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December 23, 2003

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: MB Docket No. 03-172

Dear Ms. Dortch:

On behalf of Fox Entertainment Group, Inc. and Fox Television Stations, Inc.; National Broadcasting Company, Inc. and Telemundo Communications Group, Inc.; and Viacom (collectively, the "Broadcast Networks"), this letter is submitted to respond to certain misstatements made by Cox Communications, Inc. ("Cox") in its October 14, 2003 *ex parte* letter submitted to the Commission as part of the above-referenced proceeding.<sup>1</sup>

The Cox Letter asserts that the Broadcast Networks (and Disney/ABC) "did not in fact offer Cox a cash payment option in the retransmission consent negotiations they conducted between 1998 and 2003."<sup>2</sup> This statement not only has no basis in fact, it also is contradicted by the very declaration that Cox submitted in support of its allegation.<sup>3</sup> Indeed, the Wilson Declaration specifically concedes that

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<sup>1</sup> See Letter of To-Quyen T. Truong to the FCC, dated October 14, 2003 (the "Cox Letter").

<sup>2</sup> *Id.* at 1.

<sup>3</sup> See Declaration of Robert Wilson, Cox's Vice President of Programming, attached to the Cox Letter (the "Wilson Declaration").

Disney/ABC offered Cox a cash payment option for retransmission consent in February 2003.<sup>4</sup>

Moreover, Cox was compelled to "clarify" its allegation in a supplemental *ex parte* letter filed little more than a month after the submission of the Wilson Declaration.<sup>5</sup> In its supplemental letter, Cox discloses that in addition to the cash offer from Disney/ABC, it "received a cash offer earlier this year from Viacom/CBS . . . ."<sup>6</sup>

The reality is that each of the Broadcast Networks offers cable operators – including Cox – multiple options for consideration in exchange for letting the cable operators carry the valuable programming provided by the Broadcast Networks' owned-and-operated television stations ("O&Os"). Included herewith are declarations from executives of each of the Broadcast Networks who are familiar with their companies' retransmission consent negotiations with Cox. In addition, The Walt Disney Company and The ABC Television Network today also submitted a letter and a declaration from its executive that handles retransmission consent negotiations. As the declarations make clear, in its retransmission consent negotiations with the Broadcast Networks and Disney/ABC, Cox in fact rejected any offers for a cash payment option.

Provided below is a summary of the Broadcast Networks' and Disney/ABC's most recent retransmission consent negotiations with Cox:

- ABC: As described in the Declaration of Benjamin N. Pyne, Senior Vice President of Affiliate Sales and Marketing, ABC Cable Networks Group, "Cox has had in the past, has today and will have in the future, the option of entering into a cash standalone

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<sup>4</sup> See *id.* The Cox Letter attempts to discount Disney/ABC's cash payment offer by calling it a "casual remark" made during a telephone conversation with Mr. Wilson, rather than acknowledging it as a "formal offer." Cox Letter, at 1. In the context of negotiations between sophisticated and experienced negotiators, however, it makes little difference whether an offer is presented with any particular formalities. What matters is that a Disney/ABC senior vice president made Cox a cash offer, which Cox was free to reject or pursue.

<sup>5</sup> See Letter of To-Quyen T. Truong to the FCC, dated November 24, 2003, at 1.

<sup>6</sup> *Id.*

Retransmission Consent contract for cable carriage of one or more of the ABC Owned Television Stations."<sup>7</sup>

- CBS: As described in the attached Declaration of Martin Franks, Executive Vice President of CBS and Senior Vice President of Viacom, Viacom specifically offered Cox a cash payment option for retransmission consent for KCBS Digital, KCAL Analog and Digital and all of Viacom's UPN O&Os (the only Viacom television stations not covered under a previous agreement) in February 2003.<sup>8</sup> Cox responded that it "has not done cash retransmission consent deals in the past," and instead indicated its desire to negotiate retransmission consent for the CBS and UPN O&Os in connection with the negotiations for carriage of Viacom's affiliated MTV Networks cable programming services.<sup>9</sup>
- FOX: As described in the attached Declaration of Lindsay Gardner, Executive Vice President of Affiliate Sales and Marketing for Fox Cable Networks Group, Cox and Fox Cable Networks Group recently extended an agreement enabling Cox to carry several of Fox's regional sports cable networks ("RSNs"), as well as two additional Fox cable channels.<sup>10</sup> As part of the negotiations over carriage of these cable channels, Cox demanded that Fox also extend the retransmission consent agreement for all of the Fox O&Os (which was not scheduled to expire until May 1, 2004). Therefore, because it was Cox that "insisted on combining the extension of its [retransmission consent] agreement with its agreements relating to the RSNs, Fuel and National Geographic Channel, there was no opportunity or reason to offer Cox a cash alternative for a stand-alone retransmission consent agreement."<sup>11</sup> In addition, Cox did not

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<sup>7</sup> See Declaration of Benjamin N. Pyne, Senior Vice President of Affiliate Sales and Marketing, ABC Cable Networks Group, filed with the letter of Susan L. Fox, dated December 23, 2003, on behalf of The Walt Disney Company and The ABC Television Network.

