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Via Electronic Delivery

Ms. Marlene H. Dortch
Federal Communications Commission
The Portals, TW-A325
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Presentation -- *Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Dkt. 10-56

Dear Ms. Dortch:

Attached please find a proposed condition regarding wholesale standalone broadband service. This condition would remedy the identified harms resulting from the above-referenced transaction, including the likelihood that Comcast will raise the price for standalone broadband services to induce consumers to purchase Comcast's bundled offerings and the threat to video competition posed by the transaction.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced docket for inclusion in the public record. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,



Donna N. Lampert
Mark J. O'Connor
Jennifer P. Bagg

Counsel for EarthLink, Inc.

WHOLESALE STANDALONE BROADBAND CONDITION

I. Definitions

As used in this Condition:

1. “Acquisition Closing Date” means the date on which General Electric Company transfers a controlling interest in NBC Universal, Inc. to Comcast Corporation.
2. “Broadband Internet Access” has the same meaning as defined in Part 8.11(a) of the Commission’s rules, 47 C.F.R. § 8.11(a).
3. “Wholesale Broadband Service” means a communications service by wire or radio provided by Comcast or Comcast-NBCU to an entity unaffiliated with Comcast or Comcast-NBCU for the provision of Broadband Internet Access to end users.

II. Requirements Relating to Wholesale Broadband Access

Prior to the Acquisition Closing Date, Comcast shall comply with the following requirements:

1. Comcast shall enter into an agreement (“Agreement” or “Agreements”) with EarthLink, Inc. prior to the Acquisition Closing Date and with three (3) other Broadband Internet Access providers within 90 days after the Acquisition Closing Date that have received the prior approval of the Federal Communications Commission (“FCC”) to make available Wholesale Broadband Service throughout Comcast’s service territory (the “Wholesale Broadband Providers”). Each Agreement shall be for a five (5) year term and shall include a most favored nation clause requiring Comcast to notify the Wholesale Broadband Providers within five (5) business days of execution of an Agreement, and to give each such provider for a minimum of thirty (30) days the ability to convert to all of the rates and terms in its Agreement.
2. Each Agreement shall provide that, for Wholesale Broadband Service:
 - (a) if Comcast makes available different levels of service (including, but not limited to, quality of service guarantees, maximum and minimum throughput capacity, and byte consumption per subscriber) to Comcast’s subscribers, Comcast shall make those levels of service available to all Wholesale Broadband Providers;
 - (b) if Comcast has any network flow monitoring data or usage accounting, then Comcast shall make that data or accounting available to all Wholesale Broadband Providers;
 - (c) Comcast shall not interfere in any way, directly or indirectly, with content or data passed in either direction along the bandwidth contracted for and being used by any of the Wholesale Broadband Providers;
 - (d) service shall be at reasonable rates, which shall be at least forty percent (40%) less than the current advertised retail price for Comcast’s Broadband Internet Access Service, including any promotional discounts and bundled rates (or at the imputed price of such service) (the “Wholesale Rate”) and, if Comcast offers free installation and/or modem equipment or other services, either to its retail customers or to any other party, the Wholesale Broadband Providers shall be entitled to obtain such services/equipment as part of the Wholesale Rate; and

- (e) service shall be offered on reasonable terms, including without limitation:
 - (i) reasonable ordering, provisioning, and ongoing maintenance, including:
 - a. access to systems and tools necessary for the Wholesale Broadband Providers to offer Tier 1 customer support, or the provision of Tier 1 support by Comcast;
 - b. a prequalification system that allows the Wholesale Broadband Providers to determine accurately the serviceability of a customer through a real-time application programming interface (“API”), or the provision by Comcast of all serviceable addresses in a file updated daily;
 - c. prequalification data, which shall include whether a customer will be rejected due to owed balance or credit issues; and
 - d. APIs for trouble reporting, ticket creating, ticket updates, and network outages.
 - (ii) Comcast installation personnel shall not be permitted to market or sell Comcast products and services to end users if performing a service installation for Wholesale Broadband Providers;
 - (iii) Comcast shall provide Tier 2 support, and shall report network outages promptly to the Wholesale Broadband Providers; and
 - (iv) Customers of the Wholesale Broadband Providers will not be required by Comcast to purchase any other Comcast product or other service as a condition of service.
- 3. If Comcast fails to enter into the Agreements required by this Condition within the time required, then the FCC may appoint a trustee who, for an additional ninety-day (90-day) period, shall have the authority to enter into the Agreements required by this Condition.