

ATTACHMENT C

ACA'S PROPOSED COMCAST-NBCU LICENSE TRANSFER CONDITIONS

ACA's Proposed Comcast-NBCU License Transfer Conditions

I. Definitions

For purposes of the conditions set forth below, the following definitions apply:

“Bargaining Agent” means any entity that negotiates retransmission consent or carriage agreements on behalf of one or more of its principals or members, regardless of whether they are bound by the prices, terms and conditions entered into by the Bargaining Agent.¹

“Comcast-NBCU” shall include Comcast Corporation (“Comcast”) and the joint venture, composed of assets of Comcast and NBC Universal, Inc., (“NBCU”), and each of the companies’ subsidiaries, affiliates, parents, successors, and assigns.

“Covered NBC Stations” means all NBC broadcast television stations currently or in the future owned, controlled or managed by Comcast-NBCU and all independent NBC affiliates on whose behalf Comcast-NBCU currently or in the future negotiates retransmission consent agreements.

“Covered RSNs” means all regional sports networks (“RSNs”) that are currently or in the future owned, controlled or managed by Comcast-NBCU.²

“Covered National Cable Networks” means all national cable programming networks that are currently or in the future owned, controlled, or managed by Comcast-NBCU.

“Covered Programming” means all Covered NBC Stations, Covered RSNs, and Covered National Cable Networks.

“Net Effective Rate” means the net cash consideration charged under a retransmission consent agreement or an RSN carriage agreement, adjusted to reflect the value of: (1) all other economic consideration exchanged, including marketing or launch support, penetration or other discounts, advertising availabilities, channel positioning, and payment terms; and (2) any other rights or obligations related to such agreement, including the packaging of the Covered NBC Station or Covered RSN, and other distribution rights or obligations, which may include digitization, streaming, and/or dual feeds, and the distribution of the Covered NBC Station or Covered RSN on a video-on-demand basis or via a high-definition format or interactive version or broadband technology.

“Smaller MVPD” means a multichannel video programming distributor (“MVPD”) that serves 125,000 MVPD subscribers or less in either the DMA served by a Covered NBC Station, or the region commonly served by a Covered RSN.

“Stand-Alone Retransmission Consent Agreement” means a retransmission consent agreement that does not include any provision to carry any video programming networks, other services, or other items unrelated to the carriage of a broadcast station signal, other than the primary and multicast streams of a single broadcast station, and any ancillary programming or service.

“Stand-Alone RSN Carriage Agreement” means a carriage agreement that does not include any provision to carry any video programming networks, other services, or other items unrelated to the carriage of a RSN, other than a single RSN, and any ancillary programming or service.

¹ It is intended that the National Cable Television Cooperative (NCTC), as currently organized and as it operates, would be considered a Bargaining Agent for purposes of these conditions.

² “Regional Sports Network” shall have the same meaning as in the Adelphia-Time Warner-Comcast Order.

II. General Conditions Applicable to all MVPDs

A. Program Access Conditions

1. The program access rules will apply to Covered NBC stations and all other broadcast television stations currently or in the future owned, controlled or managed by Comcast-NBCU and all independent broadcast television stations on whose behalf Comcast-NBCU currently or in the future negotiates retransmission consent agreements.
2. The program access rules will apply to Covered RSNs and Covered National Cable Networks, regardless of its means of delivery to MVPDs, including terrestrially delivered programming.
3. The program access rules will apply to all programming discussed in Conditions II.A.1 and II.A.2., which shall include all means by which such programming is offered, in whole or in part, to consumers by Comcast-NBCU through any platform, including online and mobile platforms.

B. Requirements for Stand-Alone Agreements for Covered NBC Stations and Covered RSNs

1. All retransmission consent agreements entered into by Comcast-NBCU for Covered NBC Stations must be Stand-Alone Retransmission Consent Agreements.
2. All RSN carriage agreements entered into by Comcast-NBCU for Covered RSNs must be Stand-Alone RSN Carriage Agreements.

C. Commercial Arbitration Remedy

1. When negotiations fail to produce a mutually acceptable set of prices, terms and conditions for (i) Covered NBC Stations; (ii) Covered RSNs; or (iii) Covered National Cable Networks, an aggrieved MVPD may submit a dispute over the prices, terms and conditions of retransmission consent or carriage agreements for Covered Programming to commercial arbitration, subject to the arbitration rules outlined in the Adelphia-Time Warner-Comcast Order.³

³ The ACA would not object to the Commission enhancing the terms and conditions of this commercial arbitration remedy to make it more efficient and effective.

