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February 13, 2003

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VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Rc: *Written Ex Parte*
MB Docket No. 00-277 and MM Docket Nos. 01-235, 01-317 and 00-244
2002 Biennial Regulatory Review of the Commission's Broadcast Ownership
Rules and Other Rules

Dear Ms. Dortch:

Cox Enterprises, Inc. ("Cox") respectfully submits this letter to respond to certain assertions set forth in the Reply Comments of The Walt Disney Company ("Disney/ABC Reply Comments") in the above-referenced proceeding.

In its Reply Comments, Disney/ABC ignores virtually all of the evidence and arguments detailed by Cox in its opening comments demonstrating that retention of the 35 percent national television ownership cap is necessary in the public interest.¹ Disney's sole response is to accuse Cox of "hypocritical" advocacy with respect to (1) its view that the newspaper-broadcast cross-ownership rule should be eliminated, and (2) the issue of retransmission consent.

On the first issue, the D.C. Circuit Court of Appeals already has rejected Disney/ABC's assertion that the national cap and the Commission's local broadcast ownership rules are joined at the hip. Far from being "hypocritical," Cox has carefully studied the court's analysis in the *Fox, Sinclair* and *Time Warner II* decisions, as the Commission has strongly urged the parties to do.² Application of that analysis in this proceeding reveals that, under Section 202(h) of the Communications Act, the Commission must retain the national cap and eliminate the newspaper-broadcast cross-ownership restriction in this Biennial Review. To do otherwise would

¹ See Comments of Cox Enterprises, Inc., filed January 2, 2003 ("Cox Comments").

² See Cox Comments and Reply Comments of Cox Enterprises, Inc., filed February 3, 2003 ("Cox Reply Comments").

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contravene the court's instructions and the Commission's own pledge to reach a decision that is squarely based on record evidence, Disney/ABC's cries of "hypocrisy" notwithstanding.

On the issue of retransmission consent, Disney/ABC asserts through affidavit that, "in negotiating for retransmission consent, ARC offers MVPDs a cash stand-alone price for retransmission consent for the ABC owned stations." Disney/ABC then accuses **Cox** yet again of hypocrisy because *Cox Broadcasting, Inc.* ("CBI") "similarly seeks a cash payment from cable operators for the right to retransmit the signals of the Cox stations. . . ." First, in point of fact, none of the networks – including ABC – offered Cox Communications, Inc. ("CCI") a cash alternative during the retransmission consent negotiations discussed in detail in Cox's Comments.⁴ Indeed, as stated in the attached supplemental affidavit from Mr. Wilson, ABC did not discuss a cash alternative with CCI until February 4, 2003, one day after the ABC and Cox affidavits were submitted in the record. Even then, the mention was only in the form of a casual remark, and not a formal offer, made by Mr. Pyne in a telephone conversation with Mr. Wilson. Disney should clarify its submitted affidavit so that the obviously intended inferences are neither disingenuous nor misleading.

Second, Disney/ABC's attempt to criticize CBI for "similarly" requesting cash compensation in certain retransmission consent negotiations is simply a red herring. As Cox has stressed in its Comments, retransmission consent, in and of itself, is not the issue, and it is entirely lawful for television stations to request cash, carriage of a local news channel or any other form of legal compensation during their retransmission consent discussions. In the very article cited by Disney/ABC, CBI and CCI officials made clear that Cox corporate policy calls for its units to operate individually on all issues: including retransmission consent.⁵ Although they may well disagree over the use of particular retransmission consent strategies, however, Cox's business divisions are in agreement on the fundamental policy issue raised in this proceeding: the highly vertically and horizontally integrated network conglomerates have used their size and scale to further their national distribution agenda rather than focusing on the value of local broadcasting, to the detriment of competition, diversity and localism.⁶

Retaining the 35 percent national television ownership cap would serve the public interest by restraining network leverage in all of the areas described in Cox's Comments. The fact that Cox television stations request cash in some retransmission consent negotiations (or that CCI holds various non-controlling investments in a handful of cable programming services managed by others)⁷ has no bearing on this issue and is but a thinly-disguised effort by Disney/ABC to

³ See Affidavit of Benjamin N. Pyne, Senior Vice President of Affiliate Sales and Marketing, ABC Cable Networks Group, attached as Exhibit A to Disney/ABC Reply Comments.

⁴ See Affidavit of Robert Wilson, Vice President of Programming for Cox Communications, Inc., submitted as Attachment B to Letter from Alexander Netchvolodoff, Senior Vice President of Public Policy, Cox Enterprises, Inc., filed February 3, 2003.

⁵ Linda Moss, *Must-See Retrans Spat: Small Ops vs. Cox TV*, **Multichannel News**, January 20, 2003, at 1

⁶ See, e.g., Cox Comments at 46.

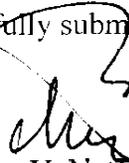
⁷ See Disney/ABC Reply Comments at 116.

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divert the Commission away from an analysis of the network conglomerate's own economic power.

We hope that the foregoing information will facilitate the Commission's analysis. Please do not hesitate to contact us if we can provide you with additional information.

Respectfully submitted,



Alexander V. Netchvolodoff

cc: Susan Eid, Esq.
Catherine Bohigian, Esq.
Alexis Johns, Esq.
Stacy Robinson, Esq.
Sarah Whitesell, Esq.
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Declaration of Robert Wilson

1. My name is Robert Wilson. I am Vice President of Programming for Cox Communications, Inc. ("Cox Communications"), a position I have held since 1997. Prior to 1997, I was employed by Cox Communications as an Assistant Business Manager and later as a Director of Operations, Finance and Administration and Director of Programming. I have been with Cox Communications and its predecessors for over 22 years.
2. My responsibilities include general oversight of all the Cox Communications cable programming agreements with content providers, including national television broadcast networks' owned-and-operated station groups and cable networks.
3. Through my position at Cox Communications, I am familiar with and have personal knowledge of the negotiations resulting in Cox Communications' cable programming agreements. These include retransmission consent negotiations with local broadcasters and national broadcast networks, as well as carriage negotiations with vertically integrated and independent cable networks. I also have personal knowledge of certain practices particularly associated with the major national broadcast networks including their attempts to tie carriage of affiliated cable networks to retransmission consent agreements involving their owned and operated broadcast stations.
4. I submitted a signed declaration verifying the factual statements made in the "Comments of Cox Enterprises, Inc.," filed in the Federal Communications Commission's docket on the 2002 biennial review of the broadcast rules, concerning Cox Communications retransmission consent negotiations and agreements. On January 31, 2003, I executed an additional declaration to verify that, to the best of my knowledge and belief, none of the networks involved in the retransmission consent negotiations described in Cox's opening comments made **Cox** a cash offer for carriage of its owned-and-operated television stations; rather, the networks insisted that Cox carry affiliated cable programming owned by the networks.
5. I am submitting this supplemental declaration to confirm the statements in my signed declarations of December 6, 2002, and January 31, 2003. In addition, in the course of retransmission consent renegotiations that date from September 2002, the first time that a representative from The Walt Disney Company and ABC Television Network mentioned to me a cash alternative for carriage of the network's owned-and-operated television stations was on February 4, 2003. This mention of a cash alternative was in the form of a casual remark, and not a formal offer, made by Mr. Benjamin Pyne, Senior Vice President of Affiliate Sales and Marketing, ABC Cable Networks Group, in a telephone conversation with me.

I declare under penalty of perjury that the foregoing is true and correct.



Robert Wilson
Vice President of Programming
Cox Communications, Inc.

Executed on Feb. 11, 2003