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Barbara S. Esbin
Admitted in the District of Columbia

February 24, 2011

Via ECFS

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation of American Cable Association ("ACA"); *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 Chief Lake:

On January 22, 2011, the Commission released a Memorandum Opinion and Order in the matter of the Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees,[1] in which the Commission granted the applications subject to conditions. ACA participated in the license transfer review through its filings in the formal comment cycle and thereafter by means of ex parte presentations.[2] In reviewing the Comcast-NBCU Order, ACA noticed an erroneous attribution to it of a statement concerning online video distributors ("OVDs").

The Comcast-NBCU Order, at paragraph 77, states: "Commenters assert that even if OVDs are not a viable competitive alternative to MVPDs today, they will become one in the near future." Footnote 170, which supports this statement references, among other filings, "ACA Comments at 4, 34-37." However, ACA did not address the issue of whether OVDs are potential competitors, but rather made the factually and legally distinct argument that online video distribution for multichannel video programming distributors ("MVPDs") is a complement to existing video distribution services, and therefore the combined entity would have the same

[1] *See In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licensees,* Memorandum Opinion and Order, 26 FCC Rcd 48 (2011) ("Comcast-NBCU Order").

[2] *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 numerous ex parte submissions. See, e.g., ACA ex parte letters filed on August 27, 2010, September 21, 2010, September 22, 2010, October 12, 2010, November 5, 2010, November 8, 2010, November 24, 2010, December 7, 2010, December 8, 2010, December 13, 2010, December 17, 2010, December 21, 2010, December 22, 2010, December 23, 2010, January 5, 2010 and January 6, 2010.

incentives and ability to raise rivals' costs for this complementary service as it would for linear programming distribution services.

The portions of ACA's Comments concerning online distribution referenced in footnote 170 read as follows:

> **Vertical harms in Online Distribution.** The proposed transaction also threatens harms in the rapidly developing and complementary online marketplace where access to popular content will become critical for smaller MVPDs to compete. The same dynamics summarized above extend to online distribution of Comcast/NBCU-controlled programming, where the combined entity would have the incentive and ability to raise costs.[3]
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> The Applicants recognize this trend and discuss in their filing the fact that high-quality video content is increasingly being distributed online by traditional, new media and user generated sources, and "[a]ny relevant market(s) for online video distribution would share many characteristics with the market(s) for traditional video programming." The ACA agrees. "Must have" video programming will retain its "must have" nature regardless of the distribution platform. Further, MVPDs are developing sophisticated business strategies to permit their existing video subscribers to access the same content online. Thus, the rapidly accelerating movement of video programming online as a complement to existing offerings will make online access to "must have" broadcast and cable video programming essential for competing MVPDs. As a result, the concerns about the vertical harms of the transaction discussed above with respect to MVPD distribution networks extend to the evolving online marketplace. It is clear that by controlling such a significant amount of "must have" programming post-transaction, the combined entity would have the incentive and ability to use this newfound market power to either withhold content from competitors or impose higher fees or other unreasonable conditions for carriage.[4]

Should the Commission determine that issuance of an errata in this docket is warranted, ACA requests that it address the erroneous attribution in footnote 170 by deleting the reference to "ACA Comments" as supporting the position that OVDs are potential rivals to MVPDs.

[3] ACA Comments at 4 (emphasis added).
[4] ACA Comments at 35 (emphasis added)(footnotes omitted).

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*): William T. Lake
Marcia Glauberman