



Sky Angel is not entitled to relief as a matter of law because (a) it is not a multichannel video programming distributor (MVPD),<sup>1/</sup> (b) the applicable statute of limitations presents a time-bar to Sky Angel's claims,<sup>2/</sup> 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.<sup>3/</sup> Consequently, Discovery propounds the document requests listed 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 document requests. However, if the Commission decides that it needs further facts to adjudicate Sky Angel's claims, then Discovery respectfully seeks the documents set forth in the requests listed below.

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<sup>1/</sup> *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.

<sup>2/</sup> See, e.g., Discovery Answer at 18-21.

<sup>3/</sup> E-mail from Steven Broeckaert, 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 document requests 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 document request, (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 document request, (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 document request, and (d) state separately any other fact that forms the basis of your information regarding the alleged facts or conclusions referred to in the document request.

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, which appended to the Complaint.

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 document requests is the date Sky Angel launched its current Internet Protocol-based distribution methodology to the present day.

#### DOCUMENT REQUESTS

1. All documents that demonstrate Sky Angel is an “MVPD.”
2. All documents that demonstrate Sky Angel offers “video programming,” as defined by 47 U.S.C. § 522(20).
3. All documents that describe or discuss Sky Angel’s method of distributing programming to subscribers.

4. All marketing documents in which Sky Angel describes its service.
5. All documents that describe or discuss the portable nature of Sky Angel's service.
6. All documents that describe or discuss how Sky Angel's service can be accessed by subscribers outside their homes via a high-speed Internet connection.
7. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the Commission's rules and regulations applicable to an MVPD.
8. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the retransmission consent requirements, as set forth in 47 U.S.C. § 325(b), and the Commission's implementing regulations found at 47 C.F.R. § 76.64.
9. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, 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.
10. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, 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.
11. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, 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 *et seq.*

12. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, 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.*

13. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the encoding requirements found at 47 C.F.R. § 76.1901 *et seq.*

14. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the signal leakage requirements found at 47 C.F.R. §§ 76.605, 76.609-611, 76.1803, and 76.1804.

15. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the requirements related to harmful interference found at 47 C.F.R. § 76.613.

16. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the requirements related to home wiring found at 47 C.F.R. § 76.800 *et seq.*

17. All documents that discuss or concern Sky Angel's obligation or actions to comply with, or seek a waiver of, the requirements related to accessibility of emergency information found at 47 C.F.R. § 79.2 *et seq.*

18. All documents related to the Affiliation Agreement, including, but not limited to, internal communications, communications with Discovery personnel, and/or communications with third parties (*e.g.*, customers, trade groups, etc.).

19. All communications about the termination provision (*i.e.*, Paragraph 12, and the subparagraphs thereto) of the Affiliation Agreement.

20. All documents that discuss or concern Discovery's decision to terminate Sky Angel was improper.
21. All documents in any way related to Sky Angel's claims, including, but not limited to, internal communications, communications with Discovery personnel, and/or communications with third parties (*e.g.*, customers, trade groups, etc.).
22. All documents that discuss or concern the demand of Sky Angel's customers for Discovery programming networks.
23. All documents that discuss or concern how the loss of Discovery programming has affected or will affect Sky Angel's customer base.
24. All documents that show, on a monthly basis from January 2007 to the present, the number of video subscribers served by Sky Angel.
25. All documents that discuss or concern how Sky Angel has been or will be damaged by the loss of Discovery programming.
26. All documents that discuss or concern Sky Angel's contention that Discovery needs "good cause," to terminate the Affiliation Agreement.
27. All documents that discuss or identify Sky Angel's competitors, including, but not limited to, documents that show that Sky Angel competes with Discovery's programming network distribution affiliates.
28. All documents that discuss or concern Sky Angel's contention that Discovery is seeking to benefit Sky Angel's competitors.
29. All documents that discuss or concern Sky Angel's contention that Discovery has committed an unfair or deceptive trade practice.

30. All documents that discuss or concern 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.)

31. All documents that discuss or concern Sky Angel's contention that Discovery is unlawfully discriminating against Sky Angel.

32. All documents that discuss or concern Sky Angel's contention that Discovery permits "... other, far larger distributors to carry Discovery channels through Internet distribution..." (Complaint at 11.)

33. All documents that discuss or concern Sky Angel's contention that Discovery programming is "must have" programming. (Complaint at 15.)

34. All documents that identify, discuss or concern Sky Angel's discussions with other programming networks, including broadcast networks, satellite delivered cable programming networks, and regional sports networks, concerning affiliation agreements with those respective networks.

35. All documents identifying other networks that were carried by Sky Angel on its DBS platform and that are not distributed over the new platform.

36. All documents discussing or relating to discussions with networks that Sky Angel expressed interest in carrying, but which are not provided as part of its program offerings to video customers.

37. All documents discussing or relating to discussions with networks that declined to allow Sky Angel to carry the network as part of the Sky Angel service.

38. All of Sky Angel's affiliation agreements with any programming network other than Discovery.

39. All documents that discuss or show concerns that any programming network expressed about Sky Angel's distribution methodology.

40. All documents that discuss or concern 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.)

41. All documents relating to Sky Angel's contention that, "...Sky Angel's IPTV distribution" is profitable to Discovery. (Complaint at 12.)

42. All documents relating to Sky Angel's contention that Discovery controls "... five to ten of America's most favored programming channels ..." (Complaint at 14.)

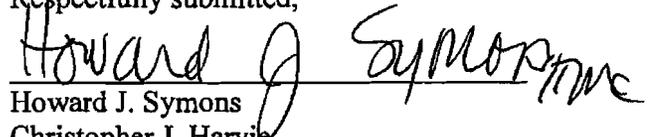
43. All documents relating to Sky Angel's contention that Discovery's channels are "... necessary to the success of emerging and independent MVPDs ..." (Complaint at 14.)

44. All documents explaining why Discovery networks are "broadband programming." (Complaint at 15.)

45. All documents showing how retaining Discovery programming network permits Sky Angel to "remain a viable competitor in the MVPD marketplace." (Complaint at 15.)

Dated: April 21, 2010

Respectfully submitted,



Howard J. Symons

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**CERTIFICATE OF SERVICE**

I, Darren Abernethy, do hereby certify that on this 21st day of April, 2010, a true and correct copy of the foregoing **FIRST SET OF DOCUMENT REQUESTS 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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Leighton T. Brown II  
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Darren Abernethy