



Hughes continue to believe that DIRECTV will be the strongest possible competitor to incumbent cable operators only if it can provide consumers with their local broadcast channels and with HDTV programming . . . . [T]hese public interest benefits will be realized *only* as a *direct result* of the proposed transaction.<sup>3</sup>

While the Commission did not impose News Corp.'s commitment on it as condition of the grant of the transfer application, there is no question but that News Corp.'s commitment was important to News Corp.'s showing that the transaction indeed offered "public interest benefits." And there is no question but that News Corp.'s commitment was an inducement to the Commission to grant the application.

Now, some three years later, News Corp. seeks to transfer its control of DIRECTV to Liberty Media. Liberty Media, however, has *not* agreed—so far, at least—to abide by News Corp.'s commitment to provide local-into-local satellite television service in all 210 DMAs. Rather, Liberty Media has agreed to comply only with those conditions the Commission actually *imposed* on News Corp.<sup>4</sup> But Liberty Media has acquired stock in News Corp., since 2004, with full knowledge of News Corp.'s earlier public promise to the Commission to extend local-into-local satellite television service to all 210 television markets. Thus, Liberty Media is in no position to complain about that commitment—nor to abandon it. Liberty Media is now, and has been, a significant shareholder of News Corp., and, to our knowledge, it has not heretofore complained about or challenged News Corp.'s commitment to roll out local-into-local service in all television markets.

The "public interest benefits" of local-into-local satellite television service in all 210 DMAs, including the consumer benefits of effective competition to incumbent cable operators, that News

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<sup>3</sup> See Letter from William M. Wiltshire *et al.*, on behalf of News Corp., General Motors Corp., and Hughes Electronics Corp., to Marlene H. Dortch, Secretary, MB Docket No. 03-124 (filed Sept. 22, 2003), at 4 (emphases added).

<sup>4</sup> See Consolidated Application for Authority to Transfer Control, MB Docket No. 07-18 (filed Jan. 24, 2007), at i.

Corp. expressly acknowledged in acquiring control of DIRECTV will be lost if the Commission does not hold Liberty Media to that commitment. News Corp. will have received the benefit of its bargain, a substantial return on its investment in three years. The public should now receive the benefits of competition and of local-into-local service that News Corp. promised to it—and only the Commission is in a position to ensure that the public receives those promised benefits.

Time is short. By the time the Commission acts on the instant application, there will be only 18 months left for DIRECTV to honor its commitment. But, today, DIRECTV serves only 142 television markets,<sup>5</sup> about 2/3 of all of the markets, and substantially short of the 176 markets that EchoStar currently serves. DIRECTV has announced its intention to deploy two additional satellites in 2007 that could easily be used to deliver local-into-local satellite television service to the remaining 68 television markets. That satellite capacity, however, could be—and may well be—utilized by Liberty Media to deliver programming services other than local broadcast stations if the Commission allows News Corp.—through Liberty Media—to abandon its earlier promise and commitment to the Commission.

### **Ohio**

Ohio is home to two of the nation's 15 smallest television markets, Lima, No. 196, and Zanesville, No. 203. DIRECTV does not provide local-into-local service in Lima (nor does EchoStar), and thus satellite subscribers in Lima are deprived of access by satellite to WLIO(TV), the NBC affiliate in Lima, and WTLW(TV), an independent station licensed to Lima. DIRECTV, however, does provide local-into-local service in the smaller market of Zanesville (while EchoStar does not), and WHIZ-TV, the NBC affiliate in Zanesville, is carried, along with a complement of

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<sup>5</sup> See DIRECTV, Local Channel Markets, available at <<http://www.directv.com/DTVAPP/global/contentPage.jsp?assetId=1000013>> (last visited Apr. 8, 2007).

other network-affiliated stations from the neighboring market of Columbus. On the one hand, DIRECTV's current local-into-local service in Zanesville demonstrates that it is clearly possible for DIRECTV to deliver local-into-service in even the smallest markets. On the other hand, without assurance of Commission oversight, there is no guarantee that DIRECTV will continue to provide local-into-local service in Zanesville in the future, especially after the digital television transition, and there is certainly no guarantee that local-into-local service will ever be offered in Lima unless the Commission conditions grant of the instant transfer application on fulfillment of News Corp.'s original commitment.

### **Virginia**

Virginia is also home to two small television markets, Harrisonburg, No. 181, and Charlottesville, No. 182. DIRECTV does not provide local-into-local service in *either* of these markets, although EchoStar does. Thus, DIRECTV's satellite subscribers in the Harrisonburg DMA do not have access by satellite to WHSV-TV, Harrisonburg, an ABC affiliate, and WVPT(TV), Staunton, a PBS affiliate. And DIRECTV's subscribers in the Charlottesville DMA do not have access by satellite to WVIR-TV, an NBC affiliate, and WCAV(TV), a CBS affiliate.<sup>6</sup> The fact that EchoStar provides local-into-local service in both markets confirms that it is economically and technically feasible to do so. Unless Liberty Media is held to News Corp.'s commitment to provide service in *every* television market, it is unlikely that DIRECTV will ever provide local-into-local service in these Virginia markets, and consumers in these rural areas will be denied the full benefits that multichannel video competition brings to the marketplace.

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<sup>6</sup> WAHU-CA is the Fox affiliate in Charlottesville and WVAW-LP is the ABC affiliate in Charlottesville. While these low power television stations do not have mandatory carriage rights, *see* 47 U.S.C. § 338(a)(3), the Charlottesville DMA is not considered a "short" market, since each of the Big Four television networks is affiliated with a television station in the market, and DIRECTV could offer to carry these network affiliates if it launched local-into-local service in the Charlottesville market, just as EchoStar has done.

## **Conclusion**

For the foregoing reasons, it is respectfully requested that the Commission impose, as a condition of grant of control of DIRECTV to Liberty Media, a requirement that Liberty Media cause DIRECTV to offer local-into-local satellite television service in all 210 DMAs by the end of 2008 and to continue to do so thereafter. This will insure that the public interest benefits originally promised in the News Corp. transaction will ultimately be reaped by the public.

Respectfully submitted,

**OHIO ASSOCIATION OF BROADCASTERS**

**VIRGINIA ASSOCIATION OF BROADCASTERS**

/s/

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