

ATTACHMENT A

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**
16

17 UNITED STATES OF AMERICA,
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19 Plaintiff,

20 v.

21 DIRECTV GROUP HOLDINGS, LLC,
22 et al.,

23 Defendants.
24

Case No. 2:16-cv-08150-MWF-E

PROPOSED FINAL JUDGMENT

Hon. Michael W. Fitzgerald

1 WHEREAS, Plaintiff, United States of America, filed its Complaint on
2 November 2, 2016, alleging Defendants' violation of Section 1 of the Sherman Act, 15
3 U.S.C. § 1, and Plaintiff and Defendants, by their respective attorneys, have consented
4 to the entry of this Final Judgment without trial or adjudication of any issue of fact or
5 law, and without this Final Judgment constituting any evidence against or admission by
6 any party regarding any issue of fact or law;

7 AND WHEREAS, Defendants agree to be bound by the provisions of this Final
8 Judgment pending its approval by the Court;

9 AND WHEREAS, the essence of this Final Judgment is the prohibition of certain
10 alleged information sharing between Defendants and their competitors;

11 NOW THEREFORE, before any testimony is taken, without trial or adjudication
12 of any issue of fact or law, and upon consent of the parties, it is ORDERED,
13 ADJUDGED AND DECREED:

14 **I. JURISDICTION AND VENUE**

15 This Court has jurisdiction over the subject matter of and the parties to this
16 action. Venue is proper in the Central District of California. For the purposes of this
17 Final Judgment only, Defendants stipulate that the Complaint states a claim upon which
18 relief may be granted against Defendants under Section 1 of the Sherman Act (15
19 U.S.C. § 1).

20 **II. DEFINITIONS**

21 A. "AT&T" means AT&T, Inc., a Delaware corporation with its headquarters
22 in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups,
23 affiliates, partnerships and joint ventures, and their directors, officers, managers,
24 agents, and employees.

25 B. "Communicate," "Communicating," and "Communication" means any
26 transfer or dissemination of information, whether directly or indirectly, and regardless
27 of the means by which it is accomplished, including without limitation orally or by
28 printed or electronic means.

1 C. “Competitively Sensitive Information” means any non-public information
2 of Defendants or any competing MVPD relating to Video Programming distribution
3 services in the United States, including without limitation non-public information
4 relating to negotiating position, tactics or strategy, Video Programming carriage plans,
5 pricing or pricing strategies, costs, revenues, profits, margins, output, marketing,
6 advertising, promotion, or research and development.

7 D. “Defendants” means DIRECTV and AT&T.

8 E. “DIRECTV” means DIRECTV Group Holdings, LLC, a Delaware
9 corporation with its headquarters in El Segundo, California, its successors and assigns,
10 and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and
11 their directors, officers, managers, agents, and employees.

12 F. “MFN Clause” means a contractual provision that entitles an MVPD to
13 modify a programming agreement to incorporate more favorable rates, contract terms,
14 or conditions that the Video Programmer agrees to with another MVPD.

15 G. “MVPD” means a multichannel video programming distributor as that
16 term is defined on the date of entry of this Final Judgment in 47 C.F.R. § 76.1200(b).

17 H. “Person” means any natural person, corporation, company, partnership,
18 joint venture, firm, association, proprietorship, agency, board, authority, commission,
19 office, or other business or legal entity, whether private or governmental.

20 I. “Video Programmer” means any Person that provides Video Programming
21 for distribution through MVPDs.

22 J. “Video Programming” means programming provided by, or generally
23 considered comparable to programming provided by, a television broadcast station or
24 cable network, regardless of the medium or method used for distribution.

25 III. APPLICABILITY

26 This Final Judgment applies to Defendants, as defined above, and all other
27 Persons in active concert or participation with any of them who receive actual notice of
28 this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

Defendants shall not, directly or indirectly:

- A. Communicate Competitively Sensitive Information to any MVPD;
- B. Request Competitively Sensitive Information from any MVPD; or
- C. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any MVPD.

