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January 14, 2013

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FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

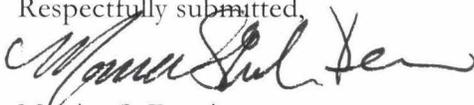
Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

RE: In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56 – Arbitration Award - Ref: Case No. 72 472 E 01147 11 – Redacted - For Public Inspection Version of Project Concord, Inc. Reply To Opposition Of NBCUniversal Media

Dear Ms. Dortch:

Enclosed for filing are an original and one (1) copy of the Project Concord, Inc. Reply To Opposition Of NBCUniversal Media (“PCI Reply”) previously filed on January 7, 2013 subject to a Request For Confidential Treatment, now Redacted - For Public Inspection. This filing is being made in connection with the Arbitrator’s decision in an Arbitration proceeding between Project Concord, Inc. and NBCUniversal Media, LLC conducted pursuant to Appendix A of the Commission’s Memorandum Opinion and Order, FCC 11-4, released January 20, 2011, in the referenced Docket (“Comcast Order”). The PCI Reply was filed pursuant to and in accordance with Section VII.E.1. of said Appendix A to the Comcast Order and Sections 1.115 and 1.45 of the Commission’s Rules.

If there are any questions on this matter, please contact the undersigned or, in the alternative, Paul C. Besozzi (202-457-5292, pbesozzi@pattonboggs.com).

Respectfully submitted,


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Michael Hurwitz, Counsel for NBCUniversal Media, LLC
Lindsay Addison, Counsel for NBCUniversal Media, LLC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	
)	
Applications of Comcast Corporation,)	
General Electric Company and NBC)	MB Docket No. 10-56
Universal, Inc.)	
)	ARBITRATION AWARD
For Consent to Assign Licenses and)	Ref: Case No. 72 472 E 01147 11
Transfer Control of Licenses)	
_____)	

PROJECT CONCORD, INC. REPLY TO
OPPOSITION OF NBCUNIVERSAL MEDIA

Monica S. Desai
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Washington, D.C. 20037
(202) 457-6000

Dated: January 7, 2013

Project Concord, Inc. (“PCI”) hereby replies to the Opposition filed by NBCUniversal Media (“NBCU”).¹ The Media Bureau wrongly concluded that if a consumer purchases certain content from PCI’s [REDACTED] the purchase would breach NBCU third-party contractual provisions (1) [REDACTED] and (2) [REDACTED].² PCI’s Application for Review underscored the errors underlying the Bureau’s wrong conclusions. NBCU’s Opposition attempts to gloss over the Bureau’s errors, and mischaracterizes PCI’s service.

1. NBCU asserts that Project Concord is “an [REDACTED], where [REDACTED] is required.”³ This is untrue. Project Concord is a traditional transactional service requiring every consumer to pay [REDACTED].⁴ [REDACTED]

[REDACTED]⁵ Consumers must [REDACTED]

¹ See *Project Concord, Inc. Claimant, vs. NBCUniversal Media, LLC, Respondent*, MB Docket No. 10-56; NBCU Opposition to Project Concord, Inc.’s Application for Review (December 28, 2012) and Project Concord, Inc. Application for Review (December 13, 2012).

² See *Project Concord, Inc. Claimant, vs. NBCUniversal Media, LLC, Respondent*, Order on Review, MB Docket No. 10-56, DA 12-1829 (November 13, 2012) (“Media Bureau Order”).

³ NBCU Opposition at 6.

⁴ See Benchmark Agreement [REDACTED] (“[REDACTED] ...”); PCI Final Offer [REDACTED] Hearing Transcript (“HT”) 333:19-336:11 (Smith); 396:19-397:2 (Peyer); PCI Phase 2 Closing Brief at 16 (June 7, 2012).

⁵ HT 353:12-19 (Peyer); *Project Concord Inc., Claimant vs. NBCUniversal Media, LLC, Respondent*, AAA Case No. 72 472 E 01147 11, Claimants Rebuttal Brief To Opening Position Statement of Respondents, Declaration of Sharon Peyer, ¶ 7 (April 20, 2012) (“Peyer Dec.”); HT: 289:18-22 (Smith); HT 353:12-19 (Peyer); HT 468:4-7 (Marenzi); HT 499:8-18 (DeVitre).

[REDACTED]⁶ Critically, no consumer is [REDACTED]

[REDACTED]⁷

2. NBCU asserts [REDACTED] for content in the [REDACTED]⁸

This is wrong. [REDACTED] for purchasing and viewing content.

3. NBCU imagines a “distinction” between the [REDACTED] and the [REDACTED] to the consumer.⁹ This is false. The price listed in the [REDACTED] is the price, in real dollars, the consumer pays to access the content. NBCU states this purported “distinction” is based not on the actual amount of money paid for the content (which is always the same), but on the “consumer’s perspective” of how much is paid.¹⁰ Yet a “consumer’s perspective” is not a relevant distinction in the contract provisions cited by NBCU. These provisions require [REDACTED]

[REDACTED] They do not distinguish [REDACTED]

[REDACTED]¹¹ As NBCU acknowledges, “[i]n framing [REDACTED] and restrictions against [REDACTED] [NBCU’s] licensees care *foremost* about whether [REDACTED]

[REDACTED] is charged to the consumer to obtain the content.”¹² PCI satisfies this requirement. The [REDACTED]

[REDACTED] It does not [REDACTED]

⁶ Peyer Dec., ¶¶ 4, 14; HT 289:19-22 (Smith); HT 292:12-20 (Smith); HT 312:10-18 (Smith); HT 360:2-14 (Peyer).

⁷ Peyer Dec. ¶ 23; HT 412:9-18 (Peyer); 523:9-524:5 (DeVitre).

⁸ NBCU Opposition at 6, 13.

