

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

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

REPLY COMMENTS OF NEWS CORPORATION

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SUMMARY

When the Commission imposed an arbitration condition on News Corp. in connection with its acquisition of a controlling interest in DIRECTV, it provided News Corp. with the right to petition for modification of the condition in the event that a material change in circumstance rendered the condition no longer necessary in the public interest. On February 27, 2008 News Corp. divested its entire interest in DIRECTV. Simultaneously, Liberty Media divested its entire ownership interest in News Corp. As a result, News Corp. ceased to be vertically integrated with any multichannel video program distributor (“MVPD”). As the Petition for Modification of Conditions points out, one can hardly imagine a greater material change in circumstance than this – a change that has obviated all the concerns that led the Commission to adopt the arbitration condition in the first place.

DISH Network, the American Cable Association (“ACA”) and the National Cable Television Cooperative (“NCTC”) filed comments opposing News Corp.’s request. None of them, however, has presented any basis for retention of the arbitration condition against an independent News Corp. The Commission clearly indicated that the condition was only imposed to address the potential transaction-specific harms that theoretically might arise in the context of the “unique combination” of News Corp.’s regional sports and broadcast programming assets with DIRECTV’s nationwide distribution platform. The Commission specifically noted that the condition was not “an opportunity to correct any and all perceived imbalances in the industry,” but rather was intended to “maintain the balance of bargaining power between News Corp. and MVPDs at roughly pre-transaction levels.” Now that News Corp. has divested its interest in DIRECTV, the balance of bargaining power has reverted to pre-transaction levels, and any

rationale for the arbitration condition that may have existed has been eliminated. None of DISH, ACA or NCTC has shown otherwise.

DISH and NCTC urge the Commission to maintain the condition based on ties that they allege remain in place between News Corp. and DIRECTV and/or Liberty Media. The Commission, however, rejected this very claim in the *News Corp./Liberty Order*. Thus, DISH and NCTC should be collaterally estopped from attempting to re-litigate the issue here. In any event, News Corp. has made abundantly clear that it no longer has any ownership interest in, or control over, DIRECTV or the networks that it sold to Liberty Media.

DISH and ACA also suggest that the condition should be maintained until the conclusion of the pending rulemaking proceeding in which the Commission is considering changes to the program access rules. News Corp., however, is currently the only independent video programmer or broadcaster that is subject to a government-imposed arbitration condition that encumbers its negotiations for carriage of its programming services in the competitive free market. DISH and ACA have not offered any explanation as to why News Corp. alone should be subject to this condition when the Commission has not determined that independent programmers or broadcasters present any risk of undue competitive power or harm to the public interest.

Finally, the Commission should reject ACA's unsupported *ad hominem* attacks suggesting that News Corp. lacked candor because it filed the Petition after the conclusion of the transfer of control of DIRECTV. Quite clearly, the material change in circumstances upon which the Petition is predicated did not occur until the Commission approved the transfer of DIRECTV and the parties consummated the transaction. Equally important, the question of whether to remove the condition had no relevance whatsoever to the Commission's review of the

transaction, and ACA has not even attempted to explain why the two proceedings should be linked together.

Given that none of DISH, ACA or NCTC has presented any evidence justifying retention of the arbitration condition, the Commission should acknowledge that the rationale for applying this restriction to News Corp. has evaporated. Since an independent News Corp. has neither the incentive nor the ability to engage in the feared anticompetitive behavior that was thought to warrant the condition, the Commission should eliminate it and permit News Corp. to resume bargaining for carriage of its regional sports and broadcast programming services in the competitive free market on the same footing as other independent video programmers and broadcasters.

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REPLY COMMENTS OF NEWS CORPORATION

News Corporation (“News Corp.”) hereby respectfully submits its reply comments in connection with the Petition for Modification of Conditions that it filed March 11, 2008 as part of the above-captioned proceeding.¹ News Corp. has divested 100 percent of its interest in DIRECTV and is no longer vertically integrated with any multichannel video programming distributor (“MVPD”). Accordingly, as News Corp. explained in the Petition, there has been a material change in circumstance that warrants the elimination of the “Additional Conditions Concerning Access to Regional Sports Cable Programming Networks” and the “Conditions Concerning Access to Local Broadcast Television Station Signals” (together, the “arbitration condition”) imposed on News Corp. in connection with its acquisition of an interest in DIRECTV in 2004.²

¹ *In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Petition for Modification of Conditions, MB Docket No. 03-124, filed March 11, 2008 (the “Petition”).

