

# AN EXAMINATION OF THE PROPOSED COMBINATION OF COMCAST AND NBC UNIVERSAL

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## HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS

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# **AN EXAMINATION OF THE PROPOSED COMBINATION OF COMCAST AND NBC UNIVERSAL**

**THURSDAY, FEBRUARY 4, 2010**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,  
AND THE INTERNET,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:34 a.m., in Room 2123, Rayburn House Office Building, Hon. Rick Boucher [chairman of the subcommittee] presiding.

Present: Representatives Boucher, Markey, Gordon, Rush, Eshoo, Stupak, DeGette, Doyle, Inslee, Weiner, Butterfield, Melancon, Matsui, Christensen, Castor, Murphy, Space, McNerney, Welch, Dingell, Waxman (ex officio), Stearns, Upton, Shimkus, Shadegg, Blunt, Buyer, Bono Mack, Terry, Rogers, Blackburn and Barton (ex officio).

Staff Present: Roger Sherman, Chief Counsel; Pat Delgado, Chief of Staff; Tim Powderly, Counsel; Amy Levine, Counsel; Shawn Chang, Counsel; Greg Guice, Counsel; Sarah Fisher, Special Assistant; Michiel Perry, Intern; Neil Fried, Minority Counsel; Will Carty, Minority Professional Staff; Garrett Golding, Minority Legislative Analyst.

## **OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA**

Mr. BOUCHER. The subcommittee will come to order. Today the subcommittee convenes to consider the proposed combination of two of our Nation's largest media and entertainment companies, Comcast and NBC Universal. I will note at the outset that it is my intent to urge the FCC and the Department of Justice to move expeditiously concerning their review and approval of this matter. I am not saying that the agency should not impose conditions on the transaction, but the companies deserve an answer in a timely manner.

The key to evaluating any merger or joint venture is to ask how it will affect consumers. Some combinations may benefit consumers by enabling the deployment of new and better products and services; others may harm consumers by limiting the choices that are available to them. Sometimes these harms can be limited or completely eliminated through the imposition of conditions, and other

times they cannot. So we will inquire this morning about whether synergies will arise from the merger that will confer benefits on consumers, whether there is the potential for consumer harm through lessened access to programming that is available today on NBC Universal, and, if there is the potential for consumer harm, whether the merger should be conditioned so as to guard against it.

Comcast is the Nation's largest multichannel video programming distributor, the largest residential broadband provider and third largest home telephone service provider, as well as the owner of a number of cable channels and regional sports networks. As measured by annual revenue, NBC Universal is the Nation's fourth largest media and entertainment company. It owns the NBC and Telemundo television networks, television broadcast stations and many of our Nation's largest television markets, cable channels and a movie studio, as well as an interest in the online video programming provider Hulu.com.

As these facts revealed, the merger, if approved, will substantially transform the media and entertainment marketplace, and it requires very careful scrutiny. That scrutiny boils down, I think, to three basic questions. First, assuming the combination is approved, what benefits will consumers see a year after the merger that they do not enjoy today? Secondly, what, if anything, are consumers receiving today that they will not continue to receive a year after the merger is consummated? And finally, are there conditions that regulators should consider imposing on approval of the merger to ensure that it serves consumers; and if so, what are those conditions?

I want to thank our panel of distinguished witnesses for their appearance here this morning and for their testimony enlightening our deliberations. I also want to remind the members of our subcommittee that several of our witnesses are scheduled to testify this afternoon in the other body, and we want to make sure that we do not detain them from their appointed rounds. So I would ask that Members adhere very closely to our time limitations on opening statements and also during the question period. And I hope that this brief opening statement has set something of an example.

I am pleased at this time to recognize the Ranking Republican Member of our subcommittee, the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Good morning. And thank you, Mr. Chairman. I just want to yield to the Ranking Member of the veterans committee who has to leave, Mr. Buyer, for a quick statement.

Mr. BUYER. I thank the gentleman for yielding to me. I am going to have to waive my opening statement. I want to thank you and the Chairman. When I asked for this hearing, I think it is extremely important for all the views to be aired, and I want to thank you for that.

I am going to take off and receive the VA Secretary's testimony, and I plan to return.

Mr. STEARNS. Very good. I look forward to it.

**OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. STEARNS. Mr. Chairman, obviously this is a very important hearing. The merger between Comcast and NBC Universal is indeed a major transaction that could possibly fundamentally alter the media and entertainment landscape in the United States. It deserves close examination by this subcommittee, our jurisdiction, as well as the Justice Department and the FCC. I am glad that the CEOs of both Comcast and NBC and Universal are here this morning. I look forward to their testimony and the testimony to the rest of the panel.

Comcast, as all of us know, is the Nation's largest video programming distributor, and NBC is the Nation's fourth largest media and entertainment company. Nevertheless there is, in my opinion, little to suggest that a Comcast/NBCU combination would seriously threaten competition in the media entertainment industries. We all know this is a highly competitive segment of the economy, and ultimately consumers stand to benefit. Since NBCU and Comcast do not compete in most segments of the market, this deal will not bring about consolidation, so to speak.

Comcast has interest in only five wholly owned and six partially owned national cable networks. So together these networks only represent about 3 percent of national cable network advertising and affiliate revenue. NBC's network represent approximately 9 percent of national cable networks' advertising and affiliate revenue, giving the combined entity a total of 12 percent, which would place it behind Disney, ABC, Time Warner and Viacom. That is the same position NBC occupies today before the deal, and approximately six out of every seven networks Comcast carries will remain unaffiliated with Comcast or NBC.

Now, the idea that Comcast/NBCU combination will harm competition is something we are looking at today. I don't think it is a—founded under the data that I have looked at. In fact, such vertical integration will lead to greater innovation and drive more competition in this already competitive market. Moreover, under the prevailing economic view, a firm that does not have market power in either the video distribution or programming markets is no more capable of exerting market power simply because it is vertically integrated.

As mentioned before, the combined Comcast/NBCU will control content representing only 12 percent of the national cable programming market. Were the new venture to unreasonably withhold any of this programming, the combined entity would likely just lose programming revenue as distributors and viewers turn to other alternatives. Indeed, in many cases, viewers might be able to find the identical content from another distributor and perhaps even for free, over the air or over the Internet. And while there is debate whether the program access rules are even needed, if not harm—even need if not harmful in light of the level of competition, Section 628 would also limit the combined entities' conduct.

Furthermore, and, my colleagues, in order to demonstrate the public's interests, benefits that will come from this deal, Comcast and NBCU have made a number of voluntary commitments in their filings. Among the commitments, they have pledged to continue of—

fering NBC and Telemundo network programming free over the air; to make more local news, public affairs, children's ethnic and other public interest programs available over the air on cable channels, on demand and on line; and to continue the position of the NBC News ombudsman to ensure journalistic independence from each of the owners. They should be commended for these voluntary commitments.

And lastly, Mr. Chairman, I would like to offer a word of caution to those who may want to add perhaps unrelated conditions to this merger. For example, proponents of Internet regulation may seek network-neutrality mandates on the Comcast/NBCU deal. I think this would be inappropriate. Not to get ahead of ourselves, but it appears that Comcast is in court and is near victory on net neutrality in the sense that the U.S. Court of Appeals for the District of Columbia heard the case, heard our oral arguments last month, and the court, in fact, seemed skeptical that the FCC even had legal authority to impose these mandates. One of the judges asked the FCC counsel, quote, whether he wanted to lose on process or jurisdiction, end quote.

Unless a condition is narrowly tailored to a transaction-specific harm to competition, it does not belong in this negotiation. Since this deal will not materially increase concentration in either the distribution of programming markets, demonstrating such harm will be difficult, especially in light of the robust competition in the video sector.

Mr. Chairman, thank you for holding this hearing. If Comcast and NBCU are right that this deal creates a stronger entity that can better serve viewers, I think it will succeed. If they are wrong, it will fail, just as the AOL/Time Warner merger failed ultimately. As competitive as this market is, regulatory intervention is not only unnecessary, but it will hurt competition and consumers.

Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The Chairman of the full Energy and Commerce Committee, the gentleman from California, Mr. Waxman is recognized for 5 minutes.

**OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. WAXMAN. Thank you very much, Mr. Chairman.

When the proposed combination of Comcast and NBC was announced last year, I said that this transaction had the potential to shape and reshape the media marketplace and raise fundamental questions regarding diversity, competition and the future of the production and distribution of video content. I urged the FCC and the Department of Justice to assess rigorously whether this transaction is in the public interest.

Well, 2 months have passed since this transaction was announced, and after additional review I am now even more certain that this new joint venture, if approved, could trigger dramatic changes in the way consumers access video programming, in the way independent programmers distribute their works, and also in the way all video distributors compete for customers.

Given the significance of the proposed joint venture, the committee should examine its implications carefully and dispassionately. We should ask hard questions, but we should also keep an open mind. There could be benefits that flow from this transaction, and I look forward to hearing Mr. Roberts and Mr. Zucker expand on the positive aspects of this deal. For example, will Comcast be a better long-term steward of NBC News than the current owner? Will Comcast be more committed to developing the quality original programming? Will Comcast invest necessary resources to promote localism and diversity and support free over-the-air broadcasting.

One important issue is whether Comcast, as the Nation's largest residential broadband provider and a potential owner of NBC's valuable content, will help protect the intellectual property. The theft of content on line is a serious issue for the creative community. It is unlawful, and it is a serious drain on our economy. This problem deserves more attention and better efforts by broadband providers. We also need to know what Comcast will do to ensure that independent writers, directors and producers won't be harmed.

There are many other essential questions, the move to online video and the TV Everywhere model could shape the future of how all customers access the programming. Perhaps sooner rather than later almost everything we do and see on our television will be just another application riding over a broadband connection. We should ask how Comcast, the Nation's largest video programming distributor, will deal with its customers and its competitors as this transition progresses.

I believe that the best way to protect consumers is through competition, but will competition be sustainable with the largest video and broadband provider controlling huge quantities of content? There may be plenty of content outside Comcast/NBC, but will consumers have the same ability and opportunities to access that content both on and off Comcast's distribution platforms as they will content from Comcast?

The future of free over-the-air broadcast television is also tested by this transaction. Many are concerned that this transaction could result in the best of NBC's programming being transitioned to pay TV service. Might the Olympics or the Super Bowl one day be available only to paying customers? Will the Comcast/NBC joint venture affect local affiliates and the network affiliate model? We must consider how this transaction will impact the coverage of local news and events as well as major televised events of interest to all Americans.

There are other issues to examine as well, including Comcast's treatment of pay channels, how this transaction will affect the diversity of voices in the marketplace, and how independent programmers will be impaired. We need to weigh all these topics as this process moves forward and the subcommittee considers related matters.

Ultimately this transaction must be scrutinized with regard to its impact on consumers, the choices they will have in the market, and the bills they will pay. This is the highest consideration required by the public interest review mandated under the Communications Act.

In closing, I want to thank Chairman Boucher for convening this hearing so quickly, and I look forward to hearing from our distinguished panel, and I thank them for their participation.

Mr. BOUCHER. Thank you very much, Chairman Waxman.

The gentleman from Nebraska Mr. Terry is recognized for 2 minutes.

Mr. TERRY. Thank you, Mr. Chairman, for holding this hearing, and I would like to waive and reserve.

Mr. BOUCHER. Thank you very much, Mr. Terry.

The gentleman from Missouri, Mr. Blunt is recognized for 2 minutes.

**OPENING STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI**

Mr. BLUNT. Thank you, Mr. Chairman. Thank you and our Ranking Member Mr. Stearns for holding this hearing.

I have a slightly longer statement for the record, but I would just like to say it is often the case in our economy when you are going through a period of repositioning and shakeups—and certainly this new joint venture between Comcast and NBC Universal would seem to be another evidence of what is happening generally in the economy—I actually understand and I support the necessity of businesses constantly needing to evaluate their market position, constantly figuring out how they reposition themselves to provide the best service and to do the best thing for the business they are in.

At the same time, as this hearing progresses this morning, I am very interested in gaining a better understanding of how Comcast and Comcast/NBC, this new entity, will affect the competitive forces in the television marketplace. This joint venture between Comcast and NBC may be as far-reaching as it is intricate, and I look forward to hearing about the various issues like competitive imbalance and market power that something on this level can bring with it.

The Chairman's points were points of interest to all of us, the full committee Chairman's points that he just expressed.

So I thank you again, Mr. Chairman, for holding this hearing this morning, and I yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Blunt.

The gentleman from Massachusetts Mr. Markey is recognized for 2 minutes.

**OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS**

Mr. MARKEY. Thank you, Mr. Chairman, very much.

There are significant questions about how consumer choice and competition, innovation and investment in the media marketplace would be affected by this planned joint venture. There will be discussion this morning and further scrutiny in the months to come of important ramifications of this proposed transaction, including the exercise of market power, higher barriers to entry, and the consequences of vertical integration associated with this proposed transaction, as there should be.



Essentially, though, for our constituents, for our consumers across America, the issue really boils down to the seven Cs: Will the combination of communications colossi curtail competition and cost consumers? That is the question that must be answered as this process moves forward.

While Comcast and NBC Universal have determined that this transaction advances their business interests, it is essential that the public interest also be served. As the author of the Internet Freedom Preservation Act to ensure network neutrality, along with Chairman Waxman and Congresswoman Anna Eshoo, I want to ensure that the combination of a major network operator and a large content owner does not enable the creation of discriminatory fast lanes and slow lanes on the Internet to the detriment of consumers.

I am also concerned about how this proposed joint venture would impact the emerging online video marketplace now and in the future. As consumers increasingly utilize their broadband connections to access online video content, control of both the content itself and the conduit through which it is delivered raises important issues with respect to competition, choice, diversity and innovation. Today's hearing is an important opportunity to raise and hopefully answer these questions.

I thank you, Mr. Chairman, for calling this hearing.

Mr. BOUCHER. Thank you, Mr. Markey.

The gentleman from Illinois Mr. Shimkus is recognized for 2 minutes.

**OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. SHIMKUS. Thank you, Mr. Chairman. And I want to thank the witnesses. I know it is difficult to get here, especially during the proceedings and all the machinations that are going on in the merger, but we appreciate it.

There are many different issues that we will be dealing with today, and I just want to make it pretty clear I do not want the Department of Justice enacting policy, legislative policy. That is our job, and I would be careful if Members find another way of giving up our responsibilities on telecom policy by enacting processes and procedures and using this and the Department of Justice to do that. So that is kind of where I stand.

A profitable NBC Universal is good for all of our constituents, and I hope that this venture between Comcast and NBC will facilitate the creation of more popular programming choices for all Americans. One of the great exports our country has is our media. American films and television shows are one of the ways we reach cultures throughout the world. And I also—I am not sure that is necessarily a good reach of culture, and I do question some of the things our consumers like to watch and what we do sell abroad, and I do think it sometimes does not put the best focus on us as a culture and the greatness of our country. But having said that, I do believe that the market rules, and the market does have a place for that. It is a great export.

I appreciate you all being here. I know it is tough in challenging times. I look forward to working with you all in the future.

I yield back my time, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Shimkus.

The gentlelady from California Ms. Eshoo is recognized for 2 minutes.

**OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. ESHOO. Good morning, Mr. Chairman, and thank you for scheduling this hearing at the onset of the merger review process so we can gauge the potential effects of this transaction and weigh in with our concerns before the agencies begin their analyses.

The Comcast/NBC Universal merger will affect millions of people, many of them, obviously, in my own district. Comcast has 24 million cable subscribers and 16 million broadband subscribers nationwide. NBC Universal produces and distributes broad swaths of entertainment programming. Like any merger, this transaction could produce beneficial synergies.

Comcast's FCC filings spell out a sincere commitment to the public interest, but having a philosophical commitment to protect consumers is far different than having a legal obligation to do so. Telecommunications megamergers, as well as those in other industry sectors, have the potential to create monopolistic titans. The Department of Justice will ensure that this merger doesn't violate our antitrust laws.

But the FCC has a special burden; it must also ensure that this merger protects the public interest. The Comcast/NBC Universal merger is not just about the purchase and sale of private businesses; it involves the transfer of public property, broadcast licenses to operate on America's spectrum. Just as importantly, if left unchecked, this merger has the potential to place a choke hold on the transfer of information on the Internet to consumers today and well into the future. If anything, this proposed merger, I think, demonstrates why we need net neutrality across the board.

So thank you, Mr. Chairman, for holding this important hearing for us to weigh in before the other agencies do, and I look forward to hearing the diverse viewpoints of the witnesses here today. I would especially like to welcome the representatives from Comcast, whose father established the company some 47 years ago. I think it is 47 years ago. It is really an amazing American story that in four-plus decades, that a company that was born with a great idea is what it is today. And so I congratulate you, and I look forward to the testimony. Thank you.

Mr. BOUCHER. Thank you very much, Ms. Eshoo.

The gentleman from Michigan Mr. Rogers is recognized for 2 minutes.

Mr. ROGERS. Thank you, Mr. Chairman. I appreciate you having this hearing.

And thank you for your testimony today. I think it is an incredibly important issue, and as the proposed merger, I hope, is fully reviewed and done diligently by the FCC and Department of Justice, the one concern that I have, Mr. Chairman, is that there is no time lines for either approval or rejection. So it is my hope, given the amount of expense and I think what is at stake, that

they will not only be diligent, but they will be quick in their decision as they move forward in the merger. And I am sure they can accomplish both. I just hope they know that what is at stake for a long time line. I think that is probably not helpful to anybody either, whatever their outcome is.

The other issue I hope that we get discussed at some length is the retransmission consent agreements. The law and regulations governing them were created nearly 20 years ago, and this committee should take a look to see if there is any changes that need to be made. There is so much, again, at stake in this when you talk about market power and content and who controls what in a spectrum. Lots at stake for the American public. So I hope we will have that opportunity to discuss it.

And to my friends at NBC, I have an opening for a constituent humorist specialist. If Conan would call my office, we could probably arrange to help you all out in any way we could possibly do that.

I yield back, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Rogers.

The gentleman from Michigan Mr. Dingell, Chairman Emeritus of the full committee, is recognized for 5 minutes.

**OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy, and I commend you for having this hearing. I believe it is important that we should go into these matters with a great deal of care, and I am hopeful we will get the answers for which we have need.

I also would suggest if we may not have quite enough time this morning to hear from all of our witnesses to get the answers that this committee needs. I would also observe that it may be necessary for us to hear from the regulatory agencies, which I believe we can do in a way that would not constitute a problem or a potential violation to the Pillsbury rule.

I do extend a warm welcome to our witnesses today, especially my old friends Brian and Ralph Roberts, as well as Colleen Abdoulah, whose companies provide cable service in my district. I also want to thank Comcast for its cooperation in the recent resolution of the PEG issue in Dearborn, Michigan, and I want you to know my appreciation in that matter.

The competitive incentives behind the proposed venture between Comcast and NBC Universal are quite unambiguous. In a world of fragmented viewing audiences created by proliferation of video service providers, Comcast and NBC Universal's proposed partnership does make quite a lot of sense. Consolidated control of content and distribution will help Comcast to become a more competitive player in the multichannel video marketplace.

At the same time, by virtue of the magnitude of the transaction, the Comcast/NBCU proposed joint venture raises legitimate concerns about the new entity's leverage vis-a-vis existing competitors and consumers, control of content and its distribution, and the general media consolidation. We will be interested in how this will im-

impact on government, the industry and also on the consuming public.

Moreover, as I have heard a lot about Internet video and how it may well be the future in television, I look forward to hearing from the witnesses about online video, how they see it developing, and whether this deal would impact it and how.

To summarize, while I understand the motivation behind the joint venture proposal pending the committee's consideration, I have concerns about its effect on the public interest. In particular, I am going to be asking witnesses to respond to questions about commitments from Comcast and NBC Universal to ensure the following in the future: editorial neutrality on network news—this is something which we have some small problems with in this country; local access to free over-the-air broadcast television, a matter of great concern to me over the many years; fair access for content distributors and consumers to programming provided via online video services; and collective bargaining rights of employees. This is by no means a complete list of concern, but I think it is a good place to start.

I would add also my desire to hear from the Federal regulatory about this matter, and I believe we need to have their input in order to have a proper understanding of the circumstances. While I understand they cannot comment on the pending merger, their input on facts and the general principles would be most helpful in helping us and the public to understand the situation before us.

In closing, I look forward to a frank discussion with our witnesses today. Mr. Chairman, I commend you for this hearing, and I thank you for your courtesy, and I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Chairman Dingell.

The Ranking Member of the full committee, the gentleman from Texas, Mr. Barton is recognized for 5 minutes.

**OPENING STATEMENT OF HON. JOE BARTON, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Well, thank you, Mr. Chairman.

I want to welcome back two of my colleagues from the committee. They are sitting side by side out in the audience. I hope you are on the same side. You may be on opposite sides on this. We are glad to have my two good friends back.

I am glad to have all of our friends at the witness table, and as far as I am concerned, it is good to see NBC and Comcast sitting side by side. That doesn't break my heart.

I think it is important and appropriate that we hold this hearing, Mr. Chairman. This type of a merger should be examined by this committee and subcommittee and should be reviewed by the people of the United States. Having said that, I hope today's hearing is level-headed and really focused on the issues and the details of the merger, and not on some "what if" discussion about what might happen if this and that were to occur.

As we all know, back in December, Comcast and General Electric announced this merger or this, I guess you would say, sale to combine the broadcasting, cable programming, movie studio, theme park and online content businesses of NBC Universal with the

cable programming and certain online content of Comcast. As I understand, Comcast is going to purchase 51 percent of NBC Universal; General Electric will still retain 49 percent.

Since the merger or since the sale has been announced, we have heard some of the usual predictions that this is the end of the media world as we know it. Put me down as skeptical on that. I don't think that is going to happen. I hope good things happen for the viewers and the folks that provide the content to the media. But let us let the market make those decisions.

We should allow companies to take risks. We should allow companies to seek out niche markets. We should allow companies to use their natural and competitive advantages to serve up material for the marketplace of various interests. It is a testament to our system that even in these uncertain economic times, there are people, some of them are at this table, that are willing to take such market risks.

There are some analysts that have expressed doubts about the economic case for the Comcast/NBC deal precisely because they don't see that a competitive advantage will materialize from this combination. So instead of condemning such an effort, we should stand back and watch it and hopefully be willing to applaud if, in fact, good things happen for the markets that both NBC and Comcast serve at the current time.

There don't appear to be any major overlaps in the markets. There do appear to be some synergies from the two companies coming together. There are certainly no antitrust implications in the classic sense, because it is my understanding that the Justice Department is not going to review it for antitrust under the classic antitrust review.

To the extent that concerns exist, Comcast has said that it will make a number of voluntary commitments to help assuage these anxieties. They plan to honor and extend the current program access rules. They will continue to offer NBC and Telemundo programming free over the air, rather than turn them into cable networks. And they also plan to add new, independently owned channels to their cable lineup. Furthermore, more local news, local public affairs, children, ethnics, and other public-interest programming is planned to be made available over the air on cable channels through on demand service and on online.

And so, again, Mr. Chairman, thank you for holding the hearing. I thank all of our witnesses. I look forward to an interesting exchange today.

Mr. BOUCHER. Thank you very much, Mr. Barton.

The gentleman from Tennessee Mr. Gordon is recognized for 2 minutes. He is no longer with us.

The gentleman from Washington State Mr. Inslee is recognized for 2 minutes.

**OPENING STATEMENT OF HON. JAY INSLEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

Mr. INSLEE. Thank you, Mr. Chair.

We are here to talk about control of America's most precious asset and that, of course, is Tina Fey. And that is one of the reasons we are so interested in this issue.

I do want to suggest something as we look through these issues, the potential upsides for consumers and the potential concerns for consumers, and I think they are both those potentials. I would suggest that we need to look at it a little bit through the lens of democracy, not just commercial activity, and I just throw in a little Jefferson who said, where the press is free and every man able to read, all is safe. And I think in today's electronic world, the modern corollary is that where content is freely available, and every man and woman able to watch, all is safe. And I think there is a democracy issue here that ought to be considered, and I will look forward to everyone giving us their views in that regard.

In that regard, I think there are three fundamental questions I hope the witnesses will address. One, in the new world where we are developing Internet-based systems, such as Hulu and iTunes, networks like Comedy Central, where people are going on line, where we do not have programming rules, how do we intend to ensure access to Americans in that sort of Jeffersonian ideal?

We know that the cable industry is realizing the market dynamic in this, as evidenced by the recent announcement of TV Everywhere, and I would hope the witnesses will tell us how can we assure that access to important content in that new system.

Although this merger is only between two companies, I would ask the witnesses to tell us if they think we ought to look at our transmission access rules in general on how they are working or not working. Are there ways that we can make them more usable to both parties to try to determine how to make it work for both parties in a way that is not so costly and gives consumers more credibility or more confidence in the system? And third is cost, which is an obvious one. Rates have gone up, I am told, three times the rate of inflation. Consumers are going to have obvious concerns about that. I hope obviously you will address that.

We look forward to this hearing from all parties. Thanks very much.

Mr. BOUCHER. Thank you, Mr. Inslee.

The gentlelady from California Mrs. Bono Mack is recognized for 2 minutes.

**OPENING STATEMENT OF HON. MARY BONO MACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mrs. BONO MACK. Thank you, Mr. Chairman. I would like to thank you and Ranking Member Stearns and the distinguished panel for being here today. I think this is an important hearing as well.

As I see it, the proposed transaction between Comcast and NBC is an example of vertical integration within the media marketplace. The proposal is a marriage of upstream and downstream companies that do not significantly compete against one another.

Now, I am sure we will hear opinions that attempt to label this transaction as horizontal integration. While I respect the right of everyone to have their own opinion, we are not entitled to our own set of facts. And in that vein, I remain unconvinced how the combination of two entities where one concentrates on the distribution of content and the other concentrates on the development of con-

tent can be determined to be anything other than a case of vertical integration.

I will admit there are certain aspects of the transaction that are of particular interest to me. For instance, I would like to hear how independent programmers are going to be impacted by this deal. I am sure others have certain questions as well, and they are entitled. However, if we use this hearing as an opportunity to cast blame and air grievances about every problem we perceive in the communications or media marketplace, we will have wasted everyone's time.

Additionally, and perhaps more importantly, this transaction should not be used as a vehicle to advance a specific policy agenda that is unrelated to the matter at hand and cannot be implemented on the industry as a whole. It is my hope that these types of regulatory shenanigans have no place at the new FCC. At the moment, I have no reason to associate that type of behavior with this Chairman or Commission.

With that, I yield back my time, and I thank you again, Mr. Chairman.

Mr. BOUCHER. Thank you, Mrs. Bono Mack.

The gentlelady from California Ms. Matsui is recognized for 2 minutes.

**OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. MATSUI. Thank you very much, Mr. Chairman. And thank you, witnesses, for being here today.

Like other major mergers or joint ventures, there will be a real impact on consumers and the marketplace, and this one is really no different. Comcast is a dominant cable provider in my hometown of Sacramento, providing service to over 200,000 households. This joint venture will only enlarge the footprint in Sacramento.

Over the last few days, I received numerous e-mails from my constituents wanting to know what this deal would mean for them. They want to know if it means higher cable rates. They want to know if they will be able to continue to receive the independent programming they are used to without any unwarranted interference or preference. They want to know what it would mean for the distribution of online video, and they want to ensure it continues to be open to all and is preserved so that they can view their favorite programs when they choose. They want to know the ramifications of this joint venture and what it may cause within the industry. Will there be a domino effect whereby Comcast competitors are likely to combine or merge with others in order to compete in the marketplace, creating a media and entertainment environment where only a few will be heard? Additionally, the people of Sacramento rely on local affiliate stations for local news and information. Would this merger put local NBC affiliates not currently owned by NBC itself at a competitive disadvantage from a programming standpoint?

I recognize that Comcast has made a series of proactive commitments on some of these subjects. I look forward to further exploration of these and other concerns today and in the weeks and

months ahead. Ultimately I believe that this proposed merger should not leave consumers with less choice, lower quality, less diversity and higher programming costs. As the FCC and Department of Justice review the proposed merger, it is my hope that they consider every aspect, particularly its impact on consumers, competition and innovation.

I thank you, Mr. Chairman, for calling this hearing today. I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Ms. Matsui.

The gentlelady from Tennessee Mrs. Blackburn is recognized for 2 minutes.

**OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE**

Mrs. BLACKBURN. Thank you, Mr. Chairman.

I want to welcome all of our guests today, and I certainly am looking forward to a discussion with you as we move through the day. I have read through your statements, and I will tell you it is absolutely puzzling and amusing to me that such intelligent people, when given the same set of statistics and the same information and the same data, can arrive at such vastly different opinions and such conclusions as to how this union would affect telecommunications moving forward. So I think we are going to have a rather robust discussion today, and I am truly looking forward to it.

I will tell you at first glance that my reaction is that if this deal results in no additional market power and content and no additional market power and distribution, then why are there such concerns about antitrust violations? And that is the point I want to discuss with all of you. And if this deal does not increase any market share, then I cannot accept the suggestions that we need to put conditions on it. So let us discuss that as we move forward.

We want to make certain that we are doing things that are good for consumers, and being from Tennessee, and having the number of content-independent content producers that we have there, we are very concerned about what this would do to access and to content. And for those of you that hold an opposing view on the antitrust violations, I want to hear from you as to how you have read the same set of material and data and arrived at other outcomes from that.

So looking forward to the discussion. Thank you for being here. I yield back.

Mr. BOUCHER. Thank you, Mrs. Blackburn.

The gentleman from Connecticut Mr. Murphy is recognized for 2 minutes.

**OPENING STATEMENT OF HON. CHRISTOPHER S. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT**

Mr. MURPHY. Thank you, Mr. Chairman. Thank you for holding this hearing, and I agree with Mrs. Blackburn that we are going to have a lively debate.

I hope that the panel will spend some time addressing one issue that Chairman Waxman raised, and that is the issue of content



protection and how this transaction may affect how we deal with protecting the copyrights of content innovators. We know the statistics. Each year our Nation's content industry is losing hundreds of millions, if not billions, of dollars to online piracy. And up until now, however, the largest distributors of that content and the largest providers of that content have largely been separate entities, and this new relationship between Comcast and NBC Universal is going to change that dynamic fundamentally if approved.

As mentioned before, this deal represents the Nation's largest broadband provider combining with the Nation's fourth largest entertainment company. The problem is that historically too often content providers and content distributors just aren't on the same page with respect to a strategy for combating online piracy, and often this lack of cooperation has simply to do with the disparate economic goals of all the parties involved.

However, the ramifications of this issue are too great to ignore, and I think the current events surrounding us today, namely the FCC's open Internet rulemaking and today's examination of this new business relationship, provide us with an opportunity to explore what steps need to be taken to ensure that we continue to deal with the theft of content that is hurting some of our Nation's most innovative job creators.

I look forward to this hearing today, and I look forward to hearing a discussion about how the combination of these two new entities may change Comcast's approach to dealing with the unlawful content flowing across its network.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. BOUCHER. Thank you, Mr. Murphy.

The gentleman from Michigan Mr. Upton is recognized for 2 minutes.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Thank you, Mr. Chairman.

And I want to welcome all of our witnesses, but particularly to a good friend who is sitting behind Brian, and that is his dad Ralph, who I see here in this audience. It is good to see you, and I appreciate all that you have done.

Today we are examining the proposed merger of Comcast and NBC, and I am encouraged by the many voluntary commitments being made by Comcast as a part of this merger. And I welcome the evaluation of the merger and the potential impact on the video programming in the broadband marketplace. However, I hope and expect a quick review and approval. All parties involved will be best served if this is a prompt process.

I believe that the merger is in the public interest and should bring greater competition to the programming and distribution markets. One of the most interesting points about the deal is that Comcast and NBC have very little overlap. The combined entity will be a more diverse company; it will be in a better position to succeed during these very difficult economic times, and that would not necessarily be the case if another entity purchased NBC from GE.

I would like to stress that the merger shouldn't be used as an opportunity to push unrelated policy agendas or extend unnecessary regulations that do not extend to the broader market. For example, I would strongly oppose any efforts to impose network neutrality conditions as a part of the deal. Doing so would be highly inappropriate.

I yield back the balance of my time, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Upton.

The gentlelady from Florida Ms. Castor for 2 minutes.

Ms. CASTOR. Good morning. And thank you, Chairman Boucher, for calling the hearing. I will waive my opening statement so I have more time for questions.

Mr. BOUCHER. Thank you very much, Ms. Castor.

[The prepared statement of Ms. Castor follows:]

Opening Statement for Congresswoman Kathy Castor, FL-11  
Hearing on the Proposed Union of Comcast/NBC Universal

Thank you, Chairman Boucher, for holding this important hearing, and I commend my colleagues for making this a priority this morning. I also want to thank the witnesses who are here today to talk about the impact that the proposed union of Comcast and NBC Universal will have on households across America. I am looking forward to their testimony and the insights they can share with us regarding the fast-changing media and entertainment marketplace and how these changes would impact consumers.

Much has changed since 1992 when the Cable Television Consumer Protection and Competition Act was enacted to keep cable competitive. Back then, cable had few competitors in the video marketplace. There was no internet to speak of, no YouTube, NetFlix, X-Box, or i-Pad to distract TV viewers from their favorite sit-coms or sporting events. Distributors like Comcast and content producers like NBC relied on advertising as their primary source of revenue in one form or another. Good programming commanded higher advertising premiums and more demand for cable subscriptions.

For the most part, that model hasn't changed. NBC Universal, as I am sure many of you will agree, is well-known for its popular programming. It coined the phrase "must-see TV," and it counts heavily on the advertising dollars generated when these shows are on the air. Comcast relies on popular pay channels in its lineup to drive subscription rates. Americans still spend most of their viewing time watching television, and the majority of them still have a pay television subscription, whether it is with Verizon FiOs, DirecTV, the Dish Network, or AT&T UVerse. On many levels, the market may appear to be more competitive than ever.

