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JULY 12, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20445

Re: General Motors Corporation and Hughes Electronics Corporation/The News Corporation Limited, Application for Authority to Transfer Control, MB Docket No. 03-124

Dear Ms. Dortch:

On behalf of Victory Sports LLC, I submit the attached comments proposing revised conditions in the above captioned matter.

Very truly yours,

//s//

Kathleen Wallman

Copy to Barbara Esbin, Media Bureau

Re: General Motors Corporation and Hughes Electronics Corporation/The News Corporation Limited, Application for Authority to Transfer Control, MB Docket No. 03-124

**Victory Sports
DirecTV Distribution Issues**

Victory Sports One is a regional sports network (“Victory RSN”) operated by Victory Sports, L.L.C. (“Victory”) an affiliate of the Minnesota Twins Major League Baseball Club (the “Twins”). Victory was established in part to allow the Minnesota Twins to capture a greater share of the television broadcast revenue currently generated by the Twins, enhancing the long term viability of the Twins as the team seeks to remain competitive with teams located in larger and more lucrative markets. The Victory RSN will also emphasize the broadcast of local college and high school sports, providing a regional broadcast venue supporting local sports.

Fox Sports Net North (“Fox North”), a News Corporation (“News Corp”) affiliate, held the broadcast rights to Twins games prior to Victory. Originally, Victory planned to launch the Victory RSN prior to the 2002 baseball season. The launch date was delayed, however, due to litigation over the rights to broadcast Twins games. The initial launch of the Victory RSN is now scheduled for October 31, 2003 with the broadcast of Twins games to begin with the 2004 season.

Victory Broadcast Territory

The broadcast territory for the Victory RSN will eventually include all of Minnesota, North Dakota and South Dakota, all or part of Iowa and a portion of western Wisconsin and its sports programming will be representative of that broadcast territory (the “Victory Broadcast Territory”). The Minneapolis-St. Paul DMA is the home of the Twins, which in turn represent the largest and most valuable block of regional sports programming available in the Victory Broadcast Territory. While it was not anticipated that the Victory RSN would achieve full distribution prior to launch, significant distribution is anticipated prior to the commencement of Big Ten college basketball broadcasts in January of 2004 due to subscriber demand for this programming. Despite the loss of Twins broadcast rights, it is anticipated that Fox North will continue to operate as a regional sports broadcast network, competing with the Victory RSN in the Victory Broadcast Territory.

DirecTV Market Share

DirecTV is the largest multichannel video programming distributor (“MVPD”) within the Victory Broadcast Territory with an estimated 500,000 subscribers. Victory estimates the total MVPD subscriber market in the Victory Broadcast Territory at 1.8 to 2.3 million,

depending on that portion of the Iowa market included. This places the DirecTV share of the Victory Broadcast Territory at approximately 25%.

Fox Broadcast Stations

In addition to DirecTV's presence in the Victory Broadcast Territory, News Corp owns and operates two broadcast stations in Minneapolis-St. Paul DMA, the largest television market in the Victory Broadcast Territory. News Corp's broadcast duopoly gives it substantial leverage over other MVPD's through the negotiation of retransmission consents. Peter Cherin, President and COO of News Corp's Fox Entertainment Group indicated at the recent Goldman Sachs Communicopia Conference that broadcast signals are the most valuable networks on cable and Fox expects to receive value for what it delivers in one or more of the following ways: (1) price increases for its existing cable networks, (2) launch of new channels and/or (3) cash.

MVPD Competition

The ongoing competition between satellite operators such as DirecTV and cable operators has become an important part of the competitive landscape in which MVPD's operate and through which new networks obtain distribution. Since cable and satellite operators compete for the same subscribers, the competition between the two is a principal mechanism through which subscribers can influence the content and pricing of each service through the selection of one service over another. When a new network initially seeks distribution, it is the competition among satellite and cable that provides subscribers the opportunity to express their preferences. In the case of regional sports networks ("RSN's") and other "must have" programming, the true value of that programming is realized in large part through this competition.