² *See In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473 (2004) (the

(cont'd)

In response to the Commission's call for comments about the Petition,³ three parties filed self-styled "oppositions" to News Corp.'s request.⁴ None of them, however, presents the Commission with any basis for retaining the arbitration condition, which does not apply to any other independent video programmer or broadcaster. Given its divestiture of DIRECTV, News Corp. has neither the incentive nor the ability, with regard to carriage of its regional sports networks ("RSNs") or broadcast stations, to engage in the behavior that led the Commission to impose the arbitration condition. The public interest no longer necessitates a special condition to protect MVPDs from News Corp.'s putative market power, and none of ACA, DISH or NCTC has demonstrated otherwise.

I. NO COMMENTER HAS PRESENTED ANY JUSTIFICATION FOR THE DISCRIMINATORY IMPOSITION OF A MANDATORY ARBITRATION CONDITION ON A SINGLE INDEPENDENT PROGRAMMER/BROADCASTER – NEWS CORP.

Each of the Commenters urges the Commission to retain the arbitration condition based on the notion that – absent this condition – MVPDs might lose access to News Corp.'s RSN programming services or broadcast stations. The Commenters, however, ignore the factual and legal predicate for the imposition of the condition in the first place. To be clear, the Commission imposed the arbitration condition *only* to protect MVPDs from harms that *theoretically might*

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"*News/Hughes Order*"), at Appendix F, Sections III and IV. Since the Commission issued the *News/Hughes Order*, The News Corporation Limited has reincorporated in the United States under the name News Corporation and Hughes Electronics Corporation has changed its name to The DirecTV Group, Inc. The entities' current names are used herein.

³ See *Comment Dates Set for Petition for Modification of Conditions Filed By News Corporation*, Public Notice, DA 08-774 (rel. April 1, 2008).

⁴ See *In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, MB Docket No. 03-124, Comments of American Cable Association ("ACA"); Comments of DISH Network ("DISH"); Comments of the National Cable Television Cooperative, Inc. ("NCTC") (all filed May 1, 2008) (ACA, DISH and NCTC collectively, the "Commenters").

occur as a result of News Corp.’s acquisition of an interest in DirecTV.⁵ Specifically, it was the combination of News Corp.’s “must have” programming assets with a national distribution platform that the Commission said conferred upon News Corp. the incentive and ability to engage in a temporary foreclosure strategy that could harm other MVPDs.⁶ The arbitration condition was put in place only because of this potential *transaction-specific* harm.⁷ As the Petition explains, the Commission expressly sought to “maintain the balance of bargaining power between News Corp. and other MVPDs at *roughly pre-transaction levels*.”⁸

The Commission recognized when it imposed the condition that circumstances might change sufficiently to warrant elimination of these restrictions before their sunset date in 2010. Thus, the arbitration condition explicitly provides that 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 . . . , rendering the condition no longer necessary in the public interest.”⁹ Now that News Corp. no longer has any interest in DIRECTV (and is not vertically integrated with any MVPD), the balance of bargaining power has reverted to “pre-transaction” levels and any rationale for the arbitration condition that may have existed has been eliminated. In particular, if News Corp. today were to withhold access to its RSN or broadcast programming from any MVPD, or bargain for anything other than market-based compensation, it would risk significant

⁵ See *In re News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, MB Docket No. 07-18, FCC 08-66 (rel. February 26, 2008) (the “*News/Liberty Order*”), at ¶¶ 101, 117, 128; see also *News/Hughes Order*, at ¶¶ 147, 153, 159, 172, 220.

⁶ See *id.*

⁷ See *News/Liberty Order*, at ¶ 90.

