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July 25, 2006

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

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**JUL 25 2006**

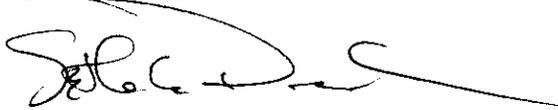
Federal Communications Commission  
Office of Secretary

**Re: MB Docket No. 03-124**

Dear Ms. Dortch:

Attached please find a copy of a letter from Jeffrey L. Abbas, President & Chief Executive Officer of the National Cable Television Cooperative, Inc., to Chairman Martin, for inclusion in the record of the above-referenced proceeding.

Respectfully submitted,



Seth A. Davidson  
*Counsel for the National Cable Television Cooperative,  
Inc.*

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Jeffrey L. Abbas  
President and  
Chief Executive Officer

July 25, 2006

**Via Hand Delivery**

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street, S.W., Room 8-B201  
Washington, DC 20554

**RECEIVED**

JUL 25 2006

Federal Communications Commission  
Office of Secretary

**Re: MB Docket No. 03-124**

Dear Chairman Martin:

I am writing on behalf of the National Cable Television Cooperative, Inc. ("NCTC") to request the Commission's immediate assistance in resolving an ongoing impasse that threatens to deny NCTC's small cable operator members the benefits of a key regional sports network ("RSN") related condition imposed by the Commission on News Corporation Ltd. ("News Corp.") in the order approving News Corp.'s acquisition of DirecTV ("Order").<sup>1</sup> The fact that the Commission, at the urging of DirecTV, recently imposed similar conditions on Time Warner and Comcast makes News Corp.'s recalcitrance all the more egregious and in need of immediate Commission attention.

*Introduction.* The issue that has arisen between NCTC (and its members) and News Corp. involves the requirement that News Corp. enter into negotiations for the carriage of its affiliated RSNs with a "bargaining agent" appointed by smaller cable operators to act on their behalf. While News Corp. ostensibly claims to be willing to negotiate with NCTC as a bargaining agent on behalf of its smaller cable operator members, it is refusing to acknowledge that those companies may share with NCTC information crucial to the effective representation of their interests. As a result, News Corp. is evading its obligations under the Order.

As explained more fully herein, News Corp. has rebuffed NCTC's efforts to elicit assurances from News Corp. that it will not seek to enforce the confidentiality provisions of current (or expired) carriage agreements between its affiliated RSNs and NCTC's member companies should those companies disclose to NCTC (in its role as appointed bargaining agent) the terms and conditions of said contracts. Obviously, NCTC cannot effectively pursue the renewal or extension of existing agreements on behalf of its members if it is denied access to such essential information regarding the price terms and other conditions contained in those

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<sup>1</sup> *General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473 (rel. Jan. 14, 2004).

agreements. Although NCTC has sought for more than a year to resolve this matter, News Corp. continues to stonewall. Therefore, NCTC respectfully requests that the Commission clarify that, consistent with the intent of the Order, NCTC "stands in the shoes" of the companies that appoint it to act as a bargaining agent on their behalf and, consequently, is entitled to access (with appropriate protections) to integral information about the terms and conditions of relevant programming agreements between News Corp. and those companies.

Discussion The Order approving News Corp.'s acquisition of DirecTV expressly recognized that the combination of the nation's leading RSN vendor and the nation's leading DBS company threatened to put smaller cable operators "at particular risk of temporary foreclosure strategies" by the combined entity. In order to "counter-balance the increase in News Corp.'s market power with respect to RSN programming," the Order provided that such smaller cable operators may appoint a "bargaining agent" to "bargain collectively" on their behalf for carriage of News Corp.-affiliated RSNs and that News Corp. is required to negotiate with the designated collective bargaining agent. The Commission specifically stated that this bargaining agent will have "all the rights and responsibilities" granted individual operators. See Order at ¶ 176.

In reliance on the Order, numerous small cable operators have asked NCTC to act as their bargaining agent to negotiate for carriage of News Corp.-affiliated RSNs. However, News Corp. has effectively blocked NCTC from moving forward by refusing to acknowledge that the confidentiality provisions in current (and expired) News Corp.-affiliated RSN carriage agreements do not prevent cable operators from disclosing relevant information in those agreements to NCTC so that NCTC may effectively bargain on their behalf. In short, News Corp. is impeding the implementation of a key condition of the Order by holding the threat of a breach of contract claim over the head of any smaller cable operator that shares information with NCTC regarding the terms of the agreements that it wants NCTC to renegotiate.

NCTC believes the Commission clearly intended for a duly appointed bargaining agent to stand in the shoes of the cable operators on whose behalf it is negotiating. Indeed, it seems self-evident to both NCTC and its members that in order for NCTC to act effectively as a bargaining agent, it must have access to certain critical confidential information in its members' agreements with relevant News Corp.-affiliated services (e.g., the contract length, product guarantees, price terms, the specific professional and/or collegiate sports content provided, most favored nations and preferential treatment provisions and any tie-ins or bundling to other News Corp. services, etc.). NCTC cannot effectively represent companies in obtaining an agreement to renew or extend an existing News Corp.-affiliated RSN agreement if those companies put themselves at risk of a lawsuit (even one that is lacking in merit) if they supply NCTC with fundamental information regarding price, content, and all other key substantive terms of relevant News Corp.-affiliated programming agreement(s).

