

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DISH NETWORK L.L.C.,

Plaintiff,

v.

COX MEDIA GROUP, LLC et al.,

Defendants.

No. 20 C 570

Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

This case involves a contract dispute over the rates DISH Network must pay to retransmit television stations that Defendant Terrier Media Buyer, Inc. purchased from Defendant Cox Media Group. DISH moved for a preliminary injunction so that it may continue to retransmit the stations at issue during this litigation at rates previously agreed upon with Cox. R. 91. For the following reasons, DISH's motion is denied.

Background

The Court begins with a brief description of the parties. Plaintiff DISH Network is a satellite multichannel video programming distributor. Defendant Cox Media Group is a media conglomerate that owned the television broadcast stations at issue in this case. R. 84 ¶ 2. Defendant NBI Holdings, LLC ("NBI"), through its subsidiary Northwest Broadcasting, Inc. ("Northwest"), owned a different group of television broadcast stations. *Id.* ¶ 40. Defendant Apollo Global Management

("Apollo") is a private equity firm and the parent company of Defendant Terrier Media Buyer, Inc. ("Terrier"). *Id.* ¶ 46.

In March 2019, DISH entered into a three-year contract with Cox that permitted DISH to retransmit 13 Cox television stations in ten major U.S. markets (the "Cox Retransmission Agreement"). *Id.* ¶ 29. DISH had a separate retransmission agreement with Northwest to retransmit 18 broadcast stations that was set to expire on December 31, 2019 (the "Northwest Retransmission Agreement"). *Id.* ¶¶ 40, 42. Under the Cox and Northwest Retransmission Agreements, DISH paid retransmission fees based on a predetermined monthly rate per DISH customer receiving each Cox or Northwest station. *Id.* ¶ 32.

On February 14, 2019, Terrier entered into separate agreements to acquire the Cox stations (the "Cox Purchase Agreement") and the entities owning the Northwest stations (the "Northwest Purchase Agreement"). R. 84 ¶¶ 47, 49. The strategy of these transactions was widely reported: "Apollo would seek to use some of Northwest Broadcasting's contracts, which have higher fees than Cox's, to hike up fees from the cable operators[.]" R. 108-31 at 5 (Liana B. Baker, Greg Roumeliotis, *Exclusive: Apollo nears \$3 billion deal to buy Cox TV stations - sources*, REUTERS (Feb. 10, 2019)). Apollo's internal communications confirm that increasing the retransmission rates was a significant part of its plan. *See* R. 95 at 10.

On March 4, 2019, the parties to the Cox and Northwest Purchase Agreements filed public applications with the FCC seeking consent for the transactions. R. 108-20. The Northwest application describes that "[i]n the first transaction, Terrier Media

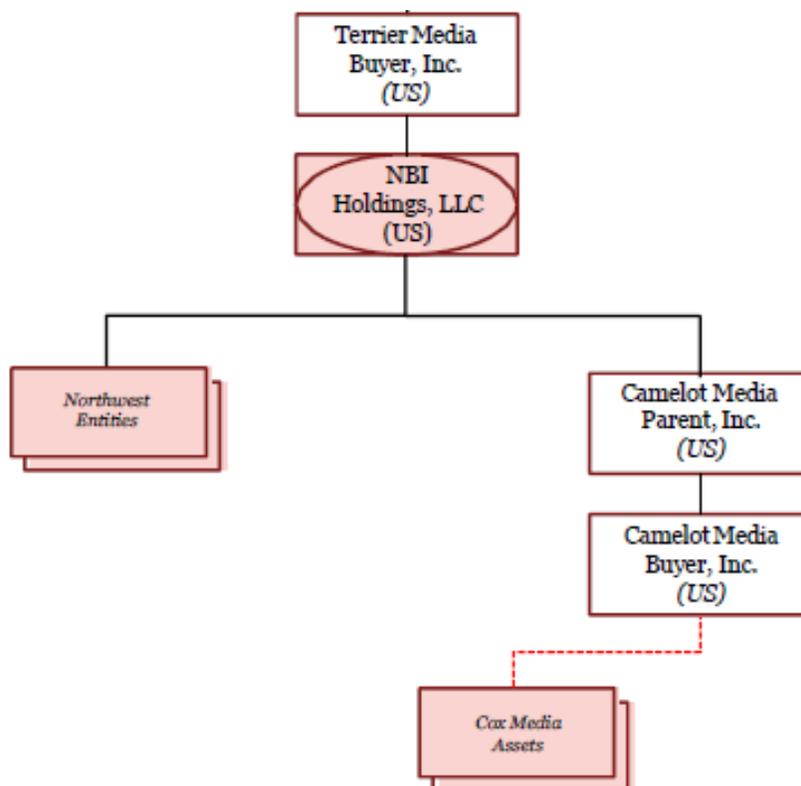
Buyer, Inc. (“Terrier Media”) will acquire companies owning all of the television stations owned by Northwest Broadcasting. After acquiring those companies, Terrier Media will acquire companies owning all of Cox’s television stations[.]” *Id.* at 1. The application further states that it “is anticipated that the Northwest Transaction and the Cox Transaction will close in close succession. At the conclusion of the Northwest Transaction and the Cox Transaction, all of the Northwest Stations, Cox Stations, and other assets not regulated by the Commission will be held by subsidiaries of NBI, which will be 100% owned by Terrier Media.” *Id.* at 2.

