EX PARTE OR LATE FILED

WILLKIE FARR & GALLAGHER LLP

MICHAEL H. HAMMER
202 303 1110
mhammer@willkie.com

1875 K Street, NW
Washington, DC 20006-1238
Tel: 202 303 1000
Fax: 202 303 2000

FILED/ACCEPTED

OCT 22 2010

Federal Communications Commission
Office of the Secretary

ORIGINAL

October 22, 2010

BY HAND DELIVERY

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
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Pursuant to the Protective Order[1] and the Second Protective Order[2] in the above-referenced proceeding, Comcast Corporation hereby submits two copies of the redacted version of an ex parte notice in response to Allbritton Communications Company that contains certain Confidential and Highly Confidential Information. Confidential and Highly Confidential versions are being filed simultaneously under separate cover.

Sincerely yours,

Michael H. Hammer
Counsel for Comcast Corporation

Enclosures

cc: Vanessa Lemmé

---

1 *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Protective Order, MB Docket No. 10-56, DA 10-370 (MB Mar. 4, 2010).

2 *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensee*, Second Protective Order, MB Docket No. 10-56, DA 10-371 (MB Mar. 4, 2010).

No. of Copies rec'd 0+1
List ABCDE

WILLKIE FARR & GALLAGHER LLP

MICHAEL H. HAMMER
202 303 1110
mhammer@willkie.com

FILED/ACCEPTED

OCT 22 2010

Federal Communications Commission
Office of the Secretary

1875 K Street, NW
Washington, DC 20006-1238
Tel: 202 303 1000
Fax: 202 303 2000

October 22, 2010

VIA HAND DELIVERY

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
REDACTED - FOR PUBLIC INSPECTION

Dear Ms. Dortch:

On October 21, 2010, the undersigned and Mia Hayes of Willkie Farr & Gallagher LLP, representing Comcast Corporation ("Comcast"), had a telephone call with Marcia Glauberman and Erin McGrath to discuss the effects of the proposed transaction among Comcast, NBC Universal, Inc. ("NBCU"), and General Electric Company (collectively, "Applicants") on local advertising and to refute allegations presented in recent weeks by the Allbritton Communications Company ("Allbritton").[1]

As discussed on the call and in Comcast's August 18 ex parte submission,[2] Allbritton's assertion that the proposed transaction would allow the combined entity to reduce competition in

---

[1] *See* Reply Comments of Allbritton Communications Company, MB Docket No. 10-56 (Aug. 19, 2010) ("Allbritton Reply Comments"); Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 17, 2010); Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 23, 2010); Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 27, 2010); Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Oct. 21, 2010) (collectively, "Allbritton Ex Partes").

[2] Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 4 (Aug. 18, 2010) ("Comcast August 18 Ex Parte").

REDACTED – FOR PUBLIC INSPECTION

the Washington, D.C. advertising market is wrong, and its conclusions are fundamentally flawed. First, Allbritton defines an artificially narrow advertising market that includes both broadcast and cable television but ignores competition from other media. Second, even in a narrowly defined video market, other broadcast stations are a much closer substitute for advertising with WRC-TV (the Washington, D.C. NBC owned and operated broadcast TV station) than is Comcast Spotlight (the advertising sales division of Comcast Cable). Finally, Comcast lacks the incentive and ability to foreclose NewsChannel 8 from any purported market, including a market for local television news advertising. Rather, the advertising synergies from the proposed transaction are a competitive benefit; notably, no advertiser or advertising agency has filed in opposition to the transaction, and several advertising agencies have filed in support of the transaction. For these reasons, Allbritton's conclusions should be given no weight by the Commission.

Comcast also responds to Allbritton's ex parte filing of October 20, which misapprehends the content of a recent Comcast filing in this proceeding.

Allbritton defines an artificial local Washington, D.C. video advertising market. Allbritton asserts that the transaction will result in the combined entity controlling close to 40 percent of the "local Washington, D.C. video advertising market."[3] This argument requires Allbritton to define broadcasting and cable as part of the same market but to ignore all other media – including Internet, radio, newspapers, mobile phones, billboards, yellow pages, direct mail, and other out-of-home advertising – that compete for advertising dollars with Comcast Spotlight and WRC-TV.[4] In an analysis that takes into account the broader marketplace of local advertising, the market shares of Comcast Spotlight and WRC-TV are much lower: Comcast Spotlight has a market share of only **[[**

---

[3] Allbritton Reply Comments at 14.

