ALLBRITTON COMMUNICATIONS

Jerald N. Fritz
Senior Vice President
Legal and Strategic Affairs
Tel: (703) 647-8747
Fax: (703) 647-8740
jfritz@allbrittontv.com

October 21, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Notice: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees,* MB Docket 10-56

Dear Ms. Dortch:

In compliance with Section 1.1206(b) of the Commission's rules, the undersigned submits this *ex parte* notice relating to the above-captioned proceeding.

On October 20, 2010, Frederick J. Ryan, Jr., President of Allbritton Communications Company, and the undersigned met with Commissioner Meredith Attwell Baker and Krista Witanowski, the Commissioner's Media Advisor, to discuss the proposed acquisition of NBC by Comcast.

In the meeting, we discussed the potentially grave implications for NewsChannel 8, Allbritton's locally-owned, independent cable news channel, if the acquisition is permitted to close absent conditions that would protect the existence of NewsChannel 8 and similarly situated channels in direct, horizontal competition with NBC's owned and operated stations. Although Comcast has indicated it will negotiate for the renewed carriage of NewsChannel 8, its instance on "packaging" the local cable news channel with broadcast retransmission consent for stations in far-off markets both ignores the independent value of NewsChannel 8 and, more fundamentally, exposes Comcast's true intention to devalue the news channel, rendering it financially non-viable.

The effect of such action now and importantly post-merger would inure directly to the benefit of the NBC owned and operated station, WRC-TV. With the extensive array of NBC's programming content combined with unprecedented control over distribution facilities, Comcast will have both the ability and incentive to eliminate NewsChannel 8 as a competitive threat. The result would be the loss of a separate, locally-owned, independent voice in the market. Absent a condition that either (1) forces divestiture of owned and operated stations in markets where

Comcast has greater than 30% control of the distribution or (2) requires Comcast to negotiate non-discriminatory carriage at marketplace rates using the current subscriber fee as a fair indication of those rates, there is no protection against the combined Comcast/WRC-TV entity.

We also noted that a post-merger Comcast/WRC-TV combined sales venture would represent roughly 40% of the existing local video advertising revenue in Washington, DC that would dwarf all video competitors combined. This dramatic imbalance would give the joint entity the substantial ability to engage in predatory pricing practices. Comcast has already offered its voluntary commitment to preserve competitive market conditions in the downstream pay television distribution market. There is no reason that local television stations – which serve their communities with quality programming every day – should not be offered the same protection.

The Commissioner was encouraged to consider the potential implications of non-conditioned approval and urged to delay the proceeding until such time as the implications are fully vetted. A summary of the points made at the meeting is attached and was provided to the Commissioner.

In accordance with the Commission's rules this *ex parte* notice is being filed electronically in the above-referenced docket. Please contact the undersigned should you have any questions regarding this matter.

Sincerely,

Jerald N. Fritz
Senior Vice President,
Legal and Strategic Affairs

Attachment

cc: Commissioner Meredith Attwell Baker
Ms. Krista Witanowski

WASHINGTON, DC MARKET

NEWS CHANNEL 8
MARYLAND · VIRGINIA · WASHINGTON, DC®

VS.

- Locally-Owned
- Only Remaining Independent – Non-Cable Owned
- Zoned Service – VA, MD, DC
- 18 Years of service
- Launched Before Retrans Regime
- Thousands of Hours of Hyper-local stories
- Local Candidate Debates
- Free Candidate Forums
- No Access to Satellite
- 13 Hours LIVE ORIGINAL Programming PER DAY
  - Daily Local Political Program
  - Daily Local Business Program
  - Daily Local Federal News Program
  - Daily Local Sports Program
  - Daily Local Community Talk

comcast.

NBC4 WASHINGTON, D.C.

NBC

cn8

CNBC

MSNBC

comcast SportsNet

TELEMUNDO

THE WEATHER CHANNEL

NEWS CHANNEL 8
MARYLAND · VIRGINIA · WASHINGTON, DC

NEWSCHANNEL 8 DOSSIER

- NewsChannel 8 has become ***the Premier*** local news channel in the entire country
- 13 HOURS of live – local – original programming **PER DAY**
- Hyper-local zoned service with separate feeds for DC/MD/VA
- Ratings equal or exceed CNN/FoxNews/Headline News/MSNBC/CNBC
- Over **12,000** unique LOCAL news packages since launch (average 650/year)
- Current term – over 112 special presentations (candidate debates, news specials, free forum for ALL candidates)
- **Only** daily local political talk show (*NewsTalk*)
- **Only** daily local business show (*Washington Business*)
- **Only** daily local Federal news program (*Federal News*)
- **Only** daily local sports program (*SportsTalk*)
- **Only** daily local community talk show (*Let's Talk Live*) with over **2,500** local guests in just the last 18 months
- Numerous specialty programs (*Merrifield Garden*, *Goss' Garage*, *Entertainment Forecast*, etc.)
- Current term – over **5,000** local guests on *NewsTalk* alone (including entire DC/MD/VA Congressional delegation numerous times, Senators, Governors, County Council executives, Mayors, *etc.*)
- Cooperative programming with premiers local all-news radio station (WTOP) on *Ask the Mayor, Ask the Governor, Ask the Police Chief* programs
- Imminent expansion of programming with **TBD launch**
  - Major resource enhancement (financial and people)
  - Multiple hyper-local multimedia reporters
  - Extensive blogger network (over 100) to provide reporting
  - Significant technical enhancements - field and studio including high def

Whatever other concerns that may be raised relating to the anticompetitive effects of Comcast's acquisition of NBC, the Washington, DC market is the "poster child" of ***real harm*** that is not only potentially but historically and currently on display. Further enhancing that anticompetitive combination threatens the very existence of horizontal competitors.

