

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

In the Matter of	)	
	)	
Applications for Consent to the	)	MB Docket No. 10-56
Transfer of Control of Licenses	)	
	)	
General Electric Company,	)	
Transferor,	)	
	)	
To	)	
	)	
Comcast Corporation,	)	
Transferee	)	

**REPLY COMMENTS OF THE  
NBC TELEVISION AFFILIATES**

The present proceeding will determine the future of the NBC television network and NBC’s owned and operated stations (the “O&Os”), which are closely tied to the continued strength of more than 200 local broadcast television stations throughout the nation that are affiliated with the NBC network, as well as the communities they serve. The NBC Television Affiliates (the “Association”), which represents these local NBC affiliated stations, supports the transaction, provided that the Commission imposes the transaction-specific conditions the Association has requested to address three core concerns – that Comcast would have the incentive and ability to (1) migrate sports content to its cable networks, (2) link network affiliation negotiations with retransmission consent negotiations, and (3) undermine affiliates’ presence in local markets through affiliate-bypass strategies.<sup>1</sup> Adopting the conditions we have

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<sup>1</sup> See NBC Television Affiliates Comments, Appendix A (June 21, 2001). The language of these requested conditions, which comes from a private agreement reached by Comcast and the Association, was carefully crafted to fairly accommodate the interests of the public, the affiliates, Comcast, and the network. See Letter of Comcast Corporation and NBC Universal, Inc. to Federal Communications Commission (filed Aug. 6, 2010) (“August 6, (continued…)”)

requested will address concerns about the impact of the transaction on the network/affiliate partnership and the benefits it has long delivered to the public – namely, a free and universally available package of local and national journalism, weather, sports, emergency information, and other programming and services that connect local viewers to one another and the country. So long as the FCC’s approval of the transaction is subject to these three requested conditions (and neither Comcast nor any other party has opposed this request for conditions<sup>2</sup>), the Association is optimistic that the transaction will preserve a strong network/affiliate partnership and enhance the public benefits produced by free, over-the-air television.

**I. WITH OUR REQUESTED CONDITIONS IN PLACE, THE TRANSACTION HAS THE POTENTIAL TO REVITALIZE THE NBC TELEVISION NETWORK.**

Given Comcast’s success as a media enterprise, a Comcast-owned NBC has the potential to be a strong and responsible partner to the affiliates and their viewers, and the Association’s discussions with Comcast have bolstered our confidence in this result.<sup>3</sup> With the three principal risks addressed, the Association believes this transaction will further the ability of affiliates to distribute quality content on free, over-the-air television and enhance the community service they bring to the public. From the outset of this proceeding, Comcast has made a commitment to strengthen the network and restore it to its “former glory.”<sup>4</sup> On the day the joint

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2010 Comcast Letter”) (providing terms of private agreement). Unless otherwise noted, all citations to comments or petitions herein are to those filed in MB Docket No. 10-56.

<sup>2</sup> Comcast and NBCU have cited these commitments as a reason why the proposed transaction serves the public interest, and it has stated to the Commission that it “view[s] the conditions requested by [the NBC Television Affiliates] as consistent with that goal [of promoting the public interest].” Comcast Corporation, General Electric Company, and NBC Universal, Inc. Opposition to Petitions to Deny and Response to Comments (“Comcast Opposition”) at 2 (July 21, 2010). The public has a vital stake in these commitments that must not be relegated to a private agreement. Thus, we have asked the FCC to incorporate these provisions as FCC-imposed conditions to provide added force and effectiveness.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 19.

venture was announced, Comcast CEO Brian Roberts told investors that Comcast was committed to “trying to return [NBC] to the No. 1 position.”<sup>5</sup> In February 2010, Brian Roberts testified to Congress, “Comcast is asking for the opportunity to . . . [be] reliable stewards for the national treasures of NBC and NBC News.”<sup>6</sup> More recently, Comcast articulated its “commitment to continue to provide free over-the-air broadcasting and to preserve and enrich the valuable content that is currently broadcast on the NBC Television Network and the local NBC O&O broadcast stations.”<sup>7</sup>

Renewed support for a strong NBC network will strengthen the ability of local stations to better serve their communities. Not only will a strengthened network provide local affiliates with high quality national programming to distribute on a free, over-the air basis and with enhanced possibilities for innovation, but a strong network partner facilitates the ability of local affiliates to invest in high quality programming that meets the needs of their local communities. Comcast has specifically said that it will work to “invest in and grow the broadcast businesses it is acquiring . . . in partnership with the local affiliates.”<sup>8</sup> It also has articulated a “long-term commitment to free over-the-air broadcasting and increased investment in broadcast programming”<sup>9</sup> and has pledged to “preserve and enhance free over-the-air

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<sup>5</sup> Meg James, *Company Town, Comcast Gets Its Wings: Deal to Take Over NBC Universal Affirms Cable TV's Ascendant Role*, L.A. Times, Dec. 4, 2009.

