

Pantelis Michalopoulos
202.429.6494
pmichalo@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

October 28, 2010

Via ELECTRONIC FILING

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

**Re: 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:

DISH Network L.L.C. (“DISH”), through counsel, submits the accompanying affidavit of Tamani Chio, DISH’s Senior Marketing Manager for Media, to supplement its prior submissions in this proceeding and provide additional or updated information in three areas:

- Comcast’s advertising practices and the risk of expanding these practices across new platforms;
- The competitiveness of online video and linear multi-channel programming in the eyes of Comcast itself; and
- A recent troubling example of the risks confronting multi-channel video programming distributors (“MVPD”s) from Comcast’s acquisition of an interest in Hulu.

Comcast has repeatedly refused to sell DISH advertising, and on other occasions has demanded unreasonable restrictions or an exorbitant rate. The acquisition of the NBC Universal programming properties would mean that Comcast’s restrictive practices of refusing to deal with competitors or of discriminatory dealing with them will only be extended to these properties, foreclosing or hampering the ability of DISH to advertise across a large number of key ways to reach audiences.

Marlene H. Dortch
October 28, 2010
Page 2

Second, in Mr. Chio's opinion, Comcast likewise restricts the access of online video providers to advertising on its platforms. This in turn suggests that Comcast views online video as sufficiently competitive with its linear multi-channel programming to restrict such practices.

Finally, DISH's submissions have been focused from the start on the fact that online video has become an essential component of every MVPD distributor's offering, and that the acquisition by Comcast of additional online video platforms threatens to deprive Comcast's competitors of this content altogether, or hamper them in their efforts to supply it. How real the risk is was demonstrated recently, when Fox attempted to prevent Cablevision subscribers from receiving Fox content over Hulu, an entity in which Fox and NBC Universal hold equal shares. Without appropriate conditions on the transaction, Comcast would be free, in a similar manner, to restrict NBC Universal content over Hulu to Comcast broadband subscribers, who also happen to subscribe to its competitor DISH or other MVPDs. The only difference would be that Comcast's willingness to do what Fox did will be matched by an even greater incentive to do so – the competitive advantage that Comcast would derive.

Please do not hesitate to contact us if you have any questions regarding this submission.

Sincerely,

/s/

Pantelis Michalopoulos
Christopher Bjornson
Counsel for DISH Network L.L.C.

Attachments

DECLARATION OF TAMANI CHIO

I, Tamani Chio, being over 18 years of age, swear and affirm as follows:

1. I make this declaration based upon personal knowledge, information, and belief, and in support of the confidential submission of DISH Network L.L.C. (“DISH”) and EchoStar Corporation (“EchoStar”) to the Federal Communications Commission (“FCC”) in connection with the FCC’s review of Comcast Corporation’s proposed purchase of a controlling interest in NBC Universal.

2. I am currently a Senior Marketing Manager, Media, for DISH, and have held this position since September 2009. In my role, I am responsible for, among other things, planning and placement of offline advertising. I have over twelve (12) years of experience in the marketing and advertisement industry, and prior to joining DISH, planned and placed national television advertisements for a variety of other clients.

3. The Responses of Comcast Corporation to the Federal Communications Commission Information and Discovery Request, MB Dkt 10-56 (June 11, 2010) (hereafter, the “Comcast Responses”) establish that, following the proposed merger between Comcast and NBC, Comcast and NBC will be able to offer consolidated advertising services across: (1) multiple platforms: i.e., cable television, broadcast television, online advertising; (2) multiple channels: including all of the Comcast/NBCU-controlled broadcast, and cable channels, as well as all other cable and broadcast channels, and (3) multiple geographies: i.e., local, regional, and national advertising.

4. Based upon my experience, Comcast generally reserves the right to sell advertising time for all of the channels it carries, and places various advertising restrictions on the platforms it controls.

5. I have regularly encountered resistance from Comcast and its wholly owned networks (hereafter, the "Comcast Networks") to DISH advertising buys and creative approvals. In many instances, the Comcast Networks have completely refused to sell ad inventory to DISH, and have flatly denied DISH the ability to run ads on their networks.

