**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MULTIMEDIA CONTENT MANAGEMENT LLC, Plaintiff	§ § § §	Civil Action No.: 6:18-cv-00207-ADA
	§	JURY TRIAL DEMANDED
v.	§	
	§	PATENT CASE
DISH NETWORK L.L.C., Defendant.	§ § §	

DEFENDANT'S REPLY CLAIM CONSTRUCTION BRIEF

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MCM has now abandoned its positions with respect to half of the independent claim terms. While MCM states that the amendments are to "simplify claim construction issues," the amendments were necessitated by MCM's original unsupportable constructions.   However, MCM's amended constructions do not fully remedy the deficiencies of the original constructions. DISH's constructions reflect the plain and ordinary understanding of the terms, an understanding that MCM's own expert acknowledges now is correct.   As reflected below, few actual disputes exist in light of the admissions by MCM's expert.

I.   CONSTRUCTION OF INDEPENDENT CLAIM TERMS

A.   Term 1: "to generate controller instructions" ('468: Claim 1 / '925: Claim 1) or "generating controller instructions" ('468: Claim 23 / '925: Claim 29)

MCM's Amended Construction	DISH's Construction
"generate computer processor-executable instructions, excluding merely a uniform resource locator (URL) or an internet protocol (IP) address, excluding operations in which the controller instructions are only transmitted or are relayed by a device"	"to create[ing] or bring[ing] into being computer executable instructions that determine whether to transmit or not transmit a content request from a user to the service provider network"

MCM's amended construction adds a second negative limitation yet still fails to define what "controller instructions" are or how they are "generated" in context of the claims. DISH's construction affirmatively construes "generate" without importing negative limitations while MCM continues to use the term "generate" to define itself.

DISH's construction of "generate" as "to create or bring into being" reflects the ordinary meaning of the term in the context of the Asserted Patents to a person of ordinary skill in the art. The term "generate" refers to something that did not exist prior to the generation. MCM used this same understanding in its response to the Unified Patents IPR. *See* Dkt. No. 48 at 4 (quoting Ex. A at 13 ("the generated item did not exist prior to being generated")). Indeed, MCM provides no reason why "create or bring into being," words Applicant used in the Patent Owner Preliminary

Response ("POPR") of the Unified Patents IPR, would be an inappropriate construction of the term "generate." *See* Dkt. No. 53 at 4-7. MCM's own expert entirely concedes the issue: "but in the context of 'controller instruction,' what does 'generate' mean? A: I thought I was clear. Bringing – you know, ***create something that didn't exist before***. To – Q: And would you say it means to create or bring into existence? A: Yes." Ex. M, 4-12-19 Transcript of J. Williams at 42:6-13; *see also id*. at 47:8-22. Indeed, MCM's expert confirmed the necessity to interpret this term as part of his validity analysis before the PTAB: "And it was critical in the context of controller instructions that you interpret what the term 'generate' actually meant; is that correct? A: Yeah, I agree." *Id*. at 40:9-12. Despite this concession, MCM does not interpret "generate" in its proposed construction.

Instead of providing a construction that explains what "controller instructions" actually are, MCM seeks to define the term "controller instructions" by what they are not. MCM only argues that controller instructions exclude "merely a uniform resource locator (URL) or an internet protocol (IP) address." Negatively construing the claim based on what the claim does not cover is not proper claim construction. *See Regeneron Pharm., Inc. v. Merus N.V.*, 864 F.3d 1343, 1352 (Fed. Cir. 2017) ("Because 'comprise' is inclusive or open-ended, the use of the term does not exclude unrecited elements.").

Controller instructions determine whether or not to transmit a content request in the context of the claims. MCM's own expert confirms this understanding. Ex. M at 49:13-18 ("Is it your understanding that in the context of Claim 1, that the controller instructions in that case were to determine whether to transmit or not transmit a content request? A: Generally, I would say yes.") (objections omitted). MCM's argument that the specification supports that "controller instructions" do more than "determine whether or not to transmit content requests" is wrong. *See*

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