CM CINNAMON MUELLER
A Professional Limited Liability Company

Barbara S. Esbin
Admitted in the District of Columbia

1333 New Hampshire Ave., NW, Fl 2
Washington, DC 20036
Telephone: (202) 872-6811
Facsimile: (202) 683-6791

Chicago Office
307 North Michigan Ave., Suite 1020
Chicago, Illinois 60601
Telephone: (312) 372-3930
Facsimile: (312) 372-3939

July 13, 2010

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: American Cable Association ("ACA")Notice of Ex Parte Presentation: In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 10-56.

Dear Ms. Dortch:

On July 12, 2010, Matthew Polka and Ross Lieberman, the American Cable Association ("ACA"), Professor William P. Rogerson, Northwestern University, Tom Cohen, Kelly Drye, and the undersigned, met with John Flynn, Senior Counsel to the Chairman for Transactions. In the meeting, participants discussed the potential horizontal and vertical harms of the proposed Comcast-NBCU transaction and the lack of adequate safeguards to protect consumers and competition described in ACA's Comments filed June 21, 2010 in the above referenced proceeding.

During the meeting, Professor Rogerson presented the information on the slides attached hereto as Exhibit 1.

If you have any questions or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/
Barbara S. Esbin

Enclosure

cc: John Flynn

EXHIBIT 1

American Cable Association

CONNECTING HOMETOWN AMERICA

The Horizontal & Vertical Harms of the Proposed Comcast-NBC Universal Joint Venture

(… and the lack of adequate safeguards to protect consumers and competition)

July 12, 2010

American Cable Association

Overview of Presentation

- **Introduction**
- **Horizontal Harm**
- **Vertical Harm**
- **Remedies**

Introduction: Lines of Business

- **NBC Programming**
  - NBC network with 10 O&O affiliates in major metro areas
  - Telemundo network with 15 O&O affiliates in major metro areas
  - National cable networks (prime time ranking in parens.):
    - USA (1), Syfy (18), Bravo (22), MSNBC (26), mun2, Oxygen, and CNBC.
- **Comcast Programming**
  - Group of 10 RSNs in major metro areas
  - National cable networks (prime time ranking in parens.):
    - E! (28), TV One, Versus, Style, Golf Channel, and G4
- **Comcast MVPD Services**
  - Largest cable operator, serving 23.8 million customers in 39 states
  - Largest residential broadband operator, serving 15.7 million customers

Introduction: Overview of Harms

- **The proposed Comcast/NBC merger has both horizontal and vertical components and each component creates a separate, distinct, and significant competitive harms**

- **Horizontal Harm** (due to the combination of NBC's programming assets with Comcast's programming assets)
  - By controlling a much larger block of highly demanded programming, in numerous local markets, the merged entity will be able to charge higher programming fees to MVPDs
  - These higher fees will be passed on to subscribers in the form of higher prices
  - The simple model we present explains why combined control of more programming can result in higher prices
  - Available evidence shows that this effect can be significant in programming markets

Introduction: Overview of Harms

- **Vertical Harm** (due to combination of NBC's programming assets with Comcast's cable assets)
  - When NBC sells programming to MVPDs that compete with Comcast, this reduces Comcast's profit
  - The merged entity will take this effect into account
  - This will result in the merged entity charging higher prices for its programming to MVPDs that compete with Comcast
  - These higher fees will be passed on to subscribers in the form of higher prices
  - Economic modeling shows that this effect can be significant in programming markets

Horizontal Harm: Theory

- **The combined ownership of NBC and Comcast programming will increase the joint venture's market power over programming**
- **This will allow the joint venture to charge significantly higher programming fees to MVPDs that purchase programming**
- **The fee increases will be substantially passed through to subscribers in the form of higher prices**
- **Regions in which the effects of the proposed combination will be most serious (although harms will be more extensive)**
  - Regions served by both an NBC O&O and a Comcast RSN
  - Regions served only by a Comcast RSN

Horizontal Harm: Evidence

- **The best available evidence on the effect of combined ownership or control on programming fees comes from markets for retransmission consent. The data suggests joint ownership or control of Big 4 stations can increase fees by at least 20%.**

- **Suddenlink *ex parte*, December 14, 2009**

  "Where a single entity controls retransmission consent negotiations for more than one Big 4 station in a single market, the average retransmission consent fees Suddenlink pays for such entity's Big 4 stations (in all Suddenlink markets where the entity represents one or more stations) is 21.6% higher than the average retransmission consent fees Suddenlink pays for other 'Big 4' stations in those same markets."

- **Small cable operators *ex partes*, May-June 2010**

  Three small cable operators, filing in the Commission's ongoing retransmission consent proceeding, reported that retransmission consent fees are 161%, 133% and 30% higher for Big 4 broadcaster stations in the same DMA that are subject to joint control or ownership than for separately owned/controlled broadcast stations.

