



*A Professional Limited Liability Company*

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October 29, 2010

**Via ECFS**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

**Re: American Cable Association (“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.**

Dear Ms. Dortch:

On October 28, 2010, Ross Lieberman, American Cable Association, Tom Cohen, Kelley Drye & Warren LLP, and the undersigned, met with John Flynn, Jim Bird, Virginia Metallo, Neil Dellar, Michael Steffen, and Jennifer Tatel. In the meeting, participants discussed the likely horizontal and vertical harms of the proposed Comcast-NBCU transaction and the proposed safeguards to protect consumers and competition described in ACA’s Comments filed June 21, 2010, Response to Comments filed July 21, 2010, and Reply filed August 19, 2010 in the above referenced proceeding.<sup>1</sup> In particular, discussion focused on the license transfer conditions ACA proposed in its August 19<sup>th</sup> Reply and the points raised in its comprehensive explanation of the conditions in its October 12<sup>th</sup> Ex Parte.

ACA reiterated how its proposed conditions are (i) narrowly tailored to address transaction-specific harms, and (ii) consistent with Commission precedent. Participants discussed how previous media transaction license transfer conditions were targeted only at vertical combinations of programming and distribution assets, whereas the Comcast-NBCU

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<sup>1</sup> *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); Response to Comments of the American Cable Association (filed July 21, 2010); Reply of the American Cable Association (filed Aug. 19, 2010). In addition ACA’s concerns are documented in ex parte letters filed on Aug. 27, 2010, Sept. 21, 2010, Sept. 22, 2010, and Oct. 12, 2010 (“October 12<sup>th</sup> Ex Parte”).

joint venture also entails horizontal harms that would require comparably effective license transfer conditions to remedy.

Participants focused especially on the development of remedies that would effectively ameliorate harms to smaller MVPDs from the proposed combination. In response to questions, ACA explained how its proposed special condition for smaller operators, which would require Comcast-NBCU to offer rates that are no more than five (5) percent higher than the best rates it offers larger MVPDs, will ensure that smaller MVPDs are able to obtain “must have” broadcast station signals and RSNs at fair prices post-combination.<sup>2</sup> Participants also discussed how to structure an effective arbitration remedy for unjustified price increases that would work for smaller MVPDs, in light of the differing economics of arbitrating disputes using commercial baseball-style arbitration under current programming contract practices. The threat of having a programming carriage dispute go to baseball-style arbitration for Comcast-NBCU is vastly decreased when it knows that resort to this dispute resolution mechanism is beyond the means of the smaller MVPD purchaser. The lack of an effective remedy for smaller providers, in turn, will permit Comcast-NBCU to exercise the increased market power it will derive as a result of the transaction to raise prices unimpeded over time. ACA stressed that having effective protections in place for smaller operators, including having an effective arbitration remedy will require a process that is both affordable and efficient, and discussed how its proposed conditions are aimed at achieving these twin goals.

Finally, participants discussed the recent endorsement of ACA’s proposed conditions, in addition to their own proposed remedies, by a large group of rural telecommunications companies who also provide MVPD services, represented by the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPATSCO), the National Rural Telecommunications Cooperative (NRTC), and the coalition Fair Access to Content and Telecommunications coalition (FACT), which is comprised of OPATSCO, NRTC, and the Rural Independent Competitive Alliance (RICA).<sup>3</sup>

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<sup>2</sup> As ACA has previously described, the special arbitration remedy for smaller MVPDs requires that Comcast-NBCU offer to smaller MVPDs a rate for broadcast station signals and RSNs that is no more than five (5) percent higher than the best rates it offers any MVPD. See ACA Reply at 55-61; October 12<sup>th</sup> Ex Parte at 17-18.

<sup>3</sup> See *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, Ex Parte Letter, NTCA, OPATSCO, NRTC, and FACT at 1 (filed Oct. 26, 2010). The letter indicates that also joining with FACT in its Reply Comments were NTCA and the Western Telecommunications Alliance (WTA).

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 S. Esbin

cc (*via email*): John Flynn  
Jim Bird  
Virginia Metallo  
Neil Dellar  
Michael Steffen  
Jennifer Tatel