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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Applications of Comcast Corporation,)
General Electric Company)
and NBC Universal, Inc.)
)
)
For Consent to Assign Licenses or)
Transfer Control of Licensees)
_____)

MB Docket No. 10-56

To the Commission:

**REPLY TO OPPOSITION TO PETITIONS TO DENY AND RESPONSE TO
COMMENTS**

of

**THE FAIR ACCESS TO CONTENT & TELECOMMUNICATIONS COALITION
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

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August 19, 2010

EXECUTIVE SUMMARY

The FACT coalition, the National Telecommunications Cooperative Association, and the Western Telecommunications Alliance submit this Reply to the “Opposition to Petitions to Deny and Response to Comments” (the “Opposition”) jointly submitted by Comcast Corporation (“Comcast ”), General Electric Company (“GE”), and NBC Universal, Inc. (“NBCU”), (collectively, the “Applicants”) on or about July 21, 2010 in the above-styled proceeding (the “Transaction”).

The Transaction would result in an unprecedented communications giant (the “Venture”) that would place an exceptional array of broadcast, linear cable, online, video-on-demand, and pay-per-view content under the control of the Nation’s largest MVPD and largest broadband operator, Comcast. Absent the imposition of conditions as called for in the FACT Comments and the NTCA/WTA Petition, as modified and restated herein (collectively, the “Conditions”), the Transaction is not in the public interest.

First, the Conditions must assure competitive MVPDs and broadband operators that they will have nondiscriminatory and reasonable access to all forms of video content controlled by the Venture. Specifically, the Conditions must ensure nondiscriminatory access to cable, online, and broadcast content. Furthermore, the Conditions must dilute the Venture ’s unprecedented market power that it could exercise through VOD/PPV properties like iN DEMAND, and through content distribution properties such as Comcast Media Center and Headend-In-The-Sky.

In addition, the Conditions must prevent the Venture from engaging in the practice of forced tying of channels, whether by express terms or punitive pricing. Forced tying raises costs, often in a discriminatory manner, for providers, and subsequently raises the rates that consumers must pay. Despite the Applicants’ claim to the contrary, members of the Coalition have

encountered this practice firsthand, to the detriment of their member providers, the customers they serve, and the goals of the Commission. Similarly, the Conditions must prevent the Venture from continuing to dictate the levels of carriage of specific channels. Conditions must also prevent the Venture from forcing the carriage of online content by requiring a per-subscriber fee for access to online programming, regardless of whether or not subscribers view this content. Finally, Conditions must ensure that any migration of broadcast content to cable or online channels will not result in consumer harm.

In order to achieve these ends, the following Transaction-specific conditions are proposed:

1. A requirement, separate and apart from the Commission's existing program access rules,¹ that the Venture license all of its content, including broadcast, linear cable, VOD, PPV and online content, on fair, reasonable and non-discriminatory licensing terms and in no event less favorable than the terms on which Comcast's own cable systems license such content.
2. A requirement that all applicable Access Rules apply to all Comcast – NBCU owned channels both retroactively and prospectively (i.e., to contracts entered into pre- and post-Merger).
3. A requirement that the NBC and Telemundo broadcast networks grant retransmission consent rights on a "most favored nation" basis to all MVPDs, and a prohibition against the tying of broadcast content to any other video programming offered by the Venture .
4. A requirement for Comcast to divest itself of ownership of iN DEMAND and CMC or, alternatively, that Comcast be prohibited from tying content offered on iN DEMAND (e.g., MLB, NHL, and Venture-owned studios' films) and/or CMC as a condition of licensing, either by contract requirement or pricing penalties.
5. A prohibition against the Venture from engaging in the forced tying of multiple channels, including a prohibition against forced tying via pricing differentials, as a condition to acquiring any programming offered by the Venture. Furthermore, a prohibition against the Venture from dictating, either explicitly or through punitive pricing, the channel

¹ Title 47 CFR Sec. 76.1000, et seq. ("Access Rules").

placement of any Venture content (such as requiring placement on a specific tier of service) on an MVPD system.²

6. A prohibition against Comcast and the Venture imposing conditions or requirements on any MVPD or broadband providers that limits the ability to offer online content in any market.
7. A prohibition against the Venture from compelling MVPDs or broadband providers to carry and pay for any online content as a condition of carriage for the licensing of any other Comcast /NBCU content.
8. Appropriate restrictions on the migration of sports and other programming from the NBC broadcast network to any basic or premium cable or online channels controlled by the Venture.

