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December 22, 2011

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

Re: Ex Parte Presentation in MB Docket No. 10-71

Dear Ms. Dortch:

On the 21st of December 2011, Steve Weed, the CEO of Wave Broadband (“Wave”) and Mark Palchick from Womble Carlyle Sandridge & Rice, LLP met with William T. Lake, Chief of the Media Bureau and Steven A. Broeckaert, Senior Deputy Chief, Policy Division of the Media Bureau.

During the meeting the parties discussed a unique situation involving retransmission consent negotiations between a cable operator and a broadcaster in a market where: (i) the cable operator competes head-to-head with Comcast; and (ii) where Comcast either owns or is affiliated with one of the local broadcast stations in the market. Specifically, Mr. Weed informed the participants that 30% of Wave’s subscriber base competes head-to-head with Comcast for customers in the following designated market areas (“DMAs”): Seattle, Portland, Sacramento and San Francisco. Wave’s share of the subscribers in each of these DMAs is between 2% and 3% and each market has an NBC owned and operated affiliate or an NBC network affiliate.

In the above markets where Wave competes directly with Comcast, some local broadcast stations are proposing that Wave pay retransmission consent fees between 300% - 400% more than the fees they are charging Comcast. If Wave is forced to pay 300% - 400% more for retransmission consent than its direct competitor Comcast, Wave will be significantly hindered in its ability to compete with Comcast and Wave could be foreclosed from continued competition with Comcast in those markets. The participants explained that the higher rates proposed to Wave are the result of Comcast’s excessive market power, as recognized by the FCC in the Comcast/NBCU Merger Order,¹ and are not based on normal competitive marketplace considerations. Normal competitive marketplace considerations typically result in differentials closer to 30% and are no where near 300-400%.

¹ *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. (for Consent to Assign Licenses and Transfer Control of Licensees (“Comcast/NBCU Merger Order”)),* 26 FCC Rcd 4238 (2011).

The Commission determined in the *Good Faith Order* that proposals involving compensation that result from an excess of market power by broadcasters or other participants in the market (MVPDs), have the effect of significantly hindering or foreclosing MVPD competition and, therefore, constitute presumptively bad faith negotiations.² The restrictions on negotiations listed in paragraph 58 of the *Good Faith Order* are applicable in the narrow situation currently faced by Wave where: (i) there is head-to-head competition with Comcast; (ii) in a market with an NBC owned or affiliated station (which is commonly-owned with Comcast); (iii) and the other local broadcast stations insist on payments by the Comcast competitor of 300% - 400% more than they receive from Comcast.³ The participants concluded their presentation by emphasizing that the situation described by Wave is different than the typical “small vs. large” competitive issues which previously have been brought before the Commission.

Please contact the undersigned if you have any questions about these issues.

Very Truly Yours,



Rebecca Jacobs

cc: William T. Lake, Chief of the Media Bureau
Steven A. Broeckaert, Senior Deputy Chief, Policy Division of the Media Bureau
Steve Weed, CEO Wave

² Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues; Good Faith Negotiation and Exclusivity, 15 FCC Rcd 5445, ¶ 58(2) (2000) (“*Good Faith Order*”).

³ *Id.*