

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

In the Matter of)
)
Applications of) MB Docket No. 14-90
)
AT&T, Inc. and)
DIRECTV)
)
For Consent to Assign or Transfer Control of)
Licenses and Authorizations)

**COMMENTS OF
CEQUEL COMMUNICATIONS, LLC D/B/A SUDDENLINK COMMUNICATIONS**

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SUMMARY

The transaction proposed by AT&T, Inc. (“AT&T”) and DIRECTV increases both the incentive and the ability of the combined company to demand unreasonably high prices and other anticompetitive terms from smaller, competing multichannel video programming distributors (“MVPDs”), such as Suddenlink, for popular, vertically owned regional sports networks (“RSNs”). Accordingly, the Commission should condition any approval of the transaction on the implementation of protective measures to mitigate such potential post-transaction harms to competing MVPDs and consumers.

The Commission should initially clarify that the program access rules apply and adopt arbitration mechanisms for any RSNs affiliated with AT&T/DIRECTV. In addition to these traditional remedies, the Commission should require AT&T/DIRECTV to offer affiliated RSN programming to any competing MVPD on an *a la carte* basis.

Alternatively, the Commission should require that the combined company make vertically integrated RSN programming available to competing MVPDs at the same rates and terms on which it makes that programming available to any other MVPD, including AT&T and DIRECTV. The Commission also should impose specific conditions prohibiting AT&T/DIRECTV from tying in-market RSN carriage to out-of-market RSN carriage and from tying carriage of one RSN with carriage of another RSN.

If the Commission is disinclined to adopt these conditions on a comprehensive basis, it certainly should adopt them in cases involving competing MVPDs serving less than 5% of the TV households in the core DMA of any AT&T/DIRECTV RSN. Such relief is essential -- as these competing MVPDs are the most vulnerable to abusive, inflationary, and anticompetitive affiliation tactics.

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Cequel Communications, LLC d/b/a Suddenlink Communications (“Suddenlink”) hereby submits these comments in the above-captioned proceeding. The transaction proposed by AT&T, Inc. (“AT&T”) and DIRECTV increases both the incentive and the ability of the combined company to demand unreasonably high prices and other anticompetitive terms from smaller, competing multichannel video programming distributors (“MVPDs”), such as Suddenlink, for popular, vertically owned regional sports networks (“RSNs”). Suddenlink is particularly concerned that the combined company will be in a position to extract discriminatory and anticompetitive rates and other conditions with respect to RSN programming in the Houston Designated Market Area (“DMA”). Suddenlink requests that the Commission condition any approval of the proposed transaction on the implementation of protective measures to prevent the combined company from harming consumers and competitors by demanding unreasonable terms for access to affiliated “must have” RSN programming. Suddenlink believes that the simplest and most efficient condition would be an obligation on the combined company to provide its

affiliated RSN programming to any competing MVPD electing to retail the service on an *a la carte* basis. Alternatively, the Commission should require that AT&T/DIRECTV make vertically integrated RSN programming available to each competing MVPD at the same rates and terms on which that programming is available to any other MVPD, including AT&T and DIRECTV.

I. FACTUAL BACKGROUND

Suddenlink provides cable television service to approximately 1.4 million subscribers in 16 states, including service to more than 47,000 subscribers in 26 communities located in the Houston designated market area (“DMA”). The latter figure represents just 2% of the 2,289,360 TV households in the Houston DMA.¹ As a practical matter, Suddenlink is a “smaller” operator in the Houston market. It has very little subscriber leverage in negotiating with local programmers. Suddenlink competes directly for video subscribers with both AT&T and DIRECTV in the Houston DMA.

AT&T, with 5.9 million subscribers nationwide, provides video service under its U-verse brand to an estimated 381,000 TV customers in the Houston DMA.² DIRECTV is the nation’s largest direct broadcast satellite (“DBS”) service provider, with more than 20 million subscribers in the U.S. and approximately 392,000 customers in the Houston DMA.³ Combined, AT&T and DIRECTV will provide video service to one-third of the Houston DMA households and will be more than fifteen times Suddenlink’s size in that DMA.

¹ See *Television & Cable Factbook* (2014 Edition) at A-1193.

