

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.)	MB Docket No. 10-56
)	
For Consent to Assign Licenses or Transfer Control of Licenses)	

COMMENTS OF THE TENNIS CHANNEL, INC.

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Introduction

The Tennis Channel, Inc. (“Tennis Channel”) respectfully submits these Comments in connection with the Federal Communications Commission’s (the “Commission”) consideration of Comcast Corporation’s (“Comcast”) proposed formation of a joint venture with General Electric Company through which Comcast will have majority ownership in and control of NBC Universal, Inc. and its various programming assets (the “Comcast/NBCU Transaction”).

In the seven years since its creation, Tennis Channel has emerged as the sole network in the United States dedicated to covering tennis, a long-popular sport in this country for which enthusiasm continues to grow. Through a combination of premier, live event coverage and innovative, original programming, Tennis Channel is the destination of choice for viewers interested in professional tennis and the “tennis lifestyle.” Equally important, Tennis Channel has reached its remarkable level of achievement as an independent programmer.

Although Tennis Channel has been, by any definition, a success story since its launch, its upward trajectory has not been without challenges. Perhaps its greatest challenges can be attributed to its status as an independent programmer. Some obstacles faced by any independent programmer are inherent in the decision to launch a network without the financial and infrastructure support of a vertically integrated parent such as Comcast. Those obstacles are to be expected, and are part of the trade-off that any programmer faces when it decides to launch as an independent network. Other obstacles, however, are attributable to the temptation and tendency for multichannel video programming distributors (“MVPDs”) to show favoritism, whether subtle or overt, to programmers in which they have an ownership interest.

Both Congress and the Commission have recognized this temptation and the dangers it poses to the vitality of independent programming. For example, in adopting the 1992 Cable Act,

Congress noted that “cable operators have the incentive and ability to favor their affiliated programmers.”¹ Thus, Congress directed the Commission to establish regulations that would, among other things, “contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”² To execute this mandate, the Commission, in its program carriage rules, explicitly proscribed MVPDs from engaging in such affiliation-based discrimination.³

In the nearly two decades since passage of the 1992 Cable Act, the industry concentration that animated Congress’ concerns has increased. Indeed, the Comcast/NBCU Transaction brings this public policy issue into stark focus. Upon consummation of this deal Comcast, the nation’s largest MVPD,⁴ will obtain control of a wide variety of NBCU programming assets, including, for example, Bravo and USA Network. These assets will be joined with the sizable collection of programming assets in which Comcast already holds a financial interest, including, for example, E! and Style.

In the sports programming arena alone, NBC Sports will become part of a family that includes interests in the Golf Channel, the MLB Network, the NHL Network, Versus, and a

¹ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(5), 106 Stat. 1460.

² 47 U.S.C. § 536(a)(3) (Section 616 of the Communications Act of 1934, as amended).

³ See 47 C.F.R. § 76.1301(c) (An MVPD may not “engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”).

⁴ See Comcast, Press Release, “Comcast Reports Third Quarter 2009 Results,” at 2 (Nov. 4, 2009).

number of regional sports channels operating under the Comcast SportsNet brands. Of course, competition between programming affiliated with Comcast/NBCU and programming not affiliated with Comcast/NBCU is not limited to the sports arena. For example, if the Comcast/NBCU Transaction is consummated, Comcast will also gain control of programming in other areas, such as general interest news (MSNBC) and business news (CNBC), in which Comcast will be carrying, and negotiating for future carriage with, competing programmers with whom it is not affiliated (*e.g.*, CNN, FOX Business Network and Bloomberg Television). Thus, while the sports genre is obviously of particular interest to the Tennis Channel, the issues raised by these Comments transcend different categories of programming.

The proposed aggregation of programming assets – many of which face competition from programmers not affiliated with Comcast/NBCU – underscores the need for the Commission, in assessing the public interest implications of the applications, to seriously consider the impact on existing and new independent programmers. Although the Commission’s program carriage rules provide a procedure through which aggrieved independent programmers can seek redress, this proceeding offers an opportunity for the Commission to impose meaningful prospective conditions, consistent with the public interest, to ensure that a post-transaction Comcast does not use its augmented vertical integration to the detriment of independent programmers and, ultimately, consumers.

