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January 13, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

*Via Electronic Filing*

**Re: AMENDED Notice of *Ex Parte* Presentations in MB Docket 10-56, *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees***

Dear Ms. Dortch,

Attached please find an amended version of a *notice of ex parte* communication originally filed Jan. 12, 2010 pursuant to meetings between Free Press representatives and staff for Commissioners Copps and Clyburn. The version attached amends the third full paragraph on page two of the *notice* to clarify the breakdown of the merger Applicants' local programming commitment to NBC owned and operated stations and Telemundo owned and operated stations, respectively.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,
_____/s/________

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January 12, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

*Via Electronic Filing*

**Re: AMENDED Notice of *Ex Parte* Presentations in MB Docket 10-56, *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees***

Dear Ms. Dortch,

Pursuant to section 1.1206(b) of the Commission's rules, this notice is being submitted pursuant to two *ex parte* communications in the above referenced docket.

On January 11, 2011, Corie Wright and Joel Kelsey of Free Press, met with Joshua Cinelli, Media Advisor, and Margaret McCarthy, Wireless Advisor, for Commissioner Copps. Later that same day, Ms. Wright and Mr. Kelsey spoke with David Grimaldi, Chief of Staff, Angela Kronenberg, Acting Wireline Legal Advisor, and Louis Peraertz, Acting Legal Advisor on Wireless, International, and Public Safety for Commissioner Mignon Clyburn

In both meetings, Ms. Wright and Mr. Kelsey restated concerns regarding the proposed Comcast/NBCU merger, focusing specifically on the proposed merger's adverse impact on competition in the emerging online video space and local communities.

**<u>Local Programming</u>**

With regard to the merger's impact on broadcast service to local communities, Free Press addressed Comcast and NBCU's recent decision to expand their voluntary commitment to increase local programming for broadcast stations controlled by the joint venture. Initially, Comcast and NBCU promised to "collectively provide an additional 1,000 hours per year of local news and information programming" across its 10 NBC owned and operated stations.[1] It made no commitment to provide any new local content for any of the Telemundo stations that would be controlled by the joint venture. Throughout the course of this merger review, Free Press and other public interest groups have stated that it is intolerable that the stations serving Spanish-Language communities were not included in this commitment.

Now, Comcast and NBCU purport to have extended their commitment to Telemundo owned and operated stations, stating that "Applicants now commit that for three years following a twelvemonth implementation period, NBCU's Telemundo O&O station group will collectively produce an additional 1,000 hours of local news and information programming that will air on the primary channel of *six* Telemundo O&O stations."[2]

As a threshold matter, Free Press reiterated that this new Telemundo commitment, like the one that Comcast and NBCU have made for NBC owned operated stations, represents a pitifully small increase in local programming – roughly, 16 or 17 minutes per day, per station for each NBC station[3] and 27 minutes per day, per station for each Telemundo station covered by the commitment. Second, there are <u>16</u> Telemundo owned operated stations at issue in the proposed transaction. Comcast and NBCU have only deigned to expand their commitment to 6 of them. The Applicants have not have not explained why the remaining 10 communities served by Telemundo owned and operated stations do not also deserve to receive a similar commitment. This omission is unacceptable.

**<u>Online Video</u>**

The emergence of new programming services and competition from online video providers would give consumers greater choice in video content, as well as inject some price discipline into Comcast's ever increasing cable rates. However, the consolidation of control over content, cable services, and broadband services through Comcast's acquisition of NBC-Universal gives the combined company powerful motives and capacity to ensure that online video programming distributors do not get access to the content they need to compete with Comcast's online and cable services. If Comcast/NBCU can impede the development of emerging and innovative online video services, consumers will be faced with fewer choices and higher prices.

Free Press explained that any merger condition that purports to prevent the joint venture from "withholding" NBC programming from online video distributors, but that does not specifically address Comcast's ability to demand unreasonably long programming

[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*, MB Dkt 10-56 (Jan 28, 2010) at 42.

[2] *See Letter to Secretary Marlene Dortch from Rick Cotton, NBC-Universal, and Kathy Zachem, Comcast Corp.*, MB Dkt 10-56 (Jan.10, 2010) at 2 (emphasis added).

[3] *See also Petition to Deny of Free Press, Media Access Project, Consumer Federation of America, and Consumers Union*, MB Dkt 10-56 (June 21, 2010) at 54.

"windows"[4] and "MVPD authentication" would not promote – or even protect – the development of innovation and competition in online video. The term "authentication" actually refers to a tying arrangement in which a facilities-based cable subscription becomes mandatory to view online content. In other words, consumers cannot watch programming online unless they can verify that have also paid a cable company to watch that very same programming. This prevents consumers from "cutting the cord" and forces emerging online video distributors into a complementary role, instead of as a competitive substitute to cable television.

Consumers should not have to pay a cable operator in order to watch online video. A merger condition that does not bar the use of authentication outright would permit Comcast to refuse to sell NBC programming to any online video distributor that is not affiliated with a cable company. In doing so, the joint venture can hobble true online video competition from new and innovative companies, preserve the existing and unsatisfactory competitive *status quo*, and extend the cable model (and price structure) to the internet.

Consequently, Comcast and NBCU should be prohibited from withholding from, or exacting unfair or unreasonable rates, terms or conditions on, competing online video programming distributors (OVPDs) seeking access to content and associated capabilities controlled by or affiliated with the joint venture. Specifically, the FCC should prohibit the joint venture from requiring, as a condition of access to Comcast/NBCU affiliated content, that an OVPD to authenticate that its customers also subscribe to an MVPD service. Additionally to prevent Comcast and NBC from demanding unreasonably long program windows, the joint venture should be prohibited from prescribing temporal windows for the availability of Comcast/NBCU-affiliated content to OVPDs that exceed the joint venture's own windowing practices for making affiliated content available through Comcast's cable OnDemand or online Fancast Xfinity TV services.

Ms. Wright and Mr. Kelsey also explained that Comcast can use its position as the dominant cable operator to strong-arm unaffiliated programmers into exclusive deals that prevent them from making their content available to Comcast's online-only competitors. Comcast is the largest cable provider in the nation, and is the dominant MVPD in certain regions of the country. Because programmers rely on Comcast for the largest percentage of their MVPD subscriber fees, Comcast has tremendous capacity to force programmers to limit online distribution of content. Instead, independent programmers should be free to make their own choices about how and to whom they sell their content without fear of retaliation from Comcast.

Finally, the merger of Comcast and NBCU would create a combined company so large that it can itself set standards for an entire industry. Consequently, any condition imposing a "comparative" regime in which Comcast/NBCU's obligation to deal with

[4] "Windows" or "windowing" refers to the practice of making content exclusive, or to delaying the availability of programming on alternative platforms, for a period of time following the "first run" of content.

online competitors is judged according to the behavior of non-vertically integrated programmers is not sufficient to address the anti-competitive incentives and power of the joint venture.

In accordance with the Commission's rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,
/s/

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