November 22, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

Over the past year, smaller cable operators and other multi-channel video distributors ("MVPDs") have demonstrated to the Commission that the proposed combination of Comcast and NBC Universal ("NBCU") will result in significantly increased video programming prices – anywhere from 22 percent to more than 100 percent depending on the type of programming. Just recently, the American Cable Association ("ACA") presented evidence that the total magnitude of the programming price increases from the deal would rise to $2.6 billion over nine years. In contrast, the quantifiable consumer benefits presented by Comcast and NBCU are relatively insignificant. In other words, the proposed combination would not serve the public interest without the inclusion of robust, meaningful and durable remedies to ameliorate this significant harm.

The Commission, of course, has extensive experience in addressing concerns about media combinations that raise the prices consumers pay for programming. In reviewing the News Corp.-DirecTV and Adelphia-Time Warner-Comcast transactions, the Commission found these vertical combinations to be in the public interest only after the parties agreed to a series of conditions that would rein in the expected price increases and other perceived potential harms. These prior conditions provide a good foundation upon which the Commission can begin to address the harms that arise from the proposed combination of Comcast-NBCU. However, they alone are insufficient for two principal reasons.

First, there is abundant evidence in the record demonstrating that the Commission's prior conditions have proven to be of little, if any, benefit for consumers served by smaller MVPDs. In particular, binding baseball-style commercial arbitration proved to be too expensive for

smaller MVPDs[1] to employ, leaving them with no real recourse when negotiations for "must have" programming break down. Consequently, these MVPDs, without a cost-effective alternative, simply had to accept the above-market rates that the Commission predicted would occur as a result of these transactions.

Second, these prior transactions only addressed vertical integration and not the significant horizontal integration of Comcast's and NBCU's programming assets. The ACA's recent study on the magnitude of harm showed that the extent of horizontal and vertical harms is roughly equivalent, and, thus, equally effective remedies are needed for both.

As parties that have participated extensively in the Commission's review of the Comcast-NBCU transaction, we have each endorsed a series of transaction-specific remedies that ameliorate the harms that have been demonstrated and fix the weaknesses in previous conditions.[2] Common among all of our proposed conditions are remedies for smaller MVPDs that prevent Comcast-NBCU from raising programming fees above levels they would be able to command without combining assets. In particular, we agree that the Commission must ensure that there are clear provisions that would prevent Comcast-NBCU from charging smaller MVPDs more than a clearly defined market-based rate, and that a cost effective process be established to enforce these rules. Such an approach, which the undersigned support, should be viewed as baseline conditions to which should be added the other important and targeted proposals each of us has also submitted.

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[1]ACA has demonstrated that, based on the experience of its member companies, the cost of arbitrating a pricing dispute would be approximately $1 million. *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, MB Docket No. 10-56, Reply of the American Cable Association (filed Aug. 19, 2010) (ACA Reply) at 39-42; Attachment B, Declaration of Robert Gessner, ¶ 15. ACA determined that, given these costs, arbitration would prove prohibitive for any operator with 125,000 or fewer subscribers in the relevant market of the programming that is the subject of the arbitration. The level of subscribership below which baseball-style arbitration becomes unaffordable was calculated by Professor William P. Rogerson according to the formula described in his study, "A Further Economic Analysis of the Proposed Comcast-NBCU Transaction," ("Rogerson II") attached to ACA's Reply as Attachment B.

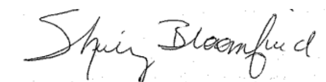
[2]*Applications of Comcast Corporation, General Electric* Company, *and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, Reply to Opposition to Petitions to Deny and Response to Comments of the FACT Coalition, NTCA, and WTA, MB Docket No. 10-56, at ii-iii (Aug. 19, 2010); See *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, Ex Parte Letter, FACT Coalition, NTCA and WTA at 1 (filed Oct. 21, 2010). (FACT proposed conditions that would ensure nondiscriminatory access to Comcast-NBCU's cable, online, broadcast, on-demand and pay-per-view content. Conditions must also prevent the practice of forced tying, and prevent Comcast-NBCU from dictating the levels of carriage of specific channels. Conditions must also prevent Comcast-NBCU from requiring a per-subscriber fee for access to online programming. Finally, conditions must ensure that any migration of broadcast content to cable or online channels will not result in consumer harm.); *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, Reply of the American Cable Association. MB Docket No. 10-56, at 48-64 & Attachment C (Aug. 19, 2010) (to ameliorate the vertical and horizontal harms of the transaction, ACA has proposed that: (i) Comcast-NBCU be prohibited from charging smaller MVPDs a rate higher than five percent more than the "most favored nation" rate for Comcast RSNs and NBC broadcast stations; (ii) a streamlined, low-cost alternative dispute resolution mechanism be established so that smaller MVPDs can enforce the prohibition; and (iii) an empowered bargaining agent be available to small MVPDs for negotiating and/or arbitrating carriage of NBCU's national cable programming networks and dispute resolution by means of traditional "baseball-style" arbitration).

As the record demonstrates, the proposed combination would significantly and unjustly increase the prices smaller MVPDs would pay to carry Comcast and NBCU programming, and these additional costs would be largely passed through to their customers. Such an outcome is clearly contrary to the public interest. We urge the Commission to adopt the remedies discussed above, and others presented in the pleadings of the undersigned, that will help to ensure that smaller MVPDs and their customers are not harmed.

Sincerely,

Matthew M. Polka
President and Chief Executive Officer
American Cable Association (ACA)

Jack Harvey
Interim President and Chief Executive Officer
National Rural Telecommunications Cooperative (NRTC)



Shirley Bloomfield
Chief Executive Office
National Telecommunications Cooperative Association (NTCA)

John N. Rose
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/s/

Bill Wade
Chairman
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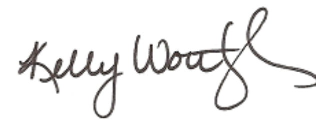

Kelly Worthington
Executive Vice President
Western Telecommunications Alliance (WTA)

cc: The Honorable Michael Copps
The Honorable Robert McDowell
The Honorable Mignon Clyburn
The Honorable Meredith Atwell Baker