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December 4, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: MB Docket No. 03-124

Dear Ms. Dortch:

News Corporation (“News Corp”), by and through its undersigned counsel, hereby responds to the letter filed with the Commission on November 25, 2008 by the American Cable Association (“ACA”), the National Telecommunications Cooperative Association (“NTCA”) and OPASTCO (together, the “Associations”) as part of the above-referenced docket.¹ In the Letter, the Associations merely repeat the same baseless arguments that ACA has been making throughout this proceeding in urging the Commission to retain the RSN and RTC Conditions imposed on News Corp at the time that it acquired an ownership interest in DirecTV.²

As News Corp already has made abundantly clear, however, since its separation from DirecTV, News Corp is no longer vertically integrated with any

¹ See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Ross J. Lieberman, Jill Canfield and Stephen Pastorkovich, MB Docket No. 03-124 (Nov. 25, 2008) (the “Letter”).

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 “*News/Hughes Order*”), at Appendix F, Sections III and IV (the “RSN and RTC Conditions”).

multichannel video programming distributor (“MVPD”).³ Accordingly, News Corp has neither the incentive nor the ability to engage in the anticompetitive behavior feared by the Commission when it imposed the conditions.

The Associations primarily argue that the RSN and RTC Conditions should be retained because they allegedly serve the public interest by ensuring that MVPDs have access to News Corp programming.⁴ The Associations even repeat the tired assertion that the Commission “recognized the risk of programming disruptions when it imposed the conditions on News Corp.”⁵ This argument, however, simply ignores the factual and legal predicate for the imposition of the condition in the first place. To be clear, the Commission imposed the conditions *only* to protect MVPDs from harms that *theoretically might* occur as a result of News Corp’s acquisition of an interest in DirecTV.⁶ The conditions were put in place only because of the *potential* for *transaction-specific* harms – and for the sole purpose of “maintain[ing] the balance of bargaining power between News Corp. and other MVPDs at *roughly pre-transaction levels*.”⁷

Now that News Corp has divested its interest in DirecTV, its bargaining power with respect to MVPDs has reverted to “pre-transaction” levels and any rationale for the RSN and RTC Conditions that may have existed has been eliminated. Indeed, the FCC already has found 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.”⁸

The Associations’ other arguments scarcely warrant a response. The mere fact that News Corp’s cable networks have managed to be profitable does not support the Associations’ blanket assertion that the “conditions have not harmed

³ See *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”).

⁴ See Letter, at 2.

⁵ *Id.*

⁶ 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.

⁷ *News/Hughes Order*, at ¶ 87 (emphasis supplied).

⁸ *News/Liberty Order*, at ¶ 117.

News Corp.”⁹ As the only independent programming entity subject to these types of conditions, News Corp is indisputably placed at a competitive disadvantage, both in negotiating with MVPDs and in attempting to acquire attractive programming content (such as the rights to carry sports events). The Associations fail entirely to explain why News Corp alone among independent programmers should be subjected to the RSN and RTC Conditions when the FCC has not determined that independent programmers present any risk of undue competitive power or harm to the public interest.

Finally, the Associations repeat the ACA charge that News Corp’s decision to seek elimination of the RSN and RTC Conditions following the divestiture of DirecTV constituted a “manipulation of Commission processes.”¹⁰ Quite clearly, there was nothing irregular about the timing of News Corp’s request. In particular, the material change in circumstance upon which the Petition was 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. Moreover, contrary to the Associations’ baseless claim, News Corp did in fact indicate during the DirecTV/Liberty Media proceeding that it might seek modification of the conditions in the future.¹¹ Thus, News Corp did not “change its story,”¹² and the Associations should not be heard to express surprise merely because News Corp appropriately waited to seek relief from the conditions until the occurrence of a material change in circumstance – the very standard established by the Commission in the RSN and RTC Conditions.

In short, the Associations’ recycled arguments fail to present the Commission with any basis for denying the Petition. News Corp therefore urges the FCC promptly to eliminate the RSN and RTC Conditions so that News Corp can resume bargaining as an independent video programmer based on the competitive free market.

⁹ Letter, at 2.

¹⁰ *Id.*; see also *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 (filed May 1, 2008), at 4.

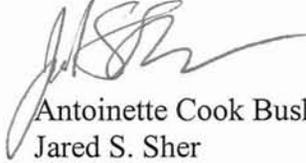
¹¹ See *In re News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, MB Docket No. 07-18, Opposition and Reply Comments of News Corporation (filed April 9, 2007), at 15 (“The Commission should defer any further consideration of this issue *unless and until* News Corp. at some time in the future files a petition seeking to modify or eliminate the conditions”) (emphasis supplied).

¹² Letter, at 3.

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This letter is being submitted electronically in the above-referenced docket, which has been granted permit-but-disclose status, pursuant to Section 1.1206(b) of the Commission's Rules. Should you have any questions concerning this submission, kindly contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Sher', with a long horizontal flourish extending to the right.

Antoinette Cook Bush
Jared S. Sher

Counsel to News Corporation