The need for such prospective conditions in this case is supported by a number of factors. First, Comcast has a history of being subject to numerous program carriage complaints, several of which, though not all, have involved sports programming.⁵ Second, it was concern about

⁵ See Responses of Comcast Corporation and NBC Universal, Inc. to Questions Submitted By Several Members of the United States House of Representatives at 33 (June 2, 2010) (stating that Comcast has received five notices of intent to file program carriage complaints in the past three years, at least three of which were brought by sports programmers).

sports programming in part that animated the Commission's imposition of significant conditions in connection with Comcast's acquisition of certain assets from Adelphia Communications Corporation in 2006.⁶ That is not surprising, given the high value that consumers, programmers and MVPDs place on sports programming. Third, although the Commission does have a mechanism in place for litigating program carriage complaints, that procedure can be expensive, time consuming and, by definition, only addresses after-the-fact allegations of discrimination. In contrast, meaningful conditions imposed in connection with the pending transfer proceeding not only will ensure that the consummation of the Comcast/NBCU Transaction comports with the public interest but, importantly, will deter the post-transaction entity from engaging in conduct that might give rise to onerous program carriage complaints.

In that regard, it is worth noting that Tennis Channel is currently a complainant in a program carriage dispute with a Comcast subsidiary. See *In the Matter of The Tennis Channel, Inc. v. Comcast Cable Communications, LLC.*, File No. CSR-8258-P (filed Jan. 5, 2010). Tennis Channel's experience with Comcast is a clear example of Comcast's efforts to advantage its affiliated networks over those in which it does not have an interest. If the Comcast/NBCU Transaction is approved, Comcast will acquire more programming assets and will have an even greater incentive to disadvantage programmers with which it is not affiliated. But these Comments are not intended to litigate Tennis Channel's program carriage dispute with Comcast Cable Communications in a different forum. Rather, these Comments are intended to raise public interest concerns of general applicability to independent programmers (*i.e.*, those not

⁶ See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors to Time Warner Cable, Inc. et al.*, Mem. Op. & Order, 21 FCC Rcd 8203, Appendix B and C (2006). See also *id.* at ¶ 191 (explaining the need for an expedited dispute resolution mechanism "to alleviate the potential harms to viewers who are denied access to valuable RSN [regional sports network] programming during protracted carriage disputes[]" and observing that the "timely resolution of carriage disputes is particularly important given the seasonal nature of RSN programming.").

affiliated with Comcast/NBCU) and their viewers, and offer proposals to address those concerns. Because these Comments are informed by Tennis Channel's experiences as an independent programmer, including its experience with Comcast, Tennis Channel hereby incorporates its pleadings from its program carriage dispute with Comcast by reference herein.

The balance of these Comments, after providing some further background on Tennis Channel, (a) explains the need for meaningful, binding conditions to protect independent programming from affiliation-based inequitable treatment, (b) raises questions about Comcast's Voluntary Commitment No. 13 and its efficacy as a safeguard for programming not affiliated with Comcast/NBCU, and (c) proposes a set of reasonable conditions that will ameliorate the potential threats to such programming posed by the Comcast/NBCU Transaction.

I. Overview of the Tennis Channel

Since its inception on May 15, 2003, Tennis Channel has become one of the most admired and innovative television sports programmers. It is the only source of round-the-clock tennis programming in the United States and the only network dedicated covering tennis, a sport played professionally on a twelve-month cycle. In addition to year-round coverage of significant tournaments and series (more than 70 annually), Tennis Channel offers major coverage of the sport's four Grand Slam events – the Australian Open, the French Open, Wimbledon, and the U.S. Open – and exclusive coverage of the worldwide and United States Davis Cup and Fed Cup matches. In 2008, for example, Tennis Channel offered more than 2,700 hours of worldwide event coverage, the vast majority of which are exclusives within the United States. That year also marked the launch of Tennis Channel HD, which made it an industry leader in high-definition sports programming. Since that time, Tennis Channel has continued to expand the programming it offers, and has experienced significant growth as a network.