[4] In the Allbritton Ex Partes, Allbritton proffers a highly misleading graphical depiction of a lone NewsChannel 8 competing against Comcast and NBCU in the Washington, D.C. market. In fact, Allbritton controls not only NewsChannel 8, but also a major network-affiliated broadcast station, WJLA-TV, the most widely distributed political newspaper, Politico, and its online counterpart, Politico.com, numerous tip sheets, including Mike Allen's Politico Playbook, and a Washington, D.C. local news site, TBD.com. Allbritton's graphical depiction of the presence of Comcast and NBCU in the Washington, D.C. market is equally inaccurate. The Comcast Network and Comcast SportsNet Mid-Atlantic offer a mix of regional and local advertising, and Comcast Cable offers local advertising through Comcast Spotlight. WRC-TV also offers local advertising opportunities, but NBCU does not (and the combined entity will not) offer local advertising through the other properties Allbritton includes in the depiction. For example, the national NBC network does not offer local advertising. Nor do national cable networks CNBC and MSNBC. NBCU does not own or operate a Telemundo station in the Washington, D.C. market. Finally, NBCU does not control or manage The Weather Channel.

REDACTED – FOR PUBLIC INSPECTION

]][5] and WRC-TV has a market share of [[ ]].[6]

Allbritton also asserts that the level of concentration in its improperly-defined "market" will be "highly concentrated" as measured by the Herfindahl-Hirschman Index ("HHI"). Again, however, Allbritton's analysis fails because it is based on an unjustifiably narrow relevant market. When one accounts for even a portion of the revenue derived from the plethora of alternative local advertising platforms available in the Washington, D.C. DMA, it is evident that the local advertising market post-transaction will be unconcentrated. In an expert economic report submitted with the Applicants' July 21 Opposition to Petitions to Deny and Response to Comments, Drs. Gregory Rosston and Michael Topper performed such an illustrative calculation.[7] The HHI calculation in the Rosston/Topper Reply Report shows that by adding to the calculation local radio and newspaper advertising that compete with video advertising, the increase in HHI drops dramatically. If one adds other competitive advertising such as Internet and out-of-home advertising, the increase in HHI is further reduced.[8]

Finally, because national advertisers often use local advertising avails in larger DMAs like Washington, D.C. to supplement national advertising campaigns or aggregate local avails in multiple DMAs to substitute for national advertising campaigns, the Washington, D.C. local advertising sold by Comcast Spotlight and WRC-TV also competes with national television advertising sold by national cable and broadcast networks. National advertisers substitute network advertising with national spot advertising depending on relative prices and would respond to any attempted increase in spot prices in Washington, D.C. by decreasing their

---

5 *See* Gregory L. Rosston, & Michael D. Topper, the Proposed Comcast-NBCU Transaction: Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition, MB Docket No. 10-56, ¶ 72 and n.108 (July 21, 2010) ("Rosston/Topper Reply Report").

6 *See id.* ¶ 72 & n.107 (citing to BIA/Kelsey, *Media Ad View Market Scan* (2008) and National Association of Broadcasters, *The Television Industry: A Market-by-Market Review 2010*).

7 *See id.* Exhibit 13 (Source: BIA/Kelsey, *Media Ad View Market Scan* (2008) (Third Party Attachment #11); National Association of Broadcasters, *The Television Industry: A Market-by-Market Review 2010* (Third Party Attachment #12); Newspaper Association of America, *Annual Newspaper Ad Expenditures* (2008), *available at* http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx).

8 *See id.* ¶ 76 & Exhibit 13 (Source: BIA/Kelsey, *Media Ad View Market Scan* (2008) (Third Party Attachment #11); National Association of Broadcasters, *The Television Industry: A Market-by-Market Review 2010* (Third Party Attachment #12); Newspaper Association of America, *Annual Newspaper Ad Expenditures* (2008), *available at* http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx).

