January 5, 2011

<u>BY ELECTRONIC FILING</u>

Marlene H. Dortch
Secretary
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 Ms. Dortch:

This is to inform you that, on January 4, 2011, Larry Hunter, Stacy Fuller, and undersigned counsel on behalf of DIRECTV met with Commissioner Baker and her Acting Legal Advisor-Media Issues, Krista Witanowski, to discuss the above referenced proceeding. Consistent with DIRECTV's prior filings in this docket and the attached summary that was provided during the meeting, the DIRECTV representatives reviewed the company's concerns about the proposed transaction and the conditions that should be imposed on any grant of the pending applications to safeguard competition and consumers.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV

Attachment

cc: Commissioner Baker
Krista Witanowski

DIRECTV

CONDITIONS REQUIRED FOR APPROVAL OF THE PROPOSED COMCAST/NBCU TRANSACTION

- The proposed Comcast/NBCU transaction would combine:

  - the nation's largest cable operator;
  - the nation's largest Internet service provider;
  - two broadcast networks;
  - over two dozen network-affiliated broadcast stations;
  - some of the most popular cable programming available;
  - the film library and production capabilities of Universal Studios; and
  - many of the most important online content sites.

Past is Prologue

- Left unchecked, this unprecedented array of assets would give Comcast new opportunities to gain unfair leverage over rivals to the detriment of consumers.

- Comcast has a history of anticompetitive conduct, and the proposed transaction will give it the ability to enhance and extend that conduct.

  - The Commission recognized, in the context of the *Adelphia* proceeding, that Comcast would use its control over programming to deny choice and raise prices to competitors' subscribers. (*e.g.*, Chicago (doubled rates), California (pay for teams our subscribers can't see, create additional RSNs to add fees)).

Linear Programming

- DIRECTV's economist demonstrated that vertical integration will improve Comcast/NBCU's bargaining position and thereby enable the joint venture to raise prices paid by its competitors substantially on *all* programming.

- The Commission has consistently imposed arbitration on vertically integrated regional sports networks and broadcast stations and should do so here as well.

- Unlike the *News/Hughes* transaction, here the Commission has economic and other support for the imposition of arbitration on national programming.

  - The Commission declined to impose arbitration on national channels in that transaction because it did not find that News could profitably *withhold* programming. While the Commission recognized that the transaction might also give News the ability to impose another harm by *raising prices substantially*, it did not at that time have the ability to conduct that analysis. DIRECTV's economist has demonstrated this effect with respect to the Comcast/NBCU merger. In light of this proven harm, the Commission should impose arbitration as a remedy to protect consumers from an increase in prices.

- The combination of assets at stake here far surpasses prior mergers.

- In 2007, after the *News/Hughes* decision, the Commission also found that "a competitive MVPD's lack of access to popular non-RSN networks would not have a materially different impact on the MVPD's subscribership than would lack of access to an RSN." (*2007 Exclusivity Sunset Order*, 22 FCC Rcd. 17791, ¶ 39)

- Prior cases also took comfort from backstop of program access rules, but there is no guarantee that the Commission will continue the ban on exclusives after it expires in 2012.

Online Loophole

- Because the proposed transaction presents a combination of broadband and content never seen before, at a time when the delivery of online and linear content is converging, it will also enable Comcast/NBCU's withholding or discriminatory pricing of online programming. This transaction would give Comcast/NBCU the incentive and ability to provide value-added content to Comcast subscribers and withhold from or raise the price to its competitors' subscribers.

- For example, Comcast/NBCU could provide to Comcast subscribers and withhold from others:

  - Additional games/events (*e.g.*, CSN-Philly games). Comcast could get rights, parcel some of them out to its various linear networks (like NBC, Versus, Golf, etc.), then put the rest online.

  - Additional episodes or alternative endings of a series.

  - Additional camera feeds (golf, tennis, hockey).

  - Alternative production quality (*e.g.*, 3D hockey game).

  - Earlier windows for movies.

- The Commission should extend the program access rules to Comcast/NBCU programming no matter how it is delivered and ensure that the same content is available to Comcast's MVPD rivals at the same time (*e.g.*, window), at the same quality (*e.g.*, HD or 3D), at the same speed, and on the same terms as it is available to Comcast.

    - No reason to allow Comcast to secure an exclusive window or other preferential treatment for Comcast/NBCU content, as even short-term disparity can impose long-term damage to competition.

- In addition, the Commission should impose an arbitration remedy where negotiations break down, with accelerated access for first-time requests in this fast-moving space.

Duration of Conditions

- The conditions should remain in force for a minimum of six years, and should not be lifted thereafter until Comcast/NBCU can demonstrate that market developments make them no longer necessary.

    - Arbitration conditions in *News/Hughes*, *Adelphia/TWC/Comcast*, and *News/Liberty* were imposed for a six-year term.

    - Basic program access conditions were imposed indefinitely (so long as program access rules remain in force).

- There is no basis for an arbitrary end date when harms identified by the Commission could still be imposed by Comcast/NBCU.