When not televising match play, Tennis Channel offers a wide array of non-event programming geared toward its viewers' interests. This original programming includes instructional and fitness series, lifestyle and travel features, and programs featuring current and former athletes and highly-regarded experts. Tennis Channel also facilitates the use of the sport as a vehicle to build bridges across cultures. It does this in a variety of ways, including through its own philanthropic efforts and by producing documentaries about the non-tennis interests and societal contributions of players such as Arthur Ashe, Billie Jean King, Serena Williams, and Shahar Peer, whose personal stories transcend the game. In addition, Tennis Channel maintains a dynamic Internet presence at www.tennischannel.com.

Tennis Channel's programming quality has been widely recognized, including an Emmy nomination for "Wimbledon Prime Time." For example, the *Washington Examiner* has stated that "Tennis Channel has arrived as a real force and an equal to . . . ESPN2 on all the big tennis events."⁷ This critical acclaim has been validated by Tennis Channel's business successes, including the fact that it produces coverage of top tournaments for other sports programmers such as CBS, ESPN and NBC.

Presently, Tennis Channel reaches more than 25 million Nielson homes from about 130 different distributors throughout the country. It is carried by nine of the top 10 cable multiple system operators, Verizon FIOS TV, AT&T U-Verse (as of June 21, 2010), and has a national footprint via DIRECTV and the DISH Network. Tennis Channel attracts affluent viewers that

⁷ Jim Williams, "Tennis Channel Is Making Its Mark Covering the French Open," *Washington Examiner* (June 2, 2009). An example of Tennis Channel's comprehensive and multifaceted coverage can be seen in the USTA's article previewing Tennis Channel's coverage of the 2010 BNP Paribas Open in Indian Wells, California. See http://www.usta.com/Global/Pro_Tennis/Pro_Tennis/Wire/2010/03/09/Tennis_Channel_to_carry_90_hours_of_live_matches_at_2010_BNP_Paribas_Open.aspx.

are prized by advertisers,⁸ and continues to enjoy impressive ratings within its coverage areas. While much of this success is attributable to the quantity and quality of the Tennis Channel's programming, it is also due in part to the continuing upward trajectory of the public's interest in the sport.

Tennis has enjoyed dramatic growth in the United States, and today is "the fastest growing sport in America among individual traditional sports[.]"⁹ "From 2003 to 2009, the number of children 6-17 playing tennis jumped to 9.5 million from 6.8 million. For all ages, tennis participation has grown 43% since 2000, according to the Sporting Goods Manufacturing Association, an industry trade group."¹⁰ According to data released by the United States Tennis Association, the number of Americans who play tennis has exceeded 30 million for the first time in more than two decades,¹¹ a near all-time high. Thus, there is every reason to believe that tennis will continue as an enduring part of America's recreational fabric, and Tennis Channel is well positioned to meet this surge in popularity as it continues to evolve and grow as a television-based multimedia destination dedicated to the professional sport and passionate lifestyle of tennis.

In short, Tennis Channel has become precisely the kind of independent programmer that the Commission's goals for content diversity were intended to encourage, and the risks to content diversity presented by the Comcast/NBCU Transaction are precisely the kinds of risks that the Commission's assignment and transfer policies are intended to prevent.

⁸ See generally Stuart Miller, "Tennis Channel Starts to Get Noticed," *The New York Times* (June 3, 2010).

⁹ http://www.usta.com/sitecore/content/USTA/Global/Get_Involved/News_and_Events/News/Tennis_fastest_growing_sport_in_America.aspx.

¹⁰ Matthew Futterman, "Golf's Big Problem: No Kids," *The Wall Street Journal* (May 21, 2010).

¹¹ See http://www.usta.com/USTA/Global/About_Us/Organization/News/US_tennis_enjoying_record_surge_in_participation.aspx.

II. The Need for Meaningful, Binding Conditions to Protect Programmers From Affiliation-Based Inequitable Treatment

Given the availability of the Commission's program carriage rules and dispute resolution mechanisms – both of which Comcast is subject to now and will be in a post-transaction environment – one can expect the applicants and their supporters to argue that the Commission need not impose any transaction-specific conditions relating to program carriage discrimination on the approval of the Comcast/NBCU Transaction.¹² The Commission should reject that argument.