⁸ Petition, at 5 (citing *News/Hughes Order*, at ¶ 87) (emphasis supplied).

⁹ *News/Hughes Order*, at Appendix F.

economic losses (which would not be offset by increased income from ownership of a competing MVPD).

The Commenters make no effort to satisfy the test established by the Commission for modification of the arbitration condition – that it remains *necessary in the public interest*; each Commenter merely argues for retention of the condition in order to benefit its own self interest. DISH, for instance, suggests that the condition should be maintained because News Corp. has not “provide[d] any evidence” that it “has not worked as intended.”¹⁰ Similarly, NCTC claims that the Petition should be granted only if News Corp. can demonstrate “that the public interest would be served by the early termination of the [arbitration] Conditions”¹¹ And ACA alleges that maintenance of the condition is appropriate because of the supposed (but unexplained) “public interest benefits that have accrued.”¹² The Commenters both ignore the occurrence of a material change in circumstance – News Corp.’s divestiture of DIRECTV – and fail to demonstrate why an arbitration condition is *necessary* to protect MVPDs from an independent News Corp. The Commission, moreover, already has made clear that absent vertical integration, News Corp., like every other independent programmer, has “no incentive to favor one MVPD over another in order to achieve particular competitive outcomes in the market for sale of MVPD service to consumers.”¹³

NCTC argues that the arbitration condition should remain in place with respect to “any arbitration proceeding or negotiation commenced prior to” News Corp.’s sale of DIRECTV.¹⁴

¹⁰ Comments of DISH, at 2.

¹¹ Comments of NCTC, at 4.

¹² Comments of ACA, at 5.

¹³ *News/Liberty Order*, at ¶ 117.

¹⁴ Comments of NCTC, at 5.

There is no reason, however, why the arbitration condition should continue to apply to ongoing negotiations between News Corp. and MVPDs where the arbitration procedures contemplated in the *News/Hughes Order* have yet to be triggered.¹⁵ News Corp. is party to numerous, ongoing negotiations with MVPDs over carriage of its RSNs and broadcast stations. An independent News Corp. must negotiate for carriage of its programming services and broadcast stations based on the competitive free market. The condition was imposed only because it was assumed that the vertical integration afforded by the News Corp./DIRECTV combination would provide News Corp. with the unique power and incentive to engage in the temporary withholding of RSN and broadcast programming.¹⁶

Thus, even if News Corp. theoretically would have had the unique incentive to engage in anti-competitive conduct when it owned DIRECTV, there can be no doubt – as the Commission implicitly recognized – that it lacks any such incentive today. NCTC’s suggestion that terminating the arbitration condition for pending negotiations would “harm the public by causing an immediate loss of access to RSN programming”¹⁷ is without merit. News Corp. would risk the prospect of severe economic losses if it were to withdraw its programming services from MVPDs. Rather, News Corp. has every economic incentive to engage in market-based negotiations to reach mutually agreeable carriage agreements as it did prior to the DIRECTV transaction, lest it lose millions of subscribers (and concomitant carriage fees and advertising dollars).

¹⁵ News Corp. has not proposed termination of arbitration proceedings that were commenced prior to the divestiture of its interest in DIRECTV.

¹⁶ See *News/Hughes Order*, at ¶ 159.

¹⁷ *Id.* at 6. ACA similarly alleges that the conditions are necessary to ensure that News Corp. does not withhold access to popular programming. See Comments of ACA, at 5.

Similarly, DISH asserts that the condition should remain in place to counter News Corp.’s alleged “market power,” citing to the Commission’s findings in the *News/Hughes Order*.¹⁸ DISH also conveniently ignores the reasons stated by the Commission for imposing the arbitration condition. The Commission did *not* impose the condition to alter whatever relative bargaining power may have existed between News Corp. and MVPDs generally prior to the acquisition of DIRECTV – only to prevent News Corp. from gaining a possible advantage based on its acquisition of a programming distributor.¹⁹ Indeed, the Commission expressly noted that the *News/Hughes* transaction was *not* “an opportunity to correct any and all perceived imbalances in the industry.”²⁰

In short, the Commenters make no attempt to refute the fact that there has been a material change in circumstance, nor have they advanced any logical reason to retain the arbitration condition on an independent News Corp. Having failed to rebut News Corp.’s showing in the Petition, the Commission should disregard the Commenters’ self-serving efforts to rely on the arbitration condition to undermine competitive free market negotiations for carriage of News Corp.’s RSN programming and broadcast stations.

