



July 19, 2010

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Portals II, Room TW-A325  
Washington, DC 20554

Re: **ERRATUM:** *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., For Consent to Assign Licenses or Transfer Control of Licensees,*  
MB Docket No. 10-56

Dear Ms. Dortch:

On June 21, 2010 the United States Telecom Association (USTelecom) filed comments in the above-captioned proceeding. This Erratum amends the comments as indicated below.

USTelecom is replacing the assertion that “our member companies have previously had a number of well-publicized and protracted disputes with Comcast over access to programming under Comcast's control” with the statement that “our member companies have had a number of disputes with vertically integrated cable companies.”

Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is fluid and cursive, with the first name "Jonathan" and the last name "Banks" clearly legible.

Jonathan Banks

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

In the Matter of	)	
	)	
Applications 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	)	
	)	

**AMENDED COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) provides these comments in the above referenced proceeding regarding the applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively, the “Applicants”) to assign and transfer control of certain Federal Communications Commission (“FCC” or “Commission”) licenses.<sup>1</sup>

The proposed transaction would, without question, put the resulting merged entity in control of an unprecedented amount of popular video programming content. While USTelecom takes no position on the ultimate merits of the transaction, the combination of the Applicants’ cable and broadcast programming assets under a single entity’s control reinforces the arguments previously made by USTelecom in other proceedings before the Commission concerning the fundamental importance of programming access to ensuring vibrant video competition. Accordingly, as the Commission reviews the proposed

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<sup>1</sup> *Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign and Transfer Control of FCC Licenses*, Public Notice, 25 FCC Rcd 2651 (MB 2010).

transaction, it is essential that it ensures that its rules for access to the types of programming being accumulated by the merged entity are sufficient to ensure that competitive MVPDs continue to have reasonable access to such programming.

### DISCUSSION

USTelecom's member companies, of all sizes, have been aggressively entering the MVPD market in geographic areas throughout the country. In many of these areas, they compete directly with Comcast for customers for video, broadband and voice services. Local telephone company competitive video entry has greatly benefitted consumers by providing them an alternative to the incumbent which, as the Commission has previously found, has also led to lower consumer prices than in areas without a wireline cable competitor. The Commission has also recognized that a successful video offering is directly related to an ILEC's ability to deploy robust broadband facilities.<sup>2</sup>

But as the Commission is well aware, the ability of ILEC video service providers to compete effectively is often dependant on access to essential programming that is owned by the very cable companies against which they are competing. In this context, our member companies have previously had a number of well-publicized and protracted disputes with vertically integrated cable providers over access to programming under

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<sup>2</sup> See e.g., Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd. 5101, ¶51 (2006) (concluding that "broadband deployment and video entry are 'inextricably linked'" ) (*Franchise Reform Order*); *Franchise Reform Order*, ¶62 (stating that, "[t]he record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated."); Report and Order, Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶20 (2007) (*MDU Order*) (stating that "broadband deployment and entry into the MVPD business are 'inextricably linked.'"); First Report and Order, *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, 25 FCC Rcd. 746, ¶36 (2010) (concluding that "a wireline firm's decision to deploy broadband is linked to its ability to offer video.") (*Program Access Order*).

their control.<sup>3</sup> The Commission's recent actions to strengthen its programming access rules and dispute processes were a welcome step in response to these recurring instances where incumbents had refused to provide competitor's access to "must have" programming.

The proposed transaction once again shines the spotlight on the critical issue of programming access. Approval of the Applicants' proposed merger would combine the formidable programming assets from an entity in the broadcast marketplace, with those of the nation's largest cable operator in the Multichannel Video Programming Distributor (MVPD) marketplace. In this regard, USTelecom urges that two areas in which the Commission should focus significant attention are those relating to access to vertically integrated MVPD content, and those relating to the Commission's decades-old retransmission consent process.