6. For example, Comcast recently notified DISH's advertising agency that it would not approve integrations on behalf of DISH for its Versus channel -- despite DISH's desire to explore sports integration opportunities with that channel. *See* Exhibit A, attached hereto.

7. In those instances where DISH has not been denied ad space outright by the Comcast Networks, DISH is often presented with unreasonable restrictions on the degree of advertising it can secure from them, and is quite frequently presented with an exorbitant ad rate.

8. Generally, the Comcast Networks do not accept advertising for any of DISH's competitive products unless the advertising is limited to general image advertising and does not contain any reference to DISH or feature any products or services of DISH that is competitive with Comcast, or is solely for a DISH product or service that Comcast does not then offer.

9. In addition, Comcast's regional sports networks and other regional channels generally do not accept day and date tune-in advertising for networks or programming they deem competitive (especially with games or news).

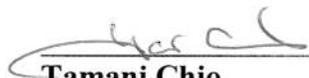
10. Comcast.net generally restricts advertising for any multichannel television services via any means of delivery, and does not accept advertising which promotes DISH.

Fancast.com also does not permit advertising that promotes the online viewing of video, unless that viewing occurs through portals owned by Comcast.

11. In my opinion, Comcast views online video as a competitor to its video distribution service, and generally prohibits those who offer online video, including DBS providers, from advertising their services on any of Comcast's platforms.

12. I am informed that News Corp. recently removed access to FOX television programming delivered *via* the web to all Cablevision subscribers in connection with the parties' ongoing contract negotiations. *See* Exhibit B, attached hereto. Such action causes a high degree of concern in relation to the Comcast and NBCU merger, as it casts doubt not only upon DISH's ability to place advertising on NBCU / Comcast content (whether on air or online), but also upon the ability of DISH subscribers to have access to NBCU content should Comcast unilaterally choose to limit content distribution only to those users who are Comcast subscribers -- in a move similar to the one executed by FOX just last week.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 16, 2010.



Tamani Chio
Senior Marketing Manager, Media
DISH Network L.L.C.

The foregoing was subscribed and sworn to before me on this 26th day of October 2010.

My commission expires: 01/30/2012



Notary Public
Witness my hand and official seal

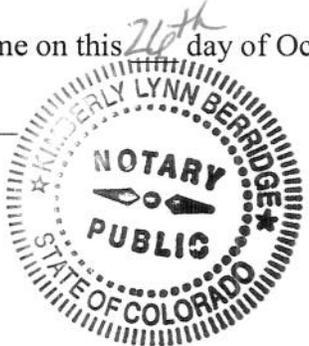


Exhibit A

Kitei, Brett

From: Gene Turner [GTurner@horizonmedia.com]
Sent: Tuesday, October 12, 2010 7:21 PM
To: Chio, Tamani
Subject: Dish TV Hurdles

Hi Tamani,

Thus far we have had one isolated case where we could not place media on behalf of Dish Network but did want to provide some specific feedback on that issue:

- When we investigated sports integration opportunities on Versus they would allow paid placements but did not approve integrations on behalf of Dish. Given that we focused on broadcast we would need to press further if there was an interest.

The team knows as we have any obstacles that pop-up we will get written detail of why not and be sure to inform you. Please let me know if you want us to explore versus further.

Thanks.

Gene

*Gene Turner
SVP, Managing Director of Response Strategy & Analytics
Horizon Media Inc /Direct Marketing Group
330 Madison Avenue
New York, NY 10022
Phone: 212-220-6290/ Fax: 917-591-2385*

 *One paper at a time. Think before you print.*

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

10/25/2010

Exhibit B



► BoomTown
A Nerd by Any Other Name Would Be as Geek-Bing
Gordon Wax Poetic at the SFund

Watch

WATCH THIS SPACE.

START HERE ►




► Digital Daily
Schmidt: Don't Like Google Street View Photographing Your House? Then Move.

All Things Digital.

News, analysis and opinion about the digital revolution.

