Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Comcast Corporation,	)	MB Docket No. 10-56
General Electric Company and NBC	)	
Universal, Inc. for Consent to Assign	)	
Licenses or Transfer Control of Licensees	)	

PETITION TO DENY AND COMMENTS OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION AND THE WESTERN TELECOMMUNICATIONS ALLIANCE

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TABLE OF CONTENTS

Page

SUMMARY

The National Telecommunications Cooperative Association and the Western Telecommunications Alliance (jointly, the Associations) submit these joint comments to oppose the proposed merger of Comcast Corporation, General Electric Company and NBC Universal, Inc. (the proposed merger). The proposed merged company will control a large suite of programming that its competitors will need access to according to reasonable terms in order to remain competitive. The Associations believe that the proposed merged company will have the ability and incentive to discriminate against non-affiliated MVPDs and drive up programming costs for the Associations' members to untenable levels. The proposed merger is a threat to diversity, competition and the future viability of small, independent MVPDs.

The Associations offer several conditions that may help to alleviate the harm of the merger should it be approved as proposed. The Associations firmly believe that the merged company should not be permitted to use its superior bargaining power to the detriment of small MVPDs. Therefore, the Associations offer the following conditions: 1) The merged company should be prohibited from bundling multiple channels and from tying broadband; 2) The merged company should be prohibited from tying web content to video content; 3) It is essential that small, competitive MVPDs have access to Comcast/NBC content and not pay more for it than do larger competitors or than that which the merged company itself pays for its own content. No Comcast/NBC content should be available exclusively to the merged company's subscribers; 4) The merged company should be required to offer retransmission rights on fair and non-discriminatory terms and without bundling; 5) The merged company should be required to divest Comcast Media Center (CMC). CMC provides centralized content management and distribution solutions for cable systems, television networks and other video content providers and for

advertisers. This creates a situation in which the merged company is both a content owner and distributor, creating a conflict and incentive for the merged company to create favorable pricing arrangements for itself and any partners; and 6) The merged company should divest itself of Hulu, the Internet source for episodic television replay.

The Associations are deeply troubled by the market position that the merged company would possess if the merger is approved. It is imperative that the Commission act to protect the public and ensure that the newly merged company complies with conditions sufficient to protect small MVPDs and the consumers they serve.

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AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE

The Federal Communications Commission (Commission or FCC) on March 18 released a Public Notice seeking comment on the applications of Comcast Corp. (Comcast), General Electric Company, and NBC Universal, Inc. (NBC) to assign and transfer control of FCC licenses.[1] The National Telecommunications Cooperative Association (NTCA) and the Western Telecommunications Alliance (WTA) (jointly, the Associations) submit these comments to oppose the transaction and offer suggested conditions that would help to alleviate the potential harm to competitors and consumers should the transfer of licenses be approved as proposed.

I. STATEMENT OF INTEREST

NTCA is a national association of more than 580 members. All of NTCA's members are rural incumbent local exchange carriers, many of whom also provide voice, video, wireless and broadband service to their rural communities. NTCA's members are actively involved in the provision of video services: two hundred and fifty nine provide video service via traditional

[1] Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC licenses, Public Notice, MB Docket No. 10-56, DA 10-457 (released March 18, 2010).

cable systems, and another 83 offer Direct Broadcast Service (DBS). But video offered via Internet Protocol (IPTV) is by far the fastest growing segment. At last count, 146 NTCA members offered video to subscribers via IPTV, a growth of 27% in one year.

At least 22 NTCA member companies currently compete directly with Comcast for video subscribers in at least a portion of their service territories and all members rely on NBC or its affiliates for content.

The WTA is a trade association that represents more than 250 rural telephone companies providing quality voice, data and video services in rural areas within the twenty-four states west of the Mississippi River, including Alaska and Hawaii.

The vast majority of WTA members are small companies and cooperatives that were developed at separate times and under a variety of circumstances to serve differing remote and sparsely populated rural areas that no larger telecommunications carriers wanted to serve. Most WTA members serve fewer than 3,000 access lines in the aggregate and fewer than 500 access lines per exchange. The per-customer costs of constructing, operating and maintaining facilities in these rural areas were then (and remain today) much higher than those in urban and suburban America. In addition, the cost of providing video services for small companies and cooperatives is a significant investment because the costs of acquiring content are considerable.

