



July 19, 2023

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: MB Docket No. 14-261

Dear Ms. Dortch:

I write on behalf of Nexstar Media Group, Inc. concerning the recent filing in this docket submitted by DIRECTV on July 18, 2023.¹ In its filing, DIRECTV seeks to embroil the Commission in a private dispute concerning The CW's copyrights and use this proceeding as a vehicle in its continuing campaign to disparage Nexstar and challenge the Congressionally-mandated retransmission consent rights of all broadcasters. For this and other reasons discussed below, we respectfully request that the Commission disregard DIRECTV's filing as procedurally inappropriate and an abuse of process.

DIRECTV is seeking to misuse this proceeding, in which the Commission seeks input on the proposal to expand the meaning of the term "multichannel video programming distributor" ("MVPD") to include virtual MVPDs ("vMVPDs"), as just another avenue for attacking Nexstar rather than contributing to the substance of the Commission's considerations in this docket. As DIRECTV makes clear at the outset of its letter, its real intent is to (1) argue that "Congress and the FCC should . . . focus on reforming the existing retransmission consent market"² and (2) villainize Nexstar for the purpose of seeking an advantage in ongoing outside disputes between the parties. Moreover, DIRECTV seeks to exploit the expiration of its retransmission consent agreement with Nexstar in an attempt to prove that Nexstar is "withhold[ing] programming" on CW-affiliated stations to gain leverage in its retransmission consent negotiations.³ This is false. DIRECTV has long been an opponent of broadcasters' retransmission consent rights as conferred by Congress, and this filing—which is only tenuously related to the docket in which it is filed—is simply its latest effort to thwart fair marketplace negotiations by making repeated judicial and regulatory filings comprised of speculation and broadside attacks on Nexstar and other members of the broadcast industry.

¹ Letter from Stacy Fuller, Senior Vice President, DIRECTV, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-261 (July 18, 2023).

² *Id.* at 2.

³ *Id.*



Furthermore, DIRECTV mischaracterizes the circumstances around its unlawful carriage of CW programming on its streaming platform. As DIRECTV is well aware, its agreement with The CW authorizing streaming of CW programming on DIRECTV's vMVPD service ("DIRECTV STREAM") expired in November 2022. DIRECTV was aware of the fact that it was unlawfully streaming The CW's programming; DIRECTV's filing plainly acknowledges that The CW licenses its programming in the same way as other broadcast networks, and yet DIRECTV willfully continued to stream that programming for eight months after its CW network streaming license had expired. DIRECTV's claims that its comment concerns Nexstar leveraging the agreement between Sinclair Broadcast Group, Inc. ("Sinclair") and DIRECTV is disingenuous—The CW played by the same rules as the other broadcast networks, and DIRECTV is aware of this fact. Moreover, as a sophisticated industry participant, DIRECTV knew that Sinclair could not authorize it to stream CW programs in the absence of a CW network agreement. Nonetheless, DIRECTV STREAM continued to stream CW programming without the appropriate copyright license for the next eight months, until The CW became aware of the infringement and took steps to cause it to stop, as is its legal right. That is a matter of copyright law, and any remedies related to DIRECTV's infringement would need to be addressed in the appropriate judicial venue. DIRECTV is not the wronged party here—it is the lawbreaker. And despite its rhetoric about "blackouts" and "markets," by DIRECTV's own admission The CW's enforcement of its copyrights "did not affect DIRECTV's satellite service. Nor did it affect non-network programming such as local news and syndicated programming."⁴

In short, DIRECTV's streaming service has been retransmitting The CW's programs without a copyright license since November 2022. Now that they have been caught in this infringement, they are seeking to manipulate the facts to point the finger for their wrongdoing at Nexstar. After taking the position in this docket that copyright issues associated with vMVPDs "fall outside the Commission's regulatory purview,"⁵ DIRECTV now makes a specious filing seeking to bootstrap a vMVPD copyright licensing issue into the retransmission consent regime and DIRECTV's private disputes with Nexstar because it suits their interests. This is the same tactic DIRECTV is employing in other venues, and it constitutes an abuse of process. The FCC should therefore disregard this filing.

Respectfully submitted,



Mark Boyes
Senior Vice President & Assistant General Counsel

⁴ *Id.* at 3 n.7.

⁵ Comments of DIRECTV, LLC, *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261 (March 3, 2015) (noting in the Summary that "DIRECTV believes the Commission should not apply legacy regulation to [linear over-the-top services]" and that "to the extent obstacles remain [with respect to linear over-the-top services], they relate primarily to copyright, not communications regulation, and thus fall outside the Commission's regulatory purview.").

