WG WILTSHIRE & GRANNIS LLP

December 17, 2010

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
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 Ms. Dortch:

Stacy Fuller and undersigned counsel on behalf of DIRECTV spoke by telephone today with Dave Grimaldi, Chief of Staff and Media Legal Advisor, Angela Kronenberg, Wireline Legal Advisor, and Louis Peraertz, Legal Advisor for Wireless, International, and Public Safety, all of Commissioner Clyburn's office, to discuss the above referenced proceeding. The specific topics of discussion are reflected in the attached talking points.

In addition, DIRECTV discussed the need for a more expedited procedure for arbitration of a first-time request for carriage, especially with respect to online content. In this regard, we discussed a proposal under which (1) Comcast/NBCU would have an obligation to give 45 days' notice whenever it intends to carry new programming; (2) an MVPD could request carriage of that programming, and could invoke arbitration after negotiating for 30 days; (3) the parties then would exchange final offers within two business days; and (4) the MVPD would have the option to carry the content under the terms of Comcast/NBCU's final offer, except that payments would be held in escrow during the arbitration proceeding pending a true-up at the conclusion of that process. The arbitrator would also be given authority to impose fees and costs if the MVPD elected such interim carriage and the final offer submitted by Comcast/NBCU were determined to materially exceed fair market value of the programming at issue.

Should you have any questions about this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV

Attachment

cc: Dave Grimaldi
Angela Kronenberg
Louis Peraertz

DIRECTV

CONDITIONS REQUIRED FOR APPROVAL OF THE PROPOSED COMCAST/NBCU TRANSACTION

- The proposed Comcast/NBCU transaction would combine:

  - the nation's largest cable operator;
  - the nation's largest Internet service provider;
  - two broadcast networks;
  - over two dozen network-affiliated broadcast stations;
  - some of the most popular cable programming available;
  - the film library and production capabilities of Universal Studios; and
  - many of the most important online content sites.

  Left unchecked, this unprecedented array of assets would give Comcast new opportunities to gain unfair leverage over rivals to the detriment of consumers, enabling it to enhance and extend the sorts of anticompetitive conduct in which it has engaged in the past.

Linear Programming

- DIRECTV's economist demonstrated that vertical integration will improve Comcast/NBCU's bargaining position and thereby enable the joint venture to raise prices paid by its competitors substantially on *all* programming.

- The Commission has consistently imposed arbitration on vertically integrated regional sports networks and broadcast stations and should do so here as well.

- Unlike the *News/Hughes* transaction, here the Commission has economic and other support for the imposition of arbitration on national programming.

  - The Commission declined to impose arbitration on national channels in that transaction because it did not find that News could profitably *withhold* programming. While the Commission recognized that the transaction might also give News the ability to impose another harm by *raising prices substantially*, it did not at that time have the ability to conduct that analysis. DIRECTV's economist has demonstrated this effect with respect to the Comcast/NBCU merger. In light of this proven harm, the Commission should impose arbitration as a remedy to protect consumers from an increase in prices.

  - The combination of assets at stake here far surpasses prior mergers.

- In 2007, after the *News/Hughes* decision, the Commission also found that "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." (*2007 Exclusivity Sunset Order*, 22 FCC Rcd. 17791, ¶ 39)

- Prior cases also took comfort from backstop of program access rules, but there is no guarantee that the Commission will continue the ban on exclusives after it expires in 2012.

Online Loophole

- Because the proposed transaction presents a combination of broadband and content never seen before, at a time when the delivery of online and linear content is converging, it will also enable Comcast/NBCU's withholding or discriminatory pricing of online programming. This transaction would give Comcast/NBCU the incentive and ability to provide value-added content to Comcast subscribers and withhold from or raise the price to its competitors' subscribers.

- The Commission should extend the program access rules to Comcast/NBCU programming no matter how it is delivered and ensure that the same content is available to Comcast's MVPD rivals at the same time (*e.g.*, window), at the same quality (*e.g.*, HD or 3D), at the same speed, and on the same terms as it is available to Comcast.

- In addition, the Commission should impose an arbitration remedy where negotiations break down, with accelerated access for first-time requests in this fast-moving space.

Duration of Conditions

- The conditions should be imposed for a minimum initial term of six years.

    - Consistent with term of the arbitration conditions in *News/Hughes, Adelphia/Comcast/TWC,* and *News/Liberty*.

- Thereafter, conditions should remain in force until such time as Comcast/NBCU can demonstrate that market developments make them no longer necessary, as there is no basis for an arbitrary end date when harms identified by the Commission could still be imposed by Comcast/NBCU.