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January 5, 2011

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: American Cable Association ("ACA") Notice of Ex Parte Presentation; *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.

Dear Ms. Dortch:

On January 5, 2011, Matthew Polka and Ross Lieberman, American Cable Association; Thomas Cohen, Kelley Drye & Warren, LLP; Peter Smith, Vice President of Programming, WOW!; and the undersigned, met with Joshua Cinelli, Legal Advisor to Commissioner Copps.[1] On January 4, 2011, Ross Lieberman participated in a telephone conference with Mr. Cinelli. It is my understanding that Mr. Lieberman reviewed the same topics described below that were discussed today with Mr. Cinelli. Accordingly, this letter documents the topics discussed during the two meetings.

During the meetings, ACA again urged the Commission to adopt conditions that will work in practice and not just in theory to ameliorate the substantial impact of the horizontal and vertical harms of the proposed Comcast-NBCU transaction on smaller MVPDs, consistent with ACA's previous filings in this docket.[2] ACA expressed understanding of the Commission's goal

[1] WOW! is a small multichannel video programming distributor ("MVPD") that carries one or more NBC owned and operated broadcast stations ("O&Os") and the suite of NBCU national cable programming networks. WOW! also carries one or more of Comcast's regional sports networks ("RSNs") and the Comcast suite of national cable programming. Moreover, WOW! operates one or more systems that compete head-to-head with Comcast cable systems. According to September 2010 data available on the website of the National Cable & Telecommunications Association ("NCTA"), WOW! is reported to have 391,000 video subscribers; as of year-end 2010, WOW! actually serves slightly more than 400,000 subscribers. *See* "Top 25 Multichannel Video Programming Distributors as of Sept. 2010", *available at* http://www.ncta.com/Stats/TopMSOs.aspx (last visited Jan. 5, 2011).

[2] *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, Comments of the American Cable Association (filed June 21, 2010) ("ACA Comments"); Response to Comments of the American Cable Association (filed July 21, 2010); Reply of the American Cable Association (filed Aug. 19, 2010) ("ACA Reply"). In addition ACA's concerns are documented in ex parte letters filed on August 27, 2010,

to impose conditions on Comcast-NBCU that attack only transaction-specific harms and not place other market participants in a better position than they were pre-transaction. But ACA also cautioned that in crafting remedial conditions, the Commission must also strive to avoid placing small MVPDs in a worse position than they were pre-transaction.

As ACA has previously demonstrated, the transaction will allow Comcast-NBCU to raise programming fees above levels they would be able to command without combining assets, and these fee increases will largely be passed through to subscribers in the form of higher subscription prices. This consumer harm will manifest itself in two ways: (1) vertical harm arising from the combination of NBCU's key programming assets – NBCU national cable programming networks and NBC O&Os[3] – with Comcast's cable distribution assets permitting Comcast-NBCU to raise the fees it charges for NBCU programming to Comcast multichannel MVPDs; and (2) horizontal harm resulting from the increased market power derived from combining NBCU's key programming assets – the suite of highly rated NBCU national cable programming networks and NBC O&Os – with Comcast's key programming assets – its RSNs – that will allow Comcast-NBCU to raise the fees charged for this programming to additional MVPDs.[4]

Consistent with the foregoing, publicly available information suggests that the Commission's transaction team has found that the Comcast-NBCU transaction, if approved with no license conditions, will cause public interest harms that outweigh the transaction's quantifiable benefits and has therefore proposed a series of remedial conditions to protect consumers and market participants, including use of commercial baseball-style arbitration in cases of carriage negotiations for "must have" programming that have reached an impasse.[5] Meeting participants discussed ACA's substantial concerns with the efficacy of the two-part special conditions it understands the Commission is contemplating to cure transaction-specific harms to small MVPDs. The first aims at making baseball-style commercial arbitration more attractive: a one-way arbitration fee shifting provision should the small MVPD prevail before the arbitrator, and the second contemplates small MVPD use of a bargaining agent to negotiate and/or arbitrate programming fee disputes.