While the program carriage rules provide an after-the-fact means of challenging discriminatory programming decisions by vertically integrated MVPDs, the process is expensive and time consuming and may allow conduct that violates Section 616 to go unchecked for an extended period of time.¹³ Moreover, because of the cost and duration of such administrative litigation, independent programmers with legitimate claims (who, by definition, do not enjoy the financial support of an MVPD corporate parent) may be deterred from even commencing such proceedings.

¹² Indeed, Comcast already has raised this point. See Responses of Comcast Corporation and NBC Universal, Inc. to Questions Submitted By Several Members of the United States House of Representatives at 35 (June 2, 2010) (referring to the program carriage rules as “a well-developed set of existing laws and regulations that safeguard against any anticompetitive misconduct.”). Presumably, Comcast also will point to its Voluntary Commitment No. 13 as evidence of its intent to exceed the mandates of the program carriage rules and, thus, provide whatever further safeguards are warranted by the public interest. The inadequacy of Voluntary Commitment No. 13 in this respect is discussed in Part III of these Comments.

¹³ Examples of some of the challenges associated with program carriage complaints are described in the Comments of TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”) (May 10, 2010), *In re Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44. As noted by MASN, “Despite its intention that program-carriage disputes be resolved expeditiously, certain procedural pitfalls in the Commission's rules have allowed these disputes to drag on. And during these protracted carriage disputes, consumers have been denied access to must-have programming.” *Id.* at 3.

In contrast, carefully crafted and substantive transaction-specific conditions are more likely to prevent discriminatory conduct from occurring in the first place. This is true for several reasons. As a preliminary matter, the type of conditions suggested below (*see* Part IV) will serve to manage the expectations of both programmers not affiliated with Comcast/NBCU and Comcast/NBCU itself, assuring that all parties have a clear understanding of the environment in which the terms and conditions of carriage are to be negotiated.

Moreover, by imposing such conditions, the applicants will be on notice from the Commission that a finding that the transfer of control comports with the public interest is predicated on, among other things, reasonable assurances about the post-transaction entity's conduct vis-à-vis programmers not affiliated with Comcast/NBCU. Presumably, Comcast/NBCU will deem it to be in its interest – as both a matter of law and corporate citizenship – to adhere to such conditions.

To the extent that expectation proves to be unfounded, conditions containing an accelerated dispute resolution protocol (*see* Part IV, below) will provide an expeditious and cost-effective means of resolving any prospective carriage dispute raised by programmers not affiliated with Comcast/NBCU.

The reason that such conditions – that is, binding requirements that go beyond the promise of voluntary commitments – are important is because they are uniquely situated to protect the vitality of independent programming. The importance of such diverse programming voices has been widely recognized. For example, Senator Herb Kohl, Chairman, Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently noted:

[T]he [NBCU] acquisition raises troubling concerns with respect to the ability of unaffiliated and independent programmers to gain access to the combined Comcast/NBC distribution platform. Promoting a diverse media of voices has long been a goal of the

Antitrust Subcommittee. Therefore, I share the concerns raised by independent programmers that after Comcast acquires NBC programming, it may be even more difficult for them to gain carriage on Comcast, carriage that they believe is essential to successfully enter the programming market. Comcast asserts that it would have no incentive to block the launch of compelling independent programming. However, Comcast already is under challenge from certain independent programmers regarding allegations that it discriminates in favor of its affiliated programmers in violation of the FCC program carriage rules and statutory requirements. The acquisition of NBC's substantial programming assets could give the combined entity more opportunities and greater incentive to engage in illegal discrimination against non-affiliated programmers. Therefore, meaningful requirements related to program carriage must be a condition to approving this merger.¹⁴

As noted above, it has been almost 20 years since Congress recognized the threat to independent programmers posed by cable operators' incentives to favor programming in which they have an economic interest, and directed the Commission to promulgate rules to proscribe such conduct. In the intervening years the benefits of quality independent programming have only increased in the wake of growing industry consolidation. That trend will intensify as a result of the Comcast/NBCU Transaction and, therefore, warrants specific, targeted conditions to ensure that the applicants are faithful to the express policy goals of Congress and the Commission.

