

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Comcast Corporation,	)	
General Electric Company	)	
and NBC Universal, Inc.	)	MB Docket No. 10-56
	)	
For Consent to Assign Licenses or	)	
Transfer Control of Licensees	)	

**RESPONSE OF SKY ANGEL U.S., LLC**

Sky Angel U.S., LLC (“Sky Angel”), by its attorneys, hereby submits its Response to the Reply Comments of Time Warner Cable Inc. (“TWC”) because TWC has mischaracterized the substance of a Media Bureau (“Bureau”) decision denying a temporary standstill requested by Sky Angel in conjunction with a program access complaint Sky Angel filed against Discovery Communications, LLC.<sup>1</sup> Specifically, TWC implies that Sky Angel is an over-the-top (“OTT”) video provider that fails to qualify as a multichannel video programming distributor (“MVPD”).<sup>2</sup> Sky Angel takes no position on the merits of the instant transfer of control. Indeed, Sky Angel had no intention to participate in this proceeding until it learned of TWC’s misstatements about the Bureau’s decision, which related solely to Sky Angel’s requested temporary standstill.

Sky Angel provides a subscription-based service of approximately eighty linear channels of exclusively family-friendly video and audio programming using Internet Protocol Television (“IPTV”) technology. Subscribers receive Sky Angel’s programming through a set-top box that has broadband Internet inputs and video outputs that connect directly to a television set. The box

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<sup>1</sup> See *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* (filed March 24, 2010).

<sup>2</sup> TWC Reply Comments, pp. 11-12.

receives and decrypts the channel lineup subscribed to, which is accessed by the subscriber on a television set via a menu of channels and a remote control. Therefore, to a consumer, Sky Angel is functionally identical to traditional satellite or cable video distribution services.

In 2007, Sky Angel entered into an agreement with Discovery Communications under which Discovery agreed to provide several of its programming channels to Sky Angel, through 2014, and agreed that IPTV would be a permitted distribution technology. Without explanation, more than two years later, Discovery Communications unilaterally decided to terminate the agreement, even though Discovery had never expressed any dissatisfaction with the agreement or Sky Angel's service, and Sky Angel had timely paid all per-subscriber fees owed to Discovery under the agreement. When Discovery refused to either retract its termination threat or provide a reasonable justification for it, Sky Angel filed a program access complaint with the Commission. At the same time, Sky Angel requested that the Bureau order a standstill to prevent Discovery's termination of service pending the outcome of the program access proceeding.

Although the Bureau declined to grant Sky Angel's request for a temporary standstill, it expressly did not determine that Sky Angel failed meet the definition of an MVPD. Instead, the Bureau simply concluded that Sky Angel had not satisfied its heavy burden of demonstrating that a standstill was warranted – a burden equivalent to that required for a stay.<sup>3</sup> In coming to its conclusion, the Bureau considered several factors, including whether Sky Angel had carried its burden of demonstrating that it is likely to succeed on the merits that it is an MVPD entitled to seek relief under the program access rules. In its initial complaint, Sky Angel did not enumerate

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<sup>3</sup> See *In the Matter of Sky Angel U.S., LLC, Emergency Petition for Temporary Standstill*, Order, 25 FCC Rcd 3879, 3881-3883 (Media Bureau 2010) (“*Standstill Order*”).

all of the reasons why it is an MVPD because the nature of its service makes it clear that Sky Angel qualifies as an MVPD under the Commission's program access definitions.<sup>4</sup>

Significantly, the Bureau issued its standstill decision before Sky Angel filed its Reply in the program access complaint proceeding, and therefore prior to a review of a full record in that proceeding. In doing so, the Bureau noted the limited record before it and clearly stated that its decision with respect to Sky Angel's standstill petition had no bearing on its ultimate conclusion as to whether Sky Angel qualified as an MVPD.

Our decision to deny Sky Angel's standstill petition should not be read to state or imply that the Commission, or the Bureau acting on delegated authority, will ultimately conclude, in resolving the underlying complaint, that Sky Angel does not meet the definition of an MVPD. Rather, based on the limited record before us at this stage and the lack of Commission precedent on that issue, we are unable to conclude that Sky Angel has met its burden of demonstrating that the extraordinary relief of a standstill order is warranted.<sup>5</sup>

Accordingly, neither the Bureau nor the full Commission has ruled on any of the merits of Sky Angel's program access complaint against Discovery Communications, including whether Sky Angel qualifies as an MVPD entitled to seek relief under the program access rules.

TWC has mischaracterized the actual status of the complaint proceeding by suggesting that Sky Angel is an OTT provider and that there has been a dispositive determination that Sky Angel fails to meet the definition of an MVPD.<sup>6</sup> In reality, Sky Angel clearly falls within the definition of an MVPD under the Commission's program access rules. Sky Angel expects that the Commission will so rule once it has the benefit of examining the complete record before it.

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<sup>4</sup> "The term 'multichannel video programming distributor' means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities." 47 C.F.R. §76.1000(e) (emphasis added).

<sup>5</sup> *Standstill Order*, 25 FCC Rcd at 3884 (emphasis added).

<sup>6</sup> TWC Reply Comments, pp. 11-12.

Sky Angel requests that TWC's recent misstatements be dismissed as incorrect and irrelevant to Sky Angel's program access complaint against Discovery Communications.

Respectfully submitted,

SKY ANGEL U.S., LLC

/s/

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