² See David Barron, “Astros, Rockets optimistic about new AT&T/DirectTV network plan, but possible hurdles loom,” *Houston Chronicle* (Aug. 7, 2014); <http://blog.chron.com/sportsupdate/2014/08/resolution-reached-in-csn-houston-dispute-as-reworked-networks-availability-to-expand-greatly/> (“*Houston Chronicle Sports Update*”).

³ *Id.*

AT&T and DIRECTV recently submitted a plan to the U.S. Bankruptcy Court to take control of Comcast SportsNet Houston (“CSN Houston”), an RSN with rights to air the baseball games of the Houston Astros and the basketball games of the Houston Rockets. CSN Houston was launched in 2012 as a partnership among Comcast, the Astros and the Rockets, but so far has only achieved about a 40% penetration in the market, primarily via distribution on Comcast cable systems. CSN Houston has not reached affiliation agreements with other MVPDs in the area, such as AT&T, DIRECTV and Suddenlink.

If the bankruptcy reorganization plan is approved, CSN Houston will likely become Root Sports Houston, with 60% ownership by DIRECTV and 40% ownership by AT&T.⁴ At that point, Root Sports Houston presumably will be launched by AT&T and DIRECTV in areas in which they directly compete with Suddenlink. The new, vertically integrated AT&T/DIRECTV will then have the incentive and ability to demand unreasonable terms from competing MVPDs (like Suddenlink) for access to Root Sports Houston.⁵

⁴ See *Houston Chronicle Sports Update*.

⁵ DIRECTV already owns and operates three other RSNs branded as Root Sports, which are based in Seattle, WA (Root Sports Northwest), Denver, CO (Root Sports Rocky Mountain), and Pittsburgh, PA (Root Sports Pittsburgh). These RSNs are distributed to a total of more than 8.7 million viewers in 18 states. They own exclusive regional programming and distribution rights to professional (and collegiate) teams, including the Seattle Mariners, Colorado Rockies, Pittsburgh Pirates, Pittsburgh Penguins, and Utah Jazz. See Root Sports’ website at http://www.rootsports.com/ViewArticle.dbml?DB_OEM_ID=25900&ATCLID=205126777. Suddenlink currently has affiliation agreements for the distribution of the programming aired by each of these Root Sports Networks in their respective regions. Although Suddenlink is most concerned about CSN Houston, for which it currently has no carriage agreement, the conditions advocated in these Comments should be applicable to all RSNs affiliated with AT&T/DIRECTV.

II. THE FCC HAS FOUND THAT RSNs ARE “MUST HAVE” PROGRAMMING, AND VERTICAL INTEGRATION OF RSNs LEADS TO PRICE INCREASES

The Commission has observed that RSNs are often considered “must-have” programming because of the lack of adequate substitutes: “[RSNs] typically purchase exclusive rights to show sporting events and sports fans believe that there is no good substitute for watching their local and/or favorite team play an important game.”⁶ Indeed, the Commission has found that “at least a certain proportion of MVPD subscribers view certain types of programming as so vital or desirable that they are willing to change MVPD providers in order to gain or retain access to that programming.”⁷ An unaffiliated MVPD that lacks local sports programming, according to the Commission, therefore “risks subscriber defections,” while rivals holding the rights to local sports programming, “will drive hard bargains to . . . defend or exploit regional sports programming rights.”⁸ Hence, the Commission has found, “an MVPD’s ability to gain access to RSNs, and the price and other terms of conditions of access, can be important factors in its ability to compete with rivals.”⁹

In situations where a “must have” programming supplier combines with a distributor, “the proposed transaction creates a vertically integrated content/distribution platform.”¹⁰ That integrated platform changes the relationship between its owner and all other MVPDs “from that of solely a programming supplier to that of both a supplier of crucial inputs and a direct

⁶ *General Motors Corp. and Hughes Electronics Corp. (Transfer of Control to News Corp.)*, 19 FCC Rcd 473, ¶ 133 (2004) (“*News Corp.-Hughes Order*”). See also *Adelphia Communications Corp. – Time Warner Cable Inc. Transfer*, 21 FCC Rcd. 8203, ¶ 124 (2006) (“*Adelphia Order*”).

⁷ *News Corp. and the DIRECTV Group, Inc. (Transfer of Control of Liberty Media Corp.)*, 23 FCC Rcd. 3265, ¶35 (2008) (“*News Corp.- DirecTV Order*”), citing *News Corp.-Hughes Order*, 19 FCC Rcd at 633; App. D and *Adelphia Order*, 21 FCC Rcd. 8270-71 ¶ 46.

