

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Fox Sports Net Ohio, LLC	)	CSR-8471-P
	)	
v.	)	
	)	
Massillon Cable TV, Inc.	)	

**ORDER**

**Adopted: January 30, 2013**

**Released: January 30, 2013**

By the Chief, Media Bureau:

1. On November 18, 2010, the Media Bureau (“Bureau”) issued an *Order on Review* granting a Petition for De Novo Review filed by Fox Sports Net Ohio, LLC (“FSN-Ohio”) pertaining to an award issued by an independent arbitrator pursuant to a condition in the *News/Hughes Order*.<sup>1</sup> The Petition stemmed from a dispute over the terms and conditions for carriage of certain regional sports network (“RSN”) programming by Massillon Cable TV, Inc. (“Massillon”), an Ohio cable operator. In the *Order on Review*, the Bureau vacated the arbitration award in its entirety, concluding that the arbitration condition established in the *News/Hughes Order* does not permit the arbitration of disputes regarding the terms and conditions of ongoing carriage agreements.<sup>2</sup> On December 17, 2010, Massillon filed an Application for Review of the Bureau’s *Order on Review*.<sup>3</sup> On May 16, 2011, Massillon submitted a request to withdraw and dismiss with prejudice its Application for Review.<sup>4</sup> Massillon states that it has entered into a settlement agreement with FSN-Ohio.<sup>5</sup> In view of this settlement, we grant Massillon’s request to withdraw and dismiss with prejudice its Application for Review.

2. We take this opportunity, however, to admonish Massillon for its failure to comply with the Bureau’s *Order on Review*.<sup>6</sup> Non-hearing actions taken pursuant to delegated authority, including the Bureau’s *Order on Review*, are effective upon release, unless otherwise ordered by the designated

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<sup>1</sup> See *Fox Sports Net Ohio, LLC v. Massillon Cable TV, Inc.*, Order on Review, 25 FCC Rcd 16054 (MB 2010) (“*Order on Review*”); see also *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee*, 19 FCC Rcd 473, 552-555, ¶¶ 172-177; *id.* at 677-679, Appendix F, Condition III (2004) (“*News/Hughes Order*”).

<sup>2</sup> See *Order on Review*, 25 FCC Rcd at 16059, ¶¶ 8-9.

<sup>3</sup> See Massillon Cable TV, Inc., Application for Review, File No. CSR-8471-P (December 17, 2010).

<sup>4</sup> See Letter from Mark Palchick, Counsel for Massillon, to Marlene Dortch, Secretary, FCC, File No. CSR-8471-P (May 16, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> Given the passage of time and the fact that the parties have settled their dispute, we are admonishing Massillon for its violation rather than pursuing alternative enforcement action.

authority.<sup>7</sup> The Bureau's *Order on Review* required Massillon to pay FSN-Ohio certain sums within 30 days of the effective date of the *Order on Review* (i.e., by December 20, 2010).<sup>8</sup> In its Opposition to Massillon's Application for Review, FSN-Ohio provided a declaration from the Director of Business and Legal Affairs for Fox Cable Networks Group dated January 13, 2011 stating that (i) he sent Massillon's President a letter on December 9, 2010 detailing the amount Massillon owed Fox as a result of the Bureau's *Order on Review*; and (ii) despite not disputing this amount, Massillon did not pay any portion of that amount to FSN-Ohio.<sup>9</sup>

3. Massillon does not dispute these statements.<sup>10</sup> Rather, Massillon claims that the filing of its Application for Review automatically stayed the requirements of the Bureau's *Order on Review* pursuant to Section 1.102(a) of the Commission's rules.<sup>11</sup> We reject this claim. The automatic stay provision in Section 1.102(a) applies when an Application for Review is filed of a "final decision of a commissioner, or panel of commissioners following review of an initial decision."<sup>12</sup> This rule applies to hearing matters conducted pursuant to Part 1, Subpart B of the Commission's rules.<sup>13</sup> Massillon offers no basis for its apparent position that an arbitration proceeding conducted pursuant to the conditions in the *News/Hughes Order* is a hearing proceeding conducted pursuant to Part 1, Subpart B of the Commission's rules. In fact, the *News/Hughes Order* conditions clearly state that an arbitration proceeding will be conducted pursuant to the rules of the AAA, not the Commission's hearing rules.<sup>14</sup> Moreover, an arbitration proceeding under the *News/Hughes Order* conditions is conducted by an arbitrator appointed by the AAA,<sup>15</sup> in hearings conducted pursuant to Part 1, Subpart B of the Commission's rules, the presiding officer is either an Administrative Law Judge, the Commission, or one or more commissioners.<sup>16</sup>

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<sup>7</sup> See 47 C.F.R. § 1.102(b)(1).