Allbritton Communications Company provides original television programming to the Washington DC market on two channels: WJLA-TV (ABC), and NewsChannel 8 (24-hour local cable news). Both are dependent on cable carriage for survival and could be at risk if the merger is approved. Although Comcast has accepted conditions that temporarily protect the local broadcast station from loss of carriage in favor of the local owned and operated station (WRC-TV), conspicuously ***NOT*** addressed in those conditions is anything to protect local/regional non-broadcast program competitors like NewsChannel 8. It is dubious whether ***any*** conditions could be crafted to adequately protect NewsChannel 8 or the financial stability of the advertising-supported broadcast station.

NewsChannel 8

Allbritton launched NewsChannel 8 in 1992 as the first, independent, cable, all-local news channel in the country. In combination with WJLA, NewsChannel 8 produces an average of approximately ***18 hours*** of local, live programming each day. Of that amount, fully ***13 hours*** are produced for NewsChannel 8. That

compares to the average network-affiliated station in the country, which provides about 3½ - 4 hours per day of live, local programming. In its 18+ years of telecasting, NewsChannel 8 has become a mainstay of local news and public affairs content in the Washington market. The service initially was carried by nine local cable operators pursuant to ten-year affiliation agreements. Through dramatic consolidation in cable system ownership, those original systems are now controlled by only two MSOs: Comcast and Cox. Cox has only Fairfax County; Comcast essentially controls the rest of the cable market.[1] In order to get the service launched, the MSOs required that it be a cable-only service – denied to satellite and other distributors. It was the price of admission and NewsChannel 8 acceded to the monopoly demand. No DISH or DirecTV customer may receive NewsChannel 8.

NewsChannel 8 struggled to stay alive for its initial five years of life, but did so with the financial assistance of WJLA. The initial ten-year term was renegotiated by Comcast in 2002 (after it acquired TCI and as it was acquiring AT&T and becoming the largest MSO in the nation). The renewal term expires on December 31, 2011 (16+ months from now).

Allbritton has attempted to renegotiate an extension of the NewsChannel 8 carriage agreement with Comcast. Comcast, although nominally willing to bargain, has insisted on "packaging" the carriage of NewsChannel 8 with retransmission consent to carry all the Allbritton-operated broadcast stations in the country. Why? Because, by combining the fees paid for all the stations, it can devalue the

[1] Cox has approximately 180,000 subscribers compared to Comcast's 853,000. Five tiny systems in the market represent approximately 86,000 subscribers combined – with Comcast enjoying a 10 to 1 size advantage. One "overbuilder," Verizon FiOS, serves 380,000 subscribers, but notably, Comcast serves as the exclusive sales agent for FiOS. Adding in all the satellite pay TV distribution and Comcast still controls an enormous 41% of all pay TV in the Washington market.

subscriber fee paid for NewsChannel 8 and spread it over unrelated broadcast stations in far-off markets.[2] The goal is to make NewsChannel 8 an unprofitable economic venture. Again, why? The answer is obvious. With NewsChannel 8 gone, all those local NewsChannel 8 viewers will need to go somewhere for their news. A mere refusal to carry NewsChannel 8 would inure directly to the benefit of WRC-TV in terms of local news viewers and advertisers. Comcast would have ***no incentive*** to carry Allbritton's cable news channel. Comcast could very well "repackage" the WRC-TV news product to create its own local news channel with Comcast's CN8 and easily eliminate the competitive threat of NewsChannel 8.[3] With ***no*** other substantive carriage alternative with the reach of Comcast, NewsChannel 8 would die an anticompetitive death.[4] **ABSENT A CONDITION THAT EITHER (1) FORCES DIVESTITURE OF OWNED AND OPERATED STATIONS IN MARKETS WHERE COMCAST HAS GREATER THAN 30% CONTROL OF THE DISTRIBUTION OR (2) REQUIRES COMCAST TO CARRY NEWSCHANNEL 8 AT MARKETPLACE RATES – USING THE CURRENT RATE AS A MARKETPLACE FLOOR – THERE IS *NO PROTECTION* AGAINST THE COMBINED COMCAST/WRC ENTITY. COMCAST'S GOAL TO ELIMINATE NEWSCHANNEL 8 AS A COMPETITIVE THREAT TO WRC-TV AND TO ELIMINATE THE NEWSCHANNEL 8 SUBSCRIBER FEE EXPENSE WILL HAVE BEEN SANCTIONED BY THE MERGER APPROVAL RIGHT IN THE SHADOW OF THE JUSTICE DEPARTMENT AND THE BACKYARD OF THE FCC.**

---

[2] Allbritton operates through related companies ABC Network affiliates in Harrisburg, PA, Lynchburg, VA, Charleston, SC, Birmingham, AL, Little Rock, AR and Tulsa, OK.

