

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In re the Matter of )  
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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. 12-80

FILED/ACCEPTED

JUN - 9 2011

Federal Communications Commission  
Office of the Secretary

**DISCOVERY COMMUNICATIONS LLC OPPOSITION  
TO MOTION OF SKY ANGEL U.S., LLC FOR IMPOSITION OF SANCTIONS**

Discovery Communications, LLC and Animal Planet, LLC (collectively, "Discovery") hereby oppose and ask the Commission to reject the Motion for Sanctions filed by Sky Angel U.S., LLC ("Sky Angel").<sup>1/</sup> The Motion lacks any sound basis and is based solely on at best, Sky Angel's misunderstanding, and at worst, deliberate misstatements, of fact.

The essence of Sky Angel's Motion for Sanctions is its allegation that Discovery deliberately misled the Commission with statements that it did not allow distribution of its programming networks over the Internet when, according to Sky Angel, DISH Network, Time Warner Cable, and Cablevision are currently doing so.<sup>2/</sup> This is inaccurate. Not only have all statements made by Discovery to the Commission in this proceeding been truthful, but minimal investigation by Sky Angel before conjuring its allegations would have shown that to be true,

<sup>1/</sup> Motion of Sky Angel U.S., LLC for Imposition of Sanctions against Discovery Communications, LLC for Lack of Candor and for Possible Misrepresentation (filed May 27, 2011) ("Motion for Sanctions").

<sup>2/</sup> *Id.* at 2-6.

saving the Commission and Discovery the burden of addressing this wholly meritless Motion for Sanctions.

Sky Angel begins its argument by repeating a litany of statements made by Discovery in various filings in this proceeding that are, in fact, simply accurate restatements of the basic proposition that “Discovery has not entered into any distribution arrangement with any MVPD or other service provider for distribution of its programming networks on the Internet as part of a transportable, multilocation television service.”<sup>3/</sup> To support its erroneous claim that Discovery’s statements are false, Sky Angel offers unsupported assertions that DISH Network, Time Warner Cable, and Cablevision represent examples of Discovery “permitting millions of subscribers of large [MVPDs] to access many (possibly all) of its linear programming channels via Internet distribution.”<sup>4/</sup> At best, this claim is based on fundamental misunderstanding and conjecture that could have been resolved through minimal research about these offerings.

*First*, with regard to the fact that DISH subscribers apparently can use hardware and software that enables remote access to their DISH service, Discovery already has explained, the first time that Sky Angel raised this precise argument, that any copyright-related issues presented by DISH’s use of Slingbox technology are beyond the scope of the FCC’s program access rules.<sup>5/</sup> Moreover, while Sky Angel argues that Discovery was not truthful when it claimed that

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<sup>3/</sup> Motion for Sanctions at 2-3; Discovery Communications LLC Answer to Program Access Complaint, at 12 (filed Apr. 21, 2010). With regard to consideration of sanctions in this proceeding, the Commission may take note that several of the Discovery statements reproduced by Sky Angel on pages 2 and 3 of the Motion for Sanctions were initially made in confidential versions of Discovery pleadings and redacted from public versions of those pleadings. By publishing the statements in its publicly-filed Motion for Sanctions, Sky Angel has violated its agreement to abide by the terms of the parties’ Stipulated Protective Order in this proceeding pending its official adoption by the Commission. See Stipulated Protective Order (filed April 13, 2010) at ¶ 13.

<sup>4/</sup> Motion for Sanctions at 3.

<sup>5/</sup> See Letter from counsel for Sky Angel submitted on November 24, 2010 and Discovery’s December 3, 2010 response.

its networks are not part of the “TV Everywhere” service,<sup>6/</sup> that claim appears to be based on a misunderstanding (or deliberate misstatement) of the distinction between the “TV Everywhere” service offered by Time Warner Cable and Comcast,<sup>7/</sup> and the DISH advertising campaign arguing that DISH’s Sling technology is the only “true TV Everywhere.”<sup>8/</sup> Discovery’s linear programming networks are *not* part of the TV Everywhere initiative being developed and offered by Comcast and Time Warner Cable.

*Second*, Sky Angel’s claim that the iPad applications being offered by Time Warner Cable and Cablevision demonstrate that Discovery has been untruthful is meritless. While Sky Angel asserts that Time Warner Cable and Cablevision’s iPad applications allow subscribers the ability to access Discovery’s linear programming networks over the Internet from multiple locations outside the subscriber home,<sup>9/</sup> that claim is simply wrong. Neither application allows subscribers the ability to access Discovery’s networks from multiple locations – use of those applications is geographically restricted to the subscribers’ homes – and neither uses the public Internet.<sup>10/</sup>

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<sup>6/</sup> Motion for Sanctions at 3.

<sup>7/</sup> See, e.g., Harry McCracken, *TV Everywhere? Cable on the Net Isn’t There Yet*, TIME, May 5, 2011, at <http://www.time.com/time/business/article/0,8599,2069693,00.html> (describing the service).

<sup>8/</sup> See Press Release, DISH Network, DISH Network Introduces America’s First True TV Everywhere Offering (Nov. 18, 2010).

<sup>9/</sup> Motion for Sanctions at 4-5.

<sup>10/</sup> See Press Release, Cablevision, Cablevision’s New Optimum App Delivers The Full Cable Television Experience To An iPad in the Home (Apr. 2, 2011) (noting the application is available to “an iPad in the home” and that “Cablevision uses its secure and proprietary Advanced Digital Cable television network to deliver cable programming to customers for viewing on the Optimum App for iPad, and content is not delivered over the Internet. . . . Customers do not need to have Internet access to use the Optimum App for iPad”); TWCable TV for iPad, at [http://www.timewarnercable.com/nynj/learn/cable/TWCableTV/TWCableTV\\_iPad.html](http://www.timewarnercable.com/nynj/learn/cable/TWCableTV/TWCableTV_iPad.html) (last visited June 7, 2011) (explaining that use of the application is limited to a subscriber’s home and that the programming flows entirely over the Time Warner Cable cable network to the subscriber’s cable modem).

In short, none of the examples presented by Sky Angel in its Motion for Sanctions represents an actual instance of an MVPD delivering Discovery's linear programming networks in a manner that is contradictory to the statements made by Discovery to the Commission. Discovery is well aware of, and takes very seriously its obligation for continuing accuracy and completeness of information submitted to the Commission. The interests of completeness and accuracy are ill-served, however, by the conjecture, obfuscation, and misinformation presented in Sky Angel's Motion for Sanctions. The Commission should deny the Motion.

Respectfully submitted,



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June 9, 2011

**CERTIFICATE OF SERVICE**

I, Ernest C. Cooper, hereby certify that on this 9th day of June 2011, a true and correct copy of the foregoing Discovery Communications LLC Opposition to Motion of Sky Angel U.S., LLC for Imposition of Sanctions was filed with the Federal Communications Commission and copies were served on the following by deposit in the U.S. mail, first class, postage prepaid:

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