

Section 3. Reliance upon Books, Reports and Records.

Each Director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such Director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board.

Section 5. Time Periods.

In applying any provision of these By-Laws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 6. Disbursements.

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation.

Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.

Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification.

Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former Directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined.

For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another

enterprise. The term “another enterprise” as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a Director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court.

Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any Director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 1 or 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the Director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the Director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance.

Expenses incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusively of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any By-Law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article VIII but whom the Corporation has the power to or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a Director, officer, employee or agent of another corporation,

partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions.

For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent corporation, or is or was a Director or officer of such constituent corporation serving at the request of such constituent corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a Director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such Director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation on Indemnification.

Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 hereof), the Corporation shall not be obligated to indemnify any Director or officer in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of the Corporation.

Section 12. Indemnification of Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to Directors and officers of the Corporation.

AMENDMENTS

(a) Subject to paragraph (b) of this Article IX below, and in furtherance and not in limitation of the powers conferred by law, in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, the Certificate of Incorporation or these By-Laws, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares entitled to vote generally on matters requiring approval of stockholders, voting together as a single class, shall be authorized to adopt, alter, amend or repeal any provision of these By-Laws, and, subject to the power of the holders of capital stock of the Corporation to adopt, alter, amend or repeal the By-Laws under the DGCL, the Board is also expressly authorized to adopt, alter, amend or repeal any provision of these By-Laws.

(b) Notwithstanding any of the foregoing, (i) Article II, Sections 1, 2, 3, 12, 13, (ii) Article III, Sections 1, 3, 4, 5, (iii) Article IV, and (iv) this Article IX of these By-Laws, may only be amended, altered or repealed (x) by the affirmative vote of at least a majority of the Directors, including at least a majority of Independent Directors then serving on the Board, or (y) by the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares entitled to vote generally on matters requiring approval of stockholders, voting together as a single class, but excluding such shares Beneficially Owned by Purchaser, or (z) in the event any person, together with its Affiliates, shall have acquired ownership of sixty-five percent (65%) or more of the Corporation's Voting Securities then outstanding, pursuant to paragraph (a) of this Article IX above.

EXHIBIT 2

**Proposed Resolutions of the Board of Directors of
The News Corporation Limited (the "Corporation")**

WHEREAS, the Board of Directors has previously approved a series of transactions (the "*Transactions*") pursuant to which the Corporation's subsidiary, Fox Entertainment Group, Inc., a Delaware corporation ("*FEG*") will acquire 34% of the outstanding common stock of Hughes Electronics Corporation ("*Hughes*");

WHEREAS, the United States Department of Justice, United States Department of Homeland Security and Federal Bureau of Investigation (together, the "*Executive Agencies*") have sought assurances that the Corporation, as a non-U.S. entity, will not be able to influence Hughes's compliance with lawful requests relating to issues of U.S. national security and law enforcement; and

WHEREAS, in response to the Executive Agencies' requests, it is proposed that the Corporation and Hughes take certain necessary actions to amend the By-laws that will be in effect upon consummation of the Transactions so as to read as set forth in the form of amended and restated by-laws of Hughes attached hereto as Exhibit A (the "*Hughes By-law Amendment*"), which amendment provides, among other things and subject to the terms thereof, that the Hughes' Audit Committee shall be comprised exclusively of U.S. citizens and shall have exclusive jurisdiction over the establishment, oversight and evolution of policies related to U.S. national security and law enforcement concerns;

IT IS THEREFORE RESOLVED, that the Board of Directors recognizes, understands and accepts the Hughes By-law Amendment and hereby determines that it is advisable, desirable and in the best interests of the Corporation and its stockholders to, in order to implement the Hughes By-law Amendment, amend (i) the Stock Purchase Agreement, dated as of April 9, 2003, as amended, by and among the Corporation, Hughes and General Motors Corporation and (ii) the Agreement and Plan of Merger, dated as of April 9, 2003, as amended, by and among the Corporation, Hughes and GMH Merger Sub, Inc., in each case in the manner contemplated by the form of letter agreement attached hereto as Exhibit B (the "*Letter Agreement*"); and it is further

RESOLVED, that the Board of Directors accepts and acknowledges that, subject to the terms of the Hughes By-law Amendment, each member of the Hughes Audit Committee shall be a U.S. citizen; and it is further

RESOLVED, that the Board of Directors understands the national security and law enforcement bases of the Hughes By-law Amendment and that the adoption of the Hughes By-law Amendment is a condition of the Executive Agencies' consent to the U.S. Federal Communications Commission's approval of the transfer of certain licenses and assets associated with the acquisition of Hughes shares by FEG.

EXHIBIT 3

HUGHES[™]

DIRECTV
PanAmSat
DIRECTV Latin America
Hughes Network Systems

November 6, 2003

United States Department of Justice
Assistant Attorney General
Criminal Division
Main Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Federal Bureau of Investigation
General Counsel
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

United States Department of Homeland Security
General Counsel
Washington, DC 20528

Re: Audit Committee Certification

Reference is made to the form of Amended and Restated By-Laws of Hughes Electronics Corporation ("Hughes") in the form attached hereto as Exhibit 1 (the "By-Laws"), that Hughes intends to adopt in connection with the closing of the transactions contemplated by the Stock Purchase Agreement, dated as of April 9, 2003, as amended from time to time, by and among Hughes, General Motors Corporation and The News Corporation Limited. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the By-Laws.

