

October 25, 2010

Mr. William T. Lake Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554

Re: Fox / Cablevision Retransmission Consent Negotiations

Dear Mr. Lake:

Chase Carey asked me to reply to your letter of October 22 requesting information regarding our negotiations with Cablevision Systems Corporation for retransmission consent. As President, Affiliate Sales and Marketing of the Fox Networks Group, I am the person within News Corporation who is most familiar with the entire scope of the ongoing negotiations. We are aware of the impact these negotiations have on our viewers and we have carefully complied with our duty to engage in good faith negotiations while making efforts to achieve fair value for Fox content. As you requested in your letter, I will describe the specific events that have transpired since we began negotiating with Cablevision for retransmission consent in September 2009. This chronology clearly demonstrates that Fox has fulfilled its obligations to negotiate in good faith.

This entire process has been very discouraging for us. We actually started the negotiations over a year ago and, while we have been able to reach agreements with other program distributors, large and small, it eventually became apparent Cablevision did not seem to be truly interested in reaching a fair agreement. When we first approached Cablevision to begin the process, they asked us to negotiate with others first to establish the fair market cash value of our stations. When we did exactly that and returned to them, they refused to acknowledge the value determined by those other agreements. As we came closer and closer to the expiration of our last agreement, we were prepared to work full tilt with an assembled staff of our top executives and attorneys. Cablevision seemed more interested in making points to Congress and the press. Time after time, even after our stations were no longer carried, Fox made changes to its proposals and concessions to meet Cablevision requests, while Cablevision only moved the same money around, presenting "new" offers with no net difference from their previous proposals.

We recognize that our approach to retransmission consent has evolved from seeking cable network launches to requiring cash compensation. In the early 1990s bundling cable networks was a benefit to both broadcast station groups and MVPDs. MVPDs were reluctant to pay cash and were in need of additional programming for their cable tiers. Broadcasters wanted to achieve some value for their network programming, and getting into the cable network business was appealing.

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Today, the broadcast business is facing new challenges and it is apparent that without creating a second revenue stream, broadcasters will no longer be able to acquire major sports events and the popular entertainment programming that consumers value and to produce local news. In determining what retransmission consent is worth, we look to viewership, important events, and the value MVPDs receive in reselling our station programming. Based on these measures, Fox could fairly seek fees in excess of the highest-paid cable channels. In spite of that, we recognize the disruptions that level of compensation would create, so we decided to pursue the middle ground of smaller cash fees and continued carriage of certain cable channels.

In October 2009, Cablevision's carriage of Fox owned and operated television broadcast stations (WNYW, WWOR-TV, and WTXF-TV) was governed by a very simple open-ended retransmission consent agreement. That agreement provided no cash compensation to Fox for Cablevision's right to carry the Fox stations. Although Cablevision charged as much as \$18 per subscriber per month for its basic tier, none of that went to compensate Fox for the popular programming that provided actual value to subscribers. In September 2009, Fox notified Cablevision of its intent to establish new retransmission consent agreements with all of the multichannel video programming distributors ("MVPDs") carrying Fox broadcast stations in order to recover some of the value of our programming. We invited Cablevision to begin negotiations immediately. Although the existing agreement had no defined expiration date, it permitted either party to terminate with a thirty-day written notice. On September 21, 2009, Fox provided that thirty-day notice to Cablevision, effectively ending the existing arrangement on October 22, 2009.

We discussed with Cablevision how changes in the industry made it absolutely vital for Fox and other broadcasters to establish a viable dual revenue stream in order to continue providing the high quality entertainment and sports programming that viewers have come to expect. With our highly rated and expensive-to-produce programming, Fox intended to seek compensation that takes a step toward recognizing the value it adds to a cable operator's channel lineup. Cablevision had been carrying Fox stations with no cash compensation while paying substantial fees well in excess of what Fox is seeking to an array of cable network programmers with much less popular programming.

