November 9, 2010

<u>VIA ECFS – MB DOCKET NO. 10-56</u>

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
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 or Transfer Control of Licensees*, MB Docket No. 10-56

Dear Ms. Dortch:

This letter reports that, on November 8, 2010, NBC Universal, Inc. ("NBCU") amended the application seeking authority to assign the television broadcast station licenses for Station KWHY-TV, Los Angeles, California,[1] to a divestiture trust, with Bahia Honda LLC serving as trustee ("Bahia Honda" or "Trustee").[2] The application was amended to include in Exhibit 4 a revised Form of Trust Agreement among NBC Universal Media, LLC, Telemundo of Los Angeles, LLC, Telemundo Group, LLC, NBC Telemundo License, LLC (the "Transferring Beneficiaries") and Bahia Honda ("amended Form of Trust Agreement"). The amended Form of Trust Agreement effectuates a number of changes to the original agreement, including provisions to prohibit any sharing of employees between Station KWHY-TV and the other stations in the Los Angeles market operated by the Transferring Beneficiaries or their affiliates.

I. Background

The Trust Application is one element of NBCU's plan to come into full compliance with section 73.3555(b) of the Commission's rules, 47 C.F.R. § 73.3555(b), prior to closing the

[1] The application also seeks Commission consent to the assignment of the television translator station licenses for K46GF, Santa Maria, California and K47GD, San Luis Obispo, California. *See* FCC Form 314, File No. BALCDT-20100517ADJ, *et al.* ("Trust Application"). The Trust Application and the instant amendment were filed in the name of NBC Telemundo License, LLC, which will be the licensee, assuming the Commission grants the relevant pending pro forma assignment application. *See* File No. BALCDT-20100128ABS.

[2] Mr. Jose Cancela is the sole member of Bahia Honda LLC.

transaction involving Comcast Corporation, General Electric Company, and NBCU.[3] Specifically, NBCU has committed either to divest one of its three television stations in the Los Angeles DMA to a third party prior to the consummation of the proposed joint venture transaction or to place one of the stations in a divestiture trust at closing, in either case pursuant to prior Commission consent.[4] NBCU has made substantial progress with regard to both aspects of this commitment. It has engaged Moelis & Company ("Moelis"), an investment bank, to assist in its effort to sell Station KWHY-TV to a third party and also has entered into an agreement with Minority Media and Telecommunications Council ("MMTC") pursuant to which MMTC has assisted in identifying prospective qualified buyers for the station, particularly minorities and women. Through this process, several potential purchasers have emerged, and NBCU is in the process of evaluating their proposals.

NBCU continues to pursue the Trust Application in the event its efforts to divest Station KWHY cannot be completed on or before the closing of the instant transaction.[5] Assigning the station to Bahia Honda will insulate the station from NBCU's influence and control, placing control with Bahia Honda, as trustee, which will be charged with divesting the station to a third-party purchaser.[6]

II. The Form of Trust Agreement Provides for an Extraordinary Level of Insulation for Station KWHY.

The amended Form of Trust Agreement contains substantial new language that goes well beyond prior Commission-approved divestiture trust agreements in guaranteeing that Station KWHY will be insulated from NBCU's influence and control. For instance, the Form of Trust Agreement prohibits any shared employees between Station KWHY-TV and the other stations in

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[3] *See 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, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) ("Comcast/NBCU Transaction").

[4] *See* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, Counsel for General Electric Company, and Kenneth E. Satten, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 1 (May 4, 2010).

[5] *See, e.g., Applications of Shareholders of AMFM, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee)*, 15 FCC Rcd 16062, 16072 (2000) ("The Commission previously has approved the use of properly insulated trust arrangements as a legitimate means to avoid attribution of a broadcast interest under the Commission's multiple ownership rules.") (citing *Corporate Ownership Reporting and Disclosure by Broadcast Licensees,* 97 FCC 2d 997, 1023-24 (1984) ("*Attribution of Ownership Interests*")).

[6] *Attribution of Ownership Interests,* 97 FCC 2d at 1023-34, on reconsideration, 1 FCC Rcd 802 (1986); *see also Clear Channel Communications, Inc.*, 23 FCC Rcd 1421 (2008); *Citadel Broadcasting Co.,* 22 FCC Rcd 7083 (2007); *Application of Stockholders of Infinity Broadcasting Corp. and Westinghouse Electric Corp.*, 12 FCC Rcd 5012, 5040-41 (1996).

the Los Angeles market operated by the Transferring Beneficiaries or their affiliates. Specifically, the Form of Trust Agreement provides:

- The Trustee will be entitled to obtain the *exclusive* services of all employees of the Transferring Beneficiaries who have been providing services solely to Station KWHY.[7]