III. Voluntary Commitment No. 13 – Will Reality Match the Rhetoric?

In their Applications and Public Interest Statement, Comcast and NBCU recognize, as they must, the public's interest in ensuring the availability of viable independent programming. Most prominently, the applicants offer the following voluntary commitment: "As Comcast

¹⁴ Letter from Senator Herb Kohl, Chairman, Subcommittee on Antitrust, Competition Policy and Consumer Rights, to The Honorable Christine Varney, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, and The Honorable Julius Genachowski, Chairman, Federal Communications Commission, dated May 26, 2010, at 2-3 ("May 26 Kohl Letter").

makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and – operated channels to its digital line-up each year for the next three years on customary terms and conditions.”¹⁵ Consistent with the voluntary nature of this commitment, the applicants limit the definition of independent programmers to networks “that (1) are not currently carried by Comcast Cable, and (2) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of networks, as measured by revenues.”¹⁶

While this voluntary commitment has some surface appeal to it, upon further examination it raises a host of issues that call into question the degree to which the public’s interest in independent – that is, not affiliated with Comcast/NBCU – programming will be protected. For example:

- Even if the applicants do add six new independent programmers by 2014, most independent programmers carried by Comcast will have already executed carriage agreements prior to the closing of the proposed transaction.¹⁷ Why are the applicants

¹⁵ *In the Matter of Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee*, MB Docket No. 10-56, Applications and Public Interest Statement; Description of the Transactions, Public Interest Showing, and Related Demonstrations at 112 (“Comcast/NBCU Statement”). *See also id.* at Appendix 8, Applicants’ Voluntary Public Interest Commitments, Commitment #13 (same).

¹⁶ *Id.* at 113. The applicants also commit that even if Comcast’s digital migration is not completed by 2011, they will commence adding independent networks (as defined by the applicants) no later than 2012. *See id.* at 113 n.248.

¹⁷ The applicants themselves cite language from a recommended decision of a Commission ALJ for the proposition that “the majority of networks that Comcast carries are unaffiliated companies[.]” Comcast/NBCU Statement at 112 n.247 (quoting *In the matter of Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable Inc., et al.*, MB Docket No. 08-214, Recommended Decision of Chief Administrative Law Judge Richard L. Sippel, ¶ 63 (Oct. 14, 2009) (“*Wealth TV Decision*”). *See also* Responses of Comcast Corporation and NBC Universal, Inc. to Questions Submitted By Several Members of the United States House of Representatives at 33 (June 2, 2010) (“[E]ven after the

not making any commitments with respect to their prospective dealings with existing independent programmers, especially given the increased concentration of programming that the post-transaction entity would control?¹⁸ Tennis Channel is not alone in raising this question. In his April 19, 2010 letter to Chairman Genachowski, Roger L. Werner, President & Chief Executive Officer of the Outdoor Channel, stated with respect to Voluntary Commitment No. 13: “[W]e frankly would like to see that commitment modified to include granting broader distribution to proven independents whose programming capabilities and financial stability are already established.”

- What are the “customary terms and conditions” to which the applicants are committing to adhere, and by what mechanism will it be determined whether the applicants are, in fact, adhering to such customary terms and conditions?
- Is this language meant to render Comcast the arbiter of what is customary, perhaps by reference to its existing relationships with programmers not affiliated with Comcast/NBCU?
- Will the new independent networks be made available immediately to all Comcast systems?
- What assurance do the Commission, the public and independent programmers (even using the applicants’ definition) have that independent networks that are similarly

transaction, nearly six out of seven channels that Comcast carries will remain independent of and unaffiliated with Comcast.”).

¹⁸ The applicants also rely on Chief Judge Sippel’s statement that “Comcast’s practice . . . is to carry unaffiliated networks if such carriage[] further[s] Comcast’s business interests.” Comcast/NBCU Statement at 112 n.247 (quoting *WealthTV Decision* at ¶ 47). But that is precisely the point. In a post-transaction environment, there is a very real risk that what Comcast perceives as furthering its business interest will be animated by a desire to favor its own, enhanced programming interests at the expense of networks not affiliated with Comcast/NBCU.

situated to Comcast/NBCU affiliates will be treated in a non-discriminatory manner vis-à-vis Comcast/NBCU affiliates that offer programming in the same category?