What has changed, though, is the direction that both viewers and media companies are heading in. By Comcast's own admission, it has lost more than 1.2 million subscribers since 2007, and the pace of those losses is accelerating. Both NBC and Comcast recognize that new ways of accessing television content have cut into their profit margins. Viewers are migrating to the web and tuning out of traditional advertising-supported media. The pay for television market is saturated—85% of all households already have some form of MVPD subscription. This might suggest that steep competition from other providers proves that a "vertical integration" poses no threat to consumers.

If this deal were only about the present or the past, however, there might not be any need for concern, or for this hearing. In many ways, this deal is about the future of media and the choices consumers will have to access not only entertainment but important news and information that impacts their daily lives. As such, we need to take a very close look at what it would mean for consumers across the nation. We need to consider the impact of programs like TV Everywhere, which will allow viewers to watch their favorite programs online through their cable subscription but could also be an attempt to bring the pay for television model to the internet. We need to ask how it would affect consumers who do not have access to Comcast, like many of the hard-working people of my district, and whether it would meet the public interest test in spirit and in actuality. We need to ask what protections workers of this new joint venture would be able to count on and how it would treat working people who negotiate their salaries and benefits through the collective bargaining process. Finally, we need to ask whether this deal would drive innovation or stall it, because history tells us that innovation has the ability to improve the

marketplace and the lives of hard-working individuals living on a finite budget. Thank you all. I look forward to hearing the testimony of our witnesses today, and I yield the balance of my time.

Mr. BOUCHER. The gentleman from California Mr. McNerney is recognized for 2 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

I would like to say the biggest concerns about the merger I think were well articulated by the Chairman of the full committee and others. So given that, the questions of the proposed venture come down to a couple of things: Will the merger enhance or will it impede competition? Will it enhance or will it impede access? Will it enhance or impede diversity of programming? And finally, how will it impact the cost on the consumer?

Hopefully we can begin to answer these questions this morning, and I look forward to the testimony.

Mr. BOUCHER. Thank you, Mr. McNerney.

The gentleman from Louisiana Mr. Melancon is recognized for 2 minutes.

Mr. MELANCON. Thank you, Mr. Chairman. I will waive my opening statement.

Mr. BOUCHER. Thank you, Mr. Melancon.

The gentleman from Ohio Mr. Space is recognized for 2 minutes.

Mr. SPACE. Thank you, Mr. Chairman. And thank you for convening this hearing today. I believe this is the first kind of our subcommittee in this Congress, and we will be discussing some critical issues that may influence the future of video programming and distribution for some time to come.

I represent a very rural district in southeastern Ohio. It is part of five broadcasting markets, and many of my constituents, in fact much more than the national average, rely upon free over-the-air broadcasting for emergency information, for news, for weather, sports. And with the national broadband plan set to come out next month and the debate about spectrum on everyone's minds, there are certainly many challenges facing the free over-the-air broadcast model. But a strong vibrant broadcast television industry is important to my constituents, so I am very interested to hear what our witnesses have to say today regarding the future of free over-the-air television.

I am also interested in learning more about how the joint venture will impact the continued expansion in the deployment of broadband, which is an issue of high priority for me personally and certainly for my constituents as well.

So I would like to welcome our witnesses and thank them for their testimony, and again, thank you, Mr. Chairman.

Mr. BOUCHER. Thank you, Mr. Space.

The gentleman from North Carolina Mr. Butterfield is recognized for 2 minutes.

**OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. BUTTERFIELD. Thank you, Mr. Chairman, for holding this very important hearing. I thank the witnesses for their testimony today.

Mr. Chairman, this historic coming together of two unique media powerhouses presents the potential for expanded entertainment opportunities and an increase in choice for our television viewers. The

proposed joint venture between these two companies creates a new NBCU, a leading communications and entertainment company. This is a transaction that should receive a fair, but intensely thorough review by the Justice Department and the FCC. I am hopeful that both DOJ and the FCC will see that the vertical integration of Comcast and NBC Universal will ultimately prove to be in the public interest whereby competition and innovation will be fostered.

It is vitally important for NBC to maintain their editorial independence. We have heard other Members speak to that today with respect to how they report the news as well as other content that will be viewed by millions of Americans. I am confident that NBC will continue to operate with the same neutrality that we see today. It is in the best interest of Comcast and NBC to report the news with objectivity, because, as we all know, if people do not like what they are watching, they can simply change the channel.

As was the case with the XM/Sirius merger, I remain committed to ensuring minority programming has a home and a voice. And I am pleased to see the commitment to increasing the diversity of programming across the spectrum of audiences and viewpoints and across all media platforms. Comcast already has a strong record in program diversity—I thank you for that—having entered into a venture with Radio One to create TV One. But continued recognition of the value of diverse programming is always welcome. I also believe that Comcast's approach of leveraging diverse content across multiple media platforms to increase the programming's reach and its prospect for success have proven effective.

Finally, I would like to commend these two companies for their proactive outreach to Members of this body. Thank you for the visit that you had with my office recently.

With that, my time has expired and I yield back.

Mr. BOUCHER. Thank you, Mr. Butterfield.

The gentleman from Arizona Mr. Shadegg is recognized for 2 minutes.

**OPENING STATEMENT OF HON. JOHN B. SHADEGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. SHADEGG. Thank you, Mr. Chairman. And thank you for holding this hearing. I would also like to thank the witnesses for spending time with us this morning.

As a supporter of the free market and competition, I also support this joint venture. I support the right of two companies, big or small, to enter into a contract and to negotiate a deal that has the potential to inspire innovation and benefit consumers, although the authority to approve this joint venture lies within the hands of the FCC and the Department of Justice. By having this hearing, we are opening up the debate of this merger to the public. I applaud this form of transparency.

In addition, I believe our discussion and the investigation by the FCC and DOJ should be thorough and complete. However, it is critical that opponents to this joint venture do not deliberately slow the process down as that will prove to be costly and unfair to the parties involved. It would be a disservice to all consumers if lengthy investigations and unfair treatment deterred business from

entering into negotiations. The purpose of antimonopoly laws is to ensure that one company does not dominate a market by unfair practices, not to discourage companies from making advances to get ahead.

When this joint venture is complete, NBCU will be 100 percent an American-owned company. We should not discourage this. Although there are some concerns that this merger will eliminate competition, I think otherwise. I believe it will inspire competition. This is innovation that our country needs, and it will create the jobs our country needs.

I would like to thank NBC and Comcast for their many voluntary public interest commitments in the course of this process. These commitments show that not only are they not attempting to take advantage of their competitors, but instead respect many of the long-standing agreements that are in place. These commitments, along with the fact that Comcast will not have a large market share by joining forces with NBC—a larger market share by joining forces with NBC, is evidence that this joint venture will not hinder competition, but will benefit consumers.

I look forward to hearing from all the witnesses today and playing an active role in the debate surrounding this merger. And I thank you, Mr. Chairman, for holding this hearing.

Mr. BOUCHER. Thank you very much, Mr. Shadegg.

The gentleman from Illinois Mr. Rush is recognized for 2 minutes.

**OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. Thank you, Mr. Chairman, for convening today's hearing to consider this matter that is before us.

Comcast and GE, these parties have argued in recent filings with the FCC and presumably with the Department of Justice that their union is a classic model of vertical integration. They contend the proposed combination will also advance key commercial policy goals of diversity, localism, innovation and competition. To underscore their claims, Comcast and NBC are offering up a number of voluntary commitments. They say these commitments will expand consumer choice, ensure over-the-air broadcasting, enhance programming opportunities, ensure competition on multiple-content delivery platforms, and maintains NBC's journalistic independence as a provider of news.

Unfortunately, Mr. Chairman, what they have not said, what they have not committed to, and what is not making news is how this deal will promote meaningful opportunities for minorities to become FCC licensees and owners of communications and programming as such. How will minority viewers and existing minority licenses and programs be affected by this combination? How will minority suppliers and advertisers be integrated into the joint ventures procurement and purchasing challenge? And what will these two Fortune 100 companies do to ensure greater diversity in hiring, training and retaining minority employees at both management and nonmanagement levels of the proposed joint venture?

These are types of integration and diversity to which I hope Comcast and GE will pay more attention to and make further com-

mitments. Although the potential rewards for the public are significant, the collective risk to minority inclusion and diversity as this transaction is currently structured are just as important.

As we continue to discuss the merger and the effects of this proposed combination in the coming months, you can be assured these will be my key areas of focus. I look forward to the hearing and perspective of our witnesses, and I want to welcome each and every one of the witnesses, and I thank you for participating this morning.

Mr. Chairman, with that I yield back the balance of my time.

Mr. BOUCHER. Thank you, Mr. Rush.

The gentleman from Michigan Mr. Stupak is recognized for 2 minutes.

Mr. STUPAK. Mr. Chairman, I will waive and ask for extra time for questions.

Mr. BOUCHER. Thank you very much, Mr. Stupak.

And the gentleman from Vermont Mr. Welch is recognized for 2 minutes.

**OPENING STATEMENT OF HON. PETER WELCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT**

Mr. WELCH. Thank you, Mr. Chairman.

Being from Vermont, a rural State, at the end of the line are customers who are primarily going to be concerned about their bill and about their access and about what programs they get. And the question that I will be very eager to get commentary upon, particularly from Comcast, what will be the relationships that the larger provider has with the smaller carriers?

And there seems to be a bit of an internal conflict, because on the one hand, the large carrier—and this is not precipitated just by this merger, there are other questions there, but it raises the issue there is a bit of conflict where the larger carrier is dependent on the local carriers to provide that content to the customers. On the one hand, it is in the interest of the larger carrier, whether it is Comcast or anyone else, to get the best price possible.

It is in the interest of the consumer to pay the lowest price possible, and the local carrier—and we have these in Vermont—is caught in between. And my concern is that there be mechanisms that provide for fair negotiation and interaction between the smaller carrier and then the larger carrier as well, because at the end of the day it is the customer who gets whacked on this, and it is a very serious issue, obviously, for the customer but also for the media companies that are involved. And that needs more attention that it has been getting. It is not specifically related to the merger, but it is a moment of opportunity for us to examine this. And it is very important to individual Vermonters and individual Americans who really do need the services that are being provided by all of you. So, thank you.

Mr. BOUCHER. Thank you very much, Mr. Welch. And thanks to all members for their statements. We have a series of recorded votes pending on the floor of the House, five of them in total, which will take us somewhere between one half hour and 45 minutes, we would estimate, to complete. And so pending the completion of these votes, the subcommittee stands in recess. I would ask our



witnesses to remain close at hand, and as soon as we can return we shall do so and proceed with your opening statements.

[Recess.]

Mr. BOUCHER. The subcommittee will reconvene, and our apologies for the lengthy delay. It is a matter over which we have little control.

I am pleased now to welcome our panel of witnesses and I will say a brief word of introduction about each. Mr. Brian Roberts is the Chairman and Chief Executive Officer of the Comcast Corporation. Mr. Jeff Zucker is the President and Chief Executive Officer of NBC Universal. Ms. Colleen Abdoulah is the President and CEO of WOW, or Wide Open West Internet, Cable & Telephone. Mr. Michael Fiorile is the Chairman of the NBC Affiliates Board; he is also the President and Chief Operating Officer of the Dispatch Printing Company. Dr. Mark Cooper is the Director of Research at the Consumer Federation of America. And Mr. Adam Thierer is the President of the Progress and Freedom Foundation.

We welcome each of you this morning, thank you for your testimony. Without objection, your prepared written statement will be made a part of our record and we would welcome your oral summary and ask that you keep your oral summary to approximately 5 minutes.

**STATEMENTS OF BRIAN ROBERTS, CHAIRMAN AND CEO, COMCAST CORPORATION; JEFF ZUCKER, PRESIDENT AND CEO, NBC UNIVERSAL; COLLEEN ABDOULAH, PRESIDENT AND CEO OF WOW, WIDE OPEN WEST INTERNET, CABLE AND TELEPHONE; MICHAEL FIORILE, CHAIRMAN, NBC AFFILIATES BOARD, AND PRESIDENT AND CEO, DISPATCH PRINTING COMPANY; DR. MARK COOPER, DIRECTOR OF RESEARCH, CONSUMER FEDERATION OF AMERICA; AND ADAM THIENER, PRESIDENT, PROGRESS AND FREEDOM FOUNDATION**

Mr. BOUCHER. Mr. Roberts, we will be pleased to begin with you.

**STATEMENT OF BRIAN ROBERTS**

Mr. ROBERTS. Thank you, Mr. Chairman.

Mr. BOUCHER. And you need to turn your microphone on and pull it as close as you can so that we can hear you well.

Mr. ROBERTS. Thank you, Mr. Chairman. Is that OK?

Mr. BOUCHER. Yes.

Mr. ROBERTS. It is a privilege to come here today to talk about Comcast's planned joint venture with GE regarding NBC Universal. As has been mentioned, my father, Ralph, is sitting just behind me. He started the company almost a half century ago. And Ralph built the company from a single small cable system in Tupelo, Mississippi to where we are today. And with this combination we are taking the next step in our improbable journey. This is indeed an important moment in our history.

Let me briefly summarize the transaction. Under our agreement, Comcast will become majority owner of NBC Universal. We will create a new venture that combines NBCU's broadcast TV, cable programming, movie studio, and theme park businesses with Comcast's limited video programming channel. Comcast will hold

51 percent of the venture and we will manage it, while 49 percent will remain with GE.

The transaction puts two Great American communications companies under one roof. It will help to preserve traditional broadcast television, a business that faces serious challenges. And it will also help to accelerate a truly amazing digital future for consumers' commerce. Together, Comcast and NBCU can help deliver the anytime/anywhere multiplatform video experience that Americans want.

In combination we will be a more creative and innovative company that will meet customer demands, and our success will stimulate our competitors to be more innovative too. So this joint venture should be good for consumers, good for innovation and competition. To leave no doubt about the benefits of the new NBCU, we have made a series of public interest commitments detailing how we will bring viewers more local programming, more children's programming, more diverse programming on more platforms.

We have also made commitments to reassure our competitors that we will compete fairly in the marketplace. Let me offer two examples.

First, the program access rules have never applied to retransmission consent negotiations, but we volunteer to have the key components of these rules apply to our retransmission negotiations for NBC stations.

Second, we want independent programmers with quality content to know that we are determined to help them reach an audience, so we have committed to add at least two new independently owned cable channels to our systems every year beginning in 2011.

The combination of NBC and Comcast will have no significant overlap between the assets of the companies. It is primarily vertical which generally poses fewer antitrust concerns. That also means no massive layoffs, no closures of facilities, nothing to produce hundreds of millions of dollars of "synergies." That is why some on Wall Street may not have initially loved this deal; but this same lack of overlap is why Washington can, because we will grow these great American businesses over the long term and make them more successful, not cut them.

Congress has recognized the benefits of vertical integration before and adopted rules in 1992 to address potential risks. At that time there was almost no competition to cable, and more than half of the channels were owned by cable companies. So Congress created program access and program carriage rules to ensure that a company which owns both, cable content and distribution, cannot treat competitors unfairly. Those rules have worked in the past and will continue to work.

In the last week, some have suggested that our prior legal challenge to certain portions of the program access rules is inconsistent with our commitments in connection with this transaction. But while we have argued and believe that today's marketplace is sufficiently competitive to do away with the program access rules, we didn't pursue this transaction with the intention of not following those rules, and we don't intend to behave any differently. So we are willing to discuss, with the FCC, making the program access

rules binding on us, even if they were to be overturned by the courts.

In the past decade Comcast has come to Washington twice to seek much merger approvals—when we acquired cable systems from AT&T and Adelphia. Each time we explained how consumers would benefit, and in each case I believe we have delivered. We spent billions of dollars upgrading cable systems to make them state-of-the-art. We created Video on Demand, which our customers have used 14 billion times, and from a standing start 4 years ago, we now give millions of Americans their first real phone choice.

Once again we have described how consumers will benefit, and I want to assure you that we will deliver.

Mr. Chairman, we are asking for the opportunity to make one of the great icons of American broadcasting and communications part of the Comcast family. We promise to be reliable stewards of the national treasures of NBC and NBC News. It is a breathtaking and humbling moment in our history and we hope we have your support. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Roberts.

[The prepared statement of Mr. Roberts and Mr. Zucker follows:]

**JOINT WRITTEN STATEMENT BY**

**BRIAN L. ROBERTS  
CHAIRMAN AND CHIEF EXECUTIVE OFFICER  
COMCAST CORPORATION**

**AND**

**JEFF ZUCKER  
PRESIDENT AND CHIEF EXECUTIVE OFFICER  
NBC UNIVERSAL**

**TO THE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE  
INTERNET**

**February 4, 2010**

Mr. Chairman, and Members of the Subcommittee, we are pleased to appear before you today to discuss Comcast Corporation's ("Comcast") planned joint venture with General Electric Company ("GE"), under which Comcast will acquire a majority interest in and management of NBC Universal ("NBCU"). As you know, the proposed transaction will combine in a new joint venture the broadcast, cable programming, movie studio, theme park, and online content businesses of NBCU with the cable programming and certain online content businesses of Comcast. This content-focused joint venture will retain the NBCU name.

The new NBCU will benefit consumers and will encourage much-needed investment and innovation in the important media sector. How will it benefit consumers? First, the new venture will lead to increased investment in NBCU by putting these important content assets under the control of a company that is focused exclusively on the communication and entertainment industry. This will foster enhanced investment in both content development and delivery, enabling NBCU to become a more competitive and innovative player in the turbulent and ever changing media world. Investment and innovation will also preserve and create sustainable media and technology jobs. Second, the transaction will promote the innovation, content, and delivery that consumers want and demand. The parties have made significant commitments in the areas of local news and information programming, enhanced programming for diverse audiences, and more quality educational and other content for children and families. And finally, Comcast's commitment to sustain and invest in the NBC broadcast network will promote the quality news, sports, and local programming that have made this network great over the last 50 years. We discuss these specific and verifiable public interest commitments later in this statement, and a summary is attached.

The new NBCU will advance key policy goals of Congress: diversity, localism, innovation, and competition. With Comcast's demonstrated commitment to investment and innovation in communications, entertainment, and information, the new NBCU will be able to increase the quantity, quality, diversity, and local focus of its content, and accelerate the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. Given the intensely competitive markets in which Comcast and NBCU operate, as well as existing law and regulations, this essentially vertical transaction will benefit consumers and spur competition, and will not present any potential harm in any marketplace.

NBCU, currently majority-owned and controlled by GE, is an American icon – a media, entertainment, and communications company with a storied past and a promising future. At the heart of NBCU's content production is the National Broadcasting Company ("NBC"), the nation's first television broadcast network and home of one of the crown jewels of NBCU, NBC News. NBCU also has two highly regarded cable news networks, CNBC and MSNBC. In addition, NBCU owns Telemundo, the nation's second largest Spanish-language broadcast network, with substantial Spanish-language production facilities located in the United States. NBCU's other assets include 26 local broadcast stations (10 NBC owned-and-operated stations ("O&Os"), 15 Telemundo O&Os, and one independent Spanish-language station), numerous national cable programming networks, a motion picture studio with a library of several thousand films, a TV production studio with a library of television series, and an international theme park business.

Comcast, a leading provider of cable television, high-speed Internet, digital voice, and other communications services to millions of customers, is a pioneer in enabling consumers to watch what they want, when they want, where they want, and on the devices they want. Comcast is primarily a distributor, offering its customers multiple delivery platforms for content and services. Although Comcast owns and produces some cable programming channels and online content, Comcast owns relatively few national cable networks, none of which is among the 30 most highly rated, and, even including its local and regional networks, Comcast accounts for a tiny percentage of the content industry. The majority of these content businesses will be contributed to the joint venture. The distribution side of Comcast (referred to as "Comcast Cable") is not being contributed to the new NBCU and will remain under Comcast's ownership and control.

The proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms. Antitrust law, competition experts, and the FCC have long recognized that vertical combinations can produce significant benefits. Experts and the FCC also have found that vertical combinations with limited horizontal issues generally do not threaten competition.

The transaction takes place against the backdrop of a communications and entertainment marketplace that is highly dynamic and competitive, and becoming more so every day. NBCU – today and post-transaction – faces competition from a large and

growing roster of content providers. There are literally hundreds of national television networks and scores of regional networks. These networks compete not only with each other but also with countless other video choices – both for consumers’ attention and for distribution on various video platforms. In addition, content producers increasingly have alternative outlets available to distribute their works, free from any purported “gatekeeping” networks or distributors. In this universe of content producers, with competitors such as Disney/ABC, Time Warner, Viacom, and News Corp., the new NBCU will have the incentive and financial resources to give consumers the high-quality programming they want and no incentive – or ability – to restrict competition or otherwise harm the public interest.

Competition is fierce among distributors as well. Consumers in every geographic area have multiple choices of multichannel video programming distributors (“MVPDs”) and can obtain video content from many non-MVPDs as well. In addition to the local cable operator, consumers can choose from two MVPDs offering direct broadcast satellite (“DBS”) service: DirecTV and Dish Network, which are now the second and third largest MVPDs in America, respectively. Verizon and AT&T, along with other wireline overbuilders, are strong, credible competitors, offering a fourth MVPD choice to tens of millions of American households and a fifth choice to some. Indeed, as competition among MVPDs has grown, Comcast’s nationwide share of MVPD subscribers has steadily decreased (it is now less than 25 percent, a share that the FCC has repeatedly said is insufficient to allow an MVPD to engage in anticompetitive conduct). Moreover, current market dynamics are more telling than static measures of market shares; over the past two years, Comcast lost 1.2 million net video subscribers while its competitors continued to add subscribers. (DirecTV, Dish Network, AT&T, and Verizon have added 7.6 million net video customers over the same time period.)

Consumers can also access high-quality video content from myriad other sources. Some households continue to receive their video through over-the-air broadcast signals, which have improved in quality and increased in quantity as a result of the broadcast digital television transition. Millions of households purchase or rent digital video discs (“DVDs”) from one of thousands of national, regional, or local retail outlets, including Walmart, Blockbuster, and Hollywood Video, as well as Netflix, MovieCrazy, Café DVD, and others who provide DVDs by mail. High-quality video content also is increasingly available from a rapidly growing number of online sources that include Amazon, Apple TV, Blinkx, Blip.tv, Boxee, Clicker.com, Crackle, Eclectus, Hulu, iReel, iTunes, Netflix, Sezmi, SlashControl, Sling, Veoh, Vevo, Vimeo, VUDU, Vuze, Xbox, YouTube – and many more. These sites offer previously unimaginable quantities of professionally-produced content and user-generated content that can be accessed from a variety of devices, including computers, Internet-equipped televisions, videogame boxes, Blu-ray DVD players, and mobile devices. In addition, there is a huge supply of user-generated video content, including professional and quasi-professional content. YouTube, for example, which is by far the leader in the nascent online video distribution business, currently receives and stores virtually an entire day’s worth of video content for its viewers *every minute*. And there are no significant barriers to entry to online video

distribution. Thus, consumers have a staggering variety of sources of video content beyond Comcast and its rival MVPDs.

The combination of NBCU and Comcast's content assets under the new NBCU – coupled with management of the new NBCU by Comcast, an experienced, committed distribution innovator – will enable the creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The companies' limited shares in all relevant markets, fierce competition at all levels of the distribution chain, and ease of entry for cable and online programming ensure that the risk of competitive harm is insignificant. Moreover, the FCC's rules governing program access, program carriage, and retransmission consent provide further safeguards for consumers as do the additional public interest commitments made by the companies to the FCC.

At the same time, the transaction's public interest benefits – particularly for the public interest goals of diversity, localism, competition, and innovation – are substantial. Through expanded access to outlets, increased investment in outlets, and lower costs, the new venture will be able to increase the amount, quality, variety, and availability of content more than either company could on its own, thus promoting *diversity*. This includes content of specific interest to minority groups, children and families, women, and other key audience segments. The new venture will also be able to provide more and better local programming, including local news and information programming, thereby advancing *localism*. NBCU and Comcast will be more innovative and effective players in video programming and distribution, spurring other content producers and distributors to improve their own services, thus enhancing *competition*. Marrying NBCU's programming assets with Comcast's multiple distribution platforms will make it easier for the combined entity to experiment with new business models that will better serve consumers, thus promoting *innovation*.

In addition, Comcast and NBCU have publicly affirmed their continuing commitment to free, over-the-air broadcasting. Despite a challenging business and technological environment, the proposed transaction has significant potential to invigorate NBCU's broadcasting business and expand the important public interest benefits it provides to consumers across this country. NBC, Telemundo, their local O&Os, and their local broadcast affiliates will benefit by having the full support of Comcast, a company that is focused entirely on entertainment, information, and communications and that has strong incentives – and the ability – to invest in and grow the broadcast businesses it is acquiring, in partnership with the local affiliates.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries will not only result in the creation of more and better programming – it will also encourage investment and innovation that will accelerate the arrival of the multiplatform, “anytime, anywhere” future of video programming that Americans want. This is because the proposed transaction will remove negotiation friction that currently inhibits the ability of Comcast to implement its pro-consumer vision of multiplatform access to quality video programming. Post-transaction, Comcast will have access to more content that it can

make available on more outlets, including the new NBCU's national and regional networks and Comcast's cable systems, video-on-demand ("VOD") platform, and online platform. This increase in the value of services offered to consumers by the new company will stimulate competitors – including non-affiliated networks, non-affiliated MVPDs, and the numerous other participants in the video marketplace – to improve what they offer to consumers.

The past is prologue: Comcast sought for years to develop the VOD business, but it could not convince studio distributors – who were reluctant to permit their movies to be distributed on an emerging, unproven platform – to provide compelling content for VOD. This caution, though understandable in light of marketplace uncertainty, slowed the growth of an innovative and extremely consumer-friendly service. Comcast finally was able to overcome the contractual wrangling and other industry resistance to an innovative business model when it joined with Sony to acquire an ownership interest in Metro-Goldwyn-Mayer ("MGM"). This allowed Comcast to "break the ice" and obtain access to hundreds of studio movies that Comcast could offer for free on VOD. Thanks to Comcast's extensive efforts to foster the growth of this new technology, VOD has gone on to become extremely popular. Comcast customers have now used Comcast's VOD service more than 14 billion times. By championing the growth of VOD, Comcast has been able to benefit not only its customers but also program producers, and it has stimulated other MVPDs to embrace the VOD model.

The formation of the new NBCU will remove negotiation impediments by providing Comcast with control of a rich program library and extensive production capabilities that Comcast can use to develop novel video products and services that will be offered to consumers across an array of distribution platforms. There is every reason to believe that the transaction proposed here will create a pro-consumer impetus for making major motion pictures available sooner for in-home, on-demand viewing and for sustainable online video distribution – which, as the FCC has observed, will help to drive broadband adoption, another key congressional goal.

As noted above, the risk of competitive harm in this transaction is insignificant. Viewed from every angle, the transaction is pro-competitive:

First, combining Comcast's and NBCU's programming assets will give rise to no cognizable competitive harm. Comcast's national cable programming networks account for only about three percent of total national cable network advertising and affiliate revenues. While NBCU owns a larger number of networks, those assets account for only about nine percent of overall national cable network advertising and affiliate revenues. In total, the new NBCU will account for only about 12 percent of overall national cable network advertising and affiliate revenues. The new NBCU will rank as the fourth largest owner of national cable networks, behind Disney/ABC, Time Warner, and Viacom – which is the same rank that NBCU has today. Because both the cable programming market and the broader video programming market will remain highly competitive, the proposed transaction will not reduce competition or diversity, nor will it lead to higher programming prices to MVPDs or consumers, or higher advertising prices.



Even after the transaction, approximately six out of every seven channels carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU.

Second, Comcast's management and ownership interests in NBCU's broadcast properties raise no regulatory or competitive concern. While Comcast will own both cable systems and a stake in NBC owned and operated broadcast stations in a small number of Designated Market Areas ("DMAs"), the FCC's rules do not prohibit such cross-ownership, nor is there any policy rationale to disallow such relationships. The prior cross-ownership prohibitions have been repealed by actions of Congress, the courts, and the FCC. The case for any new prohibition, or any transaction-specific restriction, on cable/broadcast cross-ownership is even weaker today, given the increasingly competitive market for the distribution of video programming and robust competition in local advertising. And, importantly, each of the major DMAs in question has a significant number of media outlets, with at least seven non-NBCU broadcast stations in each DMA as well as other media outlets, including radio. Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain following the combination of NBCU's broadcast stations and Comcast cable systems in each of the overlap DMAs.

Third, the combination of Comcast's and NBCU's Internet properties similarly poses no threat to competition. There is abundant and growing competition for online video content. Although Comcast operates a video site, called Fancast, and NBCU holds a 32 percent, non-controlling interest in Hulu, a site that provides access to certain online video content, the leader in online viewing (by far) is Google (through YouTube and other sites it has built or acquired), with nearly 55 percent of online video viewing. This puts Google well ahead of Microsoft, Viacom, and Hulu (all of which are in low- or mid-single digits) and even farther ahead of Fancast (currently well below one percent). There are countless other sites that provide robust competition and near-infinite consumer choice. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share and face many competitors. On the Internet, content providers essentially control their own destinies since there are many third-party portals as well as self-distribution options. Entry is easy. Thus, the transaction will not harm the marketplace for online video.

Finally, a vertical combination cannot have anticompetitive effects unless the combined company has substantial market power in the upstream (programming) or downstream (distribution) market, and such circumstances do not exist here. As noted, the video programming, video distribution, and Internet businesses are fiercely competitive, and the proposed transaction does not reduce that competition. The recent history of technology demonstrates that distribution platforms are multiplying, diversifying, and increasingly rivalrous. Wired services have been challenged by both satellite and terrestrial wireless services. Cable has brought voice competition to the telephone companies; the telephone companies have added to the video competition that cable already faced; and both cable and phone companies are racing to deploy and improve broadband Internet. Static descriptions of markets have repeatedly failed to capture advances in distribution technologies. In this highly dynamic and increasingly competitive environment, speculative claims about theoretical problems arising from any

particular combination should be subject to searching and skeptical scrutiny, given the accelerating power of technology to disrupt, continuously, all existing market structures.

In any event, there is a comprehensive regulatory structure already in place, comprising the FCC's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law that provides further safeguards against any conceivable vertical harms that might be presented by this transaction.

Although the competitive marketplace and regulatory safeguards protect against the risk of anticompetitive conduct, the companies have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. Moreover, the companies have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction. In addition to the commitment to continue to provide free, over-the-air broadcasting, mentioned previously, the companies have committed that following the transaction, the NBC O&O broadcast stations will maintain the same amount of local news and information programming they currently provide, and will produce an additional 1,000 hours per year of local news and information programming for various platforms. The combined entity will maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints, maintaining the journalistic integrity and independence of NBCU's news operations.

Comcast will commit voluntarily to extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O broadcast stations for as long as the FCC's current program access rules remain in place. Of particular note, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo stations' decisions about whether to sell their programming, or the terms and conditions of sale, to other distributors. It would also adopt the "burden-shifting" approach to proof of discriminatory pricing. And the companies would accept the five-month "shot clock" that the Commission applies to program access adjudications.

The companies also have committed that Comcast will use its On Demand and On Demand Online platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its VOD platforms. Comcast also will continue to provide free or at no additional charge the same number of VOD choices that it now provides free or at no additional charge, and will make available within three years of closing an additional 5,000 VOD choices over the course of a month that are available free or at no additional charge.

As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the

next three years on customary terms and conditions. Independent programmers would be defined as networks that (1) are not currently carried by Comcast Cable, and (2) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of cable networks, as measured by revenues. With respect to public, educational, and governmental (“PEG”) channels, Comcast has affirmatively committed not to migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution, or until a community otherwise agrees to digital PEG channels, whichever comes first.

We have proposed that these commitments be included in any FCC order approving the transaction and become binding on the parties upon completion of the transaction. A summary of the companies’ commitments is attached to this statement.

In the end, the proposed transaction simply transfers ownership and control of NBCU from GE, a company with a very diverse portfolio of interests, to Comcast, a company with an exclusive focus on, and a commitment to investing its resources in, its communications, entertainment, and information assets. This transfer of control, along with the contribution of Comcast’s complementary content assets, will enable the new NBCU to better serve consumers. The new NBCU will advance key public policy goals: diversity, localism, competition, and innovation. Competition, which is already pervasive in every one of the businesses in which the new NBCU – and Comcast Cable – will operate, provides abundant assurance that consumer welfare will be not only safeguarded but increased. Comcast and NBCU will succeed by competing vigorously and fairly.

We intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. We would welcome your support.

## **COMCAST/NBCU TRANSACTION PUBLIC INTEREST COMMITMENTS**

Comcast, GE, and NBC Universal take seriously their responsibilities as corporate citizens and share a commitment to operating the proposed venture in a way that serves the public interest. To demonstrate their commitment to consumers and to other media partners, the parties have made a set of specific, written commitments as part of their public interest filing with the Federal Communications Commission. Comcast, GE, and NBCU are committed to expanding consumer choice, ensuring the future of over-the-air broadcasting, enhancing programming opportunities, ensuring that today's highly competitive marketplace remains so, and maintaining journalistic independence for NBC's news properties. The parties' commitment to these principles will ensure that consumers are the ultimate beneficiaries of the proposed Comcast/NBCU transaction.

### **Applicants' Voluntary Public Interest Commitments**

#### **Local Programming**

**Commitment #1.** The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As Comcast negotiates and renews agreements with its broadcast affiliates, Comcast will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.

**Commitment #2.** Comcast intends to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&O schedules, Comcast believes it can expand the availability of all types of local and public interest programming.

- For three years following the closing of the transaction, NBC's O&O stations will maintain the same amount of local news and information programming that they currently provide.
- NBC's O&O stations collectively will produce an additional 1,000 hours a year of local news and information programming. This additional local content will be made available to consumers using a combination of distribution platforms.

#### **Children's Programming**

**Commitment #3.** Comcast will use its On Demand and On Demand Online platforms and a portion of the NBC O&Os' digital broadcast spectrum to speak to kids. Comcast intends to develop additional opportunities to feature children's content on all available platforms.