Hughes hereby agrees that, commencing upon the adoption of the By-Laws in connection with the contemplated transactions, on or before the last business day of each January following a calendar year in which the provisions of ^{Article III} Section 3(g) of the By-Laws applied to Hughes, the Chairman of the Audit Committee shall submit to the United States Department of Justice, Federal Bureau of Investigation, and the United States Department of ^{Article II} Homeland Security a certification regarding compliance during the prior calendar year with ^{Article III} Section 3(g) of the By-Laws. Such certification shall provide a summary of any significant matters brought before the Audit Committee pursuant to ^{Article III} Section 3(g) during such calendar year and a description of any actions taken by Hughes with respect to such matters.

This letter agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

P.O. Box 956 2250 E Imperial Hwy El Segundo, CA 90245-0956

This letter agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

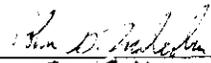
Very truly yours,

HUGHES ELECTRONICS CORPORATION

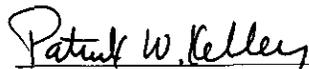
By: 
Name: Larry D. Hunter
Title: Senior Vice President
and General Counsel

Accepted and agreed as of the date first written above:

UNITED STATES DEPARTMENT OF JUSTICE

By: 
Name: JOHN G. MALCOLM
Title: DEPUTY ASSISTANT ATTORNEY GENERAL

FEDERAL BUREAU OF INVESTIGATION

By: 
Name: PATRICK W. KELLEY
Title: DEPUTY GENERAL COUNSEL

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

By: _____
Name:
Title:

/Attachment

APPENDIX F

CONDITIONS

I. PROGRAM CARRIAGE CONDITION TO PREVENT DISCRIMINATION AGAINST ALL FORMS OF UNAFFILIATED VIDEO PROGRAMMING

- Neither News Corp. nor DirecTV will discriminate against unaffiliated programming services in the selection, price, terms or conditions of carriage.

II. PROGRAM ACCESS CONDITIONS TO ENSURE NON-DISCRIMINATORY ACCESS TO ALL SATELLITE CABLE PROGRAMMING

- News Corp. will not offer any of its existing or future national and regional programming services on an exclusive basis to any MVPD and will continue to make such services available to all MVPDs on a non-exclusive basis and nondiscriminatory terms and conditions.
- DirecTV will not enter into an exclusive distribution arrangement with any Affiliated Program Rights Holder.¹
- As long as Liberty Media holds an Attributable Interest in News Corp., DirecTV will deal with Liberty Media with respect to programming services it controls as a vertically integrated programmer subject to the program access rules.
- DirecTV may continue to compete for programming that is lawfully offered on an exclusive basis by an unaffiliated program rights holder (*e.g.*, NFL Sunday Ticket).
- Neither News Corp. nor DirecTV (including any entity over which either exercises control) shall unduly or improperly influence: (i) the decision of any Affiliated Program Rights Holder to sell programming to an unaffiliated MVPD; or (ii) the prices, terms and conditions of sale of programming by any Affiliated Program Rights Holder to an unaffiliated MVPD.
- These commitments will apply to News Corp. and DirecTV for as long as the FCC deems News Corp. to have an Attributable Interest in DirecTV and the FCC's program access rules applicable to satellite cable programming vendors affiliated with cable operators remain in

¹ "Affiliated Program Rights Holder" includes (i) a program rights holder in which News Corp. or DirecTV holds a non-controlling "Attributable Interest" (as determined by the FCC's program access attribution rules); and (ii) a program rights holder in which an entity holding a non-controlling Attributable Interest in News Corp. or DirecTV holds an Attributable Interest, provided that News Corp. or DirecTV has actual knowledge of such entity's Attributable Interest in such program rights holder. At the present time Liberty Media is the only entity covered by this definition. Nonetheless this commitment goes beyond the program access rules as DBS operators are not included within the exclusivity prohibition. See 47 C.F.R. § 1002(c).

effect (provided that if the program access rules are modified these commitments shall be modified to conform to any revised rules adopted by the FCC).²

- For enforcement purposes, aggrieved MVPDs may bring program access complaints against Applicants using the procedures found at Section 76.1003, 47 U.S.C. § 76.1003, of the Commission's rules.