Home | Kara Swisher | Walt Mossberg | Digital Daily | MediaMemo | Voices | Video | D Conferences ^{New!} | Topics | Jobs

Trending More Creepiness from Google's Schmidt



MediaMemo by Peter Kafka

About Peter

Peter Kafka has been covering media and technology since 1997, when he joined the staff of Forbes magazine. Most recently, he has been the managing editor of the tech and media Web site, Silicon Alley Insider. Read more »

Email Peter

Follow Peter on Twitter

Send an Anonymous Tip »

Ethics Statement

Here is a statement of my ethics and coverage policies. It is more than most of you want to know, but, in the age of suspicion of the media, I am laying it all out.

Read more »

JOB LISTINGS

VIEW ALL | POST A JOB

Director of DD Support Programs at **Bay Cove Human Services** (Boston MA)

Sr. Coordinator, Talent Acquisition & Retention at **NASCAR** (Charlotte NC)

WordPress Developer at **All Things Digital** (San Francisco, CA)

Digital Creative Director at **Meredith** (Des Moines IA)

VP Digital Marketing Technology at **Ms&I Worldwide** (Ann Arbor MI)

WEB 2.0 DEVELOPER at **CACI** (Washington)

News Corp. Shuts Off Hulu Access to Cablevision Customers—And Turns It Back On [UPDATED]

by Peter Kafka

Posted on October 16, 2010 at 2:18 PM PT

Like

Tweet

Share

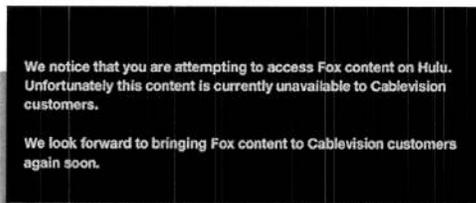
Print

UPDATE: That was fast. People familiar with the situation say that News Corp. is changing tactics and will turn on access to Fox.com and Fox programming on Hulu for Cablevision's customers. This could take a "few hours" to roll out across the Cablevision footprint, I'm told.

EARLIER:

One new twist in the Cablevision-News Corp. fight: News Corp. has cut off Cablevision subscribers' access to its shows on Hulu, the video site joint venture, as well as on its own Fox.com.

Here's a screenshot from Fortune.com columnist Seth Weintraub, taken this afternoon when he tried to watch a Fox show on the site, which is co-owned by News Corp., Disney's ABC and GE's NBC Universal.



News Corp.'s comment, via Fox Networks PR guy Scott Grogin, "Fox.com and Fox content on Hulu is unavailable to Cablevision subscribers."

And here's Hulu PR rep Elisa Schreiber:

Unfortunately, we were put in a position of needing to block Fox content on Hulu in order to remain neutral during contract negotiations between Fox and Cablevision. This only includes Fox content. All other Hulu content is accessible to Cablevision internet subscribers. We regret the impact on Cablevision customers and look forward to returning Fox content to those users as soon as possible.



CLICK HERE NOW
FREE 30-DAY TRIAL

MarketWatch, Inc. is not a registered investment advisor and does not provide any individualized advice. Future accuracy and profitable results cannot be guaranteed.

LATEST MEDIAMEMO VIDEOS



Now Playing: Web Analytics Startup Chartbeat Chases Adobe (06:28)



Web Analytics Startup Chartbeat Chases Adobe



Apps? Sure! But the Mobile Web Isn't Going Away



Will Twitter's New Look Lead to More Ad Dollars?



Google Music's Not Here Yet. But ExtensionFM Is

More Videos »

Latest MediaMemo Posts

LeBron James Gets a Jump on the Season With an Assist From the Internet October 25, 2010

A Win for Adobe: Condé Nast Will Use It Instead of Rolling Its Own Tablet Magazines October 25, 2010

Amazon Selling So Many Kindles it Can't Count Them October 25, 2010

MediaMemo Archives »

DC)

A sponsored service from
SimplyHired

This is an important escalation from News Corp (which owns this Web site) in its fight to extract more dollars from its cable partners

In the past, cable subscribers who couldn't get Fox shows during fee disputes were still able to watch some of them via Hulu. I know that News Corp has discussed shutting off access to the site during past fee fights, but as far as I know this is the first time they've actually done it.

