

November 9, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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:

Comcast Corporation (“Comcast”) hereby responds to the October 28, 2010 ex parte letter of Dish Network, L.L.C. (“Dish”) and the accompanying sworn declaration of Tamani Chio.¹ Specifically, Comcast rebuts Dish’s allegations regarding the sale of advertising time to Dish on Comcast’s national networks and attaches the sworn declaration of David T. Cassaro, President, Comcast Network Advertising Sales.²

The Dish Ex Parte claims that “Comcast has repeatedly refused to sell Dish advertising, and on other occasions has demanded unreasonable restrictions or an exorbitant rate.”³ The Chio Declaration echoes and amplifies these claims. Comcast is mystified by these allegations. In fact, as described in the Comcast Information Request Response,⁴ the competitive advertising policies for Comcast’s

¹ Letter from Pantelis Michalopoulos and Christopher Bjornson, Steptoe & Johnson LLP, Counsel for Dish Network, L.L.C., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Oct. 28, 2010) (“Dish Ex Parte”); Declaration of Tamani Chio, Senior Marketing Manager, Media, Dish Network, L.L.C., MB Docket No. 10-56, attached to Dish Ex Parte (Oct. 26, 2010) (“Chio Declaration”).

² Declaration of David T. Cassaro, President, Comcast Network Advertising Sales, MB Docket No. 10-56, attached hereto (“Cassaro Declaration”).

³ Dish Ex Parte at 1.

⁴ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, Response to Request No. 41 (June 30, 2010) (attaching Comcast’s Response to the Commission’s Information and Discovery Request) (“Comcast Information Request Response”). Comcast’s national networks, Comcast’s regional networks, Comcast Spotlight, and Comcast Interactive Media each has policies with respect to the acceptance of advertising from Comcast’s competitors. In general, the competitive advertising policies of each of these business units are consistent with standard policies in the advertising and media industries.

national networks allow for the sale of advertising to Comcast's competitors,⁵ and Comcast's national networks do in fact sell advertising to Comcast's competitors, including Dish. As Mr. Cassaro's declaration affirms, "[i]n 2010 alone, Comcast has sold to Dish hundreds of thousands of dollars worth of advertising time on E! and G4."⁶

Even more curiously, the one piece of documentary evidence Dish has submitted actually controverts its claim. Although Mr. Chio claims that Comcast's national networks "[i]n *many instances* ... completely refused to sell ad inventory to Dish and ... flatly denied Dish the ability to run ads on their networks,"⁷ the email attached as Exhibit A shows the contrary. The email observes that there was "*one isolated case*" where Dish's media buying agency, Horizon Media, Inc. ("Horizon"), "could not place media on behalf of Dish Network," although even in that case Horizon says explicitly that "they [Versus] would allow paid placements,"⁸ *i.e.*, ads.

By Horizon's own account, the only request that Versus rebuffed was Horizon's attempt to pursue on Dish's behalf "sports integration opportunities."⁹ An integration package on Comcast's Versus network is very different from the spot advertising that is sold in the scatter market, or the availabilities to air long-form commercials that are sold in the direct response market. As Mr. Cassaro's declaration explains, "[i]ntegration differs from national spot and direct response advertising in that it allows advertisers to incorporate their branding and messaging into the proprietary, Comcast-produced content that airs on Comcast's networks."¹⁰ Declining to permit a competitor to integrate its brand into Comcast-produced programming – that is, the actual programming, not the intervening commercial breaks – is entirely reasonable.

As described in Mr. Cassaro's declaration, inventory can be scarce in the volatile direct response advertising market. In one recent instance, Versus was unable to accept Dish's offer to purchase direct response advertising during a specific time period because Versus did not have the inventory to honor the request. Obviously, Versus could not have sold advertising time it did not have to Dish or to any other advertiser; Geico or Travelocity.com would have received the same answer to the same request. In another recent instance, Dish chose to switch some direct response ads purchased on a preemptible basis at a discounted price to non-preemptible ads at the rate card price so that they

⁵ *See id.*

⁶ Cassaro Declaration ¶ 5. Comcast produced copies of various invoices to Dish for advertising on Comcast networks back in June, in response to the Information Request. These materials were designated as Highly Confidential, under the Second Protective Order. Both signers of the Dish Ex Parte, as well as an additional attorney and legal assistant at their law firm, plus two economic consultants working for Dish, have had access to these documents for several months.

⁷ Chio Declaration ¶ 5 (emphasis added).

⁸ Email from Gene Turner, Senior Vice President, Managing Director of Response Strategy and Analysis, Horizon Media, Inc., Direct Marketing Group, to Tamani Chio, Senior Marketing Manager, Media, Dish Network, L.L.C. (Oct. 12, 2010), attached to Dish Ex Parte as Exhibit A (emphasis added).

⁹ *See id.*

¹⁰ Cassaro Declaration ¶ 9.

would air on G4 during a specific desired time period. Advertisers typically pay a premium for such advertisements, particularly when inventory is scarce, and the rate G4 offered to Dish was fair and appropriate in light of current direct response marketplace conditions.