- The Trustee may also obtain the *exclusive* services of certain other employees of the Transferring Beneficiaries, subject to agreement with the Transferring Beneficiaries, who have been providing services to the Station and who also have been providing services to the other stations in the Los Angeles market operated by the Transferring Beneficiaries or their affiliates. Following the Closing, *such persons mutually agreed will provide services solely to the Trustee in connection with the operation of the Station and they will no longer provide services to other stations operated by the Transferring Beneficiaries or their affiliates*.[8]

- After the Closing, no employees of the Transferring Beneficiaries will provide services to the Station while also providing services to the other stations in the Los Angeles market operated by the Transferring Beneficiaries or their affiliates.[9]

- Any employees of the Transferring Beneficiaries who provide services to the Station after the Closing will do so on an exclusive basis and shall report to, and be subject solely to the supervision, direction and control of, the Trustee.[10]

- There will be no "shared employees" between the Station and the other stations in the Los Angeles market operated by the Transferring Beneficiaries or their affiliates.[11]

To further emphasize the insulation among station employees, the Form of Trust Agreement also requires each employee of Station KWHY to:

> . . . execute a letter acknowledging that, upon commencement of the KWHY Divestiture Trust, (A) he or she is accountable solely to the Trustee in performing services with respect to the Station and (B) he or she is prohibited from communicating with the

[7] Trust Application, Amended Exhibit 4, Section 5(b)(i).

[8] *Id.* Section 5(b)(ii).

[9] *Id.* Section 5(c).

[10] *Id.*

[11] *Id.*

> Transferring Beneficiaries or their affiliates, or any of their officers, directors or employees (other than employees who are performing services for the Station on an exclusive basis under the supervision, direction and control of the Trustee) regarding the operation or management of the Station.[12]

The Form of Trust Agreement also places new limits on the Transferring Beneficiaries' right to set a minimum purchase price.[13] In particular, the Form of Trust Agreement requires that the minimum price must be consistent with the market value of the station as established by an independent broker or appraiser.[14]

As discussed in more detail below, these amendments to the Trust Agreement, coupled with NBCU's current efforts to divest Station KWHY, should put to rest any lingering concerns parties may have regarding the proposal to place the station in a divestiture trust should NBCU be unable to complete the divestiture before closing the Comcast/NBCU Transaction. In any event, these facts demonstrate conclusively that the proposed divestiture trust is *not* "a thinly-veiled attempt to retain the station indefinitely while stalling until such time as they can lobby the Commission to change its duopoly rules" as Free Press asserts.[15]

III. Allegations That Station KWHY Has Been Improperly Integrated With Stations KNBC and KVEA Are Without Merit.

Free Press has raised concerns regarding the level of integration between Station KWHY-TV and NBCU's other Los Angeles stations, KNBC and KVEA, alleging that such integration was somehow improper and renders it impossible to meet the Commission's insulations standards for divestiture trusts. Specifically, Free Press argues that the integration of the stations "necessarily forces the Trustee to communicate with the trust Beneficiary to maintain station operations, use shared facilities, and to air programming."[16] Free Press also objects to provisions in the Form of Trust Agreement that allow the Transferring Beneficiaries to set a minimum price and the date for consummation of the transaction, arguing that this would effectively allow the Transferring Beneficiaries "to set a minimum price above a commercially reasonable price" and

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[12] *Id.* Section 5(b)(vi).

[13] *Id.* Section 4(d).

[14] *Id.*

[15] Letter from Corie Wright, Free Press, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 4 (Oct. 8, 2010); *see also* Reply to Opposition of Free Press, Media Access Project, Consumer Federation of America, and Consumers Union, MB Docket No. 10-56, at 47-54 (Aug. 19, 2010) ("Free Press Reply"). Free Press's objection to the provision in the Form of Trust Agreement allowing for the revocation of the trust if the Commission adjusts its rules or policies, *see* Free Press Reply at 53, is wrong as a matter of law. The Commission has recently approved a divestiture trust agreement with an identical provision. *NM Licensing LLC, Debtor in Possession*, Report No. 47242 (May 19, 2010), File No. BALH20100401AFQ, Exhibit A, Form of Trust Agreement, Section 1(d)(i). Nevertheless, the parties have deleted this provision in the amended Form of Trust Agreement.

[16] Free Press Reply at 50.

thereby permit the Transferring Beneficiaries "to warehouse the excess station indefinitely."[17] Finally, Free Press calls into question the legitimacy of NBCU's intent to sell the station.[18] Free Press's allegations are entirely without merit.

To begin, Station KWHY remains in compliance with the *Telemundo Order*. When NBCU acquired Telemundo in 2002, it pledged to "maintain the stations' separate programming strategies, and to refrain from engaging in joint sales in the Los Angeles market."[19] NBCU has complied with this pledge.

