

October 20, 2010

BY ELECTRONIC FILING

The Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc.*, MB Docket No. 10-56

Dear Chairman Genachowski:

DIRECTV, DISH Network L.L.C., and the American Cable Association (“ACA”) are writing with respect to FOX Network’s decision to block those with Cablevision IP addresses from accessing FOX content on its affiliated websites, Fox.com and Hulu.com. This episode confirms the need for Commission action to safeguard MVPD subscribers’ access to online content in the Comcast/NBCU proceeding. If FOX, an entity with no affiliation to a distribution platform, was willing to deny certain viewers access to its online content in order to gain a negotiating advantage, a vertically integrated Comcast/NBCU would have an even greater incentive and ability to take similar action.

It appears that FOX’s primary motivation to block Hulu and Fox.com traffic was to exert pressure in its retransmission consent dispute with Cablevision. Without appropriate safeguards, it is reasonable to assume that Comcast/NBCU would take similar action against non-Comcast broadband subscribers in the event of a dispute, because it could both increase its leverage in carriage negotiations *and* encourage subscriber defection to Comcast’s own video and broadband platforms. The mere threat of using this type of embargo would surely apply upward pressure on prices for Comcast/NBCU local, regional, and national programming.

FOX’s action also seems to belie Comcast’s claim that a combined Comcast-NBCU with “a minority, non-controlling interest in Hulu” could not “‘cause’ Hulu to refuse to deal with third parties.”¹ FOX now holds a similar “minority, non-controlling interest” in Hulu, but appears to have had no difficulty “causing” Hulu to “refuse to deal” with Cablevision subscribers. The Commission should investigate as part of this proceeding whether Hulu blocked subscribers unilaterally at FOX’s request, or with the cooperation of Hulu’s other owners, as that issue bears directly on Comcast’s ability to use Hulu for its own strategic ends in the future.

DIRECTV, DISH, and ACA believe that FOX’s use of Fox.com and Hulu is a timely illustration both of the extent to which online content has become an integral part of the television viewing landscape and of the opportunities for disadvantaging MVPDs this

¹ Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56 at 190 (filed July 21, 2010).

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development would present to Comcast/NBCU. If the Commission is to approve the pending applications, it must condition such approval to ensure that Comcast/NBCU's online programming remains available to all MVPD viewers—including online viewers using broadband platforms other than Comcast's own—on a fair and non-discriminatory basis.

Respectfully submitted,

DIRECTV

DISH NETWORK L.L.C.

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