⁸ *News Corp.-DirecTV Order* at ¶ 87, citing *Adelphia Order* at ¶ 124.

⁹ *Id.*

¹⁰ *News Corp.-Hughes Order*, at ¶ 4.

competitor in the end user MVPD markets.”¹¹ As a result, according to the Commission, vertical integration has the potential to increase the incentive and ability of the vertically integrated company to engage in a variety of anticompetitive behaviors with respect to “must have” programming, like RSNs.¹² Such anticompetitive behaviors can include withholding RSN programming from competing MVPDs, as well as imposing supra-competitive prices for such “must have” programming, which the Commission has found “are likely passed through as higher MVPD prices, which in turn would harm consumers.”¹³

The transaction here, if approved, would combine the video distribution and programming assets of AT&T and DIRECTV, including currently owned and subsequently acquired RSNs – thereby giving rise to Suddenlink’s concerns and its call for protective conditions.

III. THE FCC SHOULD ADOPT PROTECTIVE CONDITIONS APPLICABLE TO AT&T/DIRECTV’S RSN PROGRAMMING

A. The Commission Has Imposed Protective Merger Conditions in the Past.

The Commission has previously imposed merger conditions to mitigate potential post-transaction harms to unaffiliated MVPDs and consumers. For example, when News Corp. acquired DIRECTV, the Commission determined that the resulting vertical integration “would increase its incentive and ability to temporarily withhold News Corp. RSN programming from its competitors.”¹⁴ To mitigate the problem, the Commission required News Corp. to submit unresolved program access disputes to binding arbitration. When Comcast and Time Warner

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *News Corp-DirectTV Order* at ¶ 90, citing 19 FCC Rcd at 552 ¶ 172 (confidential version), submitted in MB Docket 07-18.

acquired Adelphia, the Commission found that the acquiring companies “would be able to profitably impose a uniform price increase for their affiliated RSNs on their MVPD competitors in several key DMAs.”¹⁵ There too, the Commission created an arbitration remedy similar to the condition adopted in the *News Corp.-Hughes Order*. And when Liberty Media Group acquired control of DIRECTV, the Commission extended the existing arbitration condition for an additional six years.¹⁶

Until recently, MVPDs had the right to take DIRECTV to arbitration over RSN disputes based on the arbitration extension imposed when Liberty Media acquired DIRECTV.¹⁷ But this condition expired in February 2014.¹⁸ The absence of arbitration protections in this case potentially leaves smaller unaffiliated MVPDs, like Suddenlink, particularly vulnerable to anticompetitive and discriminatory conduct by AT&T/DIRECTV in exploiting its “must have” RSN programming.

Suddenlink’s concerns go beyond mere economic theory. The Commission recently concluded that DIRECTV tried to charge an unaffiliated MVPD more than “fair market value” for RSN programming carriage rights.¹⁹ Armstrong Utilities, Inc. (“Armstrong”), having failed to reach agreement for renewal of its prior contract with DIRECTV Sports Net Pittsburgh

¹⁵ *Adelphia Order*, 21 FCC Rcd at 8275 ¶ 159.

¹⁶ *News Corp.- DirectTV Order*, 23 FCC Rcd. 3265 ¶ 92 (2008). It should be noted that the protections in the existing program access rules, 47 C.F.R. § 76.1001, *et seq.*, deal with vertically integrated cable operators. Given AT&T’s historic denial of its own “cable operator” status, it is unclear whether the existing program access rules will apply to AT&T/DIRECTV. Accordingly, the Commission should clearly condition any transfer approval on the imposition of the basic program access protections.

¹⁷ *Id.* at ¶ 88.

¹⁸ *Id.* at ¶103.

¹⁹ *DIRECTV Sports Net Pittsburgh, LLC v. Armstrong Utilities, Inc., Memorandum Opinion and Order*, FCC 14-73 (rel. Jul. 16, 2014) (“*DSNP v Armstrong*”).

