

December 22, 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 Corporation (“Comcast”) hereby responds to the ex parte notice filed by Viacom Inc. (“Viacom”) raising concerns about the proposed transaction’s alleged “impact ... on the market for independent programming” and urging the Commission “to impose effective conditions to ensure a competitive marketplace.”<sup>1</sup> These concerns are meritless, as Applicants have already demonstrated with overwhelming and un rebutted record evidence.<sup>2</sup>

There is no evidence in the record that the proposed transaction will create any problem with Comcast’s carriage of independent programming networks. To the contrary, after the transaction – as Applicants have repeatedly demonstrated – approximately six out of seven networks carried by Comcast will be unaffiliated with Comcast.<sup>3</sup> Many independent programmers and programming producers have voiced their support for the proposed transaction, including, among others, CoLours TV, HDNet, Hip Hop On Demand, Outdoor Channel, Ovation, ReelzChannel, RHI Entertainment,

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<sup>1</sup> Letter from DeDe Lea, Executive Vice President, Government Affairs, Viacom Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 1-2 (Dec. 16, 2010) (“Viacom ex parte”).

<sup>2</sup> See Mark Israel and Michael L. Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction, MB Docket No. 10-56, at 103-119 (Jul. 20, 2010); see generally Applicants’ Opposition to Petitions to Deny and Response to Comment, MB Docket No. 10-56, at Section IV.D (Jul. 21, 2010).

<sup>3</sup> See Public Interest Statement, MB Docket No. 10-56, at 77 (Jan. 28, 2010); Comcast’s Response to the Commission’s Information and Discovery Request, MB Docket No. 10-56, at 42 (June 30, 2010); Comcast’s Response to the Commission’s Second Information and Document Request, MB Docket No. 10-56, at 35 (Oct. 18, 2010).

Sportsman Channel, and Tribeca Films. This broad base of support is due in no small part to Comcast's strong record of launching and expanding the carriage of dozens of independent networks and showcasing programming from independent producers on Comcast's On Demand platforms. In addition, Comcast has made a robust voluntary commitment to launch 10 independent networks that are not affiliated with large media companies. These facts – not Viacom's self-serving advocacy – should be the focus of the Commission's assessment of the record concerning carriage of independent programming.<sup>4</sup>

Viacom's claim to speak for "independent programmers" is particularly inapt. Comcast carries twenty-three (23) Viacom networks on broadly-penetrated tiers, under long-term contractual arrangements. Comcast also carries seven (7) high definition feeds of those networks and one standalone Viacom HD network. Viacom is the third-largest owner of national cable networks, while NBC Universal ("NBCU") is fourth (post-transaction, the new NBCU will still rank fourth, behind Viacom).<sup>5</sup>

The fact is that Comcast and Viacom have agreed to these mutually beneficial carriage arrangements over the course of many years of private negotiations, consistent with – in Viacom's own words – "the vibrant competition in both programming and distribution, and the myriad options and alternatives available to consumers" that characterize the marketplace in which Viacom, Comcast, and NBCU all operate.<sup>6</sup> Viacom's Chairman has admonished the Commission that "*there is no conceivable justification for government intervention*" in this marketplace, declaring that such regulation would be "ill-considered and unjustified."<sup>7</sup> As Viacom previously explained, the Commission's program carriage and program access proceedings have yielded "overwhelming and un rebutted record evidence confirming that the wholesale video programming market is competitive and functioning as Congress intended."<sup>8</sup>

Nothing about the proposed transaction will prevent Comcast and Viacom from building on what Viacom's leadership previously described as Viacom's "long-standing and successful relationship" with Comcast and continuing to reach "win/win" agreements for themselves and

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<sup>4</sup> Viacom cites to concerns raised by WealthTV and Allbritton, but Comcast has refuted claims made by those parties.

<sup>5</sup> Public Interest Statement at 92. The Commission's most recent video competition report identified Viacom as owning four of the top 20 most widely-penetrated and four of the top 20 most highly-rated networks. *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542 at App. C, Tbls. C-5 & C-6 (2009).

<sup>6</sup> Letter from Peter Chernin, President and COO, News Corporation; Robert Iger, President and CEO, The Walt Disney Company; Philippe Dauman, CEO, Viacom; and Jeff Zucker, President and CEO, NBC Universal, to Kevin Martin, Chairman, FCC, et al., MB Docket No. 07-42 (Nov. 20, 2007).

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> Letter from Antoinette Cook Bush, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel to Viacom, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 07-198 and 07-42 (Dec. 8, 2008).

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consumers, as they have many times before.<sup>9</sup> And, to the extent Viacom raises vague concerns about Comcast's alleged ability to "limit the availability of programming to non-traditional distributors,"<sup>10</sup> Comcast has already voluntarily proposed a condition it is willing to accept to address any such concerns as part of the Commission's order approving the transaction.<sup>11</sup>

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

Respectfully submitted,

Michael H. Hammer

Michael H. Hammer

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<sup>9</sup> See Press Release, Comcast, Viacom and Comcast Sign Multi-Year Affiliation Agreement (Dec. 19 2003), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=267> (quoting then-President and Chief Operating Office of Viacom Mel Karmazin).

<sup>10</sup> Viacom ex parte at 1.

<sup>11</sup> See Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, Counsel to Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2-3 (Dec. 6, 2010).