

VIA ECFS

October 14, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, DC 20554

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, Written Ex Parte Presentation

Dear Ms. Dortch:

This letter responds to the claim of Free Press *et al.* that Applicants have violated the FCC's "greenmail" rules with respect to agreements between one or more of the Applicants and (1) the NBC Television Affiliates (the "NBC Affiliates"), (2) the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and the FBC Television Affiliates Association (the "Non-NBC Affiliates"), (3) the Independent Film and Television Alliance ("IFTA"), and (4) certain Hispanic Leadership Organizations ("HLOs")¹ (collectively, the "Agreements").² As demonstrated below, there is no basis to this claim. The rules do not apply to the Agreements, Applicants have fully disclosed the Agreements, and the Agreements clearly serve the public interest. Indeed, there is no reason for concern under the greenmail rules or otherwise, and the Commission should encourage agreements of this type. Nor is there any basis for the frivolous claim that the substantial public support for the transaction means that Applicants have entered into other agreements that they have not disclosed.³

The Greenmail Rules Do Not Apply to the Agreements. The greenmail rules address situations where a person (a) seeks to dismiss or withdraw a petition to deny or an informal objection,⁴ or (b) makes or receives payment "in exchange for" withdrawing a threat to file, or refraining from filing, a petition to deny or an informal objection.⁵ Free Press *et al.* allege violation of only the latter situation, addressed in Section 73.3589 of the Commission's Rules.⁶ In addition to prohibiting most such payments, this rule requires disclosure of an agreement and the filing of an accompanying affidavit where two elements – payment and exchange – are

¹ The HLO signatories are National Hispanic Leadership Agenda, the Hispanic Association on Corporate Responsibility, and the National Hispanic Media Coalition.

² See Reply to Opposition of Free Press, Media Access Project, Consumer Federation of America, and Consumers Union, at 60-61 (filed Aug. 19, 2010) ("Free Press Opposition"). The Free Press Opposition includes multiple claims related to the Agreements, including criticism of the circumstances surrounding their negotiation and allegations that Applicants failed to make required filings with the Commission. All of the claims flow from an initial misapplication and mischaracterization of the Commission's greenmail rules.

³ Free Press Opposition at 62.

⁴ 47 C.F.R. § 73.3588.

⁵ 47 C.F.R. § 73.3589.

⁶ Free Press Opposition at 60-61.

present relating to withdrawal of a threat to file a petition to deny or an informal objection.⁷ None of the four Agreements meets the two required elements under this rule. First, the agreements with the NBC Affiliates and the Non-NBC Affiliates clearly do not trigger the rule because neither agreement involves any payments; no further analysis is required with respect to these agreements. With respect to the Memorandum of Understanding with the HLOs (the “Hispanic MOU”) and the agreement with IFTA (“IFTA Agreement”), Applicants do not believe that any financial terms in these documents involve “payments” within the rule. However, the Commission need not address this question because Applicants did not enter into either the Hispanic MOU or the IFTA Agreement *in exchange for* any commitment on the part of the HLOs or IFTA regarding the withdrawal of a threat to file or refraining from filing a petition to deny or informal objection.⁸ Accordingly, none of the four Agreements falls within the scope of Section 73.3589, and Applicants thus are not subject to any greenmail filing requirements.

As the Agreements demonstrate, Applicants have engaged in constructive dialogue with interested parties, in most cases initiated by Applicants themselves early in the process, and consistent with the numerous unilateral public interest commitments offered when they announced the transaction. The Commission should welcome agreements that resolve issues, so long as they do not run afoul of the greenmail rules.⁹ Every one of these discussions has proceeded in a manner consistent with both the letter and the spirit of the Commission’s greenmail rules and the government’s interest in this transaction. Indeed, a specific request from a Member of Congress for Applicants and IFTA to engage in discussions encouraged the Applicants’ conversations with IFTA.¹⁰