The proposed merged company will have the ability and incentive to discriminate against non-affiliated MVPDs and drive up programming costs for the Associations' members to untenable levels. The proposed merger is a threat to diversity, competition and the future viability of small, independent MVPDs.

II. THE PROPOSED MERGER THREATENS DIVERSITY AND COMPETITION IN THE VIDEO MARKET

The ability to offer video service to subscribers is essential to the long-term viability of rural telecommunications providers. As the demand for traditional landline telephone service decreases, rural telecommunications providers are evolving into full-service companies, providing the broadband connection to the home. It is documented that the availability of video service and the bundling of it with broadband is a key driver in rural broadband deployment and take rates.[2]

Though rural telecommunications providers are actively deploying video service, most complain that access to content according to reasonable terms and conditions is the biggest hurdle they face. Small video providers face substantial discrimination in prices and access to programming.

The joint venture is presented as the vertical integration of two complimentary video entities – the combining of NBC's programming assets with Comcast's cable assets. In fact, the proposed joint venture has both horizontal and vertical components, each creating separate and distinct competitive harms.

NBC is a network with 10 owned and operated NBC affiliates. The Telemundo network, an NBC property, has 15 owned and operated affiliates in major metropolitan areas. NBC also controls several national cable networks, and some of these are "must have" programming, including USA, Syfy, MSNBC, Bravo and CNBC. NBC also has an interest in Hulu, the Internet source for episodic television replay. Comcast is not only the largest cable and

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[2]Rural carriers that are able to bundle video with broadband services have experienced broadband adoption rates that are nearly 24 percent higher than those rural carriers that offer broadband alone. *See*, National Exchange Carrier Association comments, GN Docket Nos. 09-47, 09-51, 09-137 (fil. Dec. 7, 2009), p. 6.

broadband operator, serving tens of millions of customers in 39 states, it is also a producer of national cable networks. Comcast's assets include E! Entertainment, TV One, Versus, Style and the Golf Channel. A business unit of Comcast Cable, Comcast Media Center, is a content aggregator.[3] Both NBC and Comcast provide on-line content as well.

The vertical component of this transaction, the combining of NBC's programming assets with Comcast's cable assets, creates a real risk for MVPDs that compete with Comcast. All MVPDs must have some of the content offered by NBC and Comcast to be competitively viable. The merged company will have the ability and incentive to discriminate against competitors in the provision of programming. The merged company will have the ability to withhold programming or charge higher prices for it to MVPDs that compete with Comcast. Competing MVPDs who take the programming at the higher rate would necessarily have to recoup these charges from subscribers. Whether the programming is available on the competing MVPDs service or not, the competing MVPD's service would be inferior to Comcast's product. Video subscribers would flock to Comcast. Comcast has every incentive to ensure this happens.

The horizontal component of the proposed transaction, the combining of programming assets, is of great concern to all MVPDs, even those that do not compete directly with Comcast for subscribers. The merged entity will control a much larger block of highly demanded programming. By controlling a much larger block of highly demanded programming, the merged entity will be able to charge higher fees to MVPDs and impose onerous contractual requirements and restrictions.

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[3] According to the Comcast Media Center website, "Denver-based Comcast Media Center (CMC), a business unit of Comcast Cable, provides centralized content management and distribution solutions for cable systems, television networks and other video content providers and for advertisers 'All From The Center.'" http://www.comcastmediacenter.com/company/

III. CURRENT LAWS AND REGULATIONS DO NOT PROVIDE ADEQUATE PROTECTIONS AGAINST THE COMPETITIVE HARMS OF THE MERGER

Current laws and regulations are insufficient to protect consumers from the harms of the proposed merger. The large merged company will abuse its power to force carriage of undesired programming, and negotiate unfair retransmission agreements.

