

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Public Notice on Interpretation of the Terms |) | MB Docket No. 12-83 |
| “Multichannel Video Programming Distributor” |) | |
| and “Channel” as Raised in Pending |) | |
| Program Access Complaint Proceeding |) | |
| |) | |
| Complaint of Sky Angel U.S., LLC |) | MB Docket No. 12-80 |
| Against Discovery Communications, LLC, <i>et. al.</i> |) | |
| For Violation of the Commission’s Competitive |) | |
| Access to Cable Programming Rules |) | |

SUPPLEMENTAL COMMENTS OF SKY ANGEL U.S., LLC

Sky Angel U.S., LLC (“Sky Angel”) submits these supplemental comments in the above-captioned proceedings in order to apprise the Commission, as well as the United States Court of Appeals for the District of Columbia Circuit (the “Court”),¹ that on January 15, 2014, Sky Angel suspended its video and audio distribution services for the reasons described below.

Sky Angel has been unable to compete with incumbent multichannel video programming distributors (“MVPDs”) because it continues to be denied the opportunity to purchase distribution rights for the linear video programming most demanded by consumers. As a consequence, Sky Angel was forced to suspend operations until such time as it is able to acquire programming in a fair and nondiscriminatory way, and thus be able to effectively compete with other programming distributors. To be clear, Sky Angel did not suspend its operations due to

¹ These Supplemental Comments are being filed concurrently with the Court in the matter of *In re Sky Angel U.S., LLC, Petitioner*, Case No. 12-1119, which arose from a Petition for Writ of Mandamus filed by Sky Angel on February 27, 2012. The Court dismissed Sky Angel’s Petition without prejudice, permitting Sky Angel to renew the Petition in the event of additional “significant delay” by the FCC. *See Order*, Case No. 12-1119, FCC-25FCC-3879 (D.C. Cir. July 12, 2012).

insufficient funding. Although it has suffered losses, Sky Angel continues to have the financial ability to maintain and grow its service. Throughout its history, Sky Angel offered competitive, and indeed premium, subscription fees to programmers. Sky Angel simply cannot operate until programmers permit it to purchase competitive video products to distribute on its system.

Sky Angel initiated this proceeding when it filed a formal program access complaint (the “Complaint”) with the FCC on March 24, 2010 (more than 50 months or 1,500 days ago). The FCC still has not taken any substantive action on the Complaint. The purported reason for this unconscionable delay is that the FCC is attempting “to determine” if Sky Angel qualifies as an MVPD under the 1992 Cable Act and its implementing regulations, even though these standards have been in place for approximately 22 years.² The Commission even went so far as to initiate a form of notice and comment proceeding, asking the public to file comments regarding the proper scope of its MVPD definition,³ a step Sky Angel believes to be unprecedented in connection with a formal complaint. The Commission initiated that unheard of additional proceeding in response to the Court ordering it to explain why it continued to delay acting on Sky Angel’s Complaint.⁴ Although the filing period for those public comments closed two years ago, on June 13, 2012, the FCC still has taken no substantive action in these proceedings.

During the more than four years that the FCC has refused to act substantively on Sky Angel’s Complaint, it has undertaken a number of actions of far greater complexity than

² See, e.g., §76.1000(e), 47 C.F.R. §76.1000(e); 47 U.S.C. §522(13).

³ *Media Bureau Seeks Comments on Interpretation of the Terms “Multichannel Video Programming Distributor” and “Channel” as Raised in Pending Program Access Complaint Proceeding*, Public Notice, MB Docket No. 12-83, DA 12-507 (Mar. 30, 2012) (“Public Notice”).

⁴ Six business days after Sky Angel filed its Petition for Writ of Mandamus, the Court ordered the FCC to respond. See *Order*, Case No. 12-1119, FCC-25FCC-3879 (D.C. Cir., Mar. 6, 2012). The FCC released the Public Notice shortly before its April 5, 2012 response deadline to the Court. Prior to this inquiry by the Court, the FCC had not even assigned a docket number to the Complaint, a nearly two-year delay for that entirely ministerial act.

applying the 22-year-old program access framework to Sky Angel's Complaint and video distribution service. A few examples of the actions taken by the FCC during this excessive passage of time include approving the merger of Comcast and NBCUniversal, releasing its 13th, 14th and 15th Annual Reports regarding the Status of Competition in the Market for the Delivery of Video Programming, issuing policies and orders for the broadcast incentive auction, and, on two occasions, working to craft net neutrality rules. In addition, in 2012, the Commission revised its program access rules to include a formal "shot clock," under which the Media Bureau must decide program access complaints, such as the one filed by Sky Angel, within six months of filing.⁵ Even if the Commission had applied this shot clock to Sky Angel's Complaint only after it had adopted a rule to formally codify this longstanding processing requirement (which was more than 18 months after Sky Angel filed its Complaint), the Media Bureau still would have been required to rule on the merits of the Complaint about a year ago.

Sky Angel continues to await FCC action on its Complaint against Discovery Communications, *et al.* Upon appropriate findings and determinations in this proceeding, Sky Angel would be able to enforce the FCC's long-standing nondiscrimination rights against Discovery and to obtain the other forms of regulatory relief it requested. Sky Angel then would be able to demonstrate its status in the programming industry, seek to obtain competitive programming, and on that basis work to resume its operations. Accordingly, Sky Angel once again urges the FCC to find that it qualifies as an MVPD, to grant its Complaint against Discovery Communications, and to provide all of the relief requested by Sky Angel in 2010.⁶

⁵ See 47 C.F.R. §76.1003(m) (as revised in *Revisions to the Commission's Program Access Rules*, 27 FCC Rcd 12605 (2012)).

⁶ The relief sought by Sky Angel before the FCC is separate from the contract damages that Sky Angel is suing Discovery for in *Sky Angel U.S., LLC v. Discovery Communications, LLC, et al.*, Case No. 8:13-cv-00031-DKC (U.S. District Court for the District of Maryland).

Respectfully submitted,

SKY ANGEL U.S., LLC

/s/ Leighton T. Brown

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Its Attorneys

Certificate of Service

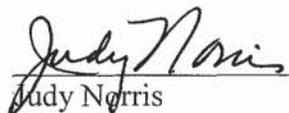
I, Judy Norris, a legal secretary with the firm of Holland & Knight LLP, hereby certify that on the 10th day of June 2014:

1. A copy of the foregoing *Supplemental Comments of Sky Angel, U.S., LLC* was hand-delivered to:

Richard K. Welch
Federal Communications Commission
Office of General Counsel
445 12th Street, S.W.
Washington, DC 20554

2. A copy of the foregoing *Supplemental Comments of Sky Angel, U.S., LLC* was deposited in the U.S. mail, postage prepaid, first-class, addressed to:

Tara M. Corvo
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
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Counsel for Discovery Communications, LLC



Judy Norris