In our negotiations, Cablevision objected to being the first to complete this type of arrangement with us because it was a relatively small operator with only a regional footprint concentrated in the largest U.S. television market. They asked that we establish the market value of the Fox stations with other MVPDs first and then come back to them. We accommodated this request by negotiating and executing a limited one-year retransmission consent agreement covering the period from October 21, 2009 through 11:59 p.m. on October 15, 2010. Under this agreement, Cablevision still did not make any cash payments for the retransmission of Fox stations; however, Cablevision did agree to launch *Fox Business Channel* and *National Geographic Wild* and carry the networks through the one-year extension period. Since the extension, at an array of meetings between Chase Carey, Tony Vinciquerra, Chairman and CEO of Fox Networks Group, and James Dolan, President and CEO of Cablevision, Mr. Dolan acknowledged that Fox is worth

what we are asking, if not more, and that Cablevision was willing to pay what we were asking to get a deal completed.

On May 7, 2010, Tony Vinciquerra and I flew from Los Angeles to Cablevision headquarters in Bethpage, New York to present a proposal for a long-term retransmission consent agreement. We flew across the country to present our proposal in person so that we could demonstrate to Cablevision that Fox was fully committed to the process of reaching an agreement. By this time we had completed retransmission consent agreements with other MVPDs, small and large, including Time Warner Cable, a much larger MVPD (negotiating for about five times the subscribers of Cablevision) that also has a significant footprint in the New York area. Through these agreements Fox had established the market value for its broadcast programming and, in particular, WNYW and WWOR-TV, exactly what Cablevision had asked us to do when we entered the one-year agreement in 2009. Given Mr. Dolan's statements regarding his willingness to pay our market rate, we approached this proposal with an eye towards honoring the gentlemen's agreement reached the prior October. Thus, we presented a straightforward proposal at close to the market rates. Three members of my distribution team followed up by meeting with two members of Cablevision's programming acquisition team on May 11, during the NCTA Cable Show in Los Angeles. They discussed the Fox proposal in detail.

On July 7, Mac Budill, Cablevision's Executive Vice President, Programming, presented Cablevision's first response to our May proposal. It was very different from our original proposal in scope, substance, and format. It proposed vastly expanded rights for Cablevision and similarly broad restrictions on Fox that would have required us to terminate business relationships with other distribution outlets with which Cablevision competes, and would have materially restrained established distribution channels for our content. The scope of rights and restrictions that Cablevision was seeking was beyond the reach of any retransmission consent proposal that I have ever seen and, to my knowledge, has no remotely similar precedent in the industry. This response was discouraging and very different from what Fox senior management had been led to expect. It was becoming clear that Cablevision intended to pursue a path geared to a larger agenda of political and regulatory intervention.

On August 24, Fox presented another comprehensive proposal, this time adopting Cablevision's format, including its approach to fees, to make it easier for the parties to see the points of agreement and those on which we were still far apart. I specifically noted to Mr. Budill that the fees for the Fox stations reflected the bundling of our stations with some of the Fox cable networks. I informed him that the fees we proposed were consistent with our other deals that covered both retransmission consent and cable network carriage and that we would never offer those terms for station carriage on a stand-alone basis.

Cablevision provided its response in a one-page proposal on September 21. Mr. Budill described it as a much simpler structure that focused on retransmission consent in isolation and reflected what he called the "market rate" that they had agreed to pay other major broadcasters in previously negotiated agreements.

On October 5, I met with Mr. Budill at Fox's New York City offices. I presented a revised proposal covering the Fox broadcast stations bundled with a number of other Fox cable networks. I explained to Mr. Budill that the cash fee for Fox's television stations was vital to the continued ability of Fox to provide quality programming and that it was extremely important to us to achieve that rate with Cablevision. I told him that, in the interest of quickly bringing our negotiations to a successful resolution, the proposed terms for WNYW and WXTF were the very best rates we could offer but specifically noted that many other terms in the bundled proposal were open for negotiation if Cablevision could get to that rate. I reiterated that the rate for the stations was based on the bundled package and that we could not offer that rate on a stand-alone basis.