A. The new merged company will engage in tying of programming

The Associations have consistently argued against the program distributor practice of tying undesired content with desired content. In order to obtain carriage rights for the 10 most widely distributed basic programmers, small MVPDs must contract for, pay for and distribute 120 to 125 channels. Even when programming is offered on an *a la carte* basis, it is often priced in such a way that taking only desired programming is not really a choice. Tying of content is the most prevalent and pernicious problem faced by small MVPDs in the market today. There is nothing in law or regulation that prevents or prohibits this tying practice and the problem will be compounded by the proposed merger. In order to gain access to desired NBC programming, a MVPD will likely have to not only take all of NBC's current programming, but also all of Comcast's programming. Similarly, if a MVPD wants access to a Comcast program, it will have to provide its subscribers the full suite of NBC programming. If a MVPD wants to offer its subscribers one channel offered by the merged company, it may have to offer and pay for, on a per subscriber basis, up to 16 additional channels today, with others certain to be added to the future line-up.

There is also a real danger that the merged company will tie its web content to video content. That is, for a MVPD to gain access to desired video content, not only would it have to take and pay for undesired video programming, it would also have to pay for and provide its subscribers access to the merged company's broadband, or other, web-based content. Content providers are already requiring that broadband content be made available to all of an IPTV provider's broadband customers, whether or not the customer subscribes to the IPTV service, whether or not the broadband customer is situated within the video service territory and whether or not the customer utilizes the broadband content. The IPTV provider pays the content provider a set amount on a per broadband subscriber basis, a cost that is ultimately borne by all broadband subscribers. Given that the merged company will control web-based content and this is an expected area of growth, there is every reason to believe that the merged company will maximize its profits by tying its video content to its web content in "take it or leave it" agreements – driving the price of service out of reach for many consumers.

B. The new merged company will engage in the practice of forced tiering of programming

Closely related to the problem of tying, is the practice of tiering and minimum penetration requirements. Not only are competitive MVPDs required to take and pay for unwanted programming, but programming vendors require that programming be placed on a specific tier or require that a certain percentage of subscribers receive the service, forcing small providers to provide the channel to the most widely subscribed tier or tiers of service. Ninety-four percent of participants in a NTCA video poll reported that video programming providers, like NBC and Comcast, have required them to place their programming in their most highly subscribed tier of video service. The merged company will exacerbate this problem due to its increased power in the market and negotiating position.

The combination of bundling and forced tiering make it impossible for a small MVPD to offer a truly basic, stripped down package of affordable service. It also prevents small MVPDs from competitively distinguishing themselves, which will further protect Comcast's market share.

C. A merger would exacerbate problems with the retransmission consent process

The Commission's rules at Section 76.56(b) require that most cable and IPTV providers may only carry the local commercial broadcast television stations located in their specified Designated Market Areas (DMAs). MVPDs may not look to neighboring CMAS for network programming. Broadcaster's programming is carried by MVPDs according to retransmission consent agreements or must carry at the sole discretion of the broadcasters.

In the past, broadcast television stations relied on advertising revenues to earn a reasonable return on investment and would require MVPDs to carry their in-DMA signals by invoking the "must carry" requirements. No payments between the MVPDs and the broadcasters were exchanged.

Today, broadcasters obtain significant revenues by charging MVPDs for the privilege of carrying the in-DMA signal through retransmission consent agreements. MVPDs need network programming to offer a successful video service and broadcasters threaten to withhold programming during retransmission consent negotiations. The cost of carrying network programming has increased exponentially over the last several years.

The merger creates a situation in which the network is also a MVPD competitor. The new company has the ability to charge outrageous fees for network programming and the incentive to withhold it from competitors. The merged company will have negotiating power not before seen in the retransmission consent process.

IV. THE MERGED COMPANY'S VOLUNTARY PUBLIC INTEREST COMMITMENTS ARE WHOLLY INSUFFICIENT TO PROTECT THE PUBLIC FROM HARM

Comcast/NBC offers a list of 16 "voluntary public interest commitments" that it will agree to if the merger is approved as presented. The commitments are nothing more than agreement to abide by current laws and regulations and a list of things it will do to make its product more attractive to its consumers. There is nothing in the commitments that will alleviate any of the harms to competition or the public this merger would inflict.