When the Commission imposed the collective bargaining condition on News Corp. (which News Corp. accepted), it presumably intended that the protection it was giving smaller cable operators in their negotiations with News Corp. would be meaningful. News Corp.'s market power dramatically exceeds that of small cable operators, and this imbalance is especially

acute with respect to “must have” local appeal programming such as RSNs, where News Corp. is the sole source of such content. It is implausible that the Commission meant to allow News Corp. to frustrate this intent by forcing any bargaining agent appointed pursuant to the Order to negotiate while effectively blindfolded (while News Corp., of course, would be negotiating with access to and knowledge of all of the material terms of its agreements with the bargaining agent’s members).

The companies that have asked NCTC to serve as their bargaining agent are confident that they are entitled to share information with NCTC. Nonetheless, these companies dare not run the risk of reprisal from News Corp. for allegedly violating the confidentiality clauses in their agreements. Faced with this conundrum, NCTC contacted News Corp. over a year ago, seeking its acknowledgement and confirmation that NCTC, as a duly appointed bargaining agent under the Order, would be entitled to relevant information regarding its members’ current and expired carriage agreements with News Corp.-affiliated RSNs. NCTC expressly committed to abide by the confidentiality provisions of its members’ agreements and stated that it would “not be permitted to further disclose any such information to its individual members or to third parties other than NCTC’s attorneys.”

Despite NCTC’s reasonable efforts at resolving this issue, News Corp. has refused to provide the requested assurance that it will not seek to enforce confidentiality provisions against NCTC’s members. This refusal does not appear to be based on any real or legitimate concern about the protection of confidential business information; to the contrary, News Corp. has suggested that they consider this issue to be a vehicle for extracting additional consideration from NCTC’s members. Yet, News Corp.’s senior management also has opaquely asserted that the company intends to enforce their confidentiality clauses “as drafted.” Such assertions bear out the legitimacy of smaller cable operators’ fear of retaliation on the part of News Corp. and have effectively prevented them from providing NCTC with access to critical information found in relevant existing and expired programming agreements.

Conclusion. As you noted in your statement regarding the Commission’s approval of the Comcast et al. transactions, “viewers consider the programming that RSNs carry as ‘must have’ TV.” The bargaining agent condition (and the related “compulsory arbitration” condition) adopted in the Order was supposed to address the risk that News Corp., following its acquisition of DirecTV, would have the incentive and ability to foreclose cable operators from access to such programming. However, News Corp.’s posturing over the confidentiality issue has made these conditions a dead letter for NCTC’s membership.

The time has come for the Commission to clarify and give effect to the Order’s bargaining agent condition. It should be noted in this regard that NCTC first contacted the Media Bureau concerning this matter nearly a year ago. In addition, the fact that the Commission has given DirecTV the benefit of an RSN-related condition in connection with the approval of the Comcast/Time Warner/Adelphia transactions makes the need for Commission action even more pressing both as an equitable matter and because News Corp. may now have an additional disincentive to deal fairly with competitors who seek access to News Corp.-affiliated RSNs.

The Honorable Kevin J. Martin

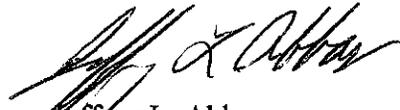
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Specifically, NCTC requests that the Commission confirm that a bargaining agent duly appointed pursuant to the Order stands in the shoes of the cable operators on whose behalf it is negotiating and, accordingly, the operators making such appointment may disclose confidential terms and conditions in its News Corp.-related RSN and other relevant affiliation agreements to such an agent. Additionally, NCTC seeks further clarification from the Commission on one other procedural aspect of the Order as it applies to negotiations conducted between News Corp. and a bargaining agent representing smaller cable operators. Specifically, the Order provides that News Corp. must allow a cable operator to continue carriage of an RSN pending arbitration where the underlying negotiation relates to the renewal of an expired RSN carriage agreement. NCTC asks the Commission to confirm that a company whose current RSN carriage agreement expires during the course of renewal negotiations between News Corp. and a designated bargaining agent representing that company is permitted to continue to carry the applicable RSN(s) during the negotiation and any related arbitration periods.

Your prompt attention and action on this matter would be greatly appreciated. If there are any questions regarding this, please contact me directly.

Respectfully submitted,



Jeffrey L. Abbas  
President & Chief Executive Officer  
NCTC

Enclosure

The Honorable Kevin J. Martin

July 25, 2006

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cc: Heather Dixon  
Office of Commissioner Tate  
Office of Commissioner Copps  
Office of Commissioner Adelstein  
Office of Commissioner McDowell  
Donna Gregg  
Lindsey Gardner, President, Fox Cable Networks Group  
Qualex International