Thus, Dish's claims about being denied opportunities to buy ads on Comcast's national networks are entirely unfounded. Equally important, Dish's ability to convey its message successfully to the public does not hinge on access to Comcast's – or NBCU's – networks. Even if Comcast's and NBCU's platforms were closed to Dish entirely (which they are not and will not be), there would remain several other broadcast networks and literally hundreds of non-Comcast, non-NBCU cable networks on which Dish could air its ads. And this is to say nothing of the innumerable other advertising vehicles available to Dish, such as local broadcast stations, radio networks and stations, newspapers, magazines, direct mail, billboards, the Internet, and so on.¹¹

Comcast also takes this opportunity to respond to Dish's specious assertion that the combined entity would attempt to "restrict NBC Universal content over Hulu."¹² Comcast notes again that the brief involvement of Hulu in the retransmission consent dispute between News Corp. and Cablevision has nothing to do with either Comcast or NBCU. Comcast has already addressed this issue fully in the record of this proceeding.¹³

Please contact the undersigned with any questions regarding this submission.

Sincerely,

Michael H. Hammer
Michael H. Hammer
Counsel for Comcast Corporation

Attachment

¹¹ The Internet affords Dish millions of advertising sites to choose from. That advertising opportunities on Comcast.net and fancast.com are restricted in various ways – as Comcast disclosed in the months-ago filings cited in note 4, *supra* – is unremarkable and inconsequential, and says nothing about the extent to which online video is a complement to or substitute for traditional broadcast and MVPD services (a subject that Applicants and Drs. Israel and Katz have previously covered at length on the record).

¹² Dish Ex Parte at 2.

¹³ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 3 (Oct. 25, 2010), *citing* 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) ("Comcast has no intention of changing NBCU's relationship with Hulu or NBCU's decision to provide certain of its content to Hulu.").

DECLARATION OF DAVID T. CASSARO

1. My name is David T. Cassaro. My business address is 5 Times Square, New York, NY 10036.
2. I am President, Comcast Network Advertising Sales, a division of Comcast Corporation (collectively, "Comcast"). I have held this position since August 2004. In this position, I oversee advertising sales for E! Entertainment Television, G4, Golf Channel, The Style Network, Versus, and PBS KIDS Sprout, as well as Comcast's VOD advertising for these networks and the VOD service ExerciseTV. I manage an in-house advertising sales force of 240 people and work closely with the senior management of each of these programming services to support their unique business objectives and growth.
3. To the best of my personal knowledge, information, and belief, based on thorough inquiry and reliance on the kinds of information on which I routinely rely in performing the duties of my office, the statements made in this declaration are true and correct.
4. I have read the Declaration of Tamani Chio, Senior Marketing Manager for Media, Dish Network, L.L.C. ("Dish"), dated October 26, 2010.
5. Comcast's national programming networks regularly sell national spot advertising and direct response advertising to Dish. In 2010 alone, Comcast has sold to Dish hundreds of thousands of dollars worth of advertising time on E! and G4. Comcast negotiates advertising rates with Dish in good faith and based on marketplace conditions and, on occasion, has proposed rates to Dish that are significantly below standard rate card rates. For example, in the Second Quarter of 2010, Comcast proposed, and Dish accepted, a national spot advertising plan

on E! at a rate over 20 percent below the average rate paid by the network's customers who purchased national spot advertising in the scatter market.

6. The direct response advertising market is volatile. Dish recently chose to pay the full rate card price in order to secure a non-preemptible direct response schedule on G4 during Dish's desired time slot, apparently after concluding that the discounted-but-preemptible order that Dish had previously lodged was vulnerable to being displaced by higher-paying advertising. The direct response advertising rates that Comcast's networks offer to Dish reflect marketplace conditions and not a desire on the part of Comcast to treat Dish differently from other advertisers.

7. Also recently, Versus was not able to clear a Dish direct response advertising buy as a result of sold-out market conditions. In this instance, Versus's non-acceptance of Dish's offer to purchase direct response advertising was based solely on the fact that Versus did not have the advertising inventory available that Dish wished to purchase.

8. Comcast's national networks reserve the right to reject advertising creative at any time, in their sole discretion. Although Comcast's networks generally do not accept advertising creative that portrays Comcast or the cable industry in a negative light, Comcast's national networks routinely accept Dish advertising creative that features products and services that compete with Comcast's products and services.

9. Comcast's networks do not sell integration opportunities to advertisers who compete with Comcast Cable or Comcast's networks. Integration differs from national spot and direct response advertising in that it allows advertisers to incorporate their branding and messaging into the proprietary, Comcast-produced content that airs on Comcast's networks. While Comcast's networks will not negotiate integration opportunities with competitors such as

Dish, Comcast's networks continue to offer Dish and other competitors a multitude of spot and direct response advertising opportunities at competitive rates.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9 day of November, 2010.



David T. Cassaro
President,
Comcast Network Advertising Sales