

December 6, 2010

VIA ELECTRONIC FILING

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 Licenses, MB Docket No. 10-56*

Dear Ms. Dortch:

Comcast hereby responds to the ex parte notice filed by ivi, Inc. (“ivi”), on November 10, 2010 – more than four months after the Commission’s deadline for raising concerns about the proposed transaction in this proceeding. ivi contends that “the only impediments to realizing upon [sic] ... [the] opportunity [to utilize “the Internet and new technologies such as that developed by ivi” to distribute video programming] are the Comcast contracts [with various cable networks].” By ivi’s account, “Comcast designed contractual roadblocks” have prevented networks from “do[ing] business” with ivi. These networks purportedly include “a handful of cable channels” listed in ivi’s filing that have “shared [with ivi] their specific difficulty with Comcast.”¹

ivi’s arguments are without merit. In fact, the six examples ivi provides contradict its claims. For example, Comcast has *no carriage agreements* with two of the six networks cited, WealthTV and Documentary Channel; therefore, these networks could in no way face alleged “Comcast designed contractual roadblocks.”² ivi also cites Univision. But Univision’s decision not to do business with ivi – rather than having anything to do with Comcast – is far more likely related to the fact that it (along with many other content owners, including NBC Universal) is currently *suing* ivi for copyright

¹ ivi Ex Parte Notice, MB Docket No. 10-56 (Nov. 10, 2010) (“ivi Ex Parte Notice”).

² ivi Ex Parte Notice at 1. Comcast noted this fact in its response to the Commission’s First Information Request in June. *See* Comcast’s Response to the Commission’s Information and Discovery Request, MB Docket No. 10-56, at 59 (June 30, 2010).

infringement of its broadcast signals and copyrighted content.³ And Outdoor Channel, another network cited by ivi, has filed comments in this very proceeding *praising* Comcast for “dealings [that] have always been reasonable and forthright” and for “continu[ing] to give us additional opportunities to bring our network to new markets.”⁴ The two other examples ivi cited, NorthWest Cable News (“NWCN”) and Tennis Channel, are similarly fallacious.⁵ Thus, ivi’s arguments fail for lack of credible evidence.⁶

As Comcast has stated, its carriage agreements generally allow networks to make content available online.⁷ However, to assuage any concerns in this area, Comcast is prepared to agree to the following language as a binding condition of the Commission’s order approving the proposed transaction:

³ See Complaint, WPIX, Inc. v. ivi, Inc., 10-CV-7415 (S.D.N.Y. filed Sept. 28, 2010) (besides Univision and NBC Universal, plaintiffs include PBS, ABC, CBS, FOX, several local broadcast stations, and Major League Baseball). The complaint states two counts, copyright infringement and secondary copyright infringement. See *id.* ¶¶ 50-62. Plaintiffs seek an injunction against ivi for ivi’s continuing infringement of plaintiffs’ intellectual property rights. *Id.* ¶ 4. The complaint states that ivi’s claims that “copyright technicalities” allow it to “sell its unauthorized service to anyone ‘anywhere on the planet’ simply by paying a semi-annual fee to the Copyright Office that amounts to approximately \$50” and that “no rules whatsoever govern their retransmission of broadcast signals over the Internet” are entirely without merit. *Id.* ¶ 6.

⁴ Letter from Roger L. Werner, President & Chief Executive Officer, Outdoor Channel, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56, at 1-2 (Apr. 19, 2010).

⁵ NWCN’s own website states: “At nwcn.com, we deliver video content and specific video news stories from NWCN.com Television newscasts. To find streaming video clips, look for a video link and the description of the video clip alongside related articles. For your convenience, we segment full newscast videos into shorter segments for easier and faster downloads.” See <http://www.nwcn.com/on-tv/faq/ontv-faq/Do-you-provide-streaming-video-on-your-site-65578297.html> (last visited Dec. 5, 2010). Like NWCN, Tennis Channel makes a significant amount of its programming available online. See, e.g., <http://www.tennischannel.com/aboutus/pressrelease/pressreleasedetail.aspx?id=174> (last visited Dec. 5, 2010) (“Tennis Channel’s French Open broadband offerings are second to none, with free access to up to five courts and 10-15 matches per day, live or on-demand. The network’s Web site, www.tennischannel.com, will also include French Open Tonight interview archives, daily highlights, live scores, exclusive tournament photos, tennis columns, blogs, sweepstakes information and other original content. The channel is partnering with Yahoo! Sports to bring live streaming to that Web site’s main tennis page and their millions of viewers as well.”); see generally <http://www.tennischannel.com/video/> (last visited Dec. 5, 2010). Neither in its pending complaint proceeding nor in the transaction proceeding has Tennis Channel voiced any complaints about online-related provisions in its carriage agreement with Comcast.

⁶ Free Press and Media Access Project parroted ivi’s allegations, and their arguments should be rejected for the reasons stated herein. See Letter from Corie Wright, Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 3 (Nov. 18, 2010).

⁷ See Applicants’ Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56, at 188 & n.642 (July 21, 2010); see also Letter from Michael D. Hurwitz, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 4 & n.17 (Oct. 22, 2010) (responding to Dr. Mark Cooper and Adam Lynn’s similar allegations).

Ms. Marlene H. Dortch

December 6, 2010

Page 3

“Comcast will not require unaffiliated content suppliers, as a condition of carriage on Comcast cable systems, to refuse to sell their programming to MVPDs and Online Video Distributors (‘OVDs’).”

Of course, Comcast should have the right, consistent with industry practice,⁸ to require that unaffiliated content suppliers not provide their programming for free over the Internet during an initial window. Comcast should also have the right to obtain from content suppliers parity treatment with other distributors, online or otherwise. Finally, Comcast should be able to negotiate for a limited period of exclusivity for promotional programming.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

Michael H. Hammer

Michael H. Hammer

Counsel for Comcast Corporation

⁸

See id.