¹⁸ Comments of DISH, at 2-3.

¹⁹ See *News/Hughes Order*, at ¶ 87. DISH also notes, at 2-3, that in any given market, News Corp.-owned RSNs do not really compete with other programmers. Thus, DISH says, “[i]t is unclear how an arbitration provision disadvantages” a particular RSN compared to “rival RSNs in different markets.” *Id.* Of course, DISH utterly ignores that the arbitration condition does not just affect News Corp.’s relationships with rival programmers – it also precludes free market negotiations between News Corp. and MVPDs. No other independent programmer is forced to negotiate carriage terms with the threat of government-mandated arbitration hanging over its head. Any interference with free market negotiations necessarily skews the results of the negotiations and impairs News Corp.’s ability to acquire sports team rights and other attractive programming. Given the marketplace distortion and resulting harm to the public interest, DISH’s contention that the “arbitration requirement is a market-based solution” turns logic on its head and is simply irreconcilable with reality.

²⁰ *News/Hughes Order*, at ¶ 131.

II. THE COMMISSION ALREADY HAS CONFIRMED THAT NEWS CORP. SEVERED ITS LINKS TO DIRECTV AND LIBERTY; DISH AND NCTC SHOULD NOT BE PERMITTED TO RE-LITIGATE THE MATTER HERE

Notwithstanding the Commission’s clear finding to the contrary, DISH and NCTC continue to claim that News Corp. remains tied to Liberty Media (“Liberty”) and/or DIRECTV. DISH alleges that “there has not been a clean break between News Corp., [Liberty] and DIRECTV”²¹ and NCTC asserts that “favoritism shown by News Corp. to DIRECTV in transactions conducted while they were vertically-integrated” could be “perpetuated in new agreements with other MVPDs.”²² NCTC even speculates that News Corp. has an “incentive to ‘make-up’ for any price breaks *it may have given* DIRECTV by demanding discriminatory or unfair terms and conditions from other MVPDs.”²³

First and foremost, the Commission has already rejected these very contentions, which were advanced by DISH and NCTC in the *News/Liberty* proceeding. The Commission therefore must find that DISH and NCTC are collaterally estopped from raising these claims here.²⁴ The Commission expressly found in the *News/Liberty Order*, based on its review of all of the agreements between News Corp., Liberty and DIRECTV – and over the objections of DISH and NCTC – that News Corp. “will [not] receive any undue advantage vis-à-vis [its] competitors as a result of . . . prior vertical integration” with DIRECTV.²⁵ Neither DISH nor NCTC subsequently

²¹ Comments of DISH, at 3.

²² Comments of NCTC, at 8.

²³ *Id.* (emphasis supplied).

²⁴ *See, e.g., In re TSR Wireless, LLC et al. v. U.S. West Communications, Inc. et al.*, 15 FCC Rcd 11166 (2000) at ¶ 15 (rejecting, under the doctrine of collateral estoppel, a party’s efforts to re-argue matters previously decided by the Commission: “a judgment in a prior suit precludes relitigation by the same parties of issues actually litigated and necessary to the outcome of the first action”) (internal citations omitted).