Notwithstanding the foregoing, nothing in this Final Judgment shall prohibit Defendants from:

D. After securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from any MVPD when such communication is reasonably related to a lawful purpose, such as a lawful joint venture or legally supervised due diligence for a potential transaction, or the enforcement of MFN clauses;

E. Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from an MVPD if such Competitively Sensitive Information pertains only to either (a) Defendants' supply of Video Programming to that MVPD, or (b) that MVPD's carriage or potential carriage of Defendants' Video Programming;

F. Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from a Video Programmer, including one affiliated with an MVPD, if such Competitively Sensitive Information pertains only to either (a) that Video Programmer's supply of Video Programming to Defendants, or (b) Defendants' carriage or potential carriage of that Video Programmer's Video Programming;

G. Responding to any question from any news organization related to the distribution of Video Programming or to any actual or proposed transaction with any MVPD, provided that response does not disclose Defendants' negotiation strategy; or

1 H. After securing advice of counsel and in consultation with the Antitrust
2 Compliance Officer, engaging in conduct in accordance with the doctrine established in
3 *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127
4 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

5 **V. COMPLIANCE PROGRAM**

6 A. Defendants shall implement a training and antitrust compliance program to
7 instruct their executives and employees responsible for, or participating in, content
8 carriage negotiations that Communicating Competitively Sensitive Information with
9 competing MVPDs when not reasonably related to a lawful purpose may be a violation
10 of the antitrust laws. This compliance program shall include designating, within thirty
11 (30) days of entry of this Final Judgment, an Antitrust Compliance Officer with
12 responsibility for implementing the training and antitrust compliance program and
13 achieving full compliance with this Final Judgment.

14 B. The Antitrust Compliance Officer shall, on a continuing basis, be
15 responsible for the following:

16 1. Distributing, within thirty (30) days from the effective date hereof, a
17 copy of this Final Judgment to (i) each of the officers of Defendants who has
18 duties or responsibilities related to the acquisition of Video Programming or to
19 Video Programming carriage plans and decisions; (ii) each of the other
20 employees and agents of Defendants who has duties or responsibilities related to
21 the acquisition of Video Programming or to Video Programming carriage plans
22 and decisions; and (iii) each of the other employees or agents of Defendants who
23 has duties or responsibilities related to reviewing any submissions to Defendants'
24 ethics portal or to any other anonymous suggestion or complaint vehicle
25 available to Defendants' employees or agents.

26 2. Distributing within thirty (30) days a copy of this Final Judgment to
27 any person who succeeds to a position described in Section V(B)(1).

28 3. Briefing annually those persons identified in Sections V(B)(1) and

1 (2) on the meaning and requirements of this Final Judgment and of the antitrust
2 laws, and advising them that Defendants' legal advisors are available to confer
3 with them regarding compliance with both the Final Judgment and the antitrust
4 laws.

5 4. Obtaining from each person identified in Sections V(B)(1) and (2)
6 an annual written certification that he or she: (i) has read, understands, and
7 agrees to abide by the terms of this Final Judgment; (ii) is not aware of any
8 violation of this Final Judgment that has not been reported to the Antitrust
9 Compliance Officer; (iii) has been advised and understands that his or her failure
10 to comply with this Final Judgment may result in an enforcement action for civil
11 or criminal contempt of court against Defendants or any other person who
12 violates this Final Judgment; and (iv) has maintained and submitted a record of
13 all Communications of Competitively Sensitive Information with any MVPD,
14 other than those consistent with Sections IV(D), (E), (F), (G) and (H).

15 5. Maintaining (i) a record of all certifications received pursuant to
16 Section V(B)(4); (ii) a file of all documents in existence at the commencement of
17 and related to any investigation by the Antitrust Compliance Officer of any
18 alleged violation of this Final Judgment; and (iii) a record of all communications
19 generated after the commencement of any such investigation and related to any
20 such alleged violation, which shall identify the date and place of the
21 communication, the persons involved, the subject matter of the communication,
22 and the results of any related investigation.

23 6. Maintaining, and furnishing to the United States, on a quarterly
24 basis for the first year and annually thereafter, a log of all Communications,
25 between or among any person identified in Sections V(B)(1) and (2) and any
26 person employed by or associated with any other MVPD, relating, in whole or in
27 part, to Competitively Sensitive Information, excluding those communications
28 consistent with Sections IV(D), (E), (F), (G) and (H). The log shall include but

1 not be limited to an identification (by name, employer and job title) of all
2 participants in the communication; the date, time, and duration of the
3 communication; the medium of the communication; and a description of the
4 subject matter of the communication.