III. ADDITIONAL CONDITIONS CONCERNING ACCESS TO REGIONAL SPORTS CABLE PROGRAMMING NETWORKS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for carriage of a regional sports network ("RSN"), an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- An aggrieved MVPD may submit a dispute with News Corp. over the terms and conditions of carriage of RSN programming in each region in which News Corp. owns or holds a controlling interest or manages any non-broadcast RSN.
- Following the expiration of any existing contract, or 90 days after a first time request for carriage, an MVPD may notify News Corp. within five business days that it intends to request commercial arbitration to determine the terms of the new affiliation agreement.
- Upon receiving timely notice of the MVPD's intent to arbitrate, News Corp. must immediately allow continued carriage of the network under the same terms and conditions of the expired affiliation agreement as long as the MVPD continues to meet the obligations set forth in this condition.
- Carriage of the disputed programming during the period of arbitration is not required in the case of first time requests for carriage.
- *"Cooling Off Period."* The period following News Corp.'s receipt of timely notice of the MVPD's intent to arbitrate and before the MVPD's filing for formal arbitration with the American Arbitration Association ("AAA") shall constitute a "cooling-off" period during which time negotiations are to continue.
- *Formal Filing with the AAA.* The MVPD's formal demand for arbitration, which shall include the MVPD's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the RSN contract and no later than the end of the twentieth business day following such expiration. If the MVPD makes a timely demand, News Corp. must participate in the arbitration proceeding.
- The AAA will notify News Corp. and the MVPD upon receiving the MVPD's formal filing.
- News Corp. will file a "final offer" with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD.

² Although *most* of the program access rules will remain applicable unless terminated by Congress, Section 76.1002(c), the prohibition on exclusive contracts, sunsets in October 2007 unless the Commission finds that the prohibition continues to be necessary to protect competition in the distribution of video programming. See 47 C.F.R. § 76.1002(c)(2). In the year prior to the sunset, the Commission will conduct a proceeding to evaluate the circumstances in the video programming marketplace.

- *The MVPD's final offer may not be disclosed until the AAA has received the final offer from News Corp.*
- The final offers shall be in the form of a contract for the carriage of the programming for a period of at least three years. The final offers may not include any provision to carry any video programming networks or any other service other than the RSN.

Rules of Arbitration

- The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA (the "Rules"), excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix B.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.
- The arbitrator is directed to choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- Under no circumstances will the arbitrator choose a final offer that does not permit News Corp. to recover a reasonable share of the costs of acquiring the programming at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),³ including, but not limited to:
 - current or previous contracts between MVPDs and RSNs in which News Corp. does not have an interest as well as offers made in such negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of such programming compared to the RSN programming at issue (*e.g.*, advertising rates, ratings);
 - contracts between MVPDs and RSNs on whose behalf News Corp. has negotiated before News Corp. acquired control of DirecTV;
 - offers made in such negotiations;
 - internal studies or discussions of the imputed value of RSN programming in bundled agreements;
 - other evidence (including internal discussions) of the value of RSN programming;
 - changes in the value of non-News Corp. RSN programming agreements;
 - changes in the value or costs of News Corp. RSN programming, or in other prices relevant to the relative value of News Corp. RSN programming (*e.g.*, advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD and News Corp. for the programming at issue in determining the fair market value.
- If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including attorney fees) against the offending party.

³ We clarify that, by "possession," we mean actual possession or control.

- Following resolution of the dispute by the arbitrator, to the extent practicable, the terms of the new affiliation agreement will become retroactive to the expiration date of the previous affiliation agreement. The MVPD will make an additional payment to News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract during the period of arbitration.
- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking de novo review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to carry the programming at issue pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorneys' fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the definition of a "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating carriage of RSNs with News Corp. and News Corp. may not refuse to negotiate carriage of RSN programming with such an entity.⁴ The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions.

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of an affiliation agreement with an MVPD for video programming subject to this condition, News Corp. must provide the MVPD with a copy of the conditions imposed in this Order. News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for affiliation.
- This condition will expire six years after the release of the Order.

⁴ The Commission has previously defined small cable companies as those with 400,000 or fewer subscribers. We adopt that definition for the purposes of this condition. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 7393 (1995) ("Sixth Report and Order").

- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the conditions have proven unduly burdensome, rendering the condition no longer necessary in the public interest.

IV. CONDITIONS CONCERNING ACCESS TO LOCAL BROADCAST TELEVISION STATION SIGNALS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for a retransmission consent agreement with a local broadcast television station that News Corp. owns and operators or on whose behalf it negotiates retransmission consent, an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- The commercial arbitration condition commences following the expiration of any existing retransmission consent agreement.
- Following such expiration, or 90 days after a first time request for retransmission consent, a MVPD may notify News Corp. within five business days that it intends to request arbitration over the terms and conditions of retransmission consent.
- Upon receiving timely notice of the MVPD's intent to arbitrate, News Corp. must immediately allow continued retransmission of the broadcast signal under the same terms and conditions of the expired retransmission consent agreement as long as the MVPD continues to meet the obligations set forth in this condition.
- Retransmission of the broadcast signal during the period of arbitration is not required in the case of first time requests for carriage.
- *"Cooling Off Period."* Following the MVPD's notice of intent to submit the dispute to arbitration, but prior to filing for formal arbitration with the American Arbitration Association ("AAA"), the MVPD and News Corp. will enter a "cooling-off" period during which negotiations will continue.
- *Formal Filing with the AAA.* The MVPD's formal demand for arbitration, which shall include the MVPD's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the retransmission consent agreement and no later than the end of the twentieth business day following such expiration. If the MVPD makes a timely demand, News Corp. must participate in the arbitration proceeding.
- The AAA will notify News Corp. and the MVPD upon receiving the MVPD's formal filing.
- News Corp. will file a "final offer" with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD.
- The MVPD's final offer may not be disclosed until the AAA has received the final offer from News Corp.
- The final offers shall be in the form of a contract for the retransmission of the broadcast signal for a period of three years. The final offers may not include any provision to carry any video programming networks or any other service other than the broadcast signal.