<sup>8</sup> See Declaration of Martin Franks, Executive Vice President of CBS and Senior Vice President of Viacom, attached hereto as Exhibit A.

<sup>9</sup> *Id.*

<sup>10</sup> See Declaration of Lindsay Gardner, Executive Vice President of Affiliate Sales and Marketing, Fox Cable Networks Group, attached hereto as Exhibit B.

<sup>11</sup> *Id.*

request a cash payment alternative for a stand-alone retransmission consent agreement in either of its last two negotiations with Fox.

- NBC: As described in the attached Declaration of Jodi Brenner, Associate General Counsel for NBC Cable Networks, Cox and NBC recently concluded negotiations to extend a pre-existing retransmission consent agreement that permits Cox to carry all of NBC's O&Os as well as affiliated NBC cable programming, including the Olympics.<sup>12</sup> "At no time during these negotiations did Cox request a cash alternative or a stand-alone retransmission consent agreement."<sup>13</sup>

The Cox Letter also decries what it calls the "inflated" rates that cable operators pay to carry the Broadcast Networks' affiliated cable programming channels.<sup>14</sup> The Commission, however, should have no difficulty dismissing this complaint as completely unfounded. As made clear by the recent findings of the United States General Accounting Office: ownership affiliation between broadcasters and cable networks "had no influence on cable networks' license fees."<sup>15</sup> In other words, the rates that Cox pays to carry the Broadcast Networks' affiliated cable programming channels are wholly in line with what Cox pays to carry all of its other cable programming channels.

In sum, Cox's *ex parte* letter constitutes just another part of its ongoing effort to revisit and defeat the retransmission consent process established by Congress to protect broadcasters from the perceived market power of vertically integrated cable companies. The Commission should reject Cox's plea for unwarranted governmental intervention in marketplace negotiations.

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<sup>12</sup> See Declaration of Jodi Brenner, Associate General Counsel for NBC Cable Networks, attached hereto as Exhibit C.

<sup>13</sup> *Id.*

<sup>14</sup> See Cox Letter, at 3.

<sup>15</sup> See *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, Report of the U.S. General Accounting Office, October 2003, at 29.

Marlene Dortch  
December 23, 2003  
Page 5

Should you have any questions concerning this submission, kindly contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. C. Quale". The signature is fluid and cursive, with a large initial "J" and "C".

John C. Quale  
*Counsel to the Broadcast Networks*

Enclosures

cc: Kenneth Ferree  
Marsha Glauberman  
Andrew Wise  
Linda Senecal  
Qualex International

**EXHIBIT A**

Declaration of Martin Franks  
Executive Vice President of CBS and Senior Vice President of Viacom



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FAX: (212) 975-6065  
mcf@franks@cbs.com

**MARTIN D. FRANKS**  
EXECUTIVE VICE PRESIDENT

### DECLARATION OF MARTIN D. FRANKS

- 1) My name is Martin D. Franks. I am executive vice president of CBS and Senior Vice President of Viacom. In my position I have responsibility for negotiating the retransmission consent agreements for all of Viacom Inc.'s owned-and-operated television stations ("O&Os"), including CBS and UPN stations as well as KCAL.
- 2) I have noted with interest the assertion by Cox Communications, Inc. ("Cox") that it has never received a "cash offer" from a network broadcaster for retransmission consent.
- 3) On February 26, 2003, I conveyed to Ms. Kathy Payne, Executive Director of Programming for Cox, an offer whereby Cox Cable could secure retransmission consent for all of the Viacom O&Os not covered under a previous agreement. Specifically, the offer covered KCAL analog and digital, KCBS digital, and all of the Viacom UPN O&Os.
- 4) While the precise terms of the offer are proprietary and confidential, the proposed terms specifically included only cash and promotional considerations. The proposal did not call for any consideration related to carriage of Viacom's affiliated cable programming networks.
- 5) At the time I sent the offer to Ms. Payne, she told me that "Cox has not done cash retransmission consent deals in the past," but that the offer would be discussed internally.
- 6) On March 19, Cox, solely at its discretion, informed CBS and Viacom that Cox preferred to negotiate retransmission consent for the relevant stations in connection with the negotiations for carriage of Viacom's affiliated MTV Networks cable programming services.

