

August 18, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth 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 or Transfer Control of Licenses, MB Docket No. 10-56*

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) responds here to the ex parte letters recently submitted in this proceeding by Allbritton Communications Company (“Allbritton”).¹ Substantively, they are without merit, and, procedurally, they violate the Commission’s directive regarding the manner in which this proceeding is to be conducted. As discussed below, Comcast has been a good partner to Allbritton, yet a year and a half before the expiration of the contract governing carriage of NewsChannel 8 on Comcast systems, Allbritton improperly seeks to use this proceeding to extract concessions from Comcast while refusing to engage in reasonable negotiations, as the parties have in the past. In support of this transparently opportunistic purpose, Allbritton concocts a theory of harm that is belied by several important details about the parties’ business relationship and discussions that Allbritton failed to disclose. The Commission should reject this misuse of the transaction-review process.

¹ See Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 9, 2010) (“Allbritton 8/9 Ex Parte”); Letters from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs, Allbritton Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Aug. 13, 2010) (the longer of these two letters is cited herein as “Allbritton 8/13 Ex Parte”).

Process. Comcast, NBC Universal, Inc., and General Electric Company (collectively, “Applicants”) filed their Applications and Public Interest Statement more than six months ago. A few weeks later, the Media Bureau issued a Public Notice that sought comments “from all interested persons to assist the Commission in its independent review of this proposed transaction.”² Stressing its desire “to consider fully all substantive issues regarding the Application in as timely and efficient a manner as possible,” the Bureau directed in bold typeface that “**petitioners and commenters should raise all issues in their initial filings**” and emphasized that “[n]ew issues may not be raised in responses or replies.”³ After issuing intervening orders that temporarily suspended⁴ and then reset⁵ the pleading cycle to allow parties to comply with “the requirement that issues be identified early in the proceeding so that they may be fully ventilated by all interested parties,”⁶ the Bureau rejected a request for a further delay, noting that “interested parties have had sufficient time to identify their potential concerns and frame any issues that they wish to raise and relief that they wish to propose.”⁷

Notwithstanding these clear directives, Allbritton now seeks to interject its professed concerns and proposed relief into this proceeding, many weeks after the extended deadline for filing petitions and comments has come and gone and even weeks after Applicants filed a comprehensive response to all of the issues raised by petitioners and commenters. Allbritton, which did not file comments on June 21 (or even a response to comments on July 21), makes no effort to justify the tardiness of its attempt to insert its concerns into this proceeding. The Commission should not countenance this attempted misuse of its processes.

NewsChannel 8. On the merits, Allbritton’s claims regarding NewsChannel 8 are speculative, unsubstantiated, and wrong. Allbritton’s letters do not even purport to provide a serious factual, legal, or economic analysis. They merely offer an unsupported assertion that Comcast’s prospective acquisition,

² 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 Licensees*, Public Notice, MB Docket No. 10-56, DA 10-457, at 1 (Media Bureau Mar. 18, 2010).

³ *Id.* at 5 (emphasis in original).

⁴ 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 Licensees*, Order, MB Docket No. 10-56, DA 10-662, at 1 (Media Bureau Apr. 16, 2010) (“April 16 Order”).

⁵ *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*, Public Notice, MB Docket No. 10-56, DA 10-636 (Media Bureau May 5, 2010).

⁶ *April 16 Order* at 1.

⁷ *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*, Order, MB Docket No. 10-56, DA 10-1087, at 3 (Media Bureau June 17, 2010) (“June 17 Order”). The Commission specifically rejected claims that, “because ‘[t]he Commission has explicitly directed public comments to address all substantive matters up front,’ this proceeding is ‘atypical,’” reasoning that “the Commission’s admonition to petitioners and commenters to raise all issues in their initial filings . . . reflects the longstanding requirement in Section 1.45(c) of the Commission’s Rules that, to allow the target of a petition to deny the opportunity to respond to all allegations against it, a ‘reply shall be limited to matters raised in the opposition’”

through the proposed joint venture, of the NBC owned-and-operated station in the Washington, D.C. market has caused Comcast to formulate a plan to somehow “devalue” Allbritton’s NewsChannel 8.⁸

Comcast has no such plan, of course; nor would such a strategy be in Comcast’s interest. As Applicants have shown, in today’s highly competitive video programming environment, Comcast has no incentive to refuse to carry networks which provide programming that consumers want and no ability to foreclose such networks from the marketplace.⁹ Allbritton does not undertake to respond to these showings or the substantial supporting economic evidence.

