

August 19, 2010

FILED/ACCEPTED

VIA HAND DELIVERY

AUG 19 2010

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

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*
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

On behalf of Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively “Applicants”), and in accordance with the First and Second Protective Orders adopted in this proceeding,¹ enclosed please find two copies of the **redacted, public** version of Applicants’ Reply to Responses (“Applicants’ Reply”).

The {{ }} symbols denote where Highly Confidential Information has been redacted pursuant to the Second Protective Order, and the [] symbols denote where Confidential Information has been redacted pursuant to the First Protective Order.

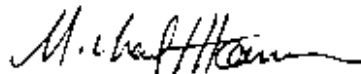
Highly Confidential and Confidential versions of Applicants’ Reply are being filed simultaneously with the Office of the Secretary and the Media Bureau under separate cover. The Confidential and Highly Confidential versions of these filings will be made available pursuant to the terms of the Protective Orders. A redacted, public version also is being filed on ECFS.

¹ *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, Protective Order, 25 FCC Rcd 2133 (MB 2010); 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, Second Protective Order, 25 FCC Rcd 2140 (MB 2010).*

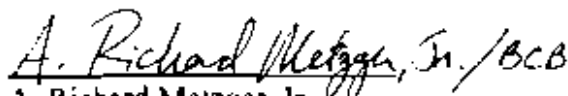
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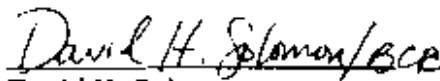
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cc: Jessica Almond
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Before the
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Washington, D.C. 20554

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General Electric Company)
and NBC Universal, Inc.)
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For Consent to Assign Licenses or)
Transfer Control of Licensees)

MB Docket No. 10-56

REPLY TO RESPONSES

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August 19, 2010

EXECUTIVE SUMMARY

With today's filings, the formal pleading cycle for this transaction is complete, and the Commission has before it an extraordinarily robust evidentiary record to support its review. Applicants' January 28 Public Interest Statement, March 5 and May 4 expert economics reports, and July 21 Opposition and Response (attaching two additional expert economic reports), among other filings, clearly demonstrate that Comcast's acquisition of control of NBCU is in the public interest. The myriad public interest benefits – including concrete, verifiable public interest commitments – outweigh any potential transaction-specific harms. The record overwhelmingly supports the conclusion that the proposed transaction will serve the public interest, convenience, and necessity, and will not harm competition or consumers.

More than seven months after the filing of their Applications and Public Interest Statement, Applicants' case that the transaction will produce genuine public interest benefits remains as compelling as ever, and has been further enhanced by agreements with key stakeholders. Similarly, Applicants' demonstration that the transaction presents no realistic threats of harm to competition or consumers has been met with ineffectual challenges, and Applicants have provided further assurances against any harm through agreements with interested parties. Applicants are confident that the Commission's review of the record will lead to only one conclusion: Authorizing General Electric to sell, and Comcast to buy, a controlling interest in NBC Universal will produce substantial benefits that far outweigh any potential harms.

Applicants have demonstrated that the transaction will, among other things, reinvigorate local broadcasting, expand the distribution of independent networks, lead to more content being available on more distribution platforms, and accelerate the "anytime, anywhere" video future

that consumers are demanding today. Specifically, Applicants have shown that it is difficult for distributors and content owners to reach agreements to accelerate the development of innovative distribution platforms because content owners are understandably concerned that such efforts will undermine the existing business models that provide the financial support necessary to create high-quality programming. This problem, often referred to as “transactional friction,” delayed for years the development of a robust video-on-demand product, and it is today delaying Comcast’s ability to offer consumers programming when they want, where they want, and on the devices they want. By combining NBCU’s programming with Comcast’s multiple distribution platforms, the transaction will increase Comcast’s and NBCU’s flexibility to experiment with new ways to make programming available to consumers; this will, in turn, make it more profitable for the companies to invest in more and higher value programming and new distribution platforms. The success of these efforts will spur participation by other content owners and even competing distributors, thus further enhancing consumer welfare.

Apart from Applicants’ direct showings, the record is replete with third-party letters in support of the proposed transaction – more than 1,000 and counting. Elected officials, community groups, diversity organizations, business representatives, advertisers, labor organizations, programmers, private citizens, and many others have offered concrete and personal accounts of their positive experiences with Applicants and attested to the companies’ character and commitment to the communities they serve. This outpouring of support is unprecedented in a transaction review proceeding.

Opponents and critics of the transaction have not made a convincing case. Despite having had more than six months to formulate plausible theories of harm to competition or consumers and to muster evidence to support such theories, the record evidence demonstrates

that those theories are wholly speculative and unsupported. As Applicants have demonstrated, the competitive characteristics of the marketplace in which the combined entity will compete ensure that these imagined harms will not be realized,

Moreover, in many cases, the claimed harms are nothing more than preexisting or industry-wide grievances that commenters are improperly re-airing in this proceeding. Many businesses and organizations who compete with or aim to extract unwarranted concessions from Comcast or NBCU are attempting to use the Commission's review process to foist unprecedented and onerous burdens on the combined entity. The Commission should not countenance such attempts.

