

October 25, 2010

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 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

Dear Ms. Dortch:

This letter responds to recent filings<sup>1</sup> that speciously attempt to link the News Corporation/Cablevision retransmission consent dispute to the Commission's review of the transaction proposed by Comcast Corporation ("Comcast"), General Electric Company, and NBC Universal, Inc. ("NBCU") (collectively, "Applicants").

These recent filings are relevant only to the extent they reveal that certain of the transaction's opponents apparently believe that every dispute that arises anywhere in the video programming industry – even between two unrelated third parties – is somehow germane to the proposed transaction. With their ripped-from-the-headlines form of advocacy, these commenters would have the Commission abandon its long-standing policy of addressing only transaction-specific issues in transaction reviews, and addressing industry-wide issues in industry-wide proceedings.<sup>2</sup> Their

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<sup>1</sup> See Letter from Susan Eid, Senior Vice President, Government Affairs, DirecTV; Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, Dish Network; and Ross J. Lieberman, Vice President of Government Affairs, American Cable Association, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Oct. 20, 2010); Letter from Coriell Wright, Policy Counsel, Free Press, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Oct. 20, 2010); Dish Network, Ex Parte Presentation, MB Docket No. 10-56 (Oct. 22, 2010); see also Letter from Harold Feld, Legal Director, Public Knowledge, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Oct. 21, 2010) ("Public Knowledge Letter").

<sup>2</sup> See *Application of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) at 35 & n.65 (filed Jan. 28, 2010) ("Public Interest Statement"); Comcast Corporation, General Electric Company, NBC Universal, Inc., Opposition to

approach is more akin to an application of chaos theory than to a fact-based and data-driven assessment of the record. By these commenters' logic, were China and Russia to be engaged in a trade war, the right response would be for the World Trade Organization to impose sanctions on Brazil. This incoherent effort is simply the latest – and daily – attempt to distract the Commission from the substantial record evidence of transaction-specific benefits and absence of credible evidence of transaction-specific harms that, together, compel the transaction's expeditious approval.<sup>3</sup>

As Applicants have demonstrated with extensive economic evidence, it would be unprofitable for the combined entity to engage in a retransmission foreclosure strategy.<sup>4</sup> Moreover, the risk of damage to the NBC Television Network and the structure of the joint venture further reduce the likelihood of retransmission consent foreclosure.<sup>5</sup> No opponent has credibly challenged these conclusions. Moreover, Applicants have made several commitments – beginning on the day the transaction was announced,<sup>6</sup> and in subsequent agreements with industry stakeholders<sup>7</sup> – that provide further safeguards against competitive harms in retransmission consent negotiations.

It would be especially inappropriate and unjust to lay the responsibility for other retransmission consent disputes in the industry at Applicants' doorstep. Although video programming negotiations can be extremely complicated and at times contentious, neither Comcast (in its negotiations with

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Petitions to Deny and Response to Comments, MB Docket No. 10-56, at 9-16 (July 21, 2010) (“Opposition and Response”).

<sup>3</sup> In its recent letter, Public Knowledge also rehashes a stale and meritless allegation unrelated to this transaction. Citing the *Adelphia Order* in reference to a claim involving PBS Kids Sprout (“Sprout”) and RCN, Public Knowledge baldly asserts that “Comcast has used its control of content and new distribution technologies to disadvantage direct competitors.” Public Knowledge Letter at 2 n.8. That is false. As the Commission described in the very section of the *Adelphia Order* that Public Knowledge cites, Sprout and Comcast rebutted that allegation. See *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006) ¶ 167 & n.549 (noting Sprout’s explanation that “it chose Comcast’s VOD distributor, Comcast Media Center (“CMC”), as its exclusive distributor because CMC offered competitive rates for transmission and one-stop-shopping for a variety of technical services,” and not to disadvantage RCN, and that in any event aSprout “reached an agreement to distribute PBS Sprout programming with another VOD distributor, TVN”). Notably, the Commission rejected RCN’s proposed condition with respect to Sprout. See *id.* ¶ 168.

<sup>4</sup> See Mark Israel & Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction, MB Docket No. 10-56 (filed Mar. 5, 2010); Opposition and Response at 133-38.

<sup>5</sup> See Opposition and Response at 140-42.

<sup>6</sup> Comcast has voluntarily committed to import key components of the program access rules to retransmission consent negotiations. See Memorandum from David L. Cohen, Executive Vice President, Comcast Corporation, *Comcast/GE Announcement Regarding NBC Universal* (Dec. 3, 2009), available at <http://www.comcast.com/nbcutransaction/pdfs/PublicInterestCommitments.pdf>; Public Interest Statement at 121 & App. 8 (Commitment #15); see also Opposition and Response at 152-53.

<sup>7</sup> See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, and David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 6, 2010) (attaching the June 3, 2010 agreement among Comcast Corporation, NBC Universal, Inc., and the NBC Television Affiliates, at § 3); *id.* (attaching the June 21, 2010 agreement among Comcast, the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, and the FBC Television Affiliates Association, at §§ 2-6).

various broadcasters) nor NBCU (in its negotiations with various MVPDs) has had a retransmission consent negotiation reach an impasse that resulted in the removal of a retransmitted primary broadcast signal from a cable or satellite system.<sup>8</sup> As the recent commenters are well aware, there are pending industry-wide proceedings that address these issues.<sup>9</sup> These commenters have had – and continue to have – a full opportunity to be heard on these broader industry issues in the appropriate forums.

The existence of retransmission consent disputes involving non-vertically integrated third-party broadcasters and third-party MVPDs underscores the industry-wide and non-transaction specific nature of this issue. The video programming industry has experienced a recent change in business approach to retransmission consent, and as frequently happens with such changes, the transition may be rocky at times. But that is not an excuse or justification for imposing conditions on one of four major broadcast networks as part of the Commission's transaction-review process.

The recent filings also attempt to impugn Comcast and NBCU with respect to Hulu. While the facts of how Hulu came to be briefly caught up in the larger dispute between News Corp. and Cablevision are unclear,<sup>10</sup> that episode has nothing to do with the combined entity's future relationship with Hulu. Comcast stands by the assurances it already made on the record that "Comcast has no intention of changing NBCU's relationship with Hulu or NBCU's decision to provide certain of its content to Hulu."<sup>11</sup>

Should you have any questions about any of the foregoing, please do not hesitate to contact me.

Respectfully submitted,

Michael H. Hammer

Michael H. Hammer

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<sup>8</sup> See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, Counsel for General Electric Company, and David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 10-56 (June 2, 2010) (attaching Responses of Comcast Corporation and NBC Universal, Inc. to Questions Submitted by Several Members of the United States House of Representatives, at 30).

<sup>9</sup> See, e.g., *In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, Public Notice, MB Docket No. 10-71 (MB Mar. 19, 2010).

<sup>10</sup> Whatever happened there, it was corrected in a matter of hours. This is consistent with the increasingly common practice of broadband service providers and providers of Internet content, applications, and services to take rapid corrective action when a particular action draws widespread disapproval.

<sup>11</sup> See Letter from James L. Casserly, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Aug. 20, 2010).