²⁵ *News/Liberty Order*, at ¶ 127.

challenged this finding, nor did they otherwise seek reconsideration of the Commission's conclusions in the *News/Liberty Order*. Thus, DISH and NCTC are barred from raising this allegation again now.²⁶

Moreover, the DISH/NCTC claims are simply untrue. News Corp. has made abundantly clear that it no longer has any ownership interest in DIRECTV, nor does it have any power over or ability to influence DIRECTV's affairs. Likewise, News Corp. has no ability to exercise any control over the RSNs that it sold to Liberty. In any event, as noted above and as explained in the Petition, News Corp. would risk significant economic losses if it were to attempt to withhold access to its programming to any MVPD.²⁷

III. IT WOULD BE PATENTLY UNFAIR TO RETAIN THE ARBITRATION CONDITION, AS DISH AND ACA SUGGEST, MERELY BECAUSE THE COMMISSION IS CONSIDERING IN A SEPARATE PROCEEDING PROPOSALS CALLING FOR IMPOSITION OF RESTRICTIONS ON NEWS CORP.'S COMPETITORS THAT MAY NOT EVEN BE ADOPTED

DISH and ACA also assert that the Commission should defer consideration of News Corp.'s Petition until after the completion of the pending proceeding in which the Commission is considering changes to the program access rules.²⁸ DISH, for instance, suggests that the Commission should not "prejudge the outcome of that proceeding by taking action to lift [the arbitration condition] prematurely."²⁹ ACA likewise urges that no changes be made to the

²⁶ See *In re Barry Skidelsky*, 7 FCC Rcd 1392 (Rev. Bd. 1992), at ¶ 8 (citing *RKO General, Inc.*, 94 FCC 2d 890 (1983)) (also noting that the "principle underlying the rule of claim preclusion is that a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so. A related but narrower issue – that one who has actually litigated an issue should not be allowed to relitigate it – underlies the rule of issue preclusion") (other internal citations omitted).

²⁷ See Petition, at 6.

²⁸ See *In re Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, Notice of Proposed Rulemaking*, MB Docket No. 07-198 (rel. Oct. 1, 2007).

²⁹ Comments of DISH, at 3.

condition “while the Commission examines whether similar conditions should be applied more broadly”³⁰

Yet by making this request, DISH and ACA acknowledge that the arbitration condition does not apply to any other independent programmer, or else the Commission would not be considering comprehensive rule changes. DISH and ACA fail entirely to explain why News Corp. alone among independent programmers should be subjected to the arbitration condition when the Commission has not determined that independent programmers or broadcasters present any risk of undue competitive power or harm to the public interest. If anything, prejudging the outcome of the rulemaking proceeding actually would occur if the Commission continues to apply the arbitration condition to News Corp. before deciding whether such a restriction should apply more broadly.

Moreover, as News Corp. and others have made abundantly clear in the rulemaking proceeding, the market for the sale of video programming is tremendously competitive.³¹ There is no justification for the Commission to interfere with privately-negotiated carriage agreements, and in any event the Commission lacks authority under the Communications Act to regulate independent video programmers in the wholesale video programming market. So if the Commission decides, in accordance with the overwhelming evidence, *not* to extend restrictions such as the arbitration condition to all independent programmers, then it would in fact *harm* the public interest to continue applying the condition to News Corp. while the proceeding is pending.

³⁰ Comments of ACA, at 8.

³¹ *See, e.g., In re Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements, Notice of Proposed Rulemaking*, MB Docket No. 07-198, Comments of Fox Entertainment Group, Inc. and Fox Television Holdings, Inc.; Comments of Viacom Inc.; Comments of The Walt Disney Company (all filed January 4, 2008).

IV. CONTRARY TO ACA’S SUGGESTION, MODIFICATION OF THE ARBITRATION CONDITION WAS IRRELEVANT TO THE COMMISSION’S CONSIDERATION OF THE NEWS CORP./LIBERTY TRANSFER OF CONTROL APPLICATION

Lacking any credible arguments to counter the merits of the Petition, ACA contends that the Commission should deny it solely because of the timing of its filing.³² Claiming that modification of the arbitration condition “was an issue of decisional significance to the Liberty/DirecTV transaction,” ACA charges News Corp. with lack of candor and manipulation of the Commission’s processes because it did not seek modification until after the transaction was consummated.³³

ACA’s contentions scarcely dignify a response. First and quite clearly, the material change in circumstance upon which the Petition is predicated did not occur until the Commission first approved the transfer of control of DIRECTV and then, just as important, until the parties consummated the transaction. It would have made no sense for the Commission to consider whether to remove the arbitration condition prior to the time that the separation between News Corp. and DIRECTV had been approved by the Commission and gone into effect.