Mr. Budill then requested a proposal for a stand-alone agreement covering only the broadcast stations. I agreed to provide a stand-alone proposal and followed up with one the next day, October 6. I explained to Mr. Budill, however, that Fox realizes substantial economic advantages from the carriage of our non-broadcast channels by MVPDs. The fees for the stations in the bundled deal are significantly below the fees that our ratings would otherwise justify.

By any objective measure, the Fox stations provide more value to Cablevision's lineup than any cable network it distributes. The Fox network spends more on its entertainment and sports programming than virtually any cable network that Cablevision distributes. In fact, the Fox broadcast network will lose money this year on its programming while the Fox television stations will make sharply reduced profits. Indeed, as I pointed out to Mr. Budill, based on established rates for cable programming services that do not approach the performance of the Fox stations, such as the reported \$3.40 Cablevision charged other MVPDs for *MSG* and *MSG Plus* in 2009, it would be reasonable for us to seek a rate between \$5 and \$6 per subscriber. If carriage of Fox's cable channels were not part of the compensation in the retransmission consent agreement, we could no longer discount the value of the stations and would need to increase the monthly fees for them.

Even the stand-alone rate that we proposed on October 6 was far less than what could reasonably be justified for some of the most highly rated programming on television, including *NFL on Fox, NASCAR on Fox, Major League Baseball's League Championship Series, the World Series,* television's perennially top-rated *American Idol, Glee, House, Bones, Family Guy, American Dad, So You Think You Can Dance,* and the longest-running show on television, *The Simpsons.* I reminded Mr. Budill that our bundled offer remained on the table and that it would give Cablevision the advantage of the same terms for retransmission consent of the Fox stations that we had established through negotiations with other, larger MVPDs, including one that is several times Cablevision's size.

Six days later, just three days before the expiration of the existing retransmission agreement, Cablevision still had not provided a response to either the bundled proposal of October 5 or the

stand-alone proposal of October 6. I wrote to Mr. Budill on October 12, reminding him of the imminent deadline and our availability to discuss the proposals at his convenience.

Mr. Budill responded on October 12, effectively reiterating his September 21 proposal and how it compared to Cablevision's retransmission consent agreements covering other New York stations. His letter also asserted that I presented our October 5 offer as non-negotiable, quoting me as saying that, "this is it." About this time we noticed that Cablevision was leaking details of our negotiations to the press with increased frequency.

I responded to Mr. Budill by letter the next day, October 13, that I had been very specific that our October 5 offer was not a "take it or leave it" proposition, a message made clear by my colleague, Michael Biard, Executive VP, Affiliate Sales & Marketing, in a call with Tom Montemagno, Cablevision's Senior VP of Programming Acquisition, on October 6 and, in fact, by our submission of the stand-alone proposal on October 6. I repeated that critical elements of our October 5 proposal were as favorable as any that we had reached with any MVPD, regardless of size, but that Fox had never presented Cablevision with an ultimatum. To the contrary, I expressed our desire to get back to the negotiating table.

Mr. Budill replied with a letter stating that there was no "miscommunication" in his mind, repeating his claim that when I handed Cablevision our proposal on October 5 I had said, "this is it." He also accused Fox of violating federal law by making false representations to the Commission. Although he still did not provide any counterproposal to our October 5 or October 6 proposals, he nevertheless suggested that we begin negotiations that day, around the clock if necessary. Mr. Budill's letter was released to the press simultaneously with its delivery to me.