- Comcast will add 500 VOD programming choices appealing to children and families to its central VOD storage facilities within 12 months of closing and will add an additional 1,000 such VOD choices (for a total of 1,500 additional VOD choices) within three years of closing. (The majority of Comcast's cable systems will be connected to Comcast's central VOD storage facilities within 12 months of closing and substantially all will be connected within three years of closing.) Comcast will also make these additional choices available online to authenticated subscribers to the extent that Comcast has the requisite online rights.
- For three years following closing, each of NBC's O&O stations will provide one additional hour per week of children's educational and informational programming utilizing one of the station's multicast channels.

**Commitment #4.** Comcast reaffirms its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company, and to apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency and duration.

- NBCU will triple the time that program ratings remain on the air after each commercial break (from 5 seconds to 15 seconds).
- NBCU will make program ratings information more visible to viewers by using a larger format.

**Commitment #5.** In an effort to constantly improve the tools and information available for parents, Comcast will expand its growing partnership with Common Sense Media ("CSM"), a highly respected organization offering enhanced information to help guide family viewing decisions. Comcast will work to creatively incorporate CSM information in its emerging On Demand and On Demand Online platforms and other advanced platforms, and will look for more opportunities for CSM to work with NBCU.

- Comcast currently gives CSM content prominent placement on its VOD menus. Comcast and the new NBCU will work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast and NBCU will explore cooperative efforts to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband.
- Upon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign. The NBCU transaction will create the opportunity for CSM and Comcast to work with NBCU's broadcast networks, local broadcast stations, and cable networks to provide a targeted and effective public education campaign on

digital literacy, targeting underserved areas, those with high concentrations of low-income residents and communities of color, as well as target Latino communities with specifically tailored Spanish-language materials.

#### **Programming for Diverse Audiences**

**Commitment #6.** Comcast intends to expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital broadcast spectrum of Telemundo's O&Os (as well as offering it to Telemundo affiliates) to enhance the current programming of Telemundo and mun2.

- Within 12 months of closing the transaction, Telemundo will launch a new Spanish language channel using programming from Telemundo's library that has had limited exposure, to be broadcast by each of the Telemundo O&O stations on one of their multicast channels. The Telemundo network also will make this new channel available to its affiliated broadcast stations on reasonable commercial terms.

**Commitment #7.** Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.

**Commitment #8.** Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.

- Comcast will increase the number of VOD choices from Telemundo and mun2 available on its central VOD storage facilities from approximately 35 today, first to 100 choices within 12 months of closing and then to a total of 300 additional choices within three years of closing. Comcast will also make these additional choices available online to its subscribers to the extent that it has the requisite online rights.

#### **Expanded Video On Demand Offerings At No Additional Charge**

**Commitment #9.** Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge.

**Commitment #10.** NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer will continue to be made available at no additional charge for the three-year period after closing.

### **Public, Educational, and Governmental (“PEG”) Channels**

**Commitment #11.** With respect to PEG channels, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

**Commitment #12.** To enhance localism and strengthen educational and governmental access programming, Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing.

- Comcast will select five locations in its service area to test various approaches to placing PEG content on VOD and online. Comcast will select these locations to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities, and will consult with community leaders to determine which programming – public, educational and/or governmental – would most benefit local residents by being placed on VOD and online.
- Comcast will file annual reports to inform the Commission of progress on the trial and implementation of this initiative.

### **Carriage for Independent Programmers**

**Commitment #13.** As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions.

- New channels are channels not currently carried on any Comcast Cable system.
- Independent programmers are entities that are not affiliated with Comcast, NBCU, or any of the top 15 owners of cable networks (measured by revenue).

### **Expanded Application of the Program Access Rule Protections**

**Commitment #14.** Comcast will commit to voluntarily accept the application of program access rules to the high definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission’s current program access rules remain in place.

**Commitment #15.** Comcast will commit to voluntarily extend the key components of the FCC’s program access rules to negotiations with MVPDs for retransmission rights to

the signals of NBC and Telemundo O&O stations for as long as the Commission's current program access rules remain in place.

- Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo O&O stations' decisions about the price or other terms and conditions on which the stations make their programming available to unaffiliated MVPDs.
- The "burden shifting" approach to proof of discriminatory pricing in the program access rules will be applied to complaints regarding retransmission consent negotiations involving the NBC and Telemundo O&O stations.
- The five-month "shot clock" applied to program access adjudications would apply to retransmission consent negotiations involving the NBC and Telemundo O&O stations.

#### **Journalistic Independence**

**Commitment #16.** The combined entity will continue the policy of journalistic independence with respect to the news programming organizations of all NBCU networks and stations, and will extend these policies to the potential influence of each of the owners. To ensure such independence, the combined entity will continue in effect the position and authority of the NBC News ombudsman to address any issues that may arise.

#### **Labor-Management Relations**

**Commitment # 17.** Comcast respects NBCU's existing labor-management relationships and expects them to continue following the closing of the transaction. Comcast plans to honor all of NBCU's collective bargaining agreements.



Mr. BOUCHER. Mr. Zucker.

**STATEMENT OF JEFF ZUCKER**

Mr. ZUCKER. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify here today. As the President and CEO of NBC Universal, I am proud to lead an iconic media company shaped by two great American brands. NBC and Universal. I am grateful for the opportunity to tell you how the proposed venture between Comcast and GE will help NBC Universal thrive and also benefit our local communities, our employees, and the American consumers who enjoy our content.

In today's intensely competitive, unpredictable and dynamic media markets, this deal is critical to realizing these benefits. The marketplace that I live in is a mediawide free-for-all, a media donnybrook, whether you look at the overall media marketplace, the cable channels, broadcast networks or the Internet. There will be more change in our space in the next 5 years than there has been in the last 50. This deal will not change the fundamental competitive dynamic or the extraordinary rate of technological change, but it will help NBC Universal compete in the new media world.

Why is this transaction good for NBC Universal, for the U.S. economy, and the consumers we serve? My answer can be captured in two words, investment and innovation, both of which I believe are essential if we are to remain a vigorous competitor in the 21st century media market and a growing source of high-wage jobs in an economy starved for employment.

First, investment. The creative programming that lies at the heart of our business is neither easy nor inexpensive to produce. The entertainment programming on our broadcasting and cable networks will require an investment this year of nearly \$4½ billion. Every year we invest another billion dollars in news gathering and news production. An investment of half a billion dollars annually makes Telemundo the leading U.S. producer of Spanish language programming. In a highly competitive, unpredictable and dynamic media marketplace, Comcast desires to expand our business and investing in programming will benefit NBC Universal, the American consumer, and the U.S. economy.

Also with regards to investment, Comcast's written commitment to over-the-air broadcasting has been widely underappreciated. In addition, Comcast has expressed a willingness to play a constructive role in the business negotiations between broadcast stations and MVPDs. Those two positions could play a pivotal role in finding the sustainable new business model for the struggling broadcast business.

Second, innovation. We believe Comcast's history of delivery, innovation, and technological vision will help us better serve the 21st century consumer. We must find the sustainable business model to meet consumer demands for access to programming anytime, anywhere. We need to be more nimble in taking advantage of new digital distribution capabilities, on demand, on line, mobile and beyond.

This venture with Comcast positions NBCU to be a leading innovator in delivering content to consumers where they want it, when they want it, and how they want it.

In this extraordinarily competitive industry, sustained investment and innovation will be the keys to remaining a vigorous competitor. This is not your father's media market. Less than 40 years ago, three companies enjoyed 90 percent of all television viewing. Oh, how simple it was. Today the world could not be more different. Each of the five largest media companies in America now only account for between 5 and 10 percent of all viewing, and a multitude of smaller competitors actually account for half of all television viewing. The new NBCU's cable channel business, where we will add Comcast networks, will account for just 7 percent of total viewing and be fourth by revenue among owners of national cable networks.

Television is also a shrinking proportion of the media market. People today choose not only between broadcast and cable television but increasingly the Internet, Xbox, iPhone and PlayStation and so many other new platforms and technologies for their media choices. Very simply, this transaction will not change the tidal wave of competition inundating today's media market. The big winner here is the consumer. More investment leads to more and better content, more innovation leads to more access anytime, anywhere.

Let me close by saying how grateful I am for GE's excellent stewardship of NBC Universal. GE has invested more than \$22 billion since 2000 and built NBC Universal into the diversified and vibrant broadcast, cable, film, cable programming and media company that we are today. With this deal, GE will have billions of dollars to invest in new technologies and jobs in its core business.

I could not be more excited about the future of this company. This deal will give us the resources and the tools to innovate and adapt in an unpredictable media world and meet the needs of 21st century consumers.

Thank you for the opportunity to testify, and I look forward to answering any questions that this subcommittee may have.

Mr. BOUCHER. Thank you very much, Mr. Zucker.

Ms. Abdoulah.

#### **STATEMENT OF COLLEEN ABDOULAH**

Ms. ABDOULAH. Hi. I am very proud to be here. Oh, is this on? Hi, I am very proud to represent WOW and the American Cable Association. We are a broadband competitor in five markets in the Midwest. One million of the households that we pass directly compete with Comcast in Michigan and Illinois. I know customers appreciate having competitive choice. They do not choose WOW because we are the low-cost provider, they chose us because we differentiate ourselves based on the service experience that we provide.

Customers recognize this. We have received 10 JDPower awards for service. Just recently they awarded us the First Place Provider of Internet, phone and cable in Consumer Reports. I don't tell you about this recognition to brag, but to illustrate that when we have direct influence and control over our operations, we can be very customer-centric and focus on what the customer needs and wants.

Yet as a buyer of content of both cable and online, we face a different set of challenges. We buy most of our content from a handful

of large-content providers who have significant market power and leverage. The prospect of having Comcast NBCU as the largest vertical integrator of content as my direct competitor does concern me, and it concerns me because the combined company will have power, full ability, and incentives to possibly hurt a competitor like us and increase our costs. I have these concerns because of current behaviors and experiences that we have today.

Now, the reality is that whether the distribution medium is broadcast cable, online or mobile, video content is key. So content negotiations are critical for us. The behaviors we experience today during those negotiations are things like price value. Not all content is created equal, yet content providers come—who have large market power—come to the table with their network offerings packaged in a take-it-all, or take-it-or-leave-it kind of fashion. Meaning that low-value networks, not highly viewed or wanted by customers, are associated with or packaged with the high-value networks that we need to buy in order to compete. And the issues with this are several. One, we end up using channel space for networks customers don't want and aren't viewing, channel space we could give to independent networks. And it consumes our valuable bandwidth that we would rather allocate to advance services that we know customers want, HD, Video on Demand, interactive, and especially faster online speeds.

Then there is carriage availability. Content providers with large, significant market power can withhold or delay launch timing by slow-rolling the negotiations. One example of this is for online content. The concept of TV Everywhere, which basically involves packaging cable networks and allowing them to be viewed by your broadband customers, I think Comcast brands their XFINITY. We went to Comcast, we went to the other networks, and we asked for rights to access that programming for our broadband customers. To date we have been denied that access.

A cable example. We were negotiating with a network that Comcast has a significant investment in. During that negotiation, the networks refused to include the rights to their advanced programming that they were developing. And the bottom line is this: We are not here to whine or ask for special advantages because we are the smaller guy.

I believe in competition. As my peers here have said, it breeds creativity, innovation, and especially a clear focus on the customer. And I think our JDPower and Consumer Report ratings validate that.

We simply ask for a thorough and thoughtful consideration of specific conditions that may be imposed so that we can continue to preserve and promote the competitive choice that we provide and that Congress sought in the 1992 and 1996 acts.

The types of conditions we would ask for are the following: the terms and conditions for access for content, whether it is cable, online, or otherwise, should be the same terms and conditions that are available to Comcast.

And then, business is business. If there is a time when discriminatory behavior occurs and market power is—and leverage is exerted inappropriately, I really ask for a remedy structure that is meaningful and accessible for companies like WOW.

The current retransmission consent and program access complaint procedures do not help us. An outside arbitration process does not help us. And the reasons are they are time-consuming, they are very costly, they don't ensure continued carriage while you are in dispute, and especially they place the burden of proof on the complainant who doesn't have the access to the data, since there is absolutely no pricing transparency. So to protect the competition and consumers from this combination, regulators must impose different and better remedies for us, and we look forward to participating in that process.

Thanks for having me.

Mr. BOUCHER. That you very much, Ms. Abdoulah.

[The prepared statement of Ms. Abdoulah follows:]

**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**

**FEBRUARY 4, 2010**

Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee, thank you for inviting me to appear today to testify on the proposed combination of Comcast and NBC Universal. My name is Colleen Abdoulah, President and CEO of WOW!, a terrestrial-based competitive provider of cable television and other broadband-related services operating in Illinois, Indiana, Michigan and Ohio.<sup>1</sup> In those markets, we face some of the most intense competition in the United States, going toe-to-toe with multiple providers of video, Internet, and voice service.

Customers appreciate having a choice of communications providers, and when they choose WOW!, it is because we offer great value at a fair price. Our true differentiation is the customer experience we provide, from the products we offer, to how we sell, install, and service them. It is for that reason that I am especially proud that *Consumer Reports* just ranked WOW! as the “Number 1” provider of video, Internet, and voice services in the United States, outperforming AT&T, Comcast, and satellite providers. In addition, in 2009, we were ranked highest by J.D. Power and Associates for overall customer satisfaction among television, Internet, and residential phone providers in the North Central Region. WOW! has received 10 of these awards in the past five years. These awards are not serendipitous. Since our inception, WOW! has been dedicated to caring for and respecting our customers, and it is heartening that in turn our customers appreciate what we do for them.

In our Chicago and Detroit markets, covering approximately 1 million households, as a multi-channel video distributor (MVPD), WOW! competes directly with Comcast’s cable systems. It also competes with both Comcast and NBC’s television stations in the local advertising market and now with their Internet distribution platforms. Equally as important, especially in the context of the proposed combination, WOW! is a major consumer of content from Comcast and NBC Universal. The Federal Communications Commission (FCC) classifies some of this content as “must have” programming, and we know that other content is much in-demand by our customers. In reviewing this proposed combination, it is not critical that content be “non-replicable” or “must have” – only that the content be sufficiently desirable to enable the entity owning or controlling it to possess market power as a result. Moreover, once an entity has

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<sup>1</sup> WOW! began operations in March 2000 in the Denver market, and in 2001 it acquired Ameritech’s extensive competitive cable television systems in the Midwest. Today, it serves approximately 465,000 customers.

“market power content,” it can, and many do today, leverage it in a number of ways, many of which are discussed in this testimony. For instance, television network owners with market power today, bundle their low-value content with higher-value networks, which in essence compels WOW! to carry non-consumer requested programming. In sum, WOW! has a major vested interest in the federal government’s review of the proposed combination to ensure that it neither harm consumers nor a vibrant competitive marketplace.

I am also here on behalf of the American Cable Association (ACA), which represents approximately 900 smaller MVPDs that operate in every state. Just like WOW!, many of these providers compete as described above with Comcast and NBC Universal, and all of them are consumers of content from these two entities. So, harms caused by the proposed combination will be felt across the country.

In addressing the proposed combination of Comcast and NBC Universal, I am going to focus on three critical points:

- First, this is an unprecedented deal, which, if consummated, would substantially increase the market power of Comcast, threatening consumers and competition in the traditional and the rapidly evolving Internet content and distribution arenas. In fact, Comcast and NBC Universal have already admitted that the deal raises competitive concerns and have proffered a series of voluntary, albeit completely inadequate, commitments to address these concerns.<sup>2</sup>

Contrary to the claims of Comcast and NBC Universal, the proposed combination is not a mere vertical integration of Comcast’s distribution assets with NBC Universal’s programming assets.<sup>3</sup> Rather, the deal greatly increases horizontal concentration by effectively combining key content assets from the two firms, as well as important distribution assets. This increased market power can then be employed vertically by the combined entity to threaten competing video distributors.

- Second, in fashioning relief to address the anticompetitive harms caused by the proposed combination, we need to learn from and correct the many inadequacies in remedies imposed or accepted by agencies to settle other

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<sup>2</sup> While on their face the Comcast-NBC Universal “commitments” may superficially reflect access to programming (broadcasting and otherwise) concessions, in reality they provide neither material certitude of program access nor assurance of a level playing field with regard to terms and conditions for access. For example, using the same methodology for resolution of discriminatory pricing and terms in future Comcast-NBC Universal retransmission agreements as exists under the FCC’s Program Access Rules (which are slated to expire in 2012) is a remedy without a solution given the time and cost of seeking a resolution and discontinuance of program access during the pendency of a complaint.

<sup>3</sup> The vertical integration issues raised by the proposed combination, of course, raise anticompetitive concerns that the FCC and Department of Justice must address.

combinations. Comcast has proven itself particularly adept at weakening or even rendering meaningless any such relief.

- Third, because of the substantial and far-reaching problems posed by the deal, the federal agencies need to proceed deliberately in their review with an eye toward imposing meaningful relief that will remedy the many harms that would be caused by the potential combination. This is especially the case because Comcast and NBC Universal are seeking to combine assets in an attempt to obtain greater market power not only in today's traditional multi-channel video market, but also in the next-generation "over-the-top" Internet video market.

**I. The Proposed Combination is Unprecedented and Will Greatly Enhance Comcast's Market Power**

I have been in the cable industry for more than 25 years and have tremendous respect for Comcast and Brian Roberts and for NBC Universal and Jeffrey Zucker and their employees. Over the past decade, these gentlemen and their two firms have amassed a series of impressive assets. Comcast is by far the leader in cable distribution and controls extensive content, including its highly potent regional sports networks (RSNs) and its new video-on-demand offering. It also has developed a TV Everywhere type of service called Fancast XFINITY, tying its cable customers to video services provided on the Internet through its broadband access network. NBC Universal also controls key content distribution assets – both its traditional owned-and-operated stations and the Internet-provided Hulu platform – and an impressive array of content through its movie studio, broadcast network and its many cable channels.

As I indicated at the outset of my testimony, WOW! competes directly with Comcast and NBC Universal, and we have more than held our own against these companies despite having fewer customers and resources. WOW! has no problem with robust competition. However, when your competitor also is a major vendor, supplying video content essential or important for any competitive provider to access, problems constantly arise. Over the years, WOW!, like most of us in the cable industry, has wrestled with each of these two firms individually to obtain content, and there is little doubt they have used their market power in these negotiations to extract additional value and obtain an advantage in the distribution market.

What concerns me and I believe should concern the FCC, Department of Justice, and you about this proposed combination is that the problems WOW! sees in the current market are surely going to be exacerbated when the two firms come together. Those problems harm the consumer and the overall marketplace in many ways, including by abnormally inflating prices, reducing distributors' ability to tailor program offerings to consumer interests, and ultimately limiting broadband services as distributors are forced to expend bandwidth for services consumers do not want.

**A. Current (Pre-Combination) Problems Faced by WOW! and Smaller MVPDs in Accessing Content**

To understand the harms that will occur post-combination, it is first essential to understand the anticompetitive acts that occur in the industry today. Because I am forbidden by confidentiality clauses in agreements with Comcast and NBC Universal from disclosing specific terms and conditions, I will describe for the Subcommittee general and frequent problems that MVPDs have encountered and currently face when negotiating content deals.<sup>4</sup> These should provide you with a more complete understanding of why today's system is not as consumer-centric as it could and should be and why, after this combination, consumers and non-vertically integrated competitive providers such as WOW! will be even more disadvantaged. Anticompetitive behavior such as the following regularly occur:

1. After entering into a distribution deal with a competitive MVPD, a RSN affiliated with a competing incumbent cable operator went back into the local professional sports rights marketplace and outbid an existing rights holder, a local broadcast station, for a package of professional sports games. Then, despite having an existing agreement, the RSN demanded a significant surcharge from the competitive MVPD in exchange for the rights to add these new games to the existing package. To add to the harm, the broadcast outlet that lost the product dramatically increased its demands for retransmission consent fees to compensate, in part, for the loss of revenue associated with the games. The competitive MVPD was faced with a poor choice: try to compete in the marketplace without key sports product, or pay twice, in effect, for the same set of games.
2. In negotiations for retransmission agreements, major owned-and-operated television network stations have conditioned any agreement with MVPDs upon carriage of infrequently-viewed networks because it drives their advertising revenues. As a result, the MVPDs were unable to carry networks with greater viewership or niche networks requested by their subscribers, and, because these "extra" networks used valuable bandwidth, the MVPDs were constrained in dedicating increased bandwidth for broadband services.
3. A MVPD attempted to negotiate a carriage agreement with a network that is partially owned by a large content provider. The network refused to grant the MVPD carriage rights for advanced platform content it was thinking about deploying -- HD, VOD, and online. However, the network reserved the right to provide this advanced content on an exclusive basis, or simply at more favorable terms, to larger competing providers operating in the same markets. This would have the effect of making the MVPD's product offerings less competitive with these larger providers, thus limiting consumers traditional and online choices.

<sup>4</sup> Confidentiality clauses are important to preserve the integrity of the negotiation process and relations between firms. However, government entities are entitled to receive agreements despite these clauses if they issue a subpoena or make a similar demand. WOW! and ACA members intend to cooperate fully with the FCC and the Department of Justice as they review the proposed combination and will respond promptly to all demands for information.



4. Content providers with market power are increasingly demanding “take it or leave it” “rate resets” during contract renewal negotiations, enabling them to automatically pass-through increased content costs. Consumers are harmed by the pass-through of some of these inflated costs; the competing MVPD is harmed when it must absorb the remaining costs, thereby diminishing the resources needed to offer content from smaller providers as well as implement advanced services.

5. Content providers with significant market power sometimes demand a higher penetration of distribution for their video services from smaller operators than they do from larger distributors. If even a relatively small number of new or existing video subscribers choose the lower-cost “broadcast basic” tier, the penetration of the higher-cost “expanded basic” tier could fall below the required penetration floor. The only remedy in that case would be to migrate the cable network(s) in question to the Limited Basic tier of service, forcing additional programming cost on those subscribers who may least be able to afford it -- and, in the process, causing the entry-level video offering to become less competitive from a retail pricing perspective than that offered by large competitors who may not have equivalent penetration requirements.

6. A MVPD has most recently experienced problems with initiating its own version of Comcast’s Fancast XFINITY TV service because it has been unable to obtain content from Comcast and other content providers with whom Comcast has struck deals. This despite the fact that Comcast claims the content used in its online service is non-exclusive. This highlights the fact that mere promises of non-exclusivity offer very little. An entity can obtain a de facto exclusive by slow-rolling negotiations or by offering the product at unreasonable rates, terms, and conditions. In the end, consumers lose as the face more limited options.

**B. Harms to Competition Arising from the Proposed Comcast- NBC Universal Combination**

With the proposed combination, the issue is whether post-combination Comcast is able to use the newly aggregated assets and market power to engage in substantially enhanced anticompetitive activities, including by raising prices significantly, withholding or discriminating in providing access, mandating uneconomic tiering or minimum penetration requirements, or forcing unreasonable tying or bundling arrangements. The readily proven response is that of course it does given the assets that the combined entity will control post-combination and given the current anticompetitive behavior of the two firms.

While couched in terms of synergies and growth opportunities, at its heart, the Comcast-NBC Universal deal is principally driven by the aim to lock-up a wider array of key content (a horizontal combination) and use that enhanced power vertically to reduce or eliminate competition, in either traditional or Internet-based markets. Let me elaborate.

In a series of rulings over the past five years -- one just the other day -- the FCC has determined that sports programming was “non-replicable” or “must have.” In other words, a

video distributor such as WOW! or other ACA members could not succeed if it could not give customers access to such programming. The Commission has reached a similar conclusion for television network programming, which combines the value of prime-time content with extensive sports content. A main driver of the proposed combination is to “lever” these two “must have” and currently competing content anchors and squeeze unaffiliated downstream multi-channel video providers to extract appreciably higher fees.<sup>5</sup> In the post-combination world Comcast will have so much power that it can create its own economic reality and make one plus one equal five. This makes every distributor in the United States quake as they will be forced to pay more for the content so essential to their businesses. Further, it means that American consumers will pay more as well. This is the antithesis of a pro-competitive deal.

Two examples will help make this point clearly. In Chicago today, WOW! carries 19 networks from Comcast and NBC Universal, including both Comcast’s regional sports network and NBC’s owned-and-operated television station. We negotiate separately with the two firms, and, although it is quite limited because each firm leverages its existing “market power content” to the maximum extent, we have some limited maneuverability regarding the rates, terms and conditions for carriage. Post-combination, even this very limited flexibility evaporates, and we will face a “take-it or leave-it” deal – which, because it contains much increased “market power content,” we must take.

An ongoing battle between Comcast and competing video distributors in California provides more specificity on how Comcast can extract added value when it controls two separate “must have” networks. Historically, Comcast’s regional sports network in the Bay Area carried all local sports teams, and competing video distributors were able to acquire this content, albeit at very high prices. Then, just a short time ago, Comcast removed two of the local teams’ games from the Bay Area network and placed them on a separate regional sports network in Sacramento, which was not previously carried by the other providers. The competing distributors thus were forced to either pay for two networks – although the amount of content from in-market sports teams did not increase and the price for the Bay Area network did not decrease -- or deprive their users of much-in-demand content. This is just one of the many strategies Comcast can employ and expand upon if this proposed combination is approved.

This enhanced market power, of course, poses the major concern for providers, like WOW!, that rely on access to key content – such as Comcast’s Chicago RSN and NBC’s “O&O” station in Chicago -- and that are competing directly with Comcast’s Chicago cable systems. Numerous studies, including from U.S. General Accountability Office, have demonstrated that competitors like WOW! provide real competition to incumbent cable providers and tangible benefits for consumers. As I discussed at the outset, WOW! has received an unprecedented

<sup>5</sup> In their application to transfer control filed last week with the FCC, Comcast-NBC Universal contend there is not an issue with regard to RSNs arising from the proposed combination. However, they only arrive at this contention by artificially pigeon-holing RSNs into their own submarket. In this testimony, WOW! has provided one example of how RSNs and local television networks compete directly, which demonstrates the fallacy of Comcast-NBC Universal’s market definition, and other distributors and WOW! can provide additional evidence supporting a conclusion that a more expansive market definition is justified.

number of awards for providing an exceptional service experience compared to incumbent providers. However, if WOW! is forced to either forgo access to content or pay supra-competitive prices or face anticompetitive terms and conditions for it, all of this is placed in jeopardy.

Moreover, WOW! is not the only competing video distributor in an extremely vulnerable position. DirecTV, Dish, Verizon's FiOS, and AT&T U-Verse are all in Comcast's cross-hairs. In fact, with the advent of Internet-delivered video content, the hundreds of ACA members who currently do not compete with Comcast's cable systems become new targets. Comcast will be able to present them with the simple proposition: if you want your customers to have access to our content, you will now pay supra-competitive prices both to acquire Comcast-NBC Universal's "must have" content for traditional cable customers and to allow your customers to access this content as an Internet-delivered service. Heads, Comcast wins; Tails, Competition and Consumers lose.

Finally, if WOW! must pay the combined Comcast-NBC Universal supra-competitive prices for content or must accept anticompetitive terms and conditions, such as unreasonable tying, tiering, or penetration requirements, it will have little choice but to either raise prices for its customers far above what would occur in competitive markets or limit the content it acquires from other suppliers, including smaller, independent providers. Moreover, WOW! can envision that the combined entity will make demands much greater than today and that are so onerous that we will have to continue to shrink the bandwidth we would dedicate for advanced services and broadband offerings. This runs directly counter to the federal government's vision of expanding and enhancing next-generation Internet access services for all users.

## **II. Traditional Behavioral Remedies are Insufficient to Remedy the Harms that Arise from the Proposed Combination**

In fashioning relief to address the harms that would arise if Comcast and NBC Universal were permitted to combine, it is important to review the history of the Congressionally mandated program access requirements and merger-related conditions and understand they are so flawed as to provide ineffective relief. The program access statute, passed as part of the 1992 cable legislation, sought to address the market power that large cable operators had acquired and which they used frequently to squeeze programmers not affiliated with them and to refuse to sell (or otherwise discriminate in the sale of) affiliated programming product to competing distributors. The FCC promptly implemented the statute by adopting rules, but it became quickly apparent that there were so many loopholes in the rules that incumbent cable operators and their affiliated programmers could readily avoid them. For example, program access remedies contain an enormous loophole that permits entities to justify discriminatory practices by claiming they are based on volume-rated cost differentials, although there is scant evidence of any cost-based rationale. Another loophole permits programming vendors to artificially establish a high market rate, which its affiliated distributor "kicks-back" to the vendor. As for the program access complaint process, there is no prohibition on programmers requiring the distributor to remove the network upon expiration of an agreement while a program access complaint is pending. Further, the costs and time associated with pursuing a complaint are so prohibitive that they are beyond the reach of most small operators.

The FCC sought to tighten these loopholes in subsequent mergers between content providers and distributors, for instance, by permitting complainants to use third-party arbitration or collectively bargain for rights. But, here again, programmers affiliated with larger cable operators quickly found how to beat the system. WOW! considered using the arbitration process imposed on Comcast in the Adelphia decision but determined the cost of the process was likely to exceed \$1 million, take one year or longer, and require key personnel to take large amounts of time from their regular jobs. In other words, the costs of using arbitration were going to be close enough to the extra price Comcast was going to charge us in the first place. Instead, we had no choice but to “eat” an enormous rate increase to carry Comcast’s RSN. In effect, the program access process has essentially given us a right without a remedy. It would be a grave error to buy into the contention of Comcast and NBC Universal that these processes constitute a legitimate backstop for anticompetitive harms arising from the deal.

WOW! and the ACA are committed to addressing problems with behavioral relief and devising enhanced measures. For instance, among the many remedies we are considering proposing to the FCC and the Department of Justice that would be necessary to address the potential harms are the following:

- **Non-Discriminatory Rates and Terms.** All Comcast-NBC Universal content (whether broadcast, satellite, terrestrial or online) would be available on a non-discriminatory basis, with rates based on a Most Favored Nation or other benchmark.
- **Prohibitions on Content Tying, Bundling and Similar Practices.** Comcast-NBC Universal would be prevented from tying and bundling its services, from requiring carriage of content on a particular tier or level of service, and from penetration or buy-through requirements that disadvantage one provider compared to another.
- **Program Access Arbitration Reforms.** To resolve any program access complaints, unaffiliated MVPDs should be permitted to elect third party review and, thereafter, binding arbitration in connection with the reasonableness of program access and retransmission consent terms and condition (including those between Comcast and NBC Universal). While the third party review or arbitration is pending, unaffiliated MVPDs would be permitted to continue to carry the programming under the terms and conditions of the existing or expired agreement.

Even with potentially enhanced behavioral remedies, given that the harms from the proposed combination of Comcast-NBC Universal are so severe, the FCC and Department of Justice must seriously consider structural relief, including divestitures of assets that are the cause of the harms. The great value of structural relief is that it creates the proper, pro-competitive market dynamic and minimizes any regulatory gaming that can occur. WOW! and the ACA were most heartened to see the Department of Justice rely on structural relief (a divestiture) in the recently negotiated Ticketmaster consent decree.

**III. Because of the Substantial and Far-reaching Problems Posed by the Deal, the Federal Communications Commission and the Department of Justice Should Proceed Deliberately**

The proposed combination of Comcast and NBC Universal would bring together the leading content distributor and a major content provider with a major television network distributor which creates and controls effectively essential content. As a consequence, the proposed combination raises critical concerns about the anticompetitive effects on a variety of markets and consumers throughout the country. In my testimony, I have briefly discussed harms from increased horizontal concentration of content, enhanced vertical integration of content and distribution, and further horizontal concentration in distribution markets. I also have raised concerns about the harms that would result with the efforts of Comcast and NBC Universal to extend their market power from the traditional communications markets to the Internet. I know that other interested parties, including consumer groups, have raised concerns which include: higher prices for consumers, particularly those in rural areas, fewer programming choices, increased difficulty by unaffiliated content providers to obtain equitable distribution agreements, less competition in local advertising markets, and lost jobs. In light of the magnitude of the proposed combination and its potential to drastically alter the competitive landscape in traditional and new content and distribution markets, the federal agencies need to proceed deliberately to gather, understand, and analyze all relevant data. WOW! and the ACA ask that they be permitted to do their jobs correctly.

**IV. Conclusion**

The proposed combination of Comcast and NBC Universal places federal decision-makers at a crossroads: will the agencies have sufficient foresight to adopt the necessary robust relief that will enable them to get ahead of anticompetitive problems caused by the proposed combination, or will they proceed cautiously waiting first to see if prices rise, jobs are lost, and firms go under? If the FCC and Department of Justice ignore or treat lightly the potential harms or provide inadequate relief, the already disturbing trend of big content and distribution mergers will only accelerate, all riding on the precedent of this deal. As a result, consumer hopes for greater choice will be dashed. On the other hand, if the federal agencies address the grave potential harms with robust relief as described above, incumbent entrepreneurs will expand their businesses and new ones will rush into the market – all to the benefit of American consumers. The consequences of these choices make this proposed combination a “big deal.” WOW! and the ACA look forward to working with the Congress and the agencies as the review proceeds and as the agencies fashion relief to address anticompetitive harms.

Mr. BOUCHER. Mr. Fiorile.

# **STATEMENT OF MICHAEL FIORILE**

Mr. FIORILE. Chairman Boucher and members of the subcommittee, my name is Michael Fiorile. I speak to you today as Chair of the NBC Television Affiliates Board, representing some 200 independently owned local television stations. For more than 60 years now, the affiliates and NBC have worked together as partners. The result has been free and universally available local and national news, weather, sports, emergency information, and some of the highest quality programming.

The question today is whether or not the benefits of this partnership produces for local viewers in your districts will thrive if and when Comcast owns NBC. The NBC Affiliates Board has been very pleased to hear Comcast's response to this key question. Steve Burke, the Chief Operating Officer at Comcast, has assured us on more than one occasion that the company's intent is to grow our partnership, providing free and over-the-air television service through the affiliates. In fact, also, Comcast's desire to retain NBC's 10 owned and operated television stations in some of our country's largest cities is very important to us, and we support that. Ownership of these stations will provide Comcast with a direct stake in serving local television viewers just as the affiliates have.

