

distributor (MVPD),^{1/} (b) the applicable statute of limitations presents a time-bar for Sky Angel's claims,^{2/} and (c) it is neither "unfair" nor "discriminatory" for Discovery to exercise a termination right provided to it by the affiliation agreement, which Sky Angel freely and voluntarily entered into.

Notwithstanding Discovery's arguments that fact discovery is unnecessary, the Commission has yet to indicate whether it will dispense with Sky Angel's claims on the law. Also, by e-mail dated April 1, 2010, the Commission instructed Discovery to propound discovery, if any, no later than April 21, 2010.^{3/} Consequently, Discovery propounds the interrogatories included below, without prejudice to its argument that discovery in this case is premature, wasteful, and unnecessary. If the Commission ultimately dismisses Sky Angel's claims as a matter of law, then Discovery will withdraw these interrogatories. However, if the Commission decides that it needs further facts to adjudicate Sky Angel's claims, then Discovery respectfully requests that the Commission order Sky Angel to answer the interrogatories set forth below.

^{1/} *Complaint of SKY ANGEL U.S., LLC Against Discovery Communications, LLC et al. for Violation of the Commission's Competitive Access to Cable Programming Rules*, File No. _____, Discovery Communications, LLC Answer to Program Access Complaint (filed Apr. 21, 2010), at 13-18 ("*Discovery Answer*") (no FCC file number assigned at the time of filing); *Complaint of SKY ANGEL U.S., LLC Against Discovery Communications, LLC et al. for Violation of the Commission's Competitive Access to Cable Programming Rules*, File No. _____, Motion of Discovery Communications, LLC to Strike Unauthorized Pleading of Sky Angel U.S., LLC or, in the Alternative, Response to Emergency Request (filed Apr. 15, 2010), at 3 ("*Discovery Motion to Strike*") (no FCC file number assigned at the time of filing); *Complaint of SKY ANGEL U.S., LLC Against Discovery Communications, LLC et al. for Violation of the Commission's Competitive Access to Cable Programming Rules*, File No. _____, Opposition of Discovery Communications, LLC to Emergency Petition for Temporary Standstill (filed Apr. 12, 2010), at 13-17 ("*Opposition to Emergency Standstill*") (no FCC file number assigned at time of filing). Discovery hereby incorporates by reference the substance of its Answer, Motion to Strike, and Opposition to Emergency Standstill.

^{2/} See, e.g., Discovery Answer at pp. 18-21.

^{3/} E-mail from Steven Broecker, Senior Deputy Division Chief, FCC Media Bureau, to Christopher Harvie, Counsel, Discovery Communications, LLC (Apr. 1, 2010, 17:08 EST) (on file with author).

INSTRUCTIONS AND DEFINITIONS

A. The terms “you,” “your” or “Sky Angel,” refer to Sky Angel U.S., LLC, as that entity is defined in the Affiliation Agreement appended to the Program Access Complaint, along with its officers, directors, employees, and agents.

B. The term “person” means any natural person or any business, legal, or governmental entity or association.

C. The term “communication” means the transmittal of information in the form of facts, ideas, inquiries or otherwise, whether in writing or orally.

D. The term “document” means any piece of written information responsive to the interrogatories set forth below, whether stored in hard copy or electronically, including, but not limited to email, writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data complications, stored in any medium which information can be obtained either directly or, if necessary, after translation by you into a reasonably useable form. A draft or non-identical copy is a separate document within the meaning of this term.

E. The term “identify” *with respect to persons* means to provide, to the extent known, the person's full name, present or last known address, and, when referring to a natural person, the present or last known place of employment.

F. The term “identify” *with respect to documents* means to provide, to the extent known, the (a) type of document, (b) general subject matter, (c) date of the document and (d) author(s), addresses(s) and recipient(s).

G. The term “state the basis” means for a particular claim, assertion, allegation, or contention to (a) identify each and every document (and, where pertinent, the section, article or subparagraph thereof) that forms any part of the source of your information regarding the alleged

facts or legal conclusions referred to by the interrogatory, (b) identify each and every communication that forms any part of the source of your information regarding the alleged facts or legal conclusions referred to by the interrogatory, (c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time and place and identifying the persons involved) that form any part of your information regarding the alleged facts or legal conclusions referred to in the interrogatory, and (d) state separately any other fact that forms the basis of your information regarding the alleged facts or conclusions referred to in the interrogatory.

H. The term "Complaint" means the program access complaint filed with the Commission by Sky Angel on March 24, 2010.

I. The term "Affiliation Agreement" means the agreement of that name entered into October 3, 2007, by and between Discovery and Sky Angel.

J. "MVPD" means a "multichannel video programming distributor," as that term is defined by the Commission in its program access rules at 47 C.F.R. § 76.1000(e).

K. Unless otherwise noted below, the time period relevant for these interrogatories is the date Sky Angel launched its current Internet Protocol-based distribution methodology to the present day.

INTERROGATORIES

1. State the basis for your contention that Sky Angel is an MVPD.
2. State the basis for your contention that Sky Angel offers "video programming," as defined by 47 U.S.C. § 522(20).
3. Describe Sky Angel's method of distributing programming to subscribers.

