

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
General Motors Corporation)	MB Docket No. 03-124
Hughes Electronics Corp., Transferors)	
)	
And)	
The New Corporation Limited, Transferee)	
)	
For Authority to Transfer Control)	

OPPOSITION OF DISH NETWORK

News Corporation (“News Corp.”) asks the Commission to lift prematurely two conditions that are pro-competitive and pro-consumer. The requirement that carriage disputes over News Corp.-owned broadcast stations and regional sports networks (“RSNs”) are subject to neutral third-party arbitration has proven to be sound regulatory policy, which should be extended and expanded, not truncated as requested here. The Commission should reject News Corp.’s petition.¹

The conditions’ arbitration requirement is a market-based solution that has worked well and has served the public interest. The Commission has explained that arbitration “push[es] the parties towards agreement prior to a complete breakdown in negotiations. Final offer arbitration has the attractive ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer

¹ News Corp. Petition for Modification of Conditions, MB Docket No. 03-124 (Mar. 11, 2008) (“*Petition*”).

of the other side may be selected by the arbitrator.”² In its Petition, News Corp. neither rebuts these findings, nor provides any evidence it has not worked as intended.

The timing of this petition also suggests that News Corp. believes these conditions should be automatically lifted upon the divestiture of DIRECTV. The Commission specifically provided that some *News/Hughes* conditions would expire upon News Corp.’s non-affiliation with DIRECTV, but it did not do so for the two conditions subject to this petition.³ Instead, the Commission established that these two conditions would sunset after six years, which roughly corresponds to the average length of a programming carriage agreement.

News Corp. has additionally failed to meet its burden justifying lifting these conditions prematurely. News Corp. offers only that “it would place News Corp. and its popular programming services at a competitive disadvantage in negotiating with MVPDs and in competing with other programming networks for the acquisition of video content.” *Petition*, ¶ 7. At a minimum, the Commission should require News Corp provide more than bare assertions of alleged harm. Prior to its combination with DIRECTV, the Commission found that News Corp. “possesses significant marker power with respect to its RSNs” and “local broadcast television stations.”⁴ These conditions continue to address this pre-existing market power, and should remain in

² See *In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, ¶ 174 (2004) (“*News/Hughes*”) (internal quotations omitted)

³ Compare *News/Hughes*, ¶¶ 127-128 to *News/Hughes*, ¶¶ 179, 226.

⁴ *Id.*, ¶¶ 147, 201.

full force for the six-year term. For instance, News Corp-owned FSN Arizona was – and remains – the only RSN serving that market offering access to Arizona Diamondbacks games this Summer.⁵ It is unclear how an arbitration provision disadvantages FSN Arizona compared to rival RSNs in altogether different markets.

Further, there has not been a clean break between News Corp., Liberty Media, and DIRECTV with respect to these properties. Specifically, Liberty Media now operates FSN Northwest, FSN Pittsburgh, and FSN Rocky Mountain networks.⁶ All three networks, however, remain affiliated with News Corp.’s Fox Sports Net. The Commission has found that the agreements “allow certain Fox RSNs to continue their present operations consistent with how those RSNs operated under Fox’s ownership.” *Id.*, ¶ 124. These continuing ties – which effectively maintain the status quo of a vertically integrated conglomerate – highlight the extent to which the two companies’ operations are still entwined, and their collective interests remain aligned. News Corp. has not established that it no longer has a continued business relationship with Liberty Media with respect to the management, operation, and carriage of RSNs.

Finally, the Commission is reviewing a host of related issues in the context of a rulemaking proceeding.⁷ The Commission should not prejudge the outcome of that proceeding by taking action to lift these conditions prematurely. Absent conclusive

⁵ <http://msn.foxsports.com/regional/arizona> (last visited Apr. 4, 2008)

⁶ *News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 07-18, ¶ 87 (Feb. 26, 2008) (“*Liberty/News*”).

⁷ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Notice of Proposed Rulemaking, FCC 07-169 (Oct. 1, 2007).

proof of public interest harm and true change of circumstances, the Commission should maintain the remaining pro-consumer conditions on News Corp. for their full term.

Respectfully submitted,

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