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December 3, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Marlene H Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S W
Washington, D C 20054

Re *Consolidated Application of General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited for Authority to Transfer Control (MB Docket No 03-124)*
Ex Parte

Dear Ms Dortch

This is to inform you that, on December 2, 2003, Chase Carey, Michael Regan, and Maureen O'Connell on behalf of The News Corporation Limited ("News Corp ") and Eddy Hartenstein, Merrill Speigel, Gary Epstein and Richard Wiley on behalf of Hughes Electronics Corporation ("Hughes"), and General Motors Corporation (collectively, the "Applicants"), met with Commissioner Martin and Legal Advisor Catherine Bohigian to discuss News Corp 's proposed investment in Hughes

At this meeting, the Applicants discussed how the proposed transaction will bring News Corp 's energy and expertise to Hughes and thereby create real competition to incumbent cable companies and result in better, more innovative services for consumers The Applicants also discussed potential conditions that are currently under consideration by the Commission in connection with the proposed transaction In particular, as set forth in the attached materials used in the meeting, the News Corp representatives demonstrated that any condition involving the use of arbitration to resolve impasses over programming agreements should require the simultaneous exchange of final offers by the parties. The Applicants also discussed the need for prompt Commission action to bring this proceeding to a close.

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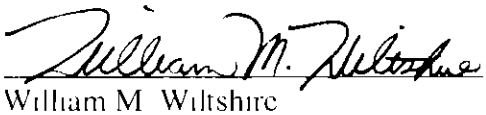
Sincerely,



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Counsel for The News Corporation Limited

Enclosure

cc Catherine Bohigian

REAL-WORLD "BASEBALL" ARBITRATION USES THE SIMULTANEOUS EXCHANGE OF OFFERS; SEQUENTIAL OFFERS WOULD IMPROPERLY DISTORT THE PROCESS

- In "baseball" arbitration, each party tenders a last, best offer, and the arbitrator must choose between those offers
    - This form of arbitration is designed to force parties toward more reasonable positions – an objective that is subverted if one party must go first and the other may opportunistically tailor its offer in response
- The Major League Baseball ("MLB") salary arbitration rules and the guidance provided by the American Arbitration Association ("AAA") and Judicial Arbitration and Mediation Services, Inc ("JAMS") on final offer arbitration uniformly call for a simultaneous exchange of offers
    - The MLB Basic Agreement provides that "[t]he Player and the Club ***shall exchange*** with each other in advance of the hearing single salary figures for the coming season (which need not be figures offered during the prior negotiations)"[1]
    - AAA's *Drafting Dispute Resolution Clauses – A Practical Guide* provides that "[e]ach party shall submit to the arbitrator and ***exchange with each other*** in advance of the hearing their last, best offers"[2]
        - If the Commission anticipates using AAA arbitration procedures to resolve programming pricing issues, it should be consistent and use ***all*** of the procedures anticipated by AAA.
    - The streamlined rules used by JAMS for baseball arbitration state "the Parties ***shall exchange*** and provide to the Case Manager written proposals for the amount of money damages they would offer or demand, as applicable"[3]
    - ***There is no provision for sequential offers and counter-offers in any of these authoritative sources on "baseball" arbitration.***
- The scholarly literature on this type of arbitration presumes a simultaneous exchange of offers[4]

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1 MLB 2003-2006 Basic Agreement, Article VI, Section F(6) (emphasis added) (available at us.i1.yimg.com/us.yimg.com/i/spo/mlbpa/mlbpa_cba.pdf)

2 Section V.13 (emphasis added) (available at www.adr.org/index2.1.jsp?JSPssid=15727&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html#baseball)

3 Rule 28 (emphasis added) (available at www.jamsadr.com/streamlined_arbitration_rules-2003.asp#Rule28)

4 *See, e.g.*, A. Farmer and P. Pecorino, "Bargaining With Informative Offers: An Analysis of Final-Offer Arbitration," *Journal of Legal Studies*, Vol. 27 at p. 419 (June 1998)(if arbitration is invoked, "[b]oth bids are made ***simultaneously*** and become common knowledge" (emphasis added)), R. Gibbons, "Learning in Equilibrium Models of Arbitration," *The American Economic Review*, Vol. 78 No. 5 at p. 898 (Dec. 1988)("The timing of final-offer arbitration is as follows: First, the parties ***simultaneously*** submit their offers to the arbitrator." (emphasis added))

