WG WILTSHIRE & GRANNIS LLP

November 23, 2010

BY HAND DELIVERY

Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

FILED/ACCEPTED

NOV 23 2010

Federal Communications Commission
Office of the Secretary

Vanessa Lemmé
Industry Analysis Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **REDACTED — FOR PUBLIC INSPECTION**

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

Dear Mses. Dortch and Lemmé:

Attached is a redacted version of the *ex parte* filed today under the Commission's First and Second Protective Orders in this proceeding. Please note that redacted Confidential Information and Highly Confidential Information are designated by the symbols [[ ]] and {{ }}, respectively.

As required by the Protective Orders in this proceeding, we are also hand delivering unredacted copies of this filing under separate cover.

Respectfully submitted,

William M. Wiltshire

William Wiltshire

Enclosure

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

REDACTED – FOR PUBLIC INSPECTION

November 23, 2010

BY ELECTRONIC FILING

The Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc.*, MB Docket No. 10-56

Dear Chairman Genachowski:

In a recent *ex parte* submission, Comcast argues that the national cable networks involved in this proceeding should not be made subject to pro-competitive arbitration safeguards because the Commission has declined to impose such safeguards on other national networks in past transactions.[1] Comcast asks the Commission to infer from these past transactions that national cable networks "by their nature" cannot be used for anticompetitive purposes.[2]

This argument is meritless. The Commission has never held that national networks cannot be the kind of "marquee" programming that can give a vertically integrated programmer the incentive and ability to disadvantage its MVPD rivals. To the contrary, the Commission has found that national programming can be used to disadvantage rivals just like "must have" regional sports network ("RSN") programming because "a competitive MVPD's lack of access to popular non-RSN networks would not have a materially different impact on the MVPD's subscribership than would lack of access to an RSN."[3] In the cases cited by Comcast, the Commission simply found – based solely on a foreclosure analysis – that the collection of national networks at issue in those proceedings did not pose a sufficient threat to competition. The Commission can and should reach a very different conclusion in this proceeding for at least two reasons.

First, the collection of national networks at issue in this proceeding far surpasses the national networks at issue in past transactions. As set forth in the confidential appendix attached

---

[1] Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, MB Docket No. 10-56 (Nov. 1, 2010) ("Comcast Ex Parte").

[2] *Id.* at 2.

[3] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Sunset of Exclusive Contract Prohibition*, 22 FCC Rcd. 17791, ¶ 39 (2007), *aff'd sub nom. Cablevision Sys. Corp. v. FCC*, 597 F.3d 1306 (2010).

REDACTED – FOR PUBLIC INSPECTION

hereto, Comcast's own internal documents demonstrate the importance of NBCU's national networks. These sentiments are confirmed by Comcast's public statements as well. For example, in the words of Comcast CEO Brian Roberts, NBCU's portfolio "includes one of the largest and most profitable collections of cable channels,"[4] including

- USA Network, which "is number one in primetime ratings for 13 consecutive quarters;"
- CNBC, "the world's number one business channel;"
- Syfy, which "in October [2009] was the third highest-rated cable channel in America;" and
- MSNBC, the nation's "fastest-growing news channel."[5]

Comcast has elsewhere characterized MSNBC as the "#2 cable news (primetime ratings A25-54)" and Bravo as the "#2 fastest growing top 20 cable entertainment network A18-49 over past 2 years."[6] Moreover, other NBCU networks hold particular importance because of their strong appeal to targeted demographics. For example, Oxygen is "[t]op 25 in ratings for women 18-49" and "#3 in working moms 18-49."[7] Overall, the Comcast-NBCU joint venture would control more than one out of every five television-viewing hours.[8] Given the uniqueness and the breadth of this programming, it is hard to imagine how an MVPD could compete without it.

The same cannot be said of the programming at issue in the transactions cited by Comcast. Exhibit A attached hereto lists the national cable networks that would be controlled by Comcast-NBCU against the national cable networks controlled by the parties in two other transactions cited by Comcast: *News Corp.-Hughes* and *Liberty-DIRECTV*.[9] Consistent with the description of the networks provided by Comcast's CEO, the national networks involved in this transaction are significantly more impressive than those at issue in the past transactions. The disparity is borne out by subscribership statistics. In the *News Corp.-Hughes* transaction, not one of the national cable networks was among the top-20 most-subscribed cable networks at the time,[10] and in the *Liberty-DIRECTV* transaction, only a single network – QVC, which was

---

4 *CMCSA — Comcast Corp. Conference Call to Discuss NBC Joint Venture with General Electric*, Final Transcript at 6 (Dec. 3, 2009), *available at* http://www.comcast.com/nbcutransaction/pdfs/Comcast_Transcript%2012.3.09.pdf ("Investor Conference Call").