DirecTV and News Corp – Content Convergence and Competitive Imbalance

If News Corp, a major content provider, controls DirecTV, one of the largest MVPD's, News Corp would determine whether competing content is available on DirecTV. Given the significant market share of DirecTV, exclusion of content by DirecTV could, in and of itself, determine the fate of unaffiliated networks and content providers. In addition, if DirecTV excludes certain networks, the market pressure on the other MVPD's to provide the excluded content would be significantly reduced, resulting in depressed pricing and reduced distribution, regardless of what subscriber preferences might otherwise dictate. In cases where News Corp is affiliated with a competing network, it will therefore be to its advantage to cause DirecTV to exclude unaffiliated competing networks. This situation is compounded by News Corp's use of the retransmission consent process to demand other MVPD's continue to carry and pay higher license fees for its affiliated networks. Again, this results in an allocation of resources not supported by subscriber demand, leaving fewer resources available for MVPD's to allocate to other networks. In the end, such a significant convergence of content and distribution would give News Corp unprecedented power over the viability and profitability of competing content providers.

News Corp Control of RSN's and Emerging Competition

It is undisputed that News Corp and others view national and regional sports programming as essential programming for all MVPD's. Through its national sports broadcast rights and interests in 19 RSN's, News Corp is the undisputed heavy weight in sports programming. Given the importance placed by News Corp on sports programming as a "battering ram" for its networks, broadcast stations and other content, News Corp defends its control over professional sports content using every means at its disposal. If News Corp is allowed to use DirecTV as part of its strategy to control the distribution of sports content, it would have another powerful weapon at its disposal for preventing the successful launch of competing networks, in particular competing RSN's.

New RSN's that obtain control over regional sports rights should have little difficulty in obtaining distribution on MVPD's given the proven value of that programming content. News Corp itself has demonstrated the value of this content through its 19 regional sports networks. Professional sports programming, however, is a limited commodity, control of which has allowed News Corp to develop monopoly control over sports programming in some regions. This situation has allowed News Corp, through its control of RSN's, to not only use sports programming to champion its other efforts, but also to extract higher fees from MVPD's and their subscribers while at the same time refusing to pay corresponding increases in rights fees to professional sports teams.

As the gap between the rights fees paid to sports teams and the income earned by RSN's has widened, the financial barriers to new RSN's have become more manageable. As result, professional teams have begun establishing their own RSN's, in what promises to be the beginning of a trend towards more sports/broadcast disintermediation. This is in many ways a normal competitive response when an intermediary extracts too much from consumers and producers. The benefits to the public and sports teams are the stabilization of fees charged to MVPD's while increasing the revenue available to the teams themselves. In smaller sports markets, team owned RSN's will become an important part of keeping teams financially competitive with larger market teams. Finally, since every fan counts in a smaller market, teams that establish their own RSN's will always think twice before overcharging MVPD's since they have an immediate interest in preserving their fan base, an issue that independent RSN's do not need to take into consideration.

The impact of new RSN's on News Corp will be substantial and News Corp and its affiliates have used every means at their disposal to seek to retain control over regional sports programming, preserving their profit margins and their coveted "battering ram". The result of this trend, however, should not be the defeat of emerging RSN's by a competitor armed with a significant distribution assets, but rather the success of the new RSN's or a necessary re-alignment of subscriber fees and team rights fees to a point that recognizes the relative roles and values of each part of the sports programming distribution chain.

The Victory RSN

The history of the Victory RSN provides an informative case study of an emerging RSN and News Corps's response.