Moreover, the agreements promote the public interest and key Commission goals, and thus they are distinctly different from the type of agreements covered by the greenmail rules. The *Report and Order* adopting the greenmail rules makes clear that the Commission adopted the rules out of concern that groups or individuals were submitting filings with the intention of extracting monetary payments, rather than for the proper purpose of identifying deficiencies in applications.¹¹ The rules do not prohibit, or even require the Commission to review, arrangements of the type discussed here – *i.e.*, agreements that serve the public interest by promoting free over-the-air broadcasting, fostering diversity, and offering opportunities for independent producers. For example, among other things, in the agreement with the NBC Affiliates, the Applicants agreed to maintain the NBC Television Network as a premier

⁷ See 47 C.F.R. § 73.3589(b). To the extent Free Press is interpreting the rule to require the filing of all written agreements even where they do not involve dismissal or withdrawal of a petition to deny or opposition, or a threat to file, *see* Free Press Opposition at 56, that interpretation is incorrect.

⁸ 47 C.F.R. § 73.3589(a)-(b).

⁹ In this connection, it should be noted that even agreements that involve payments may be permissible under the rules if found by the Commission to be in the public interest.

¹⁰ See *Competition in the Media and Entertainment Distribution Market*, Hearing Before the House Comm. on the Judiciary, Transcript (Unofficial) at 38 (Feb. 25, 2010) (suggestion by Representative Sheila Jackson-Lee).

¹¹ *Amendment of Sections 1.420 and 73.3584 of the Commission’s Rules Concerning Abuses of the Commission’s Processes*, Report and Order, 5 FCC Rcd 3911 (1990).

entertainment programming service and to devote sufficient resources to program development intended and designed to ensure that the Network's program schedule remains competitive with that of other networks.¹² In the agreement with the Non-NBC Affiliates, Comcast agreed that it will not discriminate with respect to retransmission consent negotiations with any television station affiliated with ABC, CBS, or Fox and that it will not link or engage in decision-making with NBCU with respect to such negotiations. In the Hispanic MOU, Applicants agreed to establish diversity advisory councils to assist in development of a strategic plan to address five diversity focus areas – corporate governance, employment/workforce recruitment and retention, procurement, programming, and philanthropy and community investment.¹³ Finally, in the IFTA Agreement, the Applicants have agreed to establish a number of opportunities for independent producers to promote diversity of content sources. Given the clear public benefit of these Agreements, as acknowledged by Free Press *et al.*,¹⁴ there is no basis for concern under the greenmail rule or otherwise.

Nevertheless, although the Agreements are not subject to the greenmail rules, Applicants already have filed copies of the Agreements in connection with the transaction in order to keep the FCC and all interested parties up to date regarding Applicants' efforts.¹⁵ Thus, there can be no claim of any failure to disclose, and both the Commission and interested parties have an opportunity to review the terms of the Agreements. Because the greenmail rules do not apply, Applicants have fully disclosed the Agreements, and the Agreements clearly benefit the public interest, the Commission should reject the claims of Free Press *et al.* The Commission also should recognize the attack by Free Press *et al.* on these Agreements for what it is – an attempt to undermine agreements that provide public interest benefits, the substance of which they support. Nevertheless, Applicants will submit whatever additional information or materials the Commission may request.

There is No Basis for Free Press's Frivolous Accusations of Failure to Disclose. Free Press *et al.*, without any evidence, argue that there is "strong reason to suspect that there are other agreements or arrangements" that have not been disclosed because there have been "many hundreds of expressions of support for the proposed transaction."¹⁶ It is true that many

¹² Applicants also agreed to continue to broadcast major sporting events on the NBC Television Network.

¹³ Comcast separately agreed to take a number of diversity-related actions in its letter to Rep. Bobby Rush of Illinois, a copy of which Comcast filed with the Commission in this docket.

¹⁴ See Free Press Opposition at 54-56, 60 (noting that the provisions of the Agreements "represent positive steps" and, ultimately, requesting that the Commission expressly condition the transaction on full compliance with the terms of the Agreement).