In short, baseball-style commercial arbitration provides no relief for small MVPDs who believe they are being overcharged for Comcast-NBCU programming and one-way fee shifting will not make it any better. Moreover, arbitrary limits on the size of an MVPD who may avail

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September 21, 2010, September 22, 2010, October 12, 2010, November 5, 2010, November 8, 2010, November 24, 2010, December 7, 2010, December 8, 2010, December 13, 2010, December 17, 2010, December 21, 2010, December 22, 2010 and December 23, 2010 ("ACA Fee Shifting Ex Parte").

[3] ACA Comments at 25-37; ACA Reply at 14-25.

[4] ACA Comments at 18-25; ACA Reply at 7-14. Participants also discussed the fact that, not only is the magnitude of the quantifiable vertical and horizontal harms that will result from the Comcast-NBCU transaction substantial, it far exceeds the quantifiable benefits. ACA has demonstrated that the harms will cause programming prices for MVPDs (other than Comcast) to increase approximately $320 million annually and that the harms are more than 10 times greater than the quantifiable benefits. *See* William P. Rogerson, "An Estimate of the Consumer Harm That Will Result from the Comcast-NBCU Transaction" at 17 (attached to ACA's Notice of Ex Parte (filed Nov. 8, 2010)) ("Rogerson III").

[5] Matthew Lasar, "Comcast + NBCU approval likely in January with some strings attached", ARSTECHNICA (Dec. 23, 2010), *available at* http://arstechnica.com/tech-policy/news/2010/12/comcast-nbcu-approval-likely-in-january-with-some-strings-attached.ars (last visited Jan. 5, 2011); Rebecca Arbogast & David Kaut, "FCC Comcast-NBCU Order Proposed; Conditions Said Tough But Narrowly Tailored", STIFEL NICOLAUS (Dec. 23, 2010) (subscription required; no link); Rebecca Arbogast & David Kaut, "FCC Draft Conditions for Comcast-NBCU Appear to Offer a Mixed Bag", STIFEL NICOLAUS (Dec. 30, 2010) (subscription required; no link).

itself of use of a bargaining agent to negotiate and/or arbitrate fee disputes will place small MVPDs in a far worse position than they are today with respect to national cable programming networks. Neither of these remedial conditions, as currently contemplated, should be adopted by the Commission in this proceeding.

I. Baseball-Style Arbitration Provides No Relief for Small MVPDs

ACA has repeatedly shown that although the "final offer" or "baseball style" arbitration for "must have" programming negotiations that the Commission has used to ameliorate the vertical harms of previous media transactions has worked well in practice for larger MVPDs, it has proven to be of no value for smaller MVPDs serving 125,000 or fewer subscribers in the relevant market of the programming at issue due to the higher fixed costs of the process generally being in excess of the potential benefits.[6]

II. "One-Way Fee Shifting" Will Not Make Arbitration More Useful for Small MVPDs

ACA explained that its concerns about the lack of utility of baseball-style arbitration for small MVPDs cannot be assuaged if the Commission were to impose a "one-way fee shifting" condition. One-way fee shifting, as ACA understands the proposal, would obligate Comcast-NBCU to reimburse a small MVPD for its arbitration fees if the small MVPD wins the arbitration. However, if Comcast-NBCU wins the arbitration, each side is responsible for its own arbitration costs. Unfortunately, while one-way fee shifting may look attractive from an academic perspective, it would not make arbitration any more attractive in practice to small MVPDs.

One-way fee shifting is theoretically supposed to help make a small MVPD's threat to take a programming fee dispute to arbitration more credible, thereby forcing Comcast-NBCU to lower its asking price to a fee closer to fair market value. However, as ACA explained, one-way fee shifting will not have a meaningful impact on a smaller MVPDs' willingness to arbitrate for five reasons: (1) smaller MVPDs view their odds of winning an arbitration as very low because they cannot precisely predict the result of an arbitrators' fair market value calculation, whereas Comcast-NBCU is much more capable of doing so; (2) smaller MVPDs are risk adverse to having to pay their own arbitration costs; (3) smaller MVPDs would not be reimbursed for all of its cost related to an arbitration, particularly its internal costs; (4) smaller MVPDs will expect Comcast-NBCU to outspend smaller MVPDs in arbitrations as a rational and profit maximizing strategy further reducing their chances of winning the arbitration; and (5) smaller MVPDs will be reluctant to utilize arbitration until after other smaller MVPDs have taken the high risk of being the first to arbitrate.