The handful of adverse comments filed on July 21 do nothing to strengthen the arguments advanced by transaction opponents on June 21, and which Applicants' Opposition and Response thoroughly refuted. The proposed transaction will advance the Commission's key public interest goals of diversity, localism, competition, investment, and innovation and will not harm competition or consumers. Saddling the combined entity with restrictions that do not apply to its competitors, as many critics of this proposed transaction demand, would only hinder these goals – especially when sufficient regulatory mechanisms already are in place to prevent any conceivable misconduct. Applicants have more than met their burden of demonstrating that the transaction is in the public interest and therefore respectfully request its expeditious approval.

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Before the
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In the Matter of)
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Applications of Comcast Corporation,) MB Docket No. 10-56
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and NBC Universal, Inc.)
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For Consent to Assign Licenses or)
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REPLY TO RESPONSES

Comcast Corporation (“Comcast”), General Electric Company (“GE”), and NBC Universal, Inc. (“NBCU”) (collectively, “Applicants”) hereby reply to the limited number of comments critical of the transaction that were filed on July 21, 2010 (the “July 21 Responses”). These comments do nothing to weaken Applicants’ compelling case that the proposed transaction is firmly in the public interest.

I. INTRODUCTION AND OVERVIEW.

In Section II, Applicants provide an overview of the state of the record compiled over the past seven months. For ease of reference, Applicants also provide a comprehensive chart (attached as Appendix A) that contains a list of the issues raised in the record, a summary of the affirmative and responsive case presented by Applicants on each topic, and a ready guide to the location of the key analysis and facts Applicants have presented on each issue. In Section III, Applicants explain that the Commission should give little credence to the issues raised in the July 21 Responses because they are redundant, procedurally deficient, and/or focus on industry-wide issues that are not properly raised in a transaction review proceeding. Section IV

demonstrates that Applicants have established that significant public interest benefits will flow from the proposed transaction, and that these showings have not been challenged in any meaningful way. Finally, Section V shows that claims in the July 21 Responses regarding potential harms from the transaction have already been thoroughly disproved.

II. THE RECORD IN THIS PROCEEDING CLEARLY COMPELS APPROVAL.

Today's filings conclude a pleading cycle that began with the submission of the Applications and Public Interest Statement in January.¹ During the winter and spring, Applicants provided compelling additional evidence substantiating the transaction's benefits and disproving claimed potential harms. While many of the transaction's opponents made their views known in various ways and in various fora throughout this period, all petitioners and critics had the opportunity to make their formal, substantive case to the Commission at the beginning of summer, on June 21. Throughout these seasons – including on July 21, when Applicants thoroughly refuted the criticisms leveled on June 21 – the compilation of the record in this proceeding has continued. And now, with autumn's approach, the record is complete, and the matter is ripe for resolution “in as timely and efficient a manner as possible.”²

This transaction is unparalleled in several respects:

- From the outset, Applicants recognized and embraced the need to provide tangible assurances of benefits to consumers and competition. Applicants announced substantial

¹ *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, Applications and Public Interest Statement, Lead Application File No. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (JB), and 0004101576 (WTB) (filed Jan. 28, 2010) (“Public Interest Statement”).

² *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 5 (rel. Mar. 18, 2010) (“Public Notice”).

public interest commitments on the very day the transaction was announced, and Applicants offered to make them binding conditions of the Commission's approval.³

- Before comments and petitions were filed, Applicants, at the Commission's request, provided three economic reports in support of the proposed transaction.⁴ Those reports, prepared by world-class economists, provided extensive analysis confirming that the transaction will generate genuine and substantial public interest benefits and that it will not cause harms to consumers or competition in any relevant market. Notably, the economists reached the conclusion that the transaction is strongly pro-competitive on its own terms, even without factoring Applicants' substantial voluntary commitments into their analyses.
- Also before comments and petitions were filed, Applicants, again at the Commission's request, provided written responses to 49 questions submitted by several members of the House of Representatives.⁵ Applicants also responded to 122 interrogatories from Commission staff and produced thousands of pages of the companies' most sensitive internal documents for review by the Commission and by the scores of attorneys and dozens of economists employed by opponents of the transaction (subject to protective orders).⁶ Independent of the Commission's review process, Applicants also answered scores of questions from Members of Congress after testifying at four separate Congressional hearings in February and March.
- Meanwhile, an utterly unprecedented array of federal, state, and local officials, community organizations, diversity groups, business leaders, and other stakeholders – more than 1,000 of them, and still counting – have submitted first-hand testimonials describing their longstanding positive experiences with Applicants in their communities and requesting favorable consideration of the Applications.

³ See Memorandum from David L. Cohen, Executive Vice President, Comcast Corporation (Dec. 3, 2009), available at <http://www.comcast.com/nbcustransaction/pdfs/PublicInterestCommitments.pdf>.

⁴ See Mark Israel & Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction, MB Docket No. 10-56 (filed Mar. 5, 2010) ("Israel/Katz Vertical Foreclosure Report" or "Foreclosure Report"); Gregory L. Rosston, An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction, MB Docket No. 10-56 (filed May 4, 2010) ("Rosston Benefits Report" or "Benefits Report"); Mark Israel & Michael L. Katz, The Comcast/NBCU Transaction and Online Video Distribution, MB Docket No. 10-56 (filed May 4, 2010) ("Israel/Katz Online Video Report").

