

October 28, 2010



Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman:

As the Commission reviews the current retransmission consent impasse between Cablevision Systems Corporation (Cablevision) and Fox Networks Group (Fox), Media Access Project (MAP) urges you to examine whether Fox is improperly leveraging its unauthorized television duopoly in New York to extract unjustified rents from Cablevision.¹

The retransmission consent process is but one part of a fundamentally broken system. The Commission's program carriage and program access policies are no less flawed and one-sided.² However, in no event should viewers be the victims of high-stakes gamesmanship between and among broadcasters, cable operators and cable programmers. While the Commission's powers with respect to retransmission consent are limited by an inadequate statute, MAP urges you to continue to take an expansive reading of the available remedies to restore carriage of the Fox stations at the earliest possible opportunity.

MAP calls your attention to the fact that Fox has failed to comply with the requirement that it divest ownership of WWOR-TV or *The New York Post* by December 29, 2008.³ In fact, a reconsideration petition challenging the 2006 decision granting a now-expired temporary waiver of the Commission's ownership rules remains pending.⁴ Moreover, Fox's licenses for its two New York market television stations expired on June 1, 2007, and have not been renewed, and have been

¹To avoid further complication of what is already a confusing set of circumstances, this letter refers to each of News Corporation and its various subsidiaries as "Fox."

²As more fully detailed in MAP's May 18, 2010 comments and its June 3, 2010 reply comments (filed jointly with Consumers Union, Free Press and the Parents Television Council, the public is all too frequently victimized in disputes involving MVPD's. Each of these policy areas need reform to insure that current regulations and enforcement procedures in all three policy arenas can prevent such disputes from leading to more limited programming choices, higher prices for consumers, and MVPD service disruptions.

³News Corp. previously failed to divest when a similar waiver expired in 2003.

⁴Free Press submitted an objection to Fox's request for a waiver and the associated request for approval of a corporate restructuring. Only after Free Press sought judicial relief did the Commission even deign to address it. Free Press sought reconsideration of that decision more than a year ago, but the Commission has failed to act on it.

vigorously opposed.⁵ Fox's illegitimate TV duopoly unquestionably increases its leverage by allowing the bundling of the two stations' retransmission rights, especially in light of the fact that WWOR-TV is the weakest of the major stations in the New York market. Fox's newspaper/broadcast cross-ownership has exacerbated the mismatch by allowing Fox to use the pages of *The New York Post* to press its case to the public.

It is regrettable that the Commission's protracted failure to enforce its divestiture requirement and its inaction on the pending challenges to News Corp.'s requests for regulatory largesse have given News Corp. an unfair advantage in the retransmission dispute. The challenges are not frivolous, as was made clear in the Commission's unprecedented public hearing in Newark on November 28, 2007, at which the testimony raised serious questions about News Corp.'s entitlement to hold its license for WWOR-TV.

The Commission should act promptly to restore carriage of Fox's services for the benefit of Cablevision's customers, and it should take long overdue action to enforce its ownership and license renewal policies with respect to Fox's TV stations. It should also take steps to avoid recurrence of similar programming disruptions by reforming its retransmission consent, program carriage and program access rules.

Sincerely,



Andrew Jay Schwartzman
Senior Vice President and Policy Director

cc. Commissioners Copps, McDowell, Baker and Clyburn
William Lake

⁵The Office of Communication of the United Church of Christ, Inc. and the Rainbow PUSH Coalition have challenged the renewal of both WWOR-TV and WNYW(TV), alleging, *inter alia*, that Fox violated Commission rules requiring truthful and candid representations to the Commission and the Commission's *ex parte* rules. Voice for New Jersey, a viewers group from northern New Jersey filed a separate challenge demonstrating that WWOR-TV has failed to meet its special, statutorily mandated obligation to give special attention to the problems needs and interests of the people of northern New Jersey.