The facts here should be plainly stated.

In the past, Comcast and Allbritton have negotiated the agreement regarding NewsChannel 8 in connection with agreements regarding retransmission consent for Allbritton’s local broadcast television channels in six markets, including the Washington, D.C. station, WJLA-TV. While the economic value of these agreements to Comcast pertains to carriage of both the local broadcast channels and NewsChannel 8, the compensation is expressed in terms of a fee for NewsChannel 8. Comcast believes this is consistent with Allbritton’s relationship with the other MVPDs that carry NewsChannel 8.

NewsChannel 8’s carriage on Comcast’s cable systems is contractually secured through the end of 2011, and Comcast has given no indication that it desires to do anything other than continue to carry NewsChannel 8 in full compliance with the terms of its carriage contract. Given the contractual protections that NewsChannel 8 enjoys, there is no particular reason for the parties to be addressing now the terms of the contract that will govern carriage for a period beginning in 2012.¹⁰ Allbritton simply wants the Commission to force Comcast to extend one part of the related agreements – for NewsChannel 8, together with all the associated fees – and leave broadcast signal retransmission consent out of the deal to allow Allbritton to seek more money from Comcast in the future. Nonetheless, when Allbritton expressed a desire to address this issue well in advance of the contract’s expiration, Comcast made clear its willingness to extend all of its existing contracts with Allbritton. Allbritton said no.

⁸ Allbritton 8/9 Ex Parte, at 1. Allbritton claims to have “expose[d] Comcast’s true intention” to render NewsChannel 8 “financially non-viable.” *Id.*

⁹ See Public Interest Statement at 107-112 (Jan. 28, 2010); Applicants’ Opposition & Response at 162-73 (July 21, 2010).

¹⁰ Allbritton and Comcast have had a longstanding and mutually beneficial relationship with regard to NewsChannel 8, and Comcast provided critical funding that enabled the channel to be launched and to grow. Comcast has in the past waived certain exclusivity provisions of its carriage agreement with NewsChannel 8 in order to allow NewsChannel 8 to enter into carriage agreements with other MVPDs that compete with Comcast (such as RCN and Verizon) and has offered to waive those provisions again in order to facilitate NewsChannel 8’s further expansion of its carriage in the greater Washington, D.C. market. And, in October 2009, Comcast launched NewsChannel 8 to an additional 45,000 subscribers and has proposed to further extend its carriage of NewsChannel 8 to additional cable systems in the Washington, D.C. market prior to the expiration of the agreement at the end of 2011. Comcast has been a good partner to Allbritton, and claims to the contrary are contrived.

There should be no ambiguity on this point: *Comcast is willing to renew its current agreements with Allbritton for as long as Allbritton wishes. And, if Allbritton wishes to negotiate a carriage agreement for NewsChannel 8 alone, Comcast is prepared to negotiate such an agreement on economic terms that are appropriate for NewsChannel 8 alone. What Comcast cannot do is to accede to Allbritton's demand that Comcast pay a premium price for NewsChannel 8 that indisputably includes the value of retransmission consent for Allbritton's broadcast stations but then leaves Comcast and its customers vulnerable to paying again for that value when the retransmission consent contracts for Allbritton's broadcast stations are separately renegotiated. In stark contrast to Comcast's flexibility, Allbritton has been clear that this is the only basis on which it will engage.*

The Commission should also be reminded that there are already legal protections that further guard against the harms that Allbritton imagines. If, at the expiration of NewsChannel 8's current carriage contract, Comcast were to discriminate against NewsChannel 8 on the basis of affiliation and thereby unreasonably restrain its ability to compete fairly, Allbritton would be able to seek redress under the program carriage regime adopted by Congress and implemented and enforced by the Commission. Of course, Comcast remains hopeful that, *if* Allbritton is willing to engage in reasonable good-faith business negotiations, the parties will be able to reach a mutually beneficial resolution without the need to consume the Commission's resources.

At this juncture, however, Allbritton is improperly seeking to use the Commission's review of the NBCU transaction solely to obtain additional leverage in a business negotiation. This would be inappropriate in any circumstances, but especially when done in such an untimely and analysis-free manner.