The transactions were designed to trigger the Cox Retransmission Agreement’s “Station Change in Control” and the Northwest Retransmission Agreement’s “After-Acquired Station” provisions. The Cox Retransmission Agreement provides that a “Station Change in Control” occurs either when 1) an entity gains the ability to control a majority of the board or the voting interests for the Cox stations or to direct the stations’ management; or 2) an entity becomes the FCC-authorized assignee or transferee of the broadcast licenses of the Cox stations. R. 95 at 10; R. 109-2 § 17(b). The impact such a change in control has on the Agreement depends on the identity of the acquiring entity. If the acquiring entity has a preexisting retransmission agreement with DISH, the Cox stations become subject to that agreement, and if not, the Cox Retransmission Agreement continues to control. R. 95 at 9-10; R. 109-2 § 17(b).

Meanwhile, the Northwest Retransmission Agreement’s “After-Acquired Station” clause establishes that notwithstanding any preexisting agreement, the

Agreement's terms will govern any "After-Acquired Station." R. 84 ¶ 45; 109-1 § 17(c). In turn, the Agreement defines "After-Acquired Station" as "a local television broadcast station not listed in Exhibit A as of [June 6, 2018] . . . of which [Northwest Broadcasting] (or a [Northwest Broadcasting] Affiliate) subsequently becomes the owner or licensee. R. 109-1 § 17(c).

Thus, Terrier's plan was first to acquire NBI and assume the Northwest Retransmission Agreement. R. 108-2 ¶ 32(a). Next, Terrier would transfer the ownership of Camelot Media Buyer (one of Terrier's subsidiaries to which the Cox Purchase Agreement had previously been assigned such that Camelot would directly acquire the Cox stations) to NBI. *Id.* ¶¶ 9, 32(b). Finally, Camelot would acquire the Cox stations. *Id.* ¶ 32(c). The relevant corporate ownership chart appears as follows:



R. 109 at 10.

Defendants contend that the Cox and Northwest transactions closed as planned on December 17, 2019, and thus the Cox stations became After-Acquired Stations governed by the rates set by the Northwest Retransmission Agreement. DISH contends that the Cox transaction closed before the Northwest transaction, and thus Terrier did not have a preexisting retransmission agreement when it acquired Cox, and the Cox Retransmission Agreement's rates remain in effect.

Beginning in December 2019, counsel for NBI informed DISH that the Cox stations were subject to the Northwest Retransmission Agreement. R. 84 ¶ 61. After DISH disagreed, Defendants began to run a crawl message on the Cox stations stating that DISH would lose the stations on January 14, 2020 because “it has refused to agree to reasonable terms for the valuable programming we provide.” *Id.* ¶ 68.

On January 15, 2020, DISH filed this case in the Circuit Court of Cook County and moved for a TRO to prevent Defendants from interfering with its right to retransmit Cox stations, which the state court granted *ex parte*.¹ On January 24, Defendants removed the case to federal court. DISH subsequently filed a motion to remand, which this Court denied. *See* R. 57. On February 17, DISH moved for leave to add nondiverse defendants to the case, and on February 19 the parties agreed to

¹ The TRO states that “Defendants are temporarily enjoined from taking any action to interfere with performance of the Cox Retransmission Consent Agreement between DISH and Cox, dated March 31, 2019, which will remain in full force and effect until further order of this Court. Defendants, and those in active concert with them, are further enjoined from (i) prohibiting Plaintiff from retransmitting the Cox stations listed below, and/or (ii) otherwise interfering with Plaintiff's right to retransmit those stations.” The TRO is available on the docket in the related case also before the Court, *Terrier Media Buyer Inc. v. DISH Network L.L.C.*, No. 20 CV 583 (N.D. Ill.), R. 21-2.

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