Rules of Arbitration

- The arbitration will be decided by a single arbitrator under the expedited procedures of the Rules, excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix C.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.
- The arbitrator is directed to choose the “final offer” of the party which most closely approximates the fair market value of the programming carriage rights at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),⁵ including, but not limited to:
 - current contracts between MVPDs and Fox-affiliated stations on whose behalf News Corp. does not negotiate;
 - current contracts between MVPDs and non-Fox network stations;
 - offers made in the preceding negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of Fox programming compared to other network programming (*e.g.*, advertising rates, ratings);
 - contracts between MVPDs and stations on whose behalf News Corp. has negotiated made before News Corp. acquired control of DirecTV as well as offers made in such negotiations;
 - internal studies of the imputed value of retransmission consent agreements in bundled agreements;
 - changes in the value of non-Fox retransmission consent agreements;
 - changes in the value or costs of Fox programming or broadcast stations, or in other prices relevant to the relative value of Fox broadcast programming (*e.g.*, advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD and News Corp. for the programming at issue in determining the fair market value.
- If the arbitrator finds that one party’s conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party’s costs and expenses (including attorney fees) against the offending party.
- Following the decision of the arbitrator, and to the extent practicable, the terms of the new retransmission consent agreement, including payment terms, if any, will become retroactive to the expiration date of the previous retransmission consent agreement. The MVPD will make an additional payment to News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator’s award and the amount actually paid under the terms of the expired contract during the period of arbitration.
- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

⁵ We clarify that, by “possession,” we mean actual possession or control.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking *de novo* review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to continue to retransmit the broadcast signal pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the Arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorney fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the Commission's definition of "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating with News Corp. for carriage of the programming subject to this condition and News Corp. may not refuse to negotiate with such an entity.⁶ The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions.
- When dealing with MVPDs with fewer than 5,000 total subscribers, we require News Corp. to either elect "must-carry" status or negotiate retransmission consent for its owned and operated stations and any affiliated station on whose behalf it negotiates retransmission consent without any requirements for cash compensation or carriage of programming other than the broadcast signal.

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of a must-carry election or retransmission consent agreement with an MVPD, News Corp. must provide the MVPD with a copy of the conditions imposed in this Order. News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for retransmission consent.
- This condition will expire six years after the release of the Order.
- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the condition has proven unduly burdensome, rendering the condition no longer necessary in the public interest.

Non-discriminatory Access to Local Broadcast Television Station Signals

⁶ See *Sixth Report and Order*, 10 FCC Rcd 7393 (1995).

- The non-discrimination commitments that News Corp. has proposed and we have imposed as conditions regarding non-discriminatory access to satellite cable programming networks are extended to any broadcast station that News Corp. owns and operates or on whose behalf it negotiates retransmission consent.

Good Faith and Exclusivity Requirements of SHVIA

- The good faith and exclusivity requirements of SHVIA, in effect by their terms until January 1, 2006, are extended to apply to retransmission consent negotiations undertaken by News Corp. for carriage of its local broadcast station signals so long as the program access rules are in effect.

VI. CONDITION TO INCREASE LOCAL-INTO-LOCAL BROADCAST TELEVISION SERVICE OFFERINGS

- By year end 2004, DirecTV must provide local broadcast channels to subscribers in an additional 30 designated market areas (“DMAs”) beyond what had been previously funded, projected or planned by Hughes/DirecTV.
- In the event that circumstances beyond DirecTV’s control limit its ability to fulfill this license condition, DirecTV may petition the Commission for waiver pursuant to Section 1.3 of the Commission rules, 47 C.F.R. § 1.3.

VII. CONDITIONS TO MITIGATE NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY AND TRADE POLICY CONCERNS

Pursuant to the request of the U.S. Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”), with the concurrence of the Department of Homeland Security (“DHS”),⁷ the transfer of control is conditioned on:

- GM causing Hughes to adopt, and Hughes adopting, prior to the closing of the subject transaction, the Hughes By-law Amendment;
- The adoption by the Board of Directors of News Corp. of the Proposed Resolutions; and
- Compliance by Hughes and News Corp., respectively, with the commitments set forth in the Hughes By-laws Amendment, the Proposed Resolutions, and the Letter Agreement.

⁷ See Petition to Adopt Conditions to Authorizations and Licenses (filed Nov. 25, 2003) (“Petition to Adopt Conditions”); Appendix E.

