January 13, 2011

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

RE: Notice of Oral *Ex Parte* Communication
Docket 10-56
Comcast/NBCU Transaction

Dear Ms. Dortch:

This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

On January 12, 2011, the following individuals met with Commissioner Clyburn, Chief of Staff Dave Grimaldi, Legal Advisors Angela Kronenberg and Louis Peraertz, and Intern Ian Forbes: Donna Lampert on behalf of EarthLink, David Goodfriend on behalf of Sports Fans Coalition, Stacy Fuller of DIRECTV, Gigi Sohn of Public Knowledge, Corie Wright of Free Press, Andrew Jay Schwartzman of Media Access Project, Parul P. Desai of Consumers Union, Jeffrey Blum of DISH Network, Charles Herring of Wealth TV, Ross Lieberman of the American Cable Association, Gregory Babyak of Bloomberg, LP, Mark Ellison on behalf of the rural telephone coalition, FACT and Michael Forscey on behalf of Writers Guild of America West.

At the outset of the meeting, the participants explained that they had disparate views on various aspects of the proposed transaction and as to whether any set of conditions would be sufficient to justify approval of the pending applications. At this meeting, they wished to present certain changes as to which the participating organizations believe would be necessary under any circumstance. Stressing that the absence of access to the proposed conditions makes it very difficult to discuss details, the parties raised several areas where they felt strong conditions are required.

Program Access and Program Carriage

The parties discussed the importance of protecting and promoting competition in video programming markets by assuring that Comcast's competitors have access to Comcast/NBCU programming, as well as to the programming of other content providers which may have distribution deals with Comcast.

It is not enough to provide that Comcast may not withhold programming from competitors, as there are many ways to disadvantage competitors having nominal access to programming, such as insisting on "windows" of exclusivity. They expressed particular concern about tying arrangements, including use of "authentication" mechanisms tied to cable subscriptions to leverage power vis à vis competitors. The participants explained that they are constrained by the lack of access to program contracts, but available data indicates that Comcast regularly forces programmers to restrict availability of their programming to MVPD competitors.

They also explained the significant anti-competitive effects from any merger condition that would allow MVPDs to invoke arbitration only when Comcast/NBCU national programming channels are offered as a "bundle." In order to protect consumers and competition, the Commission should provide for stand-alone arbitration of marquee national content (which would be defined as national networks affiliated with Comcast/NBCU that are distributed to 90 million or more subscribers).

With respect to program carriage, the participants observed that it appears that the proposed order contains little to insure that independent programmers can obtain carriage on Comcast systems on reasonable terms and conditions. The participants discussed concerns about the amount of control the merged entity would have over cable and online distribution and expressed the need for conditions to ensure that independent programmers have fair opportunities for carriage. For example, if the combined Comcast/NBCU is able to offer larger bundles of its own programming, many fewer channels will be available to independent programmers. Participants noted the increased threat to independent news and business news channels of discriminatory tier and channel placement, and the need to ensure neighborhooding of independent news and business news channels as a remedy.

In addition, they explained the need for an effective arbitration mechanism for dispute resolution, including adequate transparency about arrangements with other MVPD's and special provisions to protect smaller MVPD's and independent programmers. The value of a 25% set aside for independently produced content makes that another important objective.

With respect to administering complaints, both as to access and carriage, the participants called for strong anti-retaliation provisions. They explained that competing MVPD's and even larger independent programmers have legitimate fear of aggressive tactics which can be employed against them should they attempt to exercise their rights to obtain adjudication.

Wholesale Broadband

The participants then spoke about the importance of a provision which requires the availability of wholesale broadband access on Comcast's systems. They said that the merger will encourage and enable Comcast to raise the price of standalone broadband, which will harm consumers and threaten video competition unless a wholesale-based competitive offering is made available and becomes established. Comcast does not now publicize or promote its standalone offering, and will be even less inclined to do so in the future, whereas a competing broadband Internet access provider will aggressively advertise and promote its offering to attract consumers who do not want or cannot afford Comcast's higher priced bundles. Experience with existing wholesale broadband offerings on Time Warner Cable and on a very limited portion of Comcast's footprint show that competitors offer higher speeds at lower prices, and that broadband offerings in Time Warner Cable's region are generally more affordable than those offered by Comcast. Participants also discussed how the availability of a competitive broadband provider could help increase the ability of traditional and online video providers to compete, increasing user choice and improving services.

Enforcement and Duration

Next, the participants called for strong enforcement procedures with expedited complaint processes. They stated that an imminent filing from some of the public interest groups would address objections that an expedited application for review procedure might be barred by the Communications Act.

Finally, with respect to the duration of any conditions, the parties reiterated that any provisions should be co-terminus with the next license renewal term for the NBC and Telemundo television stations. This would provide a mechanism for parties to raise issues with respect to compliance with the terms of any order, and give Comcast an incentive to comply rigorously.

Respectfully submitted,

Andrew Jay Schwartzman

cc. Commissioner Clyburn
Dave Grimaldi
Angela Kronenberg
Louis Peraertz
Ian Forbes