ACA explained that one way fee shifting would not increase a small MVPD's willingness to engage in an arbitration because it does not address the fact that small MVPDs cannot precisely predict the result of an arbitrator's fair market value calculation, and therefore an MVPD remains unchanged in its belief that its chances of losing an arbitration and not recouping its arbitration costs is high. In comparison, Comcast-NBCU will generally be in a

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[6] ACA Comments at 44-46; William P. Rogerson, "Economic Analysis of the Competitive Harms of the Proposed Comcast-NBCU Transaction" at 49-51 (attached as Exhibit 1 to ACA's Comments) ("Rogerson I"); ACA Reply at 39-42; William P. Rogerson, "A Further Economic Analysis of the Proposed Comcast-NBCU Transaction" at 39-43 (attached as Attachment A to ACA's Reply) ("Rogerson II"); ACA Notice of Ex Parte, Attachment A, "Explanation of ACA's Proposed Comcast-NBCU License Transfer Conditions" at 8-10 (filed Oct. 12, 2010) ("ACA Oct. 12, 2010 Ex Parte"); ACA Notice of Ex Parte at 2 (filed Dec. 7, 2010); ACA Notice of Ex Parte at 2 (filed Dec. 8, 2010).

much better position to predict the result of an arbitrator's determination of the fair market value of the programming at issue, and this will lead a small MVPD to believe that its chance of winning an arbitration is low. Comcast-NBCU is significantly better informed than small MVPDs with respect to the following factors relevant to an arbitrator's fair market value calculation: the prices that Comcast-NBCU charges other MVPDs for the relevant programming; the prices other programmers charge Comcast-NBCU for similar programming; the "small MVPD premium" paid by other MVPDs; and other data and information pertinent to other factors an arbitrator is likely to consider. Small MVPDs typically operate in only one market, and carry only one Comcast regional sports network and/or one NBC O&O, and these MVPDs do not have knowledge of the fees other MVPDs are paying for both the programming at issue and similar programming due to non-disclosure agreements in contracts and the fact that most of the other MVPDs with the most relevant information would be direct competitors.

In addition, small MVPDs are risk-averse to having to pay their own arbitration costs. $1 million is a relatively large share of a small MVPD's annual revenues. Therefore the prospect of not being reimbursed for arbitration expenses discourages smaller MVPDs from undertaking arbitration even with one-way cost shifting.

Moreover, one-way fee shifting will likely only reimburse the MVPD for the external costs of arbitration. Yet other internal costs will be incurred, including the opportunity cost of lost time of senior executives and internal legal staff, and these costs will go unreimbursed, further reducing the incentive of smaller MVPDs from participating in an arbitration. For an MVPD with only a handful of senior executives, such losses can be a significant drain on resources.

Small MVPDs can expect Comcast-NBCU to outspend them in an arbitration as a rational and profit maximizing strategy, further diminishing the likelihood that they will be able to win and thus reducing a small MVPD's willingness to enter into arbitration in the first place. Since Comcast-NBCU will be in multiple arbitrations, it can reuse many aspects of its preparations in subsequent arbitrations giving it a significant advantage against a small MVPD. Moreover, Comcast-NBCU will have a reputational incentive to apply overwhelming force in its first few arbitrations with small MVPDs to discourage other others from undertaking arbitration.

Finally, small MVPDs will be reluctant to utilize arbitration until after other small MVPDs take the high risk of being the first to arbitrate. Small MVPDs will be poorly informed when arbitration with one-way cost shifting is first made available, and there is no track record. Thus, the first few MVPDs will have to bear especially high costs. Therefore there is a risk that arbitrations for small MVPDs will never occur because the first few will be perceived as being particularly risky. It is important to note that many uncertainties about how small MVPDs will be treated in arbitrations and how one-way cost shifting will work in practice, will not be resolved simply because larger operators such as DirecTV or DISH have already engaged in arbitration.