It's also a logical move, at least from News Corp's perspective:

If it's trying to increase the pain felt by Cablevision and its subscribers, it may as well use every tool it has. And in the past, the Web has been used *against* programmers like Fox in these fights. Last year, when Time Warner Cable was fighting with News Corp., it prepared a video showing customers how to find their favorite shows on sites like Hulu.

But while the move is certain to rile up the digerati (astonished industry executive to me, over the phone, just now: "That is crazy!") I'm not sure how much real impact it will have in the fight.

News Corp's most valuable weapon is access to the Phillies-Giants playoff game tonight, and the New York Giants-Detroit Lions game tomorrow.

Both are scheduled to air on Fox, and many of Cablevision's three million subscribers who live in the New York area will holler loudly if they can't see them. But they wouldn't be able to see them on Hulu or Fox.com, anyway.

Instead, those sites are used to show reruns of Fox broadcast shows. That means Cablevision subs can't see Sunday night's episode of "The Simpsons" on Monday, but that's not the same kind of impact.

[View Comments](#)

Tagged Internet, MediaMemo, Peter Kafka, entertainment, media, politics, television, video, ABC, access, broadcast, Cablevision, comment, content, contract, customers, Detroit, Lions, Disney, Elisa Schreiber, escalation, Fox, GE, Giants, Hulu, Internet, joint, NBC Universal, NBC Universal, negotiations, New York, New York Giants, News Corp., partners, Phillies, PR, programmers, reruns, Scott Grogin, screenshot, Seth Weintraub, shows, subscribers, The Simpsons, Time Warner Cable, unavailable, video, site, Web site | permalink

Related From MediaMemo

Hulu Plus, Take Two: How's \$4.95 a Month?
October 21, 2010

Cablevision Complains (Very Quietly) About News Corp.'s Web Blackout
October 18, 2010

News Corp. Vs. Cablevision = Another Installment of "How to Cut Your Cord"
October 16, 2010

Related from All Things D

Dow Jones COO/CFO Daintith to Depart—Haipin Becomes CFO
September 27, 2010

Viral Video: WSJ and NYT Get Taiwan CGI Treatment—Including a Shark Fin for Rupe!
September 9, 2010

Former HP CEO Off News Corp.'s Board
August 31, 2010

POWERED BY **surphace**

We've launched a new commenting tool, Disqus. For the full story on all of its functionality, [click here](#). To begin commenting right away, you can log in below using Disqus or Facebook Connect—you can also log in using an existing AllThingsD account. [Learn more](#) about how Disqus collects and uses information in connection with the comments tool.

Like 1 person liked this.

Add New Comment

Market Watch
Get ahead of now.
Visit Now ▶

iPhone 4
Full Coverage

SPONSORED LINKS

Comcast Cable Internet
\$99/Mo For 12 Months. Comcast Triple Play. \$250 Back. Order Now!
www.ComcastOffers.com

Ashford GAA
Vote for INTERNET right here.
ashfordgaa.com

Property Virgins on HGTV
Tune in for All- New Episodes Every Weeknight 8/7c on HGTV
HGTV.com

Top-10 Internet Providers
We Have Ranked The Top-10 Internet Providers And Found The Best Deals
www.broadbandbuyer.com

MediaMemo Posts by Date

Choose a month... ▼

MediaMemo Posts by Category

Select category ▼

MediaMemo Posts by Tag

ABC ad ads Amazon AOL app cable CBS
Comcast Conde Nast deal Disney earnings
entertainment feature Fox GE Hulu investors
iPad iPhone iTunes Kindle layoffs
magazine MySpace NBC network News
Corp. newspapers New York
Times online platform revenue sales
sony start-up Time Inc Time Warner
TV U.S. Viacom Warner Music Group Web Web
site YouTube

[More MediaMemo Tags ▶](#)