

March 5, 2010

Via Hand Delivery

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

Re: *In the Matter of 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 January 28, 2010, General Electric Company (“GE”) and Comcast Corporation (“Comcast”) (collectively, “Applicants”) filed their Applications and Public Interest Statement seeking approval to transfer control of certain Federal Communications Commission (“Commission”) licenses as part of a proposed transaction that would combine the broadcast, cable programming, movie studio, theme park, and online content businesses of NBC Universal (“NBCU”) with the cable programming and certain online content businesses of Comcast.¹ Applicants demonstrated in the Public Interest Statement that the proposed transaction is pro-consumer, pro-competitive, and strongly in the public interest.

Applicants file herewith an economic report, prepared by Drs. Mark Israel and Michael L. Katz, entitled “Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction” (“Israel/Katz Report” or “Economists’ Report”), which further supports Applicants’ showing that the proposed transaction is in the public interest and should be approved expeditiously. Dr. Israel is a Senior Vice President at Compass Lexecon. His areas of expertise include antitrust, industrial organization, econometrics, business strategy, and the economics of information. Prior to joining Compass Lexecon, Dr. Israel was a faculty member at Northwestern University’s Kellogg School of Management. Dr. Katz is the Director of the Institute for Business

¹ See *In the Matter of 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, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) (“Public Interest Statement”).

Innovation at the University of California, Berkeley. From January 1994 through January 1996, he was the Commission's Chief Economist. From September 2001 through January 2003, he served as the Deputy Assistant Attorney General for Economic Analysis at the U.S. Department of Justice.

The Israel/Katz Report contains Confidential and Highly Confidential business information and proprietary data. As a result, it is being submitted pursuant to the First and Second Protective Orders adopted by the Media Bureau in this proceeding.² A public version of the Economists' Report is being filed concurrently in Docket No. 10-56 for the public record.

In their report, Drs. Israel and Katz focus on the potential for foreclosure post-transaction of the NBC owned-and-operated ("O&O") stations' signals. Drs. Israel and Katz conduct their analysis using the mathematical model developed by the Commission staff to analyze the issue of vertical foreclosure in the News Corp.-DirecTV transaction.³ Without endorsing the staff's model, Drs. Israel and Katz apply the model to the present transaction. Their analysis demonstrates empirically that, even using the staff's model, a strategy of withholding the NBC broadcast stations' signals from Comcast Cable's rival MVPDs would not be profitable and, therefore, is very unlikely to be pursued post-transaction.

The "central finding" of the Israel/Katz Report is that "the proposed Comcast/NBCU/GE joint venture does not pose a significant threat of foreclosure."⁴ This conclusion holds whether one analyzes permanent or temporary foreclosure strategies. In reaching this conclusion, Drs. Israel and Katz undertook three main steps:

First, they applied the staff model to the proposed transaction, making limited and appropriate modifications to account for the unique features of the proposed transaction and marketplace changes that have occurred since the News Corp.-DirecTV transaction. This yielded a "critical departure rate" at which subscribers would have to switch away from a foreclosed MVPD to a Comcast cable system in order to make up for the losses (e.g., reduced advertising revenues) that a foreclosure strategy would impose on NBC.⁵

² See *In the Matter of 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, Protective Order, DA 10-370 (Mar. 4, 2010) ("First Protective Order"); *In the Matter of 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, Protective Order, DA 10-371 (Mar. 4, 2010) ("Second Protective Order").

³ See *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473 ¶ 15, Appendix D: Technical Appendix (2004).

⁴ Israel/Katz Report ¶ 4.

⁵ *Id.* ¶ 5.

Second, Drs. Israel and Katz undertook an econometric analysis of historical events to estimate the likely actual rates at which subscribers would switch away from an MVPD in response to temporary or permanent foreclosure of an NBC broadcast station. For both temporary and permanent foreclosure, Drs. Israel and Katz found that there is “no statistical evidence to support the proposition that large numbers of consumers would switch to Comcast if a rival MVPD were temporarily unable to provide them with access to the signal of a single network broadcast station.”⁶

Third, Drs. Israel and Katz compared the “critical departure rate” of switching with the estimated actual switching rates. They found that “the econometric results provide no support for significant switching rates and certainly not for switching rates as high as the range of critical departure rates that we compute using an appropriately modified version of the Commission staff model.”⁷

Drs. Israel and Katz conclude that the Commission staff model “does not support the conclusion that there is a significant threat that the Comcast/NBCU/GE joint venture would engage in foreclosure by withholding the retransmission rights to NBC broadcast stations’ signals from Comcast’s MVPD rivals.”⁸ To the contrary, they find that “it is difficult, if not impossible, to conceive of a situation in which application of the Commission staff model would convincingly establish that Comcast would be likely to withhold NBC stations’ retransmission rights to implement a foreclosure strategy.”⁹

The Israel/Katz Report’s finding that foreclosure is highly unlikely as a matter of economics is bolstered by several legal protections that guard against foreclosure. For example, while the joint venture will have a board of directors initially consisting of three Comcast designees and two GE designees, the joint venture agreement provides that Comcast executives serving as directors or officers of the joint venture owe fiduciary duties to the joint venture and its members, including GE. These duties would be violated if the directors or officers of the joint venture made business decisions which knowingly sacrificed joint venture profits in order to increase Comcast’s MVPD profits. GE has a strong incentive to enforce this provision.

In addition, the Communications Act already requires that broadcasters bargain in good faith with MVPDs regarding retransmission consent, and the Commission has adopted rules to enforce that duty.¹⁰ To provide even further assurances, Applicants have voluntarily committed to extend the key components of the Commission’s program access rules to negotiations with MVPDs for retransmission

⁶ *Id.* ¶ 124.

⁷ *Id.* ¶ 131.

⁸ *Id.* ¶ 132.

⁹ *Id.* ¶ 131.

¹⁰ *See* 47 U.S.C. § 325(b)(3)(C); 47 C.F.R. § 76.65.

rights to the signals of NBC and Telemundo O&O stations.¹¹ These additional legal protections underscore and strengthen the economic finding of Drs. Israel and Katz that “the most reasonable and defensible conclusion is that foreclosure is highly unlikely.”¹²

Respectfully submitted,



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Enclosure

¹¹ Public Interest Statement at 121.

¹² Israel/Katz Report ¶ 132.