5 *Id.* at 7.

6 Comcast Corp., *Cable Networks*, at 1-2, *at* http://www.comcast.com/nbcutransaction/pdfs/JV_CableNetworks_and_DigitalAssetsOverview.pdf.

7 *Id.* at 2.

8 *See* Cecelia Kang, "Comcast, NBC aim to ease feds' concerns," THE WASHINGTON POST (Dec. 2, 2009), *at* http://www.washingtonpost.com/wp-dyn/content/article/2009/12/01/AR2009120104343.html.

9 *See* Comcast Ex Parte at 2.

10 *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, MB Docket No. 03-172, 19 FCC Rcd 1606 at Table C-6 (2004).

REDACTED – FOR PUBLIC INSPECTION

ranked 14 – was in the top 20.[11] By contrast, Comcast has proposed to take control of two of the top twenty most widely distributed networks – USA Network (number 5) and CNBC (number 17) – both of which are distributed to 100 million subscribers.[12] In addition, it has proposed to take control of four other networks with subscribership greater than 75 million, in addition to the three it already owns. (See attached Exhibit B.)

Second, the economic record in this proceeding is more complete and amply demonstrates the harm that would result from the transaction absent proper conditions. In past transactions, the Commission has focused on whether a merger would allow an entity to profit from permanent or temporary foreclosure. For example, in *News Corp.-Hughes*, the Commission recognized that bargaining dynamics and changes in bargaining position are the key to determining the incentives created by vertical integration.[13] The Commission identified two factors that might change a vertically-integrated programmer's bargaining position: (1) the profits generated from subscribers who switch from the foreclosed MVPD to the affiliated MVPD (in this case, Comcast); and (2) increased compensation for the programming going forward. However, its economic analysis could only measure the effect of switching.[14] Accordingly, the Commission performed an analysis based solely on the first factor (*i.e.*, subscriber gains from foreclosure), which it described as "an estimate of the *minimum* increase in incentive and ability to obtain additional compensation from MVPDs."[15] Thus, the Commission recognized that the methodology used in *News Corp.-Hughes* would systematically understate the effects of vertical integration, capturing only the effects of the short-term strategy (causing subscribers to switch) rather than the long-term goal (raising prices).[16] Similar limitations applied to the analysis of other past transactions as well.[17]

In this proceeding, by contrast, the record includes a more complete analysis of the incentives created by vertical integration. For example, using publicly available data, Professor William Rogerson used a sophisticated bargaining analysis to demonstrate that the price

---

[11] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket No. 06-189, 24 FCC Rcd 542 at Table C-5 (rel. 2009).

[12] *See* National Cable and Telecommunications Association, *Top 25 Cable Programming Networks* (based on 2009 Kagan data), *at* http://www.ncta.com/Stats/TopNetworks.aspx. This list is traditionally the source cited in the Commission's annual video competition reports.

[13] *See, e.g., General Motors Corp., Hughes Electronics Corp. and The News Corporation Ltd.*, 19 FCC Rcd. 473, ¶¶ 180, 204 (2004).

[14] *See id.*, Appendix D, ¶ 12.

[15] *Id.* (emphasis in original).

[16] *Id.*, ¶ 81 ("The underlying purpose of temporary foreclosure generally is to extract a higher price for the integrated firm's upstream input and thus raise its downstream rivals' costs.").

[17] *See, e.g., News Corp., The DIRECTV Group, Inc., and Liberty Media Corp.*, 23 FCC Rcd. 3265, ¶ 84 (2008).

REDACTED – FOR PUBLIC INSPECTION

increases expected for NBCU's national networks in the absence of appropriate safeguards would be approximately $1.1 billion.[18] Applying a similar analysis using confidential data, Professor Kevin Murphy confirmed that the likely increase in prices for NBCU national networks would be substantial.[19] Because this crucial evidence was lacking in prior proceedings but is available here, the Commission need not feel constrained by conclusions reached on a less complete record. Moreover, in prior cases, the Commission drew comfort from the fact that such networks would be subject to the program access rules' ban on exclusive carriage arrangements.[20] However, that safeguard expires in just two years and thus cannot be relied upon to safeguard competition against an integrated Comcast-NBCU.[21]

Accordingly, Comcast's attempt to equate the analysis of national networks in this proceeding with that performed in prior proceedings must fail. The networks at issue here are more significant and numerous, while the evidence of harm is also more complete. Under these circumstances, the Commission should conclude that the proposed transaction cannot be approved in the absence of appropriate pro-competitive safeguards applicable to the national networks that would be controlled by Comcast-NBCU.

Respectfully submitted,

DIRECTV

By: /s/
Susan Eid
Sr. Vice President, Government Affairs

DISH NETWORK L.L.C.