⁵ See Letter from Michael H. Hamner, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., et al. to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 10-56 (June 2, 2010) (attaching Comcast and NBCU Responses to Questions Submitted by Several Members of the U.S. House of Representatives).

⁶ See Letter from Michael H. Hamner, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (June 30, 2010) (attaching Comcast's Response to the Commission's Information and Discovery Request); Letter from David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 6, 2010) (attaching NBCU's Response to the Commission's Information and Discovery Request).

- Applicants have also expanded certain of their initial commitments and, through productive dialogue with responsible stakeholders, have reached important agreements with representatives of network-affiliated broadcast stations, independent film and television producers, and diversity communities.

In each of these respects, the Comcast/NBCU transaction is unlike any other. In some other respects, however, the transaction is not unusual at all:

- As in too many prior transactions, various parties have not resisted the temptation to use the opportunity of a transaction review to present their pre-existing agendas regarding industry-wide issues, or to ventilate pre-existing grievances that have nothing whatever to do with the transaction.
- As in too many prior transactions, perennial critics of entertainment, information, and communications companies express anew the apocalyptic predictions they have so often voiced, the credibility of which is thoroughly undercut by today's dynamic and vigorously competitive marketplace (especially in the areas most relevant to the instant transaction – the wholesale and retail provision of video programming).
- As in too many prior transactions, commenters present conclusory demands for conditions but provide no rigorous analytical or evidentiary foundation for their demands. In fact, the gulf between the paucity of the analysis and the burdensomeness of the conditions tendered by opponents is a telling indication that these proposals are not necessary or prudent.
- As in too many prior transactions, competitors request conditions that will confer business advantages on them or layer on additional costs that will hamper the new entity from competing effectively against them. Consumers will not benefit from the increased costs of this imbalanced and inequitable regulatory burden.

While none of these is a proper use of the transaction review process, they are all disappointingly familiar.

Both the exceptional and the routine characteristics of this transaction review have resulted in the compilation of an extremely lengthy and robust record. The June 21 filing deadline for comments and petitions attracted numerous filings – pro and con – and Applicants provided an exhaustive and evidence-based response, backed up by extensive economic analysis,

in their Opposition and Response on July 21.⁷ Now that the time has long since come and gone for critics to formulate plausible theories of harm and muster any evidence to support those theories, it is possible to make a full assessment of where things stand. Applicants are confident that a fair review of the record can lead to only one conclusion: Authorizing General Electric to sell, and Comcast to buy, a controlling interest in NBC Universal will produce substantial benefits that far outweigh any conceivable harms and therefore will serve the public interest.

On the benefits side, the transaction will bring about a reinvigoration of broadcasting through an infusion of new capital and energy to enable the venerable, accomplished NBC broadcast television network to regain the ratings leadership position it lost six years ago. Applicants have made specific commitments to produce additional local broadcast content on the NBC-affiliated owned and operated broadcast stations (“O&Os”) and make those stations’ content more widely available on additional platforms. These commitments, along with binding agreements Applicants reached with representatives of local broadcast affiliates – both the NBC affiliates association and the ABC, CBS, and FOX affiliates associations – provide further assurances that this transaction will help broadcast networks and stations and their affiliates not only survive in a challenging environment but also affirmatively advance the Commission’s goals of diversity, localism, competition, and innovation. Consumers will also benefit from Comcast’s launch of new independent channels, by the expansion of On Demand options, and by new programming and advertising collaboration with NBCU’s broadcast operations and cable networks. These benefits will extend to online and mobile platforms as well, as the transaction will enable the combined entity to accelerate “anytime, anywhere” access to the widest possible

⁷ Comcast Corporation, General Electric Company, and NBC Universal, Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56 (July 21, 2010) (“Opposition and Response”).

array of high-quality content. These and other benefits have been discussed at length in Applicants' prior submissions.

In terms of potential harms, opponents of this transaction have spared no effort in attempting to persuade the Commission to reject the transaction or to adopt onerous conditions of one sort or another. But the factual, legal, and economic bases of their arguments are demonstrably false; the transaction's opponents had many months to build their cases, yet their efforts were effectively rebutted by Applicant's Opposition and Response. Some commenters raised familiar concerns about program access, retransmission consent, and program carriage, but these concerns (to the extent they are valid) are not specific to the transaction – they can be observed every day in negotiations taking place throughout the industry. Other commenters raised wholly speculative concerns about the transaction's effects on online video services, and some of those commenters seasoned their allegations with predictable, baseless attacks on Comcast's and NBCU's pre-transaction online practices.