Second and equally clearly, the question of whether to remove the arbitration condition had no relevance whatsoever to the transfer proceeding. Its fulminations and *ad hominem* attacks aside, ACA does not even attempt to explain the relevance of the matters raised in the Petition to the Commission’s consideration of the *News/Liberty* transaction. The Commission very correctly concluded in the *News/Liberty Order* that it was “premature” to consider any modification of the arbitration condition.³⁴ Acknowledging that questions about the condition

³² See Comments of ACA, at 2-4.

³³ See *id.* at 4.

³⁴ See *News/Liberty Order*, at ¶ 128.

could arise following the transaction, the Commission observed: “[T]he conditions shall continue to apply for their full term *or until such time as the Commission grants relief*” pursuant to a petition as contemplated by the plain text of the *News/Hughes Order*.³⁵ Indeed, the Commission clearly contemplated that News Corp. might seek modification of the condition once it no longer controlled DIRECTV, stating: “*If and when News Corp. asks the Commission to terminate the conditions, we will evaluate whether our doing so would serve the public interest.*”³⁶ Moreover, rather than becoming submerged in all the issues raised in the transfer proceeding, separate consideration of the request for modification of the condition, after public notice of the filing of News Corp.’s Petition, as happened here, ensures that the issues will be fully evaluated.³⁷

Third and finally, ACA’s contention that News Corp. somehow manipulated the Commission’s processes and is guilty of lack of candor is both unsupported and unsupportable and should be summarily dismissed. Indeed, ACA’s own candor in making this allegation is questionable, as it conveniently eliminates a key sentence from the paragraph it quotes from the News Corp. filing to support its charge – a sentence that clearly indicates that News Corp. might seek modification in the future.³⁸ News Corp. never stated or implied that it would never seek early modification or elimination of the arbitration condition. It only correctly pointed out, in

³⁵ *Id.* (emphasis supplied).

³⁶ *Id.* (emphasis supplied).

³⁷ Without the slightest basis, ACA recklessly asserts that News Corp. lacked candor because it did not disclose in the transfer proceeding precisely when it intended to file the request for modification of the condition. *See* Comments of ACA, at 4. Given that the modification of the condition had no relevance to the review of the transfer application, as the Commission concluded, whether the Petition was filed immediately post-closing or a year from now is immaterial and plainly no basis for ACA’s utterly unsupported and outrageous *ad hominem* attacks.

³⁸ *Id.* The eliminated sentence stated: “The Commission should defer any further consideration of this issue unless and until News Corp. at some time in the future files a petition seeking to modify or eliminate the conditions.” *In re News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, MB Docket No. 07-18, Opposition and Reply Comments of News Corporation (filed April 9, 2007), at 15.

response to calls from ACA and NCTC to maintain the arbitration condition post-transaction, that News Corp. had not made the required request for a change in the condition in connection with the *News/Liberty* proceeding, and therefore Commission consideration of the issues relevant to any modification was unnecessary and premature.³⁹ ACA should hardly be heard to express surprise that News Corp. proceeded with its request for modification of the condition promptly upon the occurrence of a material change in circumstance – the consummation of the severance of all ties between News Corp. and DIRECTV.

V. CONCLUSION

Given that none of the Commenters has presented any evidence or argument justifying retention of the arbitration condition, the Commission should acknowledge that any rationale for applying the restrictions to News Corp. has evaporated. Now that News Corp. is no longer vertically integrated with a national distribution platform, it no longer has any incentive or ability to engage in the feared anticompetitive behavior that was thought to warrant the condition. News Corp.'s decision to divest its interest in DIRECTV constitutes a material change in circumstance rendering the arbitration condition no longer necessary in the public interest. None of DISH, ACA or NCTC has shown otherwise.

Accordingly, the Commission should eliminate the arbitration condition expeditiously so that News Corp. can resume bargaining as an independent video programmer and broadcaster for carriage of its programming services and broadcast stations based on the competitive free market.

³⁹ See *id.* at 14-15.

Respectfully submitted,

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