III. Special Conditions Applicable to Smaller MVPDs

A. Special Requirements for Stand-Alone Agreements for Covered NBC Stations and Covered RSNs for Smaller MVPDs

1. Upon entering into a Stand-Alone Retransmission Consent Agreement for a Covered NBC Station with an MVPD that serves 125,000 MVPD subscribers or less in the DMA served by the Covered NBC Station, and throughout the life of the agreement, Comcast-NBCU may neither require nor accept fees, terms, and conditions from the MVPD that result in a Net Effective Rate more than 5% higher than the lowest Net Effective Rate of any retransmission consent agreement for the Covered NBC Station with any MVPD including itself, that is currently in force. Moreover, Comcast-NBCU may neither withhold terms and conditions related to carriage of the Covered NBC Station that are made available to other MVPDs, including itself, nor require terms and conditions related to carriage of the Covered NBC Station that are technically infeasible or commercially prohibitive for the MVPD.
2. Upon entering into a Stand-Alone RSN Carriage Agreement for a Covered RSN with an MVPD that serves 125,000 MVPD subscribers or less in the region commonly served by the Covered RSN, and throughout the life of the agreement, Comcast-NBCU may neither require nor accept fees, terms, and conditions from the MVPD that result in a Net Effective Rate more than 5% higher than the lowest Net Effective Rate of any carriage agreement for the Covered RSN with any MVPD including itself, that is currently in force. Moreover, Comcast-NBCU may neither withhold terms and conditions related to carriage of the Covered RSN that are made available to other MVPDs, including itself, nor require terms and conditions related to carriage of the Covered RSN that are technically infeasible or commercially prohibitive for the MVPD.
3. Each principal executive and financial officer of Comcast-NBCU will certify to the Commission on an annual basis that Comcast-NBCU, based on his or her knowledge, has calculated the Net Effective Rate for each retransmission consent agreement for Covered NBC Stations and for each carriage agreement for Covered RSNs currently in force, and is not in violation of Conditions III.A.1. or III.A.2.

B. Special Commercial Arbitration Remedy for Smaller MVPDs

1. An MVPD that serves 125,000 MVPD subscribers or less in either the DMA served by a Covered NBC Station, or the region commonly served by a Covered RSN, may submit a dispute over the terms and conditions of carriage of a Covered NBC Station or a Covered RSN subject to a special commercial arbitration remedy for Smaller MVPDs designed to affordably resolve disputes related to Conditions III.A.1. or III.A.2.
2. The special commercial arbitration remedy for Smaller MVPDs shall be a traditional arbitration conducted in accordance with the Rules for the Special Commercial Arbitration Remedy for Smaller MVPDs contained in Appendix A, different from the “final offer” or “baseball” arbitration outlined in Condition II.C.1.
3. An aggrieved MVPD shall be granted an automatic right to continued carriage of the Covered NBC Station or Covered RSN until resolution of the special commercial arbitration remedy for smaller MVPDs.

C. Special Rules for Bargaining Agents

1. Comcast-NBCU shall negotiate in good faith with Bargaining Agents. The following actions by Comcast-NBCU would violate this duty to negotiate in good faith:
 - a. Refusal to negotiate with a Bargaining Agent on behalf of all its principals or members.
 - b. Refusal to enter into a retransmission consent or carriage agreement with an MVPD unless it contains a restriction on either being represented by a Bargaining Agent, or opting into an agreement subsequently reached by a Bargaining Agent.
 - c. Refusal to put forth an offer to a Bargaining Agent with members who are not bound by the prices, terms, and conditions entered into by the Bargaining Agent, for any set of different subscriber levels specified by the Bargaining Agent so long as none of the subscriber levels are greater than the aggregate number of MVPD subscribers served by the entire membership of the Bargaining Agent.
2. When negotiations involving Bargaining Agents fail to produce a mutually acceptable set of prices, terms, and conditions for Covered Programming, an aggrieved Bargaining Agent shall have the same rights to submit a dispute over the prices, terms and conditions for Covered Programming to commercial arbitration as an MVPD, pursuant to the rules outlined in Condition II.C.1, with the following additional rules:
 - a. An aggrieved Bargaining Agent with members who are not bound by the prices, terms and conditions entered into by the Bargaining Agent and Comcast-NBCU, shall present final offers to the arbitrator based on each disputed set of subscriber levels specified by the Bargaining Agent so long as none of the subscriber levels are greater than the aggregate number of MVPD subscribers served by the entire membership of the Bargaining Agent. For each set of different subscriber levels, the arbitrator will choose the final offer of the party that most closely approximates the fair market value of the Covered Programming.⁴

IV. Duration of Conditions

- A. These conditions shall apply to Comcast-NBCU for nine years, regardless of whether, during this period, any statute or regulation referenced in any condition, including the program access rules, are not extended by the Commission or are overturned by the Courts.

⁴ The actual prices, terms and conditions of the agreement entered into by the Bargaining Agent's members will then be determined by the aggregate number of MVPD subscribers of the Bargaining Agent's members that subsequently opt into the agreement.

Appendix A

Rules for the Special Commercial Arbitration Remedy for Smaller MVPDs:

- A. Upon receiving timely notice of a Smaller MVPD's intent to arbitrate, Comcast-NBCU shall submit to the arbitrator in writing its last offer to the MVPD, and may include, at its discretion, an explanation of why its offer complies with Conditions III.A.1. or III.A.2.
- B. Comcast-NBCU shall be obligated to make available to the arbitrator all relevant contracts and other data and information, including its calculations of the Net Effective Rate for all retransmission consent agreements for the Covered NBC Station or for all carriage agreements for the Covered RSN currently in force, as the arbitrator deems necessary to resolve the dispute.
- C. The Smaller MVPD may submit to the arbitrator in writing an explanation for why it believes Comcast-NBCU's last offer does not comply with Conditions III.A.1. or III.A.2.
- D. Comcast-NBCU may respond in writing to the Smaller MVPD's filing.
- E. After receiving the written briefs of both parties and all relevant contracts and other data and information, the arbitrator shall determine whether Comcast-NBCU's last offer complies with Conditions III.A.1. or III.A.2. If the arbitrator finds that Comcast-NBCU's offer does not comply, then the arbitrator, after informal consultation with the parties, shall adjust the Comcast-NBCU offer to bring it into compliance. The MVPD and Comcast-NBCU shall be bound to accept the arbitrator's modified terms and conditions.