These assertions of harm, however, simply cannot be regarded as genuine, transaction-specific problems given the following facts:

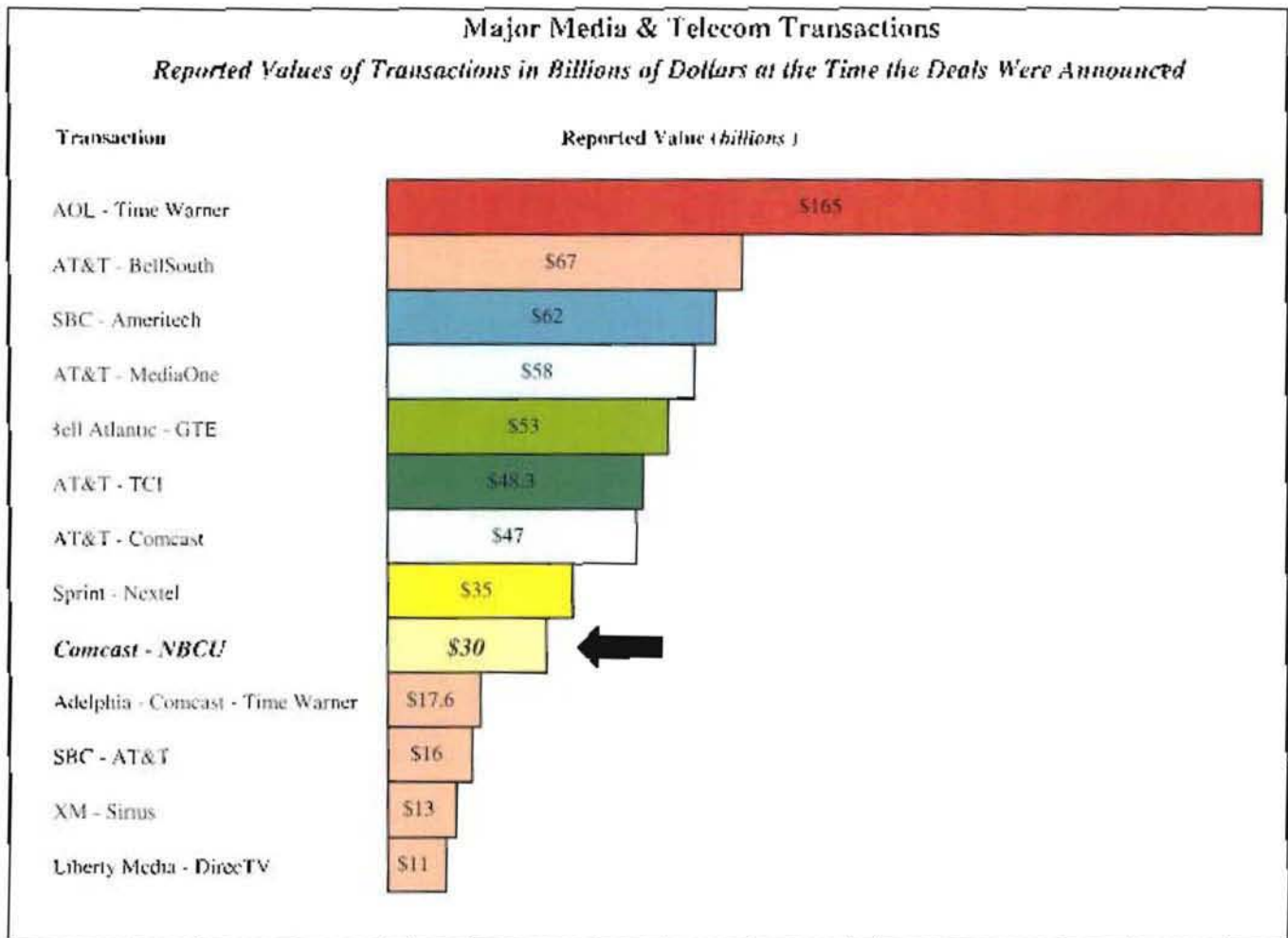
- Video businesses are intensely competitive, and growing more so, both at the program network level and the distributor level.
- Applicants do not possess, and the transaction will not create, market power in wholesale video programming or retail video programming distribution.
- Applicants' economists demonstrated early in the proceeding the absence of credible concerns, and they went on to provide convincing responses to the opponents' economists who purported to show otherwise. (Several of the opponents' economists failed even to engage meaningfully with the evidence presented in the first round of reports submitted by Applicants' economists.) In short, Applicants' economists demonstrated that the transaction will lead to tangible benefits to consumers and competition and will not provide the combined entity with the ability or incentive to foreclose competition from competing programming suppliers or distributors.

- In any event, sufficient regulatory safeguards currently exist to address any legitimate concerns regarding program access, retransmission consent, and program carriage, and to the extent that parties are unhappy with those regimes there are open industry-wide proceedings in which those concerns should be ventilated and addressed.
- Online video is a nascent, competitive, fragmented, and incredibly dynamic marketplace in which the dangers of anticompetitive conduct are very low, and there are far more risks than benefits to saddling one marketplace participant with restrictive conditions that do not apply to its competitors, including several larger competitors.⁸

Opponents to this transaction utterly fail to refute these basic facts regarding the relevant markets and Applicants' substantial legal and economic analyses, relying instead on the simplistic and misplaced view that this transaction is unprecedented in size and scope and therefore must, by definition, be contrary to the public interest. This assertion is readily refuted by the following chart, which shows that the proposed transaction is not particularly large, and the Commission has approved far larger transactions.⁹

⁸ Any transaction condition in this area has great potential to prove as foolhardy (but perhaps not as benign) as the instant messaging condition adopted in the AOL-Time Warner transaction a decade ago at the urging of some of the same parties that now criticize this transaction. *See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Red 6547 ¶¶ 223-232 (2001). The Commission subsequently abandoned that hard-fought condition not long after imposing it. *See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 18 FCC Red 16835 ¶ 14 (2003)

⁹ The sources for the information presented in this chart may be found in Appendix B.



