

July 21, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Reply Comments in MB 10-56, Applications of Comcast Corp., and
NBC Universal, Inc., to Assign and transfer Control of Licenses**

Dear Ms. Dortch:

America Channel (AC) submits these reply comments in MB 10-56. We did not file initial comments; however other parties quoted comments we submitted several years ago, in support of their petition to deny in this proceeding. We therefore update the record, and take the opportunity to address other issues raised in initial comments.

In this letter, we share more recent and favorable experiences with Comcast. In addition, we address various proposals for the creation of subcategories of independent programmers. We also note separately that lack of FCC enforcement of existing industry-wide rules continues to present significant challenges for independent programmers.

By way of background, AC is an independently owned programming network focused on college sports. AC is not affiliated with any MVPD or large media company. While AC's content mission includes traditionally popular sports such as football and basketball, we also believe that society and consumers benefit from a diverse array of sports, including women's sports, from schools that have historically received less exposure (for example Division I mid-majors). AC's plans include supplementing live sports, with lifestyle programming about the achievements, aspirations, contributions, and adventures of students and student-athletes. We believe that this type of content is attractive and can provide meaningful benefit to communities, schools, and consumers. AC also structured its license fee rates at industry-low standards, as we believe this best serves consumers, MVPDs, and competition. Attractive pricing can also help in growing distribution over time.

As other commenters noted, independent programming plays a critical role in the media landscape, enhancing the diversity of ideas and information in the marketplace, and increasing competition.¹ Independent programmers also face unique challenges particularly in the current economy.

In initial comments, several independent programmers expressed support for the Comcast / NBCU transaction.² Some cited personal experiences with Comcast.³ Our recent experiences with Comcast reflect an effort by Comcast to promote independent programming.

In 2006-2007, AC entered the college sports space, and in late 2007 we entered into a carriage agreement with Comcast. AC remains in the strategic planning and early operational stages and has not yet launched its service. The timing of the launch was postponed by extremely challenging economic circumstances and the worst capital market conditions in decades, which affected access to investment capital generally,

¹ See filing of HDNet, LLC in MB 10-56 at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020505964>.

² These include HDNet, LLC, REELZCHANNEL, Outdoor Channel, CatholicTV, and Inspiration Networks.

³ Id.

including for small businesses and new ventures that do not have conglomerate backing. Investment capital is required to sustain operations until the network achieves scale, typically when the distribution footprint becomes large enough to sustain a cash flow positive business. It can take a long time and extensive effort to launch a new network, even in good economic times.⁴

Macroeconomic forces have presented unique challenges for small business. We believe the markets are finally improving. In this challenging environment, Comcast has been supportive and has permitted us to extend our launch date as we move forward with our capital raise efforts and business plan. Comcast also made available to AC, network operations services through Comcast Media Center, at appreciably competitive terms when compared with other network operations providers, enabling us to maximize efficiencies including a lower cost structure and consequently lower capital raise requirements. We have had other exchanges of ideas with Comcast about ways to enhance our business. These experiences commenced before the NBCU transaction, and Comcast did not ask us to publicize them. Our ability to overcome the markets and pursue our objectives would not be possible without Comcast's support. The time has also enabled us to enhance our business by pursuing a vertical strategy with new lines of business and new revenue sources, all of which are generally helpful to our efforts, and enhance our ability to execute on our plan. For example we are nearing completion of internalizing our mobile sports production function, which will create further efficiencies, and includes newly booked third party production revenue.

Other commenters in this proceeding noted past differences with Comcast in expressing their support,⁵ and we acknowledge having had the same. But several independent programmers have expressed favorable experiences with Comcast. Indeed Comcast has also supported new, unlaunched independent programmers -- for example shortly after AC announced an agreement with Comcast, Black Television News Channel (BTNC) announced an agreement with Comcast.⁶ In our view Comcast has taken a leadership role among MVPDs in providing opportunities for independent programmers in a challenging economic environment.

Comcast is a multiplatform content competitor -- in the linear cable regional sports market, and in the online sports video space.⁷ Most cable content companies have online/multiplatform strategies, and AC plans a similar offering. We express no position here regarding the Commission's inquiry on Title II reclassification or the need for industry-wide network neutrality regulations. But with respect to the proposed transaction, Comcast's support of our efforts as an independent content provider for cable and broadband distribution is noted.