- If the proposed transaction is consummated, the aggregation of programming interests under the Comcast/NBCU umbrella will increase the incentives for the combined entity to favor its programming. This is attributable to the unassailable fact that the post-transaction entity will have economic interests to protect in a broader array of content.
- Such favoritism can manifest itself in a variety of ways including, without limitation: channel assignment; the service tier on which particular programming is made available; restrictions on independent programmers' ability to control Internet distribution of its content; limitations on programmers' ability to accept commercial advertisements or sponsorship from particular entities; promotional and marketing support; the methodology by which ratings are measured; and the rates that Comcast will pay for carriage.

The foregoing examples underscore the problem with the applicants' voluntary commitment concerning independent programming. While Comcast and NBCU say the right things as far as they go, the proffered commitments are, in reality, non-binding aspirations that would do little to eliminate the enhanced incentive that Comcast would have, if the Comcast/NBCU Transaction is approved, to harm programming diversity. It is this absence of any meaningful commitment to ensure non-discrimination that renders this voluntary commitment inadequate and, perhaps, illusory. In order to address these deficiencies, in the

following section Tennis Channel proposes a series of reasonable and binding conditions that are designed to supplement Voluntary Commitment No. 13.

IV. Effective Safeguards for Existing and New Programmers That are Not Affiliated with Comcast/NBCU

In order to affirmatively address the threats to existing and prospective independent programmers posed by the Comcast/NBCU Transaction, Tennis Channel respectfully suggests that the Commission should impose the following program carriage conditions to help ensure that the consummation of the transaction, if approved, comports with the public interest.¹⁹

PROGRAM CARRIAGE CONDITIONS

A. Definitions

For purposes of the conditions set forth below, the following definitions apply:

“Affiliated Network” means any non-broadcast video programming service that (1) was owned, in whole or part, by Comcast as of January 28, 2010, or in which Comcast had an attributable interest as defined in 47 C.F.R. § 76.1300(b) as of January 28, 2010; or (2) is owned, in whole or in part, by Comcast, or in which Comcast has an attributable interest as defined in 47 C.F.R. § 76.1300(b) at any time during the Effective Period.

“Category” means any genre of video programming including, without limitation, news, sports, music, movies, finance, fitness, science, lifestyle, children’s programming, and any other category of comparable programming.

¹⁹ Senator Kohl also has urged the Commission to impose conditions relating to program carriage. Specifically, Senator Kohl has advocated the following: “A requirement that Comcast agree not to discriminate against programmers seeking carriage on Comcast in favor of any Comcast-owned programming, including the NBC broadcast and cable programming to be acquired in this transaction. This requirement would be independent of the existing FCC program carriage rules, and apply regardless of whether or not those rules are in force. This merger condition should specifically ensure that, even if offered carriage, a non-affiliated programmer should not face discrimination with respect to channel placement or tiering (such as, for example, being placed on an expensive digital tier while the comparable Comcast-owned channel is shown on a basic tier).” May 26 Kohl Letter at 5.

“Comcast” means Comcast Corporation, NBC Universal, Inc., and their subsidiaries, affiliates, parents, successors, assigns, and joint venture partners.

“Compete” means, with respect to two non-broadcast video programming services, that (1) the two services telecast programming that is substantially in the same Category; or (2) with respect to an Existing Covered Network, advertisers collectively accounting for five percent or more of the revenues of total advertising time on one of the services have placed advertisements on the other service. With respect to (1), two non-broadcast video programming services will be deemed to Compete if a substantial amount of their programming is in the same Category (*e.g.*, news or sports). The Covered Network will not be required to show that all or substantially all of its programming is in the same Category as the programming of the Affiliated Network.

“Covered Network” means an Existing Covered Network or a New Covered Network.

“Effective Period” means six (6) years following the date upon which the Commission’s approval of the transfer of control applications becomes final.

“Existing Covered Network” means any non-broadcast video programming service that (1) is not owned, in whole or in part, by Comcast; and (2) was carried on any Comcast system as of January 28, 2010, or is carried on any such system during the Effective Period.

“New Covered Network” means any non-broadcast video programming service that is not owned, in whole or in part, by Comcast, and has not previously been carried on any Comcast system.