4. Describe how Sky Angel's service can be accessed by subscribers outside their homes via a high-speed Internet connection.
5. State whether Sky Angel has an obligation to comply with, or seek a waiver of, the Commission's rules and regulations applicable to an MVPD.
6. State whether Sky Angel complies with the retransmission consent requirements, as set forth in 47 U.S.C. § 325(b)(1), and the Commission's implementing regulations found at 47 C.F.R. § 76.64.
7. State whether Sky Angel complies with the reciprocal good faith bargaining requirements, as set forth in 47 U.S.C. § 325(b)(3)(C), and the Commission's implementing regulations found at 47 C.F.R. § 76.65.
8. State whether Sky Angel complies with the equal employment opportunity ("EEO") requirements, as set forth in 47 U.S.C. § 554, and the Commission's implementing regulations found at 47 C.F.R. §§ 76.1702, 76.1802.
9. State whether Sky Angel complies with the closed captioning requirements, as set forth in 47 U.S.C. § 613, and the Commission's implementing regulations found at 47 C.F.R. § 79.1.
10. State whether Sky Angel complies with the navigation device requirements, as set forth in 47 U.S.C. § 549, and the Commission's implementing regulations found at 47 C.F.R. § 76.1200 *et seq.*
11. State whether Sky Angel complies with the encoding requirements found at 47 C.F.R. § 76.1901 *et seq.*
12. State whether Sky Angel complies with the signal leakage requirements found at 47 C.F.R. §§ 76.605, 76.609-611, 76.1803, and 76.1804.

13. State whether Sky Angel complies with the requirements related to harmful interference found at 47 C.F.R. § 76.613.
14. State whether Sky Angel complies with the requirements related to home wiring found at 47 C.F.R. § 76.800 *et seq.*
15. State whether Sky Angel complies with the requirements related to accessibility of emergency information found at 47 C.F.R. § 79.2.
16. State on what basis Discovery's decision to terminate Sky Angel was improper under the Affiliation Agreement.
17. Identify Sky Angel's competitors.
18. State how the loss of Discovery programming has affected or will affect Sky Angel's customer base.
19. Describe the impact that the loss of Discovery programming has had or will have on Sky Angel's customer base.
20. State how, if at all, Sky Angel has been or will be damaged by the loss of Discovery programming.
21. State the basis for Sky Angel's contention that Discovery needs "good cause" to terminate the Affiliation Agreement.
22. State how Sky Angel competes with Discovery's programming network distribution affiliates.
23. State the basis for Sky Angel's contention that Discovery has committed an unfair or deceptive trade practice.
24. State the basis for Sky Angel's contention that Discovery is seeking to benefit Sky Angel's competitors.

25. State the basis for Sky Angel's contention that Discovery programming is "must have" programming. (Complaint at 15.)

26. State the basis for Sky Angel's contention that Discovery permits "... other, far larger distributors to carry Discovery channels through Internet distribution..." (Complaint at 11.)

27. Identify all programming networks, including broadcast networks, satellite delivered cable programming networks, and regional sports networks, with whom Sky Angel has discussed or entered into an affiliation agreement.

28. Identify the networks that were carried by Sky Angel on its DBS platform and that are not distributed over its new platform.

29. Identify networks that Sky Angel expressed interest in carrying, but which are not provided as part of its program offerings to video customers.

30. Identify any network that declined to allow Sky Angel to carry the network as part of Sky Angel's service

31. State whether any programming network has ever expressed concern about Sky Angel's distribution methodology.

32. State the basis for Sky Angel's contention that Discovery's programming networks are "...being distributed through the Internet, directly to Subscriber's computers, as part of the TV Anywhere services..." (Complaint at 5.)

33. State the basis for Sky Angel's contention that, "...Sky Angel's IPTV distribution" is profitable to Discovery. (Complaint at 12.)

34. State the basis for Sky Angel's contention that Discovery controls "... five to ten of America's most favored programming channels ..." (Complaint at 14.)

35. State the basis for Sky Angel's contention that Discovery's channels are "... necessary to the success of emerging and independent MVPDs ... " (Complaint at 14.)

36. State why Discovery networks are "broadband programming." (Complaint at 15.)

37. State the basis for Sky Angel's contention that retaining Discovery programming network permits Sky Angel to "remain a viable competitor in the MVPD marketplace." (Complaint at 15.)

38. State the basis for Sky Angel's contention that Discovery intended to "hinder significantly or prevent Sky Angel from distributing programming to its subscribers in competition with affiliates of Discovery." (Complaint at 11.)

39. Identify every person with knowledge of facts pertaining to this proceeding.

40. Identify any expert witness(es) retained by Sky Angel for the purpose of providing expert testimony to the Commission related to this proceeding.

41. Identify all documents provided to, reviewed by, or prepared by any expert witness(es) identified in response to Interrogatory No. 40.

Dated: April 21, 2010

Respectfully submitted,

Howard J. Symons, TMC

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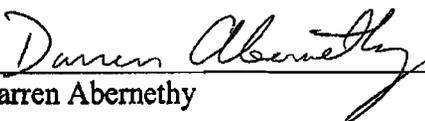
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CERTIFICATE OF SERVICE

I, Darren Abernathy, do hereby certify that on this 21st day of April, 2010, a true and correct copy of the foregoing **FIRST SET OF INTERROGATORIES PROPOUNDED ON SKY ANGEL U.S., LLC BY DISCOVERY COMMUNICATIONS, LLC** was served by first class mail, postage prepaid, on the following:

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Darren Abernathy