⁹ NBCU Opposition at 21.

¹⁰ NBCU Opposition at 21.

¹¹ NBCU Opposition at 22.

¹² NBCU Opposition at 11

¹³ The [REDACTED] ¹⁴ And, that price is always exactly the same.

4. NBCU wrongly asserts that PCI users are [REDACTED]

[REDACTED] ¹⁵ NBCU also wrongly contends that the [REDACTED]

[REDACTED] ¹⁶ Consumers electing to [REDACTED]

[REDACTED] Cash is cash, regardless of how it is earned. That [REDACTED]

[REDACTED] ¹⁷ That [REDACTED]

[REDACTED] NBCU itself acknowledges that the Media Bureau “did not dispute that

[REDACTED] ¹⁸ [REDACTED]

[REDACTED] ¹⁹ And

that [REDACTED] is no different than [REDACTED] users have in other online video retail store accounts.

5. NBCU asserts [REDACTED]

[REDACTED] ²⁰ Yet the Arbitrator acknowledged [REDACTED]

[REDACTED] ²¹ PCI made clear from the start that it would like

¹³ HT 336:8-11 (Smith).

¹⁴ Peyer Dec., ¶ 7; HT 559:1-5 (McHarg); HT 289:19-290:8 (Smith); Marenzi Expert Report at 4, ¶ 14 (“for transactions [REDACTED]”).

¹⁵ NBCU Opposition at 18.

¹⁶ NBCU Opposition at 18.

¹⁷ Peyer Dec. ¶ 16; HT 298:15-299:12 (Smith); HT 355:10-356:1 (Peyer).

¹⁸ NBCU Opposition at 18 (emphasis added).

¹⁹ HT 294:22-296:17 (Smith) (“They are [REDACTED] [REDACTED] (emphasis added).

²⁰ NBCU Opposition at 18.

²¹ Phase I Decision at 9.

to offer [REDACTED]²²

6. NBCU attempts to distinguish [REDACTED] and [REDACTED], arguing that [REDACTED] are different from [REDACTED]. These arguments ignore that [REDACTED] can be accumulated [REDACTED]. [REDACTED]. [REDACTED].²³ These are obviously not [REDACTED] exchanges.²⁴ Next, NBCU says that [REDACTED] are okay because they are a “limited exception,”²⁵ but cites to no contractual provisions that would support this distinction. This failure to cite any provisions is because nothing in NBCU’s third-party agreements allows for “limited” or “*de minimis*” exceptions for these types of promotions.

7. NBCU asserts the Bureau found the Benchmark Agreement provisions “do not matter” for purposes of NBCU’s contract impediment defense.²⁶ That is wrong. In fact, the Bureau found significant its own (wrong) conclusion that the Benchmark Agreement’s broad prohibitions against [REDACTED] “do not explicitly address [REDACTED].”²⁷ The Bureau is flatly incorrect: [REDACTED] of the Benchmark Agreement explicitly states “[REDACTED].” [REDACTED].

²² See PCI Application for Review at 21-23 (discussing PCI testimony regarding [REDACTED]); see also *Project Concord Inc., Claimant vs. NBCUniversal Media, LLC, Respondent*, AAA Case No. 72 472 E 01147 11, Claimants Rebuttal Brief To Opening Position Statement of Respondents, Declaration of Lawrence Smith, ¶ 11 (April 20, 2012) (“Smith Dec.”).

²³ Smith Dec. at 25-27.

²⁴ NBCU Opposition at 20.

²⁵ NBCU Opposition at 20.

²⁶ NBCU Opposition at 15.

²⁷ Media Bureau Order, ¶ 36 (emphasis added).

[REDACTED]

[REDACTED]²⁸ This provision mirrors similar language in NBCU's [REDACTED] contract.²⁹

8. Despite this clear [REDACTED] NBCU erroneously argues that PCI's service is nonetheless [REDACTED] because the Benchmark Agreement does not prohibit consumers from

[REDACTED]

[REDACTED]³⁰ Under the terms of NBCU's [REDACTED] contract, however, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³¹ Transactions [REDACTED] meet this test.

9. NBCU erroneously contends that the [REDACTED]

[REDACTED]³² However,

the [REDACTED]³³ The [REDACTED]

[REDACTED] Consumers can purchase

content [REDACTED]

[REDACTED]³⁴ [REDACTED]

[REDACTED]

²⁸ Benchmark Agreement, [REDACTED] (emphasis added).

²⁹ See [REDACTED] (“... [REDACTED] [REDACTED]”).

³⁰ NBCU Opposition at 14.

³¹ See [REDACTED]; see also PCI Application for Review at 13-14.

³² NBCU Opposition at 16.

³³ See PCI Application for Review at 15-18.

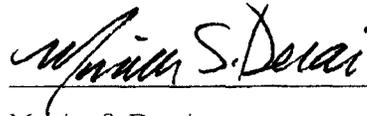
³⁴ Peyer Dec., ¶¶ 4-5, 16; see also HT 395:5-17 (Peyer).

REDACTED - FOR PUBLIC INSPECTION

Respectfully submitted,

Project Concord, Inc.

By:

A handwritten signature in cursive script, appearing to read "Monica S. Desai", written over a horizontal line.

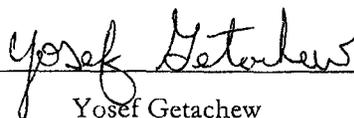
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Dated: January 7, 2013

CERTIFICATE OF SERVICE

I, Yosef Getachew, certify that, on this 7th of January, 2013, a copy of the foregoing "Project Concord, Inc. Reply to Opposition of NBCUniversal Media" has been served by hand delivery or electronically and first-class mail, postage pre-paid, on the following:

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Yosef Getachew