In this Reply, the Coalition demonstrates that the proposed Conditions are appropriate, necessary, transaction-specific, and consistent with and essential to the public interest. The Commission should reject as invalid the Applicants' arguments to the contrary.

² The FACT Comments had originally contained nine recommended Conditions. The Coalition has, in this Reply, consolidated two Conditions into this single Condition 5.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

Applications for Consent to the)
Transfer of Control of Licenses)

General Electric Company,)
Transferor,)

to)

Comcast Corporation,)
Transferee)

MB Docket No. 10-56

**REPLY TO OPPOSITION TO PETITIONS TO DENY AND RESPONSE TO
COMMENTS
OF
THE FAIR ACCESS TO CONTENT & TELECOMMUNICATIONS COALITION
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

The Fair Access to Content & Telecommunications Coalition (“FACT”), which includes the National Rural Telecommunications Cooperative (“NRTC”),³ the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),⁴ and the

³ NRTC is a non-profit corporation organized as a buying cooperative and made up of some 1500 rural telephone and electric cooperatives and companies. NRTC has delivered advanced telecommunications technology to its members since 1986 including C-band television, direct broadcast service television and, more recently, Internet protocol television (IPTV) distribution rights.

⁴ OPASTCO is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Rural Independent Competitive Alliance (“RICA”);⁵ joined by the National Telecommunications Cooperative Association (“NTCA”),⁶ and the Western Telecommunications Alliance (“WTA”)⁷ (collectively, the “Coalition”) pursuant to Section 309(d) of the Communications Act of 1934, as amended (the “Communications Act”),⁸ and Section 73.3584(b) of the Commission’s Rules,⁹ hereby reply to the Opposition to Petitions to Deny and Response to Comments filed in the above-captioned application for transfer of control of NBC Universal, Inc. (“NBCU”) from General Electric Company (“GE”) to Comcast Corporation (“Comcast”) (collectively, the “Applicants”).¹⁰

I. INTRODUCTION AND OVERVIEW

FACT, NTCA and WTA, in their respective Comments and Petition to Deny, have demonstrated that the proposed Transaction would create a vertically integrated company (hereinafter the “Venture”) with the ability and incentive to foreclose cable, online, video-on-

⁵ RICA is a national association of nearly 80 competitive local exchange carriers (CLECs) that are affiliated with rural ILECs and provide facilities based service in rural areas.

⁶ NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

⁷ WTA is a trade association that represents approximately 250 rural telephone companies operating west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

⁸ 47 U.S.C. § 309(d) (2006 & Supp. III).

⁹ 47 C.F.R. § 73.3584(b) (2009).

¹⁰ See Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Public Notice, MB Docket No. 10-56, DA 10-457 (Mar 18, 2010) (hereinafter, the applications are referred to as the “Applications,” the transaction referred to herein as the “Transaction” or the “Merger,” and the parties thereto referred to as “Applicants” or “Venture”).

demand, pay-per-view and broadcast programming both for traditional multichannel video distributors (“MVPDs”) and online distributors, to discriminate against unaffiliated programming channels, and limit the ability of programming channels to distribute such programming via online Internet systems. The Applicants have failed to overcome their burden to prove that the Transaction is in the public interest,¹¹ absent imposition of the Conditions.

The Applications seek approval to vertically integrate NBCU, a leading programming provider, with the nation’s dominant cable and broadband provider, Comcast. Permitting the Transaction to occur through a grant of the Applications without substantive and meaningful conditions as recommended by the Coalition will cause harm to the public interest. The Applicants’ arguments to the contrary are incorrect statements of law, misrepresentations of fact, and self-serving depictions of the public interest.