This is a very positive start, but at this point it is in fact just a start; the fact that never before has a major cable operator controlled one the four major broadcast networks is here. The stakes for free local television service and for viewers are too high to leave the statements alone.

In the weeks ahead, the Affiliates Board and Comcast have work to do. Together we hope to design and agree upon clear, specific, and enforceable conditions defining what it means in practice for Comcast to deliver on its promise to uphold the network affiliate partnership for free, local television service that has served viewers so well for so long.

We have Comcast's word on these principles and we look forward to getting to specifics such as those that had been proposed in the application. First, there must be protections in place to prevent the erosion of the NBC Network through migration of popular NBC news, sport and entertainment content and talent to cable channels or to other pay services. For example, consider the prospect, if you will, of NFL football games, currently broadcast for free by NBC affiliates, migrating to a Comcast sports channel. Or consider NBC Nightly News moving to a pay channel. That would be an immediate and a significant loss to affiliates and to all of our viewers. The public and the affiliates also need assurances that Comcast will continue to invest in new and compelling sports news and entertainment programming for the NBC Network.

Secondly, Comcast must not interfere with NBC's affiliates' right to serve our local communities as the first point of availability of network programming. This longstanding principle serves the network, serves the affiliates and consumers by maintaining the broadcast medium with its unique reach and accessibility to view-

ers as a strong and economically viable platform provided free to all Americans.

And thirdly, this transaction raises questions about retransmission consent. As you know, thanks to this committee and others in Congress, retransmission consent is a market-based mechanism that clearly works. It supports stations' investment in local and national programming. The Comcast-NBC transaction could threaten this essential economic foundation of NBC affiliates' localized services. It puts the station's supplier of network programming and their single largest distributor under one roof. Simply put, Comcast should not use its control of the NBC Network to undermine the market for retransmission consent of affiliate signals on Comcast systems.

One way to address this concern is to keep network affiliation negotiations with the NBC Network and to keep retransmission consent negotiations with Comcast Cable separate in the future, as they are today. We are also considering other ways to preserve retransmission consent because of its vital role in the underpinning of local service that we provide to communities.

So you have heard briefly about three principal areas of concerns to the affiliates. Given your oversight role, we would hope and we would encourage you to encourage the FCC to adopt the necessary conditions to protect consumers' continued access to free quality local television. Like the commitments Comcast has volunteered in its application, these conditions need to become part of the FCC's order and need to be binding.

Comcast and the affiliates are off to a very promising start in fleshing out the principles which both of us consider very important. With concrete and enforceable safeguards and conditions, we believe this transaction can actually strengthen the ability of affiliates and NBC to serve our communities for many, many years to come, and we know from discussions with Comcast that Comcast shares these goals.

And I thank you for the opportunity to be here today.

Mr. BOUCHER. Thank you, Mr. Fiorile.

[The prepared statement of Mr. Fiorile follows:]

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY AND THE INTERNET  
OF THE COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES

**Testimony of Michael J. Fiorile**  
**Chair**  
**NBC Television Affiliates Board**

**An Examination of the Proposed Combination  
of Comcast and NBC Universal**

**February 4, 2010**

Good morning, Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee. My name is Michael Fiorile. I am speaking to you today as Chair of the NBC Television Affiliates Board. Our association represents some 200 independently owned, local television stations in markets around the nation that are affiliated with the NBC network. These stations make a wealth of local and national programming freely available to their communities. I am also President and Chief Operating Officer of the Dispatch Printing Company, a family owned company that owns, among other local media outlets, WTHR, the NBC-affiliated station in Indianapolis. I appreciate the opportunity to appear before you today.

The proposed transfer of control of the NBC Television Network and the ten NBC owned-and-operated, major-market stations, as well as numerous other media interests, to the nation's largest cable operator presents fundamental questions about our shared future in the media landscape. It is an unprecedented combination involving two companies that create and distribute much of the best television programming in the United States. The local broadcast stations affiliated with the NBC network believe deeply in the value of the network and of the partnership between the network and its affiliates, which has been developed and fostered over



decades of effort. This partnership is one key factor that has enabled us to serve markets from Anchorage to Roanoke with free, high-quality local and national programming.

This transaction presents two questions to affiliates that are at the very core of our ability to continue to serve our communities effectively with free, local and national over-the-air programming.

*First*, will the partnership that has been so carefully fostered between NBC and its affiliates survive, and even thrive, in the years ahead, permitting us to continue to provide and enhance the excellent service that our communities expect?

*Second*, will NBC affiliates continue to have a positive working relationship with NBC under Comcast's control, or will the combination of our network with our largest distributor create undue leverage to the detriment of affiliates and, by extension, to the public we serve?

The answers to these questions have profound implications for the viewing public. The network-affiliate model, which combines the "efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public,"<sup>1</sup> is a key enabler of local community journalism and public service. That partnership produces a free and universally available package of local and national journalism, weather, sports, emergency information, and other programming and services that connect local viewers to one another and the country. Cable and other multichannel video programming distribution ("MVPD") platforms provide few local services of this kind (other than, of course, through the retransmission of local television signals), and their services certainly are not available for free to viewers. Indeed, a 2008 study by the Pew Research Center for the People & the Press confirmed

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<sup>1</sup> H. Rep. No. 200-887, 100th Cong., 2d Sess. 20 (1988).

that free, local television remained the most popular source of news in the United States, with most stations producing an average of 4.1 hours of local news per day.<sup>2</sup> Put simply, the combination of local and national programming aired by an NBC network affiliate is greater than the sum of its parts, enabling local stations to invest more heavily in local programming and services than would be possible without the draw of national network programming.

Thus, let there be no mistake: the stakes in this deal for local communities are high, both for affiliates and the public they serve.

Given the critical importance of a continued and successful partnership between NBC and its affiliates, we have been pleased to hear encouraging statements from Comcast and NBC Universal since announcement of the proposed transaction. A week ago, the parties filed their application for FCC approval of the transaction, in which “Commitment #1” is an assertion that “the combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through broadcast affiliates across the nation” and a pledge to “continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service.”<sup>3</sup> This statement of intent — which has been reiterated in productive conversations that the NBC Television Affiliates Board has had with Comcast — has been a very welcome start to this process.

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<sup>2</sup> See Press Release, Pew Research Center for the People & the Press, Public Evaluations of the News Media: 1985-2009, Press Accuracy Rating Hits Two Decade Low, at 4 (Sept. 12, 2009), available at <http://people-press.org/reports/pdf/543.pdf>; see also *id.* at 14 (noting that the vast majority of Americans “say that if all local television news programs went off the air—and shut down their web sites—it would be an important loss”).

<sup>3</sup> Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, *Applications and Public Interest Statement*, at 40 (filed Jan. 28, 2010) (hereinafter, “Application”). The Application states that these commitments should be included in any Commission order granting the application and “would become binding on the parties upon completion of the transaction.” *Id.* at 38.

Moreover, we fully support and welcome the inclusion of the ten NBC television stations owned and operated by the network within the proposed transaction. We are optimistic that Comcast's control of local NBC television stations in major markets such as New York, Chicago, Washington, Philadelphia, Miami, Los Angeles, and San Francisco will create incentives for Comcast to invest in the NBC television network and local television generally.<sup>4</sup>

Our discussions with Comcast, however, have just begun, and we must now progress beyond general statements of intent. In the weeks ahead, the Affiliates Board and Comcast have much hard work before them to reach clear, specific, documented and enforceable conditions defining what it means in practice for the new Comcast-controlled NBC to be "committed" to the network-affiliate model and the free, over-the-air television platform that has served the public so well for so long — and that Comcast has appropriately stated it will continue. I do not yet know what form those conditions will take, or the precise vehicle or vehicles by which they will be memorialized and enforced.<sup>5</sup> And at such an early stage in the discussion, I cannot yet know with certainty whether these discussions will even result in a common understanding as to appropriate conditions, which, to state the obvious, will be a prerequisite to our support for this transaction.

The Affiliates Board has heard concerns from affiliates nationwide that are inherent in a transaction under which the largest vertically integrated cable operator —

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<sup>4</sup> See, e.g., Comcast Corp., Transcript of Investor Presentation re: General Electric and Comcast Corp. Joint Venture Agreement, at 5 (Dec. 3, 2009) (commentary of Brian L. Roberts, Chairman and CEO of Comcast, noting the "[i]conic broadcasting network of NBC and their 10 local TV stations"), available at [http://www.nbcutransaction.com/pdfs/Comcast\\_Transcript%2012.3.09.pdf](http://www.nbcutransaction.com/pdfs/Comcast_Transcript%2012.3.09.pdf).

<sup>5</sup> We believe that the approach proposed in Comcast's application to the FCC has promise. Under that approach, commitments would become part of the FCC's Order approving the transaction and thereafter would be "binding on the parties upon completion of the transaction." See *supra* note 3. In effect, these commitments would become FCC-imposed conditions like those mandated in prior mergers of major media companies.

regardless of its identity or good track record — acquires one of the four major broadcast networks in the United States.

These concerns, as we see them today, can be grouped under three categories: *first*, protecting the value of the network and the availability of free, over-the-air programming to the public by preventing the siphoning of key programming from the network to Comcast-owned cable channels; *second*, preventing the bypass of affiliates, which would occur if Comcast were to provide the network programming for which affiliates have contracted “first call” rights to competing platforms in their respective markets; and *third* protecting the integrity of the retransmission consent principle.

**1. Preventing Migration of NBC Network Programming to Pay Services.** While we do not anticipate that Comcast would simply “turn NBC into a cable channel,”<sup>6</sup> as some observers have speculated, it could nevertheless gradually migrate some or all of the most compelling sports, news and entertainment programming and talent away from free, over-the-air distribution on NBC to its newly owned cable channels that are made available only to paying subscribers, such as Bravo and USA Network. A related harm would arise if Comcast were to elect not to make the investments in new programming that are necessary to sustain network audiences at current levels or greater, choosing instead to focus its investments on cable channels.

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<sup>6</sup> See, e.g., Jonathan Storm, *Many Possibilities for Comcast and NBC*, Philadelphia Inquirer (Dec. 3, 2009) (opining that Comcast “could turn the NBC broadcast network into a cable TV jewel or bring it even lower than it already is as a cheeseball, all-reality-all-the-time programmer. Or it could just turn it off.”), available at <http://www.philly.com/inquirer/business/78395712.html>; Evan Hessel, *Why Comcast Wants NBC*, Forbes (Oct. 1, 2009) (“[Comcast] could also take the more drastic step of converting NBC, which despite a ratings slide over the past years still produces some of Hollywood's most watched shows, into a cable channel only available as part of a pay TV subscription”), available at <http://www.forbes.com/2009/10/01/comcast-nbc-ge-business-media-cable.html>

This is not to suggest the absence of scenarios in which Comcast's operation of its cable channels could add to, rather than subtract from, the strength of the free, over-the-air broadcast network. Notably, a diversified media company such as Comcast may be well positioned to compete for rights to programming and talent that would benefit the free, over-the-air broadcast network and cable channels alike.

Yet the disappearance of popular news, sports, and entertainment programming from the NBC network would be unacceptably harmful. The net result of migration of content and investments from the NBC network to Comcast's cable channels would be to turn viewers away from NBC programming — harming NBC's local affiliates and diminishing their ability to provide quality local news, weather, and other programming relied upon by local communities, including subscribers of pay television services. The migration, for example, of NFL programming currently broadcast to the public for free by NBC affiliates over to Comcast's sports channel, Versus, could be a significant loss to the public and would be devastating to affiliates.<sup>7</sup>

On a positive note, as discussed above we believe it is important that Comcast retain ownership of the network's ten owned-and-operated NBC stations, providing it with incentive to preserve the strength of the NBC network and local stations. We do not, however, believe that this incentive alone will be enough to ensure against migration of critical network programming to Comcast's cable properties, and we therefore look forward in the weeks ahead to developing with Comcast concrete and enforceable conditions against such migration.

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<sup>7</sup> It is thus noteworthy that in its application to the FCC seeking approval of the transaction, Comcast states, "The transaction will allow for NBC's sports programming to be distributed on [Comcast-owned cable channels] Versus, Golf Channel, and Comcast's multiple [regional sports networks]." See Application at 50.

*2. Preventing the Bypass of NBC Network Affiliates.* One of the core elements of the network-affiliate relationship is the affiliate's contractual right — embodied in every network affiliation agreement — to serve its local community as the first point of availability of network programming. While network entertainment, sports, and news programming may be available on other platforms at some point after their broadcast premiere, such as through streaming video sites, iTunes, and video-on-demand ("VOD") services, the local affiliate provides viewers with the first opportunity to watch such programming. This longstanding contractual principle serves the network and affiliate well by maintaining the broadcast medium, with its unique reach and accessibility to viewers, as a strong and economically viable platform. An affiliate's "first call" right to flagship network programming also serves the public well because it is a cornerstone for the localized services that stations provide to their home communities for free.

A cable operator with a television network, however, has unique incentives to undercut its affiliates to benefit its cable and Internet distribution outlets. Comcast has the means to bypass NBC affiliates on its own platforms or others for which it provides programming, if it were to so choose. According to its latest figures, Comcast has 23.8 million cable television subscribers; the company is thus "principally involved in the development, management and operation of cable networks and in the delivery of programming content."<sup>8</sup> Cable channels, particularly wholly owned channels, are more profitable than broadcast distribution because the owners of highly rated channels are able to command significant subscriber fees in addition to

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<sup>8</sup> See Comcast, Corporate Overview, <http://www.comcast.com/corporate/about/pressroom/corporateoverview/corporateoverview.html>; see also Comcast Corp. Investor Presentation, at slide 9 (Dec. 3, 2009) <http://www.nbcutransaction.com/investor.html>, (estimating that after consummation of the transaction, 80 percent of Comcast's operating cash flow will be derived from the company's cable distribution business).

selling advertising — a dual revenue stream<sup>9</sup> that historically has not been available to broadcasters and is now only beginning to be available, but at depressed rates.

One mechanism by which this bypass could occur is through Comcast's highly developed VOD and broadband platforms. Comcast has attracted customers to its digital cable platform through its VOD offerings as well as an online video site, Fancast.<sup>10</sup> Comcast has described that with Fancast, "We aim to be the one website where you can tune-in, watch, and engage around all the television you love and need to know about."<sup>11</sup> And on its investor website, Comcast asserts that "[w]ith 10,000 choices every month and even more on the way, [the Comcast VOD service] On Demand is a strong differentiator for our video service."<sup>12</sup> Moreover, when it announced the NBC Universal transaction, Comcast explained to investors that "content can benefit distribution,"<sup>13</sup> and in the FCC application seeking approval of the transaction, Comcast acknowledges that "[t]he proposed transaction creates significant opportunities to extend [NBC's broadcast] news programming to other outlets, such as Comcast's local and regional cable networks, VOD, and online."<sup>14</sup> Clearly, Comcast may have incentive to make its VOD platform, Fancast site and/or other wholly owned video outlets the "first stop" for popular NBC network programming.

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<sup>9</sup> See, e.g., Comcast Corp., Transcript of Investor Presentation, *supra* note 4, at 6 (commentary of Brian L. Roberts, Chairman and CEO of Comcast) ("We think cable networks [are] one of the best businesses in the media sector because each channel is its own multimedia brand, with a minimum of two robust revenue streams in affiliate fees and advertising and a great online presence.").

<sup>10</sup> Comcast reports that monthly VOD views on its "On Demand" service increased from 75 million in December 2004 to 334 million in December 2008. See Comcast Investor Relations, Video, <http://www.cmcsk.com/video.cfm>

<sup>11</sup> Comcast Voices (blog of Comcast Corp.), *Fancast.com, Go Ahead and Watch Your Favorite Television Online* (May 6, 2009), <http://blog.comcast.com/2009/05/fancastcom-go-ahead-and-watch-your-favorite-television-online.html>

<sup>12</sup> Comcast Investor Relations, *supra* note 10.

<sup>13</sup> Comcast Corp, Transcript of Investor Presentation, *supra* note 4, at 9.

<sup>14</sup> Application at 40-41.

*3. Maintaining the Integrity of Retransmission Consent.* Every NBC affiliate has two sets of bet-the-company contractual relationships. The first is the affiliate's contract with its network. The second is its complement of retransmission consent contracts setting out the terms and conditions under which its signal is retransmitted on cable systems and other MVPDs. Understandably, then, any combination that would merge both of these relationships into a single entity would raise concerns about the accumulated leverage that could result from one company being the key to both of these relationships. Here, Comcast is the nation's largest cable provider, and it is the major cable partner for a significant number of NBC affiliates. The terms under which the broadcast signals of NBC affiliates are retransmitted by Comcast to its subscribers are critical to the health and well-being of the affiliates and the network-affiliate system that serves the public so effectively.

For example, a combined NBC-Comcast could seek to tie together retransmission consent payments with payments for network programming provided under an affiliation agreement, or force affiliates to accept unfavorable affiliation agreement provisions to obtain market-based retransmission consent payments. In either case, the combined entity would be using its unique leverage over affiliates to undermine their ability to negotiate fair retransmission consent agreements. We have no evidence that current management of Comcast and NBC would undertake these tactics. But management and corporate strategy can change, and we must take a long view of these issues to protect important principles and ensure that the public's access to high-quality NBC-affiliated television stations will not be put at risk.

This is not to say, of course, that the merger cannot be effectuated. Principles that are familiar to this Committee and to the FCC have been developed in other contexts to impose structural separation between subsidiaries whose operations should not be commingled for



certain public-policy purposes. We tentatively believe that a strong set of structural separation requirements for the subsidiaries of Comcast that will negotiate retransmission consent agreements and those that will administer the network's relations with affiliates can permit the combination to go forward while minimizing concerns about maintaining market-based negotiations for retransmission consent.

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In the recently concluded transition to digital television, local television stations — including NBC affiliates — invested billions of dollars to build the infrastructure for state-of-the-art digital broadcasting. These investments have made possible, for the first time, a wealth of free, high definition and multicast programming,<sup>15</sup> in addition to new innovations such as mobile DTV. (Incidentally, these investments also enabled the return of over 100 MHz of spectrum for 4G commercial wireless and public safety uses). The network-affiliate partnership can advance these new digital opportunities and services and build upon these investments. If the NBC network and its affiliates do this together we will continue a long tradition of cooperation and joint ventures that have benefited local communities.

The concerns I have described to you today are not, I am hopeful, insurmountable. With concrete and enforceable safeguards and conditions, this transaction should continue to serve the public interest and strengthen, not diminish, the network-affiliate partnership. We accept that the only certainty in our industry is that there will be continued change. We have been strong believers in the NBC Television Network, as well as free, local broadcasting. We need our network to be owned by a strong partner that will value it as much as we do and will value us. If the core attributes of our relationships with NBC and Comcast can be maintained

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<sup>15</sup> Local television stations are offering some 1,450 multicast streams to the public at this time.

under the new ownership structure, this transaction should strengthen and extend our combined ability to serve the American public with free services in new and interesting ways. We are cautiously optimistic that this goal can be achieved during the process of considering the merger, and that we can move forward together with a renewed sense of shared enterprise to serve the public.

Mr. BOUCHER. Dr. Cooper.

**STATEMENT OF DR. MARK COOPER**

Dr. COOPER. Thank you, Mr. Chairman and members of the committee, for the opportunity to offer a public interest analysis of a merger that is unique in the history of the video market and will go a long way toward determining whether or not the future of the video viewing in America is more competitive and consumer-friendly than the past.

There is another side to this story. Comcast straddles the dominant video distribution platform of the 20th century as the Nation's largest cable operator and the emerging video distribution platform of the 21st century as the Nation's largest broadband Internet service provider. In its cable franchise service territories, the market share of Comcast in these two vital distribution platforms exceeds 50 percent.

Allowing it to acquire one of the Nation's premiere content producers will radically alter the structure of the video marketplace, triggering a bevy of anticompetitive effects that will result in higher prices and fewer choices for consumers. Allowing Comcast to acquire NBC will increase the likelihood that the ugly business model of the cable cartel will be strengthened and extended to the Internet.

There are huge horizontal problems with this merger. Broadcasters and cable companies have a natural competitive rivalry, witnessed every day. They argue about their price, channel location, and carriage of content. The rivalry is so intense that each side has attempted to enter the rival's market in an effort to diminish their market power. They are known as disruptive entrants in each other's market.

This merger would eliminate that primary line of conflict between two of the most important of these potential entrants. These two companies compete for audiences and advertise in a dozen of the Nation's most important local markets, serving about a fifth of the Nation's population. There are more people in the markets where Comcast and NBC compete head to head through NBC O&Os than there are where O&Os own stations and Comcast is not present. There is more population that they compete for directly than they do not.

These two companies compete in the video programming market, where Comcast original sports and news production compete with NBC's news and sports production. Three-quarters of the regional sports networks that Comcast has rolled out are located in the markets where they compete directly with NBC for eyeballs and advertiser dollars. If that ain't competition, there is no such thing as competition. That is horizontal competition.

These two companies compete in cyberspace where NBC has funded an alternative distribution, platform Hulu, as well as numerous Web sites for its media properties. Comcast has launched its own video portal and has big plans to expand that competition. That is head-to-head competition in cyberspace; that is horizontal competition.

By combining its distribution market power, that 50 percent market share, that 24 percent national share of cable viewers, with

a huge portfolio of content, the merger would dramatically increase the incentive and ability of Comcast to raise prices, discriminate in carriage, foreclose and block competitive entry, and force larger programming bundles on to other systems. Those strategies raise prices and reduce choices, as you have heard from Ms. Abdoulah.

The merger has so many anticompetitive and anticonsumer effects that it just can't be fixed, they can't be unraveled. The claim that there is enough other competition to prevent these anticompetitive effects is based on the denial of the existence of a well-recognized \$80 billion multichannel video market. That is a marketplace that we recognize and we can evaluate. The likely response in that market to the creation of a giant that has both massive content and massive distribution is to get the other members of the market to bulk up in the same way. We will lose more choices in that market.

They claim that FCC oversight under current law or Comcast promises to obey the law for a change will protect the public is absurd. The FCC rules have failed to undermine, eliminate, prevent the stranglehold of the cable operators to date. And there is no reason to believe that they will be better able to tame the video giant that will result from this merger.

Comcast public interest promises do not even acknowledge the existence of these horizontal competition problems, not to mention offer serious remedies. Their temporary Band-Aids that have been offered cannot cure the long-term structural injuries that will result from this merger.

For decades Congress has labored to bring consumers price competition in the video market by opening the door to different business models and different technologies, but in every instance, key policy mistakes were made that allowed the cable industry to preserve and extend its market power. This is the first big policy test for the Internet as the alternative video platform that can compete with cable. If policymakers allow this merger to go forward, the prospects for a more competition-friendly, consumer-friendly, multichannel video market will be dealt a setback.

Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Dr. Cooper.

[The prepared statement of Dr. Cooper follows:]



Consumer Federation of America

Testimony of

**Dr. Mark Cooper**  
**Director of Research**  
**Consumer Federation of America**

on behalf of

**Consumer Federation of America**  
**Free Press**  
**Consumers Union**

before the

**U.S. House of Representatives**  
**Subcommittee on Communications, Technology, and the Internet of the**  
**Committee on Energy and Commerce**

Regarding

**An Examination of the Proposed Combination of Comcast and NBC Universal**

**Mr. Chairman and Members of the Committee,**

My name is Dr. Mark Cooper. I am the Director of Research at the Consumer Federation of America. I appear before you today on behalf of the Consumer Federation of America, Free Press and Consumers Union. We appreciate the opportunity to share our views of a merger that is unique in the history of the video market and will go a long way toward determining whether or not the future of video viewing in America is more competitive and consumer-friendly than the past.

The merger of Comcast and the National Broadcasting Company (NBC) is a hugely complex undertaking, unlike any other in the history of the video marketplace. Allowing the largest cable operator in history to acquire one of the nation's premier video content producers will radically alter the structure of the video marketplace and result in higher prices and fewer choices for consumers. The merging parties are already among the dominant players in the current video market. This merger will give them the incentive and ability to not only preserve and exploit the worst aspects of the current market, but to extend them to the future market.

Comcast has sought to downplay the impact of the merger by claiming that it is a small player in comparison to the vast video universe in which it exists. It has also glossed-over the fact that this merger involves the elimination of actual head-to-head competition. Finally, it has argued that existing protections and public interest promises will prevent any harms that might result from the merger. All three claims are wrong.

Neither Comcast's regurgitation of market shares and counts of outlets and products, nor its public interest commitments begin to address the fundamental public policy questions and competitive issues at stake in this merger. Nor can the merger of these companies be viewed separately from the products they sell. NBC and Comcast do not sell widgets. They sell news and information and access to the primary platforms American use to receive this news and information. Control over production and distribution of information has critical implications for society and democracy. As a consequence, the merger of these two media giants reaches far beyond the economic size of the merging parties to the very content consumers receive, and how they are permitted to access it.

Finally, if the size and scope of this merger is not sufficient to give you pause, the past actions of the acquiring party should. Comcast has raised cable rates for consumers every year, and is among the lowest ranked companies in terms of customer service. Comcast is the frequent subject of program access complaints of competing video providers, as well as of discriminatory carriage complaints by independent programmers. Finally, Comcast is on record lying to a federal agency regarding whether they blocked Internet users' access to a competing video application for anti-competitive purposes. These past practices do not bode well for future competition if Comcast is allowed to acquire NBC. Further, Comcast's lack of candor in past proceedings cast doubt on the prudence of relying on Comcast's voluntary public interest commitments as a means of addressing the anti-consumer impacts of this merger.

The goal of mega-mergers such as this is to cut costs and increase revenues. The most direct path to those outcomes are firing workers and raising prices. Cutting jobs is hardly a laudable

goal in the current environment, but the primary “synergy” that mergers produce is the ability to reduce employment by sharing resources between the commonly-held companies. To expect the opposite to happen here based on the evidence-free assertions of Comcast would be foolhardy. Simply put, this merger is about higher prices, fewer choices, and lost jobs.

### **The Biggest Gets Bigger (and Stronger)**

Comcast is the nation’s largest cable operator, largest broadband service provider and one of the leading providers of regional cable sports and news networks. NBC is one of only four major national broadcast networks, the third largest major owner of local TV stations in terms of audience reach, an icon of local and national news production and the owner of one of a handful of major movies studios.

As large as Comcast is nationally, it is even more important as a local provider of video services. Comcast is a huge entity in specific product markets. It is the dominant multi-channel video programming distributor (MVPD) in those areas where it holds a cable franchise, accounting, on average for over half of the MVPD market. It is the dominant broadband access provider in the areas where it has a cable franchise, accounting for over half of that market. This dominance of local market distribution platforms is the source of its market power. The merger will eliminate competing distribution platforms in some of its markets and will give Comcast control over strategic assets to preserve and expand its market power in all of its markets.

Broadcasters and cable operators are producers of goods and services that compete head-to-head, including local news, sports, and advertising. In addition, NBC and Comcast are also suppliers of content and distribution platforms, which are goods and services that complement one another. In both roles there is a clear competitive rivalry between them. For example, in providing complementary services, broadcasters and cable operators argue about the price, channel location and carriage of content. The merger will eliminate this natural rivalry between two of the most important players in the multi-channel video space, a space in which there are only a handful of large players.

These anticompetitive effects of the merger are primarily what antitrust practice refers to as horizontal effects. They are likely to reduce competition in specific local markets – head-to-head competition in local video markets, head-to-head competition for programming viewers, head-to-head competition for distributions platforms. The merger will raise barriers to entry even higher through denial and manipulation of access to programming and the need to engage in two-stage entry. The merger will increase the likelihood of the exercise of existing market power within specific markets, and will increase the incentive and ability to raise prices or profits.

The fact that some of the leverage is brought to bear because of the link to complementary products (i.e. is vertical in antitrust terms), should not obscure the reality that the ultimate effects are on horizontal competition in both the distribution and programming markets. The merger would dramatically increase the incentive and ability of Comcast to raise prices, discriminate in carriage, foreclose and block competitive entry and force bundles on other cable systems. The merger enhances the ability of Comcast to preserve its position as the dominant local MVPD,

reinforce its ability to exercise market power in specific cable or programming markets and extend its business model to the Internet.

We raise these concerns about the merger based on eight specific anti-competitive effects that the merger will have on the video market. The attached exhibit presents the list of distribution and content assets owned in whole or in part by these two companies. The exhibit makes it crystal clear that they do compete head-to-head across a number of product and geographic markets and the assets represent an arsenal of complements that would be powerful ammunition to use as leverage against existing competitors and new entrants.

### **Higher Prices, Fewer Choices, Less Competition**

**(1) This Merger will reduce choice and competition in local markets.** The merging parties currently compete head-to-head as distributors of video content, in local markets. Because broadcasters own TV stations, they compete with cable in local markets for audiences and advertisers -- especially in the production and distribution of local news, and local and political advertising. This merger eliminates this head-to-head competition in 11 major markets where NBC owns broadcast stations and Comcast operates a cable franchise. These 11 markets account for nearly a quarter of U.S. TV households.

This merger also eliminates a competitor for local and political advertising. In fact, in 2006 NBC told the Federal Communications Commission that local cable operators present the single biggest threat to broadcasters in terms of securing local and political advertising.<sup>1</sup> Now that NBC is looking to merge with Comcast, the potential elimination of this local competition has been conveniently ignored. But federal authorities cannot and should not ignore the fact that a merger between Comcast and NBC is likely to cause a significant decline in competition in local advertising markets and excessive domination by the merged company. Not only will advertisers lose an important option, but the merger will be to the detriment of other local broadcasters - particularly smaller, independent ones - who are already facing ad revenue declines in an economic downturn. A stand-alone broadcaster will not be able to offer package deals and volume discounts for advertising across multiple channels the way that Comcast/NBC will be able to do post-merger. That means other local broadcasters will have less money to produce local news and hire staff. To compete, rival broadcasters will have two options: fire staff and reduce production of local news and information; or consolidate in order to compensate for market share lost to the new media mammoth.

**(2) This merger removes an independent outlet and an independent source of news and information.** These two companies compete in the video programming market, where Comcast's regional sports and news production compete with NBC's local news and sports production. By acquiring NBC, Comcast's incentive to develop new programming would be reduced. Instead of continuing to compete to win audience, it just buys NBC's viewers. Where two important entities were producing programming, there will now be one.

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<sup>1</sup> NBC Media Ownership Comments, FCC Docket 06-121 (filed Oct. 2006).



**(3) The merger will eliminate competition between Comcast and NBC in cyberspace.** NBC content is available online in a variety of forms and on different websites and services. Most prominently, of course, NBC is a stakeholder in Hulu -- an online video distribution portal that draws millions of viewers. Comcast has put resources into developing its own online video site - "Fancast" - where consumers can find content owned by the cable operator. The merger eliminates this nascent, head-to-head competition.

Moreover, Comcast is the driving force behind the new "TV Everywhere" initiative. This collusive venture -- which we believe merits its own antitrust investigation--would tie online video distribution of cable content to a cable subscription and pressure content providers to restrict or refrain from online distribution outside of the portal. This is a disaster for video competition. The proposed merger strengthens Comcast's hand in this scheme by increasing their market power in both traditional and online video distribution. Comcast is clearly attempting to control the distribution of the video content it makes available on the web by restricting sales exclusively to Comcast cable customers. It does not sell that content to non-Comcast customers. By contrast, NBC has exactly the opposite philosophy -- or at least it did. Through Hulu, NBC is competing for both Comcast and non-Comcast customers by selling video online that is not tied to cable. NBC also has incentives to make its programming available in as many points of sale as possible. Merger with Comcast will put an end that pro-competitive practice.

**(4) The merger will provide Comcast with greater means to deny rivals access to Comcast controlled programming.** Comcast already has incentive to undermine competing cable and satellite TV distributors by denying them access to critical, non-substitutable programming, or by extracting higher prices from competitors to induce subscribers to switch to Comcast. Post-merger it will have a great deal more content to use as an anticompetitive tool. Comcast has engaged in these anticompetitive acts in the past and by becoming a major programmer it will have a much larger tool to wield against potential competitors. Moreover, Comcast has opposed, and is currently challenging in court, the few rules in place that would prevent it from withholding its programming from competing services.

**(5) The merger will provide greater incentive for Comcast to discriminate against competing independent programmers.** Comcast already has a strong incentive to, and significant track record of, favoring its own programming over the content produced by others with preferential carriage deals. Post-merger it will have a lot more content to favor. The current regulatory structure does not appear sufficient to remedy the existing problem and cannot be expected to address the resulting post-merger threat to independent programmers. The econometric analysis of program carriage indicates there is a great deal of discrimination occurring already. The fact that the FCC is continually trying to catch up with complaints of program carriage discrimination is testimony to the existence of the problem and the inability of the existing rules to correct it.

**(6) The merger will stimulate a domino effect of concentration between distributors and programmers.** The new combination will create a major asymmetry in the current cartel model in the cable industry. It brings together a large cable provider with a huge stable of must-have programming *and* the largest wireline broadband platform in America. Very likely, this will trigger more mergers and acquisitions because it changes the dynamics of the market. But there will be no positive competitive outcomes resulting from this change.

This merger signals that the old, anticompetitive game is still on—but with a twist. Like all other cable operators, Comcast has never entered the service territory of a competing multi-channel video program provider, allowing everyone to preserve market power and relentlessly raise prices. But Comcast's expanded assets and especially its new leverage over the online video market will give it a substantial edge against its direct competitors in its service territory. The likely effect of the merger will be for other cable distribution and broadband companies to muscle up with their own content holdings to try and offset Comcast's huge advantage. In other words, there is only one way to deal with a vertically integrated giant that has must-have content and control over two distribution platforms -- you have to vertically integrate yourself. This merger would send a signal to the industry that the decades old game of mutual forbearance from competition will be repeated but at the next level of vertical integration that spills over into the online market. Watch for AT&T and Verizon to be next in line for major content acquisitions. When that happens, it will be extremely difficult for any company that is merely a programmer or merely a distributor to get into the market. Barriers to entry to challenge vertically integrated incumbents will be nearly unassailable. The only option may be a two-stage entry into both markets at the same time -- which is an errand reserved only for the brave and the foolish.

