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April 6, 2007

VIA ECFS

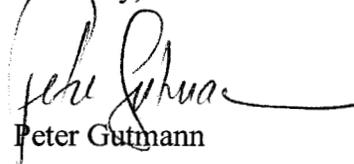
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Reply Comments of Massillon Cable TV, Inc.
MB Docket 07-18**

Dear Ms. Dortch:

Submitted herewith electronically through the Commission's ECFS filing system, are the reply comments of Massillon Cable TV, Inc. in MB Docket No. 07-18.

Sincerely,



Peter Gutmann

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of)
)
NEWS CORPORATION AND)
THE DIRECTV GROUP, INC.)
)
Transferors,)
) **MB Docket No. 07-18**
and)
)
LIBERTY MEDIA CORPORATION)
)
Transferee,)
)
For Authority to Transfer of Control.)

To: Office of the Secretary

REPLY COMMENTS OF MASSILLON CABLE TV, INC.

Massillon Cable TV, Inc. (“Massillon”), by its attorneys, pursuant to the Commission’s Public Notice, DA 07-637, released February 21, 2007, respectfully submits herewith its reply comments in support of the comments filed herein by the National Cable Television Cooperative (“NCTC”) and the American Cable Association (“ACA”).

For the reasons described herein, Massillon urges the Commission not to enable the parties to the subject transfer of control to use their proposed restructuring to evade the pro-competitive protections which the Commission only recently imposed.

Massillon has a strong interest in this proceeding. Massillon is a cable television provider that operates cable systems in Ohio that are affiliates of Fox Cable Networks (“Fox”), a subsidiary of News Corporation. In 2001, Fox and Massillon amended their affiliation

agreement such that Fox was to provide additional Cleveland Indians baseball games in exchange for higher per-subscriber fees. However, following the 2005 baseball season, Fox stopped providing any Cleveland Indians games but refused to adjust the affiliation fee. Following a protracted period of unsuccessful negotiation (while Massillon continued to pay the enhanced fee), Massillon demanded that the dispute be arbitrated, pursuant to the Commission's *Order*.¹ Fox, however, has resisted arbitration on the ground that the *Order* provided no remedy for the very abuses it was intended to protect against – namely the common control of both Fox (the source of regional sports programming for cable distribution) and DirecTV (the other primary means by which television households can obtain direct access to such sports in lieu of through cable).

In its comments, NCTC notes that one of its primary functions is to negotiate and administer master affiliation agreements between cable television programming networks and its member cable systems. *NCTC Comments* at 2. NCTC notes that it currently is involved in arbitration involving RSNs owned by News Corp. but that the subject parties have not explicitly pledged as a condition of approval of the subject transfer of control that they are to remain subject to the *Order's* conditions. *Id.*, at 4-5.² Among the entities omitted from this pledge is Fox – with whom Massillon is embroiled in a dispute over its (and, indirectly, News Corp's) use of market clout to extract excessive fees even after withdrawing the programming upon which

¹ *In re General Motors Cop. and Hughes Electronics Cop., Transferors, and The News Corporation Limited, Transferee*, FCC 03-330, 19 FCC Rcd. 473 (2004) (the "*Order*"). The *Order* approved the transaction whereby News Corp. had acquired DBS facilities that carry regional sports networks ("RSNs") such as Fox that News Corp. owned. Such DBS facilities compete with cable systems such as Massillon for distribution of RSNs to consumers. The *Order* compels commercial arbitration for disputes about carriage of RSN programming of a Fox affiliate. *See, Order* at ¶¶ 175 and 373 and Appendix F.

² In the subject *Consolidated Application* at 17-18, the parties note that as the result of their proposed transaction, News Corp. will remain in control of all but three of its 15 RSNs. The parties claim that **this** restructuring will eliminate the vertical integration concerns that were addressed in the *Order* and which led to the arbitration remedy that both NCTC and Massillon have invoked. Even so, the parties agree to adopt the conditions mandated in the *Order* regarding the three RSNs whose control is to be transferred. They are silent as to the other RSNs (including Fox) that are to remain within the control of News Corp.

the fees had been imposed. Therefore, based upon its own recent experience, Massillon shares NCTC's concern that, unless explicitly ordered as part of any FCC approval of the subject transaction, Fox will use the proposed restructuring of its RSN ownership as a means to evade the market protections that the FCC imposed in its *Order*, including the expedited arbitration mechanism for competitors with News Corp's DBS facilities for carriage of News Corp's RSNs.

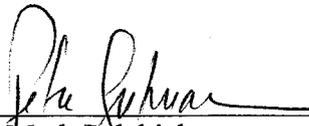
ACA's comments go further, contending that the proposed transaction merits not only preservation but strengthening of the conditions of the *Order*. Specifically, ACA has found that the brief window within which certain arbitration rights must be invoked is too narrow to afford its members meaningful relief. This is the very position Fox has taken in attempting to disclaim an arbitrator's jurisdiction in its dispute with Massillon? Consequently, Massillon shares ACA's concern that, unless the arbitration provision of the *Order* is at the very least affirmed, if not expanded, Fox will use the outcome of the subject application, if approved without stringent protections for parties such as Massillon, as further leverage to extract unfair and discriminatory fees for the programming it controls, while continuing to frustrate the remedial efforts of those cable systems dependent upon Fox for essential RSN programming.

³ Specifically, Fox has contended that the arbitrator lacks jurisdiction to resolve any dispute not involving a new or renewed affiliation agreement, and thus seeks to sidestep any remedy for the situation faced by Massillon in which Fox altered an affiliation agreement by withdrawing programming without offering an appropriate fee adjustment.

In view of the foregoing, Massillon urges the Commission to condition any approval of the subject application upon preserving the arbitration rights set forth in the *Order*.

Respectfully submitted,

MASSILLON CABLE TV, INC.

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