

**DAVID R. GOODFRIEND, ESQ.**  
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**WASHINGTON, D.C. 20036**

February 6, 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: MB Docket No. 14-57

Dear Ms. Dortch:

Yesterday, February 5<sup>th</sup>, 2015, Michael Norton, President of WeatherNationTV, and the undersigned, met with the following members of the Comcast/Time Warner Cable merger review team: Hillary Burchuk (Team Leader); Bill Lake (Chief), Hillary DeNigro, Marcia Glauber, Ty Bream, Julie Saulner, Allen Barna, and Adam Lazarus of the Media Bureau; Jim Bird, Bill Freedman, Jaimie Douglas, Keith Ingram, Amanda Burkett, and Elizabeth Cuttner of the Office of General Counsel; Bill Dever and (by phone) Adam Copeland of the Wireless Competition Bureau; and David Waterman of the Office of Strategic Planning and Policy Analysis.

WeatherNationTV is an independent weather information service launched as a competitor to The Weather Channel. It utilizes multiple distribution platforms, including linear pay-TV, broadcast ancillary digital channels, online, and over-the-top (“OTT”) broadband-enabled devices such as the Sony, Samsung, LG, Roku, and Microsoft Xbox, among others.

Regarding OTT, authentication, and digital distribution platforms, Mr. Norton stated that in direct conversations with senior Comcast programming and public policy executives, WeatherNationTV was told that its wide availability on OTT devices such as Xbox, PlayStation, and other digital platforms makes WeatherNationTV less attractive to Comcast as a linear programming provider. Comcast offered to put WeatherNationTV on its X1 service but only on terms that would have undermined WeatherNationTV’s agreements with other distributors, creating an unstable position for WeatherNationTV. By contrast, DIRECTV and multiple cable operators carry WeatherNationTV without calling for diminished digital distribution by the network.

Regarding digital distribution via broadband generally, Comcast would have the incentive and ability to harm WeatherNationTV’s OTT products nationwide. At either 25Mbps (over 50% market share nationally) or 10Mbps (over 40% market share nationally), a merged Comcast/Time Warner Cable would have a big enough national footprint to decide WeatherNationTV’s fate. WeatherNationTV’s

broadband-enabled distribution platforms rely on an unfettered broadband connection. Comcast would have the incentive to favor its own weather programming property (The Weather Channel is 25% owned by Comcast) and the ability to undermine WeatherNationTV through any network access or related agreements.

Even if, as expected, the FCC adopts a strong net-neutrality order addressing in-network blocking, throttling, and other discrimination, along with paid prioritization and interconnection, Comcast/Time Warner Cable still would have the incentive and ability to make WeatherNationTV's digital offerings less competitive. In addition to the example above, Comcast could exempt its own digital weather data services from data caps or configure its set-top boxes to offer preferential treatment to Comcast's on-screen weather information applications over those of WeatherNationTV.

The weather programming and information format opens the door to especially pernicious anticompetitive tactics by Comcast. Comcast's 25% equity stake in The Weather Channel's parent company, which after its acquisition of Weather Central in 2012 now owns the dominant weather data service, WSI, gives Comcast a unique ability to thwart competition in a critical programming niche.

WeatherNationTV has direct experience with the abuse of this critical input. In 2013, when DIRECTV resisted The Weather Channel's proposed rate increase and opened discussions with WeatherNationTV, the WSI weather data service owned by The Weather Channel's parent company threatened WeatherNationTV's very existence by notifying WeatherNationTV that its contract would be up at the end of the month, and that WeatherNationTV would need to sign a new agreement for a rate increase of 57 times, or face termination of its contract for crucial weather data. This communication by WSI coincided with the launch of WeatherNationTV on the DIRECTV platform. WeatherNationTV quickly completed a migration to an alternative weather data provider to avoid being driven out of business. DIRECTV now carries both The Weather Channel and WeatherNationTV.

It should be noted that the DOJ's consent decree in the Comcast/NBCU merger addressed Comcast's influence over The Weather Channel's management decisions—WeatherNationTV has raised questions over whether Comcast is in compliance with that provision—but is silent as to how Comcast could influence WSI's weather data service in anti-competitive ways.

Comcast seems to take a more restrictive view than does Time Warner Cable regarding both linear and digital distribution of WeatherNationTV. In conversations with Comcast, WeatherNationTV was told that there is insufficient demand or bandwidth for a second weather programming service. Mr. Norton noted that this assertion seems inconsistent with observable facts. For example, multiple local broadcasters providing weather information simultaneously in the same market all compete to provide the best weather information.

WeatherNationTV believes that no conditions could address all the potential harms of the proposed merger. Despite a condition in the Comcast/NBCU DOJ consent decree prohibiting Comcast from influencing The Weather Channel's management decisions through the 25% equity holding, Comcast's apparent exclusive with The Weather Channel raises significant questions as to whether Comcast

influenced The Weather Channel's management in contravention of the consent decree. Moreover, as stated above, even if Comcast is in compliance with the consent decree, it still can thwart competition through WSI's weather data service. Behavioral conditions simply have not and will not work.

Sincerely,

/s/  
David Goodfriend, Counsel to WeatherNationTV

cc:

Hillary Burchuk (Team Leader)  
Bill Lake (Chief, Media Bureau)  
Hillary DeNigro (Media Bureau)  
Marcia Glaubergerman (Media Bureau)  
Ty Bream (Media Bureau)  
Julie Saulner (Media Bureau)  
Allen Barna (Media Bureau)  
David Waterman (Office of Strategic Planning  
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Jim Bird (Office of General Counsel)  
Bill Freedman (Office of General Counsel)  
Jaimie Douglas (Office of General Counsel)  
Keith Ingram (Office of General Counsel)  
Amanda Burkett (Office of General Counsel)  
Elizabeth Cuttner (Office of General Counsel)  
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Bill Dever (Wireless Competition Bureau)  
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