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October 21, 2010

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ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte*, MB Docket No. 10-56

Dear Ms. Dortch:

Please be advised that on October 21, 2010, Jill Canfield of the National Telecommunications Cooperative Association (NTCA), Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Eric Keber of the Western Telecommunications Alliance (WTA), and Mark Ellison of Patton Boggs LLP representing the National Rural Telecommunications Cooperative (NRTC) and the FACT coalition (described below), met with Mr. Joshua Cinelli, Media Advisor to Commissioner Michael J. Copps, with regard to the above referenced proceeding.

OPASTCO, NRTC and the Rural Independent Competitive Alliance (RICA) have filed Comments and Replies in the above referenced Docket as the Fair Access to Content and Telecommunications coalition or "FACT." Joining with FACT in the Reply Comments were NTCA and the Western Telecommunications Alliance. The parties represented at the meeting are referred to herein as the "Coalition" for purposes of this *Ex Parte*.

The Coalition presented concerns held by rural telecommunications companies stemming from the proposed transaction being considered by the Commission in this Docket and presented eight recommended conditions to be placed on the transaction in the Docket. The Coalition also responded to questions raised by the Commission staff concerning the rural MVPD marketplace and online video.

The Coalition discussed the nature of the businesses of rural telephone companies and their video operations, competition – both as MVPDs and as broadband providers of video –

and content licensing arrangements and concerns. The Coalition discussed video licensing arrangements for rural telephone companies, including the tying (bundling) of multiple channels of video channels and broadband or online video content, and the challenges and opportunities faced by rural telephone companies.

The Coalition provided a two-page leave-behind document pertaining to these issues and the recommended conditions, a copy of which is included with this filing.

Please direct any questions regarding this matter to the undersigned.

Respectfully,

Mark C. Ellison
Counsel for FACT & NRTC
And acting on behalf of NTCA and WTA

<u>Impact of Comcast/NBC Universal (NBCU) Merger</u>
<u>Presented by Fair Access to Content & Telecommunications Coalition (FACT);[1]</u>
<u>The National Telecommunications Cooperative (NTCA); and</u>
<u>The Western Telecommunications Alliance (WTA)</u>

- FACT, NTCA and WTA represent telecommunications providers that **offer voice, video, and broadband services in rural America**. These providers: (1) purchase programming content from Comcast and NBCU; and (2) compete with Comcast as video and broadband distributors.

- Absent conditions, the Merger will **raise video prices for rural consumers**.

    - Programmers, such as NBC Universal, frequently require rural providers to carry undesired channels they offer in order to obtain desired channels and to carry them on their most widely distributed tier. Telco video providers *must* offer USA, the top-rated cable channel to compete, but they must either carry all NBCU channels or, alternatively, pay a punitive price for USA.

    - By requiring the purchase of unwanted channels, tying currently **adds about $15 a month** to the price of rural telco providers' expanded-basic video package. Additionally, it impedes inclusion of programming of interest to rural consumers, such as RFD-TV or Blue Highways TV, in their expanded-basic package.

    - If the Merger is allowed, the company will have interest in 54 cable television channels to bundle, thus giving it **additional leverage to increase rural providers' costs through tying**. And because Comcast competes against rural providers in the MVPD market, it will also have a strong incentive to utilize that leverage to drive up rural providers' programming costs and prices.

    - In markets where Comcast/NBCU owns the NBC broadcast affiliate and/or the regional sports network, there will be a strong incentive to extract **higher fees** from competing video providers. This will further harm rural providers, which already pay much more for broadcast and RSNs as do incumbent MVPDs.

- Absent conditions, the Merger **will raise broadband prices for rural consumers**.

    - Companies are beginning to engage in "broadband tying." This is a practice where cable programmers **require MVPDs to purchase online content as a condition of purchasing cable programming**.

    - Rural providers are charged a per-broadband subscriber fee for this online content, even for broadband subscribers who are not cable customers. This fee **raises the prices for broadband services and impedes telco video competition.**

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[1] FACT is a coalition of three non-profit organizations: the National Rural Telecommunications Cooperative (NRTC); the Rural Independent Competitive Alliance (RICA); and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO).

- If the Comcast/NBC Universal is approved, Comcast will have ownership in 32 online digital properties as well as all of its cable and broadcast video. Therefore, the company **will have a greater ability to raise rural providers' costs by tying online content to traditional programming rights**. It will also have the incentive to do so since Comcast competes against rural providers in the broadband market.

- Online content leverage vis-à-vis other controlled content is evidenced in the recent Fox–Cablevision retrans consent conflict; Hulu (owned in part by Fox, NBCU, and Disney) blocked access to Fox content for Cablevision broadband subscribers.

FACT, NTCA, and WTA submit that the following **conditions** on the Merger are essential:

1. A requirement, separate and apart from the Commission's existing program access rules, that the merged entity (Venture) license all of its content, including broadcast, linear cable, VOD, PPV and online content, on fair and non-discriminatory licensing terms; in no event less favorable than the terms on which Comcast's own cable systems license such content.

2. A requirement that all applicable Access Rules apply to all Comcast – NBCU owned channels both retroactively and prospectively (i.e., contracts signed pre- and post-Merger).

3. A requirement that the NBC and Telemundo broadcast networks grant retransmission consent rights on a "most favored nation" basis to all MVPDs, and a prohibition against the tying of broadcast content to any other video programming offered by the Venture .

4. A requirement for Comcast to divest itself of ownership of iN DEMAND and CMC or, alternatively, that Comcast be prohibited from tying content offered on iN DEMAND (e.g., MLB, NHL, and Venture-owned studios' films) and/or CMC as a condition of licensing, either by contract requirement or pricing penalties.

5. A prohibition against the Venture from engaging in the forced tying of multiple channels, including a prohibition against forced tying via pricing differentials, as a condition to acquiring any programming offered by the Venture. Furthermore, a prohibition against the Venture from dictating, either explicitly or through punitive pricing, the channel placement of any Venture content (such as requiring placement on a specific tier of service) on an MVPD system.

6. A prohibition against Comcast and the Venture imposing conditions or requirements on any MVPD or broadband providers that limits the ability to offer online content in any market.

7. A prohibition against the Venture from compelling MVPDs or broadband providers to carry and pay for any online content as a condition of carriage for the licensing of any other Comcast /NBCU content.

8. Restrictions on the migration of sports and other programming from the NBC broadcast network to any basic or premium cable or online channels controlled by the Venture.