Reasoned analysis, not overheated rhetoric, should govern the Commission's review here.

From the outset, the Commission has stressed its interest in conducting its review "in as timely and efficient a manner as possible."¹⁰ The processes prescribed by the Commission have created an extremely comprehensive record. That record must now be assessed, and a decision made. Applicants respectfully tender Appendix A as a ready aid to sorting through that record. In sum, the facts and arguments presented by the Applicants, confirmed by searching analysis submitted by highly-respected economists, supported by dozens of interested stakeholders and

¹⁰ Public Notice at 5.

more than 1,000 personalized letters, combined with the wide-ranging and concrete public interest commitments bolstered by several agreements with credible third parties, altogether present an overwhelming case for approval.

III. THE JULY 21 RESPONSES LARGELY RAISE ARGUMENTS PREVIOUSLY REBUTTED BY APPLICANTS, AND THE COMMISSION SHOULD ACCORD THEM NO WEIGHT.

Because many of the July 21 Responses raise few, if any, new issues and fail to respond meaningfully to the arguments of other commenters, the Commission need not concern itself with them. The purpose of the response stage of the pleading cycle is evident from its name: parties and commenters are *to respond* to comments made in the initial round of the pleading cycle.¹¹ Several of the commenters who filed responses, however, do little more than repeat and repackage their prior arguments. For example, Greenlining Institute merely re-hashes much of its earlier filing.¹² Bloomberg likewise repeats many of its arguments about wholesale bundling of networks,¹³ channel location,¹⁴ and online video.¹⁵ Applicants have already fully addressed and refuted these and other claims of competitive harm in their previous filings.¹⁶ Although

¹¹ Stressing its desire “to consider fully all substantive issues regarding the Application in as timely and efficient a manner as possible,” the Commission 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.” *Public Notice* at 5 (emphasis in original).

¹² Compare, e.g., Greenlining Institute (“Greenlining”) Response at 7 with Greenlining Petition at 32 (repeating its prior arguments about wholesale bundling) and Greenlining Response at 8-9 with Greenlining Petition at 38-40 (repeating its prior arguments about online video). Unless otherwise noted, all citations to responses herein are to those filed in MB Docket No. 10-56 on or about July 21, 2010, and all citations to comments or petitions herein are to those filed in MB Docket No. 10-56 on or about June 21, 2010.

¹³ Compare Bloomberg Response at 23 with Bloomberg Petition at 46.

¹⁴ Compare Bloomberg Response at 2-8 with Bloomberg Petition at 59-66.

¹⁵ Compare Bloomberg Response at 12-22 with Bloomberg Petition at 41-44.

¹⁶ See Opposition and Response at 173-175, 180-204, 211-218; Mark Israel & Michael L. Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction, MB Docket No. 10-56, at 139-142, 145-175 (filed July

Bloomberg cites to other comments in support of its positions, that is nothing more than self-amplification, as Bloomberg largely cites to the filings of a group of parties with which Bloomberg is collaborating in this proceeding.¹⁷ The Commission should discount these “hall of mirrors” tactics.

The July 21 Responses also continue to raise industry-wide issues beyond the scope of this proceeding that should not and cannot be resolved in the context of this transaction. The Commission’s precedent establishes that its review should be limited to transaction-specific issues; industry-wide issues subject to general rulemaking or other proceedings should not be considered.¹⁸ For example, commenters raise concerns about general practices relating to net neutrality,¹⁹ retransmission consent and program access,²⁰ program carriage,²¹ and cable rates.²² The Commission should decline to address such industry-wide issues in the context of this

21, 2010) (“Israel/Katz Reply Report”); Public Interest Statement at 122-126; *see generally* Israel/Katz Online Video Report.

¹⁷ Bloomberg is a member of the Coalition for Competition in the Media. Other members include CWA; Free Press; Greenlining Institute; Media Access Project; OPASTCO; WealthTV; and Writers Guild of America, West. *See* <http://www.competitioninmedia.org>. Not surprisingly, these groups account for the vast majority of comments in which Bloomberg purports to find corroborating evidence in support of its position.

¹⁸ *See* Public Interest Statement at 35; Opposition and Response at 9-16.

¹⁹ *See, e.g.*, Bloomberg Response at 12, 15-16; New Jersey Division of Rate Counsel (“NJ Rate Counsel”) Response at 11-14. Significantly, Rep. Rick Boucher, Chairman of the House Energy and Commerce Subcommittee on Communications, Technology, and the Internet, has “urge[d] that the Commission not impose any conditions in its order approving the Comcast-NBC Universal combination regarding network openness.” He noted that any such regulation “is best left to the multiparty negotiations, legislation and Commission proceedings of general applicability” because any such principles “should have universal application to all broadband providers and that it would be highly inappropriate to impose network openness requirements on a single broadband provider prior to the time that rules are applicable across the industry.” Letter from Rick Boucher, U.S. House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56, at 2-3 (Aug. 2, 2010).

²⁰ *See, e.g.*, ACA Response at 5-10; Bloomberg Response at 23-29; Greenlining Response at 7; Illinois Attorney General Response at 4; NJ Rate Counsel Response at 33.