(“DSNP”), submitted a demand for arbitration, pursuant to the conditions adopted in the *News Corp. - DirectTV Order*.²⁰ The arbitrator found that Armstrong’s final offer most closely approximated fair market value.²¹ DSNP disagreed and filed a petition for review of the arbitration award with the Media Bureau.²² Three years ago, the Media Bureau rejected DSNP’s challenge and affirmed the arbitrator’s finding that DSNP’s proposed RSN carriage rates were above fair market value.²³ Undeterred, DSNP appealed to the full Commission.²⁴ Just two months ago, the Commission affirmed the Media Bureau’s ruling against DSPN.²⁵

DSPN v. Armstrong demonstrates two important facts. First, DIRECTV has a recent history of actually trying to impose unfair RSN carriage rates on a competing MVPD. Second, DIRECTV appears willing to invest substantial resources in time-consuming and resource-intensive arbitration and litigation to protect (or increase) its market position. Although Armstrong refused to back down, smaller MVPDs (and even larger MVPDs with a limited market presence) typically lack the resources to sustain such a long and draining legal campaign. Taken together, these facts suggest that the Commission in this proceeding should not rely on arbitration alone to protect the interests of small, competing MVPDs and their customers.

²⁰ *Id.* at ¶ 3.

²¹ *Id.*

²² *Id.* (“On April 13, 2011, DSNP filed a Petition for *De Novo* Review of the ruling.”).

²³ See *DIRECTV Sports Net Pittsburgh, LLC, v. Armstrong Utilities, Inc.*, Order on Review, 26 FCC Rcd. 12574 (2011).

²⁴ See *DSNP v Armstrong* at ¶ 1.

²⁵ *Id.*

B. The Commission Certainly Should Impose Traditional Conditions on AT&T/DIRECTV'S RSN Programming.

The Commission should, at a minimum: (1) clarify that the existing program access rules would apply to AT&T/DIRECTV;²⁶ and (2) adopt established arbitration mechanisms for any RSNs affiliated with AT&T/DIRECTV.²⁷

C. To Provide Meaningful Protection, the Commission Should Impose an *A La Carte* Condition on AT&T/DIRECTV's RSN Programming.

The traditional conditions outlined above are a start, but more is needed here. Even with such basic protective provisions in place, AT&T/DIRECTV will have the ability to leverage “must have” programming assets to extract ever increasing rates from unaffiliated MVPDs and their customers. As the Commission found in the *News Corp.-Hughes Order*, the program access rules are “insufficient to protect against the harms arising from [the] enhanced incentive and ability to use . . . market power in the market for regional sports programming to the detriment of consumers.”²⁸ And the protracted *DSPN v. Armstrong* case demonstrates that arbitration is costly and time consuming, even if the correct result is ultimately reached.

Accordingly, the Commission should impose additional conditions on affiliated RSN distribution to protect competition and consumers. The simplest and most effective way to prevent AT&T/DIRECTV from abusing the bargaining power associated with RSN ownership is

²⁶ See n. 16, *supra*.

²⁷ See *News Corp.-Hughes Order*, ¶¶ 172-177; *Adelphia Order*, Appendix B; *News Corp.-DirecTV Order*, ¶¶ 90-110. The Commission has required RSN programming to be offered separate and apart from other programming – at least in the context of arbitration. See, e.g. *News Corp.-Hughes Order*, at ¶ 175 (“We also specify that expedited arbitration procedures be used and that the final offers submitted to the arbitrator by each side may not include any compensation for RSN carriage in the form of the MVPD's agreement to carry any video programming networks or any other service other than the RSN.”).

²⁸ See *News Corp.-Hughes Order* at ¶ 169. See also *Adelphia Order* at ¶ 155.

to guarantee competing MVPDs access to AT&T/DIRECTV's RSNs, even if the competing MVPD elects to distribute the programming to consumers on an *a la carte* basis.

The Commission should guarantee competing MVPDs the ability to distribute AT&T/DIRECTV's RSNs on an *a la carte* basis, so they will be able to market (and price) the RSNs independently of any other programming. This guarantee would effectively limit the adverse inflationary and discriminatory results that AT&T/DIRECTV might otherwise trigger by coupling extremely high wholesale costs with very broad retail distribution requirements. At the same time, it would preserve the ability of AT&T/DIRECTV to recover its programming investment in a reasonable fashion.