For these reasons, Comcast-NBCU will know that the vast majority of small MVPDs will <u>never</u> engage in arbitration even with one-way fee shifting, and the arbitration process will place no restraint on Comcast-NBCU from charging small MVPDs higher prices for "must have" programming consistent with the estimates of Professor Rogerson.[7]

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[7] *See* ACA Notice of Ex Parte (filed Dec. 22, 2010) ("ACA Fee Shifting Ex Parte"); ACA Fee Shifting Ex Parte, Attachment A, Declaration of Colleen Abdoulah at ¶ 12; ACA Fee Shifting Ex Parte, Attachment B, Declaration of Steve Friedman at ¶ 8.

It is important to note that ACA has never argued that Comcast-NBCU will engage in foreclosure strategies for its linear programming, or seek to raise prices *higher* than those estimated by Professor Rogerson. Today's marketplace, combined with existing rules and regulations – flawed as they may be – work well enough on their own to address these issues. Instead, ACA's sole focus is the incentive and ability that this transaction would provide Comcast-NBCU to increase programming prices, consistent with the projections ACA has put forward in this record of this proceeding.[8] And with respect to alleviating these specific transaction harms, one-way fee shifting would not be effective in curbing increases of this magnitude. Using it to remedy the harms of the transaction would leave consumers and markets served by smaller MVPDs wholly unprotected from the above-market rate increases the transaction would permit Comcast-NBCU to extract from these providers.

III. Arbitrary Limits on the Size of a "Small MVPD" Will Decrease Utility of the Bargaining Agent Condition

ACA also discussed its understanding that the Commission again intends to rely on its 1995 definition of a "small cable company" as one serving 400,000 or fewer subscribers to determine the size of an MVPD who may benefit from the one-way fee shifting provision for arbitrating O&O and RSN programming disputes and/or avail itself of the use of a bargaining agent to negotiate programming agreements with Comcast-NBCU.[9] ACA explained that use of this 15 year-old definition, developed primarily to determine which companies should benefit from streamlined cable rate regulation is completely inapposite to the size of an operator who would be unable to benefit from commercial arbitration without fee-shifting or other relief.[10]

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[8] *See, e.g.,* Rogerson I at 14-17; Rogerson III at 6-18.

[9] See, *e.g.*, News-Hughes Order, at ¶ 223 n. 626; ("The Commission has previously defined small cable companies as those with 400,000 or fewer subscribers. We adopt that definition for the purposes of this condition. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 7393 (1995)."); 47 C.F.R. § 76.901(e) ("A small cable company is a cable television operator that serves a total of 400,000 or fewer subscribers over one or more cable systems.")

[10] ACA member WOW! serves slightly more than 400,000 across its cable systems. WOW!'s President and Chief Executive Officer, Colleen Abdoulah, has testified in numerous public hearings and submitted declarations in the instant transaction review explaining that her company previously considered but decided against utilizing the Commissions' baseball-style arbitration condition to resolve a fee impasse for a Comcast RSN in the Chicago area. Although WOW! serves just over 400,000 on a cumulative basis, it has only 80,000 subscribers for its Chicago system. WOW! calculated that the cost of bringing the arbitration would have exceeded benefits of winning. As a consequence, WOW! had no alternative but to accept a rate increase it considered unjustified. Testimony of Colleen Abdoulah, President and Chief Executive Officer, WOW!, Board Member, American Cable Association, Before the Senate Committee on Antitrust, Competition Policy and Consumer Rights, The Comcast/NBC Universal Merger: What does the Future Hold for Competition and Consumers?, Feb. 4, 2010, at 8, *available at* http://judiciary.senate.gov/pdf/10-02-04%20Abdoulah%20Testimony.pdf (last visited Jan. 5, 2011); Testimony of Colleen Abdoulah, President and Chief Executive Officer, WOW!, Board Member, American Cable Association, Before the House Subcommittee on Communications, Technology, and the Internet An Examination of the Proposed Combination of Comcast and NBC Universal, Feb. 4, 2010, at n1, *available at* http://republicans.energycommerce.house.gov/Media/file/Hearings/Telecom/100204%20Hearing/Testimony/WOW%20Abdoulah%20Testimony.pdf (last visited Jan. 5, 2011). If the Commission provides one-way fee shifting for only those MVPDs with 400,000 or fewer subscribers, the Commission would fail to provide any relief for MVPDs such as WOW!, with over 400,000 cumulatively, but far fewer in the relevant market for the NBC O&O or Comcast RSN programming, who would not find baseball-style arbitration a reasonable remedy.

