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

October 19, 2010

Via ECFS

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

Re: American Cable Association ("ACA") Ex Parte; *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:

ACA has previously documented its concerns about the horizontal and vertical competitive harms of the proposed combination of assets associated with the Comcast-NBCU transaction, the lack of adequate safeguards to protect consumers and competition, and the conditions ACA believes necessary to mitigate these harms in Comments filed June 21, 2010, Response to Comments filed July 21, 2010 and Reply filed August 19, 2010 in the above-referenced proceeding.[1] ACA attached to its Comments and Reply two separate economic studies by Northwestern University Professor William P. Rogerson documenting the horizontal and vertical harms that will flow from the transaction.[2] The economic theory of horizontal harm Professor Rogerson outlined in Rogerson I and II shows that a sufficient condition for combined ownership of two video programming networks to receive higher programming carriage fees from a multichannel video programming distributor ("MVPD") is that the networks be partial substitutes for one another in the sense that that the value of one of the networks to an MVPD is lower conditional on it already carrying the other network.[3]

On October 18, 2010, Professor Rogerson participated in a telephone conference with FCC Chief Economist Jonathan B. Baker, Paul LaFontaine, Office of Strategic Policy, and Patrick

[1] *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses,* MB Docket No. 10-56, Comments of the American Cable Association (filed June 21, 2010) ("*ACA Comments*"); Response to Comments of the American Cable Association (filed July 21, 2010); Reply of the American Cable Association (filed Aug. 19, 2010) ("*ACA Reply*"). In addition, ACA's concerns are documented in ex parte letters filed in this docket on Aug. 27, 2010, Sept. 21, 2010, Sept. 22, 2010 and Oct. 12, 2010.
[2] *See ACA Comments*, Exhibit A, William P. Rogerson, "Economic Analysis of the Competitive Harms of the Proposed Comcast-NBCU Transaction" (Rogerson I); *ACA Reply*, Attachment A, William P. Rogerson, "A Further Economic Analysis of the Proposed Comcast-NBCU Transaction" (Rogerson II).
[3] *See* Rogerson I at 9-14; Rogerson II at 23-33.

DeGraba, Chief Economist, Wireless Telecommunications Bureau in which Professor Rogerson was asked to discuss an earlier paper written by Dr. Baker entitled, "Unilateral Competitive Effects Theories in Merger Analysis,"[4] and to comment on the relationship of the theory described therein to the theory of horizontal harm ACA has presented in this transaction review.

During the call, Professor Rogerson explained that in his opinion the two theories were very similar and both essentially made the same basic observation. That is, a sufficient condition for combined ownership of two networks to result in fee increases is that the networks be partial substitutes in the specific technical sense described in ACA's Comments and Reply, and Rogerson I and II. Rogerson I and II directly assume that this condition holds and explain that it is likely to hold because MPVD subscribers generally value increases in variety at a diminishing rate.[5] The main difference in *Unilateral Competitive Effects*, Professor Rogerson explained, is that it provides an alternate explanation of why the partial substitutes property might hold for such goods. Specifically, *Unilateral Competitive Effects* begins with a model in which two networks are not direct substitutes for one another. It then instead assumes that there is a common pool of other networks than can substitute for either of these two networks, and that the MVPD has strict preferences over the common pool of available substitutes. In this case the cost to the MVPD of losing one of the two networks is that it must replace it by the best available network in the common pool of substitutes. However, Professor Rogerson noted, the cost to the MVPD of losing a second network is that it must replace it by the next best available network in the common pool of substitutes. So long as the MVPD strictly prefers the best available network in the common pool of substitutes to the next best available network in the common pool of substitutes, the partial substitutes property will hold. Namely, the cost to the MVPD of losing one of the networks is higher conditional on already having lost the other network. Thus, Professor Rogerson explained, *Unilateral Competitive Effects* provides an alternate explanation for why the partial substitutes property described in Rogerson I and II may hold.

In addition, participants discussed the distinction between networks being partial substitutes at the MVPD level and networks being partial substitutes at the subscriber level. Professor Rogerson explained that ACA's argument that subscribers value programming variety at a diminishing rate supports the view that networks are substitutes at the subscriber level. The theory of economic harm described in Rogerson I and II requires that the networks be substitutes at the MVPD level. Professor Rogerson advanced the view that if networks are substitutes at the subscriber level, this would normally mean that they are also substitutes at the MVPD level. Professor Rogerson further noted that, to the best of his knowledge, none of the economic experts hired by the parties to the transaction had advanced any specific theory, argument or evidence to explain why this relationship would not hold.

[4] Jonathan B. Baker, "Unilateral Competitive Effects Theories in Merger Analysis," *Antitrust,* Volume 11, Spring 1997, 21-26 ("*Unilateral Competitive Effects*").
[5] *See ACA Comments* at 20; *ACA Reply* at 3, 7-10; Rogerson I at 4-5, 11-13; Rogerson II at 23-27.

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,

Barbara Esbin

Barbara S. Esbin

cc (*via email*): Jonathan B. Baker
Paul LaFontaine
Patrick DeGraba