When the Victory RSN was initially under consideration, Fox North had the opportunity to retain the Twins regional broadcast rights by offering a rights fee that reflected the real economic value of those rights. Instead, the offer received by the Twins only solidified the case for establishing its own RSN. Rather than accept the Twins decision, Fox North then initiated litigation to extend its rights to broadcast Twins games as long as possible and prevent the Victory's management team from establishing the Victory RSN. As a result of that litigation, the rights of the Victory RSN to Twins games beginning in 2004 was firmly established. Following that decision, Fox North again had an opportunity to offer the Twins a more competitive rights fee and chose instead to ignore the dictates of the market place and offer a lower fee than that offered prior to the litigation. Given the importance of regional sports programming, the rationale for this action was difficult to comprehend.

Victory is now concerned that News Corp's plan of attack will be to seek to defeat the Victory RSN by attacking distribution. One MVPD that is planning to carry Victory instead of Fox North was told the issue of carriage of Fox North would come up in the retransmission consent negotiations for Fox broadcast content. More importantly, DirecTV has given only a passing response to Victory's inquiries and expressed no desire to negotiate or discuss distribution of the Victory RSN. This despite the fact that DirecTV is the MVPD that has historically been one of the first to sign sports programming as it seeks to pull subscribers away from cable operators and that it carried Twins baseball as part of Fox North, DirecTV customer service is confirming this position in its response to subscriber inquiries, stating that DirecTV does "not currently have plans to add Victory Sports One." While negotiation over the cost of the service was always expected, Victory did not anticipate there would be no effort to negotiate at all.

Twins baseball has represented 85.1% of RSN viewership in the Victory Broadcast Territory, compared to 8.3% attributable to NBA basketball and 6.6% to NHL Hockey. Given that Twins baseball represents the most valuable block of regional sports programming in the Victory Broadcast Territory, DirecTV's unwillingness to negotiate is contrary to the value it has placed on sports programming in the past. If DirecTV does not carry the Victory RSN, the lack of competition will reduce the revenue received by Victory from other MVPD's. Finally, if News Corp places additional pressure on MVPD's through the retransmission consent process, this situation will be exacerbated to the point that Victory may no longer be viable. If Victory were to fail, Fox North would again be the only RSN in the market no doubt re-acquiring the Twins broadcast rights, continuing the trend of expanding its profit margin at the expense of MVPD's, subscribers and sports teams.

Proposed Relief

To address the foregoing concerns, Victory believes that the following conditions be imposed on Fox's acquisition of control of DirecTV:

- (1) DirecTV may not refuse to carry a new unaffiliated RSN that offers live professional or college sports programming that was previously offered by a competing RSN that was carried by DirecTV prior to the creation of the new RSN, provided such service is made available to DirecTV at a price that reflects fair market value. Fair value shall be established based on average historical ratings and shall be no less than the price paid by DirecTV for comparable affiliated programming services.
- (2) DirecTV may not assign to an unaffiliated RSN significantly inferior channel positioning, rate tiers or other type of inaccessibility to subscribers as compared to competing or comparable affiliated RSN's.
- (3) DirecTV shall provide unaffiliated RSN's with the same level of promotional support, cooperative advertising, mention in presentations to potential subscribers and other similar marketing support as provided to comparable competing or affiliated RSN's.
- (4) DirecTV shall not impose more onerous technical quality standards or requirements on unaffiliated RSN's than are or were previously imposed on competing or affiliated RSN's.
- (5) DirecTV shall not require unaffiliated RSN's to waive rights not waived by or make commitments not required of competing or affiliated RSN's.
- (6) News Corp and its broadcast affiliates shall not use retransmission consents to obtain carriage of affiliated RSN's by other MVPD's or rights fees for affiliated RSN's in excess of the fair market value of those services.
- (7) News Corp and its broadcast affiliates shall not use retransmission consents to obtain commitments or impose conditions that would make the carriage of competing unaffiliated RSN's at their fair market value impractical or economically unfeasible.

Enforcement of the foregoing commitments would be by private action, or if the FCC so chose, regulatory action. In the case of private actions, any party who successfully prosecutes such a claim shall be entitled to such equitable relief and damages as may be appropriate under the circumstances as well as reimbursement for court costs and attorneys fees.