B. Conditions

1. Comcast will not discriminate against any Covered Network in the pricing, terms, or any other conditions of carriage (the “Terms and Conditions of Carriage”). Without limitation, Comcast will:
 - a. Carry any Covered Network on all cable systems on which it carries any Affiliated Network with which the Covered Network Competes;
 - b. Distribute any Covered Network to at least the same subscribers who receive any Affiliated Network with which the Covered Network Competes;
 - c. Not charge any subscriber more money, or impose on any subscriber any additional conditions or obligations, in order for that subscriber to receive a Covered Network than it charges or imposes for any subscriber to receive an Affiliated Network with which the Covered Network Competes;
 - d. Not impose on any Covered Network with which any Affiliated Network Competes any limitations or restrictions with respect to Internet, mobile or other emerging forms of distribution of the Covered Network’s programming that exceed or are more onerous from the perspective of the Covered Network than such limitations or restrictions imposed on any Affiliated Network with which a Covered Network Competes; and
 - e. Not impose on any Covered Network with which any Affiliated Network Competes any limitations or restrictions with respect to advertising that exceed or are more onerous from the perspective of the Covered Network than such limitations or restrictions imposed on any Affiliated Network with which a Covered Network Competes.

2. Comcast will negotiate in good faith with any Covered Network regarding the Terms and Conditions of Carriage for such Covered Network at the request of any such Covered Network.
3. Notwithstanding the foregoing conditions, Comcast shall remain subject to all rules of general applicability promulgated by the Commission including, without limitation, those relating to program carriage. In the event of a conflict between any rules of general applicability and these Program Carriage Conditions, the Program Carriage Conditions shall control until the expiration of the Effective Period.

C. Dispute Resolution

1. Any Covered Network may submit a dispute over its Terms and Conditions of Carriage by Comcast, which Terms and Conditions of Carriage have been the subject of negotiations between the Covered Network and Comcast, to a commercial arbitrator, in accordance with the procedures set forth in Section C.3 below.
2. In any arbitration initiated by a Covered Network pursuant to Section C.1, Comcast will not be deemed to have violated these Program Carriage Conditions if and only if it proves by a preponderance of the evidence that Comcast's decision to carry the Covered Network on different terms and conditions than the Affiliated Network(s) with which the Covered Network Competes was based entirely on factors unrelated to the Covered Network's lack of affiliation with Comcast.
3. In order to provide for an expedited dispute resolution mechanism for complaints arising under these Program Carriage Conditions concerning the Terms and Conditions of Carriage, the Commission should adopt a commercial arbitration

remedy similar to that adopted in the Adelphia proceeding, with modifications appropriate to account for the particular conditions set forth above.²⁰

Conclusion

As described above, the proposed Comcast/NBCU Transaction has the potential to pose unique and serious threats to the continued viability of independent programming. The importance of such programming to the American public is beyond dispute, and repeatedly has been recognized by Congress, the Commission and a litany of observers from a diverse array of viewpoints. At the same time, Congress and the Commission have recognized the dangers to such programming posed by the incentives for vertically integrated MVPDs to favor affiliated programmers.

Because the Comcast/NBCU Transaction, if consummated, will create an unprecedented conglomeration of programming and programming distribution assets, it is incumbent upon the Commission to ensure that this union does not adversely impact the important public interest served by independent programming voices. The Tennis Channel, informed by its experience and success as one of those voices, respectfully submits that the optimal way to protect these interests is for the Commission to adopt the safeguards embodied in the proposed Program Carriage Conditions set forth in Part IV of these Comments as binding conditions should it approve the Comcast/NBCU Transaction.

²⁰ See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors to Time Warner Cable, Inc. et al.*, Mem. Op. & Order, 21 FCC Rcd 8203, Appendix B and C (2006). Although the Commission subsequently suspended the Adelphia program carriage condition in “light of [its] anticipated revision of [the generally-applicable] program carriage procedures[.]” *Comcast Corp., Petition for Decl. Ruling that The America Channel is not a Regional Sports Network*, 22 FCC Rcd 17928, 17946-47 (2007), the unique circumstances of the Comcast/NBCU Transaction render the Program Carriage Conditions set forth above appropriate here, irrespective of the Commission’s existing or future rules of general applicability.

Dated: June 21, 2010

A handwritten signature in black ink, appearing to read 'R. M. Cooper', is written over a horizontal line.

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