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December 8, 2010

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: American Cable Association ("ACA") Notice of Ex Parte Presentation; *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 December 8, 2010, Matt Polka and Ross Lieberman, American Cable Association; Colleen Abdoulah, President & CEO, WOW!; William Rogerson, Northwestern University; and the undersigned met with Edward Lazarus, Chief of Staff, Chairman Genachowski; John Flynn, Senior Counsel to the Chairman for Transactions; and Paul de Sa, Chief, Office of Strategic Policy. WOW!, is a small operator providing high-speed Internet, cable and voice services in communities located in Illinois, Michigan, Indiana and Ohio, competes head-to-head in local markets in Illinois and Michigan with Comcast's cable systems and also negotiates with Comcast and NBC Universal ("NBCU") to purchase all of their "must have" programming, including Comcast's regional sports networks ("RSNs"), NBC owned and operated television broadcast stations ("NBC O&Os"), and the suite of highly-rated NBCU national cable programming networks.

During the meetings, ACA discussed the substantial impact of the horizontal and vertical harms of the proposed Comcast-NBCU transaction on smaller multichannel video programming distributors (MVPDs) and the safeguards ACA has proposed to protect consumers and competition, consistent with ACA's filings in this docket, including Comments filed June 21, 2010, Response to Comments filed July 21, 2010, and Reply filed August 19, 2010 in the above-referenced proceeding.[1]

[1] *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, MB Docket No. 10-56, Comments of the American Cable Association (filed June 21, 2010) ("ACA Comments"); Response to Comments of the American Cable Association (filed July 21, 2010); Reply of the American Cable Association (filed Aug. 19, 2010) ("ACA Reply"). In addition ACA's concerns are documented in ex parte letters filed on August 27, 2010, September 21, 2010, September 22, 2010, October 12, 2010, November 5, 2010, November 8, 2010, and November 24, 2010.

As ACA has demonstrated, the transaction will allow Comcast-NBCU to raise programming fees above levels they would be able to command without combining assets, and these fee increases will largely be passed through to subscribers in the form of higher subscription prices. This consumer harm will manifest itself in two ways: (1) vertical harm arising from the combination of NBCU key programming assets – NBCU national cable programming networks and NBC O&Os[2] – with Comcast's cable distribution assets permitting Comcast-NBCU to raise the fees it charges for NBCU programming to Comcast multichannel video programming distributor rivals (MVPDs); and (2) horizontal harm resulting from the increased market power derived from combining NBCU's key programming assets – the suite of highly rated NBCU national cable programming networks and NBC O&Os – with Comcast's key programming assets – its RSNs – that will allow Comcast-NBCU to raise the fees charged for this programming to additional MVPDs.[3]

Participants discussed the fact that, not only is the magnitude of the quantifiable vertical and horizontal harms that will result from the Comcast-NBCU transaction substantial, it far exceeds the quantifiable benefits. ACA has demonstrated that the harms will cause programming prices for MVPDs (other than Comcast) to increase approximately $320 million annually and that the harms are more than 10 times greater than the quantifiable benefits.[4]

ACA and the operators reiterated the need for effective relief from the higher programming fees that Comcast-NBCU will be able to extract from multichannel video programming distributors (MVPDs) of all sizes as a result of the combination of the key programming and distribution assets of the applicants. They discussed how best to fashion relief for smaller MVPDs serving 125,000 or fewer subscribers for NBC broadcast station and Comcast RSN programming in a particular region or Designated Market Area, consistent with ACA's previous filings in this docket. ACA and the operators emphasized that although the "final offer" or "baseball style" arbitration for "must have" programming negotiations that the Commission has used to ameliorate the vertical harms of previous media transactions has worked well in practice for larger MVPDs, it has proven to be of no value for smaller MVPDs and their subscribers due to the fixed costs of the process being far in excess of the potential benefits, lack of access to key data and information upon which to base final offers, and its overall substantial risks to business operations. Consistent with ACA's previous filings, WOW!'s President, Colleen Abdoulah stressed how, in her experience, the Commission had previously provided small MVPDs with a right, but not a remedy for transaction-related vertical harms.[5] According to Abdoulah, it would be a grave error for the Commission to rely again solely on remedies that in the past have proven of no value for smaller operators.

ACA again called upon the Commission to impose conditions that would prohibit Comcast-NBCU from charging smaller MVPDs more than clear, market-based rates for "must have" programming together with a simplified enforcement mechanism that can provide certain relief when commercial negotiations fail to produce satisfactory outcomes for smaller MVPDs. ACA noted that its proposed conditions to protect smaller MVPDs from above-market rate increases for Comcast RSNs and NBC O&Os post-transaction will affect less than 5 percent of the MVPD subscribers in the relevant markets for that programming. In short, imposing ACA's suggested conditions on Comcast-NBCU will ameliorate transaction-related harms that

[2] ACA Comments at 25-37; ACA Reply at 14-25.
[3] ACA Comments at 18-25; ACA Reply at 7-14.
[4] *See* ACA Notice of Ex Parte, attach. Rogerson III, at 17 (filed Nov. 8, 2010).
[5] ACA Comments at 51.

otherwise would significantly and adversely affect smaller MVPDs and their subscribers, while having a de minimis impact on either Comcast-NBCU specifically or the programming market in general. Participants also discussed means of empowering bargaining agents to bargain collectively on behalf of small MVPDs for NBCU national cable programming networks, consistent with the recommendations contained in ACA's previous filings in this docket.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

Barbara Esbin

Barbara S. Esbin

cc (*via email*): Edward Lazarus
Paul de Sa
John Flynn