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Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St, SW
Washington, DC 20554

Re: Proposed Transfer of Control to News Corp of Hughes Electronics from GM, Docket No. 03-124

Dear Ms. Dortch:

We respectfully submit this Ex-Parte Comment because we believe the Commission must embrace an honest analysis of media industry conditions in its policymaking, including this proposed transfer of control. It is clear to us that News Corp. is a totally inappropriate entity to operate Hughes Electronics/DirecTV. DBS services are supposed to ***compete*** with cable. But a reading of the accompanying article by Diane Mermigas, "The Push for Retransmission Fees" (*TV Week*, August 18, 2003), clearly shows how News Corp./Fox is so intertwined with the cable industry it will be unable to truly compete.

Indeed, in our opinion, the article illustrates the perverse outcome likely if the Commission approves the transfer of control. Cable rates will be increased, as broadcasters and networks like Fox demand additional financial payments from cable operators for carriage. Facing new multi-billion costs from broadcasters like News Corp./Fox, cable will raise its rates. DirecTV will then be in a position to increase its subscriber charges.

Part of that DBS increase will be directly due to new surging costs for carriage of Fox-owned programming and stations. Given News Corp.'s extensive holdings of operated and owned broadcast stations (and whatever contractual benefits they obtain from their affiliates with current and new forms of retransmission consent), they stand to gain the most from new financial demands on cable systems. (For a list of O and O's, see: http://www.newscorp.com/operations/tvstations.html).

Competition and consumers will be harmed by this proposed deal.

Respectfully,

Jeffrey Chester
Executive Director

From: TV Week. August 18, 2003

The Push for Retransmission Fees
By Diane Mermigas

A number of leading broadcasters are seeking congressional support for what they say is the only true economic relief for local station owners: a mandatory payment of cash retransmission fees by cable operators.

These large-market TV station owners say they already have put the deregulation battle behind them because any proposed change in the cross-ownership or duopoly rules is limited in its upside potential and applicable only to some broadcasters, depending on the market and the group owner.

Any attempt to secure a universal fee for local broadcast signals will benefit all TV station owners and serve to generate a long-awaited, much-needed second revenue stream at a time when local advertising revenues are under siege. And that makes some kind of retransmission consent payment the only fight that matters.

Veteran Bear Stearns broadcast analyst Victor Miller says it would be a definitive "transforming event" in television values. Nothing would do more to bolster and secure TV station values than locking in a predictable and reliable second revenue stream, he said.

Mr. Miller estimates that payment to local broadcasters for their Big 4 network TV signals, based on what cable operators pay cable networks per subscriber today, will cost the cable industry about $1.5 billion. Others estimate payments could run as high as $6 billion.

But just as important, the renewed retransmission efforts are a response to the growing consolidation among major cable operators and entertainment media players, a trend underscored in recent weeks by speculation that Comcast Corp., the nation's leading cable operator, would enter the bidding for Vivendi Universal Entertainment. Comcast ultimately decided last week not to bid.

To secure their place in the digital world, broadcasters need to establish a monetary value for the unique network and local content they provide to cable. They need an impetus to create new content and services that will attract analog TV viewers to digital.

"If you don't have the digital must-carry, none of this stuff will have financial viability," said Jack Sanders, Belo Television president.

Leading broadcasters acknowledge, but provide little detail about, the movement afoot during Congress' summer break to begin soliciting the support of key legislators for retransmission rules.

Belo and Hearst-Argyle Television are among the leading local TV broadcasters said to be pursuing a grass-roots push for securing legislative mandates for cash and in-kind compensation for digital broadcast signals. But the number of outspoken industry advocates is growing, led by Emmis Broadcasting CEO Jeff Smulyan, who has chided his local broadcast peers for giving away their signals without making cable operators pay for them and for having "leverage" they don't know how to use.

Broadcasters say there is a narrow window to capitalize on the growing concern in Congress about cable pricing and control of both content supply and distribution, even though much of the recent dialogue has been about the Federal Communications Commission's proposed broadcast deregulation.