**(7) By undermining competition this merger will result in higher prices for consumers.**

Comcast already raises its rates every year for its cable subscribers, and prices are likely to rise further after the merger. By weakening competition, Comcast's market power over price is strengthened, but there are also direct ways the merger will push the price to consumers up. Comcast will have the opportunity and incentive to charge its competitors more for NBC programs and force competitors to pay for less desirable Comcast cable channels in order to get NBC programming -- those added costs will mean bigger bills for cable subscribers. Furthermore, the lack of competitive pressure that has failed to produce any appreciable downward pressure on cable rates since 1983, will not discipline Comcast from raising its own rates.

**(8) This merger will result in higher prices for consumers through the leveraging of "retransmission rights."** Through its takeover of local NBC broadcast stations, Comcast will also gain special "retransmission consent rights," which allow stations to negotiate fees for cable carriage of broadcast signals. These rights will enable Comcast to leverage control over must-have local programming and larger bundles of cable channels to charge competing cable, telco and satellite TV providers more money for content. Additionally, once Comcast acquires a broadcaster, it will have the means and incentive to raise retransmission rights payments for NBC-owned stations. This will be reinforced by two factors. First, as the owner of NBC, Comcast profits from the retransmission payments it receives and does not lose from the retransmission payments it makes, which are passed through to consumers. Second, Comcast can charge competitors more for local NBC programming, and will be able to exploit asymmetric information. Cable operators do not publish what they pay for retransmission; broadcasters do not publish what they get. Because of Comcast's superior bargaining power, it will ask for more and pay less.

**A Comcast/NBC Merger Should Not Be Allowed To Proceed**

The merger has so many anti-competitive, anti-consumer, and anti-social effects that it cannot be fixed. Comcast's claim that FCC oversight will protect the public is absurd. The challenges that

this merger poses to the future of video competition cannot be ignored, or brushed aside by reliance on FCC rules that have yet to remedy current problems and, thus, are ill-equipped to attend to the increased anticompetitive means and incentives that will result from Comcast's acquisition of NBC. The FCC rules have failed to break the stranglehold of cable to-date; there is no reason to believe they will be better able to tame the video giant that will result from this merger.

Further, any suggestion that the public interest commitments Comcast has made will solve these problems is misguided. Temporary band-aids cannot cure long-term structural injuries. Comcast's promises lack substance and accountability. More importantly, the commitments do not begin to address the anticompetitive effects of the merger. Many of Comcast's commitments amount to little more than a promise to obey the law. Where they go beyond current law, they largely fall within the company's existing business plans. Anything beyond that is meager at best, and in no way substitutes for the localism and diversity that a vigorously competitive industry would produce.

Over the past quarter century there have been a few moments when a technology comes along that holds the possibility of breaking the chokehold that cable has on the multi-channel video programming market, but on each occasion policy mistakes were made that allowed the cable industry to strangle competition. This is the first big policy moment for determining whether the Internet will function as an alternative platform to compete with cable. If policymakers allow this merger to go forward, the prospects for a more competition-friendly, consumer-friendly multi-channel video marketplace will be dealt a severe setback.

I urge policymakers to think long and hard before they allow a merger that gives the parties incentives to harm competition and consumers, while increasing their ability to act on those incentives. This hearing should be the opening round in what must be a long and rigorous inquiry into a huge complex merger of immense importance to the American people. It should be the first step in a review process that concludes the merger is not in the public interest and should not be allowed to close.

**CITIES WHERE THE MERGING MEDIA GIANTS HAVE  
HEAD TO HEAD COMPETITION AND COMPLEMENTARY ASSETS**

**NBCU****DISTRIBUTION**

- **National Footprint**

27 Stations in 24 cities in 19 states

- **Local Footprint**

NBC Station  
 WNBC —————→ New York  
 KNBC  
 Los Angeles  
 WMAQ  
 Chicago —————→ Chicago  
 WCAU  
 Philadelphia —————→ Philadelphia  
 KNTV  
 San Jose/San Francisco —————→ San Francisco  
 KXAS  
 Dallas/Fort Worth  
 WRC  
 Washington —————→ Washington  
 WTVJ  
 Miami —————→ Miami  
 KNSD  
 San Diego  
 WVIT  
 Hartford —————→ Hartford  
 WNCN  
 Raleigh  
 WCMH  
 Columbus  
 WVTM  
 Birmingham  
 WJAR —————→ Providence  
 Providence  
 Telemundo Stations:  
 KVEA/KWHY  
 Los Angeles  
 WNJU —————→ New York  
 New York  
 WSCV  
 Miami  
 KTMD —————→ Houston  
 Houston  
 WSNS —————→ Chicago  
 Chicago  
 KXTX  
 Dallas/Fort Worth  
 KVDA  
 San Antonio  
 KSTS  
 San Jose/San Francisco —————→ San Francisco  
 KDRX  
 Phoenix  
 KNSO  
 Fresno —————→ Fresno  
 KMAS  
 Denver —————→ Denver  
 WNEU —————→ Boston  
 Boston/Merrimack —————→ Boston  
 KHRR  
 Tucson  
 WKAQ  
 Puerto Rico

**COMCAST****DISTRIBUTION**

- **National Footprint**

39 Cable Systems reaching 39 states

- **Local Footprint**

New Bedford  
 Springfield  
 Pittsburgh  
 Wilkes Barre  
 Baltimore  
 Richmond  
 Jacksonville  
 Orlando  
 West Palm Beach  
 Fort Myers  
 Tampa  
 Atlanta  
 Knoxville  
 Nashville  
 Chattanooga  
 Memphis  
 Peoria  
 Detroit  
 Grand Rapids  
 Indianapolis  
 Peoria  
 Champaign  
 Minneapolis/St. Paul  
 Albuquerque  
 Colorado Springs  
 Salt Lake City  
 Portland  
 Seattle  
 Sacramento

**NBCU****INTERNET**

NBC.com  
 MSNBC.com  
 CNBC.com  
 TVitalge.com  
 Scifi.com  
 Telemundo.com  
 Bravotv.com  
 Triotv.com  
 Nbcolympics.com  
 Shopnbc.com  
 Partial  
 Hulu (a joint venture with News Corp.)  
 Aetv.com  
 Biography.com  
 Historychannel.com  
 Militaryhistory.com  
 Thehistorychannelclub.com  
 Historytravel.com  
 Newsvine.com

**PROGRAMMING**

- **Cable Network Properties**

Bravo  
 CNBC  
 MSNBC  
 NBC Sports  
 Oxygen  
 Syfy Channel  
 USA Network  
 Weather Channel  
 Chiller  
 Sleuth  
 Universal HD

- **Broadcasting**

NBC Television Network  
 NBC Sports & Olympics

**OTHER CONTENT PROPERTIES**

Universal Media Studios  
 Universal Cable Productions  
 Universal Pictures  
 Focus Features  
 Universal Studios Home Video

**COMCAST****INTERNET**

Comcast.com  
 Fancast  
 Fandango  
 thePLATFORM  
 Plaxo  
 (TV Everywhere)

**PROGRAMMING**

- **Cable Network Properties**

Golf Channel  
 Style Network  
 Versus  
 E! Entertainment Television, Inc.  
 G4 Media, Inc.  
 FearNet

- **Local Sports Media Properties**

Comcast SportsNet Bay Area  
 Comcast SportsNet California  
 Comcast SportsNet Chicago  
 Comcast SportsNet Mid-Atlantic  
 Comcast SportsNet New England  
 Comcast SportsNet Northwest  
 Comcast SportsNet Philadelphia  
 Mountain West Sports Network

**OTHER CONTENT PROPERTIES**

MGM Pictures (partial ownership)  
 United Artists Corporation (partial ownership)

Mr. BOUCHER. Mr. Thierer.

**STATEMENT OF ADAM THIERER**

Mr. THIERER. Thank you, Mr. Chairman and members of the committee, for inviting me here today to testify. My name is Adam Thierer. I am the president of the Progress and Freedom Foundation here in Washington.

Although we are still early in this process, there has already been a great deal of hand-wringing and even some dire predictions about the pending merger of Comcast and NBC Universal. I hope to put this proposed marriage in some historical content and explain why the deal certainly wouldn't have the detrimental impact that some critics fear, and also try to explain why it might even be one potential model for how to sustain traditional media going forward.

First, let's remember that we have been here before. Paranoid predictions of a media merger apocalypse have accompanied the announcements of many previous deals from AOL-Time Warner to News Corp.-DirecTV to XM-Sirius. In these cases and most others, the sky-is-falling claims are typically proved to be greatly overstated. The only harm that one could reasonably claim came from most of those mergers was not to consumers or content providers, but to the merging firms themselves and their shareholders. That is because many mergers simply failed to create the sort of synergies and benefits originally hoped for, and consequently die of natural causes over time. Other firms, however, have found ways to make deals work and deliver some important news services that previously were unimaginable or simply too expensive to offer alone. Regardless, the point here is we will never know what works unless we permit marketplace experimentation with new and innovative business models.

Second, the fear that Comcast-NBCU will act as a gatekeeper over video content is also largely overblown, especially in light of preemptive concessions that they have already made on program access and carriage. It is important to realize that the merger will only marginally affect vertical integration in the cable marketplace. Currently the percentage of cable channels owned by individual distributors is in the single digits. And even after this merger, it will only be in the teens. Stated differently, the vast majority of cable channels will be independent of Comcast-NBCU control.

More importantly, it is hard to believe that the new firms would restrict its content to just Comcast's own distribution networks, since they would be losing eyeballs, advertisers, and revenues that accompany the carriage of their content on other platforms. Likewise, it would make little sense for the firm to block newer competing channels on their own platform, since they would incur the wrath of programmers and the viewing public alike. And those channels will likely find a home elsewhere which could incentivize subscribers to switch video service providers.

The really great thing about the modern media marketplace is that there is always another place for consumers to turn to find what they want. Comcast faces increasing robust competition in the video programming market place from satellite and telco providers as well as from a variety of Internet-based video providers.

And NBC Universal's stable of programming, while quite impressive, is a mere trickle in the ocean of content that consumers can choose from.

Meanwhile cutting the cable cord altogether and instead getting the video they want from a bewildering array of online video services today. Netflix, Hulu, Joost, Roku, Apple, the Sony PlayStation Store, the Microsoft Xbox store, and many other online sites such as YouTube and Vimeo, and Justin.TV offer a mix of professional and amateur content.

In sum, there has never been so much competition for our eyes and ears, and audiences and advertising dollars have become increasingly fragmented as a result.

Finally, we need to realize that the ongoing digital revolution is upending many traditional business models—especially advertising supported over-the-air broadcasting—and that alliances like Comcast-NBCU may be one blueprint for how traditional media operators can involve and compete going forward. With both the FCC and FTC currently investigating whether journalism is in trouble and what it might take to save the news, many media economists and industry analysts seem to agree that at least some degree of consolidation or collaboration might be necessary.

Consider last week's news that NBC Universal saw quarterly profits plunge by a whopping 30 percent in the first quarter of 2009. This is indicative of the general downturn the entire media sector has been experiencing as of late. Why not then allow Comcast to try to help NBC out and try to get back on track, instead of forcing them to make it on their own in such a radically and uncertain future? It goes without saying that Comcast might be in a better position to protect NBC Universal's copyrighted content from digital piracy, at least over their own pipes.

So those who are concerned about the future of broadcasting and local news should remember that news and local news—and broadcast news in particular—isn't cheap. Unless we want to embark on massive government subsidization to bail out traditional media providers, Congress and regulatory officials must be willing to grant private media operators the flexibility to restructure their business affairs so they can continue to provide important public needs while also turning a profit. That can't happen unless we allow media markets to evolve and let operators experiment with new business models and ownership structures.

Although there are no guarantees, deals like Comcast-NBC Universal may be one model that helps firms create and extend and monetize their media content going forward. But, again, regulatory flexibility is crucial so we can figure out what works and what doesn't.

Thank you again for inviting me here today.

Mr. BOUCHER. Thank you very much, Mr. Thierer.

[The prepared statement of Mr. Thierer follows:]



Testimony of  
Adam D. Thierer  
President  
The Progress & Freedom Foundation  
[www.PFF.org](http://www.PFF.org)

Hearing on  
"An Examination of the Proposed Combination of Comcast and NBC Universal"

Before the  
Subcommittee on Communications, Technology, and the Internet  
Committee on Energy and Commerce  
U.S. House of Representatives

February 4, 2010

Mr. Chairman and members of the Committee, thank you for inviting me here today. My name is Adam Thierer and I am the President of The Progress & Freedom Foundation (PFF).

Although we are still early in this process, there has already been a great deal of hand-wringing and even some dire predictions about the pending merger of Comcast and NBC Universal. I hope to put this proposed marriage in some historical context and explain why the deal certainly won't have the detrimental impact some critics fear, and also explain why it might even be one potential model for how to sustain traditional media going forward.

#### **Beware Media Merger Hysteria**

First, let's remember that we've been here before. Paranoid predictions of a media apocalypse have accompanied the announcements of many previous media mergers, from AOL-Time Warner to News Corp.-DirecTV to XM-Sirius.<sup>1</sup> In these cases and almost all others, however, the "sky is falling" claims proved to be greatly overstated.<sup>2</sup> The only "harm" that one could reasonably claim came from those mergers was not to consumers or content providers,



but to the merging firms themselves and their shareholders. That's because many mergers simply fail to create the sort of synergies and benefits originally hoped for and consequently die of natural causes over time.

Other firms, however, have found ways to make deals work and deliver important new services that previously were unimaginable or simply too expensive to offer alone.<sup>3</sup> Regardless, the point here is that we'll never know what works unless we permit marketplace experimentation with new and innovative business models.

**“Gatekeeper” Myths: Why Restricting Content Options is Economic Suicide**

Second, the fear that Comcast-NBCU will act as a “gatekeeper” over video content is also largely overblown—especially in light of the preemptive concessions they have already made on program access and carriage. But it's important to realize that the merger will only marginally affect vertical integration in the cable marketplace. Currently, the percentage of cable channels owned by video distributors is in the single digits, and even after this merger it will only be in the teens.<sup>4</sup> (See Exhibit 1) Stated differently, the vast majority of cable channels will be independent of Comcast-NBCU control.

More importantly, it's hard to believe the new firm would restrict its content to just Comcast-owned distribution networks since they would be losing the eyeballs, advertisers, and revenues that would accompany the carriage of their content on other video platforms. Likewise, it would make little sense for the firm to block new or competing channels on their own platform since they would incur the wrath of the programmers and the viewing public

alike. And those channels will likely quickly find a home elsewhere, which could incentivize subscribers to switch video service providers. (See Exhibits 2-6)

Indeed, the great thing about the modern media marketplace is that there is always another place for consumers to turn to find what they want. Comcast faces increasingly robust competition in the video programming marketplace from satellite and telco providers, as well as from Internet-based video providers.<sup>5</sup> (See Exhibit 7) And NBC Universal's stable of programming, while impressive, is a mere trickle in an ocean of content that consumers can choose from.<sup>6</sup>

Meanwhile, many consumers are increasingly "cutting the cable cord" altogether and instead getting the video they want from a bewildering array of online video services.<sup>7</sup> Netflix, Hulu, Joost, Roku, Apple, the Sony PlayStation Store, the Microsoft Xbox store, and others offer traditional TV fare while sites like YouTube, Vimeo and Justin.TV offer a mix of professional and amateur content.

In sum, there has never been so much competition for our eyes and ears, and audiences and advertising dollars have become increasingly fragmented as a result.<sup>8</sup> (See Exhibits 8-10)

#### **What Future for Broadcasting & Local News in Turbulent Times?**

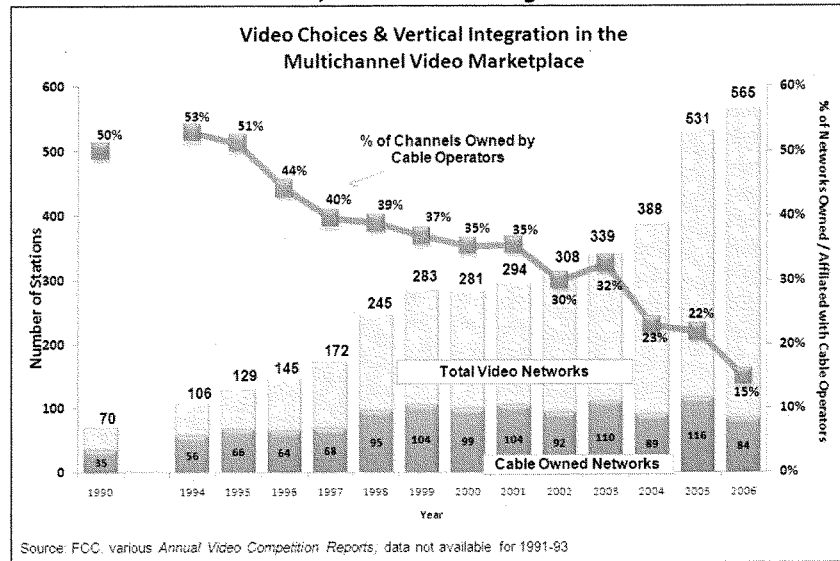
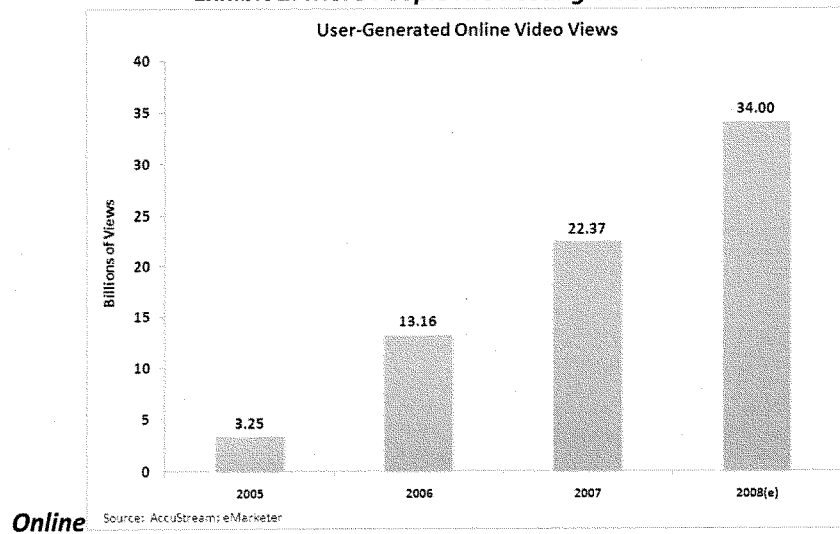
Finally, we need to realize that the ongoing digital revolution is upending many traditional media business models—especially advertising supported over-the-air broadcasting—and that alliances like Comcast-NBCU may be one blueprint for how traditional media operators can evolve and compete going forward. With both the FCC and FTC currently investigating whether journalism is in trouble and what it might take to "save the news," many

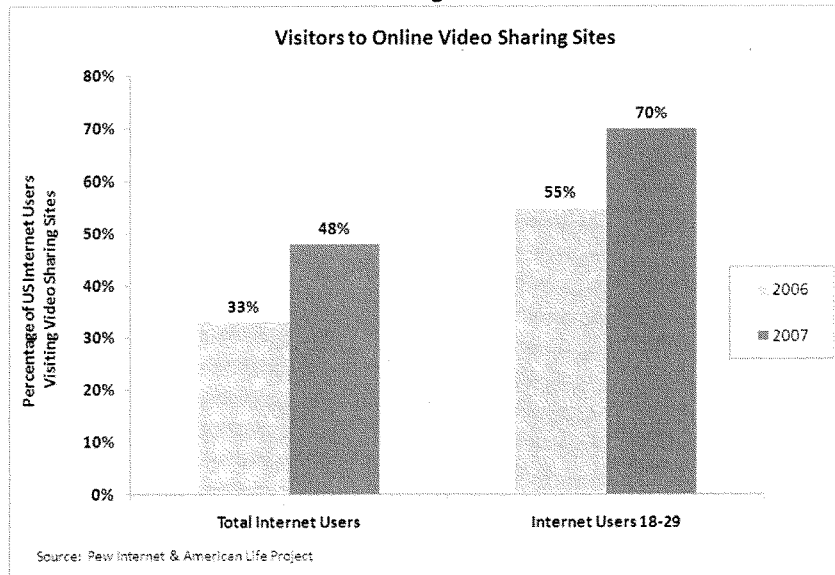
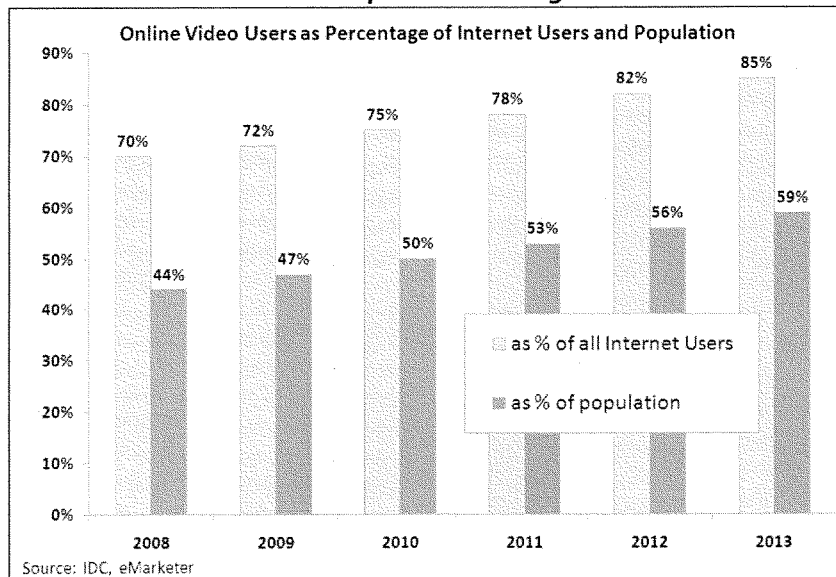
media economists and industry analysts seem to agree that at least *some* degree of consolidation or collaboration might be necessary.

Consider last week's news that NBC Universal saw quarterly profits plunge by a whopping 30% in the fourth quarter of 2009.<sup>9</sup> This is indicative of the general downturn the entire media sector has been experiencing as of late. Why not then let Comcast help NBCU try to get back on track rather than force them to make it on their own in a radically uncertain future? And it goes without saying that Comcast might be better positioned to protect NBC Universal's copyrighted content from digital piracy, at least over its own pipes.

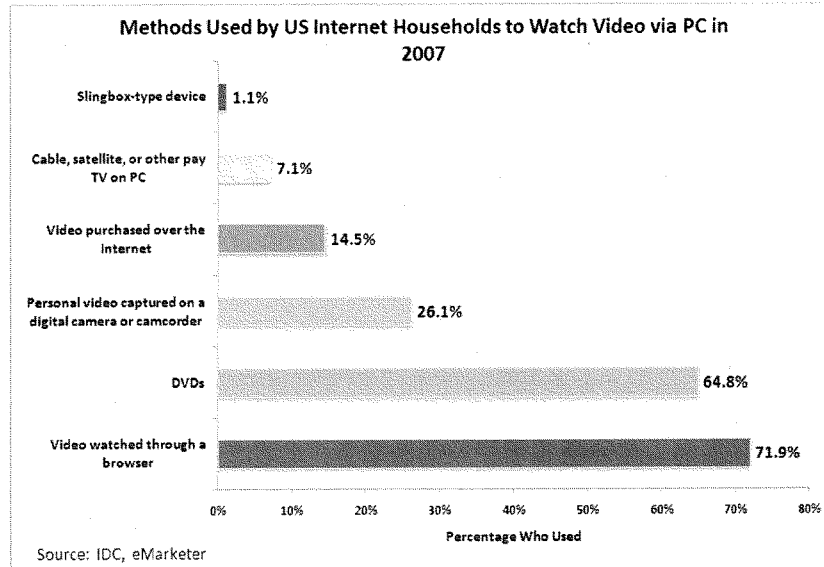
Those who are concerned about the future of broadcasting and local news should remember that news—and local broadcast news in particular—isn't cheap. Unless we want to embark on a massive government subsidization scheme to bailout traditional media providers, Congress and regulatory officials must be willing to grant private media operators the flexibility to restructure their business affairs so they can continue to provide important public needs while also turning a profit.<sup>10</sup> That can't happen unless we allow media markets to evolve and let operators experiment with new business models and ownership structures.<sup>11</sup> Although there are no guarantees, creator/distributor alliances like Comcast-NBCU may be one model that helps firms create, extend, and then also monetize their media content. But, again, regulatory flexibility is crucial so we can figure out what works and what doesn't.

Thank you again for inviting me here to testify.

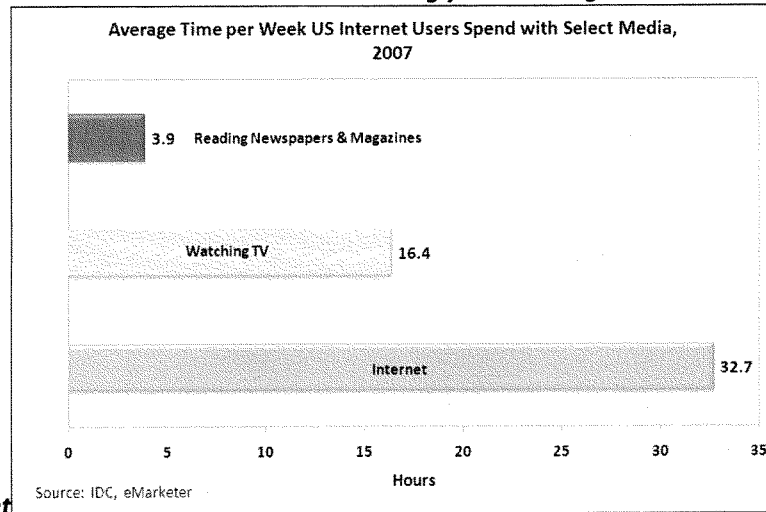
**Exhibit 1: More Choice, Less Vertical Integration in Cable Market****Exhibit 2: More People Are Posting Videos**

**Exhibit 3: Video-Sharing Sites Are on the Rise****Exhibit 4: More People Are Viewing Online Video**

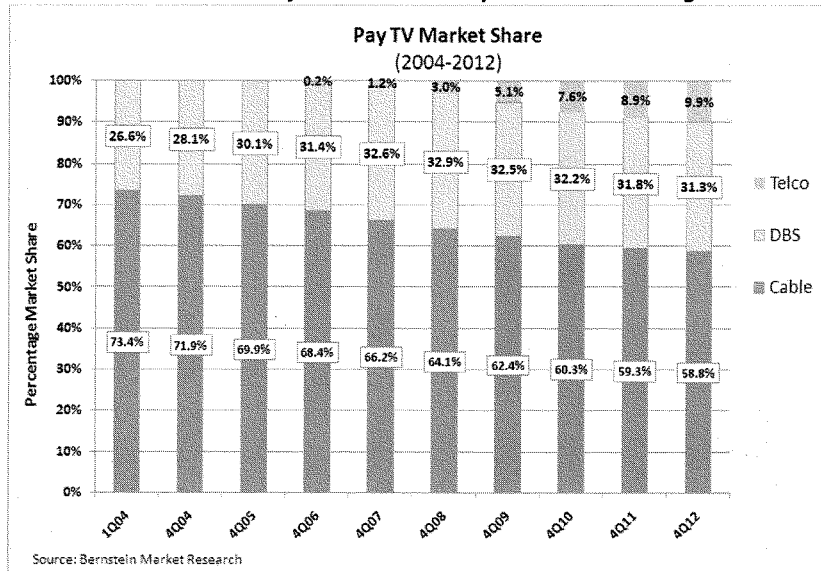
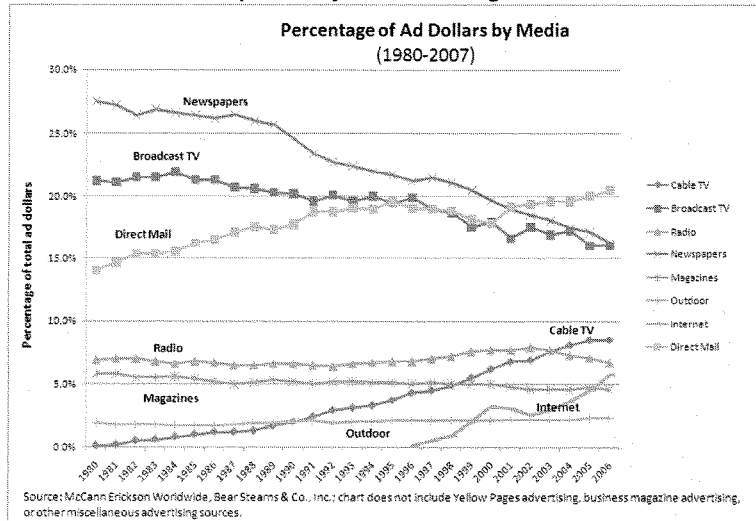
**Exhibit 5: Plenty of Ways to Watch Video Content**

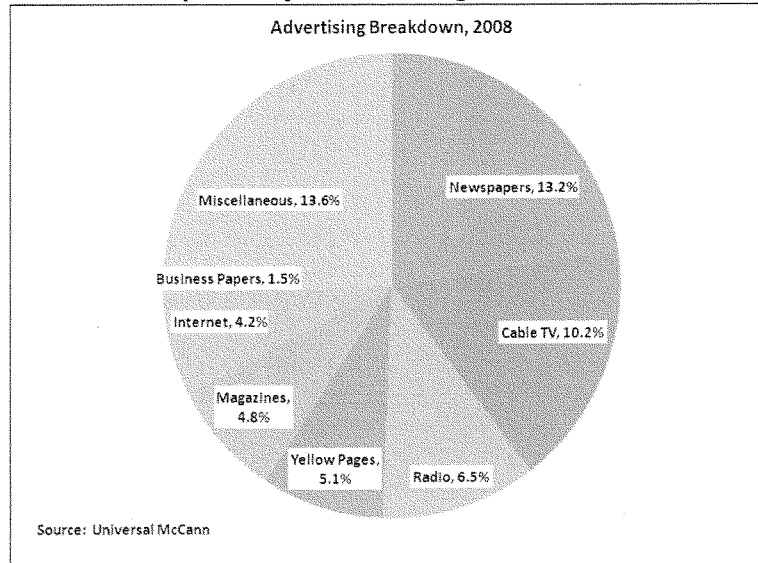


**Exhibit 6: Internet Increasingly Dominating TV and**



Print

**Exhibit 7: Pay TV Market Competition is Growing****Exhibit 8: Competition for Advertising Dollars is Intense**

**Exhibit 9: Competition for Advertising Dollars is Intense (cont.)****Exhibit 10: Increasing Fragmentation of TV Audience**

Highest-Rated TV Shows of Each Season (1950-2005)					
Season	Program	Rating	Season	Program	Rating
1950-51	Texaco Star Theater	61.6	1978-79	Laverne & Shirley	30.5
1951-52	Godfrey's Talent Scouts	53.8	1979-80	60 Minutes	28.2
1952-53	I Love Lucy	67.3	1980-81	Dallas	31.2
1953-54	I Love Lucy	58.8	1981-82	Dallas	28.4
1954-55	I Love Lucy	49.3	1982-83	60 Minutes	25.5
1955-56	\$64,000 Question	47.5	1983-84	Dallas	25.7
1956-57	I Love Lucy	43.7	1984-85	Dynasty	25
1957-58	Gunsmoke	43.1	1985-86	Cosby Show	33.8
1958-59	Gunsmoke	39.6	1986-87	Cosby Show	34.9
1959-60	Gunsmoke	40.3	1987-88	Cosby Show	27.8
1960-61	Gunsmoke	37.3	1988-89	Roseanne	25.5
1961-62	Wagon Trail	32.1	1989-90	Roseanne	23.4
1962-63	Beverly Hillbillies	36.0	1990-91	Cheers	21.6
1963-64	Beverly Hillbillies	39.1	1991-92	60 Minutes	21.7
1964-65	Bonanza	36.3	1992-93	60 Minutes	21.6
1965-66	Bonanza	31.8	1993-94	Home Improvement	21.9
1966-67	Bonanza	29.1	1994-95	Seinfeld	20.5
1967-68	Andy Griffith	27.6	1995-96	E.R.	22.0
1968-69	Rowan & Martin's Laugh-In	31.8	1996-97	E.R.	21.2
1969-70	Rowan & Martin's Laugh-In	26.3	1997-98	Seinfeld	22.0
1970-71	Marcus Welby, MD	29.6	1998-99	E.R.	17.8
1971-72	All in the Family	34.0	1999-00	Who Wants to be a Millionaire	18.6
1972-73	All in the Family	33.3	2000-01	Survivor II	17.4
1973-74	All in the Family	31.2	2001-02	Friends	15.3
1974-75	All in the Family	30.2	2002-03	CSI	16.1
1975-76	All in the Family	30.1	2003-04	CSI	15.9
1976-77	Happy Days	31.5	2004-05	CSI	16.3
1977-78	Laverne & Shirley	31.6	2005-06	American Idol	12.9
			2006-07	American Idol	12.3

Source: Nielsen Media Research



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- <sup>1</sup> Adam Thierer, The Progress & Freedom Foundation, *A Brief History of Media Merger Hysteria: From AOL-Time Warner to Comcast-NBC*, Progress on Point 16.25, Dec. 2009, [www.pff.org/issues-pubs/pops/2009/pop16.25-comcast-NBC-merger-madness.pdf](http://www.pff.org/issues-pubs/pops/2009/pop16.25-comcast-NBC-merger-madness.pdf)
- <sup>2</sup> Adam Thierer, *A Media Morality Play*, Forbes, Dec. 15, 2009, [www.forbes.com/2009/12/14/media-merger-antitrust-opinions-contributors-adam-thierer.html](http://www.forbes.com/2009/12/14/media-merger-antitrust-opinions-contributors-adam-thierer.html)
- <sup>3</sup> A good example: Disney's seamless and successful integration of ABC Television Group (ABC + Disney cable properties), Walt Disney Studios, the Walt Disney Internet Group, its many ESPN properties, and its parks and resorts.
- <sup>4</sup> 2006 is the last for which the FCC has made data available, but as of that time the overall number of national programming networks available in America stood at 565 channels. That is up from just 70 channels in 1990, an astonishing increase in program choices. The FCC noted that, "Of the 565 networks, 84 (14.9 percent) were vertically integrated, or affiliated, with at least one cable operator." Federal Communications Commission, *FCC Adopts 13<sup>th</sup> Annual Report to Congress on Video Competition and Notice of Inquiry for the 14<sup>th</sup> Annual Report*, Nov. 27, 2007, at 4, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-278454A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278454A1.pdf) What that summary fails to mention, however, is that vertical integration has fallen steadily since the FCC's first *Annual Video Competition Report* was issued, when over 50 percent of all channels were affiliated with a cable operator. Indeed, the video marketplace exhibits less vertical integration than ever before. As far as vertically integrated industries go, no impartial observer would conclude that this industry is being controlled by "gatekeeper," pay TV platforms, as some critics suggest. Most new pay TV channels today are independently owned and offer an unprecedented diversity of programming options. This trend is a strong sign of how healthy and vibrantly competitive this marketplace is today. Finally, these numbers do not take into account the split between Time Warner Entertainment and Time Warner Cable, which represented a significant portion of the 15% of vertically owned channels before 2006. That is the percentage of cable channels owned by video distributors is in the single digits today.
- <sup>5</sup> Adam Thierer, The Progress & Freedom Foundation, *Video Competition in a Digital Age*, Testimony before the Subcommittee on Communications, Technology and the Internet, U.S. House Committee on Energy and Commerce, Oct. 22, 2009, [www.pff.org/issues-pubs/testimony/2009/10-22-09-thierer-testimony-video-competition-digital-age.pdf](http://www.pff.org/issues-pubs/testimony/2009/10-22-09-thierer-testimony-video-competition-digital-age.pdf)
- <sup>6</sup> Adam Thierer, *The Media Cornucopia*, City Journal, Vol. 17, No. 2, Spring 2007, at 84-89, [www.city-journal.org/html/17\\_2\\_media.html](http://www.city-journal.org/html/17_2_media.html)
- <sup>7</sup> See generally The Progress & Freedom Foundation, "Cutting the Video Cord," PFF Blog Ongoing Series, [http://blog.pff.org/archives/ongoing\\_series/cutting\\_the\\_video\\_cord/](http://blog.pff.org/archives/ongoing_series/cutting_the_video_cord/)
- <sup>8</sup> Adam Thierer and Grant Eskelsen, The Progress & Freedom Foundation, *Media Metrics: The True State of the Modern Media Marketplace*, PFF Special Report, Summer 2008), [www.pff.org/mediametrics](http://www.pff.org/mediametrics)
- <sup>9</sup> David B. Wilkerson, *NBC Quarterly Profit Plunges 30%*, MarketWatch, Jan. 22, 2010.
- <sup>10</sup> W. Kenneth Ferree, The Progress & Freedom Foundation, *Another Naïve Proposal for Government Entanglement with the Fourth Estate*, PFF Blog, Feb. 1, 2010, [http://blog.pff.org/archives/2010/02/another\\_naive\\_proposal\\_for\\_government\\_entanglement.html](http://blog.pff.org/archives/2010/02/another_naive_proposal_for_government_entanglement.html); Adam Thierer, *Socializing Media in Order to Save It*, City Journal, March 27, 2009, [www.city-journal.org/2009/eon0327at.html](http://www.city-journal.org/2009/eon0327at.html); Adam Thierer, The Progress & Freedom Foundation, *Public Option for Press Should Get the Red Pen*, Progress Snapshot 6.4, Jan. 25, 2010, [www.pff.org/issues-pubs/ps/2010/ps6.4-OP-ED-for-Daily-Caller-A-Public-Option-for-the-Press.html](http://www.pff.org/issues-pubs/ps/2010/ps6.4-OP-ED-for-Daily-Caller-A-Public-Option-for-the-Press.html)
- <sup>11</sup> W. Kenneth Ferree, The Progress & Freedom Foundation, *Media Ownership Proceedings*, Testimony before the Federal Communications Commission, Nov. 3, 2009, [www.pff.org/issues-pubs/testimony/2009/11-03-09-ferree-media-ownership-testimony.pdf](http://www.pff.org/issues-pubs/testimony/2009/11-03-09-ferree-media-ownership-testimony.pdf); Adam Thierer, *Media Myths: Making Sense of the Debate over Media Ownership* (The Progress & Freedom Foundation, 2005), [www.pff.org/issues-pubs/books/050610mediamyths.pdf](http://www.pff.org/issues-pubs/books/050610mediamyths.pdf)

Mr. BOUCHER. And we express our appreciation to all of the witnesses for thoughtful and well-presented comments this morning.