I declare under penalty of perjury that the foregoing is true and correct.

Martin D. Franks

Executed: December 22, 2003

**EXHIBIT B**

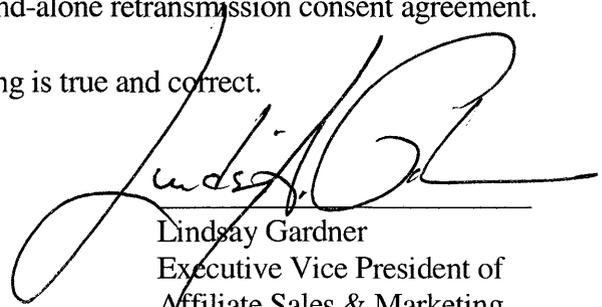
Declaration of Lindsay Gardner  
Executive Vice President of Affiliate Sales and Marketing, Fox Cable Networks Group

## Declaration of Lindsay Gardner

1. My name is Lindsay Gardner. I am Executive Vice President of Affiliate Sales and Marketing for the Fox Cable Networks Group ("Fox Cable"), a position I have held since May 1999. My responsibilities include the sale and marketing of the various cable program networks owned and managed by Fox Cable to cable operators and satellite distributors. Over the past several years, I have also been responsible for retransmission consent negotiations on behalf of Fox owned and operated television stations.
2. On November 25, 2003 Fox Cable concluded an agreement with Cox Communications ("Cox") for renewal of the carriage by Cox-owned cable systems of six Fox Cable regional sports networks ("RSNs") serving 3.3 million Cox subscribers. The agreement extended a 1999 contract that was scheduled to expire on December 31, 2003. As part of that agreement, Cox committed to launch two additional cable networks owned and operated by Fox Cable: *Fuel* and *National Geographic Channel*.
3. In January 2000, Cox and Fox Television Holdings ("FTH") entered into a retransmission consent ("RTC") agreement relating to the carriage of FTH owned and operated stations on Cox-owned cable systems. The term of that RTC agreement was scheduled to expire on May 1, 2004, and it was not the intention of Fox Cable to enter into negotiations for the extension of that agreement until some time during the early part of 2004. However, Cox insisted on negotiating for an extension of the RTC agreement in connection with the negotiations that related to, and concluded with, the agreements for the carriage of the RSNs, *Fuel* and *National Geographic Channel*. A new RTC agreement between FTH and Cox was therefore negotiated and entered into on November 25, 2003 – the same date as the RSN, *Fuel* and *National Geographic Channel* agreements.
4. Since Cox insisted on combining the extension of its RTC agreement with its agreements relating to the RSNs, *Fuel* and *National Geographic Channel*, there was no opportunity or reason to offer Cox a cash alternative for a stand-alone retransmission consent agreement.
5. In neither the January 2000 negotiation nor the November 2003 negotiation did Cox

at any time request a cash alternative for a stand-alone retransmission consent agreement.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Lindsay Gardner", is written over a horizontal line.

Lindsay Gardner  
Executive Vice President of  
Affiliate Sales & Marketing  
Fox Cable Networks Group

Executed on December 17, 2003

**EXHIBIT C**

Declaration of Jodi Brenner  
Associate General Counsel for NBC Cable Networks

**Declaration of Jodi Brenner**

1. My name is Jodi Brenner. I am Associate General Counsel for NBC Cable Networks ("NBC Cable"), and have been with NBC Cable for five and a half years. Since 1998, (with a brief break in early 2000) my responsibilities have included the negotiating and drafting of distribution agreements with cable and satellite distributors for the cable programming networks owned and managed by NBC Cable, as well as the Olympics on cable and the retransmission consent for NBC owned and operated television stations.
2. During the period from 1998 through 2003 referenced by Cox Communications, Inc. ("Cox") in an October 14, 2003 filing with the Federal Communications Commission, NBC did not enter into a new Retransmission Consent Agreement with Cox, but rather extended an existing agreement that included the right for additional programming, including the Olympics on cable. In that Agreement, Cox secured the right to retransmit all NBC owned and operated television stations through calendar year 2008.
3. At no time during these negotiations did Cox request a cash alternative or a stand-alone retransmission consent agreement.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Jodi Brenner  
Associate General Counsel  
NBC Cable Networks

Executed on December 19, 2003