



November 25, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: American Cable Association (“ACA”), National Telecommunications Cooperative Association (“NTCA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Notice of Ex Parte Communication Re News Corporation’s (“News Corp.”) Petition for Modification (“Petition”); MB Docket No. 03-124.**

Dear Ms. Dortch:

On behalf of ACA, NTCA, OPASTCO, and their member companies, we write in response to News Corp.’s recent ex parte communication urging prompt action on News Corp.’s Petition.<sup>1</sup> For the reasons noted below, we urge the Commission to deny New Corp.’s Petition, and maintain the News Corp./DirecTV conditions for their full term.

**ACA, NTCA, and OPASTCO.** The undersigned associations collectively represent nearly all incumbent cable and telco entities serving small markets and rural areas in the United States. Members of these groups employ a variety of technologies to offer their customers voice, video, and broadband services. ACA represents nearly 1,100 small and medium-sized cable companies.<sup>2</sup> NTCA represents more than 580 rural incumbent local exchange carriers (“LECs”) that include both cooperatives and commercial companies.<sup>3</sup> OPASTCO represents more than 600 rural LECs and their affiliate telecommunications companies.<sup>4</sup>

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<sup>1</sup> *In the Matter of General Motors Corporation Hughes Electronics Corp., Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, News Corporation Ex Parte*, MB Docket No. 03-124 (filed Sept. 26, 2008).

<sup>2</sup> ACA member systems serve about 7.5 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA’s members serve fewer than 1,000 subscribers.

<sup>3</sup> The vast majority of NTCA members provide voice, video, wireless, and broadband service to their rural communities. NTCA members are also MVPDs offering retail video service. Specifically, 276 NTCA members provide coaxial cable (CATV) service, 106 members provide direct broadcast satellite (DBS) service, 76 members provide Internet Protocol television (IPTV) service, and more than 60 currently provide video over digital subscriber line (DSL). The number of LECs offering video continues to grow.

<sup>4</sup> OPASTCO is a national trade association representing small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 5.5 million customers. Nearly all OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). Half of OPASTCO’s members operate small cable

**The conditions placed on News Corp. continue to have substantial public interest benefits.** The News Corp./DirecTV conditions continue to advance the public interest by: (1) protecting competition by maintaining access to “must have” programming, and (2) avoiding temporary foreclosures and the disruption of customer viewing patterns. Small and medium-sized video distributors are particularly vulnerable to the withdrawal of “must have” programming. As the Commission has recognized, access to “must have” programming is necessary for multichannel video programming distributors (“MVPDs”) to respond to consumer demands and retain the ability to provide a viable service in a competitive environment.<sup>5</sup> News Corp. has the incentive to threaten temporary foreclosure during negotiations to enhance their bargaining position, knowing that the small and medium-sized MVPDs need uninterrupted “must have” programming to remain viable. The Commission recognized the risks of programming disruptions when it imposed the conditions on News Corp.<sup>6</sup> These conditions have brought a measure of stability and predictability to retransmission consent and Regional Sports Network (“RSN”) negotiations and should continue.

**The News Corp./DirecTV conditions have not harmed News Corp.** News Corp. continues to assert that the retention of the RSN and retransmission consent conditions harms the public interest by placing News Corp. at a competitive disadvantage in negotiating with MVPDs. The evidence does not bear out this conclusion. In its latest earnings release, News Corp. notes that for the full year, “[television] segment operating income increased 17% due to improved FOX Broadcasting Company results...,”<sup>7</sup> as well as “higher contributions” from cable network programming, including RSNs.<sup>8</sup> As News Corp.’s Chairman and Chief Executive, Rupert Murdoch, noted in the earnings release, “All of our business segments generated year over year gains, with record profits reported at our...cable programming...and television businesses.”<sup>9</sup> Notably absent from its earnings release is News Corp.’s concern about the “competitive disadvantage” that is threatening the company. The truth is, News Corp. will continue to maintain the immense market power that it has today through 2010, when the conditions are set to expire.

**News Corp. should not be rewarded for its manipulation of Commission processes.** Furthermore, as noted in ACA’s Opposition in response to News Corp.’s Petition, News Corp. should

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television companies in their rural service areas. An increasing number of OPASTCO members offer video services via digital subscriber line (DSL) or fiber optic technology.

<sup>5</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, Report and Order, 17 FCC Rcd 12124, 12139, ¶ 33 (2002); see also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission’s Program Access Rules and Examination of Program Tying Arrangements*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17817 ¶ 39 (2007).

<sup>6</sup> *In the Matter of General Motors Corporation and Hughes Electronic Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd. 473 ¶ 161 (2004) (“[T]he transaction would result in secondary public harms by depriving subscribers of access to RSN programming during the period of temporary foreclosure or by causing subscribers to change MVPDs to access the foreclosed programming, even where they would otherwise not desire to change providers with greater frequency than today”).

<sup>7</sup> See News Corp. Earnings Release, News Corp. Reports Record Full Year Operating Income of \$5.4 Billion; Growth of 21% Over Fiscal 2007; Full Year Earnings Per Share Increased 68% to \$1.81; Fourth Quarter Operating Income Grows 21% to \$1.5 Billion on Revenue Growth of 17% at 3, available at [http://www.newscorp.com/investor/download/NWS\\_Q4\\_2008.pdf](http://www.newscorp.com/investor/download/NWS_Q4_2008.pdf).

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 2.

not be rewarded for manipulating the Commission's processes.<sup>10</sup> For twelve months—while its deal to sell DirecTV to Liberty Media Corporation (“Liberty”) was awaiting Commission approval—News Corp. maintained on the record with the Commission that the News Corp./DirecTV conditions would remain effective until 2010. Just *two weeks* after the Liberty/DirecTV deal was approved by the Commission, News Corp. changed its story. News Corp. should not be rewarded for these actions, and the Commission should deny News Corp.'s Petition.

For the foregoing reasons, News Corp.'s Petition fails to establish that the public interest requires the early termination of the News Corp./DirecTV conditions. We therefore strongly oppose News Corp.'s attempt to modify the News Corp./DirecTV conditions, and urge the Commission to maintain the conditions for their full term.

Sincerely,

/s/ Ross J. Lieberman

Ross J. Lieberman  
Vice President of Government Affairs  
American Cable Association

/s/ Jill Canfield

Jill Canfield  
Senior Regulatory Counsel, Legal & Industry  
National Telecommunications Cooperative  
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/s/ Stephen Pastorkovich

Stephen Pastorkovich  
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Organization for the Promotion and Advancement of  
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<sup>10</sup> See Opposition of the American Cable Association, MB Docket No. 03-124 at 2-4 (filed May 1, 2008).