Station KNBC has operated as an NBC network affiliate since 1949 and continues to do so to this day. Station KVEA operated as a Telemundo network affiliate prior to NBCU's acquisition of Telemundo in 2002, and continues to operate as an affiliate of the Telemundo network. Station KWHY operates as an independent Spanish-language station – the oldest such station in the nation. The partial co-location of the three stations in NBCU's Burbank, California studios was a reasonable business decision that was not precluded by or in conflict with the *Telemundo Order*. Stations KWHY and KVEA, the two Spanish-language stations, were co-located in Glendale, California when NBCU acquired them in 2002. NBCU relocated Station KWHY News and Programming and the functions shared with KVEA (e.g., engineering and "back office" support functions such as Human Resources and Finance) to Burbank in 2003. KWHY Sales and Administration remained in Glendale until 2006, when NBCU moved these groups to the Pinnacle Building in Burbank, which is a separate building near the main Burbank facility. Nothing in the *Telemundo Order* sought to disrupt the existing co-location nor did it prohibit co-locating certain of the stations' operations in this way.

More important, the co-location did not result in an improper integration of Station KWHY's programming strategy or sales with those of KVEA or KNBC. Station KWHY continues to air independent programming, targets different audiences than KVEA and KNBC, and is substantially different from KVEA and KNBC. As network affiliates, Stations KVEA and KNBC do not have programming departments, but do have local production groups. Moreover, while they are in the same building with KWHY Programming, the KVEA and NBCU local production groups are located on a different floor than KWHY Programming. Station KWHY also continues to refrain from participating in joint sales with Stations KVEA and/or KNBC, and NBCU has located the sales staffs of KVEA and KWHY in separate buildings and the two sales staffs do not interact with each other. In fact, the sales forces for KVEA and KWHY openly and aggressively compete with one another.

Neither Free Press nor any other party has offered evidence sufficient to demonstrate that Station KWHY has violated the *Telemundo Order*. The only evidence of so-called joint programming Free Press offers is an assertion that Stations KVEA and KWHY "often use the

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[17] *Id.* at 52-53.

[18] *Id.* at 53-54.

[19] *Telemundo Communications Group, Inc. and TN Acquisition Corp.*, 17 FCC Rcd 6958, 6975 (2002) ("*Telemundo Order*"); *see also id.* at 6977 ("NBC has promised to maintain the stations' separate programming and to refrain from engaging in join[t] sales.").

same reporter who carriers a four-sided microphone flag."[20] While Station KVEA does make available to KWHY news stories reported from the field, this practice does not mean that KWHY does not pursue an independent programming strategy. In fact, the decision of whether to incorporate stories from Station KVEA into KWHY's newscasts is left to the editorial discretion of KWHY's news personnel, including its executive producer of news and its news, sports and weather anchors, who are independent of KVEA.

Free Press also asserts that the collective bargaining agreement involving certain KVEA and KWHY employees is evidence that the stations have "all but merged" operations.[21] This allegation is mere rhetoric and should be disregarded. Nothing in the *Telemundo Order* prohibits sharing employees between stations KVEA and KWHY. Moreover, utilizing a single collective bargaining agreement in this case simply makes sense given that, under the Commission's EEO rules, the three Los Angeles stations constitute a "station employment unit" for EEO reporting purposes.[22]

In sum, there is no basis to conclude that Stations KNBC, KVEA, and KWHY have improperly commingled "facilities, personnel, and programming" in violation of the *Telemundo Order*. Similarly, there is no basis to conclude that three stations are integrated to such an extent that the proposed divestiture trust cannot insulate Station KWHY from NBCU's influence and control. First, sharing physical facilities among the three stations will not violate the Commission's insulation standards for divestiture trusts. In fact, the FCC recently approved two divestiture trusts that contemplate the trustee utilizing certain shared facilities.[23] In approving the use of shared facilities, the Commission is simply recognizing the fact that interaction among personnel regarding access to shared facilities does not undermine the fundamental insulation established for the operation and management of a station or stations put in a divestiture trust. Moreover, the Form of Trust Agreement expressly prohibits staff serving Station KWHY from communicating with staff serving the other stations regarding the management and operation of Station KWHY.

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[20] Free Press Reply at 49.

[21] *Id*.

[22] *See* 47 C.F.R. § 73.2080(e)(2) ("A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.").

