized Representatives is permitted pursuant to Paragraph 8, before reviewing or having access to any Highly Confidential Information, each person seeking such access shall execute a Declaration, file



**Before the  
AMERICAN ARBITRATION ASSOCIATION**

<i>In the Matter of Arbitrations Between</i>	)	
	)	
DISH Network L.L.C.	)	
	)	
Claimant,	)	Case No. 16-472-E-00118-10
	)	Case No. 16-472-E-00211-10
-and-	)	
	)	
Comcast Corporation,	)	Stephen S. Strick, Arbitrator
	)	
Respondent.	)	
<hr/>		

**CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

1. This Confidentiality Agreement and Protective Order (the "Agreement") is intended to protect trade secrets and other commercially sensitive confidential information contained in (i) documents that are produced, given or exchanged by and among the Parties, or produced by non-parties, and deposition testimony provided, as part of discovery in the Proceedings, and (ii) documents and testimony submitted as part of the record in the course of the Proceedings or any review of the Proceedings by the Commission or a court of competent jurisdiction.

2. Definitions.

(a) Arbitrator. "Arbitrator" means Stephen S. Strick, Esq.

(b) Authorized Representative. "Authorized Representative" means an individual who has signed and filed a Declaration in the form of Attachment A to this Agreement and is one of the following:

(i) Outside Counsel of Record for a Reviewing Party to these Proceedings, or any associated attorney, paralegal, clerical staff member or other employee of Outside Counsel of Record's law firm reasonably necessary to render professional services in these Proceedings; or

(ii) Outside Experts engaged by a Reviewing Party to these Proceedings, or any associated clerical or support staff member or other employee of engaged expert's firm reasonably necessary to render professional services in these Proceedings.

(c) Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

(d) Confidential Information. "Confidential Information" means information, whether in oral or written form, so designated by a Designating Party

8. Access to Confidential Information and Highly Confidential Information.

(a) Other than in accordance with Paragraphs 5, 8, 11, and 18 of this Agreement, Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to Authorized Representatives. Before an Authorized Representative may obtain any access to Confidential Information, such person must execute a Declaration in the form annexed hereto ("Declaration").

(b) The Arbitrator and any associated clerical or support staff member or other employee the Arbitrator deems necessary to render professional services in these Proceedings may receive and review Confidential Information and Highly Confidential Information, subject to the protections of this Agreement, without executing a Declaration.

(c) Notwithstanding anything herein to the contrary, RSN-related Agreements or summaries, descriptions, or characterizations of the substance thereof shall not be disclosed to any DISH or Comcast in-house personnel, including, but not limited to, any in-house counsel.

(d) All persons who obtain Confidential Information in these Proceedings shall ensure that access to that Confidential Information is strictly limited as prescribed in this Agreement and is used only as provided in this Agreement. For the avoidance of doubt, all persons who obtain any Highly Confidential Information in these Proceedings shall comply with the procedures prescribed in paragraphs 4-13 of this Agreement concerning the ongoing designation and use of Highly Confidential Information as such, including, without limitation, any testimony, transcripts, pleadings, or documents containing or derived from Highly Confidential Information.

(e) Prior to the disclosure of any RSN-related Agreement, any Protected Third Party may redact certain portions of such RSN-related Agreement (i) that are not relevant to these Proceedings; or (ii) to the extent relevant, as necessary to assure the highest level of confidentiality practicable to protect the Protected Third Party's confidential and proprietary information to the extent not inconsistent with the purposes of these Proceedings.

(f) Highly Confidential Information shall only be disclosed to an Outside Expert according to the terms of this subparagraph. If Highly Confidential Information is disclosed to an Outside Expert, for the period extending from the date of disclosure until February 1, 2012, such Outside Expert will not work for any RSN or any other network that primarily distributes sports programming in connection with securing distribution on DISH or any Comcast cable system; nor, for such period, shall such Outside Expert work for any party (i) in connection with any agreement for the distribution by a multichannel video programming distributor ("MVPD") of any RSN that is a Protected Third Party; or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where a RSN that is a Protected Third Party also is interested in acquiring the relevant programming (regardless of whether the RSN that is a Protected Third Party previously had any rights to carry such programming). Before any Highly Confidential Information is disclosed to any such Outside Expert, each Outside Expert so retained or employed shall sign and file a Declaration in the form of Attachment A to confirm that he or she has read this subparagraph, meets the requirements of this subparagraph, and is bound by the obligations set forth herein. Such statement shall be provided to the Parties and the Protected Third Party. Nothing in this paragraph shall preclude an Outside Expert

from advising, assisting, or otherwise participating on behalf of a Reviewing Party or a Protected Third Party in future arbitrations or program access proceedings that are not adverse to a Protected Third Party which is not owned by, affiliated with, or under common ownership with a Reviewing Party, and that are initiated by any MVPD (and any following proceedings at the FCC or in federal court) relating to RSN carriage agreements, subject to any and all restrictions on the use of confidential information applicable in these, as well as any such future, arbitration or proceeding.

(g) If Highly Confidential Information is disclosed to a person who is Outside Counsel of Record, and such person subsequently becomes an employee of any Party or Protected Third Party, such person shall not be allowed to work for such Party or Protected Third Party (i) in connection with a negotiation for the distribution by an MVPD of an RSN that is a Protected Third Party; or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where an RSN that is a Protected Third Party also is interested in acquiring the relevant programming (regardless of whether the Protected Third Party RSN previously had any rights to carry such programming) until February 1, 2012. Nothing in this paragraph shall preclude such counsel from advising, assisting, or otherwise participating on behalf of a Reviewing Party in future arbitrations or program access proceedings initiated by any MVPD (and any following proceedings at the FCC or in federal court) relating to RSN carriage agreements, subject to any and all restrictions on the use of confidential information applicable in this, as well as any such future, arbitration or proceeding.

9. Procedures for Obtaining Access to Confidential Information or Highly Confidential Information. Other than in accordance with Paragraphs 5, 8, 11, and 18 of this Agreement, in all cases where access to Confidential Information or Highly Confidential Information by Authorized Representatives is permitted pursuant to Paragraph 8, before reviewing or having access to any Confidential Information or Highly Confidential Information, each person seeking such access shall execute a Declaration, file it with the Arbitrator, and serve it upon the parties hereto by email through Outside Counsel of Record.

10. Disclosure of Confidential Information or Highly Confidential Information. An Authorized Representative may disclose Confidential Information or Highly Confidential Information only to other individuals to whom disclosure is permitted under this Agreement.

11. Additional Disclosure. If any Party to these Proceedings seeks review of any decision or order issued by the Arbitrator before the Commission or a court of competent jurisdiction, such Party shall notify the Commission or such court of the existence and terms of this Agreement. In the event of an appeal to the Commission or a court, the unredacted version of any decision or order or pleading containing Highly Confidential Information shall not be filed unless reasonably necessary, in which case, prior to such disclosure, the Parties shall (i) cooperate to have the Highly Confidential Information sealed and any proceedings on review closed; and (ii) seek confidential treatment of such Highly Confidential Information to the maximum extent possible, including, without limitation, treatment in accordance with Sections 0.442 and 0.461 of the Commission's rules, 47 C.F.R. §§ 0.442, 0.461. In addition, a Party submitting Highly Confidential Information to the Commission or a court shall mark and identify such Highly Confidential Information in a manner consistent with Paragraph 13 hereof so as to alert the Commission or court that it is receiving Highly Confidential Information subject to this Agreement.