NCAAOM NATIONAL COALITION OF
AFRICAN AMERICAN OWNED MEDIA

January 14, 2011 **Via ECFS**

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
TW-A325

Washington, DC 20554

Re: *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:

On January 11, 2011, WealthTV filed an ex parte letter proposing certain program carriage conditions that the Commission should impose on the merger of Comcast Corp. ("Comcast") and NBC Universal, Inc. ("NBCU") should it approve the transaction. The National Coalition of African American Owned Media ("NCAAOM") fully supports those conditions.

In addition to WealthTV's proposed conditions, representatives of NCAAOM met with Commissioner Mignon Clyburn and her Legal Advisors on December 13, 2010, to discuss the above-captioned application and the need for the Commission to impose conditions on the transaction that would support wholly-owned African-American networks. Specifically, NCAAOM discussed why the Applicants' voluntary commitment to add ten (10) independently owned and operated channels during the next eight years is inadequate to address the merger-specific harm that combining Comcast, the nation's primary multichannel video programming distributor, with NBCU, a leading content provider, would cause to independent African-American programmers. In this ex parte letter, NCAAOM attaches a letter signed by Alvin D. James, a founder of the Major Broadcasting Cable Network[1] ("MBC Network"), detailing merger-specific harms that were inflicted upon the independent African-American network as a result of Comcast's merger with AT&T Broadband in 2002. As Mr. James details in his letter, following the merger, Comcast became the largest operator of cable television systems in the country.

[1] MBC Network was founded in 1999 by attorney Willie Gary, Marlon Jackson (of Jackson 5 fame), broadcast veteran Alvin James, and sports figures Cecil Fielder and Evander Holyfield. It later changed its name to the Black Family Channel.

STANLEY WASHINGTON, PRESIDENT, NATIONAL COALITION OF AFRICAN AMERICAN OWNED MEDIA
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For the reasons described more fully in the attached letter, it is imperative that the Commission extend unique protections to independent African-American owned networks in this proceeding.

These protections are necessary particularly because Comcast does not currently distribute widely any wholly-owned African-American networks. To be sure, Comcast and NBCU have recently announced memoranda of understanding ("MOU") they have reached with the African-American, Hispanic and Asian-American communities. Many of these proposed commitments, however, reflect nothing more than vague goals and often are mere duplications of the Applicants' previously stated voluntary commitments. In the case of the African-American MOU, for example, Comcast-NBCU does not even increase the number of independently owned and operated channels it intends to add. In fact, Comcast-NBCU continues to trumpet that its voluntary commitment to add ten independently owned and operated channels over the next eight years is a significant concession. Meanwhile, Comcast states that it is enhancing this commitment by requiring that four of the channels to be linear video programming networks in which African-Americans have a majority or substantial ownership interest. However, this so-called enhancement is meaningless because Comcast fails to provide any details about such key factors for the success of a network as channel placement, access to targeted markets, or subscriber numbers.[2] Moreover, this channel commitment is trifling in the wake of Comcast's conversion to digital cable, which will afford the merged company the capacity to carry virtually hundreds of channels. It is also worth noting that the organizations that entered into the MOUs have received charitable donations from Comcast.

Additionally, the African-American MOU highlights the compelling need that exists for programming networks to be owned by African-Americans. In the MOU, NBCU states that it "is proud that across all of its content . . . diverse talent is prominent" and argues "[i]n particular, African-Americans actors and actresses are in strong, positive roles" in NBCU programming.[3] Then, the first two examples that NBCU provides of programs depicting strong, positive African-American characters are Bravo's *Bad Girls* and *Real Housewives of Atlanta*. While room exists for many portrayals, the African-American community does not agree that these programs represent the type of programming that depicts African-Americans in a favorable light. This highlights the compelling need for African-Americans to own programming networks and thus have the ability to present an alternative vision of the African-American community.

Given Comcast's stronghold in major urban television markets with significant African-American audiences, carriage by Comcast is essential in determining the success or failure of independently owned and controlled African-American programming channels. For the reasons stated above, Comcast-NBCU should adopt meaningful voluntary commitments to provide ten percent of its channel capacity

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[2] *See* Comcast-NBCU MOU with the National Association of the Advancement of Colored People, the National Urban League and National Action Network, MB Docket No. 10-56, at 9, (filed Dec. 17, 2010).

[3] Id. at 10.

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(at least 25 channels) to be programmed by African-American independently owned and controlled companies; and four hours of prime time programming per week on NBC for African American independently owned programming.[4]

Should you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

Stanley E. Washington /s

Stanley E. Washington
President & Chief Executive Officer

NCAAOM

Attachment

CC:

The Honorable Julius Genachowski, Chairman

The Honorable Michael J. Copps, Commissioner

The Honorable Mignon Clyburn, Commissioner

The Honorable Robert M. McDowell, Commissioner

The Honorable Meredith Attwell Baker, Commissioner

[4] NCAAOM Reply to Comcast-NBCU Opposition, MB Docket No. 10-56, at 13, (filed Aug. 19, 2010).

THE ALVIN JAMES GROUP
1579 Monroe Drive NE, Suite F237 Atlanta, GA 30324

January 11, 2011

Mr. Stanley E. Washington
President & Chief Executive Officer
NCAAOM

Dear Mr. Washington:

The MBC Network was founded in 1999[1] as an African-American-owned-and-operated video programming network uniquely positioned to serve African-American families. Between 1999 and 2002, MBC Network was distributed by Comcast and enjoyed a positive relationship with the company. During that time, MBC Network was launched on local cable systems in urban markets owned by Comcast at the rate of approximately 2,000,000 new cable television households per year, and was also carried on a growing number of local cable systems owned by other major cable operators as well. At the urging of Comcast, between 1999 and 2002, MBC Network broadened its programming format from exclusively African-American religious gospel programming to more general African-American family programming.