I am going to recognize myself for an opening round of questions. Increasingly, the viewing of television programs over the Internet has become a useful and attractive alternative to viewing those programs over cable television. Concerns have been raised, including some this morning, about the fact that the Comcast-NBC combination would place Comcast in a position to inhibit the online viewing of television programs for a very large amount of television content. That concern is heightened by the TV Everywhere model that Comcast and Time Warner Cable have now launched, through which the online TV programs are made available only to the subscribers to the cable television service itself.

With regard to TV Everywhere, smaller cable companies, including Ms. Abdoulah's, as she just indicated, have in instances been denied access to the content that is being made available on TV Everywhere. And there are questions about whether programs that are offered over the air today and made available through the nbc.com Web site for online viewing might in the future migrate into TV Everywhere, a very real concern a number of people have expressed.

The concern about the Comcast position enabling it to potentially inhibit the availability of TV fare over the Internet is also heightened by the fact that, for at least some period of time last year, users of Boxee—which is a software application that enables people to see online television programs on their television sets, not just on computers but actually on their TV sets—are giving them a very seamless experience, similar to what they would get from cable TV. But the Boxee users were apparently blocked from being able to view the Hulu-delivered programs on their TV sets. And presumably that blocking came from Hulu. And I would note that NBC Universal is a part owner and one of the founders of Hulu.

And so, Mr. Roberts and Mr. Zucker, my question to you is this. What response do you have to those concerns and what assurance can you give us that, when this combination takes place, there will not be an inhibition put in place that would limit the amount of online video content that viewers can see?

Mr. Roberts, would you like to start?

Mr. ROBERTS. Thank you. Thank you, Mr. Chairman, and I appreciate the opportunity to talk about some of those issues. First of all, as has been mentioned previously, we have helped create the broadband experience that consumers enjoy today, some of the work out of cable labs going back a decade was one of the first to create high speed broadband. It is the fastest growing part of Comcast, is our broadband business.

In fact, we are in the process of completing nearly a billion-dollar upgrade to create wideband. And if you say what do you do with wideband right now, at 50 megabits a second I trust there are great entrepreneurs to come up with the answers, and we want to be a company on the leading edge. So we think this is absolutely one of the most exciting areas.

And I have said consistently for several years that we believe video over the Internet is one of those applications that requires

more speed and justifies the investments that we are making in wideband and broadband. So we think it is a friend, not a foe.

That position is demonstrated by the surge of usage and the amount of bits that consumers continue to consume each month, and it is growing at a very fast rate. So in this transaction, if you look at the facts, there were 30 billion views of video Internet last month. NBC was less than 1 percent of that. Hulu, of which NBC is one of four partners, I, think is around 4 percent. Comcast is less than half a percent of any of our video-owned content assets being viewed on the Internet.

Mr. BOUCHER. Mr. Roberts, my time is running out rapidly here. Let me pinpoint a couple of key concerns. Ms. Abdoulah has said that she has been denied access to the content available on TV Everywhere. What is your response to that?

Mr. ROBERTS. I am not aware exactly what she is referring to—

Mr. BOUCHER. Do you agree she ought to be able to get access to it on reasonable terms?

Mr. ROBERTS. Yes. And I believe she can by going to—the biggest proponent of TV Everywhere is—

Mr. BOUCHER. Let me just accept the “yes.”

Mr. ROBERTS. OK, fair enough.

Mr. BOUCHER. The second key question that I have is this: What about Boxee? Mr. Zucker, you probably are in a better position to answer that. Did Hulu block the Boxee users from access to the Hulu programs?

Mr. ZUCKER. Well, this was a decision made by the Hulu management to—what Boxee was doing was illegally taking the content that was on Hulu without any business deal and, you know, all—we have several distributors, actually many distributors of the Hulu content that we have legal distribution deals with. So we don’t preclude distribution deals. What we preclude are those who illegally take that content.

Mr. BOUCHER. Would you have negotiations with Boxee?

Mr. ZUCKER. We have always said we are open to negotiations.

Mr. BOUCHER. All right. One further question and my time has expired. Can the two of you offer to us assurance that the programs that are delivered over the air by NBC today and are then available on the nbc.com Web site for online viewing will not migrate into the TV Everywhere format so that they then would be available only to people who have a cable subscription? Can you give us that assurance?

Mr. ROBERTS. Yes.

Mr. BOUCHER. Thank you very much. I appreciate your answers to those questions.

The gentleman from Florida, Mr. Stearns, is recognized for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Dr. Cooper, you have testified before our committee before many times, and I thank you for coming. Ms. Abdoulah, we sort of all are on your side; you are the small person in this big room here, so we are sympathetic to you. As I understand it, you don’t oppose a merger, you just want conditions in place; would that be an ample way to say your opinion?

Ms. ABDOULAH. That is a fair statement.

Mr. STEARNS. Dr. Cooper, you are against this merger; is that fair? Yes or no?

Dr. COOPER. I believe—I am against the merger, I don't think you can unravel the anticompetitive—

Mr. STEARNS. You have been here before and I know you testified against other mergers, so I am going to ask you succinctly if you can tell us that—I mean, you say control over the production and distribution of information has critical implication for society and democracy. We all agree with—no one disagrees with that. The problem is that the proposed deal before us doesn't speak to all the production and all distribution. So when you make that statement, you know, Comcast-NBC, it is not all of production, all of distribution. I mean, you and I we both agree there is diversity of news and entertainment from all kinds of different things. I don't have to go in and enumerate them.

But how could Comcast in your opinion, very succinctly, now control production and distribution, to go back to your statement overall? I mean in one or two sentences.

Dr. COOPER. I am not worried about overall. I am worried about in specific local markets where they have market power. So in 12 of this Nation's markets, Comcast and NBC compete head to head for eyeballs, for advertisers. In many of those markets they produce programming, new programming and sports programming, marquis programming.

Mr. STEARNS. In those 12 markets, what will happen if this merger comes? Tell me worst-case scenario.

Dr. COOPER. Worst-case scenario, one of those entities abandons the market and ceases to try to win eyeballs. Today they both vigorously try to win eyeballs; tomorrow I have lost a competitor.

Mr. STEARNS. And which one of those markets, or those 12, you think is most likely in your opinion?

Dr. COOPER. They are all good candidates. They are all important markets.

Mr. STEARNS. Come on, just one of those 12 that we can highlight.

Dr. COOPER. Well, the premiere one is, of course, Philadelphia.

Mr. STEARNS. OK, Philadelphia, that is a market. It is going to happen in 2 years, 5 years, 2 days, 1? What?

Dr. COOPER. These are long-term structural changes.

Mr. STEARNS. Five to 10 years?

Dr. COOPER. In those markets we have a record of Comcast making it difficult for competitors to enter. You have heard from those people.

Mr. STEARNS. Yes, yes.

Dr. COOPER. They have withheld their sports programming.

Mr. STEARNS. I got it.

Dr. COOPER. Slowed down, driven hard bargains, and raised their prices.

Mr. STEARNS. Ms. Abdoulah, do you agree with him? Do you think that is true, that in these 12 markets we are going to lose Comcast will dominate and we will lose competition? He is buttressing your argument in a way, so he is on your side even though you wanted the conditions.

Ms. ABDOULAH. Well, I think we are speaking of different things. He is speaking of the 15 markets and the O&Os.

Mr. STEARNS. And you are speaking of your own?

Ms. ABDOULAH. And I am speaking as a competitor in markets.

Mr. STEARNS. Mr. Thierer, what would you say to Dr. Cooper's comment?

Mr. THIERER. I think the problem with this story is that right now you see Comcast actually losing share in those markets.

Mr. STEARNS. In those 12 markets?

Mr. THIERER. In some of them; I can't speak for all of them. We know that telco operators have taken away a lot of that market share; satellite operators are still highly competitive. I hear a lot of concern about advertisers and viewer options from Mark. I am sure the advertisers will be pleased to hear Mark is so concerned about their welfare. They are actually doing all right.

I have some data I present in my testimony showing just how many different avenues advertisers can take their dollars to. In terms of viewers, they are shifting their eyeballs and ears all around these days. So it is hard for me to believe this will be some sort of nightmare Chicken Little scenario where the sky is going to fall in these markets.

Mr. STEARNS. Ms. Abdoulah, I am coming back to you; you are sort of the person here. Given that Comcast would not be gaining any new cable properties to compete with your company, what advantage would this company gain from withholding content from you or your customers?

Ms. ABDOULAH. What advantage? I can't offer the same content. If I don't have access to the content where does my customer go? To my competitor, to Comcast.

Mr. STEARNS. Mr. Roberts, you might want to comment on either her comment or Dr. Cooper's.

Mr. ROBERTS. I go back to the principle, first of all, the content that is going to be made available to our competitors is available today. In the last 2 years Comcast has lost nationally over about a million and a half customers, while phone, satellite, and Wide Open West of the country, have added over 7 million. In fact, the second and third largest distributors of multichannel video in the country today are two satellite companies. So there is a very competitive market.

One of the reasons we want to get more invested in content is we see the value of that content growing. I think the premise of the way you phrased the question I agree with, which is we will be well-served to make that content available to all the growing players in the marketplace. So I think this will ultimately lead to more innovation, more content creation. We see it as a growing business.

I am sure somewhere we will talk about the intellectual property and how to protect it. We are very much focused on that same issue. And I think we recognize that this is a very competitive video distribution marketplace, and this is an opportunity to participate in the growing part. And as the Internet grows, as the Chairman asked, we want to see the content available and growing for the consumer, because that is where the consumer wants to be.

Ms. ABDOULAH. May I respond?

Mr. BOUCHER. Very quickly, Ms. Abdoulah.

Ms. ABDOULAH. It is not just about withholding content. It is also about putting restrictions and conditions on how we offer that content. Those are two things that we need to consider here because that happens as well.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The gentleman from California, Mr. Waxman, is recognized for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. Roberts, NBC has been a long-time proponent of vigorous protection for the intellectual property rights of content creators and owners. Mr. Zucker and I have had opportunity to discuss the need for more robust action by broadband providers and protecting content available on line. On-line content theft is a serious problem. It is a drain on our economy and one that I am committed to addressing.

If your transaction is approved and you find that you own NBC's valuable content catalogue, can you tell us what actions you are considering to reduce content theft on line?

And secondly, will you ask other broadband providers that seek access to NBC content to adopt measures to reduce content theft?

Mr. ROBERTS. I think we absolutely recognize the vital nature of protecting the licensed, legitimate, non-theft model is what has propelled NBC Universal to what it is today, and every other owner of content. In the distribution business we also rely on licensed content to be the successful part of our business. So I think we now have doubly the incentive or double the incentive to figure this issue out better than it is figured out today.

Specifically, I think there have been technological advancements in the last couple years. They are going to make it more likely that we can cooperate.

And to your very specific question, would we encourage the rest of the other broadband providers and distributors to try to find solutions here, the answer is yes. We will now be an active member of NCTA, MPAA, and other industry trade groups that are focused on these questions.

I think it is vital that we have cooperative solutions. We obviously, on one hand, have privacy concerns, and copyright protection concerns on the other hand. We want—by having such a—33,000 employees at NBC Universal that I have to worry about, and 100,000 employees at Comcast cable, it is in my interest and I think the consumer's interest to continue the licensed model and find solutions that are acceptable.

Mr. WAXMAN. I appreciate that. On this issue about fair competition, the Communications Act prohibits cable companies from requiring a financial interest in any program service as condition for carriage, or forcing a programmer to grant an exclusive to the cable provider as a condition of carriage. The idea behind this prohibition is to protect independent programmers from being forced to accept unfair terms as the price for being distributed and seen by viewers. Do you agree that this kind of prohibition make sense?

Mr. ROBERTS. I do. And we have abided by that prohibition since 1992.

Mr. WAXMAN. There was a statement by Steve Burke during a program carriage dispute between Comcast and the NFL. And Mr. Burke, who was Comcast chief operating officer, stated that Comcast treats its own programming services as siblings, as opposed to strangers. Do you agree with Mr. Burke's statement? Does Comcast treat its own programming services differently than those outside of the Comcast family?

Mr. ROBERTS. I am not familiar with the context of that remark, so I if may, Mr. Burke—

Mr. WAXMAN. Put his statement aside. Do you treat your programming service differently than those outside of the Comcast family?

Mr. ROBERTS. I think that what he may have been referring to is, as employees of the company and just how—as chief operating officer he is concerned with both parts, the company and the welfare of the assets and the people. But specifically to—we have six out of every seven channels that Comcast carries, we do not have any financial interest in. The competitiveness of DirectTV, WOW, Dish Network, Verizon Fios, AT&T U-Verse requires us to have the most compelling product, as fairly and exciting presented to the consumer as possible.

Mr. WAXMAN. You are going to treat your content and other content not produced by your—

Mr. ROBERTS. We have to get the best content, otherwise people are not going to want our product. I think that is what is driving us, from a competitive standpoint, as to how to have the best offerings possible.

Mr. WAXMAN. Let me ask Mr. Zucker. As a programmer interested in bringing NBC's programming to as many people as possible, are you expecting Comcast to look out for its own? And if so, would you expect such a preference to be good for NBC?

Mr. ZUCKER. The fact is that we would like our content to be as widely seen as possible. So our relationship with every distributor is the same, that we would like them, though they don't always, to carry all of our networks and all of our content. And we have those conversations all the time with all distributors.

Mr. WAXMAN. Mr. Chairman, I know my time has expired, but I want to point out that companies, like people, naturally have an interest in taking care of special family members. But in looking at this transaction, I think the FCC needs to analyze carefully what such potential favoritism might mean for competition from independent programmers and ultimately a consumer choice.

Mr. BOUCHER. Thank you very much, Mr. Waxman.

The gentleman from Indiana, Mr. Buyer, is recognized for 7 minutes.

Mr. BUYER. Thank you very much.

I have worked hard to do my due diligence, to examine this from all sides.

Mr. Roberts, what I am going to ask of you, if you can grab your pen, I have six questions that I am going to ask. And you don't have to give very long answers, because you and I have had very good discussions with regard to the word trust. You can't beat up broadcasters for your entire career of Comcast and, all of the sudden, you become one without giving assurances or commitments.

So let us go ahead and go down the line. With regard to your testimony on program access rules, you have now given the assurance that you will abide by them regardless of what the court may do. Does that commitment apply even after the rule sunsets? That is my first question.

The second question is that, as I speak with the affiliates, it seems to me that you could fairly easily even get around the rule, even though there is a commitment. For example, a local NBC affiliate could significantly raise the price for all Comcast video competitors in that market for retransmission of a station's signal, but for Comcast, this would be basically an accounting charge from one corporate affiliate to another.

What can you do to assure that Comcast will not use its control of the NBCU to raise the rates for all its competitors to pay for this valuable must have programming? That is my second question, please, also recognizing that if in fact that local market becomes—you upset the market rates, that it does have an impact upon smaller cable operators likewise. That is my second.

My third is with regard to the issue on price. It does appear that you have the potential to gain a significant amount of leverage with your video distribution competitors for the price of access to these channels. Now, you might offer them access to programming, but at what price that effectively forecloses them from access or raises the providers' cost structure so they can't compete. Will you commit, at least with respect to the vast NBCU programming that you now control, that you will control, to maintain for some period of years the programming prices in the current deals? After all, these were negotiated arm's length before the vertical integration, so they should reflect the market rates.

Secondly on my third question, will you agree to so-called most-favored-nations status for similarly situated purchases that are now in integrated programming? That is, will you commit all similarly situated video competitors of yours will automatically get the best price that you will make available to them?

My fourth question with regard to the NBCU vast array of films in the film library, what commitments will you make about competitor access to valuable programming, which is essential for video-on-demand services?

The next issue is on advertising. I understand Comcast does not currently allow its video competitors to advertise their services on Comcast's—on your cable channels. Do you intend to extend this policy to all NBCU networks and programs after the deal? And if you do—well, let's just hear what your commitment is going to be on that, because you understand what this could do.

The last is with regard to—I am not aware of any commitments that Comcast has made regarding the availability of Comcast and NBCU programming for distribution online. The ability of consumers to enjoy their favorite programming online or to take it with them on various devices is the frontier that you and I spoke about. Will Comcast make a commitment that it will not deny its video distribution rivals access to the NBCU broadcast or cable programming for online distribution? Assuming that the competitor is willing to pay a fair market rate, will Comcast commit not to give its online properties preferential treatment, for example, by



making a really hot show available to a competitor for online distribution after Comcast customers have already enjoyed it first? I await your reply.

Mr. ROBERTS. OK. I am going to do my very best, and I hope you will bear with me. There were a lot of questions there, and I appreciate that you have covered a lot of ground. I think what we said in my opening statement, which you may have caught some of or maybe not all of, is that we are prepared to discuss with the FCC either the sunseting or the—any litigation that exists on the program assets rules and program carriage rules, having them remain in place after this transaction is completed. So I think we will continue to abide and have lived with, and it is not a motivation for this deal, is to see a massive change in that oversight that the FCC has on our conduct of behavior.

Again, I want to stress the point it underscore that it is not the motivation for this deal to suddenly take a CNBC off of Direct TV or in some way try to change that relationship because, frankly, those are the second and third largest distributors. They are the fastest-growing distributors of the telcos, and the fact is that that is part of the growth in Mr. Zucker's business.

Mr. BUYER. Number two.

Mr. ROBERTS. Rates for retransmissions and smaller MSOs. I am not totally sure I understood all of the implications of that question. Could you perhaps just talk about that a little bit?

Mr. BUYER. We are a little worried about, in our office when you talked about, well, the NBC affiliates are going to feel good about what we do. They may get better rates. Well, when you do that, you are going to change what happens in that local market, and there could potentially be cost shifting. And what type of assurances?

And not only that, but also, some of the affiliates I have spoken to, it is this corporate accounting.

Mr. ROBERTS. So, first of all, I hope you, as I was, encouraged by the head of the NBC Affiliates Board statements that we are off to an encouraging start in terms of trying to address some of the fundamental issues in a troubled business, because of audience share declines, technological change; broadcast television is going through a lot of change.

We heard about retransmission consent, which I think is the axis of this question. By being at the end of this deal, about 80 percent a cable content and about 20 percent a content company, we are still going to have a large concern about cable rates, and what is the right model and the right answer?

Sitting here today, I don't have the perfect answer to the dynamic changes that are going through the industry. But the question I think in its essence, are we prepared to try to play a constructive role in the future of broadcast television and recognize its vital importance? We are making a huge bet by buying NBC. At the same time, there has been—there are the opportunities to revisit, what is the right answer there? And I hope by being in both sides, we can truly play a role in helping make that happen.

Mr. BUYER. But my time is running out. If you can hit these commitments fairly quickly. Go to three.

Mr. ROBERTS. Program prices in the current deals. I can assure you that all the existing contracts that NBC has, which I have not had access to see, we don't intend to abrogate any agreements or attempt to do so.

Mr. BUYER. OK, number four.

Mr. ROBERTS. Films, competitors' access. Again, I don't know. I have just met the Universal folks. But again, it is not the motivation. I am sure we are going to try to figure out how to make the best movies. You have many partners when you make a film, all the actors and the writers and the talent and the creative folks. And you are going to try to maximize the revenues as a fiduciary of that film. And if other folks want access to it, we are certainly in favor of that.

Mr. BOUCHER. Mr. Buyer and Mr. Roberts, let me suggest that, Mr. Roberts, you submit the balance of those answers in writing. We are going to be submitting some additional questions to you in writing anyway, and we have such a number of members still to ask questions and limited time. I think we will move on.

. Thank you very much, Mr. Buyer.

The gentleman from Michigan, Mr. Dingell, is recognized for 5 minutes.

Mr. DINGELL. Thank you, Mr. Chairman.

Gentlemen and ladies, I am going to request a lot of these questions be answered yes or no. It doesn't indicate any lack of respect, but it indicates a very important need to conserve time under the very limited process as we proceed.

To Mr. Roberts, will Comcast commit not to tie together retransmission consent payments with payments for network programming provider under an affiliation agreement? Yes or no?

Mr. ROBERTS. Could you repeat the question? I am sorry.

Mr. DINGELL. Will Comcast commit not to tie together retransmission consent payments with payments for network programming provider under an affiliation agreement? Yes or no?

Mr. ROBERTS. We will not do what you said, I believe. I am sorry. There are a couple of—

Mr. DINGELL. I will ask that the record be kept open. You can give us a more finished answer to that at the appropriate time.

Mr. ROBERTS. I appreciate that.

Mr. DINGELL. And I hope you don't regard that I am trying to take advantage of you.

Now, again, Mr. Roberts, will Comcast commit not to force network affiliates to accept unfavorable affiliation agreement provisions to obtain market-based retransmission consent payments? Yes or no?

Mr. ROBERTS. We will not force them to take unfair deals.

Mr. DINGELL. Again, I will ask that the record be kept open so that you can amplify on that.

Again, Mr. Roberts, does Comcast's public interest filing with FCC include proper assurances that Comcast will not migrate critical network programming away from free over-the-air broadcasting to Comcast's cable properties? Again, yes or no?

Mr. ROBERTS. We will not—that is not the motivation. And I believe our filing does address that, yes.

Mr. DINGELL. And I want to be clear, these questions are all asked with all respect and affection.

Mr. Roberts, again, upon approval of Comcast's joint venture with NBC Universal, will Comcast commit to respecting collective bargaining agreements for its employees and the process by which they are reached? Yes or no?

Mr. ROBERTS. Yes.

Mr. DINGELL. Again, Mr. Roberts, further, will Comcast put up roadblocks to first or initial contract negotiations with the unions? Yes or no?

Mr. ROBERTS. No.

Mr. DINGELL. Mr. Roberts, finally, how will Comcast view arbitration of first contract negotiations should they break down between Comcast and employees seeking to form a union? Will Comcast support or oppose such actions?

Mr. ROBERTS. In terms of mediation or some third party?

Mr. DINGELL. I am talking about arbitration. You can use the word mediation interchangeably with it.

Mr. ROBERTS. If there is a contract breakdown, if there are creative ways to find solutions—we don't want to have a breakdown. So if that is a helpful way to go, that is something we will consider, sure.

Mr. DINGELL. Now, these questions to Ms. Abdoulah and Dr. Cooper.

In 25 words or less, how do you see the proposed joint venture between Comcast and NBC Universal as affecting the online video market?

Starting with Dr. Cooper.

Dr. COOPER. Frankly, we see it as an effort to extend the market division agreement that has existed between cable operators and physical space into cyberspace. That is the explicit intention of TV Everywhere.

The statement that they will not use NBC properties to reinforce that does not answer our concern, because NBC will stop developing alternative platforms.

Mr. DINGELL. I am going to request Ms. Abdoulah give us her comments.

Ms. ABDOULAH. I am concerned, sir, for two reasons. One, we have had a recent experience where we have not been granted the rights for online product. That is number one. And number two, I am concerned that the current video model where it is a take it or leave it, here is the high price you are going to pay, gets extended to the online broadband customer base as well.

Mr. DINGELL. Mr. Roberts, you had a comment; 25 words or less.

Mr. ROBERTS. I think that the internet is a nascent market. I think that TV Everywhere, just to be really clear, is meant to say if you are subscribing—the way it was presented to us from HBO and Time Warner—if you can get the—if you are a customer of, say, HBO on television and you now want to watch it on the PC, this enables that to happen. And I don't believe there is any impediments to Ms. Abdoulah being able to have the same access from Time Warner. Those are the principles that were publicly stated and that we thought made a lot of sense.

Mr. DINGELL. Thank you.

Now, this goes again to Mr. Roberts. Dr. Cooper asserts that a lack of competitive pressure has failed to produce any appreciable downward pressure on cable rates since 1983. In addition, Comcast will arguably be incentivized by virtue of vertical integration to charge competitors more for must-have content, thereby raising cable rates for consumers. What commitments does Comcast intend to make to prevent such abuses?

Mr. ROBERTS. Well, I think that, as I said, we are still 80 percent a cable company. So our eye is very much still in that perspective, Mr. Dingell.

Number two, I don't think the deal changes anything in that regard. NBC has great content and charges the best price that it can get from its customers, and I am not sure that our incentive is any different given the two companies coming together.

I think that the quality of the content and the technology that has changed in the last several years is part of the answer, but I think it is a broader industry question, not necessarily specific to this deal.

Mr. DINGELL. Thank you.

Mr. Chairman, I know my time is up, but I think mercy requires that Ms. Abdoulah and Dr. Cooper be able to comment.

Starting with Ms. Abdoulah, do you have a comment on that?

Ms. ABDOULAH. I have a comment on the previous comment that we have not been denied access. Comcast—it is not about Time Warner only. Comcast provides networks on their TV Everywhere platform. We asked Comcast specifically for the rights and they—we got sort of excuses like, it is not ready for launch, even though has been launched to 14 million of their households. We were told there are technical issues. We are technically able of authenticating it. So there are issues of content being withheld today.

Mr. DINGELL. Thank you.

Dr. Cooper, very quickly.

Dr. COOPER. Comcast's sob story about losing cable subscribers is a dog that doesn't hunt. In the past few years, they have shifted to Triple Play, increased the total number of subscribers they have across their items, increased the price of cable, increased the margin on their cable customers. That is inconsistent with a market that is forcing them to lower prices. They are counting the wrong thing, the thing they are not really interested in anymore.

Mr. DINGELL. Thank you.

My time is up.

Mr. BOUCHER. Thank you very much, Chairman Dingell.

The gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

I think we have to just continue this conversation. It is obviously at the center of what this merger represents. So, as you know, I have introduced network neutrality legislation, and clearly the concern here is that, when a company that has the wire going into the home merges with a company that has all of NBC Universal's content, that there could be a temptation to discriminate against others.

And again, going out in the future, we are concerned about the proverbial kid in the garage that has got that great idea. We have

got a concern about the kid that thinks up the idea of Avatar.com TV. It could be an big concept right now, huh? And it is not owned by Comcast or NBC. And so we have to make sure that it doesn't get discriminated against because it is not an NBC idea; it is not a Comcast idea.

So how can we enshrine these principles of nondiscrimination against those great new ideas from having access to the pipes that go into people's homes that are controlled by Comcast, Mr. Roberts? And that goes to the question of network neutrality, and what kind of guarantees can we get that those other ideas are going to be protected?

Mr. ROBERTS. As you know, Mr. Markey, there is a procedure taking place at the FCC right now on this very question of net neutrality, and as you have said, you have got potential legislation in this committee and in the Congress.

So I would, first, want to point out that I think, whatever you do, if you are really trying to make that protection or achieve that goal, it is going to have to apply across the board. And whether that is to all providers, what levels of the Internet, what about wireless; the world is changing and converging and evolving very, very quickly. So, again, I believe that this particular transaction doesn't really have the potential, in my opinion, to change that kid in the garage or that AvatarTV.com or whatever the example one wants to pick, because let's just say Google today is over 50 percent of all the video views of the 30 billion views that took place last month—

Mr. MARKEY. Will you commit, will you commit to not creating a different standard for access by Avatar TV with the Comcast platform? Will you accept the principles of nondiscrimination?

Mr. ROBERTS. We have accepted and voluntarily—we may have a disagreement on whether there should be a law and what that does specifically, how it is interpreted down the road and what that does to investment.

Here we are investing in DOCSIS 3.0 wideband without any applications. We are counting on that kid in the garage. We had the same questions many years ago; what about video gaming over the Internet? Are you going to support it or not? It is a huge part of what drives broadband, are all these new applications. And so, yes, I believe that it is not in our business interest.

Mr. MARKEY. Do you believe that there should be any conditions which are attached to this merger at all?

Mr. ROBERTS. Yes. We have said that we have identified, I don't know, at least 10 commitments that get involved with independence of NBC news to program access applying to retransmission consent. What I testified this morning earlier was that, if for some reason the rules of program access are struck down by the court, we would continue—want to have a conversation, have a commitment with the FCC to have them continued because that is not a plan we plan to change. We have talked about children's programming, free over-the-air broadcasting.

Mr. MARKEY. My greatest concern going forward is that the Internet is this incredibly chaotic generator of creativity and new jobs in our society. That is who we have to be in the 21st century, as a Nation. And it is very important that there be no disincentives

to that young creative person, the thousands of them across the country, the tens of thousands that can create that new product, to get it into the homes of the American people, to feel that there was a barrier, there was a blocked, that they couldn't get in. That there was one standard for NBC Universal, Comcast programming, and another standard perhaps for other powerful content providers, but for that smaller creative person that really has to make the breakthrough, that they won't be able to do it.

And I think, in the end, that that would hurt our economic competitiveness because broadband, to a very large extent, is a proxy, as a word, for 21st century American competitiveness for the 3 percent of the population of the world that we represent. And we have to make sure that all of that creativity gets unleashed because that is something we have to brand globally.

So that is the conversation I think we have to have going forward, and this agreement that you have really should be a model to ensure that that becomes who we think of ourselves as a Nation.

So we thank all of you for being here today.

And I thank you, Mr. Chairman, for your indulgence and giving me extra time.

Mr. BOUCHER. Thank you very much, Mr. Markey.

Gentleman from Washington State, Mr. Inslee, is recognized for 5 minutes.