REDACTED – FOR PUBLIC INSPECTION

purchases of spot advertising. This provides an additional competitive constraint on the ad prices charged by Comcast Spotlight and WRC-TV in the Washington, D.C. DMA.[9]

Even in an artificially narrow video advertising market, Allbritton does not account for product differentiation and fails to acknowledge that cable advertising and broadcast advertising are not close substitutes. By failing to account for the differences between the advertising services provided by Comcast Spotlight and the advertising services provided by WRC-TV, Allbritton significantly overstates the competitive implications of the proposed transaction for advertisers in the Washington, D.C. market. Allbritton completely ignores important differences in targeting, inventory, reach, and demographics between the advertising sold by Comcast Spotlight and the advertising sold by WRC-TV and other broadcast TV stations. In particular, local-zoned advertising accounts for {{ }}[10] of Comcast Spotlight's advertising revenue generated in the Washington, D.C. DMA. WRC-TV and other broadcast stations do not sell such geographically targeted advertising. On the other hand, while WRC-TV and other broadcast stations have the ability to reach nearly all television households in the Washington, D.C. DMA, Comcast Spotlight reaches only {{ }}[11] of television households in the DMA, so advertisers trying to reach the entire DMA will not view Comcast Spotlight as a close substitute for WRC-TV or other broadcast stations. It is no surprise that the advertisers who purchase local-zoned advertising from Comcast Spotlight, typically small localized businesses, are different from the advertisers who purchase DMA-wide advertising from WRC-TV.[12]

Thus, in arguing that the proposed transaction will result in a highly concentrated local advertising market in Washington, D.C., Allbritton overlooks the key question for competition analysis: whether the advertising sold by Spotlight is one of the closest substitutes for advertisers that would buy from WRC-TV. Given the degree of differentiation between advertising services offered by Comcast Spotlight and WRC-TV, the answer to that question is "no"; the advertising sold by other broadcast stations in the Washington, D.C. DMA, including the Allbritton-owned local ABC station, WJLA-TV, and nine other non-NBCU-owned local full-power commercial broadcast stations, is a closer substitute for the advertising sold by WRC-TV than is advertising sold by Comcast. Indeed, the differences between cable and broadcast

---

[9] *Id.* ¶ 75 & n.116 (citing to statements by Frank Commerford, President, Platform Development & Commercial Operations, NBCU, and Pat Notley, Vice President of Sales, WRC-TV (July 9, 2010)).

[10] *Id.* at n.121 (Source: Comcast Spotlight).

[11] *Id.* Exhibit 15 (Source: Comcast Spotlight, {{ }} (Comcast Attachment #9); Media Business Corp., 'All Video by DMA,' 3rd Quarter 2009 (Third Party Attachment #13); Television Bureau of Advertising, 'Local Cable Reach Guide Nov. '09,' *available at* http://www.tvb.org/pdf/rcentrl/Local_Cable_Reach_Guide_DMA_Interconnect_UEs_Nov09.pdf).

[12] *See id.* ¶ 80.

REDACTED – FOR PUBLIC INSPECTION

advertising have led the Antitrust Division of the Department of Justice to maintain that there are a significant number of advertisers for which there is no close substitute for advertising on a broadcast station.[13]

Allbritton claims erroneously that the advertising synergies from the proposed transaction are anticompetitive – Comcast lacks the incentive and the ability to engage in a predation strategy against NewsChannel 8. Allbritton claims that the combined entity would be able to offer advertising services and cross-promotion discounts that other stations would not be able to offer, and that Allbritton's NewsChannel 8 (recently rebranded as TBD TV) and other independent programmers will be harmed as a result.[14] Even if this were true, such discounting would be good for customers. The antitrust laws are intended to protect the competitive process and not individual competitors, and the first order effect of offering discounted prices to advertisers is that those advertisers benefit.[15] In addition, given the number of competitors for advertising dollars, it is implausible that Allbritton will be driven out of the market or that competition will be harmed as a result of the combined entity offering discounted services. Nor is it plausible that that the combined entity would later recoup its losses by raising prices, because in doing so, it would risk losing advertisers to competitors. As Drs. Rosston and Topper explained in their Reply Report, "[r]ather than creating any anticompetitive effects, the ability to offer package deals and volume discounts is a competitive benefit of the transaction."[16] Furthermore, numerous advertising agencies have filed in support of the proposed transaction, with enthusiastic praise for the innovative targeted advertising products and services that the combined entity will be able to offer.[17] In the more than seven months that the Commission's

---

[13] *See* Complaint ¶ 10, *United States v. Raycom Media, Inc.*, Civil Action No. 1:08-cv-01510 (Aug. 28, 2008) (alleging that, as to a significant number of advertisers, "cable television advertising is not a meaningful substitute for broadcast television spot advertising").