- If the Commission were to adopt a system based on sequential offers, it would change the parties' incentives and distort the negotiation and arbitration processes

    - First, sequential offers would give cable operators greater incentive to initiate arbitration ***in every case*** rather than reach a negotiated agreement
        - At a minimum, the cable operator gets a free look at News Corp.'s last best offer without fear of losing programming.

    - Second, sequential offers would skew the results towards cable operators.
        - Where neither party knows what the other is going to offer, both have the incentive to make the most reasonable offer possible – that is the underlying rationale for baseball arbitration
        - Where the cable operator knows what News Corp. has offered, it will be able to act opportunistically by using News Corp.'s offer – rather than an independent assessment of fair market value – to determine its own counter-offer

    - Result more frequent regulatory intervention into commercial negotiations and increased transaction costs that ultimately will be passed on to consumers

- There is no reason to place News Corp. at such a sharp disadvantage to incumbent cable operators

    - ***Once arbitration is initiated, any arguable leverage that News Corp. has gained over the cable operator by acquiring an interest in DIRECTV is nullified, as the relative commercial position of the parties is irrelevant to the arbitrator's determination of a fair market value for the programming.***

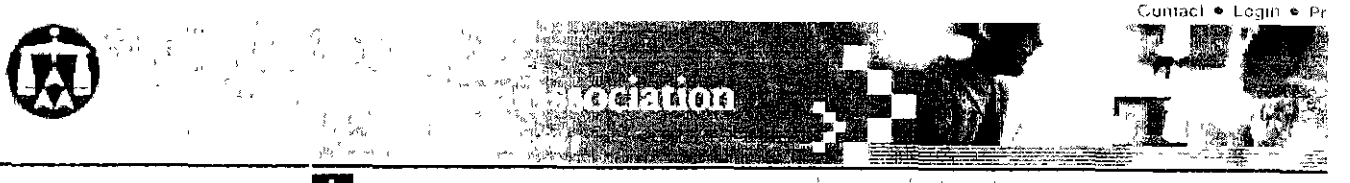
2003-2006 BASIC AGREEMENT

TABLE OF CONTENTS

(5) *Timetable and Decision* Submission may be made at any time between January 5 and January 15 In the event the offer of the Club is reduced on or subsequent to January 15, the Player's right to submit to arbitration shall be reinstated for a period of 7 days Arbitration hearings shall be held as soon as possible after submission and, to the extent practicable, shall be scheduled to be held from February 1 to February 20 The arbitration panel may render the decision on the day of the hearing, and shall make every effort to do so not later than 24 hours following the close of the hearing The arbitration panel shall be limited to awarding only one or the other of the two figures submitted There shall be no opinion There shall be no release of the arbitration award by the arbitration panel except to the Club, the Player, the Association and the LRD The panel chair shall initially inform the Association and the LRD of the award only and not how the panel members voted The panel chair shall disclose to the Association and the LRD the individual votes of the panel members on each March 15 following the February hearings The panel chair shall insert the figure awarded in paragraph 2 of the duplicate Uniform Player's Contracts delivered at the hearing and shall forward both copies to the Office of the Commissioner

(6) *Form of Submission* The Player and the Club shall exchange with each other in advance of the hearing single salary figures for the coming season (which need not be figures offered during the prior negotiations) and then shall submit such figures to the arbitration panel At the hearing, the Player and Club shall deliver to the arbitration panel a Uniform Player's Contract executed in duplicate, complete except for the salary figure to be inserted in paragraph 2 Upon submission of the salary issue to arbitration by either Player or Club, the Player shall be regarded as a signed Player (unless the Player withdraws from arbitration as provided in paragraph (4) above)