Mr. INSLEE. Thank you. Mr. Roberts, I am told that, in May of 2007, Comcast obtained the broadcast rights for the Portland Trailblazers, and at the time, the public was told that they would be available through competitors.

Instead the Blazer broadcasting rights was used to run ads extorting satellite subscribers to switch to Comcast because it offered Blazer telecasts and the satellite providers did not. It has now been 2 and a half years and still there is no deal to allow the conveyance of those rights.

This leads me to suggest we ought to think about spiffing up our rules on how to deal with those access rights. And there is an arbitration procedure now that some have suggested is not adequate to the task of today and has not worked.

I wanted to ask you and Ms. Abdoulah if we should consider bringing those access procedures up to speed, for instance, by requiring continuation of coverage during the arbitration process, or having limits on the period of time it takes to reach a resolution, and/or changing the burden of proof and giving parties discovery of in fact the contractual relations with others?

Mr. Roberts and Ms. Abdoulah, could you address that consideration?

Mr. ROBERTS. Do you want me to go first?

First of all, my understanding of Portland is we would love to have satellite carry that channel. We don't have an ability to begin an arbitration process to ask them to carry it. They are not bound by those rules. It is the other way around.

And so I don't believe they have availed themselves because I am not sure that they have wanted to do that. I don't know what their motivation would be. So any change that you might have to the program access rules in general I am not sure would affect that particular situation.

But just for the record, we have tried on numerous occasions to get that content carried by satellite and would welcome any way we can get that worked out.

As to the program access rules in general, I just want to start—they were written in 1992. They were at a time when I think probably over 50 percent of all the programming channels were owned by cable companies, and cable at that time did not have satellite competition or Telco competition or Wide Open West type competition. It did not exist.

Today, according to the FCC, about 15 percent of the channels are owned by vertically integrated companies. So there is a big change in the market over the last 18 years or so. But I think any revisiting should again go across the whole industry, and we would welcome that. I am not sure it is specific to this deal. But it is probably something that the FCC from time to time or Congress from time to time should look at; that is part of the question of whether the rules are still necessary, given where the market is, what is happening with other forms of distribution.

But I think that we have no problem with—you know, the FCC has said it wants to review how it timely resolves some of these matters, and the new chairman I think has sort of said the institution needs to look at how it processes things differently than past FCCs. And we welcome that kind of institutional review and want to be a constructive part of that process.

Mr. INSLEE. Thank you.

Ms. Abdoulah.

Ms. ABDOULAH. I cannot obviously comment on why Dish has not—or satellite has not been able to get a deal for the sports. I can assume it is because of the price.

And the reason I assume that is because we recently went through a negotiation in Chicago for a Comcast regional sports network. When we came to the table to negotiate, we had a high single-digit increase. They had a high double-digit increase. We were about \$2 million apart, getting nowhere in the negotiation.

So we said, we will go to arbitration, thinking that was a remedy for us. We quickly found out that it is not. It was going to cost about a million dollars just to get the ball rolling. It could go on for months, up to 18 months. During that time period, there was no requirement that the service continue during the dispute.

And the burden of proof was going to be placed on us to show that we are not getting a fair and equitable rate. Well, we can't do that because there is no price transparency. There is no market rationalization for the prices that we pay.

So, yes, do I think it needs to be absolutely reviewed and reformed and restructured so that there are time limits, the cost is not egregious and out of the reach of smaller operators; that the burden of proof goes on the programmer, the content provider, who is setting the price, for them to prove that it is decent and it is fair and it is market based. And the timing, that there is a set timing for the arbitration process.

Otherwise, we have no remedy. We have no place to go if we hit loggerheads, and we can't come to an agreement. And we absolutely need that to be fair and competitive.

Mr. BOUCHER. Thank you very much, Mr. Inslee and Ms. Abdoulah.

We are facing a bit of a time problem now. We are scheduled between 1:00 and 1:15 to have another series of four votes, and then this subcommittee will have to vacate this room because, at 2:00, there will be a hearing involving Secretary Sebelius on these premises.

So I am going to ask members if they will voluntarily keep their questions to about 3 minutes. And that way, we can get as far through the list of members still to ask questions as possible.

The gentlelady from Tennessee, Mrs. Blackburn, is recognized for such time as she may consume, hopefully no more than 3 minutes.

Mrs. BLACKBURN. Well, I will tell you what I will do, Mr. Chairman, why don't I lay my questions out and then allow you all to respond to me in writing. And that will save some time and allow others to get their questions in and on the record.

Mr. Roberts and Mr. Zucker, I am going to start with you because when we talk about mergers or deals or unions, things of that nature, whether it is large or small, we talk about how it is going to affect the consumer. And I mentioned this in my opening statement, and what I would like to hear from you, from each of you, is a statement as to why this is a good deal for my constituents, whether they are a consumer or a member of the content production community. And that articulation would be wonderful, and it would be helpful to me.

Mr. Thierer, to you, you had in your testimony that it would make no sense for the new firm to block new or competing channels and that Comcast faces robust competition in the video programming marketplace from satellite and telecom providers as well as from Internet-based video providers. So, given the robust competition in the video programming marketplace, do you believe that government should impose network neutrality standards on this union? And what would some of the consequences for consumers and innovation be if that intervention took place?

Mr. Zucker, you have been associated with NBC for at least a decade and CEO of NBCU for 2 years, and do you think the prognosis is for freestanding broadcast companies in this dynamic? What is the environment? What do you think it is going to be the prognosis there? And I am now out of time, it looks like.

If I can get one more, I had a question, and this would be actually for all of you. Looking at what—what impact this deal would have on efforts by broadcast to develop additional revenue streams. As I have talked to broadcasters and broadcast companies, they are talking about looking at other streams. And I would like to hear from you all kind of where are you planning to move with this? What do we anticipate being the next move for you?

Mr. BOUCHER. Mrs. Blackburn, is that sufficient, do you think?

Mrs. BLACKBURN. Yes, sir. That is enough. Thank you all. I yield back.

Mr. BOUCHER. And we will ask those to whom those questions were propounded to respond in writing.

Let me also say that other members of the subcommittee will be submitting questions to the witnesses. We would appreciate your



prompt answers to those, and the record will remain open for such period of time as is necessary to receive those answers.

The gentlelady from California, Ms. Matsui, is recognized for 5 minutes, hopefully less.

Ms. MATSUI. Thank you very much, Mr. Chairman.

There are about 200 independently-owned local TV stations affiliated with NBC network throughout the country. One of those happens to be in my district, KCRA, which is the region's local NBC station. Many of my constituents—it is a very highly rated station—rely upon KCRA for local news, programming and information. And I want to ensure that KCRA is not put at a competitive disadvantage to NBC-owned stations.

Question for Mr. Fiorile. In your testimony, you speak about the potential need for a strong set of structural separation requirements for the subsidies of Comcast. Can you briefly elaborate on this point? And what safeguards or conditions, if any, do you envision to ensure independently-owned NBC affiliates are not put at a competitive disadvantage?

Mr. FIORILE. Thank you for the question.

The concern that I articulate is such that we currently negotiated with NBC for renewal of our affiliation agreement. And separate and aside from that, we negotiated with a cable carrier for retransmission consent. The potential exists to reach a standstill in negotiations with the cable carrier over retransmission consent and then to have that same company withhold an affiliation renewal from the network.

So what we would hope is that there would be some kind of separation between the two, and in particular, a remedy that that cable carrier could find, if we were at a standstill in negotiations or retransmission consent, is the network could be brought in around the local affiliates, circumventing the retransmission consent process.

Ms. MATSUI. Mr. Zucker, do you agree with the assertion that structural separation may be necessary?

Mr. ZUCKER. I don't think it is necessary. I think that we have always been able to, in the course of these conversations with the affiliates, work this out. There has never been any issue with regard to that, and I don't foresee any need for it going forward.

Ms. MATSUI. You don't foresee any need at all.

As I mentioned in my statement, there are concerns that this joint venture may cause a domino affect in industry, and some critics of the proposed joint venture fear that this deal will create competitive pressure that will result in further joint ventures between content and distribution companies.

Dr. Cooper, in your opinion, if this joint venture goes through, how would the media and entertainment landscape change over the long run? I think you have to quickly address that.

Dr. COOPER. As I said in my testimony, the great fear is that you create a merger wave where all of the other entities look at the advantage that Comcast has gained, one of which is described by Mr. Fiorile, and say, I have to get as much of a similar advantage as I possibly can, particularly because there is this market division between cable operators, so the cable operator elsewhere will say, I have got to have the same deal. And you will create a situation

in which every one is seeking to gain maximum leverage through that sort of integration.

Ms. MATSUI. OK. I have other questions to submit. I will just yield back my time right now.

Mr. BOUCHER. Thank you very much.

Ms. Matsui, I would suggest you submit them in writing.

Ms. Castor, you are recognized for 7 minutes, hopefully less.

Ms. CASTOR. Thank you, Mr. Chairman. Mine is kind of a follow on to Congresswoman Matsui's question.

Under the FCC public interest test, you will be asked to determine, is this transaction in the public interest, and is it convenient to—does it promote convenience and necessity?

What about customers who don't have Comcast, who are not served in that area? For example, in the Tampa Bay area, which is the largest media market in the State of Florida, it has the flagship NBC affiliate. It is probably the most successful, highest rated in the entire area. What does this mean for those customers? We are not served. Comcast cable is a very minor share of the market. Verizon has a much larger share. But what is the impact? How does this promote the public interest for the customers there that will not have access to Comcast in the near future and maybe won't be able to achieve a larger market share in the future?

Mr. ZUCKER. May I take that question? I think that—I believe it is WFLA in Tampa, which is an affiliate that we are incredibly proud to be associated with.

I think what is terrific about this proposed joint venture is that Comcast is committing to free over-the-air television, and the future of broadcasting, and I have to say that, before this joint venture was proposed, I was concerned about the future of broadcasting. It has been under a tremendous amount of duress, especially with the economic woes that we have all suffered.

I think Comcast's willingness to commit to the future of over-the-air broadcasting, to step up and say that they are willing and hope that they will be able to play a constructive role in retrans conversations; all of these give me greater comfort in thinking about the future of broadcasting. And I think that is good for the viewers of WFLA and your constituents in Tampa.

Ms. CASTOR. Mr. Fiorile, you heard his answer and you also heard his answer on the separation condition. What is your reaction to that?

Mr. FIORILE. I guess I would look for more on the previous question. I would look for a stronger condition and for more separation and some clarity on non-integration of both the network affiliation negotiations and retransmission consent negotiations. The capacity for Comcast to bring benefits to the over-the-air NBC affiliate family, I think there is a real possibility of that.

Dr. COOPER. May I offer an alternative view?

In point of fact, Comcast will be in a stronger position to demand bigger bundles at higher prices from your local cable operator who is not Comcast. They will have a—be in a stronger position to demand higher retrans where they are than OandO. So those two things will have a negative effect on consumers because they have a stronger bargaining position as a larger integrated entity.

Mr. ZUCKER. I would just add that the program access rules that we have been talking about actually haven't applied to NBCU because we haven't been owned by a distributor. In fact, going forward, they will apply, and actually, we will now be subject to those rules. So I actually think there is a greater benefit as a result of that and less protection for us.

Ms. ABDOULAH. And hence why the rules need to be reviewed.

Mr. BOUCHER. Ms. Castor, thank you very much.

The gentleman from Illinois, Mr. Rush, is recognized for his questions.

Mr. RUSH. Thank you, Mr. Chairman.

And, Mr. Chairman, I do know that we are operating with some severe time restraints.

I am going to ask Mr. Roberts and Mr. Zucker if you could listen to a question and maybe we could get an answer from each one of you. Have your respective companies done all that they reasonably can to foster minority ownership of communications properties, improve business relationships with the existing minority business owners, and recruiting and retention of minority employees?

And to the extent that you can, will you divulge to us what and when was the last large transaction that you personally or your executive team struck with a minority-owned firm, and what was their value in terms of dollars and duration?

Mr. ROBERTS. Well, I think it is—one of my goals personally is to see our company continually improve in diversity; diversity in how we purchase our goods and services, how our employees are made up and reflect the customers that we serve. And I would say I would never give us a perfect scorecard, and I think it is something that we are constantly striving to improve on. And it is a major priority for the company.

In terms of media-owned assets, the last deal that I can think of was the New York Times company a decade ago sold their cable systems, maybe a little longer than that, to a minority-owned group that we participated in with Bruce Llewellyn called Garden State Cable. And eventually Mr. Llewellyn and the group that we partnered with sold their shares after more than half a decade.

We built the cable system in Philadelphia. We also wanted to have local ownership by minority and women businesses. And so we had a separate public company that are Comcast Philadelphia, was owned with and shares were available to Philadelphia residents who were women and minorities. Eventually that got bought up. Everyone made a lot of money; 10 times their money or more.

So as we have, from time to time, had to dispose of certain assets, we have always looked for ways to find creative opportunities with minority entrepreneurs. We do the same for purchasing of vehicles and other hard goods. We spend about \$5 billion a year on capital spending. So there is great opportunity to support businesses with smaller ownership than just the large owners.

Mr. BOUCHER. Mr. Rush, can we move on?

Thank you very much.

The gentleman from Vermont, Mr. Welch, is recognized for hopefully one or two questions.

Mr. WELCH. Thank you very much.

Mr. Roberts, my understanding is, you want to be treated the same on net neutrality. And if there were any conditions that were imposed as part of this arrangement, you would want them imposed on everyone else. Is that more or less right?

Mr. ROBERTS. I think—I am not sure there should be—that there has been proof that the Internet isn't growing fast enough or that there should be rules. But if there are new rules that want to be put forth, I think it should not be a competitive differentiator that would apply to some and not to all.

Mr. WELCH. Well, if in the course of this, there were rules that applied to net neutrality, would you be supportive of them as long as they were applied across the board to everyone else?

Mr. ROBERTS. I think it depends on the rule. But conceptually, we are participating right now with the FCC. We have put in comments, and we think there is a constructive dialogue led by Chairman Genachowski.

Mr. WELCH. We are going to have to go quick because we are going to vote. But I want to ask you about the availability of non-affiliated content on TV Everywhere. Are you going to be asking, you Comcast, asking independent programmers to sign exclusivity deals with you or with your TV Everywhere partners?

Mr. ROBERTS. Absolutely not.

Mr. WELCH. You won't be doing it. That is good.

Again, I go back to this concern about the bundling of services and whether there are mechanisms to work out payment disputes. Right now, I understand arbitration is theoretically available. For instance, if you and a smaller programmer, like the WOW! Network, had a dispute about pay, arbitration is theoretically available; is that right?

Mr. ROBERTS. There is a dispute resolution mechanism at the FCC, yes.

Mr. WELCH. Ms. Abdoulah, does that work as a practical matter? What is involved if you have a dispute with a larger distributor? And we don't have to single out Comcast here. But how does arbitration work as a practical remedy to resolve the dispute?

Ms. ABDOULAH. You would file a complaint, and then there is the depositions and all the data gathering. And you asked, is it effective? No. It is a long process.

The worst part about it is, two things, you do not get guarantee that the programmer will keep that service on while you are in dispute. That is huge because customers then lose the signal, and now it is a problem for your consumers, your paying consumers who lose a signal. That is a big issue. And secondarily, I would have to be the one that would prove that the pricing is not right, and I don't have exposure to market pricing or data. That is huge.

Mr. WELCH. Let me ask, Dr. Cooper, is there a suggestion you would have to provide fairness, and I mean to the two, whether it is, in this case, Comcast and WOW! that would resolve this dispute in a reasonable way so that both of their interests were respected?

Dr. COOPER. Frankly, if you listen to the lists of promises that people have tried to extract of conditions that people have talked about, there are 15 or 16. They can't be enforced effectively to preserve competition in the marketplace. The last decade has proven that the FCC is incapable of enforcing these conditions. So, on this

merger, the answer is, it should not go forward, and Congress needs to revisit all of these other problems as a general proposition.

Mr. BOUCHER. Mr. Welch, if it is oK with you, so that other members can ask at least one question.

Mr. WELCH. Sorry. I yield back.

Thank you, Mr. Chairman.

Mr. BOUCHER. Mrs. Christensen from the Virgin Islands is recognized for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

And since some of my questions on whether the regulations are strong enough I think have at least been alluded to, and the diversity issue has been partially addressed.

Let me ask just one question. The unions, especially the CWA, have concerns based on what they say has been a difficult history, and this is to Mr. Roberts and Mr.—Mr. Roberts particularly, and Mr. Zucker may answer—the history with Comcast. But also on the possibility of what might happen to jobs at a time when this country is focused on expanding jobs. So what do you plan or foresee the impact of this proposed merger would be on jobs?

Mr. ROBERTS. Thank you for that question, because it is something I am very proud of.

Comcast today has over 100,000 employees and when we started the company, Ralph, what was it 12, in Tupelo; 12 in 1963. I think we have a one-way track record of creating jobs in this country.

And now with NBC Universal having another 33,000 employees, the thing that I am most excited about this deal is the hardest thing to convince investors, which is that there is not going to be massive job cuts as part of this coming together. We don't own a news channel, a broadcast network, a movie studio. So there isn't the overlap that typically you see in horizontal deals where then the first benefit is firing people. The great ideas of this country, Google, what Apple is doing, are adding, not by subtracting.

So this deal is a risk. We have been talking about the uncertainty of the future and what is happening in technology. It is not clear that it is a sure thing. What is happening to broadcast, what is happening in the Internet, and there is an investment and a passion that has to come with how you operate a company of this nature. And I think it starts with having a great relationship with your employees. And if they are in a union, respecting that. And if they are not, it is their right to choose one. And hopefully, either way, we create a fabulous work environment that ultimately we create great products that consumers will want.

Mr. BOUCHER. Thank you very much, Mrs. Christensen.

The gentleman from Pennsylvania, Mr. Doyle, is recognized.

Mr. DOYLE. Thank you. And I will be brief, Mr. Chairman.

Even though Comcast is from that other city in Pennsylvania, they have been solid citizens in Pittsburgh since their entry into the market in 2002. And I would like to enter into the record a letter from our Mayor Luke Ravenstahl and Councilman Doug Shields in support of the Comcast merger.

Mr. BOUCHER. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. DOYLE. Just a quick question. I also want to say that, in Pittsburgh, Comcast workers are unionized, and we appreciate

that. And Comcast has worked with the unions in Pittsburgh and have a good relationship, and I want to state that for the record.

Very quickly, Mr. Roberts, there has been many news articles about how some in the copyright businesses have been pressuring ISPs to disconnect their users if they have been alleged to have illegally downloaded copyrighted materials. It has been called the three strikes program or the graduated response. I checked with your staff, and I am told that Comcast does not currently disconnect users. And I want to say that I appreciate that policy, because our concern is there are no avenues for the users to have a due process. And we have seen many instances where people have been accused of doing something illegal, and it turns out they hadn't. And I just want to make sure that Congress, hopefully, will not be passing an explicit mandate for three strikes. So absent one, will Comcast continue to commit not cut off their customers from the Internet without some sort of due process procedure?

Mr. ROBERTS. Well, first of all, thank you for the introduction. What I said earlier and if I might—and we maybe can submit some comments, as the chairman has allowed, for specifically that rule and that test.

We think that by having made multibillions of dollars of investment here in content and still being 80 percent a distributor, we can play a constructive role in figuring out what is the right technological answer that protects the consumer and protects the copyright, so that what is going over is legal and is protected and keeps these businesses viable.

We have seen in other industries where that has gotten so bad that the viability of the industry has been jeopardized. Exactly what the right answer is, I am not prepared today to say that I know. Obviously, many smart minds are there. But I am going to spend a lot of time and energy at this, more than I have in the past because of the fact that we have such a large stake now in content if this deal happens. How best to do that, I don't know right now.

I don't know, Jeff, if you have a point of view on that. But some have said we should go to that three strikes and we are trying to figure that out as we speak. We were going to try to use both industries to talk to each other through the trade associations in a more cooperative way than has ever happened before.

Mr. DOYLE. I just hope it is not based strictly on the people making accusations without some sort of due process on the other end. Thank you very much.

Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Doyle.

And thanks to all of the members for their expeditious questions here, at least during the last half hour, and thanks to all of our panel members for informing us as thoroughly as you have on this matter of public interest.

We will be submitting some additional questions in writing, and the record will remain open for such period of time as is needed to receive your responses.

The gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I want to thank you for that. I was getting ready to ask that question.

Mr. Chairman, I would also urge that the committee call the FCC and the Department of Justice before us. There are a number of questions that appear here to be in need of answering. I recognize there are matters there before those two agencies, but I think we could craft a proper hearing to get their proper input without intruding into the Pillsbury rule.

Mr. BOUCHER. Thanks very much, Mr. Dingell, for that constructive suggestion.

And we are going to adjourn this hearing. We now have to respond to the recorded votes on the floor, and the clock stands at zero. So we will be sprinting over there. So thanks so much to the witnesses today for your attendance and your answers to our questions.

[Whereupon, at 1:13 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



# CITY OF PITTSBURGH

"America's Most Livable City"

*Office of Mayor Luke Ravenstahl*

January 29, 2010

The Honorable Mike Doyle  
U.S. Congress  
401 Cannon HOB  
Washington, DC 20515

Dear Congressman Doyle:

Now that the formal regulatory approval process has begun for the creation of a joint venture between Comcast and GE for NBC Universal, I want to express my support for this transaction.

For consumers here in the City of Pittsburgh, the advantages of merging NBC's content with Comcast's delivery technology are obvious and should mean more and better entertainment choices – and therefore more diverse programming. Comcast has already committed, for example, to launch new Telemundo programming and increase video on demand content from both Telemundo and Mun2.

In pursuing this joint venture, Comcast has made a number of public commitments that I believe display its focus on consumers. These include promises of additional local news and more children's programming from NBC stations and the addition of at least six new independently owned and operated cable networks to its digital lineup in the next three years.

Certainly, these developments will encourage competitive responses from rival content owners and distributors, all of which will benefit consumers here in Pittsburgh and encourage continued innovation.

Furthermore, Comcast has been an outstanding corporate partner in our city. Over the years, Comcast has helped Pittsburgh residents by providing numerous significant Foundation grants to local groups such as the Mentoring Partnership of Southwestern PA, the Greater Pittsburgh Community Food Bank, Junior Achievement of Western Pennsylvania and Carnegie Library of Pittsburgh, among others.

City residents also benefit every year from the community-level volunteer work done on Comcast Cares Day, including recent improvements at the Northview Heights Family Support Center, Allegheny Commons Park, Pressley Street High Rise and Western Pennsylvania Conservancy sites, to name a few.

As you undertake a thorough review of this transaction, I believe the regulatory process will show that this new joint venture will benefit consumers across the nation. I know it will benefit those in the City of Pittsburgh.

Sincerely,

Luke Ravenstahl  
Mayor, City of Pittsburgh

Cc: Frank J. Polito, Comcast

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**DOUGLAS A. SHIELDS**

PITTSBURGH CITY COUNCIL, DISTRICT 5

CHAIR, LAND USE & ECONOMIC DEVELOPMENT ♦ PRESIDENT EMERITUS

January 29, 2010

The Honorable Mike Doyle  
U.S. Congress  
401 Cannon HOB  
Washington, DC 20515

Dear Congressman Doyle:

As the regulatory process gets underway for the transaction uniting Comcast and NBCU, I hope you share my sentiment that this partnership is in the public's best interest. These are two strong U.S. companies whose shared assets signal a new era in entertainment. Not only will this joint venture be pro-competitive, it is pro-consumer, bringing more entertainment choices to families.

Furthermore, there is a clear commitment that this transaction will result in expanded children's programming, parental content rating information and diverse programming. The combined company with interests in Telemundo, Mun2, TVOne and extensive channel offerings serving distinct viewers will be a leader in diversity programming.

Each company brings with it a strong track record of community investment. I know first-hand in the neighborhoods I represent in the City of Pittsburgh that Comcast is a champion of our non-profit community. Whether it is supporting the Urban League, giving a voice to the United Way through an appearance on Local Edition or cable airtime for a food drive, Comcast is always there.

While Comcast is a major national company, it feels local. Its employees live, work, and volunteer in our community. This localism is further apparent in the content provided to its customers On Demand. On any given weekend, residents in our city neighborhoods may be watching area high school football rivalries On Demand or reading in the newspaper that another of Allegheny County's most wanted fugitives was captured due to a tip from a Comcast subscriber watching Fugitive Files On Demand.

Right in our own City limits there is further evidence of Comcast's commitment to a local workforce. My constituent's customer service calls to Comcast are not answered in India or Taiwan, but answered by our neighbors, more than 600 strong, located in the West End. It's hard to miss that Pittsburgh accent! Comcast keeps us connected with our community.

Again, this merger holds the promise of great opportunity. It is good for the consumer, competition and the economy. I urge you to encourage serious consideration of the swift affirmation of the Comcast/NBCU union.

Sincerely,

Douglas A. Shields  
Member of Council

HENRY A. WAXMAN, CALIFORNIA  
CHAIRMAN

JOHN D. DINGELL, MICHIGAN  
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BETTY SUTTON, OHIO  
BRUCE BRALEY, IOWA  
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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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PHIL SINGREY, GEORGIA  
STEVE SCALISE, LOUISIANA

March 1, 2010

Mr. Brian L. Roberts  
Chairman & CEO  
Comcast Corporation  
One Comcast Center  
52nd Floor  
Philadelphia, PA 19103-2838

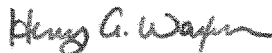
Dear Mr. Roberts:

Thank you for appearing before the Subcommittee on Communications, Technology, and the Internet on February 4, 2010, at the hearing entitled "An Examination of the Proposed Combination of Comcast and NBC Universal."

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions.

Please provide your responses by March 17, 2010, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to [Earley.Green@mail.house.gov](mailto:Earley.Green@mail.house.gov). Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman  
Chairman

Attachment

U.S. House of Representatives Committee on Energy and Commerce,  
Subcommittee on Communications, Technology, and the Internet  
Hearing on “An Examination of the Proposed Combination of Comcast and NBC  
Universal”

March 19, 2010

Responses to questions for the record submitted by Representative Henry A. Waxman

**During the hearing, in response to questions from members of the Committee, you seemed to offer a series of additional commitments as part of the Comcast/NBC Universal transaction. They include:**

- **(In response to Chairman Boucher) Programs that are delivered over the air by NBC today and are then available on the nbc.com web site for online viewing will not migrate into the TV Everywhere format so that they then would be available only to people who have a cable subscription.**
- **(In response to Chairman Boucher) Smaller cable operators should have access to TV Everywhere content on reasonable terms.**
- **(In response to Ranking Member Stearns) Comcast/NBC-U content will continue to be made available to competitors.**
- **(In response to Chairman Waxman) Comcast/NBC-U will continue to abide by rules prohibiting cable companies from requiring a financial interest in any program service as conditions for carriage, or forcing a programmer to grant as an exclusive to the cable provider as a condition of carriage.**
- **(In response to Rep. Buyer) Comcast/NBC-U will continue to abide by program access rules regardless of what the court may do, and that this commitment applies even after the rule sunsets.**
- **(In response to Rep. Buyer) Comcast/NBC-U will maintain for some period of years the programming prices in the current deals to video distribution competitors.**
- **(In response to Rep. Dingell) Comcast/NBC-U will commit to not tying together retransmission consent payments with payments for network programming provider under an affiliation agreement.**
- **(In response to Rep. Dingell) Comcast/NBC-U will commit to not migration away critical network programming from free over the air broadcasting to Comcast’s cable properties.**
- **(In response to Rep. Dingell) Comcast/NBC-U will commit to respecting collective bargaining agreements for its employees and the process by which they are reached.**
- **(In response to Rep. Dingell) Comcast/NBC-U will not put up roadblocks to first or initial contract negotiations with the unions.**

- **(In response to Rep. Welch) Comcast-NBC-U will not ask independent programmers to sign exclusivity deals with Comcast/NBC-U or with TV Everywhere partners.**

**1. Please reconfirm that Comcast/NBC-Universal will adhere to these commitments, either voluntarily or as part of mandatory conditions that the Federal Communications Commission may impose.**

I was pleased to come before the Subcommittee to explain why we believe that this transaction will be good for competition and good for consumers. As I noted in my remarks, the intense competition and dynamism of the communications marketplace, and the applicants' lack of market power in any relevant market, ensure that any risks of consumer harm are negligible. In addition, there is a well developed set of existing laws and regulations that provide significant further safeguards against any misconduct.

Comcast and NBCU also have tendered to the FCC an unprecedented series of voluntary public interest commitments as part of our application. Those commitments (which were also submitted along with our written statement for the record of this hearing) are intended to provide concrete and verifiable assurances that the pro-consumer benefits of the transaction will be achieved. We have also stated that we are prepared to accept all 16 of the commitments that were set forth in our Public Interest Statement as legally binding conditions of the FCC's approval of our transaction.

All of the statements you reference in your question reflect our current sound business practices and positions, disciplined by the market and by existing law. I remain comfortable with each of them, but would respectfully suggest that attempting to "codify" them as regulatory conditions is both unnecessary and unwise. The marketplace is changing rapidly, and we need the latitude to respond and adapt to these changes in the same way as our competitors do.

So I confirm that the statements you cite represent our current thinking and practice and offer the following additional context for each statement:

- **(In response to Chairman Boucher) Programs that are delivered over the air by NBC today and are then available on the nbc.com web site for online viewing will not migrate into the TV Everywhere format so that they then would be available only to people who have a cable subscription.**

This accurately states our current position. We certainly expect that the programs that are delivered over-the-air by NBC today and then are available at the nbc.com website for online viewing will continue to be made available in that fashion, and will not migrate into the TV Everywhere model. But while we have no plans to change current practices, we believe that the dynamism of the online video sector makes it unwise to set in stone any plans with respect to putting content online in any particular fashion.

- **(In response to Chairman Boucher) Smaller cable operators should have access to TV Everywhere content on reasonable terms.**

This accurately states our position. The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to all consumers when they want, where they want, and on the devices they want. Providing content that consumers want online – through

Comcast's distribution platform and those of our competitors – is essential to that effort. Comcast's goal is to expand the amount of content available online now and in the future and to do so through business models that support the continued production of high-quality content.

So, with respect to Comcast content today, or new NBCU content in the future, to the extent that we make it available online to Comcast-authenticated subscribers at sites like Fancast Xfinity TV, we intend to make it available on reasonable terms to other MVPDs to provide online to their authenticated subscribers. And, as explained in more detail in our response to questions posed by other members of the Subcommittee, this is already occurring.

**• (In response to Ranking Member Stearns) Comcast/NBC-U content will continue to be made available to competitors.**

This is our current practice and current law. As a content provider, the new NBCU will need to depend upon competing MVPDs to reach the more than three-quarters of all U.S. MVPD homes that Comcast does not serve. The new NBCU cannot keep programming content exclusive to Comcast Cable, because without distribution on competitors' networks (which represents more than three quarters of NBCU's content distribution), Comcast would only hurt its own programming networks. Thus, there are powerful competitive incentives to license NBCU's content broadly. This viewpoint on the economic and competitive realities is further underscored by Professor Richard Epstein of the University of Chicago, whose two recent Free State Foundation postings (attached to these answers) provide a useful perspective on the testimony of Dr. Mark Cooper.

I would also note that today, NBCU's cable networks are not subject to the existing program access rules because they are not vertically integrated with a cable company. However, post-transaction, NBCU's cable networks will be deemed vertically integrated with Comcast, so the rules will apply to those networks.

**• (In response to Chairman Waxman) Comcast/NBC-U will continue to abide by rules prohibiting cable companies from requiring a financial interest in any program service as conditions for carriage, or forcing a programmer to grant an exclusive to the cable provider as a condition of carriage.**

This response affirms that we remain subject to Section 616 of the Communications Act, which applies to us and all MVPDs today. As I said at the hearing, we have abided by that prohibition since it was enacted in 1992.

**• (In response to Rep. Buyer) Comcast/NBC-U will continue to abide by program access rules regardless of what the court may do, and that this commitment applies even after the rule sunsets.**

As I testified, we are prepared to discuss with the FCC making the program access rules binding on us in connection with approval of the transaction, regardless of whether they were overturned in court. As you know, on March 12, 2010, the U.S. Court of Appeals for the D.C. Circuit upheld the 2007 FCC Order that extended the program access exclusivity prohibition for another five years, and we will not appeal further.

**• (In response to Rep. Buyer) Comcast/NBC-U will maintain for some period of years the programming prices in the current deals to video distribution competitors.**

This response affirms that Comcast fully intends to honor all of NBCU's existing program licensing contracts, including their pricing provisions.

**• (In response to Rep. Dingell) Comcast/NBC-U will commit to not tying together retransmission consent payments with payments for network programming provide[d] under an affiliation agreement.**

It has been NBCU's practice, and will remain our practice, to offer MVPDs the option of obtaining retransmission consent for any NBCU O&O station available on a stand-alone basis. However, NBCU does, and we would intend to, reserve the right to enter into contracts with MVPDs that encompass both retransmission consent arrangements and cable network programming agreements.

**• (In response to Rep. Dingell) Comcast/NBC-U will commit to not migrat[e] away critical network programming from free over the air broadcasting to Comcast's cable properties.**

This statement reflects part of our commitment to maintain free, over-the-air broadcast television, through NBC's owned and operated stations, and through local broadcast affiliates throughout the nation. Comcast wants to invest in the broadcast industry and help it grow. Broadcasting is so important to us that it topped our list of voluntary public interest commitments. Consistent with this commitment, we intend to continue to invest in high-quality programming for broadcast on the NBC Television Network, and we fully expect that shows like *The Office*, *Meet the Press*, and *Saturday Night Live* will remain on NBC. This is not to say that no show will ever be moved from a broadcast network to a cable network; such moves have happened in the past and may happen again in the future. For example, *Law & Order: Criminal Intent* originally aired on the NBC Television Network, and has since migrated to USA. But our intention is to strengthen, not weaken, the NBC Television Network. We would like to restore it to its prior role as the #1 broadcast network.