5 C. If Defendants' Antitrust Compliance Officer learns of any allegations of a
6 violation of any of the terms and conditions contained in this Final Judgment,
7 Defendants shall immediately investigate to determine if a violation has occurred and
8 appropriate action is required to comply with this Final Judgment. If Defendants'
9 Antitrust Compliance Officer learns of any violation of any of the terms and conditions
10 contained in this Final Judgment, Defendants shall immediately take appropriate action
11 to terminate or modify the activity so as to comply with this Final Judgment.
12 Defendants shall report any such investigation or action in the annual compliance
13 statement required by Section VI(B).

14 D. If Defendants' Antitrust Compliance Officer learns any Competitively
15 Sensitive Information has been communicated from an MVPD to any person identified
16 in Sections V(B)(1) and (2), excluding those communications consistent with Sections
17 IV(D), (E), (F), (G) and (H), the Antitrust Compliance Officer shall instruct that person
18 that he or she must not consider the Competitively Sensitive Information in any way,
19 shall advise counsel for the MVPD which communicated the Competitively Sensitive
20 Information that such information must not be communicated to Defendants, and report
21 the circumstances of the Communication of the Competitively Sensitive Information
22 and the response by the Antitrust Compliance Officer in the annual compliance
23 statement required by Section VI(B).

24 VI. CERTIFICATION

25 A. Within sixty (60) days after entry of this Final Judgment, Defendants shall
26 certify to Plaintiff whether they have designated an Antitrust Compliance Officer and
27 have distributed the Final Judgment in accordance with Section V(B) above. This
28 certification shall include the name, title, business address, email address, and business

1 phone number of the Person designated as Antitrust Compliance Officer.

2 B. For the term of this Final Judgment, on or before its anniversary date,
3 Defendants shall file with the Plaintiff an annual statement as to the fact and manner of
4 its compliance with the provisions of Section V, including the record(s) created in
5 accordance with Section V(B)(4) above.

6 VII. COMPLIANCE INSPECTION

7 A. For purposes of determining or securing compliance with this Final
8 Judgment, or of determining whether this Final Judgment should be modified or
9 vacated, and subject to any legally recognized privilege, from time to time authorized
10 representatives of the United States Department of Justice, including consultants and
11 other persons retained by the United States shall, upon written request of an authorized
12 representative of the Assistant Attorney General in charge of the Antitrust Division,
13 and on reasonable notice to Defendants, be permitted:

14 1. access during Defendants' office hours to inspect and copy, or at the
15 United States' option, to require Defendants and their members to provide copies
16 of all books, ledgers, accounts, records, and documents in their possession,
17 custody, or control, relating to any matters contained in this Final Judgment; and

18 2. to interview, either informally or on the record, Defendants'
19 officers, employees, or other representatives, who may have their individual
20 counsel present, regarding such matters. The interviews shall be subject to the
21 reasonable convenience of the interviewee and without restraint or interference
22 by Defendants.

23 B. Upon the written request of an authorized representative of the Assistant
24 Attorney General in charge of the Antitrust Division, Defendants shall submit written
25 reports and interrogatory responses, under oath if requested, relating to any of the
26 matters contained in this Final Judgment as may be requested.

27 C. No information or documents obtained by the means provided in this
28 section shall be divulged by the United States to any person other than an authorized

1 representative of the executive branch of the United States, except in the course of legal
2 proceedings to which the United States is a party (including grand jury proceedings), or
3 for the purpose of securing compliance with this Final Judgment, or as otherwise
4 required by law.

5 D. If at the time information or documents are furnished by Defendants to the
6 United States, Defendants identify in writing the material in any such information or
7 documents to which a claim of protection may be asserted under Rule 26(c)(7) of the
8 Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such
9 material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of
10 Civil Procedure," then the United States shall give ten (10) calendar days notice prior to
11 divulging such material in any legal proceeding (other than a grand jury proceeding).

12 **VIII. RETENTION OF JURISDICTION**

13 This Court retains jurisdiction to enable any party to this Final Judgment to apply
14 to this Court at any time for further orders and directions as may be necessary or
15 appropriate to carry out or construe this Final Judgment, to modify any of its
16 provisions, to enforce compliance, and to punish violations of its provisions.

17 **IX. EXPIRATION OF FINAL JUDGMENT**

18 Unless this Court grants an extension, this Final Judgment shall expire five (5)
19 years from its date of entry.
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X. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States’ responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

SO ORDERED:

Dated: _____, 2017

Michael W. Fitzgerald
United States District Judge