(7) *Selection of Arbitrators* The Association and the LRD shall annually select the arbitrators In the event they are unable to agree by January 1 in any year, they jointly shall request that the American Arbitration Association furnish them lists of prominent, professional arbitrators Upon receipt of such lists, the arbitrators shall be selected by alternately striking names from the lists All cases shall



Drafting Dispute Resolution Clauses - A Practical Guide

In 1997, William K Slate II, president of the American Arbitration Association, formed the "Drafting Resolution Clauses" Committee under the guidance of the AAA's general counsel Michael F Hoell review the existing booklet and to determine whether improvements could be made The committe consisting of James H Carter of Sullivan & Cromwell, chair, and members Winslow Christian, Da Freyer of Skadden, Arps, Slate, Meagher & Flom, Richard K Jeydel, senior vice president, genera and secretary of Kanematsu USA Inc , Charles B Molineaux of Wickwire Gavin and John H Wilk Donovan Leisure, Newton & Irvine, contributed greatly to revising this booklet

The booklet is intended to assist parties in drafting alternative dispute resolution (ADR) clauses W in mind, and in addition to the suggested clauses, the committee compiled a checklist of considera the drafter as well as examples of supplemental language which go beyond the basic clauses Us benefit from the commentary throughout the text which helps to identify points of interest Parties questions regarding drafting an AAA clause should contact their local AAA office

Table of Contents

13 "Baseball" Arbitration

"Baseball" arbitration is a methodology used in many different contexts in addition to baseball players' salary disputes, and is particularly eff when parties have a long term relationship The procedure involves each party submitting a number to the arbitrator(s) and serving the nun or her adversary on the understanding that, following a hearing, the arbitrator(s) will pick one of the submitted numbers, nothing else A key this approach is 'hat there is incentive for a party to submit a highly reasonable number, since this increases the likelihood that the arbitrato select that number In some instances, the process of submitting the numbers moves the parties so close together that the dispute is settl a hearing Sample language providing for "baseball" arbitration is set forth below

BASEBALL 1 Each party shall submit to the arbitrator and exchange with each other in advance of the hearing their last, best offers The arbitrator shall be limited to awarding only one or the other of the two figures submitted

JAMS STREAMLINED ARBITRATION RULES & PROCEDURES

STREAMLINED ARBITRATION RULES & PROCEDURES

Table of Contents

for any act or omission in connection with any Arbitration conducted under these Rules, including but not limited to a recusal by the Arbitrator

Rule 26. Fees

(a) Each Party shall pay its pro-rata share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses JAMS agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration prior to the Hearing and may preclude a Party that has failed to deposit its pro-rata or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing JAMS may waive the deposit requirement upon a showing of good cause

(c) The Parties are jointly and severally liable for the payment of the fees and expenses of JAMS In the event that one Party has paid more than its share of the fees, the Arbitrator may award against any other Party any costs or fees that such Party owes with respect to the Arbitration

(d) JAMS may defer issuance of an Arbitration Award rendered by the Arbitrator if any and/or all outstanding invoices are not paid If JAMS declines to issue an Arbitration Award in accordance with this Rule, it shall not be issued to any Party

(e) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees JAMS shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration

Rule 27. Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate The Parties shall promptly notify the Case Manager, and provide to the Case Manager a copy of their written agreement setting forth the agreed-upon maximum and minimum amounts.

(b) The Case Manager shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties

(c) The Arbitrator shall render the Award in accordance with Rule 19.

(d) In the event that the Award of the Arbitrator is in between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

Rule 28. Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to the Case Manager written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 19 (b) The Case Manager shall promptly provide a copy of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which

shall supersede all prior proposals The revised written proposals shall be provided to the Case Manager who shall promptly provide them to the Arbitrator, unless the Parties agree otherwise

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 19(b) This provision modifies Rule 19(f) in that no written statement of reasons shall accompany the Award

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 19, except that the Award shall thereafter be corrected to conform to the closest of the last proposals, and the closest of the last proposals will become the Award

(d) Other than as provided herein, the provisions of Rule 19 shall be applicable