<sup>6</sup> *Consumers, Competition, and Consolidation in the Video Broadband Market: Hearing Before the Subcomm. on Commc'ns, Tech., and the Internet, Senate Comm. on Commerce Sci., and Transp.*, 111th Cong. (Mar. 11, 2010) (Testimony of Brian Roberts).

<sup>7</sup> Comcast Opposition at 18.

<sup>8</sup> *Consumers Competition, and Consolidation in the Video and Broadband Market, Hearing Before the S. Comm. on Commerce, Science and Transportation, Senate Comm. on Commerce Sci., and Transp.*, 111th Cong. (Mar. 11, 2010) (Testimony of Brian Roberts).

<sup>9</sup> Comcast Opposition at 2.

broadcasting in a challenging economic environment.”<sup>10</sup> We are enthusiastic about working with Comcast to ensure that our network/affiliate partnership optimally serves our communities.

The Association appreciates Comcast’s dialogue with the Association and its efforts in reaching a private agreement to address a variety of NBC affiliate concerns about the transaction. Based on Comcast’s statements and its actions, we believe that Comcast’s current management is committed to strengthening the NBC network, the broadcasting medium, the network/affiliate relationship, and the ability of local NBC affiliates to serve their communities.

## **II. THE ASSOCIATION DISAGREES WITH CERTAIN ARGUMENTS ADVANCED BY OPPONENTS OF THE TRANSACTION OR BELIEVES THEY WILL BE ADDRESSED ADEQUATELY BY OUR REQUESTED CONDITIONS.**

### **A. Appropriate Safeguards Would Address Concerns About The Quality of Content Broadcast Over-The-Air.**

Some commenters have expressed skepticism about Comcast’s commitment to free over-the-air television. In their comments, Free Press and the Media Access Project criticize Comcast’s stated voluntary commitment to invest and expand free over-the-air programming as “no doubt designed to assuage the very legitimate concerns voiced by NBC affiliates and policymakers that Comcast will migrate the most popular NBC broadcast content behind a pay wall.”<sup>11</sup> They call the statement a “a vague promise to do no harm” that “should not be confused with a viable, legitimate public interest benefit.”<sup>12</sup> In particular, some commenters note concern that, “[b]y transferring some of NBCU’s national sporting events from NBC’s networks to

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<sup>10</sup> *Id.* at 6.

<sup>11</sup> *See* Consumer Federation of America, Consumers Union, Free Press, and Media Access Project Petition to Deny at 62 (June 21, 2010); *see also* Fair Access to Content & Telecommunications Coalition Comments at 30 (June 21, 2010) (criticizing Comcast’s voluntary commitment to free, over-the-air broadcasting).

<sup>12</sup> *Id.* at 30.

Versus, Comcast would form a national sports network that would rival ESPN.”<sup>13</sup> DIRECTV raises a separate concern that also relates to the continued quality of content distributed on the NBC network – that is, the possibility that Comcast could migrate popular sports programming to the Internet and limit its availability to Comcast subscribers.<sup>14</sup>

As we have emphasized to the FCC and to Comcast, we share the concern for keeping high quality sports content and other quality programming on the NBC network.<sup>15</sup> We believe that these concerns have been partially addressed by Comcast’s commitments to date and will be adequately addressed if the FCC adopts the conditions that the Association has requested and which Comcast has not opposed. We are encouraged by Comcast’s stated commitment to over-the-air television and to the retention of high-value sports content on the NBC network. Comcast has articulated a “long-term commitment to free over-the-air broadcasting and increased investment in broadcast programming”<sup>16</sup> and pledged to “preserve and enhance free over-the-air broadcasting in a challenging economic environment.”<sup>17</sup> It has stated that it intends to “devote the attention and resources necessary to ensure that NBCU’s broadcasting businesses remain vibrant sources of news and entertainment programming for consumers.”<sup>18</sup>

Comcast has entered into an agreement with the Association that protects against certain harms to the public’s local broadcast service that could result from the transaction. These

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<sup>13</sup> Declaration of Hal J. Singer, at para. 175 (Attachment to Communications Workers of America Petition to Deny (June 21, 2010)).

<sup>14</sup> See DIRECTV, Inc. Comments at 28-29 (June 21, 2010).

<sup>15</sup> See also Letter from Congressman Rick Boucher, Chairman of the House Subcommittee on Communications, Technology, and the Internet, to Federal Communications Commission Chairman Julius Genachowski (Aug. 2, 2010) (“August 2, 2010 Boucher Letter”).