Advertising. In its latest letter, Allbritton also now asserts that the proposed transaction would allow the combined entity to reduce competition in the Washington, D.C. advertising market.¹¹ The argument on this point is extremely conclusory, bereft of evidence or analysis. Applicants have already demonstrated – with extensive evidence, backed up by legal and economic analyses – that the proposed transaction will not reduce competition in local advertising markets, in Washington, D.C. or anywhere else.¹² Notably, no advertiser has filed in opposition to the transaction, and several advertisers have filed in support of the transaction.¹³

“Media Monopoly.” Allbritton has chosen not to file timely, thoughtful, responsible comments in conformity with the Commission's processes, but instead to conduct an aggressive media campaign that accuses Comcast and NBCU of trying to “create a media monopoly.”¹⁴ This is decidedly

¹¹ Allbritton 8/13 Ex Parte at 2.

¹² See Public Interest Statement at 8; Applicants' Responses to Several Members of Congress at 23-24 (June 2, 2010); Applicants' Opposition and Response at 73-76, 120-128; Rosston/Topper Reply Report ¶¶ 41-84 (July 21, 2010).

¹³ See Applicants' Opposition and Response at 75-76.

¹⁴ See Politico, at 12-13, Aug. 6, 2010; see also Cecilia Kang, *Allbritton's Advertising Assault against Comcast-NBC Merger*, Washington Post (Aug. 13, 2010), available at http://voices.washingtonpost.com/posttech/2010/08/allbrittons_advertising_assaul.html.

inconsistent with the record evidence in this proceeding and with Allbritton's prior statements to Congress¹⁵ and is an especially ridiculous charge to be leveled by an entity that, in the Washington, D.C. market alone, controls:

- a major network-affiliated broadcast station, WJLA-TV;
- a 24-hour news channel, NewsChannel 8;
- the most-widely distributed political newspaper, Politico;¹⁶
- one of the most popular political websites, Politico.com;¹⁷
- a tip sheet that the New York Times labels "the principal early-morning document for an elite set of political and news-media thrivers and strivers," Mike Allen's Politico Playbook;¹⁸ and
- various other tip sheets including Morning Score, Morning Money, Pulse, The Huddle, Morning Energy, Morning Defense, and Morning Tech.

There are abundant sources for news and opinion in the Washington, D.C. marketplace, and Allbritton, with its numerous outlets, is perfectly capable of competing without unwarranted regulatory intervention.

* * *

The Commission has firmly expressed its "desire to conduct its review in an orderly and efficient manner."¹⁹ Allbritton belatedly and without good cause asks the Commission "to delay the proceeding until such time as the implications [of its ex parte letters] are fully vetted." In other words,

¹⁵ "We have so many channels of information available to us that it takes well over five minutes to scroll through most television program guides *The threat that any organization can dominate the information flow to the public is a long-retired notion, if it ever had viability.*" *Oversight of the Federal Communications Commission: Media Ownership: Hearing Before the House Comm. on Energy and Commerce*, 110th Cong., Written Testimony of Jerald N. Fritz, Senior Vice President for Legal and Strategic Affairs, Allbritton Communications Company, at 5 (Dec. 5, 2007) (emphasis added).

¹⁶ See Politico's Media Kit, available at http://www.politico.com/advertising/pdf/politico_brochure.pdf (claiming that "POLITICO distributes 26,065 copies, more than any other Capitol Hill publication, including Roll Call and The Hill"). Politico has used hundreds of thousands of dollars' worth of advertising space to attack Comcast and the NBCU transaction.

¹⁷ Politico claims that its website is "one of the most visited newspaper sites in the U.S." and that "[i]n the last six months, our site has averaged on a monthly basis . . . 3.23 million unique visitors per month [and] 18.77 million page views per month." *Id.*

¹⁸ Mike Leibovitz, *The Man the White House Wakes Up To*, N.Y. Times, Apr. 19, 2010, available at <http://www.nytimes.com/2010/04/25/magazine/25allen-t.html>. The sole sponsor of this tip sheet for the week of August 9 was NewsChannel 8, and the ads were used solely for the purpose of attacking the Comcast/NBCU transaction.

¹⁹ *June 17 Order* at 4.

Marlene H. Dortch

August 18, 2010

Page 6

Allbritton requests that the Commission delay the proceeding indefinitely to consider an issue that Allbritton chose not to raise until more than six weeks after it should have been raised and based on nothing more than Allbritton's unsupported speculation about the possibility of future harm. Allbritton's attempt to disrupt the transaction review process to its own ends – and in direct contravention of the Commission's instructions – should be rejected.

Kindly direct any questions regarding this matter to my attention.

Respectfully submitted,

/s/ Michael H. Hammer

Michael H. Hammer

Counsel for Comcast Corporation

cc: Jessica Almond
Vanessa Lemmé