APPENDIX G

LICENSES AND AUTHORIZATIONS TO BE TRANSFERRED

File No. SAT-T/C-20030502-00083 is the Lead File number for the space station series of applications. The complete list of File Numbers follows:

Satellite Space Stations:

| File Number | Licensee/Call Signs |
|------------------------|--|
| SAT-T/C-20030502-00083 | DIRECTV Enterprises, LLC Call Sign(s): DBS8402; S2369; DBS8402; DBS8402; S2430; S2417; DBS8804 |
| SAT-T/C-20030505-00084 | Hughes Network Systems, Inc. Call Sign(s): S2132; S2133; S2185; S2187; S2188; S2190; S2191 |
| SAT-T/C-20030502-00085 | PanAmSat Licensee Corporation Call Sign(s): S2368; PAS-2R; PAS-4; CS91004; PAS-6; PAS-8; S2359; PAS-9; S2229; S2380; S2382; S2131; S2128; S2381; S2377; GAL V; GAL VIII(i); S2146; S2378; S2253; S2422; SBS-6; KS39 |
| SAT-T/C-20030502-00086 | USSB II, Inc. Call Sign(s): DBS8107; DBS8107 |

File No. SES-T/C-20030502-00582 is the Lead File number for the earth station series of applications. The complete list of File Numbers follows (see also Public Notice, Report No. SES 00565, December 31, 2003):

Satellite Earth Stations:

| File Number | Licensee/Call Signs |
|------------------------|---|
| SES-T/C-20030502-00582 | Hughes Network Systems, Inc. Call Sign(s): E000166; E030007; E880787; E880788; E880789; E881110; E881111; E881112; E890426; E890427; E890428; E890628; E890629; E890630; E891001; E891002; E900192; E900682; E940455; E940460; E950471; E950472; E950473; E970067; E990170 (VSAT Transmit/Receive) |
| SES-T/C-20030502-00583 | Hughes Network Systems Limited Call Sign(s): E000362; E010187; E020195; E020205; E020206; E020207; E020208 (Transmit/Receive) |
| SES-T/C-20030502-00584 | Hughes Network Systems, Inc. Call Sign(s): E020241; E020242; E030004; E030005; E030006; E880970; E881109; E890627; E900013; E910612; E940478; SES-STA-20021101-01942 (Transmit/Receive) |
| SES-T/C-20030502-00585 | USSB II, Inc. Call Sign(s): E930437 (Receive Only) |
| SES-T/C-20030502-00586 | USSB II, Inc. Call Sign(s): E930485 (Transmit Only) |
| SES-T/C-20030502-00587 | California Broadcast Center, LLC Call Sign(s): E010237; E020091 (Transmit/Receive) |

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|------------------------|--|
| SES-T/C-20030502-00588 | PanAmSat Licensee Corporation <i>Call Sign(s):</i> E010334; E970080 (Receive Only) |
| SES-T/C-20030502-00589 | PanAmSat Licensee Corporation <i>Call Sign(s):</i> E950067; E970051 (Transmit Only) |
| SES-T/C-20030502-00590 | PanAmSat Licensee Corporation <i>Call Sign(s):</i> E000048; E000049; E000063; E000274; E000363; E000364; E000488; E010019; E010112; E010113; E010131; E010133; E020309; E030012; E4132; E7465; E881286; E881304; E890530; E900089; E920340; E920377; E930088; E940333; E940368; E940532; E950267; E950307; E950502; E950508; E970352; E970391; E970392; E980460; E980467; E980501; E980502; E980503; E990024; E990091; E990092; E990093; E990214; E990223; E990224; E990323; E990334; E990363; E990364; E990365; E990433; KA244; KA245; KA391; KA450; KA71 (Transmit/Receive) |
| SES-T/C-20030502-00591 | PanAmSat Licensee Corporation <i>Call Sign(s):</i> E010118; E010280; E990055 (Temporary Transmit/Receive) |
| SES-T/C-20030502-00592 | PanAmSat Licensee Corporation <i>Call Sign(s):</i> E2178; E3943; E860175; E900621; E900757; KL92 (Common Carrier Transmit/Receive) |
| SES-T/C-20030505-00601 | DIRECTV Enterprises, LLC <i>Call Sign(s):</i> E950423; E950424; E980170; E980341 (Receive Only) |
| SES-T/C-20030505-00602 | DIRECTV Enterprises, LLC <i>Call Sign(s):</i> E930229; E930304 (Transmit Only) |
| SES-T/C-20030505-00603 | DIRECTV Enterprises, LLC <i>Call Sign(s):</i> E010129; E010130; E020172; E930191; E950349; E980285; E980338; E980340; E980473; E990159 (Transmit/Receive) |
| SES-T/C-20030505-00604 | DIRECTV Enterprises, LLC <i>Call Sign(s):</i> E990545 (Temporary Transmit/Receive) |
| SES-T/C-20030505-00605 | DIRECTV Latin America, LLC (D-I-P) <i>Call Sign(s):</i> E990232 (Transmit/Receive) |
| SES-T/C-20030505-00606 | Hughes Communications Satellite Services, Inc. <i>Call Sign(s):</i> E960001; E970079; E970094 (Receive Only) |
| SES-T/C-20030505-00607 | Hughes Network Systems, Inc. <i>Call Sign(s):</i> E861092; E873438 (Temporary Transmit/Receive) |