²¹ *See, e.g.*, Bloomberg Response at 3-14; Greenlining Response at 7-8.

²² *See, e.g.*, Illinois Attorney General Response at 4; NJ Rate Counsel Response at 13-16, 23-24.

transaction review and instead properly consider such concerns, if at all, in industry-wide proceedings.

Other commenters used the second stage of the pleading cycle – reserved for “responses to comments and oppositions to petitions [to deny]”²³ – to file opening comments.²⁴ To the extent these filings attempt to raise new issues, propose a raft of new conditions,²⁵ or seek denial of the transaction,²⁶ their comments contravene the Commission’s ruling that “[n]ew issues may not be raised in responses or replies”²⁷ and its instructions to “raise all issues in their initial filings.”²⁸ These efforts to introduce new arguments and new conditions are untimely and should be accorded no weight.

²³ See *Public Notice*; see also *Commission Announces Revised Pleading Schedule For Its Review of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign and Transfer Control of FCC Licenses*, MB Docket No. 10-56, Public Notice, DA 10-636 (rel. May 5, 2010).

²⁴ Commenters in this category include: American Community Television (“ACT”); the Illinois Attorney General; the National Association of Black Owned Broadcasters (“NABOB”), and NJ Rate Counsel.

²⁵ See ACT Response at 5-10; NABOB Response at 5-7; NJ Rate Counsel Response at 39-43. While all of the newly proposed conditions are ill-timed and unwarranted, NABOB’s are the most puzzling, seeking (among other things) that Comcast be required to sell four percent of its cable systems to companies owned and controlled by African Americans, notwithstanding that the proposed transaction involves no acquisition of additional cable systems, and notwithstanding Applicants’ strong record of diversity and substantial undertakings to increase the diversity of programming owned by and targeting African Americans. See generally *Opposition and Response* at 35-49 and 228-247.

²⁶ See Illinois Attorney General Response at 2, 6.

²⁷ *Public Notice* at 5 (citing 47 C.F.R. §1.45(c)).

²⁸ See *id.*; see also *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*, Order, MB Docket No. 10-6, DA 10-1087 (MB rel. June 17, 2010) (explaining that “the Commission’s admonition to petitioners and commenters to raise all issues in their initial filings was not ‘atypical:’ it 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. . . .”).

IV. APPLICANTS HAVE DEMONSTRATED THAT THE PROPOSED TRANSACTION FURTHERS THE PUBLIC INTEREST, AND NONE OF THE JULY 21 RESPONSES CHALLENGES THE JOINT VENTURE'S BENEFITS IN ANY MEANINGFUL WAY.

Notwithstanding that the vast majority of issues raised by commenters should be discounted for the reasons stated above, Applicants will briefly respond to certain key assertions and arguments about the transaction's benefits to reinforce the point that the issues raised have already been answered in Applicants' prior filings and to correct factual errors and misleading statements.

Applicants' Public Interest Statement, their Opposition and Response, Dr. Rosston's Benefits Report, and Drs. Rosston and Topper's Reply Report²⁹ provide full substantiation of the transaction's benefits. In these filings, Applicants detailed the kinds of benefits that will flow from the proposed marriage of content and distribution, such as increased investment, accelerated innovation, and stimulated competition.³⁰ As Dr. Rosston explained, by vertically integrating with NBCU, Comcast will be able to overcome some of the transactional friction that has delayed and continues to delay the deployment of innovative services that consumers demand. Dr. Rosston presented substantial evidence that the initial deployment of VOD, earlier release of movies for VOD, Comcast Xfinity, and advanced advertising was neither as quick nor as extensive as it could have been.³¹ Post-transaction, Comcast's access to content – on arm's-length terms, but with less contractual friction – will lead to increased investment in

²⁹ Gregory L. Rosston & Michael D. Topper, *The Proposed Comcast–NBCU Transaction: Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition*, MB Docket No. 10-56 (July 21, 2010) (“Rosston/Topper Reply Report”).

³⁰ *Opposition and Response* at 25-33, 56-79; *Rosston Benefits Report* ¶¶ 10-14, 49-50, 56-70; *Rosston/Topper Reply Report* ¶¶ 6-13, 14-25.

³¹ See *Rosston Benefits Report* ¶¶ 24-48.

programming, accelerated deployment of new services, and more efficient and effective experimentation with new services.³² The combined entity's acceleration of investment in and deployment of innovative products and services should stimulate competitive programmers and multichannel video programming distributors ("MVPDs") to follow suit.³³ These and related showings have not been rebutted.

Applicants also showed that benefits will flow from the tangible and verifiable commitments that Applicants have made to localism, diversity, and programming availability. Applicants have made concrete their commitments to preserve and enrich free over-the-air broadcasting and to enhance local news and public affairs programming by reaching agreements with both the NBC Television Affiliates and the Affiliates Associations for ABC, CBS, and Fox.³⁴ Applicants have also undertaken substantial commitments to invest in and increase the availability of diverse and independent programming, enhancing and expanding their initial commitments in this area.³⁵

Given the weight of the evidence supporting the substantial consumer benefits of the proposed transaction, it is no surprise that very few of the July 21 Responses attack the transaction's benefits. Those that do criticize the benefits offer only conclusory statements that

³² See Rosston Benefits Report ¶ 50; see also Rosston/Topper Reply Report ¶ 12.