On Wednesday, October 13, I responded to Mr. Budill by e-mail that, rather than expending energy and time in an unproductive dialogue about what was said or not said in the past, we were prepared to negotiate with Cablevision immediately and I directly asked him if Cablevision intended to send Fox a counterproposal. Mr. Budill called me on the afternoon of October 13 and provided me with an oral proposal. He requested that Fox also propose rates for *Fox News Channel*, even though its carriage agreement is still in effect. Later that day he provided a written version by e-mail. On the phone and in the letter accompanying that proposal – and for the first time in our negotiations – Mr. Budill raised the possibility of binding arbitration, though he claimed it was not a preferred path. We determined that a face-to-face meeting would be more productive than continued phone calls and I offered to take a late-night flight and meet with Cablevision in New York City the next day, Thursday, October 14. In order to give Fox time to prepare a response to Cablevision's October 13 proposal, we agreed to meet on Friday, October 15. Given the imminent deadline, I requested a start time of 9:00 a.m.; he preferred a noon start.

As soon as I got off the phone with Mr. Budill, we began working on a revised proposal and continued working on it late into the night. As Cablevision requested, we included rates for *Fox News Channel* to be included at Cablevision's option. We sent the proposal to Cablevision by e-

mail at about 4:40 p.m., Eastern Time, Thursday, October 14. Mr. Budill replied that it came too late to engage anyone at Cablevision that day.

Fox put together a team of its senior distribution executives and attorneys so it would be prepared to complete a deal. Flying to New York from our California offices were myself; Mr. Biard; Sean Riley, Senior VP, Affiliate Sales & Marketing; Lisa Smolinisky, VP, Business and Legal Affairs; Andrew Biggers, VP, Affiliate Sales & Marketing; and David Espinosa, Director, Affiliate Sales & Marketing. Joe Di Scipio, VP, Legal and FCC Compliance, Fox Television Stations, Inc., came up from his Washington office and Tim Carry, Executive VP, Affiliate Sales for Fox News and Fox Business Channel, based in New York, was also with us. Sometime after 1:00 p.m. Friday afternoon, more than an hour after the scheduled start time, we were joined by Mr. Budill, Mr. Montemagno, and Clifford Harris of Cablevision.

Our initial meeting on Friday lasted less than an hour. Cablevision still did not have a response to our proposal of the previous day. We reconvened at about 5:00 p.m. when Cablevision made a new offer in a half-hour session. The Fox team did not believe the proposal made much, if any movement toward reaching an agreement. We met again at 7:00 p.m. for a short meeting at which Fox offered a revised proposal that provided significant concessions on the cable networks portion of the agreement as well as the terms covering carriage of WWOR-TV. At approximately 8:00 p.m. Mr. Budill called to inform me that Cablevision did not intend to respond to Fox's last proposal and that he believed we were at an impasse. Nevertheless, he asked if he and his team could return to our offices after they went to dinner in the event that something were to change. They returned after 10:00 p.m., but there were no further negotiations that night.

Friday morning, while we were waiting for the Cablevision executives to arrive, I had received a letter from Mr. Budill proposing the continued carriage of Fox stations and networks beyond the midnight expiration of the existing one-year agreement, without payment for the broadcast stations. The letter stated (inaccurately) that because Fox provides the signals for its stations to Cablevision by fiber feed and Fox has the physical ability to shut off the feeds, Cablevision would consider the continued provision of the signals on the fiber to constitute authorization for carriage. I drafted a response stating that Fox had been trying in good faith to negotiate a new agreement with Cablevision since May and that if we did not reach an agreement by midnight, Cablevision would no longer have the authority to retransmit the signals of Fox broadcast stations, regardless of how it received them. Just as Cablevision would not allow its customers to continue to receive cable service without paying their bills, we needed to take the same position.

At 11:55 p.m., I e-mailed Mr. Budill my letter and hand-delivered a copy. Midnight arrived, our agreement expired, and Cablevision terminated carriage of the three stations. The Cablevision executives left our office at 12:15 a.m.