Most significantly, if the 1995 definition of a "small cable company" is adopted by the Commission to determine the size of an MVPD who could avail itself of collective bargaining through use of a bargaining agent, it would leave smaller MVPDs in a worse position post-transaction than they are today in acquiring Comcast-NBCU national cable networks. This is simply unacceptable, and the must modify any "remedial" condition that would not only leave whole groups of MVPDs with no relief – those with 125,000 or fewer subscribers in the relevant market for NBC O&O and Comcast RSN programming – but would leave small MVPDs who purchase Comcast-NBCU national cable programming through their current bargaining agent, the National Cable Television Cooperative ("NCTC"), in a worse position post-transaction than they are today.

Although the Commission has used its definition of "small cable company" for purposes of defining the class of MVPDs who could utilize a bargaining agent in its News Corp.-DirecTV and Adelphia orders, the limitation pertained only to negotiations for O&O retransmission consent and/or RSN programming.[11] ACA explained that a limit of 400,000 subscribers for use of a bargaining agent for such local/regional programming did not adversely impact existing industry practices at the time because bargaining agents were not used to negotiate programming for broadcast stations and regional sports networks. ACA also noted that the bargaining agent provision for local/regional programming found in previous conditions failed to provide any relief for smaller MVPDs from the harms of those transactions, and that they do not expect the bargaining agent remedy to provide any relief to small MVPDs for programming impasses involving NBC O&Os or Comcast RSNs here. However, with respect to bargaining agent negotiations for national cable programming networks as would be the case if the limit were applied to Comcast-NBCU, the situation is far different. For the transaction under the review, given the transaction-specific harms ACA has demonstrated, the 400,000 subscriber limit for use of a bargaining agent for national cable programming networks is particularly inappropriate.

ACA described how its members currently negotiate carriage of national cable programming networks through the NCTC in order to collectively obtain the best rates available to them. Significantly, not all NCTC members fall within the Commission's definition of a "small cable company." NCTC membership currently includes a number of MVPDs with more than 400,000 total subscribers, including Cox, Charter, Verizon, Cablevision, Suddenlink, Mediacom, Insight, Cable One, WOW! and RCN. ACA discussed its understanding that the largest NCTC members, e.g., Cox, Charter, Verizon and Cablevision, the smallest of which has slightly more than 3.04 million video subscribers, very rarely, if ever, participate in its programming deals.[12] The next five smaller NCTC members, Suddenlink, Mediacom, Insight, Cable One, and WOW!, the largest of which has 1.29 million video subscribers, regularly participate in NCTC

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[11] *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 552-53, ¶ 176 (RSNs), 575, ¶ 223 (O&O retransmission consent) (2004); *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8339, Appendix B, ¶ 5 (RSNs) (2006)

[12] *See* "Top 25 Multichannel Video Programming Distributors as of Sept. 2010", *available at* http://www.ncta.com/Stats/TopMSOs.aspx (last visited Jan. 5, 2011).

agreements and provide an important aggregate share of the total number of subscribers that NCTC can deliver to programmers. In fact, these "next five" companies represent 30 percent of NCTC subscribership for the top 10 national cable networks, and a similar amount for the top 25 and top 50 networks.