³³ See Rosston Benefits Report ¶ 8; Opposition and Response at 76-79.

³⁴ Opposition and Response at 18-25.

³⁵ Opposition and Response at 33-55. NABOB criticizes Applicants for spending \$6.3 million on advertising with African American targeted media last year. NABOB, however, ignores Applicants' commitment to increase spending on advertising with minority-owned media by at least \$7 million. See *id.* at 262. Other criticisms of Applicants' commitments to enhance diverse programming similarly fall short and have been refuted. See, e.g., Opposition and Response at 35-40, 45-49; see also Letter from William Griffin, Chairman and CEO, Hip Hop On Demand, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Aug. 17, 2010) (rejecting calls from certain commenters to impose mandatory channel set-asides on Comcast cable systems and praising Applicants' commitments to add diverse programming, attempt to sell a Los Angeles station to minority bidders, and create a \$20 million fund to support minority-owned "new media" ventures).

merely echo their prior assertions and offer no new evidence or credible rationale to support their claims. For instance, Greenlining Institute alleges that Applicants have made an “unsubstantiated claim of public benefit,” and have not demonstrated that the public interest, including diversity, localism, and competition, will be promoted through this transaction.³⁶ Yet Greenlining Institute does not even purport to support this allegation with evidence; it merely summarizes what other parties stated in their initial comments. By contrast, in their Opposition and Response, filed on the same day, Applicants made an affirmative showing – with specific additional evidence, including expert economic analysis – of the benefits to diversity, localism, competition, investment, and innovation, rebutting Greenlining Institute and all of the comments to which it cites.³⁷ In fact, since July 21, the Commission has posted even more letters in support to the docket in this proceeding, including letters from diversity groups,³⁸ Members of Congress,³⁹ programmers,⁴⁰ elected officials,⁴¹ community groups,⁴² business organizations,⁴³

³⁶ Greenlining Institute Response at 4-6, 10.

³⁷ Opposition and Response at 16-79.

³⁸ Many of the letters in support are dated before the July 21 filing deadline, but they were not publicly available on the Commission’s Electronic Comment Filing System until the week of July 21. See, e.g., Letter from Moises Perez, Executive Director, Alianza Dominicana, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Peter Wong, Chairman, Asian Pacific American Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Scott Gray, President and CEO, Minneapolis Urban League, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 7, 2010); Letter from Dawud Walid, Executive Director, Council on American-Islamic Relations, Michigan Chapter, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 22, 2010); Letter from James Kelly, President & CEO, Urban League of Metropolitan Seattle, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 18, 2010); Letter from Margarita Chaidez, President, Unidos por el Pueblo, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 19, 2010).

³⁹ See, e.g., Letter from Thirteen Hispanic Members of Congress, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 22, 2010); Letter from Eleven Members of Congress, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 28, 2010) (supporting Applicants’ commitment to diversity).

⁴⁰ See, e.g., Letter from Sean P. McGrail, President and CEO, New England Sports Networks, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 7, 2010); Letter from Bill Trevarthen, Executive Director, Michigan Government Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 10, 2010); Letter from William V. Jennings, Jr., Station Manager, Bedford Community Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010); Letter from Julianne Turner, Executive

and advertisers.⁴⁴ These letters further support Applicants' demonstration of public interest benefits and attest to Applicants' positive track records in the communities they serve.

Some commenters attempt to argue, contrary to the record in this proceeding, that the benefits of the transaction are not real and substantial. For example, with respect to independent programming, Writers Guild of America, West ("WGAW") denigrates Comcast's agreement with the Independent Film & Television Alliance ("IFTA") as insufficient because "the agreement does not provide a guarantee that any amount of independently-produced

Director, Concord Community Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Mar. 16, 2010).

⁴¹ See, e.g., Letter from Bruce Patterson, Michigan State Senate, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Curry Todd, Tennessee House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 2, 2010); Letter from John DeStefano, Jr. Mayor, New Haven, CT, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 3, 2010); Letter from Roy Schmidt, Michigan House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 10, 2010); Letter from James H. Merrill, South Carolina House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Denny Doyle, Mayor, Beaverton, OR, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Glenn F. McConnell, President Pro Tempore, South Carolina Senate, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010).

⁴² See, e.g., Letter from Brian A. Gallagher, President and CEO, United Way Worldwide, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from David Bukowski, Executive Director, Disability Advocates of Kent County, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Joy C. Newton, Executive Director, Chairman's Leadership Forum, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Katherine Cabaniss, Executive Director, Crime Stoppers, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Jennifer O'Flannery Anderson, President and CEO, United Way of Broward County, FL, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Kaitlyn S. Rossow, Executive Director, Big Brothers Big Sisters of Berrien & Cass, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010).

⁴³ See, e.g., Letter from Frederic Kurkjian, Senior Vice President, Technicolor USA, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 8, 2010); Letter from Mathew Aden, Vice President, Harmonic, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Terry Hartwick, President & CEO, North Little Rock Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Vail P. Garvin, Executive Director, Central Bucks County Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 30, 2010); Letter from Ed Lazarus, President, Branford Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010).

