

Telecom Dispute Solutions, Inc.

Mediation and Arbitration Services for the Telecommunications Industry

EX PARTE OR LATV

17721 Tree Lawn Drive
Ashton, Maryland 20861
301/774-4251

Frank G. Lamancusa
President

FLamancusa@TelecomADR.com

ORIGINAL

January 6, 2004

RECEIVED

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

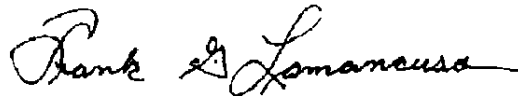
Federal Communications Commission
Office of Secretary

Re: *Ex parte* submission – MB 03-124

Dear Secretary Dortch:

Enclosed are two (2) copies of an electronically transmitted *ex parte* submitted on January 6, 2004, relating to the conditioned approval of the News Corp/DirecTV merger, docketed as MB 03-124.

Sincerely,



Frank G. Lamancusa

Enclosures

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Federal Communications Commission
Office of Secretary

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: FCC's Conditioned Approval of News Corp/DirecTV Merger: MB 03-124
Electronically transmitted *ex parte* submission

Dear Chairman Powell and Commissioners Abernathy, Copps, Martin, and Adelstein:

I applaud the Commission's incorporation of commercial arbitration procedures to resolve retransmission consent negotiations in its conditioned approval of the News Corp/DirecTV merger but assert that the designation of the American Arbitration Association ("AAA") as the sole resource for arbitrators violates federal contracting requirements promulgated pursuant to 41 U.S.C. 253(c) and the ethical requirements of 5 C.F.R. § 2635.101(b)(8).

The information released by the Commission on December 19, 2003, states that if an MVPD and News Corp cannot reach an agreement on retransmission consent, the MVPD has the option of filing a demand for arbitration with the AAA. To my knowledge, the Commission neither selected the AAA as the sole source for arbitration services as a result of a competitive bidding process nor complied with the federal requirements for contracting without the provision of full and open competition (*see, e.g.*, Federal Acquisition Regulation, §§ 6.1-6.3).

The AAA is a for-profit provider of arbitration services within the United States. They are not unique, however, as many other experienced and qualified organizations and individuals provide similar services to the telecommunications industry on a daily basis (*e.g.*, CPR Institute for Dispute Resolution, Communications Dispute Resolutions). The Commission therefore appears to have given preferential treatment to a private organization, namely the AAA, in contravention of the impartiality provision of 5 C.F.R. § 2635.101(b)(8).

In an effort to neutralize these violations, I suggest that the Commission include arbitrator neutral language (*i.e.*, name no particular entity) in its pending order and allow the parties to submit their arbitration demand to any neutral or panel of neutrals that agrees to abide by the procedures outlined in the Commission's order.

Electronically Transmitted *Ex Parte* Submission – MB 03-124

January 6, 2004

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Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Frank G. Lamancusa". The signature is written in a cursive style with a long horizontal flourish at the end.

Frank G. Lamancusa

cc Marlene H. Dortch, Secretary (2 copies)
Kenneth Ferree (electronically)
Barbara Esbin (electronically)