The situation in the Houston market is instructive. AT&T and DIRECTV's plan to acquire CSN Houston and rebrand its programming as Root Sports Houston reflects a conscious business decision by those companies to invest in what they believe will be popular content. AT&T and DIRECTV should have the opportunity to recover this investment from consumers who value Root Sports Houston enough to purchase it – but not by leveraging enthusiasm on the part of a select group of sports fans into a carriage obligation that foists costly sports programming on large numbers of disinterested consumers. With *a la carte* distribution, Root Sports Houston could charge whatever individual consumers are willing to pay for the RSN programming content, and unaffiliated MVPDs could pass on to these customers the direct cost of that RSN programming.²⁹ Under this scenario, the market would force the owner of Root

²⁹ Unaffiliated MVPDs distributing RSN programming on an *a la carte* basis should have reasonable business discretion to set a retail rate for the channel that covers the *full* cost of RSN distribution. A retail rate strictly limited to a pass-through of wholesale programming costs, after all, would deny the operator any recovery of additional distribution costs, including billing subscribers and processing payment to the RSN. Suddenlink respectfully suggests that the Commission adopt a conservative “safe harbor” retail benchmark of 125% of the RSN wholesale price charged by AT&T/DIRECTV. That is, neither AT&T/DIRECTV nor any RSN affiliate(s)

Sports Houston to recover its investment solely from those consumers who actually value this costly programming.

Suddenlink appreciates that imposing this wholesale obligation on a programmer is at odds with the “tiering” practices that traditionally served the cable industry and its customers well and helped foster the development of a plethora of diverse cable networks. The reality, however, is that the cable industry’s successful tiering model was premised on individual networks charging relatively low per subscriber costs – a qualification which no longer applies to RSNs, and could be particularly problematic where (as here) a vertically integrated RSN is negotiating distribution terms with competing MVPDs, including MVPDs (like Suddenlink) with relatively limited market presence.

In economic terms, an *a la carte* condition on the licensing of AT&T/DIRECTV’s RSN programming would ensure that end users receive an accurate price signal from the ultimate source of the cost – the owner of the programming. In the absence of any accountability, AT&T/DIRECTV and affiliated RSNs will be incented to charge competing MVPDs excessive rates. An *a la carte* retail regime would provide much needed accountability. Further, an *a la carte* condition would allow competing distributors to maintain their own preferred retailing pricing structures for tiered programming – free from exorbitant RSN costs that AT&T/DIRECTV might otherwise impose.³⁰

would be permitted to challenge the MVPD’s retail rates for *a la carte* RSN programming, so long as those rates do not exceed 125% of the wholesale price of the RSN programming. An operator would retain discretion to impose a higher markup, but the amount above the 25% “safe harbor” would be subject to challenge and would require the MVPD to demonstrate that the mark-up was solely to recover operating costs and a reasonable return on investment.

³⁰ Significantly, Suddenlink is *not* advocating a mandatory *a la carte* retail regime be imposed on competing MVPDs. If the competing MVPD voluntarily elects to include AT&T/DIRECTV’s in a tier, the Commission should *not* interfere with that competitor’s preferred retail pricing structure.

D. Alternatively, AT&T/DIRECTV Should Be Required To Provide Access To RSNs On A “Most-Favored-Nations” (“MFN”) Basis.

An *a la carte* condition has, among others, the virtue of simplicity and efficiency. By elevating consumer choice, it would eliminate many opportunities for the combined AT&T/DIRECTV to harm unaffiliated MVPDs through discriminatory and anticompetitive pricing and carriage terms. It would also mitigate the harmful impact of inflationary rate demands on consumers. And it would do so without requiring any detailed negotiation of terms or adjudicative fact-finding. If, however, the Commission does not adopt a straight-forward *a la carte* condition, it should at least adopt the “most favored nations” (“MFN”) conditions described herein.³¹

The Commission should require that AT&T/DIRECTV make vertically integrated RSN programming available to each competing MVPD at the same rates and terms on which that programming is made available to any other MVPD, including AT&T and DIRECTV. In this way, if a tiering or other carriage obligation is imposed, that obligation will be no more onerous on smaller MVPDs than on larger MVPDs, and each MVPD will be entitled to obtain the RSN at the most favorable price paid by any other MVPD, including AT&T/DIRECTV.