File No. 0001293908 is the Lead File number for the wireless radio series of applications. The complete list of File Numbers follows:

Wireless Licenses:

| File Number | Licensee/File Nos. |
|--------------------|--|
| 0001293908 | DIRECTV, Inc. <i>Call Sign(s):</i> WPTZ691 (IG) |

0001293894

Hughes Electronics Corporation
Call Sign(s): WNEU9099 (MG)

0001293921

Hughes Network Systems, Inc.
Call Sign(s): WPVW320 (IG)

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, for Authority to Transfer Control

The Commission has now completed a multi-year review, involving two separate transfer applications, to transfer control of Commission licenses involving nationwide DBS provider DirecTV. Unlike the transfer application involving EchoStar Communications—which ultimately became the first major transaction blocked by this Commission in decades because it would have harmed the public interest by combining the only two nationwide DBS providers in the country¹—this transaction, as conditioned, involving General Motors, Hughes Electronics Corporation and The News Corporation (“News Corp.”) will bring significant benefits to the American public.

As a result of this transaction, DirecTV will be a stronger competitor in the pay-television space, especially against market-leading cable operators. This increased competition to cable will spur new innovative services and programming, lower prices and increased service quality not just to current and future DirecTV subscribers, but to all pay-television subscribers as cable operators throughout the country will be forced to respond to this new nationwide competitive threat.

This transaction, as proposed, did raise concerns about use and abuse of market power. Our strict and narrowly tailored conditions, however, will prevent the realization of these harms to the public. For example, we were concerned that the merged entity would discriminate against unaffiliated programmers, preventing DirecTV subscribers from accessing compelling programming from a multiplicity of diverse sources. To address this concern, we condition this transaction to ensure that unaffiliated programmers have access to the DirecTV platform on nondiscriminatory terms and conditions.

We were concerned that the merged entity would force across-the-board MVPD price increases by using its increased incentive and ability to threaten to or actually withhold highly valued programming by consumers—namely local broadcast signals and regional sports networks²—to extract excessive rents or unfair carriage concessions from MVPDs—programming costs almost certain to be passed on to subscribers. We addressed this concern by setting up a commercial arbitration remedy that will help

¹ See *Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferees)*, 17 FCC Rcd 20559 (2002).

² One should not view our conditions regarding retransmission agreements or regional sports networks as anything other than a condition to mitigate a merger-specific harm identified in the record of this proceeding. It, especially, should not be interpreted as an industry-wide declaration of the Commission concerning the ongoing commercial disputes between MVPDs and broadcasters or regional and national sports programming networks. The broadcast industry and the sports programming market continue to evolve on all fronts. In the case of sports, for instance, increased channel capacity on MVPD systems and advances in broadband Internet access are providing leagues, teams, MVPD providers and sports programming networks with new opportunities for sports distribution. In addition, there are signs in the marketplace to suggest that the extraordinary increases in license fees paid by sports networks to teams over the past year—which then get passed on to MVPDs, then on to consumers—is stabilizing. I continue to believe these issues are best resolved in the marketplace.

reign in excessive programming price increases and ensure that the public will not lose access to the valued programming during negotiations and arbitration. In addition, we ensure that News Corp.'s other affiliated programming will be offered to all MVPDs on a non-discriminatory basis.

Finally, this transaction will result in more local programming being carried by DirecTV in more local markets. In fact, as a condition of this license transfer, we mandate that the merged entity provide, by year end 2004, local channel service in an additional 30 DMAs beyond what had been previously funded, projected or planned by Hughes/DirecTV. As DBS providers continue to carry local broadcasting services to more and more Americans and in the process become a more effective competitor against cable, both of our collective localism and competition goals are enhanced. I share the desires of my colleagues to see more DBS providers carry local broadcast signals and local programming into more local markets—especially to rural America.³

In short, facilities-based competition among satellite and cable providers has led to more innovation, more programming and more subscribers. As a result of this transaction those trends, along with competitive prices and better quality of service will continue for the American public. I, therefore, approve this transaction, as conditioned, as I believe it serves the public interest.

³ With regard to APTS/PBS's proposed condition to restrict DirecTV from segregating local broadcast stations to wing satellites, I do not believe there is sufficient record evidence to suggest that there was a merger-specific public interest harm that called for the proposed condition. To the extent APTS/PBS advocated a further clarification of an interpretation of the nondiscriminatory local broadcast carriage provisions of SHVIA, I do not believe this question is best resolved in this license-transfer proceeding, but is better suited for a separate Commission review. As noted by APTS/PBS in their comments to this proceeding, the Commission will have this opportunity in considering the APTS/PBS Application for Review (*see* Application for Review of the Association of Public Television Stations and the Public Broadcasting Service, CSR-5865-Z (May 6, 2002)) of a previous Media Bureau interpretation of SHVIA. *See National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, Declaratory Ruling and Order, DA 02-765 (Apr. 4, 2002). Until that time, DBS providers using a two-dish solution must do so consistent with Section 76.66 of our rules and Section 338(d) of the Communications Act.

SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, MB Docket No. 03-124

I write separately to clarify my rationale for not supporting the imposition of a proposed condition to restrict DirecTV from segregating some, but not all, local broadcast stations to wing satellites. As the Order specifically states, “[w]ith regard to APTS/PBS’s proposed condition to restrict DirecTV from segregating local broadcast stations to wing satellites, we recognize that the proposed transaction may give DirecTV greater incentive to favor News Corp.’s Fox broadcast network programming and therefore to move other broadcasters onto other satellites. There is not a majority to decide whether this increased incentive results in a merger specific harm.”

I do not believe the issue is merger specific because any incentive to use wing satellites for some, but not all, broadcast stations is applicable to all DBS providers, not just News Corp. In fact, the National Association of Broadcasters and the Association of Local Television Stations filed a petition asking for modification or clarification of the Commission’s rules regarding carriage of television broadcast stations by DBS providers in a manner that requires subscribers to obtain a second satellite dish antenna.¹ Since the Bureau’s decision in that matter is subject to an application for review by the full Commission, I believe that this issue is best addressed in the context of that proceeding. In the interim, the Bureau’s decision provides that if any DBS provider chooses to carry local stations using a second dish to receive some those stations, it must do so in a manner that does not violate Section 76.66 of our rules and Section 338(d) of the Communications Act.²

¹ See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (MD, 2002).

² “[T]he satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the station’s local market on contiguous channels and provide access to such station’s signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide or menu. 47 U.S.C. Section 338(d).

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: General Motors Corporation and Hughes Electronics, Corporation, Transferors and The News Corporation Limited, Transferee, For Authority to Transfer Control

Here we go again. Today the Commission demonstrates how serious -- and seriously misguided - it was when it voted on June 2 to eviscerate media concentration protections. Presented with the opportunity to signal whether it intends to protect the important goals of diversity, competition, and localism, or to allow instead ever greater and more threatening levels of media consolidation, the majority flashes the green light for the next great wave of media consolidation.

News Corp was already a media giant:

- In the U.S., News Corp. owns television stations reaching over 44 percent of the country. (WNYW-5, New York; WWOR-TV-9, New York; KTTV-11, Los Angeles; KCOP-13, Los Angeles; WFLD-32, Chicago; WPWR-TV-50, Chicago; WTXF-TV-29, Philadelphia; WFXT-25, Boston; KDFW-4, Dallas; KDFI-27, Dallas; WTTG-5, Washington, DC; WDCA-20, Washington, DC; KMSP-TV-9, Minneapolis; WFTC-29, Minneapolis; WJBK-2, Detroit; WAGA-5, Atlanta; WUTB-24, Baltimore; KRIV-26, Houston; KTXH-20, Houston; WTVT-13, Tampa Bay; WRBW-65, Orlando; WOFL-35, Orlando; WJW-8, Cleveland; KSAZ-TV-10, Phoenix; KUTP-45, Phoenix; KDVR-31, Denver; KTVI-2, St. Louis; WITI-6, Milwaukee; WDAF-TV-4, Kansas City; KSTU-13, Salt Lake City; WBRC-6, Birmingham; WHBQ-TV-13, Memphis; WGHP-8, Greensboro; KTBC-7, Austin; WOGX-51, Ocala).
- In nine markets, it owns more than one television station (New York, Los Angeles, Chicago, Dallas, Washington, DC, Minneapolis, Houston, Orlando and Phoenix).
- It owns a major national broadcast network (Fox).
- It owns numerous cable and DBS channels, including regional sports networks across the country (among them FX, Fox News Channel, Fox Movie Channel, Fox Sports, Fox Sports en Espanol, National Geographic Channel, Speed Channel).
- It owns the most widely used electronic program guide for navigating television content (Gemstar-TV Guide).
- It owns newspapers, magazines, and publishing (including *New York Post*, *The Weekly Standard* and HarperCollins Publishers).
- It owns studios (including Twentieth Century Fox, Searchlight, Fox Television Studios, Twentieth Century Fox Television).
- It will now own a nationwide multi-channel direct broadcast satellite system (DirecTV).
- And it will now also own a major fixed satellite service provider that carries video broadcast and cable programming for delivery to distribution systems (PanAmSat).

- This list constitutes News Corp's major holdings in the United States. This conglomerate also has massive media holdings in other nations spanning the globe.

When is "Big Media" big enough? With spectrum always scarce and diversity hanging by a thread, where is the logic -- where is the public interest benefit -- of giving more and more media power to fewer and fewer players? In the end, it all comes back to this: to putting too much power in one conglomerate's hands and creating opportunities for abuse that accompany such concentrated power. Any public interest benefits that may potentially come about from this huge consolidation of commercial power are vastly outweighed by the potential for significant harm to consumers, the industry and the country. I therefore dissent from allowing this merger to go forward.

