Lampert, O'Connor & Johnston, P.C.

1776 K Street NW, Suite 700
Washington, DC 20006

Donna N. Lampert
lampert@lojlaw.com

tel (202) 887-6230
fax (202) 887-6231

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Via Electronic Delivery

Ms. Marlene H. Dortch
Federal Communications Commission
The Portals, TW-A325
445 12th Street SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – MB Dkt. 10-56, *Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*

Dear Ms. Dortch:

On Thursday, November 18, 2010, Samuel R. DeSimone, Jr., General Counsel and Secretary, EarthLink, Inc. ("EarthLink"), Kevin Brand, Chief of Consumer Products and Support, EarthLink, and the undersigned of Lampert, O'Connor & Johnston, P.C., discussed the above-referenced proceeding with Edward Lazarus, Chief of Staff to Chairman Julius Genachowski.

In the meeting, we discussed the substantial expert economic evidence (much of which is uncontested) showing the merger will harm broadband affordability and the emerging online video market. EarthLink underscored the serious public interest harms that require FCC attention and action if the transaction is to proceed.

With respect to broadband affordability, we discussed the fact that affordability is an essential element to broadband adoption and is especially important for disadvantaged users in uncertain economic times. We explained that expert studies show the merger will increase the price of standalone broadband. The bundle will be more profitable to Comcast due to lower programming costs, increased advertising revenues, and its strong motivation to staunch the threat of online video. Raising standalone broadband prices will force more consumers to discontinue broadband or to purchase bundles of services they don't want, disserving national broadband goals.

We also discussed how the transaction will increase Comcast's incentive and ability to engage in anticompetitive conduct towards emerging online video, to the detriment of consumers who deserve the choice to "cut the cord" as well as the ability to enjoy the rich new content that the Internet brings. We noted that the FCC should support and encourage the development of online video to promote a future where consumers can get the video they want, where and when they want, without being restricted. We also discussed the need for action at this formative period if this future is to be realized.

EarthLink explained that mandating wholesale standalone broadband directly addresses the harms to broadband affordability and online video. Independent broadband providers such as EarthLink are in a superior position to meet the needs of consumers that want or need broadband at an affordable price, rather than an expensive bundle. EarthLink's previous broadband wholesale arrangements, such as with Time Warner Cable, have proved that competition in the marketplace brings prices down, improves customer service, and satisfies consumer needs. Unfortunately, as EarthLink has described, Comcast is the only high-speed broadband option for many consumers.

EarthLink explained that having a standalone broadband option also helps promote video competition, since consumers will be able to "break the bundle" as well as "cut the cord" entirely, fueling growth of online video options. We also discussed why ensuring consumers have a broadband option meets national open Internet goals since EarthLink and other unaffiliated broadband Internet providers will have strong incentives to be open and nondiscriminatory to attract users, including online video programmers, and to act as "agents" for detecting discrimination. This competitive alternative also puts market pressure on Comcast not to act in ways contrary to an open Internet, achieving FCC goals in a structural, easy-to-administer manner. Unlike a standalone broadband option remedy that is price-regulated by the FCC, yet ultimately still subject to the full control of Comcast, a wholly independent wholesale-based competitive broadband option offers a market structure that aligns incentives to the benefit of consumers. This reduces the need for continuing government intervention and increases the likelihood online video will be able to grow free from Comcast's control.

Pursuant to Section 1.1206 of the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced docket for inclusion in the public record and is distributed to the meeting participants via email. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,

Donna N. Lampert
Counsel for EarthLink, Inc.

cc: (*via electronic mail*)

Edward Lazarus (edward.lazarus@fcc.gov)