## **I. ACCESS TO VIDEO PROGRAMMING CONTENT IS CRITICAL TO INCREASING VIDEO AND BROADBAND DEPLOYMENT AND COMPETITION.**

The Commission has consistently emphasized how access to critical programming will result in substantial consumer benefits including increased competition in the MVPD

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<sup>3</sup> *Program Access Order*, ¶30 (noting that Cablevision has withheld the terrestrially delivered High Definition feeds of its affiliated MSG and MSG+ RSNs from certain competitors in select markets, including Verizon and AT&T; and that Cox has withheld the terrestrially delivered Cox-4 channel, which has exclusive rights to the San Diego Padres baseball games, from AT&T, as well as DIRECTV, EchoStar). *See also*, David Lieberman, *FCC to hear disputes on channel access Competitors want to air those that cable companies own*, USA Today, July 16, 2009 (available at: [http://www.usatoday.com/money/media/2009-07-15-phones-satellites-cable\\_N.htm](http://www.usatoday.com/money/media/2009-07-15-phones-satellites-cable_N.htm)) (visited July 19, 2010); *see also*, *FCC Looks to Close Cable Loophole*, Newark Star-Ledger, December 16, 2009 (noting carriage disputes between AT&T and Cox Communications in San Diego, and between Cablevision and Verizon and AT&T for carriage of the high-definition format of its Madison Square Garden Networks). Smaller providers have also faced similar changes with respect to accessing vertically integrated programming. *See e.g.*, Comments of the United States Telecom Association, January 4, 2008, MB Docket No. 07-198, pp. 16-17; USTelecom ex parte, January 12, 2010, MB Docket No. 07-198; Comments of the Coalition for Competitive Access to Content, January 4, 2008, MB Docket No. 07-198.

market, lower prices for consumers and increased broadband penetration.<sup>4</sup> Similarly, broadcast programming, such as that owned and controlled by General Electric Company, and NBC Universal, Inc. (NBC), has previously been identified by the Commission as ‘must-have’ programming.<sup>5</sup>

As the Commission has noted on numerous occasions, broadband deployment and MVPD competition are “inextricably linked.”<sup>6</sup> Denied access to must-have video programming content, whether in the broadcast or MVPD marketplace, could create a significant barrier to the provision of competitive video services. Because the deployment of broadband networks and the provision of video service are intrinsically linked, lack of access to critical programming makes entry into both the video and broadband markets more risky, thereby diminishing the incentive of wireline competitors to deploy advanced networks capable of transmitting video to consumers.

## **II. THE COMMISSION SHOULD CLOSELY EXAMINE THE IMPACT OF THE MERGER ON THE RETRANSMISSION CONSENT REGIME.**

Recently, USTelecom filed comments with the Commission in its proceeding regarding reform of its retransmission consent rules. As USTelecom noted in its

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<sup>4</sup> See e.g., *MDU Order*, ¶17 (concluding that access to programming results in a “significant increase” in MVPD competition, which “usually results in lower prices, more channels, and a greater diversity of information and entertainment from more sources.”); *Franchise Reform Order*, ¶50 (concluding that increased MVPD competition, “is necessary and appropriate to achieve increased video competition and broadband deployment.”).

<sup>5</sup> Memorandum Opinion and Order, *General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473, ¶48 (discussing Congress’ recognition of local television broadcast signals as “must-have programming.”). NBC is included in the so-called ‘Big Four’ networks, in addition to ABC, CBS and FOX.

<sup>6</sup> See e.g., *Franchise Reform Order* ¶51 (concluding that “broadband deployment and video entry are ‘inextricably linked’”); *Id.*, ¶62 (stating that, “[t]he record here indicates that a provider’s ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.”); *MDU Order*, ¶20 (stating that “broadband deployment and entry into the MVPD business are ‘inextricably linked.’”); *Program Access Order*, ¶36 (concluding that “a wireline firm’s decision to deploy broadband is linked to its ability to offer video.”).

comments,<sup>7</sup> the imbalance in the current retransmission consent regime is harming consumers by driving up rates for all MVPDs and their respective subscribers, as well as denying consumers' access to these signals at critical times. Although consumers are not a party to retransmission negotiations, they are clearly impacted by the outcomes of those negotiations.

