



January 7, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Notice:

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 10-56.

Dear Ms. Dortch:

On January 5, 2011, the American Cable Association (ACA) submitted an ex parte filing in the above-captioned proceeding. ACA's filing described how what is known as "baseball-style arbitration" in program access disputes is of no utility to small multichannel program distributors (MVPDs). This is the case, particularly for the smallest MVPDs, even if a "one-way fee shifting" mechanism, where the party losing the arbitration pays the other party's costs, were implemented.

The members of the National Telecommunications Cooperative Association (NTCA), the Western Telecommunications Alliance (WTA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Rural Independent Competitive Alliance (RICA)¹ concur with ACA's filing. The associations add that many MVPDs owned or otherwise affiliated with rural local exchange carriers (RLECs) often utilize broadband technologies, such as DSL or fiber, to provide video services in tandem with voice services. Largely because of the costs of programming, any of these broadband-based video services are offered at or near a break-even basis, or even at a loss, in order to retain customers in an increasingly competitive environment.

¹ RICA and OPASTCO are members of the Fair Access to Content in Telecommunications (FACT), coalition along with National Rural Telecommunications Cooperative (NRTC). The FACT Coalition, NTCA, and WTA filed joint reply comments in this proceeding outlining eight conditions that would be necessary to ensure that the proposed merger would be consistent with the public interest (Reply to Opposition to Petition to Deny and Response to Comments of FACT, NTCA and WTA, filed. Aug. 19, 2010).

ACA's ex parte also outlined that, in the event the arbitration provision is adopted, the Commission is considering setting a limit of 400,000 subscribers for those MVPDs that may wish to use the services of a bargaining agent.² The associations concur with ACA that this limit would significantly dilute the utility of bargaining agents for the much smaller MVPDs that use the same agent. This would leave the smallest MVPDs and their customers in a worse situation after the merger, contrary to the public interest.³

Moreover, ACA's contention that small MVPDs are unable to avail themselves of the burdensome expense of baseball-style arbitration⁴ is even more applicable to MVPDs affiliated with RLECs. Finally, MVPDs that operate with minimal if any profit-margin clearly could not afford the risk that would accompany the one-way fee shifting mechanism described in ACA's filing.⁵ Not only do the small MVPDs suffer from an inferior bargaining position, their size means that they are subject to even greater financial constraints.

For these reasons, in addition to those outlined in ACA's January 5 filing, the Commission should only approve the merger contingent upon the conditions called for by the FACT Coalition, its joint filers and the ACA throughout this proceeding.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano
Senior Vice President – Policy
National Telecommunications Cooperative
Association (NTCA)

/s/ John N. Rose

John N. Rose
President
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
(OPASTCO)

/s/ Stephen G. Kraskin

Stephen G. Kraskin
Communications Advisory Counsel
Rural Independent Competitive
Alliance (RICA)

/s/ Kelly Worthington

Kelly Worthington
Executive Vice President
Western Telecommunications Alliance (WTA)

cc: RICA
WTA
OPASTCO

² 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, filed by Cinnamon Mueller, pp. 5-8 (January 5, 2011).

³ See, ACA Notice of Ex Parte Presentation; In the Matter of Application 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 filed by Cinnamon Mueller, pp. 4-5 (December 22, 2010) .

⁴ ACA Ex Parte December 22, 2010, pp. 2-5.

⁵ ACA Ex Parte January 5, 2011, pp. 4-8.