An MFN remedy is an imperfect solution in this situation, as it leaves open the possibility that the vertically integrated company can harm competitors by charging artificially inflated rates to its own affiliated distributors. Nevertheless, requiring that AT&T/DIRECTV’s RSNs be made available to every local MVPD on the most favorable terms provided to any MVPD would at least offer some protection to MVPDs with a minor local presence (*e.g.*, Suddenlink in the Houston DMA) by allowing them to take advantage of the lower rates that might be negotiated

³¹ In fact, it would not be unreasonable for the Commission to impose **both** the *a la carte* condition described above and MFN obligations set forth in this section.

successfully by unaffiliated MVPDs with a much larger local presence (*e.g.*, Comcast) and at least some negotiating power.

The Commission should also clearly state that the MFN requirement will be construed broadly, so that AT&T/DIRECTV cannot circumvent the intent of the condition by withholding MFN pricing for RSN programming on the basis of technical distinctions between distributors. AT&T/DIRECTV must not be given latitude to evade the Commission's protective intent by fashioning unique contractual provisions that effectively render small operators (*i.e.*, the intended beneficiaries) ineligible.

E. AT&T/DIRECTV Should Be Prohibited From Tying In-Market RSN Carriage to Out-of-Market RSN Carriage.

Although RSN programming is typically considered “must have” within an RSN's core DMA, that is not necessarily the case outside that DMA. For example, while some remote areas of Texas and surrounding states may contain some fans of Houston sports teams, it is *within* the Houston DMA that coverage of those teams constitutes “must have” sports programming. For this reason, unaffiliated MVPDs (like Suddenlink) may be willing to carry costly RSN programming on in-market systems (where it may be highly valued by a significant percentage of the MVPD's subscribers), but not on out-of-market systems (where it is not comparably valued).³²

This economic judgment should be left to the MVPD, particularly when that MVPD competes directly with the MVPD owner of the RSN. It is, therefore, critical that the Commission impose a specific condition barring AT&T/DIRECTV from varying terms assessed

³² This is particularly true when the RSN insists upon inclusion in a broadly distributed programming tier, demonstrating again why an *a la carte* condition would be the best regulatory solution.

for “in-market” RSN carriage depending on whether the competing MVPD also agrees to carry the RSN programming outside the core DMA.

F. AT&T/DIRECTV Should Be Prohibited From Tying Carriage of One RSN With Carriage of Another RSN.

As a general proposition, demands from programmers to tie multiple networks together in a single programming agreement have an inflationary effect on MVPDs and their subscribers. To minimize that risk, the Commission should bar AT&T/DIRECTV from either: (1) requiring a competing MVPD to distribute multiple RSNs; or (2) varying affiliation terms depending on how many RSNs the competing MVPD carries. Given the “must have” nature of RSN programming, this prophylactic provision will help mitigate the risk of AT&T/DIRECTV exploiting ownership of multiple RSNs to further burden competing MVPDs and their customers.³³

G. Special Consideration is Warranted for Smaller MVPDs and their Customers.

These Comments are premised on the notion that the vertical integration of RSNs (with their “must have” programming) can adversely impact competing MVPDs and their customers. That problem is exacerbated when the unaffiliated MVPD has a very limited in-market presence. In these cases (as compared to cases where the MVPD has a major in-market presence), the RSN is at relatively little risk of adversely impacting its ratings and subscriber fees if it advances such excessive demands that the MVPD declines carriage.

Accordingly, even if the Commission is disinclined to adopt the various conditions outlined above on a comprehensive basis, it should adopt them in cases involving competing MVPDs serving less than 5% of the TV households in the core DMA of any AT&T/DIRECTV RSN. Providing relief in these particular circumstances is essential -- as these competing

³³ See n. 25, *supra*.

MVPDs are the most vulnerable to abusive, inflationary, and anticompetitive affiliation tactics. Moreover, AT&T and DIRECTV can hardly claim that this extremely limited relief would have an unreasonable adverse impact on their merger and future operation.

CONCLUSION

The purpose of this proceeding is to ensure that the proposed transaction serves the public interest. The Commission has previously recognized that there are potential anticompetitive harms associated with vertically integrated RSNs, and it has concluded that, in at least one case, a DIRECTV-affiliated RSN tried to impose a rate above “fair market value.” The rapidly increasing cost associated with RSN carriage (and its detrimental impact on consumers) is also indisputable. The Commission should, therefore, impose meaningful conditions in this proceeding (as proposed above) to ensure that the proposed transaction does, in fact, serve the public interest.

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