The majority seems to recognize that the agreement that the parties presented to the Commission for approval was seriously flawed. But the majority's strategy to apply band-aids in several places to stem what is in fact a public interest hemorrhage did not -- because it could not -- work. This agreement was probably beyond repair. Certainly the band-aids applied by the majority don't fix it.

The Applicants point to several claimed public interest benefits of the proposed merger. Yet, even the majority discounts all but two of these benefits as not supported by the record. The majority relies on the potential public interest benefits of innovative services that will be offered under News Corp.'s management and on additional markets in which DirecTV will provide carriage for local television stations. As to the former, the majority admits it is difficult to quantify, but points to the innovative service offerings available on News Corp.'s satellite systems in other parts of the world which include interactive sports betting and casinos. As to the claimed second benefit, the major DBS providers have already been increasing their local station carriage for competitive reasons and, as several commenters point out, DirecTV is altogether able to expand those offerings without this merger.

The *Order* is even more telling in its handling of potential harms emanating from this transaction. The majority finds that News Corp. has market power in its programming services, that this transaction increases its ability and incentive to use its market power to raise programming costs, and that these increases would ultimately be passed on to consumers. Indeed, all of the Commissioners appear to agree that in the transaction, as proposed by the Applicants, the harms outweigh the benefits. In addition to my belief that the conditions imposed in this *Order* are not adequate to address the harms acknowledged by the majority, I am further concerned that the majority fails to acknowledge other real and potential harms associated with the merger. These include:

- **Media Concentration:** Although the majority at least attempts to address the harms of vertical integration, it dismisses outright horizontal integration harms that can arise from allowing one company to own broadcast outlets across the country *and* a nationwide multi-channel distribution system -- an unprecedented level of consolidation. Instead, the majority concludes that broadcast outlets do not serve the same market as cable and DBS. The majority further discounts any harms to localism or diversity, finding instead that market forces will ensure adequate sources of information. To trust that in the unforgiving environment of the market, the public interest will somehow magically trump the urge to build power and profit is a leap of faith that this Commissioner, for one, is unprepared to take. The majority ought to know better. This is the same flawed logic we saw in the Commission's June 2 decision. In addition, the majority fails to analyze the impact of this merger on ensuring independent and diverse programming. Alleged economies of scale do precious little to nurture program or viewpoint diversity.

Given the majority's analysis, I am concerned that this merger is merely the beginning of another wave of consolidation. News Corp. has indicated it may continue growing by acquiring additional television duopolies and other properties. Indeed, the majority apparently presumes that additional News Corp. acquisitions of television stations, radio stations, and newspapers is in the public interest under the Commission's new bright-line media ownership rules. And other Big Media conglomerates, encouraged by today's decision, will now feel emboldened or compelled to consolidate further. My service as a Commissioner has taught me that the response to one company's acquisition is almost invariably another company's request to grow bigger so that it can "compete" and "survive."

The majority's conclusion that broadcast stations do not compete in the same market as cable and DBS, along with its unwillingness closely to examine harms to diversity and localism, make clear that this Commission has no intention to slow, or even critically to examine, cross-platform mergers between broadcast stations and cable or DBS systems.

- ***Community Standards and Indecency:*** Some have suggested that there may be a link between increasing consolidation and increasing indecency on our airwaves. As I traveled across this country holding hearings and attending forums earlier this year, I heard time and again that ownership matters when it comes to what is offered up to viewers and listeners, particularly to our children. I am troubled that today's decision comes on the heels of complaints that News Corp. aired indecent material on the *2003 Billboard Music Awards* just last week. This is not the first instance of such viewer complaints against News Corp. Many of the indecency complaints I have seen come into the Commission involve stations owned by large media companies. I raise the issue here not because of any specific broadcast program, but because the Commission has refused to study the possible relationship between indecency and media concentration. I believe such a study is relevant to decisions such as the one we make today and that, indeed, we should not be making these decisions until we have credibly considered the matter. As we allow media conglomerates to grow ever larger, many Americans are concerned that the race to the bottom will accelerate and that broadcaster consideration for local community standards will continue to erode.

Yet, today, before we even consider these complaints or address the impact of increasing consolidation on increasing indecency, we reward News Corp. with a nationwide programming distribution system. And what will be the effect? Will we see even more attempts to air progressively coarser content? As we move towards more interactive programming, will we see gambling intrude itself into our homes on DirecTV as News Corp. provides on its overseas satellite system? Will we see wider distribution of shows that continue to push the envelope of outrageousness even further?

- ***Increasing Consumer Rates:*** Applicants cite economic efficiencies that will result from their agreement and claim that the merger will give them the scale and scope to compete more effectively. There may well be some such efficiencies, although the baleful tale of many recent high visibility corporate mega-mergers does not provide much proof of commercial success. Be that as it may, Applicants did not demonstrate that any of these alleged savings would be passed on to consumers nor did they evince great enthusiasm for so doing. It is telling that Applicants produced so little data as to how this transaction could possibly discipline rising cable rates. The likelihood of its doing so is so remote as to be