¹⁵ Free Press *et al.* repeatedly criticize Applicants for initially filing only summaries of the Agreements, arguing that 47 C.F.R. 73.3589 requires the applicants to submit "any written agreement" along with affidavits. See, e.g., Free Press Opposition at 56, 57 n.142. However, because the greenmail rules do not apply, at most Applicants' only obligation was to notify the Commission of the existence of the Agreements in light of their relevance to the transaction. Applicants did so in all cases, notifying the Commission not only of the existence of an agreement but of its key terms in connection with the transaction, and subsequently filed the entire text of each Agreement. The Applicants have clearly met any disclosure obligations under the Commission's rules.

¹⁶ Free Press Opposition at 62.

individuals and entities – including numerous public officials and community organizations – have filed in support of the transaction, and the Applicants are proud of this fact. This support is the byproduct of longstanding working relationships and partnerships with these organizations and leaders, attesting to the Applicants’ strong commitments to diversity and local communities. As explained above, Section 73.3589 applies only to agreements that (a) involve payments, and (b) are entered into in exchange for the withdrawal of a threat to file a petition to deny or informal objection or the refraining from filing a petition to deny or informal objection. The mere fact that numerous officials and community organizations have recognized the public interest benefits of the transaction in letters of support cannot be a basis for a greenmail claim. Allegations that any of these letters bears any connection to an agreement exchanging payment for the non-filing of a petition to deny or informal objection are unsubstantiated and frivolous, and they completely misconstrue the requirements of Section 73.3589.

Pointing to a statement in Applicants’ July 21 Opposition that Applicants have reached agreements with representatives of the Hispanic and African American communities, *Free Press et al.* imply that there must be an unfiled agreement between Applicants and the African American community.¹⁷ To the extent there is any confusion on this point, Applicants clarify that the diversity-related steps discussed with representatives of the African American community were laid out in the letter sent by David Cohen, Executive Vice President of Comcast, to Representative Bobby Rush of Illinois on July 2, 2010 (the “Rush Letter”), to which a summary of Applicants’ diversity-related commitments (the “Summary of Diversity Commitments”) was attached. The Rush Letter and the Summary of Diversity Commitments were filed with the Commission on July 12, 2010,¹⁸ and it was these documents to which Applicants’ statement in the July 21 Opposition on this point refer. Applicants have summarized all of the diversity-related commitments relating to the African American community in the Rush Letter and the Summary of Diversity Commitments. Thus, *Free Press et al.*’s allegations here are unfounded. Applicants continue to engage in constructive dialogue with interested parties representing diverse communities and will apprise the Commission promptly if any of those cooperative discussions result in agreements.

For the reasons discussed above, the Commission should dismiss the claims of *Free Press et al.* regarding the greenmail rules and should decline to legitimize the speculative and offensive allegations regarding Applicants’ constructive dialogue with interested parties and the support of numerous public officials and community organizations for this transaction.

¹⁷ *Id.* at 58, 62.

¹⁸ *See* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 12, 2010) (attaching letter from David L. Cohen, Executive Vice President, Comcast, to Hon. Bobby Rush, Congressman (D-IL) (“Rush Letter”). Some of the commitments set forth in the Rush Letter were set forth, albeit in more preliminary form, in a letter sent by Mr. Cohen to Representative Chaka Fattah on April 28, 2010. Mr. Cohen also reiterated Comcast’s diversity efforts in letters sent by Mr. Cohen to Representative Gregory W. Meeks on July 19, 2010 and to Representatives Michael M. Honda and Judy Chu on August 6, 2010.

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Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Michael H. Hammer
Michael H. Hammer
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000
Counsel for Comcast Corporation

/s/ David H. Solomon
David H. Solomon
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW
Washington, DC 20037
(202) 783-4141
Counsel for NBC Universal

cc: Jessica Almond
Jim Bird
Neil Dellar
John Flynn
Bill Freedman
Marcia Glauberman
William Lake
Vanessa Lemmé
Virginia Metallo
Joel Rabinovitz
Jennifer Tatel
Best Copy and Printing, Inc.