In the current proceeding, the Commission should focus its analysis on whether and how the current bargaining imbalance between broadcasters and MVPDs resident in today's retransmission consent regime could be exacerbated by approval of the proposed merger. For example, in geographic areas where Comcast Corporation (Comcast) competes with other MVPD providers, could retransmission consent negotiations be utilized to hinder effective competition? To the extent the Commission identifies material competitive concerns it should consider implementing measured and reasonable mechanisms to address them.

As noted in its comments in the Commission's consideration of reform to its retransmission consent rules, USTelecom fully supports unfettered free market negotiations during retransmission consent discussions. USTelecom urges the Commission to carefully consider the recommendations contained in our comments. In addition, the Commission should also carefully consider and address any additional issues raised by the proposed merger in the retransmission consent environment.

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<sup>7</sup> See Comments of the United States Telecom Association, dated May 18, 2010, in response to, Public Notice, *Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, DA 10-474, MB Docket No. 10-71 (released March 19, 2010).

### **III. THE COMMISSION SHOULD CAREFULLY CONSIDER ISSUES RELATING TO VERTICALLY INTEGRATED MVPD PROGRAMMING ARISING FROM THE PROPOSED MERGER.**

In recent years, the Commission has focused a great deal of attention on issues relating to access to vertically integrated MVPD programming. Its decision in 2007 to extend the program access rules for five additional years has been essential to ensuring increased competition in MVPD marketplace, particularly for the growing wireline competition to incumbent cable operators.<sup>8</sup> Similarly, the recent decision reforming the program access rules to address concerns regarding the terrestrial loophole were a targeted, but necessary, decision by the Commission.<sup>9</sup>

If the proposed transaction is approved, the combined entity would control 13 of the top 75 cable programming networks in addition to its major-market Regional Sports Networks. Of course, it would also control access to the owned & operated NBC and Telemundo affiliates. USTelecom therefore urges the Commission to carefully consider issues that could arise from the proposed merger as they relate to vertically integrated MVPD programming. As the Commission noted in its order establishing new rules regarding terrestrially delivered, vertically integrated MVPD program, its judgment that cable operators had the incentive and ability to withhold or take other unfair acts with their affiliated programming, was “supported by real-world evidence.”<sup>10</sup> It further noted the “substantial evidence” that cable entities would withhold affiliated programming from competitors “when not barred from doing so.”<sup>11</sup>

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<sup>8</sup> Report and Order and Notice of Proposed Rulemaking, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, 22 FCC Rcd 17791, 72 FR 61559 (2007).

<sup>9</sup> *Program Access Order*.

<sup>10</sup> *Program Access Order*, ¶30.

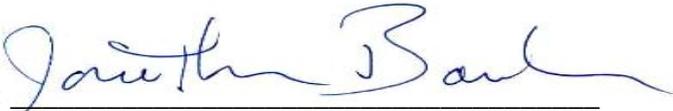
<sup>11</sup> *Id.*

While a complete listing of potential competitive harms would be impossible to compile, USTelecom urges the Commission to carefully consider the concerns raised by stakeholders in this proceeding. By closely analyzing the record in this proceeding, the Commission will be able to identify and effectively address legitimate concerns by stakeholders in the MVPD marketplace.

#### **IV. CONCLUSION.**

While USTelecom takes no position on the ultimate merits of the proposed transaction at this time, it takes this opportunity to reiterate its prior advocacy concerning the imperative that control over video programming not be allowed to prevent effective competition to incumbent cable providers. The Commission must ensure that it has mechanisms in effect concerning access to programming and retransmission consent that are sufficiently vibrant to respond to any anti-competitive conduct that might arise from the proposed consolidated programming ownership.

Respectfully submitted,  
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