

August 24, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th 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 and Transfer Control of Licenses, MB Docket No. 10-56 (AAA Case No. 72-472-E-01147-11)

Dear Ms. Dortch:

The dispute between Project Concord, Inc. (PCI) and NBCUniversal has broad ramifications. Public Knowledge (PK) writes to urge the Commission to ensure that it safeguards the future development of online video and does not discourage PCI or companies like it from taking advantage of procedures that it puts in place.

In the Comcast/NBCU proceeding, PK argued that the Commission ought to protect the development of online video. By combining large programmers with the largest cable operator, the merger posed a clear risk to the development of alternative distribution platforms. The combined company has a strong interest in protecting its legacy cable system, and could limit the licensing of its programming to serve that end.

To limit this, the Commission adopted various conditions designed to ensure that online programmers would have access to programming under some circumstances. But as with all merger conditions, these provisions have meaning only to the extent to which they are enforced by the Commission and used by parties such as PCI. Thus, it has been encouraging to see PCI go into arbitration to gain access to programming under those conditions, and to see its claims vindicated by the arbitrator. PK does not have access to the confidential information in PCI's or NBCUniversal's filings and so cannot review the matter completely, but observes as a general matter that if the Commission disturbs the arbitrator's findings then future parties might be discouraged from trying to access programming under the merger conditions, which would then be of little use. Similarly, PK generally agrees with PCI that without cost-shifting, future parties might be discouraged from filing complaints. Not all companies have PCI's ability to pursue claims in the face of tough opposition, and without assurances that cost-shifting will be available to them (when warranted) may simply be discouraged from enforcing their rights. Thus, parties that are victorious in arbitration should be able to expect that their costs will be covered.

Consumers benefit from competition between rival video distribution platforms. These new platforms can drive down prices, offer consumers more of what they want to watch, and offer programming in new ways and on new devices. By making more video part of the broader Internet content ecosystem, companies like PCI can help break the hold that legacy companies have on video distribution. However, to compete, new platforms need access to the programming that viewers demand. PCI is putting itself through the not-inconsiderable trouble of taking

advantage of the procedures the Commission set up in order to gain access to that programming, and neither it nor others like it should be discouraged from pursuing their claims. Thus, when it decides the issues that the parties have raised, PK urges the Commission to pay close attention to the public interest consequences of its actions. What may seem like a narrow, technical dispute between two companies may have broad implications both for the future of online video distribution, and for the effectiveness of its merger remedies generally.

Respectfully submitted,

*/s John Bergmayer*  
*Senior Staff Attorney*  
PUBLIC KNOWLEDGE