By: /s/
Jeffrey H. Blum
Senior Vice-President and Deputy General Counsel

AMERICAN CABLE ASSOCIATION

By: /s/
Ross J. Lieberman
Vice President of Government Affairs

---

[18] *See* An Estimate of the Consumer Harm That Will Result from the Comcast-NBCU Transaction, pp. 6-10 and Table 9 (attached to Letter from Barbara S. Esbin to Marlene H. Dortch, MB Docket No. 10-56 (Nov. 8, 2010)).

[19] *See* Response of Professor Kevin M. Murphy to Reply Report of Mark Israel and Michael L. Katz, ¶ 40 (attached as Exhibit A to Reply of DIRECTV, Inc. (Aug. 19, 2010)).

[20] *See, e.g., News Corp.-Hughes*, ¶ 124; *Liberty-DIRECTV*, ¶ 77.

[21] *See 2007 Exclusivity Extension Order*, ¶ 1.

EXHIBIT A:

NATIONAL NETWORKS CONTROLLED BY ACQUIRING PARTY IN THREE TRANSACTIONS

Comcast/NBCU[1]	News/Hughes[2]	Liberty/DIRECTV[3]
CNBC	Fox News Channel	QVC
MSNBC	FX	Starz
Bravo	National Geographic Channel	Encore
Chiller	Speed Channel	HSN
CNBC World	Fox Movie Channel	GSN
Mun2	Fox Sports World	
Oxygen	Fox Sports Digital Networks	
Sleuth		
Syfy		
Universal HD		
USA Network		
E!		
Golf Channel		
Versus		
Style		
G4		

[1] Comcast-NBCU Application at 30-31.

[2] Consolidated Application of General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control, MB Docket No. 03-124, Attach. F (May 15, 2003).

[3] Consolidated Application of News Corp. and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control, MB Docket No. 07-18, at 8-10 (Jan. 29, 2007).

EXHIBIT B:

DISTRIBUTION OF COMCAST-NBCU NETWORKS

NBCU Network	Total Subscribers (M)
USA	[[ ]]
CNBC	[[ ]]
SyFy	[[ ]]
MSNBC	[[ ]]
Bravo	[[ ]]
Oxygen	[[ ]]
Sleuth	[[ ]]
Chiller	[[ ]]
Mun2	[[ ]]
Universal HD	[[ ]]

Comcast Network	Total Subscribers (M)
E!	[[ ]]
GOLF	[[ ]]
VERSUS	[[ ]]
G4	[[ ]]
STYLE	[[ ]]
SPROUT	[[ ]]

Source: SNL Kagan Financial, TV Network Summary: Basic Cable Networks by Subscribers (M), 2010

CONFIDENTIAL APPENDIX

The following documents produced by Comcast in this proceeding illustrate the strategic value of NBCU's collection of national networks.

- {{

  }}[1]

- {{

  }}

- {{

  }}.[3]

---

[1] 31-COM-332.

[2] 31-COM-95.

[3] 31-COM-644. *See also* 31 COM-1766 {{(

}}.

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of November, 2010, a copy of the foregoing *ex parte* was sent by overnight mail to:

Kathryn A. Zachem
Vice President, Regulatory and State Legislative Affairs
COMCAST CORPORATION
2001 Pennsylvania Ave, NW
Suite 500
Washington, DC 20006

Jordan Goldstein
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, DC 20006

Michael H. Hammer
James L. Casserly
Michael D. Hurwitz
Brien C. Bell
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, DC 20006

A. Richard Metzger, Jr.
Regina M. Keeney
LAWLER, METZGER, KEENEY & LOGAN, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006

Margaret L. Tobey
Vice President, Regulatory Affairs
NBC UNIVERSAL, INC.
1299 Pennsylvania Avenue, NW
9th Floor
Washington, DC 20004

Bryan N. Tramont
Kenneth E. Satten
David H. Solomon
Natalie G. Roisman
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Brackett B. Denniston, III
Senior Vice President & General Counsel
GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06828

Richard Cotton
Executive Vice President & General Counsel
NBC UNIVERSAL, INC.
30 Rockefeller Plaza
New York, NY 10112

Arthur J. Burke
Ronan P. Harty
Rajesh James
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

and by e-mail to:

Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, DC 20554
www.bcpiweb.com

Wayne McKee
Media Bureau
Room 4-C737
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Wayne.McKee@fcc.gov

William Lake
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
William.Lake@fcc.gov

Jim Bird
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
James.Bird@fcc.gov

Tracy Waldon
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Tracy.Waldon@fcc.gov

Jessica Almond
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jessica.Almond@fcc.gov

Vanessa Lemmé
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Vanessa.Lemme@fcc.gov

Caitlin M. McDonnell

Caitlin M. McDonnell