



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

June 16, 2010

In Re Applications of Comcast Corp., General Electric, and NBC Universal, Inc., to Assign and Transfer Control of Licenses, MB Dkt. 10-56

Dear Mr. Lake,

Free Press submits this letter with regard to recent data submissions by Comcast Corporation and NBC Universal, Inc. (together, “Applicants”) pursuant to a Media Bureau Information and Discovery Requests.¹ We commend the Media Bureau for issuing the Information and Discovery Requests and availing the Commission and outside parties of the information necessary to assess the merger’s impact on competition and consumers. However, the timing of the Commission’s data request, in conjunction with the terms of the Commission’s initial Notice seeking comment on the proposed merger, has put commenting parties such as Free Press in an untenable position: We must either accomplish the impossible feat of reviewing and analyzing hundreds of thousands of data points in the space of a few days, or risk forfeiting the right to advance new arguments relevant to the merger that may be generated by a more thorough examination of this information.

Under the terms of the Commission’s March 18, 2010 Notice seeking comment on the Comcast/NBCU merger application, parties are required to raise “all issues in their initial

¹ See *Request for Information Sent to NBC Universal, Inc., and Request for Information Sent to Comcast Corp.*, both filed MB Dkt 10-56 (May 21, 2010).

filings. New issues may not be raised in responses or replies.”² Initial filings are presently due in less than one week, on June 21, 2010.³

On May 21, 2010 the Media Bureau issued Information and Discovery Requests to Applicants, seeking data, information, and documents relevant to the proposed merger transaction. This information was submitted to the Commission on June 11, 2010. Some of this information contains confidential and proprietary information, subject to FCC Protective Orders. Free Press signed acknowledgements of confidentiality entitling certain staff members access to un-redacted data.

On Tuesday, June 15th, Free Press received Comcast and NBCU’s un-redacted data submissions. These submissions comprise tens of thousands of pages and hundreds of thousands of data points. It is not practicable – nor, indeed, even possible – for any party to review and analyze such a voluminous amount of data for inclusion in initial pleadings, as would appear to be required by the Notice.

In addition to the sheer volume of data, the format in which Applicant, Comcast, has submitted its information to outside parties further precludes meaningful access and timely examination. Under the terms of the Media Bureau’s Information Request, Applicants were required to submit electronic information in a format that can be meaningfully accessed and used.⁴ In particular, the Commission required that data-intensive responses to certain interrogatories to be “submitted only as: (1) a machine-readable Excel spreadsheet (preferred) or (2) as an Access database.”⁵ It appears that both Comcast and NBCU submitted this data in the requisite Excel form to the Commission. While the files are too extensive to review exhaustively at this time, NBCU also appears to have made the data available to Free Press in Excel spread sheet form. Comcast, on the other hand, took the additional and unnecessary step of converting all of its Excel spreadsheets into password-locked PDF files. The PDF format not only inhibits direct analysis of the data, the password locking also prevents the cutting and pasting of data into other files, further frustrating any timely analysis of the information. Indeed, the only way to evaluate Comcast’s information is to enter each individual datum, by hand, into separate files. Given the volume of data submitted, this process alone will take weeks to accomplish and will increase the chance of data entry error.

² *FCC Public Notice*, “Commission Seeks Comment on Applications of Comcast Corp., General Electric, and NBC Universal, Inc., to Assign and Transfer Control of Licenses,” MB Dkt. 10-56 (Mar. 18, 2010) at 5. The Commission does suggest in the Notice that “[s]ubmissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered.” *Id.* However, because Applicants submitted their responses to the Media Bureau’s request prior to the deadline, this information does not appear to fall within this exception. In any event, 15 days is still an exceedingly inadequate amount of time to review and analyze this data.

³ *FCC Public Notice*, “Commission Announces Revised Pleadings Schedule for Its Review of Comcast Corp., General Electric, and NBC Universal, Inc., to Assign and Transfer Control of Licenses,” MB Dkt 10-56 (May 5, 2010)

⁴ *See, e.g., Information and Discovery Request for Comcast Corporation*, MB Dkt, 10-56 (May 21, 2010) at “Instructions, ¶8 (“Electronic documents and data shall be produced in a format that allows the Commission to access and use them”).

⁵ *Id.*

Given the complex and far-reaching nature of the proposed transaction, it is essential that parties participating in the proceeding have adequate time to research, analyze, and effectively present the impact of this merger on innovation, competition, and the public interest. Unfortunately, and however well-intentioned, the terms of the FCC Notice may have the perverse affect of limiting both the quantity and quality of information that outside parties can submit to inform the FCC's merger analysis.

As a consequence, the Commission must extend significantly the time and opportunity to analyze the data and submit any arguments incorporating this new data into the record. In light of the vast quantity of information submitted, a 90 day time frame is appropriate. In the alternative, the Commission should rescind its March 18th Notice prohibiting parties from raising new arguments or issues in *ex parte* filings or replies. Absent Commission action, parties – through no fault of their own – may be precluded from presenting new arguments and information for consideration, thereby compromising the thoroughness and validity of Commission's merger review.

Respectfully
submitted,

_____/s/_____

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