

KATHLEEN M.H. WALLMAN  
WALLMAN CONSULTING, LLC  
9332 RAMEY LANE  
GREAT FALLS, VIRGINIA 22066

December 12, 2003

The Honorable Michael Powell, Chairman  
The Honorable Kathleen Abernathy  
The Honorable Michael Copps  
The Honorable Kevin Martin  
The Honorable Jonathan Adelstein

Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

Re: 03-124 on behalf of Victory Sports, LLC

Dear Mr. Chairman and Commissioners:

We write to follow up on the concerns outlined in our earlier submission of which a copy is attached. We continue to be gravely concerned about the concentration of market power that will result from the combination proposed in this merger. The impending combination is already having disruptive effects in Victory's efforts to deliver regional sports programming to viewers.

In November, Victory Sports offered to allow all distributors, including DirecTV, to carry our service **without charge** during the college basketball season, allowing fans to have access to Victory's programming while allowing ample time to complete the negotiation of long term arrangements before the beginning of the Major League Baseball season, during which Victory will carry Twins baseball. The result, as hoped for, has been an increase in dialogue with a number of distributors. There has been one surprising exception to our offer of free programming: a letter rejecting the offer, from DirecTV. A copy of the related correspondence is attached. While DirecTV seems to acknowledge that not offering Victory's Twins programming during the baseball season could cause "substantial customer frustration," they have disavowed interest in negotiating a distribution agreement.

It is our understanding that the only condition that the FCC is actively considering to address Victory's concerns about distribution abuses is an arbitration mechanism, as opposed to any specific structural or behavioral standards of conduct or fair dealing which DirecTV would be required to adhere to. Arbitration alone is a wholly inadequate solution.

Any proposed condition must take into account the relative resources of DirecTV and News Corporation in comparison to the resources of the potentially aggrieved parties. If arbitration is the only solution offered, arbitration and the attendant delays will almost certainly become part of the negotiation process. This would allow DirecTV and News Corporation to impose their will

on others that lack the resources to endure such a process. This would also allow DirecTV to use the prospect of delay through arbitration as leverage in negotiations, effectively allowing it to use the combined distribution and programming might of News Corporation to improperly influence the competitive landscape. Without quantifiable benchmarks or standards, there will be nothing to prevent the potential harms of this transaction, only after the fact remedies for those damaged as result.

We urge the adoption of the standards that we advanced in our earlier submission to the record in this matter. A copy of our earlier submission is attached.

Very truly yours,

//signed//

Kathleen M.H. Wallman