The Coalition urges the Commission to impose the eight Conditions called for herein on any approval of the Applications to ensure that the public interest harms to consumers are ameliorated. The following reflects the combined conditions proposed by the FACT Comments and NTCA/WTA Petition. Those Conditions are as follows:

1. A requirement, separate and apart from the Commission’s existing program access rules,¹² that the Venture license all of its content, including broadcast, linear cable, VOD, PPV and online content, on fair, reasonable and non-discriminatory licensing terms and in no event less favorable than the terms on which the Comcast’s own cable systems license such content.
2. A requirement that all applicable Access Rules apply to all Comcast – NBCU owned channels both retroactively and prospectively (i.e., to contracts entered into pre- and post-Merger).

¹¹ 47 U.S.C. §§ 309, 310(d).

¹² Title 47 CFR Sec. 76.1000, et seq. (“Access Rules”).

3. A requirement that the NBC and Telemundo broadcast networks grant retransmission consent rights on a “most favored nation” basis to all MVPDs, and a prohibition against the tying of broadcast content to any other video programming offered by the Venture .
4. A requirement for Comcast to divest itself of ownership of iN DEMAND and CMC or, alternatively, that Comcast be prohibited from tying content offered on iN DEMAND (e.g., MLB, NHL, and Venture-owned studios’ films) and/or CMC as a condition of licensing, either by contract requirement or pricing penalties.
5. A prohibition against the Venture from engaging in the forced tying of multiple channels, including a prohibition against forced tying via pricing differentials, as a condition to acquiring any programming offered by the Venture. Furthermore, a prohibition against the Venture from dictating, either explicitly or through punitive pricing, the channel placement of any Venture content (such as requiring placement on a specific tier of service) on an MVPD system.¹³
6. A prohibition against Comcast and the Venture imposing conditions or requirements on any MVPD or broadband providers that limits the ability to offer online content in any market.
7. A prohibition against the Venture from compelling MVPDs or broadband providers to carry and pay for any online content as a condition of carriage for the licensing of any other Comcast /NBCU content.
8. Appropriate restrictions on the migration of sports and other programming from the NBC broadcast network to any basic or premium cable or online channels controlled by the Venture .

The scope of the proposed Transaction cannot be overstated: it is of historic magnitude and unique. Never before has a merger placed such a vast amount of video content under the control of a company that is not only the nation’s largest MVPD cable distributor,¹⁴ but also its largest broadband provider.¹⁵ Furthermore, the Merger would transpire at a time of significant change in the video distribution business with two relatively new and rapidly emerging distribution technologies: Internet protocol television (“IPTV”) and Internet (online) video.

¹³ The FACT Comments had originally contained nine recommended Conditions. The Coalition has, in this Reply, consolidated two Conditions into this single Condition 5.

¹⁴ See <http://www.ncta.com/Stats/TopMSOs.aspx>

¹⁵ “The Venture Continues To Beat Telcos In Broadband Growth,” Karl Bode, DSL Reports, April 28, 2010.

IPTV services are critical to the competitive viability of many rural telephone companies and will offer consumers greatly enhanced services, particularly in rural America. IPTV has come into being as a viable competitor to cable and satellite MVPDs only within the past two to three years. Online video distribution is growing at phenomenal rates and is poised to become another viable competitor to cable and satellite MVPD services.

There is, however, within this Merger great and real potential to disrupt and impede these emerging competitors. Consideration of the Applications demands particular care against the backdrop of these emerging video services. Conditions on the merger are essential to ensure that the anticompetitive opportunities and incentives this unique Transaction brings do not become reality, and that the market power of Venture is appropriately constrained.

Furthermore, this proceeding *is* the proper forum for addressing all issues associated with the proposed Conditions. Contrary to the Applicant's assertions, those issues are Transition-specific and not matters for general rulemakings. Without the Conditions constraining the anticompetitive abilities of the Venture, approval of the Applications would be contrary to Section 309 of the Communications Act¹⁶ which requires the Commission to determine whether a grant of these specific Applications will serve the public interest.¹⁷

The Commission must determine whether the Applicants have demonstrated that the proposed Merger will serve the public interest, convenience, and necessity.¹⁸ Given the substantial harms that the proposed Merger would cause, the only way this test can be passed is if the Merger is subject to a number of enforceable conditions. Through imposition of the

¹⁶ 47 U.S.C. §309.

¹⁷ Id.

¹⁸ FACT comments, pp. 9-10.

