INDIANA UNIVERSITY
DEPARTMENT OF TELECOMMUNICATIONS
College of Arts and Sciences
Bloomington

April 16, 2010

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

Re: Ex Parte Communication in MB Docket No. 10-56

Dear Ms. Dortch:

On April 15, 2010, I spoke by telephone with Rebekah Goodheart, Daniel Shiman, and Danny Bring of the Media Bureau; Jim Bird and Virginia Metallo of the Office of General Counsel; and Anthony Bush of the Office of Inspector General. The discussion focused on the Commission's review of the proposed joint venture between Comcast Corporation and NBC Universal, Inc.

I provided my views on the impact of new technologies on the cable industry. I pointed out that cable operators were concerned that video over the Internet would reduce demand for their existing MVPD service. I explained that in my view, Comcast already has significant horizontal market power and some valuable programming in the MVPD market and that the transaction was basically a vertical merger. Comcast will have incentives to favor their own programming but it is not clear if the proposed merger would significantly enhance the combined entity's market power. I clarified, however, that the proposed transaction would give the parties some more bargaining power that could affect carriage or prices paid for some programming. I explained that the old vertically-integrated business model, in which cable networks needed financing and assured cable carriage to become established, had changed with the growth of well-established program suppliers like Viacom and Fox which are not vertically integrated.

Although there is no rule of thumb regarding the number of subscribers a network needs to be viable, I explained that MVPDs the size of Comcast exert significant market power over less well-established networks, especially those that rely on advertising, because the possibility of being cut out of a large local market, or a substantial portion of the national market, would have a considerably negative impact on their revenues.

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On the ISP side, I explained that this was a developing area where consumers currently do not pay to access content, but that this may change over time. I expressed my concern that Comcast currently has some market power over aggregators of on-line video programming because of its various local and cumulative national market shares in the ISP market. I agreed that NBC programming is reasonably considered “must have” programming, so that an online aggregator of online programming that does not include NBC programming likely would be at a significant disadvantage. After the transaction, therefore, Comcast’s control over NBC programming may increase Comcast’s leverage over aggregators of on-line video programming, although that leverage is limited by the competitive pressures on NBC to maximize its viewer reach in order to sell advertising. I also pointed out that if Comcast discriminated against any online programming offered by an MVPD such as Dish Network, this could harm the MVPD’s offline network as well.

To address the issue of programming withholding, I pointed out that the FCC could create a program access merger condition that would make NBC or other programming available to online video program aggregators on a nondiscriminatory basis, but that this would be complicated. I explained that the most competitively significant aspect of online video programming currently comes from “aggregators” like Hulu; the main issue if this market trend continues is going to be whether different aggregators would be available on each ISP under the same conditions. This is a complicated issue because online video programming aggregators have different cost structures than MVPDs and because the online market is so early in its development.

Sincerely,

David Waterman
Professor