<sup>8</sup> See *Order on Review*, 25 FCC Rcd at 16059, ¶ 8 and 16062, ¶ 15. Specifically, Massillon was required to reimburse FSN-Ohio for the following costs and fees paid to Massillon in satisfaction of the arbitrator's award: (i) any excess affiliation fees, including interest, paid by FSN-Ohio; (ii) Massillon's legal costs as of the date of the award; and (iii) Massillon's economic consultant costs as of the date of the award, including the costs of expert testimony at the hearings. See *id.* In addition, Massillon was required to reimburse FSN-Ohio for the amount representing Massillon's portion of the administrative fees of the American Arbitration Association ("AAA") that FSN-Ohio was compelled to pay under the award. See *id.*

<sup>9</sup> See Fox Sports Net Ohio, LLC, Opposition to Application for Review, File No. CSR-8471-P (January 13, 2011), Declaration of Rodrigo Vazquez.

<sup>10</sup> See Massillon Cable TV, Inc., Reply, File No. CSR-8471-P (February 4, 2011).

<sup>11</sup> See *id.* at 4 (citing 47 C.F.R. § 1.102(a)).

<sup>12</sup> 47 C.F.R. § 1.102(a)(1) ("Final decisions of a commissioner, or panel of commissioners following review of an initial decision shall be effective 40 days after public release of the full text of such final decision."); 47 C.F.R. § 1.102(a)(3) ("If an application for review of such final decision is filed, or if the Commission on its own motion orders the record of the proceeding before it for review, the effect of the decision is stayed until the Commission's review of the proceeding has been completed."); see also 47 C.F.R. § 1.267(a) (stating that the presiding officer in a hearing proceeding shall prepare an "initial (or recommended) decision").

<sup>13</sup> See 47 C.F.R. part 1, subpart B.

<sup>14</sup> See *News/Hughes Order*, 19 FCC Rcd at 554, ¶ 177 ("The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA . . ."); *id.* at 678, Appendix F, Condition III.

<sup>15</sup> See *id.* and Appendix B, 631.

<sup>16</sup> See 47 U.S.C. § 1.241(a).

4. Rather, review of an arbitration award under the *News/Hughes Order* conditions is a non-hearing matter governed by Section 1.102(b) of the Commission's rules.<sup>17</sup> This rule provides that, upon the filing of an Application for Review of a non-hearing action on delegated authority, the Commission "may in its discretion" stay the effect of an action pending its review.<sup>18</sup> Massillon, however, never sought a stay of the Bureau's *Order on Review* nor did the Commission stay the Bureau's *Order on Review* on its own motion. Accordingly, we admonish Massillon for failing to comply with the requirements stated in the Bureau's *Order on Review*.

5. Accordingly, **IT IS ORDERED** that Massillon's request to withdraw and dismiss with prejudice its Application for Review **IS GRANTED** and that Massillon's Application for Review **IS DISMISSED WITH PREJUDICE**.

6. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>17</sup> See 47 C.F.R. § 1.102(b).

<sup>18</sup> See 47 C.F.R. § 1.102(b)(1) ("Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action . . ."); 47 C.F.R. § 1.102(b)(3) ("If an application for review of a non-hearing or interlocutory action is filed, or if the Commission reviews the action on its own motion, the Commission may in its discretion stay the effect of any such action until its review of the matters at issue has been completed."); see also *Amendment of Section 73.662(B), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas)*, Memorandum Opinion and Order, 18 FCC Rcd 18497, 18497, ¶ 1 n.2 (MB, 2003) (rejecting claim that the automatic stay provision of Section 1.102(a) applies in a non-hearing matter).

<sup>19</sup> 47 C.F.R. § 0.283.