ACA discussed how an operator size limit of 400,000 subscribers would completely exclude the "next five" companies from participating in NCTC agreements resulting from an arbitration with Comcast-NBCU. ACA explained that if MVPDs with more than 400,000 subscribers that generally participate in NCTC agreements are not allowed to participate in Comcast-NBCU arbitrations, then the MVPDs with less than 400,000 would be made indisputably worse off by the condition because the class allowed to participate might end up being significantly smaller than the class that now participates in deals, and this could result in higher prices for those that are the remaining members. It would also mean that MVPDs with more than 400,000 subscribers would be unable to either actually use or threaten to use the NCTC as a bargaining agent, and would be forced to negotiate all carriage agreements on their own, again making these MVPDs worse off.

ACA suggested that the correct subscribership limit for participation in any commercial arbitration proceeding to determine the fees for Comcast-NBCU national cable programming networks brought by a bargaining agent should be set at 1.5 million. This number is based firmly on the size of MVPDs currently participating through the NCTC in programming agreements for Comcast national cable programming networks. ACA explained that use of this subscribership limit would preserve the pre-transaction status quo, where MVPDs with greater than 400,000 subscribers participate in NCTC agreements, and their participation benefits themselves and their subscribers, as well as the smaller MVPDs and their subscribers. The condition is both transaction-specific, aimed solely at tempering the increased bargaining power of Comcast-NBCU post-combination, and narrowly tailored to protect the interests of smaller MVPDs and their subscribers, without upsetting current industry practices. Comcast itself has recognized the value of buying consortia such as the NCTC in making the benefits of volume discounts available to small cable operators or other distributors.[13] It is inconceivable that a license condition that had the effect of crippling the ability of the established buying consortia of ACA members, the NCTC, can be found to be consistent with the public interest, convenience, and necessity, as required by the Act.

Moreover, increasing the size of MVPDs who could utilize arbitration for Comcast-NBCU national cable programming networks would prevent Comcast-NBCU from taking advantage of the license conditions to further their larger industry-wide agenda of carving out MVPDs with more than 400,000 subscribers from participation in NCTC carriage agreements. It was noted that it is not uncommon for programmers to seek to exclude the larger NCTC members from carriage agreements in an effort to depress the number of subscribers covered and therefore raise the price per subscriber for the remaining subscribers. <u>The proposed 400,000 subscriber limit would have the perverse effect of furthering this larger industry agenda to raise programming prices charged to small MVPDs.</u> Just as participants in Commission transaction review proceedings are admonished against trying to solve industry-wide problems through

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[13] *See 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, Comcast Opposition to Petitions to Deny and Response to Comments at 211 (filed July 21, 2010) ("It is essential to recognize that the benefits of volume discounts are available to small cable operators and other distributors, who can and do avail themselves of volume discounts through buying consortia, including the National Cable Television Cooperative ('NCTC').").

conditions imposed solely on the parties to the transaction, ACA stressed that the Commission should not permit its processes to be used to further a larger programmer agenda to decrease the utility of bargaining agents such as NCTC to small MVPDs. It is therefore imperative that the Commission extend to MVPDs serving between 400,000 and 1.5 million the right to avail themselves of a bargaining agent to arbitrate disputes concerning Comcast-NBCU national cable programming networks. Failure to do so will leave competitive MVPDs such as WOW!, Wave, and RCN with no ability to withstand the post-transaction programming rate increases that Comcast-NBCU will be able to extract under the conditions currently contemplated by the Commission.

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In conclusion, ACA submitted that should the Commission rely on commercial arbitration with one-way fee shifting and impose a subscriber limit of 400,000 on MVPDs who can avail themselves of a bargaining agent to protect them, these small MVPDs will once again be left with rights but no effective remedies, and the operators and their subscribers will bear the brunt of above-market programming price increases made possible solely by the combination of key programming and distribution assets of the applicants. To make matters worse, should the Commission adopt commercial baseball-style arbitration as the primary remedy for MVPDs harmed by the transaction and its special provisions concerning small MVPDs fail to provide any real relief for these companies and their subscribers, the small MVPDs will be put at competitive disadvantage to their larger competitors who may avail themselves of remedies that work. ACA urged the Commission to adopt conditions that will in practice afford usable remedies to small MVPDs who must purchase programming from the combined Comcast-NBCU.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

Barbara Esbin

Barbara S. Esbin

cc (*via email*): Joshua Cinelli