

November 18, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, DC 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 Licenses*, MB Docket No. 10-56

Dear Ms. Dortch:

On November 17, 2010, Kathy Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, and the undersigned (“Applicants”) met with the following Commission personnel regarding the above-captioned proceeding: John Flynn, Senior Counsel to the Chairman for Transactions; Rick Kaplan, Chief Counsel and Senior Legal Advisor to the Chairman; and Michael Steffen, Office of General Counsel.

Consistent with their written filings in the docket, Applicants described the operation of the program access rules and the impact of the program access arbitration provision adopted in the *Adelphia Order*.¹

Applicants also emphasized that the record evidence demonstrates that no program carriage conditions are warranted, as Comcast will continue to have powerful business incentives post-transaction to carry a wide array of quality programming, regardless of its source (and the program carriage rules exist as a regulatory safeguard against any harms). The record reflects that Comcast has launched or expanded the carriage of dozens of unaffiliated networks in recent years. Several independent networks, including HDNet, New England Sports Network, Ovation, and ReelzChannel, have filed comments in this proceeding praising Comcast’s strong record of carrying unaffiliated

¹ *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) (“*Adelphia Order*”).

networks. In fact, post-transaction, nearly six out of seven networks that Comcast carries will be unaffiliated with Comcast or NBCU.

Applicants stressed that an arbitration regime is ill-suited for the program carriage context and would cause significant harm and uncertainty to Comcast's cable business. Specifically, Applicants noted that Comcast receives frequent requests for carriage, is facing ever-increasing programming costs, and relies on its internal industry experts to make business judgments in selecting and managing attractive programming choices and prices for its customers in today's highly competitive market. Applicants asserted that these critical judgments should not be subject to second-guessing by a private arbitrator.

The Commission has a fully briefed record in another proceeding (MB Docket No. 07-42) dealing with program carriage. In that proceeding, commenters have made various proposals about ways to streamline and expedite the program carriage complaint process. Thus, it is clear program carriage is an industry-wide issue and, consistent with Commission precedent, any changes to the program carriage rules should be addressed in the pending industry-wide proceeding.

In the *Adelphia Order*, the Commission adopted,² and later suspended,³ a program carriage arbitration condition. Even if the condition were not suspended, however, it would provide no precedent for a program carriage arbitration condition in this case. In the *Adelphia Order*, the Commission applied the arbitration condition only to regional sports networks ("RSNs"), which provide programming that is "unique because it is particularly desirable and non-replicable."⁴ The Commission found that the acquisition of Adelphia's cable systems would give Comcast and Time Warner increased incentives to deny carriage of rival RSNs.⁵ Here, however, Comcast is not acquiring any new cable systems, so its incentives with regard to RSNs will be unchanged. And, the *Adelphia Order* certainly provides no basis for imposing a program carriage arbitration condition on national cable networks, which the Commission has repeatedly and recently found are different than RSNs because they "operate in a highly competitive" market with many "reasonably close substitutes."⁶

2 *Adelphia Order* ¶ 190.

3 *Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, Order, 22 FCC Rcd 17938 ¶ 24 (2007).

4 *Adelphia Order* ¶¶ 189, 124.

5 *Id.*

6 *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473 ¶ 129 (2004). See *Adelphia Order* ¶ 168; see also *In the Matter of News Corp. and the DirecTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265 ¶ 86 (2008). There is no evidence in the record of this proceeding that Comcast's and NBCU's programming networks do not have substitutes. Moreover, the *Adelphia Order* is also inapplicable because, unlike RSNs, whose relevant market is regional, *Adelphia Order* ¶ 125, national cable networks operate in a national market. In that market, Comcast serves less than 24 percent of subscribers, a share that the Court of Appeals for the D.C. Circuit found insufficient to enable a cable operator to act anticompetitively with regard to programmers. See *Comcast Corp. v. FCC*, 579 F. 3d 1, 8 (D.C. Cir. 2009) ("Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.")

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Please direct any questions regarding this matter to my attention.

Respectfully submitted,

David P. Murray

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Counsel for Comcast Corporation

cc: John Flynn
Rick Kaplan
Michael Steffen