[23] *CBS Radio East, Inc.*, Report No. 47166 (Feb. 1, 2010), File No. BAL-20021115AAH ("CBS Radio East Trust"), Attachment B: Form of KFWB Asset Trust Agreement, Section 2(c) ("To the extent that any of the Excluded Assets are also used or useful in the conduct of the business and operation of the Station as of the Closing Date (the "Shared Assets"), then, during the term of this Trust Agreement, CBS Radio shall make such arrangements as are reasonably necessary to provide for the Trustee's continued use of the Shared Assets by the Station without any cost to the Trustee."); *Nassau Broadcasting III L.L.C.*, DA 10-312 (Feb. 25, 2010), File No. BALH-20090518AIG ("Nassau Trust"), Attachment 10, Trust Agreement, Section 2(c) ("To the extent that any of the Excluded Assets are also used or useful in the conduct of the business and operation of the Trust Stations as of the Closing Date (the "Shared Assets"), then, during the term of this Trust Agreement, the Company shall make such arrangements on or before the Closing as are reasonably necessary to provide for the Trustee's continued use of the Shared Assets by the Trust Stations without any cost to the Trustee.").

Second, Free Press's assertion that the Transferring Beneficiaries' ability to set a minimum purchase price gives the Transferring Beneficiaries the ability to set the minimum price at an unreasonable level thereby frustrating the Trustee's ability to divest Station KWHY also is misplaced. Minimum purchase price provisions are common to divestiture trusts and have long been accepted by the Commission[24] and Free Press has offered no justification sufficient for the Commission to deviate from this well-settled practice in this case. In any event, the Form of Trust Agreement now resolves Free Press's concern by requiring the minimum purchase price to be consistent with the market value of the Station. Moreover, to the extent that Free Press is concerned that the trust otherwise contains no express time limitation, the FCC has concluded that the lack of a deadline for selling a station does not in and of itself disqualify a divestiture trust.[25]

Finally, Free Press's overall suggestion that NBCU does not intend to divest itself of Station KWHY is wrong. NBCU is engaged in aggressive efforts to divest the station as outlined above.[26] The fact that NBCU has not divested itself of the station before now does not call into question NBCU's intent to divest the station now. NBCU's ownership of Stations KWHY, KNBC, and KVEA has been and remains in compliance with the *Telemundo Order*.[27]

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[24] *See, e.g.,* Nassau Trust, Section 4(d)(i) ("the Company shall, within thirty (30) days of the date of this Agreement, establish a minimum purchase price for the sale of each Trust Station . . . and shall have the rights . . . to establish a date by which any sale must be consummated. . . ."); CBS Radio East Trust, Amendment Attachment A: Form of KFWB License Trust Agreement, Section 4(d)(i) ("CBS Radio East shall have the right . . . to establish a minimum purchase price for the sale of the Station . . . and . . . to establish a date by which the sale must be consummated."); *Letter from Peter Doyle, Chief Audio Division to John F. Garziglia, Womble Carlyle Sandridge & Rice, PLLC,* 22 FCC Rcd 21786 (MB Dec. 20, 2007) ("*Doyle Letter*") (finding that "the Trust Agreement provision allowing the beneficiary to establish a minimum purchase price for the Station is consistent with precedent, and establishes neither improper control by Cumulus nor that the Assignment Application is a sham."); *Twentieth Holdings Corp.*, 4 FCC Rcd 4052, 4055 (1989).

[25] *See Doyle Letter*, 22 FCC Rcd at 21790.

[26] *See also*, Letter from Antonio R. Villaraigosa, Mayor, Los Angeles, CA to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56, at 1 (June 18, 2010) ("[NBCU] has announced it intends to divest KWHY-TV, and is making a good faith effort to help secure a minority owner to acquire the station.").

[27] *See Telemundo Order*, 17 FCC Rcd at 6976. Although the *Telemundo Order* granted a temporary waiver of Section 73.3555(b), NBCU filed a request to extend that temporary waiver before it expired. *See* Letter from F. William LeBeau, Sr. Regulatory Counsel and Assistant Secretary, Telemundo of Los Angeles License Corp., to Marlene H. Dortch, Secretary, FCC, BTCCT-20011101ACN, *et seq.* (Mar. 14, 2003). Consequently, under Commission precedent, the temporary waiver remains in force until such time as the Commission acts on the pending extension request. *See* Letter from W. Kenneth Ferree, Chief, Media Bureau, to Tribune Television Co. (Sept. 5, 2003) (cited in *Counterpoint Communications, Inc. and Tribune Television Co.*, 20 FCC Rcd 8582 ¶ 21 (2005)). NBCU also has submitted periodic reports outlining its efforts to divest one of the television stations in the Los Angeles DMA. *See, e.g.,* Letter from Margaret L. Tobey, Assistant Secretary, NBC Telemundo License Co., to Marlene H. Dortch, Secretary, FCC (Oct. 12, 2010).

In short, Free Press's concerns regarding the proposed divestiture trust are without merit and the Commission should approve the Trust Application as amended. If you have any questions concerning the foregoing, do not hesitate to contact the undersigned.

Sincerely,

/s/ Michael H. Hammer

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