- **"Corpus Christi Consent Decree" (1996)**

  The DOJ filed a complaint against three Big 4 broadcasters in the Corpus Christi DMA alleging that they had illegally colluded to raise retransmission consent fees by entering into an agreement to jointly negotiate these fees. In response the three firms entered into a settlement agreement to halt this practice and refrain from such practices in the future.

Horizontal Harm: Markets Affected

6 TV Markets with both an NBC O&O & Comcast RSN

3	Chicago, IL	WMAQ	CSN Chicago	3,501,010
4	Philadelphia, PA	WCAU	CSN Philadelphia	2,955,190
6	San Francisco-Oakland-San Jose, CA	KNTV	CSN Bay Area & CSN California	2,503,400
9	Washington, DC (Hagerstown, MD)	WRC	CSN Mid-Atlantic	2,335,040
17	Miami-Fort Lauderdale, FL	WTVJ	CSN Southeast	1,538,090
30	Hartford and New Haven, CT	WVIT	CSN New England	1,010,630
			TOTAL	**13,843,360**

TV Markets Above Represent **12.1%** of 2010 Total US TV Households (114,866,380)

Comcast Cable has a substantial presence in all 6 of these TV markets.

Horizontal Harm: Markets Affected

54 TV Markets with Comcast RSN and without NBC O&O

Albany-Schenectady-Troy, NY
Atlanta, GA
Augusta, GA
Baltimore, MD
Bangor, ME
Bend, OR
Birmingham (Anniston and Tuscaloosa), AL
Boston, MA (Manchester, NH)
Champaign and Springfield-Decatur, IL
Charleston, SC
Charlottesville, VA
Chattanooga, TN
Chico-Redding, CA
Dothan, AL
Eugene, OR
Fresno-Visalia, CA
Ft. Myers-Naples, FL
Ft. Wayne, IN
Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC
Harrisburg-Lancaster-Lebanon-York, PA
Harrisonburg, VA
Hattiesburg-Laurel, MS
Houston, TX
Huntsville-Decatur (Florence), AL
Jackson, MS
Jacksonville, FL
Knoxville, TN
Lafayette, IN
Little Rock-Pine Bluff, AR
Memphis, TN
Meridian, MS
Mobile, AL-Pensacola (Ft. Walton Beach), FL
Monroe-El Dorado, AR
Monterey-Salinas, CA
Myrtle Beach-Florence, SC
Nashville, TN
Paducah, KY-Cape Girardeau, MO-Harrisburg, IL
Panama City, FL
Peoria-Bloomington, IL
Portland, OR
Portland-Auburn, ME
Providence, RI-New Bedford, MA
Richmond-Petersburg, VA
Roanoke-Lynchburg, VA
Rockford, IL
Sacramento-Stockton-Modesto, CA
Salisbury, MD
Savannah, GA
Seattle-Tacoma, WA
South Bend-Elkhart, IN
Spokane, WA
Tampa-St. Petersburg (Sarasota), FL
West Palm Beach-Ft. Pierce, FL
Wilkes Barre-Scranton, PA

TV Markets Above Represent 32,064,500 Total TV Households or
27.9% of 2010 Total US TV Households (114,866,380)

Vertical Harm: Theory

- When NBC sells programming to MVPDs that compete with Comcast, this reduces Comcast's profit
- The merged entity will take this effect into account
- The merged entity will view Comcast's lost profits as an opportunity cost of providing programming to MVPDs that compete with Comcast
- This will result in the merged entity charging higher fees for its programming to MVPDs that compete with Comcast
- These fee increases will be substantially passed through to subscribers in the form of higher subscription prices.

Vertical Harm: Flaw with Simply Calculating Stand-Alone Profitability of Program Withdrawal

- **FCC test to assess competitive harms in the News Corp/Direct TV vertical merger focused on stand-alone profit from temporary or permanent program withdrawal**

- **News Corp Methodology**
  - **Calculate effect on profit (S) by examining loss in programming profit from withdrawal (L) and gain in MVPD profit due to customer switching (G) (S=G-L)**
  - **FCC concluded that a sufficient condition for a vertical merger to create significant competitive harms is that it creates a situation where the value of switching exceeds the loss of programming profit (S>0)**

- **Flaw in News Corp Methodology**
  - **The condition – S>0 – is sufficient but not necessary for there to be competitive harm**
  - **Competitive harm arises to the extent the vertical combination causes programming prices to rise**
  - **A vertical combination will cause programming prices to rise to the extent that it increases the programmer's opportunity cost of providing programming to MVPDs that it competes with, which can occur even if S<0**
  - **The better approach is to measure directly the increased opportunity cost and therefore the extent to which prices will rise**

- **Subsequently, FCC used Methodology Similar to "Better Approach" in Adelphia/Comcast/TimeWarner**

Vertical Harm: An Example

The Situation:

- **One seller and one buyer**
- **Seller already owns the good**
- **The good is of no value to the seller and there is only one possible buyer**
- **Good is worth $200 to the buyer**

• **What price will the buyer and seller negotiate?**

- If seller could make a take-it-or-leave-it offer to the buyer, he would offer $200, and it would be accepted

