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COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 23, 2003

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Federal Communications Commission
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The Honorable R. Hewitt Pate
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Assistant Attorney General Pate and Chairman Powell:

We write to you concerning the proposed acquisition by News Corporation of a controlling interest in DIRECTV. We held a hearing on this transaction at the Subcommittee on Antitrust, Competition Policy and Consumer Rights in June, and have since examined this transaction in detail. As we wrote to you on June 18, 2003, we believe that this merger raises very important competition and communications policy issues and should be scrutinized carefully by both of your agencies. In light of the hearing and our follow-up inquiries, we believe that this transaction should only be approved upon the adoption of certain conditions necessary to avoid the risk of injury to competition and consumers. Also, we believe that your agencies should consider imposing additional conditions on the transaction that may be appropriate under the circumstances.

Our concerns focus on the effect of combining the extensive content holdings of News Corporation with the powerful distribution vehicle offered by DIRECTV. This vertical combination raises the serious possibility that News Corporation will gain the leverage to raise the price of its programming to all distributors, causing consumers' cable and satellite bills to rise. Another concern is whether other distributors, both cable and satellite, will have equal access to the programming owned by News Corporation. Further, many have raised concerns regarding the effect of the acquisition on the barriers that any new programmers and distributors would face in attempting to enter the programming and MVPD markets. Accordingly, we believe that your agencies should consider imposing conditions on the transaction to reduce the risk of competitive harm that might otherwise result from the transaction.

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First, we believe the deal should only be approved on the express condition that the combined company commit to all of the Program Access Commitments News Corporation has already made as part of its FCC filings (found in attachment G to the Consolidated Application For Authority To Transfer Control of General Motors Corporation and Hughes Electronics Corporation and the News Corporation Limited). Second, conditions on the deal should require that News Corporation make any sports programming, such as the World Series, currently broadcast on the Fox television network, available to DIRECTV's competitors on nondiscriminatory terms. News Corporation CEO Rupert Murdoch agreed to this condition at our Antitrust Subcommittee hearing in June. In addition, we believe that the following conditions may be appropriate and deserve your consideration:

1. A commitment by News Corporation to make its broadcast television programming available to DIRECTV's competitors on the same financial terms and conditions as it makes its broadcast television programming available to DIRECTV. At our Antitrust Subcommittee hearing, Mr. Murdoch testified that this was a "reasonable request" that News Corporation would study;

2. A commitment to expand DIRECTV's carriage of local broadcast stations (the so-called "local into local" service) to specified additional markets by specified dates. Such a commitment would provide definite terms to News Corporation's pledge to deploy local-into-local service into more markets than DIRECTV had planned to deploy local-into-local service;

3. A commitment that News Corporation will not purchase a majority interest in Hughes Electronics for the next five years. News Corporation has argued that it will not own a majority of DIRECTV and thus any incentives it may have to raise prices to DIRECTV's competitors, in order to benefit DIRECTV, will be lessened. A commitment by News Corporation not to purchase a majority interest in DIRECTV for five years will preserve any protections gained by News Corporation owning less than a majority stake of DIRECTV for an extended period. A five year prohibition would also give your agencies ample time to examine the impact of this deal; and

4. A commitment to implement safeguards and procedures to prevent information sharing between DIRECTV and News Corporation regarding pricing or other contract terms for programming offered by News Corporation's competitors, or regarding pricing or contract terms offered by DIRECTV's competitors to purchase programming.

Any conditions placed on the transaction should be in the form of a legally binding and enforceable undertaking, either as part of an antitrust consent decree or as a condition to the FCC's approval of the license transfer.

In addition to the issues listed above, we are concerned, as we have noted, about the possibility that this transaction will give News Corporation leverage to raise the cost of programming. We therefore urge that your reviews evaluate the likelihood of programming price increases, and possible methods by which any such price increases can be avoided. Maintaining diversity and robust competition in our media continues to be a priority for the Antitrust Subcommittee. The enumerated conditions previously discussed will advance these goals, and help to ensure that this transaction will not unduly harm competition in either the video distribution or programming markets.

Thank you for your attention to this matter.

Very respectfully yours,



MIKE DEWINE
Chairman, Subcommittee on
Antitrust, Competition Policy, and
Consumer Rights



HERB KOHL
Ranking Member, Subcommittee on
Antitrust, Competition Policy, and
Consumer Rights