Broadcasters are being careful about revealing their plans to solicit political support for paid retransmission, but presumably are in pursuit of local-broadcast-friendly legislators such as Billy Tauzin (R-La.), John Dingell (D-Mich.), Edward Markey (D-Mass.) and Fred Upton (R-Mich.).

Some broadcasters clearly do not agree with the approach. "The minute you get Congress involved in these things, you are opening the door to reregulation, and that's the last thing anyone wants," said one leading broadcast group executive.

Any legislation would have to mandate full digital must-carry and some logical period of transition, with an agreement on how broadcasters could use the 19.4 megahertz and digital signals and what content or services would be accepted and covered.

The biggest challenge of the retransmission battle is devising a universal way-perhaps using TV households and general viewing-to value traditional analog and new digital broadcast signals in order for broadcasters and cable operators to work out ways to compensate each other for carriage. Until now, cable operators generally have provided assured carriage of new cable networks owned by broadcasters' corporate parents.

Snaring cash retransmission now, at a time when cable operators are seeking their own relief from escalating program costs, may seem tricky. But there is heightened concern in Congress about the growing ability of cable companies to control both content distribution and supply, as in the case of AOL Time Warner and Comcast Corp.

The result is increasing preferential treatment by media companies of their own product, which includes placing their own cable networks on preferred lower-number channels and increasing their own rates.

Cable operators such as Comcast also are making massive double-digit gains in snaring local advertising dollars that would otherwise be spent with local TV stations and newspapers. Comcast's local interconnect service will generate $1 billion in advertising sales this year.

One of the issues broadcasters would have to reconcile with cable operators is giving up some of their local ad inventory for cable operators to sell, echoing the arrangement cable operators now have with cable networks to whom they also pay some per-subscriber carriage fee. Cable networks generally give up 20 percent of their local ad inventory to the local cable operator to sell. But TV stations generally command much bigger audiences than local cable systems, and that needs to be factored into the equation.

As part of a cash retransmission arrangement, network TV affiliates may be required to give up some network prime-time ad inventory to cable operators to sell and keep revenues from as part of their carriage compensation. Some big network affiliates say that is akin to letting the fox into the henhouse.

And it all segues into cable operators' ongoing discussions with cable networks about a la carte and tiered program placement and pricing as a means to generate new revenues. However, retransmission fees are an economic imperative for local TV stations, which are generally looking at flat to minus 5 percent growth of their core advertising revenues in 2003.

Another impetus to revisit and move on retransmission fees for broadcasters is News Corp.'s pending acquisition of a 34 percent controlling stake in the dominant domestic satellite provider DirecTV, which is expected to gain regulatory approval by year-end.

While News Corp. and its Fox Entertainment Group will have the negotiating leverage to pave the way for unprecedented fees and other business practices as a major broadcaster seeking carriage of its signals on cable, it also will be in the unique position of being able to advance its new satellite interests and cable network interests, which could work against pure-play broadcasters.

In brief remarks to me on Wednesday, News Corp. and Fox Chairman and CEO Rupert Murdoch said such speculation is overstated. "Obviously, if free over-the-air television achieves some retransmission charge, then DirecTV will have to pay it. We won't be giving DirecTV or Fox any favored treatment," Mr. Murdoch said. "I don't think for a minute the cable industry will roll over."

Added News Corp. Vice Chairman Lachlan Murdoch, "You're negotiating with pretty entrenched monopolies in the [multiple system operators]. So no matter how strong your negotiating position will be, it's not as strong as theirs."

For now, Fox is maintaining a low profile on such matters as it undergoes review of its proposed DirecTV deal. Although News Corp. may well use its newfound clout to further such broadcast-friendly matters as cash retransmission, the Fox-DirecTV deal also is another example of the consolidation of content distribution and supply power that many pure-play broadcasters feel they need to counter, and soon.#