

January 11, 2011

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**ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte, 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:

Please be advised that the attached document proposes conditions to the transaction in the above referenced proceeding on behalf Herring Broadcasting Company, Inc. d/b/a WealthTV.

Please direct any questions regarding this matter to the undersigned.

Respectfully,



Mark C. Ellison  
Counsel for Herring Broadcasting Company, Inc.

Attachment

## **I. RECOMMENDED MERGER-RELATED CONDITION TO PROTECT ESTABLISHED INDEPENDENT NETWORKS**

If the Merger is approved, in order to remedy and avoid further discrimination in carriage of independent programmers, and in light of the changed incentives that will result from the further vertical integration of the acquirer, the following condition should be imposed.

### **A. FAIR CARRIAGE TERMS:**

Require that Comcast carry all “Established Independent Networks”<sup>1</sup> on similar terms and conditions as other Major MVPDs providing carriage.

### **B. REFORMED COMPLAINT PROCESS:**

Make Carriage Access Complaints filed by Established Independent Networks against Comcast Subject to Baseball-Style Arbitration<sup>2</sup>. The FCC’s existing program carriage complaint process does not prevent retaliation and provides a lengthy process with little certainty in the outcome for complainants. As a result it deters legitimate complaints and fails to constrain cable operator behavior. Instead, we believe that as a condition of approval of the proposed transaction, Comcast-NBCU must enter commercial, “baseball-style” arbitration for disputes over program carriage with EINs. The complaint process would permit any Established Independent Network that has been denied carriage, or where such terms and conditions of carriage by Comcast are not commensurate with other Major MVPDs, to institute the arbitration process. The following carriage access arbitration process conditions shall apply:

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<sup>1</sup> An “Established Independent Network” (EIN) means a network: (1) in which Comcast has no interest; (2) having a current and established history of providing in all material respects programming 24 hours a day, seven days a week, for at least 12 consecutive months; (3) having current and continuous carriage for at least 6 months with a minimum of two “Major MVPD Operators.” A “Major MVPD Operator” is an operator that is a top five cable MVPD; a top two DBS provider; or a top two telecommunications MVPD. “Top” shall mean the cable, DBS or telecommunications provider with the largest number of households that pay for subscriptions to video programming services provided by such MVPD.

<sup>2</sup> In baseball-style arbitration, each side submits a final best offer and the arbitrator selects whichever one he or she deems closest to the appropriate result.

1. Arbitration shall be held under the AAA International Rules of arbitration. Arbitration shall commence 45 days subsequent to the filing of a complaint, and the parties shall use best efforts for the dispute to be fully submitted to the arbitrator within 90 days after arbitration is commenced. The arbitrator has 45 days to issue a decision. Any party who appeals the decision of the arbitrator and loses, shall pay all attorneys' fees and costs for the appeal for both parties. The Commission shall issue its findings and conclusions not more than 60 days after receipt of a petition for review of the arbitrator's award, which may be extended by the Commission for one period of 60 days. Failure to comply with an arbitration award that has been accepted by the Commission shall be a violation of a Commission Order.
2. Establishing a prima facie case. Prima facie means that a complainant shall put forth evidence of the elements of the discrimination offense, supported as appropriate by documents, testimony, declaration or affidavit that, if subsequently found to be true by a finder of fact, would be sufficient to establish a program carriage violation.
3. Comcast's refusal to deal, or refusal to negotiate in good faith with an Established Independent Network because of the programmer's good faith assertion of rights under this provision or any other provision of the Communications Act of 1934, as amended, shall constitute discrimination.
4. Once an Established Independent Network files a complaint alleging discrimination with respect to a change in the terms or conditions of carriage, no such change shall be effective absent order of the Commission.
5. All remedies available for a violation of the Program Carriage rules of the commission, 47 U.S.C. § 536; 47 C.F.R. §76.1300 *et. seq.*, shall be available for a violation of the obligations herein set forth and, in addition, damages shall be an available remedy and may be awarded in a similar fashion to the Commission's Program Access Rules. 47 C.F.R. §1003(d).