[14] For example, Allbritton speculates that "Comcast and NBCU could enter into joint advertising sales, marketing, and promotion combinations that exclude NewsChannel 8; selectively provide detailed viewership and audience research data derived from set-top boxes only for their owned and operated programs, enter into exclusive deals with advertisers; offer discounts that accrue only when an advertiser purchases a certain percentage of its video advertising from the combined entity; and engage in other forms of exclusionary conduct …." Allbritton Reply Comments at 15.

[15] Such advertisers have reduced input costs, and a competitive market for the goods or services sold to consumers ensures that such input cost reductions are passed on to consumers in the form of lower prices.

[16] Rosston/Topper Reply Report ¶ 45.

[17] *See, e.g.*, Letter from Mark Petrosky, Chief Operating Officer, Duffey-Petrosky & Co., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Laura Desmond, Global CEO, Starcom MediaVest Group, to Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 10-56 (June 18, 2010); Letter from Steve Farella, Chairman and CEO, TargetCast tcm, to Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 10-56 (June 18, 2010) ("TargetCast tcm Letter"); Letter from Curt Hecht, CEO, VivaKi Nerve Center, to Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 10-56 (June 18, 2010); Letter from Phil Cowdell, CEO, Mindshare N.A., to Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 10-56 (June 21, 2010); Letter

REDACTED – FOR PUBLIC INSPECTION

docket has been open, not one single advertiser or advertising agency has filed in opposition to the transaction.

Allbritton also posits a scenario in which an advertiser is forced to buy a bundle of WRC-TV advertising and advertising on six cable channels.[18] However, the economic conditions for anticompetitive bundling are not present in the Washington, D.C. advertising marketplace. In particular, Allbritton fails to demonstrate that the combined entity will possess market power in any relevant market. In the Washington, D.C. DMA – and in other DMAs where Comcast Cable overlaps with an NBC owned and operated broadcast station – advertisers will be able to choose from many alternatives to the combined entity, and the combined entity will not have the ability or incentive to engage in anticompetitive bundling.

Allbritton even goes so far as to suggest that the market should be defined to consist only of advertising on local television news programming.[19] Allbritton provides no facts or analysis to support this claimed market and the Commission should disregard it for that reason alone. If Allbritton's claim is that advertising on local news is a separate, relevant market, then there is no increase in concentration as a result of the proposed transaction because Comcast does not produce any localized news programming in Washington, D.C.[20] In addition, there is no unique audience that advertisers can reach solely by advertising on local TV news in Washington, D.C., and there are many other individual broadcast and cable shows, not to mention other media, that allow advertisers to reach a particular audience demographic.[21]

Allbritton also complains that "[w]hen NewsChannel 8 was launched … the cable MSOs extracted two-minutes per hour of time on NewsChannel 8 to be sold by the cable systems" and asserts that Comcast could use this time in bundled offers, "cutting the legs out of the single-channel NewsChannel 8 offering."[22] This is factually inaccurate and contrary to economic logic.

---

from Paul Woolmington, Founding Partner, Naked Communications, to Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 10-56 (June 21, 2010). In the words of Steve Farella, the founder and CEO of TargetCast tcm, after the transaction, "Comcast and NBC will be better able to provide advertisers what they want…." TargetCast tcm Letter at 1.

[18] *See* Allbritton Ex Partes, Presentation at 7-8.

[19] *See* Allbritton Reply Comments at 16, n.17 ("Advertising on uniquely localized stations such as NewsChannel 8 may constitute a separate local advertising market of its own …."). If by this statement Allbritton is suggesting that NewsChannel 8 is a market unto itself, then it is inconceivable that NewsChannel 8 could be harmed by the proposed transaction, which *ipso facto* involves media properties in a different market from NewsChannel 8.

[20] While The Comcast Network is available in Washington, D.C. and provides local public affairs, sports, and community interest programming, none of The Comcast Network's air time is devoted to local or regional news.

[21] *See* Rosston/Topper Reply Report ¶¶ 51-62.

[22] Allbritton Ex Partes, Presentation at 8.

REDACTED – FOR PUBLIC INSPECTION

First, Allbritton fails to acknowledge that providing two minutes of local ad avails per hour is standard practice in the industry and is a standard term of virtually all carriage agreements between programmers and MVPDs. {{

}} Third, Comcast lacks the incentive to engage in predation because it would have no ability to raise prices to recoup its investment in a predation strategy even if it were successful in driving NewsChannel 8 out of business.[23] Advertisers in the Washington, D.C. market and elsewhere have a multitude of advertising outlets from which to choose; rather than pay supra-competitive prices, advertisers would seek other means of reaching target audiences.[24]

Allbritton's claims that the proposed transaction will reduce competition in the Washington, D.C. local advertising market are baseless and speculative. An economic analysis of this market both before and after the proposed transaction, as Drs. Rosston and Topper have undertaken on behalf of Applicants, demonstrates that no harm will result in any plausible market for local advertising – in Washington, D.C. or anywhere else – and Allbritton's claims to the contrary should be rejected.