The only commitment that purports to address the programming to be controlled by Comcast is number 15. It states, "Comcast will commit to voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O stations for as long as the Commission's current program access rules remain in place." In short, Comcast is "voluntarily" "accepting" key components (and only the "key" components?) of regulation that it is required to comply with as a cable operator. It offers nothing.

V. IF THE MERGER IS APPROVED, CONDITIONS ARE NECESSARY TO ALLEVIATE THE HARM IT WILL CAUSE

The Associations oppose the merger of NBC and Comcast, but indications are that it will be approved. Therefore, the Associations offers certain conditions that may help to alleviate some of the harm the merger will cause small MVPDs and consumers.

A. Prohibit the merged company from bundling multiple channels

The merged company should be prohibited from requiring cable and IPTV providers to take and pay for unwanted video programming in order to have access to desired programming. The practice is unfair to consumers and competing MVPDs as described *supra.* This prohibition should include a prohibition that prevents *de facto* forced bundling that occurs due to manner in which the programming is priced.

B. Prohibit the merged company from tying broadband and web content to video content

The availability of web content is expected to grow in coming years. It is important that the content be available to consumers, but it should not be a mandatory service with a fee attached. The merged company should be prohibited from forcing MVPDs to purchase and pay for web content in order to have access to video content.

C. Require fair, reasonable and non-discriminatory licensing of all Comcast/NBC content

Small, competitive MVPDs must have access to Comcast/NBC content, including sports content, according to fair and reasonable terms and conditions. The merged company should not be permitted to use its superior negotiating position to the detriment of small MVPDs and the consumers they serve. Small MVPDs should pay no more for content than do larger competitors or than that which merged company itself pays for its own content. No Comcast/NBC content should be available exclusively to the merged company's subscribers.

D. Require the merged company to offer retransmission rights on fair and non-discriminatory terms, and without bundling

The merged company should be required to offer retransmission rights on fair and non-discriminatory terms. This means that small MVPDs should pay no more for retransmission rights than do the larger MVPDs, and there should be a standstill provision during negotiations so that the merged company cannot use the threat of pulling programming to its competitive advantage. The new company should also not be permitted to bundle any of its network programming with cable programming or web content.

E. Require the merged company to divest Comcast Media Center

The merged company should be forced to divest Comcast Media Center. Control of this content aggregator creates a conflict of interest for the merged company. In its role as both content owner and content distributor, the merged company would be in a position of both a consumer of video content and a reseller of content. Comcast Media Center is also a distributor of in Demand, the video on demand distributor jointly owned by Comcast, Time Warner Cable, Cox Communications, and Advance/Newhouse Partnership. Continued operation of Comcast Media Center by the merged company invites not only the abuse of competitors, but opens the door to the possibility of collaborative pricing arrangements. The merged company would have the incentive to create favorable pricing arrangements for itself and any partners. These "sweetheart" deals would occur at the expense and to the detriment of competing companies, especially small rural MVPDs. Divestiture of Comcast Media Center is necessary to alleviate the harm.

F. Require that the merged company divest itself of Hulu

The merged company should be required to divest itself of Hulu, the Internet source for episodic television replay. Hulu is a partnership of NBC, Fox, and ABC. Partner influences could limit the distribution and pricing of content available through the Hulu portal. It is also possible that Hulu would become part of a forced bundle of content properties forced on competing companies that acquire content from the merged companies. Continued ownership of Hulu post merger would create a conflict of interest for the merged company and divestiture is necessary.

VI. CONCLUSION

The Associations' members are deeply troubled by the actions of program providers. They abuse their power to the detriment of rural MVPDs and their subscribers. The proposed merger combines a MVPD, a broadcaster and providers of video and on-line content into one behemoth company. There is great potential for behavior that is detrimental to consumers and small competitors, whether they compete directly with the merged company or not. If the merger is to be approved, it is imperative that the Commission act to protect the public and ensure that the newly merged Comcast complies with the conditions outlined above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Petition to Deny and Comments of the National Telecommunications Cooperative Association and the Western Telecommunications Alliance in MB Docket No. 10-56, DA 10-457, was served on this 21st day of June 2010 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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