- If buyer could make a take-it-or-leave-it offer to the seller, he would offer $0, and it would be accepted

- Economic theory suggests that in general the price the buyer and seller negotiate will be somewhere between the lowest price the seller would accept and the highest price the buyer would pay –

$$p = (1 - \alpha)\ \$0 + \alpha\ \$200$$

where α is a parameter between 0 and 1 interpreted as the strength of the seller's bargaining power

- In the absence of any other information, it is reasonable to set α equal to ½. (Nash Bargaining Solution)

$$p = \$100$$

Vertical Harm: An Example

- **Now suppose that the seller owns another business that competes with the buyer's business and that the seller's profits in the other business will be reduced by $50 if he sells the good to the buyer**

- **Predicted price from Bargaining Theory:**

  Lowest price seller will accept = $50
  Highest price buyer will pay = $200

  p = ½ $50 + ½ $200
  = $125

- **The fact that the minimum price the seller will accept goes up by $50 results in him being able to negotiate a price that is $25 higher**

- **This is true even though the stand alone profitability of withdrawal does NOT become positive**
  - **Stand-alone profitability of withdrawal before the change**
    = -$100
  - **Stand alone profitability of withdrawal after the change**
    = -$100 + $50
    = -$50

Vertical Harm: An Example

- **Costs would have to rise to over $100 before the stand alone profit from withdrawal would become positive**

- **Example**

  - Suppose costs rise to $120

  - Stand alone profit from withdrawal = -$100 + $120 or $20

- **NewsCorp approach to estimating vertical harm**

  - Any merger that raised costs by $100 or less would not cause any significant harm

- **ACA approach (similar to Adelphia) to estimating vertical harm**

  - A merger that raised costs by $x would likely result in a price increase of $x/2

- **The main point:**

  - The stand alone profitability of withdrawal is positive if costs rise above the current price level

  - It is certainly true that prices will have to rise if costs rise above the current price level

  - However, significant increases in cost will generally cause significant increases in prices even if the costs do not rise by enough to make the stand alone cost of withdrawal positive

Vertical Harm:

Estimated Magnitude of Vertical Harm

- **Following the Nash Bargaining Model, the formula for calculating the increase in programming fees is equal to:**

$$\Delta P \quad = \quad \alpha\, d\, \pi / 2$$

where the variables are defined as follows

ΔP, increase in programming fees

π, profit that affiliated MVPD earns per subscriber

d, fraction of unaffiliated MVPDs' subs that'll leave MVPD if the program is withdrawn

α, fraction of the leaving customers that switch to the affiliated MVPD

- **An illustrative calculation using plausible parameter values**

π = $40 per subscriber per month

d= .05

α = .5

ΔP = $.50 per subscriber per month

Vertical Harm: Markets Affected

- **Deal will cause significant vertical harms in:**
  - 6 DMAs that both have an NBC O&O and are substantially served by Comcast
    - **Approx. 12.1% of all US TV households reside in these DMAs**
    - **Plausibly, NBC O&O retrans fees will double for MVPDs here**
  - **Nationwide (for DirecTV, Dish, AT&T and Verizon)**
    - **Plausibly, NBCU's National Cable Nets fees will increase 18-20%**
  - **Regions (where cable overbuilders compete with Comcast)**
    - **Plausibly, if Comcast passes all of an overbuilder's customers, its retrans fees will increase by over 100% and its fees for NBCU's national cable networks will increase by 44%**
    - **An overbuilder will still experience significant price increases even if the share of its customers passed by Comcast drops to more modest levels**

Remedies: Conditions Proposed by Comcast-NBCU

- **Horizontal Harms: Comcast has proposed no conditions to deal with the horizontal harms of the transaction**

- **Vertical Harms: To deal with the vertical harm of the transaction, Comcast has proposed that program access rules be applied to its retransmission consent agreements in addition to all of its other programming agreements**

Remedies: Comcast-NBCU's Proposed Conditions are Inadequate

- **Program access rules suffer from 4 major problems:**

1) Program access rules place no restrictions on quantity discounts
2) Program access rules provide no automatic right to continued carriage while a complaint is being investigated
3) It is not clear whether program access rules will be interpreted as applying to provision of online programming services
4) To the extent that the programming fees a vertically integrated firm charges itself are simply internal transfer prices that can be costlessly set at any level, program access rules provide no constraint on the programming fees that a vertically integrated firm charges its rivals

- **Therefore, simply requiring that the combined entity's retransmission consent and other programming negotiations be subject to program access rules will not reduce the vertical harm created by the transaction**

Remedies: Binding Arbitration is Inadequate for Smaller MVPDs

- In previous transactions with vertical competitive harms, one remedy used by the Commission has been to give parties purchasing certain classes of programming the right to ask for binding arbitration with mandatory interim carriage

- This type of condition also has the potential to reduce the horizontal harm created by this transaction

- A major problem that the Commission would need to address if it considered using this type of condition is that binding arbitration is not a cost effective option for smaller and medium-sized MVPDs