<sup>16</sup> Comcast Opposition at 2.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 20.

include a commitment to maintain the network “as a premier general entertainment programming service, including a mix of high-quality programming” and to “[d]evote sufficient resources to program development intended and designed to ensure that the Network’s program schedule remains competitive.”<sup>19</sup> These promises build on Comcast’s voluntary commitments “to continu[e] to provide free over-the-air television through [NBC’s] O&O broadcast stations and through broadcast affiliates across the nation.”<sup>20</sup>

With respect to sports, our agreement with Comcast includes a “major sporting events” provision intended to “maintain the public’s free, over-the-air access to Major Sporting Events.”<sup>21</sup> We are pleased that Comcast agreed to this provision, and the FCC has the opportunity to further protect the public interest by simply incorporating it as a condition to FCC approval of the transaction.<sup>22</sup>

**B. The Transaction Has The Potential To Enhance The Ability Of Local Affiliates To Serve Local Communities.**

Several commenters express concern about the impact of the transaction on localism. In its recent submission, the Greenlining Institute suggests, without supporting evidence, that the merger “will drastically reduce the amount and quality of local news, political coverage and community responsive programming” and otherwise harm localism.<sup>23</sup> The

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<sup>19</sup> August 6, 2010 Comcast Letter.

<sup>20</sup> Comcast Corporation, General Electric Company, and NBC Universal, Inc. Applications and Public Interest Statement at 40 (filed Jan. 28, 2010) (hereinafter, “Application”). The Application states that these commitments should be included in any Commission order granting the application and “would become binding on the parties upon completion of the transaction.” *Id.* at 38.

<sup>21</sup> August 6, 2010 Comcast Letter.

<sup>22</sup> See NBC Television Affiliates Comments, Appendix A; see also August 2, 2010 Boucher Letter (supporting adoption of sports migration provision as necessary to the public interest).

<sup>23</sup> Greenlining Institute Response to Comments at 5 (July 21, 2010).

Greenlining Institute cites the Association's prior filing as noting the threat that the transaction could "erode the localized service that has been a cornerstone of the network-affiliate partnership since its inception."<sup>24</sup> The New Jersey Division of Rate Counsel raises related concerns about the impact of the transaction on the local advertising market, its effect on local broadcasters that rely on advertising revenues, and Comcast's commitment to local news programming.<sup>25</sup>

In response, the NBC Television Affiliates believe that the transaction likely would preserve and enhance localism interests, so long as the transaction is approved subject to the three conditions we urge the Commission to adopt. The Association is optimistic about Comcast's stated desire to preserve and further strengthen the NBC network. With a strong network partner, stations will have a continued and revitalized ability to invest in local journalism, timely and often life-saving emergency information, local sports, and weather and civic events coverage.

Comcast's agreement with the Association contains several provisions that will support the health of affiliates' localized service. Comcast has agreed to continue to provide non-duplication protections to affiliates; to vest decisions about network exclusivity in the NBC network, apart from Comcast's cable operations; and not to use its cable systems to transmit same-day linear feeds of network programming into the television markets of local affiliates.<sup>26</sup> These provisions promote localism by preserving the localized nature of broadcast television service and the ability of affiliates to deliver a unique package of local and national news and

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<sup>24</sup> *Id.* at 5 (quoting NBC Television Affiliates Comments).

<sup>25</sup> New Jersey Division of Rate Counsel Reply Comments at 33-35 (July 21, 2010).

<sup>26</sup> August 6, 2010 Comcast Letter.

other services tailored to the tastes and needs of their communities.<sup>27</sup> All three conditions that the Association seeks will strengthen affiliates' ability to invest in local newsrooms and other programming that meets local needs. Further, Comcast's commitment to localism will be promoted by its ownership of both the NBC television network and NBC's ten O&Os in major television markets around the country. The O&Os give Comcast a direct stake in the network/affiliate partnership and the unique local/national mix of programming that it provides. The Association believes that these factors – ownership of the O&Os, Comcast's actions and commitments to date, and grant of the Association's requested conditions – provide assurances that the transaction will enhance the local service that NBC affiliates are able to provide to their communities.

**C. Comcast's Stake In The O&Os Promotes, Rather Than Threatens, The Public Interest.**

The Association supports Comcast's ownership of the ten NBC O&Os because it will buoy Comcast's stake in over-the-air television and the quality of the service that it will bring to the public. Comcast's control of local NBC television stations in major markets such as Chicago, New York, Washington, Philadelphia, Miami, Los Angeles, and San Francisco will provide positive incentives for continued support of the free, over-the-air network/affiliate model and local television. In contrast, we believe that divestiture of any of these stations would weaken Comcast's stake in over-the-air television and significantly undercut the goal of localism.

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<sup>27</sup> Because of their importance, we have requested – and continue to request – that certain of these provisions be adopted as FCC conditions to grant of approval for the transaction. *See* NBC Television Affiliates Comments.

The Association believes that swift FCC action with respect to the transaction is in the public interest. If the FCC conditions that we have requested are in place, we support FCC approval of the transaction by year-end.<sup>28</sup> The uncertainties inevitably triggered by a long wait period would disrupt the market and undercut the ability of the NBC Network, the O&Os, and the affiliates to move forward with strengthened over-the-air service.

Respectfully submitted,



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<sup>28</sup> Congressman Rick Boucher, Chairman of the House Subcommittee on Communications, Technology and the Internet, has urged FCC action by December 1, 2010, and other Senators and Representatives have similarly urged resolution of the matter by the end of the year. *See* August 2, 2010 Boucher Letter.