By e-mail at 1:30 a.m., Cablevision requested another meeting for noon, Saturday October 16. They arrived at 12:30 p.m. on Saturday and proceeded to disparage the value of our programming, specifically WWOR-TV, our New Jersey station, which, according to Mr. Budill, should have to pay Cablevision to carry it. We found this argument interesting given that WWOR carried 21 Yankees games, and Cablevision pays *YES Network* a reported \$2.50 per subscriber for the YES Network for its 125 games. They similarly discounted the concessions on the cable networks portion of the proposal we made the prior evening. Cablevision then made a new offer with an extremely small increase in compensation. At about 3:00 p.m., Fox replied with a counteroffer that made additional significant concessions. About an hour and a half later, Cablevision made another proposal. On examination, we noticed that it did not make any net changes from their offer of earlier that day, which was not much different from their last offer of Friday. Cablevision confirmed that our evaluation of their proposals was accurate. We determined that with no net changes being made to the proposals, we were at an impasse and I suggested meeting again the next morning. Cablevision agreed to meet, but not until noon, and left the building at about 5:30 p.m.

Our meeting on Sunday, October 17 began about 12:35 p.m., less than an hour before the kick-off of the Fox Network telecast of the New York Giants game. We made a proposal and left the Cablevision representatives in the conference room to discuss it. They called us back in at 3:00 p.m. with a change to their previous proposal that amounted to no net difference in the consideration proposed to Fox. We offered to continue discussions as long as they wanted, but they decided to leave at about 3:30 p.m.

Brief conversations took place on Monday by phone. During one call, Cablevision suggested that it might be willing to purchase WWOR-TV from Fox, provided that the sales price recognized the value of Cablevision's retransmission fees for WNYW at Fox's proposed rate. On Monday afternoon, my team and I returned to Los Angeles. We had brief phone calls on Tuesday and Wednesday. Neither side made any new proposals and no progress was made.

On Wednesday, October 20, Chase Carey reached out to James Dolan to request a meeting. Mr. Carey rearranged his schedule and flew to New York from Los Angeles to meet with Mr. Dolan. They discussed the deal and whether there was a path to resolution of the impasse. Mr. Dolan made it clear that Cablevision's preferred path was to continue to seek political or regulatory relief, despite the fact that in numerous meetings dating back to October 2009, Mr. Dolan had acknowledged that Fox programming was worth at least what Fox had proposed. However, in light of what Cablevision already pays for other programming, Cablevision asserted that it could not absorb the cost.

You have also requested that we detail the efforts that Fox is making to end the current impasse. Mr. Carey's meeting with Mr. Dolan represented one such significant effort. We remain willing to meet with Cablevision at any time in any place to continue good faith negotiations and we have made this clear to Cablevision. Fox believes that such negotiations between business partners will ultimately reach fair results.

We do not believe that binding arbitration is an effective path to the resolution of retransmission consent disputes. An arbitrated result is not required to determine the fair market value of retransmission consent for Fox stations. An arbitrator will not have the knowledge of our business that would allow him or her to establish a price that would permit us to continue to provide the high quality, and very expensive, sports and entertainment content that we currently provide. Arbitration was not required to establish fair value through arms-length negotiations with other MVPDs in recent months. Furthermore, if we agree to arbitration with one party it will denigrate the efforts and results of all who worked to negotiate those agreements already in place. Granting Cablevision's demand for arbitration would open the door to every future negotiation being distorted by arbitration demands in lieu of the marketplace negotiations that have led to the successful and uneventful completion of hundreds of other retransmission consent agreements covering the Fox stations. In fact, the specter of a politically-imposed arbitration or heightened regulation has become an impediment to reaching a business solution. Cablevision, along with an array of other MVPDs, have undertaken a broad effort to change the law to their advantage, despite wide recognition that the broadcast industry cannot compete without a second revenue stream.

Finally, your letter asked us to bring to your attention any conduct by Cablevision that we believe violates its good faith obligations. We respectfully decline to do so at this time. We remain hopeful that negotiations will continue and ultimately result in a retransmission consent agreement acceptable to both of our companies. Making charges of statutory violations will not advance this process.

Please let us know if you have any additional questions, and be assured that Fox's commitment to serve our broadcast audiences remains rock-solid.

Sincerely,

Michael C. Hopkins

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