⁴⁴ See, e.g., Letter from Phil Cowdell, CEO, MindShare N.A., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Nigel Morris, CEO, Aegis Media, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010).

programming will be aired on [Comcast-owned] channels” and proposes that the Commission require a set-aside for independent programming on NBCU broadcast and television networks.⁴⁵

WGAW, however, identifies no legitimate transaction-specific harm that would justify the imposition of such a condition on one company – nor can it. Applicants have agreed to devote substantial resources to enhancing the opportunities for independently-produced programming to be considered for NBCU and Comcast platforms, including providing \$1.5 million per year in development funds and providing opportunities to pitch programming ideas directly to NBCU creative executives.⁴⁶ These efforts are designed to facilitate the development of compelling programming from independent producers who might otherwise not have such opportunities. In the highly competitive video programming environment in which NBCU operates, NBCU executives will have every incentive to ensure that promising programming concepts from independent producers have the opportunity to be developed and tested in the marketplace. Further, Applicants note that the Commission explicitly repealed any requirements on the source of programming almost twenty years ago, and the reasoning for that decision still stands today.⁴⁷

⁴⁵ WGAW Response at 4, 6.

⁴⁶ Opposition and Response at 41-42.

⁴⁷ See *In the Matter of Evaluation of the Syndication and Financial Interest Rules*, Second Report and Order, 8 FCC Rcd 3282 (1993), see also Opposition & Response at 239 n.803 (quoting Commissioner McDowell as explaining in a 2008 speech regarding Fin/Syn, “[p]rofound changes have occurred since 1992. Today, the average consumer has a choice of at least three subscription video providers, and sometimes five. Cable companies pass over 92 percent and serve approximately 60 percent of households. DirecTV and EchoStar . . . serve over 30 million consumers and have grown to a 30 percent market share among MVPDs. Now phone companies are in the video business too The reach of the broadcast networks has fallen far below the 62 percent of the prime-time audience cited by the court in 1992. During the current season, the combination of 77 ad-supported cable networks posted higher ratings among the key 18 to 49 demographic than the broadcast networks In 1992, there was no public Internet, let alone Internet video.”).

WGAW also claims that the reduction in transactional friction will result in the new NBCU paying an unfair price for content and shifting economic benefits to the joint venture at the expense of content producers. WGAW’s counter-intuitive contention is that negotiation friction, which slows the development and deployment of innovative platforms, determines fair market value.⁴⁸ As Drs. Rosston and Topper showed in their Reply Report, WGAW is incorrect.

At the outset, Drs. Rosston and Topper note that “WGAW provides no economic analysis or evidence to support its claim, and in fact there is no theoretical or factual basis for th[is] claim.”⁴⁹ Moreover, WGAW’s claim “does not make economic sense because negotiation frictions *prevent* firms from agreeing upon a fair market price.”⁵⁰ Further, “WGAW’s claim ignores the fact that the video marketplace is highly competitive; . . . [n]either party to the transaction has market power nor will the transaction give them market power or result in the exclusion of any buyer or seller from the marketplace.”⁵¹ Finally, WGAW’s claim is contrary to the terms of the executed transaction documents. The joint venture agreement requires that the prices that Comcast pays for NBCU content cannot be less favorable to the joint venture than those the joint venture would obtain from comparable transactions with unaffiliated third parties. Thus, “NBCU is protected against the risk that the price of any transaction with Comcast will be at ‘below market rates.’”⁵² WGAW’s calls for imposing a “fair market value” condition are

⁴⁸ WGAW Response at 7.

⁴⁹ Rosston/Topper Reply Report ¶ 26.

⁵⁰ *Id.* ¶ 11 n.13 (emphasis added).

⁵¹ *Id.* ¶ 27.

⁵² *Id.* ¶ 28.

unnecessary and would draw the Commission into dynamic content negotiations that are best conducted by private parties.

With respect to public, educational, and government (“PEG”) programming, American Community Television (“ACT”) claim that the Applicants’ commitments would actually disadvantage PEG programming, rather than promote and enhance it.⁵³ ACT’s criticism largely duplicates the criticisms of other commenters in the initial comment round, and has been refuted by Applicants in their July 21 Opposition and Response.⁵⁴ ACT first urges the Commission to place a condition on the transaction to require carriage of PEG channels on the basic tier.⁵⁵ As Applicants explained in their Opposition and Response, ACT’s suggestion is unnecessary and contrary to local and federal law: the national commitment ACT seeks for carriage on a basic tier (digital or analog) would conflict with existing franchise agreements, and such a commitment is inappropriate given that the Communications Act does not impose PEG channel placement obligations for the large and growing number of cable systems that are rate-deregulated.⁵⁶

ACT also raises concerns that Comcast will provide access to PEG channels on its VOD platform in lieu of linear carriage or will develop a separate On Demand and On Demand Online platform just for PEG channels.⁵⁷ Neither of those concerns is legitimate. First, as Applicants confirmed in their Opposition and Response, Applicants’ intention in tendering its commitment

⁵³ ACT Response at ii, 2.

⁵⁴ See Opposition and Response at 307-311.

⁵⁵ ACT Response at 5-6.

⁵⁶ Opposition and Response at 307-09.

⁵⁷ ACT Response at 8-9.