[3] There are virtually no remaining independent local cable news channels left in America except for NewsChannel 8. All the rest are MSO-owned and those in "partnership" with broadcast stations simply re-loop the broadcast stations' over-the-air news product… a far cry from the robust offerings of NewsChannel 8.

[4] Also lost could be Allbritton's DTV "Doug Hill /Accuweather" subchannel that is directly competitive to WRC's "Weather Now" subchannel.

And the result will be the LOSS of a Separate, Locally-Owned, Independent voice in the market. How can that possibly be in the Public Interest?

"Horizontal Competition" is defined as "the rivalry to gain customer preference among entities at the same level, such as competition among competing wholesalers or competing retailers." Despite the spin that this merger is simply a vertical combination with no effect on horizontal markets, the Commission need only flip on its local TV. Who directly competes with WRC-TV if not NewsChannel 8? And, if the Commission believes that this is unique to Washington, ask who could possibly ever launch a competitive local television news channel in any market where Comcast will own the dominant pipe to the home, the slew of programming channels and the NBC owned and operated station. It won't happen. And how can that be in the Public Interest?

Joint Sales

The Comcast/NBCU merger would create a gigantic sales venture that will encapsulate roughly ***forty percent*** of the existing local video advertising revenue in DC, a venture that will make it nearly impossible for the other nine major local ad sales forces to compete within the market. This horizontal behemoth would dwarf all competitors – and almost equal their share – ***combined!***

Comcast has *already* merged local ad sales forces with Verizon FiOS in Washington; the Comcast/FiOS sales entity is the current market leader with 19.4% of the local video advertising revenues in Washington. WRC-TV controls 19.1% of the market, putting the Comcast/WRC post-merger market share at nearly 40%.[5] Each of the nine other main entities left in the market would have, on average, about 6% of the advertising market share.

Post-merger, Comcast/WRC would have the capacity to provide joint advertising sales, marketing, and promotion combinations that WJLA, NewsChannel 8, and the other stations within DC would simply be unable to offer. Comcast itself has bragged about its potential to be an "advertising sales powerhouse serving every conceivable marketer need."[6]

Here's how it would likely happen: the WRC-TV sales force would be merged into Comcast "Spotlight" – the interconnect sales team. An account executive would

---

[5] Washington, DC already is considered a "moderately concentrated" market with an HHI of 1648. The Comcast/NBCU merger would bump the HHI 779 points to an astounding 2447. Transactions that increase the HHI by more than 100 points in concentrated markets raise antitrust concerns; this transaction would exceed the DOJ and FTC's presumptive limits nearly ***eight-fold!***

[6] *Comcast's Burke Touts One-Stop Shopping*, BROADCASTING & CABLE, Mar. 8, 2010, at 4. It is quite telling to note that, in its agreement with ABC/CBS/Fox Affiliate Associations filed with the FCC, no conditions were included limiting Comcast's predatory joint sales activities.

call on an advertiser and say something like the following: "If you want to buy the NBC programming on WRC-TV, you need to also consider these 6 cable channels – and dedicate 60% of your TV budget to the buy." That, of course, leaves the rest of the competitors to scramble over the remnant dollars.

Comcast/WRC's proposed "synergies" are nothing more than tactics that will drive non-NBC stations out of the market. By offering local advertisers free or price discounted cross-promotions on WRC-TV, Comcast cable channels, Comcast/NBCU's online assets, and other advertising platforms, WJLA and other stations will be left out in the cold. The quality local news, weather and sports programming WJLA and other stations provide to the community is keenly dependent on local advertising revenue; the proposed merger arrangement and the colossal advertising force it stands to create will undoubtedly diminish these stations' revenues and their programming.

If past practice is any indication of predictive conduct, Comcast can be counted on to flex its sales muscle to the detriment of its customers. When NewsChannel 8 was launched, for example, the cable MSOs extracted two-minutes per hour of time on NewsChannel 8 to be sold by the cable systems. A NewsChannel 8 account executive would knock on an advertiser's door to sell a spot for $200. The cable account executive would follow up the next day and offer a package of 4-5 cable channels and "throw in NewsChannel 8 for free," cutting the legs out of the single-channel NewsChannel 8 offering. We can predict the exact same tactics from the predatory Comcast/WRC force.

Without a commitment to preserve competitive conditions for the local television market, advertisers may ultimately face fewer outlets and/or higher prices for local video advertising, and consumers will be faced with lower quality and/or fewer choices in television programming. Comcast has *already* offered its *voluntary* commitment to preserve competitive market conditions in the downstream MVPD distribution market. There is no reason that local television stations – which serve their communities with quality programming every day – should not be offered the same protection.