From 1999 to 2002, Comcast consistently represented to MBC Network that the network could expect continued growth on Comcast systems and that the only factor constraining even greater growth was the lack of sufficient channel capacity on certain systems. By 2002, MBC Network was carried on numerous Comcast systems, representing a substantial percentage of the 8,000,000 cable television households then served by Comcast throughout the country.

Later that year, AT&T completed the spin-off of its broadband unit, which merged with Comcast in November 2002. The merger made Comcast the largest operator of cable television systems in the country. Unfortunately, however, the transaction had a very negative impact on MBC Network. Between the announcement of the proposed Comcast-AT&T Broadband merger and the transaction's November 2002 completion, Comcast directed its local cable systems not to enter into additional local carriage agreements to launch the MBC Network. At the same time, Comcast informed MBC Network executives, in a series of meetings, that they now would be required to offer Comcast a significant ownership interest in MBC Network in order to guarantee continued launches on additional Comcast systems. MBC Network rejected Comcast's demand for an ownership interest and shortly thereafter, in February 2003 Comcast announced the founding of TV One, a non-broadcast television programming network for the African-American family community partially owned by Comcast.[2]

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[1] MBC Network later changed its name to the Black Family Channel.

[2] Radio One, Inc., a radio broadcaster primarily targeting African American and urban listeners, also owns a significant share of TV One, along with Bear Stearns, Constellation Ventures, Syndicated Communications and Opportunity Capital Partners. *See* TV One's web site, available at http://www.tvoneonline.com/inside_tvone/producer_guidelines.asp.

Immediately following these two events – MBC Network's refusal to relinquish an ownership interest and Comcast's launch of TV One – MBC Network's growth on Comcast's systems slowed by more than 90 percent before halting altogether. When MBC Network sought to continue negotiating for new launch schedules with Comcast's systems, it learned that Comcast's senior executives had ordered its local cable systems to halt launches of the MBC Network in order to make way for TV One. As a result, in 2003, MBC Network achieved launches on local cable systems owned by Comcast reaching only 86,000 new cable television households, compared to the millions of new cable television households per year to which it had gained access prior to the completion of the Comcast-AT&T Broadband merger and Comcast's announced launch of TV One.

Comcast debuted TV One on Martin Luther King Day in January 2004 to approximately 2,500,000 of its cable television households in the Atlanta, Detroit-Flint, and Baltimore-Washington metropolitan areas. In each market, Comcast provided TV One with a channel in the basic analog service tier at no additional charge to the subscriber. At the time of its initial rollout, Comcast also announced that it would launch TV One in the Pittsburgh, Chicago and Oakland markets.

In contrast to Comcast's favorable treatment of TV One, Comcast proceeded to disadvantage MBC Network in several ways. First, Comcast refused to provide MBC Network on an analog channel in markets where TV One enjoyed analog service, and according to MBC Network executives, misrepresented that no analog channel existed in key markets as a reason for denying such service to MBC Network. Instead, Comcast placed MBC Network on a premium digital tier, which cost subscribers an additional $10 to $15 per month. Second, Comcast positioned MBC Network on a channel numbering in the hundreds, far away from its competitor TV One that made it difficult if not impossible for subscribers to find. Third, in the Detroit and Baltimore markets – concurrent with its launch of TV One – Comcast displaced MBC Network from its spot on the basic analog service tier and moved it to the premium digital service tier that reached significantly fewer subscribers.

The Comcast-AT&T Broadband merger also disadvantaged MBC Network in another way. Comcast denied MBC Network the opportunity to continue to offer local cable operators two minutes of advertising availability per hour of programming through the Headend-in-the-Sky ("HITS") platform that Comcast acquired from AT&T Broadband. HITS is a satellite multiplex service that provides cable channels to Comcast local cable systems as well as non-Comcast cable operations. Even as Comcast precluded MBC Network from making advertising time available, Comcast permitted TV One to offer two minutes of advertising availability during each hour of programming to Comcast and non-Comcast cable operators. This practice severely disadvantaged MBC Network, as local advertising availability represented an important revenue source for local cable television operators and played an important role in local operators' decisions about which programming networks to carry.

Furthermore, MBC Network learned that Comcast approached other large cable operators to request carriage of TV One on their local cable systems in key urban markets. In at least one instance, with Time Warner in New York City, Comcast urged the company to shelve the launch of MBC Network in favor of launching TV One. Some regional cable system clusters operated by Time Warner are owned by Time Warner Entertainment, of which Comcast had an ownership interest at the time that Comcast influenced that programming decision, demonstrating yet again the negative impact that market concentration has on independent African-American programmers.

As demonstrated above, Comcast's practices leading up to and immediately following its merger with AT&T Broadband demonstrate a pattern of anticompetitive behavior that unfairly disadvantaged MBC Network as a result of Comcast's increased concentration in the market. Moreover, Comcast's ownership interest in MBC Network's leading competitor, TV One, provided Comcast with the ability and incentive to favor its affiliated programming over MBC Network. Indeed, Comcast refused to carry MBC Network in certain markets and in others relegated MBC Network to a digital tier with significantly fewer subscribers. So successful was Comcast at arresting MBC Network's growth and blocking program carriage on its own cable systems and non-Comcast cable systems that MBC Network folded in 2007.

Recognizing the transaction specific harms that were inflicted upon an independent African-American voice as a result of Comcast's merger with AT&T Broadband, it is imperative that the Commission extend unique protections to independent African-American owned networks in this proceeding.

Respectfully submitted,

Alvin D. James
President & CEO