* * *

Allbritton misconstrues a press report of a Comcast filing and mischaracterizes NewsChannel 8's carriage agreement with Comcast. Comcast also wishes to take this opportunity to respond to Allbritton's ex parte filing of October 20. Allbritton's representative Jerald Fritz inexplicably called an Associate Chief of the Media Bureau to discuss his views based on a press report about a filing that Comcast made with the Commission on October 18. Had Mr. Fritz troubled to read the underlying filing, he would have seen that he had completely misconstrued the story. The phrase to which he was reacting was from Comcast's answer to a Commission question about video *transport* services – i.e., the "back office" technical delivery services providing for the transport of cable programming to a cable system.[25] Comcast's

---

[23] *See* Rosston/Topper Reply Report ¶¶ 66-67.

[24] *See id.* ¶ 66.

[25] The phrase quoted by Mr. Fritz comes from Comcast's response to Question #79 in the Commission's Second Information and Document Request. The relevant paragraph says this:
"There are other reasons why MVPDs may use CMC over competitors. For example, CMC does not demand exclusivity from linear programming networks or VOD content providers, and programmers are free to contract with other transport providers. Furthermore, CMC does not have exclusives with its MVPD customers that require them to receive services only from CMC. This flexibility makes CMC a more attractive option for programmers and MVPDs alike. Lastly, CMC has a long track record in the industry of providing reliable transport services and excellent customer service." Responses of Comcast Corporation to the Commission's Second Information and Document Request, MB Docket No. 10-56, Response #79 (Oct. 18, 2010).

REDACTED – FOR PUBLIC INSPECTION

answer pertained in no way, shape, or form to any question about negotiated agreements between networks and MVPDs to distribute cable channels to customers. Nothing in the paragraph from which the quoted language is drawn is remotely relevant to any assertion that Allbritton has made in this proceeding. Nothing that Mr. Fritz has said is relevant to the accuracy of Comcast's response to the Commission's question about video transport services, and Comcast stands by its answer.

Mr. Fritz compounds his error by turning his misconstruction of a press report into an effort to mischaracterize Comcast's agreement with NewsChannel 8. As Comcast informed the Commission *more than two months ago* – and Allbritton has never denied this – "Comcast has in the past waived certain exclusivity provisions in its agreement with NewsChannel 8 in order to allow NewsChannel 8 to enter into carriage agreements with other MVPDs that compete with Comcast (such as RCN and Verizon) and has offered to waive those provisions again in order to facilitate NewsChannel 8's further expansion of its carriage in the greater Washington, D.C. market."[26] For Mr. Fritz to tell the Commission that NewsChannel 8 "is distributed by Comcast on an exclusive basis as against direct broadcast satellite distributors in the geographic areas served by Comcast's systems . . . . [S]atellite distribution is prohibited,"[27] is misleading. As Mr. Fritz knows full well, *Comcast specifically offered to waive its exclusivity to allow carriage of NewsChannel 8 by both DirecTV and Dish.* Allbritton did not accept Comcast's offer, presumably because it has failed to persuade the DBS providers that they should carry the channel.

Mr. Fritz further claims that the contract's "restrictions also forbid broadcast carriage of the NewsChannel 8 programming (for example on a DTV subchannel) and Internet carriage is also limited."[28] This should come as no surprise, because there is nothing remotely unusual or improper about any such provisions. These are standard features of cable network carriage agreements wherein MVPDs protect themselves and their customers against the devaluation of the content the MVPDs and their customers are *paying* to carry. These terms are premised on Comcast's belief that it is not fair, nor reasonable, to expect a customer to pay to watch a show via cable, when the network distributing it also makes that very same show available to everyone free of charge.

---

[26] Comcast August 18 Ex Parte at 3, n.10.

[27] Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Oct. 20, 2010).

[28] *Id.* (emphasis omitted).

REDACTED – FOR PUBLIC INSPECTION

Please do no hesitate to contact me with questions about the foregoing.

Respectfully submitted,

Michael H. Hammer
Counsel for Comcast Corporation

cc: Marcia Glauberman
Erin McGrath