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CONTAINS "HIGHLY CONFIDENTIAL" INFORMATION
SUBJECT TO SECOND PROTECTIVE ORDER IN FCC 03-124

November 5, 2003

By Hand

Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
MB Docket No. 03-124

Dear Secretary Dortch:

I write on behalf of Advance/Newhouse Communications, Cable One, Cox Communications and Insight Communications (the "Joint Cable Commenters"). We have reviewed the documents produced by The News Corporation Limited ("News Corp.") to the Department of Justice and recently made available to the Commission in response to your request dated October 16, 2003 in connection with the above-captioned proceeding.[1] The documents clearly validate the concerns the Joint Cable Commenters and others have raised with the proposed combination.[2]

As the Joint Cable Commenters have emphasized throughout this proceeding, the acquisition of DirecTV's national distribution platform provides News Corp. with a guaranteed

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[1] *See* Letter from W. Kenneth Ferree to Gary M. Epstein and William M. Wiltshire, MB Docket 03-124, October 16, 2003.

[2] On the other hand, the documents do not demonstrate how News Corp. would achieve efficiencies beyond those typically associated with horizontal combinations. Certainly, there is nothing in the documents that explain now the transaction would necessarily result in the elimination of a "double markup" for Fox programming carried by DirecTV, and thereby force down the prices paid by retail multichannel subscribers. Nor is there any basis upon which to conclude that an impact – if any materializes – of the transaction on the so-called "double marginalization" effect will necessarily outweigh the raising rivals cost effect associated with this transaction.

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path into every television household in the country for its Fox broadcast and cable content. Control of this national distribution platform lowers substantially the costs and risks to News Corp. of withholding programming from cable operators attempting to resist higher prices for "must-have" Fox broadcast and regional sports programming. Thus, the transaction will enable News Corp. to use DirecTV as a negotiating weapon to inflict higher prices on cable operators and their subscribers for must-have Fox broadcast and regional sports programming. With the Fox cable and broadcast services and the DirecTV distribution platform under the same corporate banner, News Corp. can coordinate these formidable content and distribution assets to maximize its leverage during program carriage disputes with cable operators.

The new documents reinforce a key point stressed by the Joint Cable Commenters throughout this proceeding: notwithstanding its claims to the contrary, News Corp. would not need to achieve "enormous increases in subscribership or pricing"[3] using DirecTV to make temporary withholdings of must-have programming a viable and profitable strategy. The documents make clear that: (1) News Corp. already engages in temporary programming withdrawals in order to obtain more favorable rates and terms from cable operators; (2) acquiring control over DirecTV will reduce the costs of such tactics to News Corp. and therefore create upward pressure on programming prices to consumers; and (3) News Corp. recognizes the value of effectuating a service interruption in a particular market in order to "send a message" to distributors in other markets about the costs of resisting its fee and carriage demands. In particular:

[3] *See* The News Corporation Limited and General Motors Corporation/Hughes Electronics Corporation Opposition to Petitions to Deny and Reply Comments, filed July 1, 2003 in the above-captioned proceeding ("Opposition") at 23.

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For all of these reasons, emphasized again in the most recently available documents, it is clear that the transaction poses a real threat to consumer welfare that can and must be addressed

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via targeted conditions. Prior to acquiring a controlling interest in DirecTV, News Corp. faces some risk and uncertainty. It does not know whether the loss of subscription and advertising revenue from a service interruption arising from a temporary bargaining impasse with a cable operator over carriage of RSN or FOX programming could be made up via higher carriage fees gained from that distributor (and others in adjacent markets) once the impasse is resolved. The takeover substantially reduces, if not eliminates, the pre-transaction risks to News Corp. of failing to conclude a carriage agreement with a cable operator for a "must have" Fox programming service.

It bears emphasis that the key competitive concern raised by this transaction is not that News Corp. will seek to benefit DirecTV by denying its competitors access to Fox programming. Instead, the principal danger in this transaction is that DirecTV will be used as a "weapon" to obtain supra-competitive prices for Fox programming from all retail distributors, and that those prices will ultimately be borne by consumers. The documents most recently produced by News Corp. provide additional factual support for the concerns raised by the Joint Cable Commenters and underscore the importance of conditioning any license transfers on pro-competitive safeguards against unwarranted pricing power.

Pursuant to the Second Protective Order, one UNREDACTED copy and two REDACTED copies of this letter are being filed with the Office of the Secretary. Pursuant to the Second Protective Order, UNREDACTED copies are also being filed with Marcia Glauberman and Linda Senecal.

Respectfully submitted,

Bruce D. Sokler

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cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Paul Gallant
Johanna Mikes
Stacy Robinson Fuller
Jordan Goldstein
Catherine Crutcher Bohigian
W. Kenneth Ferree

Barbara Esbin	(via email)
Marcia Glauberman	(via email)
Linda Senecal	(via email)
Tracy Waldon	(via email)
Donald Stockdale	(via email)
Simon Wilkie	(via email)
JoAnn Lucanik	(via email)
Marilyn Simon	(via email)
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Neil Dellar	(via email)
Douglas Webbink	(via email)
Qualex International	(via email)

Bertram W. Carp

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