Independent programmers today face serious challenges. These include a challenging economic environment; challenges in securing distribution and content rights; and competition generally from much larger companies. Congress mandated protections for independent programmers under the 1992 Cable Act. In initial comments, several programmers expressed concern about lack of enforcement of these rules.⁸ HDNet noted that the Commission "has failed to comply with Congress' mandate in the eighteen

⁴ For example 6 years for REELZCHANNEL (see <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020443051>); and 7 years for SiTV (see <http://www.sitv.com/about-us> and <http://www.linkedin.com/companies/si-tv>).

⁵ See NFL filing dated 6/21/2010 in MB 10-56 at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020510556>.

⁶ See BTNC press release dated 4/14/ 2008 at <http://www.btnc.tv/node/2> announcing a carriage agreement with Comcast. BTNC is an independent programmer scheduled to launch in 2011 -- see <http://www.btnc.tv/>.

⁷ For example Comcast offers live streaming of NBA games: see <http://www.csnchicago.com/03/08/10/Comcast-SportsNet-and-Bulls-Announce-Fre/landing.html?blockID=193352&feedID=4321>.

⁸ See HDNet, LLC filing in MB 10-56 dated 06/17/10 - <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020505964>

years since the passage of the Cable Act.”⁹ Similarly NFL noted “the Commission’s processes for resolving program carriage disputes are unduly slow” and that “they have proven to be ineffective...”¹⁰

Lack of enforcement of existing FCC rules essentially vitiates protections independent programmers might otherwise have,¹¹ and increases the business challenges already faced by independent programmers. Historically proceedings relating to independent programmers have taken between 1 and 3 years. Contrast this with the time it took the Commission to generate a Notice of Inquiry on reclassification of broadband (GN 10-127): just 72 days following the D.C. Circuit’s decision on April 6, 2010; with a comment cycle of 30 days and a reply comment cycle of 30 days.¹² The message this sends is that the Commission moves quickly on matters it deems are important. The Commission can affirm its commitment to diversity and independent programming by enforcing existing rules in a timely manner as mandated by Congress. Going forward, lack of FCC enforcement of industry-wide rules would be a greater challenge to the prospects of independent programmers than a more vertically integrated Comcast. Indeed lack of FCC enforcement of existing rules should not be a reason for imposition of conditions in the present transaction, as this would constitute an improper shift of responsibility.

Finally, we agree with HDNet and NFL that program carriage issues are best addressed on an industry-wide basis. Except with respect to the enforcement issues raised above, we express no opinion here regarding any specific proposals for modification of the program carriage rules, as that is the subject of a separate, industry-wide proceeding. But whatever the Commission decides, we caution that government-mandated segmentation of independent programming on the basis of genre, life stage, or target demographic could become precedential and exclusionary outside of the merger context. Government should exercise restraint before picking which product will ultimately be more disruptive, more meritorious, or more important for consumers, diversity and competition. Doing otherwise could raise questions about government’s role in content, and trigger unintended precedent for other platforms (e.g. broadband and wireless) particularly as they converge.

Thank you for your consideration of these matters.

Sincerely,



Doron Gorshein
CEO
America Channel

⁹ Id. “To HDNet’s knowledge, there has never been an expedited review of a programmer complaint; the few complaints by programmers that have been brought have dragged out for years before reaching a resolution.” <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020505964>.

¹⁰ NFL filing dated 6/21/2010 in MB 10-56.

¹¹ See testimony of Andrew Jay Schwartzmann before Committee on the Judiciary, U.S. House of Representatives, February 25, 2010: “complaints and appeals often have been stalled at the FCC for months and years.” <http://judiciary.house.gov/hearings/pdf/Schwartzman100225.pdf>. See also statement of Commissioner McDowell in MB 05-192, that “it has become clear to me... that the Commission’s regulations governing program carriage agreements and program access by MVPDs for years have not been enforced in the expeditious manner contemplated by Congress and our own rules.... Why? Because the FCC has not been doing its job.... Competition, in this quickly evolving market, should not be held back by an indolent bureaucracy’s failure to obey simple Congressional mandates.” http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-105A6.pdf.

¹² See In the Matter of Framework for Broadband Internet Service, GN Docket 10-127 adopted June 17, 2010, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-114A1.pdf.