**• (In response to Rep. Dingell) Comcast/NBC-U will commit to respecting collective bargaining agreements for its employees and the process by which they are reached.**

This is absolutely the case. Our original statement of voluntary public interest commitments on the day we announced this transaction includes the following: "We plan to honor all of NBCU's collective bargaining agreements. We respect NBCU's existing labor-management relationships and expect them to continue following the closing of this transaction." Comcast does not anticipate that any fundamental changes will be made to the manner in which NBCU conducts labor relations.

**• (In response to Rep. Dingell) Comcast/NBC-U will not put up roadblocks to first or initial contract negotiations with the unions.**

This is also our position. Consistent with the public interest commitment cited immediately above, where bargaining unit employees have chosen to be represented by a union, Comcast will not delay good-faith negotiations with the bargaining unit representative.

**• (In response to Rep. Welch) Comcast-NBC-U will not ask independent programmers to sign exclusivity deals with Comcast/NBC-U or with TV Everywhere partners.**

This statement is correct and restates our current practice. Comcast does not ask its programming suppliers (whether for cable carriage or for distribution on VOD or Online) for exclusive rights to carry their programming. Of course, the industry commonly utilizes timing “windows” for content, like advertising-supported, subscription, and pay-per-view windows, that govern when and how different types of content are available to consumers. Within this context, programmers who sell to Comcast remain free to sell to anyone else they want, on any distribution channel.

**2. You stated during the hearing that if the FCC intends to establish network neutrality rules, they must apply across the board. Your company has also indicated to me that it would be comfortable with the FCC writing such rules, including rules concerning non-discrimination. Is this an accurate statement? If so, why has Comcast challenged the FCC's ability to issue such rules?**

Comcast was one of the very first companies to deliver the promise of broadband to American homes. Ever since we first started offering our High-Speed Internet service in 1996, we have operated it in a manner consistent with the openness embodied by the principles of the FCC's Internet Policy Statement. Our commitment to doing so in the future is unwavering, regardless of whether the FCC adopts any of the open Internet rules currently under consideration.

In the comments we filed in January in the FCC's “Open Internet” proceeding, we made three major points concerning this issue. First, we do not think the FCC's Notice of Proposed Rulemaking included a persuasive showing that Congress has given the FCC the statutory authority necessary to adopt the specific rules proposed. Second, we questioned whether there is any evidence or data demonstrating a problem in the marketplace that these rules would help to address and whether adopting rules in the absence of a problem might present more risks than benefits. Based on a review of the comments filed to date, we think that argument still rings true – nobody put forward any hard evidence or data demonstrating a problem. Our third point was that, if the FCC can establish both that it has the necessary authority and that there is a need for rules to achieve the core goal of “preserving a free and open Internet” (to use Chairman Genachowski's term), the FCC's proposed rules should be amended in several respects to minimize the potential for unintended consequences that may hurt consumers.

In particular, we noted that the FCC would be better served by a prohibition on unreasonable and anticompetitive discrimination, rather than an absolute prohibition on discrimination. Leading engineering experts point out that an absolute prohibition is illogical. Applying an “unreasonable and anticompetitive” standard would allow broadband Internet service providers and content and application providers to experiment with various technologies and business models that may lead to socially-beneficial differentiation; this standard would more narrowly address circumstances where there is a potential risk to consumers or competition.

Additionally, we urged the FCC to ensure that these rules apply to all players in, and all layers of, the Internet ecosystem. It was to the last point that I was referring during the hearing. Unless any new rules are broadly applied across the Internet ecosystem, there is no way to ensure that the potential risks to the open Internet can be addressed no matter where they may occur or who causes them – including at the applications and operating

system level. Unless there is even-handed application of any new rules at all layers of the Internet, there is no way to ensure consistency in the Commission's effort to "preserve an open Internet."

For further elaboration on some of the points made above, I am attaching a blog posting from our Executive Vice President, David Cohen, from earlier this year.

Separate and distinct from the FCC's current proceeding, in September 2008, we appealed the FCC's Network Management Order. We did so because the FCC under previous leadership abandoned due process in the way it dealt with the complaint against us. As we've made clear in our briefs to the court, and as our counsel made clear at oral argument in January 2010, we are not challenging the FCC's authority to adopt net neutrality/open Internet rules. Rather, we are challenging whether the FCC was acting within its statutory authority in prosecuting us for behavior that we had no reason to believe might be illegal. Regardless of whether you believe that our previous network management practices were reasonable, there is widespread agreement that the process the FCC followed was a radical departure from the norms of due process.

Today's FCC has chosen the correct path, from both a legal and policy-making perspective, for examining these issues, and we commend Chairman Genachowski and his colleagues on the Commission for adopting this approach. Publishing a notice of proposed rulemaking with thoughtful questions and draft proposed rules will undoubtedly elicit the kind of forthright, open, fact-based debate that we need to have on these important questions about the future of the Internet. This will lead to more thoughtful, and ultimately more sustainable, outcomes for consumers and all parties in the Internet ecosystem.



## The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

### *Perspectives from FSF Scholars*

*February 12, 2010*

*Vol. 5, No. 4*

### **The Comcast and NBCU Merger: The Upside Down Analysis of Dr. Mark Cooper**

by

**Richard A. Epstein\***

I have just had the opportunity to read the [statement](#) that Dr. Mark Cooper, the Director of Research for the Consumer Federation of America, has prepared in opposition to the proposed combination of Comcast and NBC Universal. Normally the detached analysis has to wait to see the affirmative case for a merger to bless it. But in this stance, Dr. Cooper has achieved a rare feat. The evidence that he presents against this proposed merger suffices to explain emphatically why it ought to be approved.

As a matter of basic theory, any merger evaluation should depend on an accurate appraisal of its relative costs and benefits. Under the traditional analysis of a merger, the pro side consists of the efficiency gains that are obtained from the integration of the facilities of the two firms. The negative side, in turn, consists of the increase in market concentration to the extent that it allows the new firm to raise its prices above the competitive level. As a matter of basic theory, this risk may materialize in horizontal mergers, but rarely will appear in vertical ones, which involve the integration of two facilities or services at different levels in the chain of production.

Dr. Cooper's analysis does not engage in this elementary form of analysis. The words "efficiency" and "benefit" do not appear anywhere in the analysis, so that the implicit baseline for his dubious judgment is that any cost of the merger is in and of itself to require its rejection by the applicable public authorities.

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[www.freestatefoundation.org](http://www.freestatefoundation.org)

This omission is curious beyond belief. The first question to ask about this merger is whether it should be treated as horizontal or vertical. To be sure, there are some horizontal components to the merger, which could be met by a partial divestiture in some local markets if the concentration levels are thought to move too high. But the vast bulk of this transaction lies on the vertical side of the line, which involve the linkage of a transmission company — Comcast — with a content company—NBC Universal.

Dr. Cooper acknowledges this point when he notes the “complementary” nature of the assets of the two firms. To most people in the field, the merger of two complements in effect is one of the reasons why vertical mergers are viewed generally with favor why horizontal mergers are not. Thus in patent pools, for example, the antitrust law encourages the pooling of complements, because of the way in which such pooling lowers transaction costs and eliminates some of the substantial social losses associated with the “double marginalization” problem, which produces substantial resources when two successive links in the chain of production that enjoy some monopoly power interact with each other.

Dr. Cooper has the rare skill to turn an economic virtue into a social vice. He writes that the two companies have in their respective roles of distributor and content provider, “a competitive rivalry. For example, in providing complementary services, broadcasters and cable operators argue about the price, channel location and carriage of content.” Argue? What his odd choice of words shows us is that he has no explanation as to why the reduction in transaction costs should count as a social loss, when in fact it allows the provision of more services at lower prices. The gains from vertical integration are treated as though they create a social loss, which is even more mysterious because he does not bother to establish that either firm has any level of monopoly power to begin with.

He then fortifies this analysis with one kind of alarmist prediction that makes sense only to those who are convinced that both companies will commit hari-kari after their linking up their fortunes. Thus he thinks that Comcast will carry only NBC content, which NBC will in turn only supply to Comcast. But why would either company wish to make its network weaker than it need be, by entering into actions of exclusion that hurt itself as much as any outsider? If the purchase of outside content allows Comcast to satisfy its customers’ tastes, it will go for it. If selling content to other service providers allows NBC to gain more revenues, all the better. Both points are especially true for Comcast which does not have nationwide penetration in the cable market.

These antitrust arguments are then dead losers. Nor are they improved by the other ad hoc diversionary arguments that are just beside the point. For antitrust purposes, what possible difference could it make that Mr. Cooper claims Comcast has raised its rates every year? If it can do so without the merger, why think that the merger will make matters worse? And why harp on the point that Comcast has blocked Internet access to a competitive supplier of video material? If Comcast violated a law or regulation, then that “conduct” offense should be punished. But it is irrational to think that any particular past sin has some outsized role to play in the assessment of a proposed forward-looking merger.

It is even worse to claim that letting go workers after merger should count against the merger, when the entire purpose of antitrust law is to allow firms to produce more with less. Perhaps some workers will be let go. Or perhaps some additional services will be provided. But until letting go workers becomes some kind of public offense, the point is a mindless diversion unless the antitrust law become a back-handed way to introduce civil service requirements through the back door.

So the question remains why anyone should think that the identification of these efficiency gains should count as an objection to this merger? Dr. Cooper's magic bullet on this point is that we are not dealing with two companies that "sell widgets." We are dealing with companies that are dealing with speech and public discourse.

True enough, but the last thing that any analyst should do is botch the antitrust analysis in any field that is as important as speech. Instead, the question is to ask why this combination might affect the market in speech. Here two points are relevant. The first is that the political speech market has never been healthier, because the coming of age of the web introduces more political content and lower cost of access than ever before. Entertainers may experience serious grief with the web because they are trying to sell content that is easily pirated. But political commentators are intent upon giving away content for free in the hope that every reader will forward a particular story to his or her entire list. *Puhleeze forward!!*

NBC surely must be hit hard in the content department like every other established news service. It may not be a failing company, but it is surely one that is buffeted by the winds of change. If it thinks that this alliance will stop the bleeding, it should be given the running room to make the business judgment that might salvage or expand its operations.

The situation is in reality exactly the opposite of what Dr. Cooper's topsy-turvy analysis predicts. Efficiency is even more important when first amendment issues are at stake than when they are not. He is not able to perform a minor intellectual miracle of having an upside down antitrust analysis saved by topsy-turvy First Amendment analysis. His errors don't cancel each other out. They cumulate.

---

\* Richard A. Epstein is the James Parker Hall Distinguished Service Professor of Law, The University of Chicago, The Peter and Kirsten Bedford Senior Fellow, The Hoover Institution, and a visiting professor at New York University Law School. He is also a Distinguished Adjunct Senior Scholar at the Free State Foundation and a member of FSF's Board of Academic Advisors.

## The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

### *Perspectives from FSF Scholars*

March 15, 2010

Vol. 5, No. 6

### **The Dogmatic Posture of a Consumer Advocate: A Second Response to Mark Cooper**

by

**Richard A. Epstein\***

In a previous *Perspectives* published by the Free State Foundation, I took to task the shoddy reasoning in Dr. Mark Cooper's statement in opposition to the Comcast-NBC Universal merger. In that piece, I explained that nothing he had said in opposition to that merger gave the slightest reason to think that the linkage of these two firms would cause any systematic harm to the overall telecommunications and entertainment industry, to its video segment, or to the larger economy as a whole. The explicit test I used in making that judgment was social welfare, which is equal to the sum of consumer and producer surplus generated by the transaction.

In recent *testimony* submitted to the United States Senate Commerce Committee, Dr. Cooper has responded to my comments as part of his ongoing opposition to the proposed merger on behalf of the Consumer Federation of America, the Consumers Union and Free Press. His criticisms are both general and specific. He first attacks the general approach to antitrust law of the Chicago School, of which I am a proud part. He then goes into some particulars of this transaction in order to support his own conclusion. Let me take his general points first and then turn to the particulars of this merger.

*Efficiency and Restraint.* Mr. Cooper (who has no visible qualifications in antitrust law) believes that the Chicago School represents an unflinching ideological commitment to the position that mergers produce efficiencies, even as they generate

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serious horizontal and vertical restrictions which are harmful to consumer welfare. He accuses me, and others like me, of harboring deep "ideological" commitments that stand in the way of clear analysis. He pays no attention at all to his own ideological blinders.

In launching this indiscriminate broadside, he is surely right that I did not speak about the specific efficiencies of this particular merger, as my purpose was to point out the economic weaknesses in his own arguments, none of which he responds to in detail. He makes similar mistakes in this recent testimony. Any sound economic theory shows that Dr. Cooper is surely wrong in denying, without any empirical evidence of his own, the existence of economic efficiencies unless they can be demonstrated in concrete economic fashion.

To see why, assume that under the proper definitions of the geographical and product market, there are some restrictive effects to many mergers, perhaps even to this one. The question is what does this indicate about the potential economic gains to these transactions. Here there are three possibilities. The first is that the merger would be so clunky that it would introduce extra layers of bureaucracy that disrupt sensible patterns of production. The second is that there are no organizational changes of note so that the efficiency remains the same. The third is that there are efficiencies that come from the merger which are evident to the insiders, even if they are not easily identifiable to outsiders like Mr. Cooper who know nothing about the internal operations of the new firm or its component parts.

The question is which of these three possibilities is the most likely to occur when the merger takes place. We can easily dismiss the first of them in virtually all cases, because any merger that created a firm with known inefficiencies would be surely less competitive than the two firms that it replaced. It is highly doubtful that the contraction of the industry, moreover, would allow it to regain through the exercise of market power the profits that it lost from its poor operations. The far more likely outcome is that other firms in the industry — for no one suggests that this merger would result in a 100 percent market control over any industry — would be able to take advantage of the high cost structure of a newly beached whale. Or that new entrants would help finish the job. It does not take empirical evidence to reach this conclusion. It only takes a rudimentary appreciation of basic economic theory. High-cost mergers are not planned in advance, even though they do arise in practice when business calculations go awry.

The second possibility — that all things should be expected to stay the same — can be dismissed with equal confidence. With respect to its internal operations, the merger of two large organizations will surely present some difficulties in the integration of different cultures, a point which is not likely to be lost on the parties to the merger. But at the same time, the decision to go forward with the synergy suggests that it would be wholly irrational to abandon any effort to eliminate duplication, streamline supply chains, combine research and advertisement facilities, engage in cross promotions, and open up new joint ventures that neither party could undertake itself. It follows therefore that the conventional model that evaluates mergers by asking about a trade-off between its efficiency properties and its restrictive implications is the correct trade-off.

It is not just a Chicago School artifact. It is also the standard view within the economic profession, which accordingly concentrates on this third possibility, ignoring all others. It is therefore intellectually irresponsible for Mr. Cooper to insist that the Chicago School just “waves a magic efficiency wand. . .” As should be evident, this derisive sentence could only be written by someone who has not tried to understand what the Chicago approach is about from the inside.

*False Analogies.* Being totally devoid of all theory, Mr. Cooper then seeks to bolster his general denunciations of my previous *Perspectives* piece by citing at great length a number of studies that have pointed out the flaws of a “free market” approach to financial regulation. But what he fails to do is to connect up that an analysis of market failure in other markets to the instant transaction. Thus in footnote 20, he makes the correct point that the great mistake of financial deregulation in the first decade of this century was its uncritical acceptance of a view (championed by Robert Rubin and Lawrence Summers, as well as Alan Greenspan) that counterparty scrutiny eliminated all need for government regulation of these transactions.

That criticism is in fact correct, and its most persuasive explanation comes from the sound application of the banking principles of the Chicago School. One problem with financial markets is that they dealt in newly created instruments that had a higher variability in value than traditional analysis suggested. Accordingly, the stress tests that are normally used to evaluate the soundness of financial arrangements understand the volatility of the financial deals, and hence the risk of widespread bankruptcy. Given the close interconnections between the parties and the rapid velocity of financial transactions, the counterparties bear only part of the overall social loss, which in turn suggests that their joint precautions will be insufficient to withstand the beating that they will take in times of stress. The result is that some form of regulation may well make sense. One sensible first step is retaining some overall reserve requirements.

It also bears mention that the financial markets were distorted by multiple *government* policies whose combined effect aggravated the risks of these voluntary transactions. First, the underlying mortgage securities were often mispriced, in part because of the active role that Fannie Mae and Freddie Mac played as a buyer and guarantor of these instruments. Second, the cheap money policies of the Federal Reserve resulted in a run-up in prices of the complementary goods, the real estate. Third, all players operating in these markets counted on an implicit federal guarantee that they would be bailed out from any economic failure, which in turn induced them to take high-risk, heads-I-win-tails-you-lose gambles, which ended in disaster. Fourth, imposing mark-to-market rules created the real risk of downward cascades that spread risk far further than should have been the case.

It has been said that free market advocates are supposed to believe in the privatization of gains and the socialization of losses. Nothing could be further from the truth. It is the height of government irresponsibility to create incentive structures that operate in this fashion. Whatever guarantees are given should be for a price that reflects the underlying risk, and, like ordinary private guarantees, contain explicit covenants on how banks and other financial institutions should operate in order to control against these risks. The intellectual blindness of Mr. Cooper in understanding the difference

between financial and entertainment markets condemns his work to the lower levels of Dante's inferno.

Mr. Cooper shows a similar want of understanding about the ill-fated mergers under the Telecommunications Act of 1996. This statute was ballyhooed as introducing competition into the telecommunication industry, but it did nothing of the sort. Telecommunications is a network industry in which classical "wheat farm" textbook competitive solutions are not possible. The proponents of the 1996 Act oversold its supposed competitive effects because they ignored the simple fact that even after the statute was put into place the FCC and the state commissions had to figure out how to forge the appropriate integration of services of multiple carriers. Rejecting the old AT&T model of an end-to-end monopoly subject to regulation on matters of rates and access does not decide what should be put in its place.

The great disaster under the Telecommunications Act was again a *government* failure in the design of that new system. The 1996 Act allowed for either interconnection or for the purchase of "unbundled network elements" as the mode of integration. The FCC pushed the second approach at the expense of the first. In so doing it mispriced all the elements which led to excessive subsidization of new entrants and a litigation nightmare that lasted for about a decade. Many of the mergers that took place were driven by the desire to settle the unending litigation under the 1996 Act and to correct the bad guess of Judge Harold Greene that telecommunications was best organized with AT&T as a long lines carrier and the Regional Bell Companies as local exchange carriers to be treated as regulated local monopolists. Had the bill been passed five years later, it would have been clear that the so-called "last mile" monopoly of the incumbents had largely been overtaken by technology, and the Act would have assumed, hopefully, a very different form. But however these complications play out, it is again blinding economic ignorance to confuse the proposed Comcast-NBCU merger with the unfortunate escapades of the 1990s. The technology in telecommunications has so advanced that the prospect of single firm monopoly has been blunted by the multiple pathways into the home and office.

*The Comcast NBC Universal Merger in Context.* Mr. Cooper's fundamental misperceptions about how markets work leads him to make counterproductive proposals for the evaluation of this merger. Desirous of some - any - grand vision of how the telecommunications and entertainment industry should look, he bravely insists that the government ought to undertake "complete industry-wide proceedings" to resolve all underlying problems and to determine the proper institutional structure for the video industry insofar as it relates to both content and carriage. This recommendation is subject two fatal flaws. The first is that it presupposes that anyone could conduct a study on this fast-moving and complex industry that could be completed before some new technological or business model innovation rendered it obsolete. Yet that result would be ideal for Mr. Cooper because in the interim he could stymie this merger on procedural grounds without presenting any persuasive evidence that the merger is anticompetitive.

On this score, he surely disagreed with the glowing appraisal of the merger offered by Comcast and NBC-Universal. But he should find it more difficult to disagree

with the assessment of the Congressional Research Service's February 2, 2010 report, authored by Charles B. Goldfarb, "[The Proposed Comcast-NBC Universal Combination: How It Might Affect the Video Market.](#)" which is the antithesis of Mr. Cooper's jeremiad about this merger. Mr. Goldfarb's account of the video industry notes that there is "so much uncertainty" associated with the future development of the video market as to render it impossible to make any sound predictions of the industry's direction. More concretely, he properly tends to downplay the risks of vertical exclusion that Mr. Cooper trumpets in his report. Thus the CRS acknowledges that in "some unique circumstances" a distributor might be willing to pay a huge premium to foreclose distribution of certain content through other channels. But, in practice, this result is likely to be most uncommon, and if it does occur some narrow conduct rule that is directed to this risk of foreclosure is surely a far better way to deal with this problem than the total nullification of the merger. As a matter of general theory, Mr. Cooper shows no awareness of the critical role that tailoring limited remedies can play in an intelligent antitrust policy.

It should come as no surprise that the deep conceptual confusions in Mr. Cooper's recent presentation sheds no light on the empirical evidence that surrounds this merger. In his extended remarks he chides me for a fact-free presentation in my earlier paper. That criticism is largely beside the point because my purpose there was to discredit his own attack on the merger, not to mount a first-line defense of the transaction. His most recent broadside against the merger, however, does purport to be comprehensive. Yet it offers no detailed analysis, by name, of any particular geographical or product market that might induce someone to reject the merger. That omission is inexcusable in his case because his response wholly ignores the [detailed presentation](#) Comcast and NBC Universal have offered the FCC for their merger, which does mention a large number of competitors who compete in different ways for various segments of the video market. These major players include video rental operations like Wal-Mart, Blockbuster, Hollywood Video and Net Flix. It includes over-the-air satellite firms like EchoStar and DirecTV and online companies like Amazon, BlinkX, Clicker.com, Veoh, and the like, many of which I have never heard of. And of course there are content standbys like Walt Disney and Time Warner to contend with, plus many small players in this space.

It would be presumptuous of any academic to speak about the movements that are likely to take place in this industry. The principle of comparative advantage counsels against that foolhardy undertaking. But it is critical to note the clear implications of the constant level of new entry and new innovation throughout this sector. All of these devices are imperfect substitutes for each other, just as Skype is an imperfect substitute for cell phones, which in turn are an imperfect substitute for land lines and so on. What is clear, however, is that technological innovation always expands the boundaries of the relevant market, which thereby undercuts any claim of market dominance or monopolization by any player, big or small. Mr. Cooper offers vague speculation of unambiguous movements in price and quality without a shred of evidence as to how these trends will play out over the life of this proposed merger or any other.

It may well be that this merger will crater like the Time Warner/AOL deal. But that is not an antitrust concern, but a sober reminder that bigger is not always better, and that



even sophisticated business parties can make mistakes in gauging the gains from trade and the future direction of markets. But it is precisely because all mergers face economic pressures of self-correction that we should regulate them with a light hand. The cumbersome Soviet-style review process that Mr. Cooper advocates does no good for the consumers who he purports to represent. It only shows how far out of touch he is with the basics of antitrust theory as they relate to the particulars of the telecommunication market.

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## Comcast, the FCC, and "Open Internet" Rules: Where We Stand

Posted by David L. Cohen, Executive Vice President, In Broadband

On Friday, Comcast presented oral argument before the U.S. Court of Appeals for the D.C. Circuit in the company's challenge to the FCC's "Bit Torrent" Order. Comcast has challenged the FCC's 2008 Order which found, in the absence of any applicable federal law, that Comcast violated "federal Internet policy" in the way it chose to manage congestion on its network – engineering decisions designed in good faith to provide the best possible Internet experience to as many of our customers as possible. In March 2008, while the FCC was considering the matter, Comcast announced that it had chosen to move to a different technique for managing network congestion. Unfortunately, the FCC proceeded to issue an order against Comcast in August 2008. We and many others (including two FCC Commissioners) thought the order was simply wrong, both legally and factually.

A little history: In 2005, the FCC had adopted a very short, four-point "Internet Policy Statement" that, among other things, described what consumers should be able to expect from their Internet service provider, including "reasonable network management." But policy statements are not law. They are not the same thing as enforceable rules. Members of the FCC and even advocates of "net neutrality" regulation made that very point at the time. When that Statement was issued, Comcast made it clear that we supported the four principles. We served (and still serve) our customers consistent with those principles.

When in 2007 the FCC instituted proceedings based on a complaint against Comcast's network management and told us we needed to show why we had not violated "federal Internet policy," we were surprised. And when the FCC ultimately issued an order telling us what they thought we had done wrong — and telling the world for the first time how the FCC intended to interpret and enforce this "policy" — we were very disappointed. We felt our network management practices were reasonable and consistent with the Internet Policy Statement. Perhaps more importantly, from a legal standpoint, we felt the FCC had not given us (or anyone else) fair notice of what its standard was for determining whether conduct (including network management) was permissible. It also didn't give fair notice that it would try to directly enforce the aspirational Policy Statement regarding consumer expectations against us (or anyone else).

When the FCC issued its Order finding of a violation of federal standards based on our network management practices that we believed in good faith were reasonable, we had no choice but to challenge it in court.

It remains our hope that the court will tell the FCC to vacate (withdraw) the Comcast order, and thereby set the record straight and clear our name. In the meantime, last fall the new FCC began doing what the previous FCC should have done in the first place — FCC Chairman Julius Genachowski asked the agency to start a proceeding to adopt rules to "preserve an open Internet" that are based, in significant part, on the FCC's 2005 Internet Policy Statement. In other words, the FCC is now determining whether there is a need for enforceable rules and, if so, to properly establish them and to decide what guidance those rules should give to Internet Service Providers and others in the Internet ecosystem. The current rulemaking proceeding will also create a proper record for the FCC to consider its legal authority to proceed with any rules it ultimately decides to adopt. And Comcast, in turn, has been supportive of this FCC's actions to bring some clarity to this unsettled area.

Some activists insist that Comcast's challenge to the FCC is "a fight about net neutrality." That's simply not true. The primary basis for our challenge, and the basis on which we hope the court will decide this case, is that no federal agency can subject any company or individual to sanctions for violation of federal standards when there was no law in the first place. This is a basic issue of fair notice, regardless of the issue at stake. So it shouldn't matter whether you are for or against "net neutrality" regulation — this is simply not the way the government should conduct its business. If the FCC — or any agency — wants to regulate in an area, it needs first to establish binding regulations and apply them properly, consistent with the process that Chairman Genachowski has now proposed.

So where does Comcast stand on whether rules are needed? As I've noted before, we support the Chairman's commitment to an "open, transparent, fact-based and data-driven" rulemaking proceeding on this topic. In an interview on CNBC last Friday, our Chairman and CEO Brian Roberts also endorsed the FCC trying to make clear what the rules of the road are moving forward. He noted our support of the Chairman's process, and pledged our constructive participation.

And while, as we will make clear in our comments, we continue to question whether the record will show a need for new rules — because broadband competition and consumer demand will ensure that the Internet remain open as it has always been — the FCC may decide otherwise. If that is the result, we are obviously better off having "clear rules," as Brian stated, than with the confusion of having the FCC try to enforce an unenforceable and vague "policy statement."

It's truly sad that the debate around "net neutrality," or the need to regulate to "preserve an open Internet," has been filled with so much rhetoric, vituperation, and confusion. That's gone on long enough. It is time to move on, and for the FCC to decide, in a clear and reasoned way, whether and what rules are needed to "preserve an open Internet," and to whom they should apply and how. In launching the rulemaking, the FCC said that greater clarity is required, and we agree. Comcast will join many other interested parties in making comments to the FCC this week regarding its proposed open Internet rules. Our goal is to move past the rhetoric and to provide thoughtful, constructive, and fact-based guidance as the FCC looks for a way forward that will be lawful and that will effectively balance all the important interests at stake.

U.S. House of Representatives Committee on Energy and Commerce,  
 Subcommittee on Communications, Technology, and the Internet  
 Hearing on "An Examination of the Proposed Combination of Comcast and NBC Universal"  
 March 19, 2010

Responses to questions for the record submitted by Representative Bobby L. Rush

**1. Comcast addresses digital migration of PEG channels in its public interest commitments. I'd like to address equivalencies to Comcast's plans for its commercial channels. In Chicago today, Comcast carries PEG channels at the same quality and functionality as commercial channels. Will Comcast commit to continuing that practice in the future?**

The one technical issue that has been a point of contention between Comcast and certain local franchising authorities ("LFAs") involves digitization of PEG channels. We have sought to put this concern to rest by committing that we will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

Insofar as I am aware, there has never been any issue with regard to the quality of our PEG transmissions. We have no intention or plan to change the current quality of PEG channel delivery, and we believe the eventual move to digital carriage will only enhance that quality.

**2. In its FCC transfer application, Comcast refers to hosting an online platform for PEG content. Recent studies in Chicago show that 40% of the population remain less or un-connected to the Internet. It's important that PEG channels be available to the public in the same manner Comcast makes commercial channels available. Is the online platform in addition to carriage on its cable system or are you suggesting that it will be in lieu of carriage equivalent to that offered to commercial channels?**

Our clear intention in tendering this commitment was to provide a new platform *in addition to* our traditional carriage of PEG channels on cable systems. If and to the extent that the online platform proves to be a viable vehicle for viewing of PEG programming, we would be happy to discuss with LFAs the possibility of reducing traditional carriage of linear PEG channels.

**3. Where Comcast has provided financial support to PEG Access channels, like it does in Chicago, those channels have flourished and provided an important public service to local residents, nonprofit groups and educational institutions. That funding is small, but important in terms of benefiting the public. What is Comcast's commitment to funding PEG channels in the future?**

We expect PEG funding to continue to be set through bilateral negotiations between Comcast and individual LFAs, and we will continue to meet those commitments, subject to applicable law. Our consistent goal in negotiating franchise agreements is to balance the community's interest in PEG programming with the cost to our customers of providing that programming. It is worth remembering that any PEG funding obligations are *in addition to* the typical 5 percent franchise fee we pay, and that our two biggest competitors (DirecTV and Dish Network) pay no franchise fees, carry no PEG channels, and make no PEG support payments. If we lose customers to our satellite competitors (in part because these unique local payments make our

price uncompetitive), the community will lose franchise fees and fewer customers will receive PEG programming of any kind. (Plus, in systems where we pay a flat PEG fee, as opposed to a per-subscriber PEG fee, the PEG costs will be borne by a shrinking number of customers.)

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Responses to questions for the record submitted by Representative Bart Stupak

**1. There has been a lot of discussion about how a new Comcast/NBC Universal company would change the dynamics of retransmission consent. How do you predict the dynamics would change when both a cable operator, who must pay retransmission consent for content, simultaneously owns a network that must sell access through retransmission consent?**

Retransmission consent negotiations have been contentious at times, but that is a longstanding industry-wide issue and, as the recent spat between Cablevision and Disney, and other disputes demonstrate, it is by no means specific to the proposed joint venture. There will continue to be pressure to change the way retransmission consent works, especially as the broadcast model is undergoing what will inevitably be a rocky transition toward a dual revenue stream. We think that retransmission consent is an industry-wide issue that should be addressed, if at all, in industry-wide proceedings. Chairman Genachowski has recently indicated that the FCC is beginning the process of reviewing the retransmission consent framework.

We are pleased that Comcast has not had any retransmission consent negotiation escalate to the point where its customers were deprived of the primary signals of any local broadcast stations for any period of time (and we understand the converse to be true for NBC as well). In the future, the combined entity will look at this issue from both sides of the table. Given the rapid industry changes that have occurred just within the past year, Comcast is not in a position to predict how retransmission consent will change in the coming years. But we need to make the system work in everyone's interests, particularly consumers, and we want to play a constructive role in making that happen.

Congress already has enacted legislation that requires broadcasters and MVPDs to negotiate in good faith over retransmission consent, and the FCC has amplified that requirement in rules that have been in effect for some time. Nonetheless, in connection with the transaction, Comcast has provided further assurances to our future negotiating partners by committing to "voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O stations." Our commitment means that we'll live by a rule that prohibits Comcast from improperly influencing the NBC and Telemundo O&O stations' decisions about whether, and on what terms and conditions, they reach retransmission consent agreement with other MVPDs. It also means that the burden shifts to us to justify any differential pricing between competing MVPDs. We will also accept the five-month "shot clock" to resolve program access complaints. None of these protections apply to retransmission consent negotiations today, but we are willing to do these things to provide additional assurances.

**2. Mr. Fiorile indicates in his testimony that your voluntary public interest commitment to free over-the-air television is a positive sign. Is Comcast willing to agree to**

**merger conditions at the FCC that specifically lay out which types of programming would remain free over-the-air?**

Comcast made unprecedented commitments to continuing to provide free over-the-air broadcasting and preserving and enriching valuable content that is currently broadcast on NBC O&O broadcast stations. As part of our Public Interest Statement, we indicated, and I firmly believe, that this transaction will help to preserve and enhance traditional broadcast television. Our objective is to strengthen the NBC Television Network and restore its former glory, not weaken it, and we have no intention of removing valuable NBC network content from the broadcast platform. While programming may, from time to time, migrate from NBC to a cable network, we envision that NBC will continue to be programmed primarily with first-run material.

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Responses to questions for the record submitted by Representative Marsha Blackburn

**1. Whenever we discuss business deals, whether they are smaller ones, or ones of this magnitude, my first reaction is, how will this affect the consumer? Can you please elaborate some more on why this is such a tremendous deal for my constituents in central and west Tennessee?**

The transaction will bring many benefits to consumers across the country, including your constituents in Tennessee. It will enhance the *diversity* of programming by expanding the amount, quality, variety, and availability of content; it will provide increased *localism* through more and better local programming; it will foster *competition* by better serving consumers and spurring other players to follow suit; and it will accelerate *innovation* by combining compelling content with state-of-the-art distribution platforms. We are backing this up with concrete and verifiable commitments:

- We have committed to supporting the NBC television network – one of America’s iconic brands – so that it can thrive as a free, over-the-air source of news, entertainment, sports, and other highly valued programming. We want to restore NBC to its former glory by airing high-quality, highly-rated, popular programming.
- We have made specific commitments to preserve and enrich the output of local news, public affairs, and other local programming across a variety of platforms, including broadcast, VOD, and online.
- We have made specific commitments to add programming aimed at children and at diverse audiences.
- And we have committed the new NBCU to a cooperative dialogue with its broadcast affiliates, such as WMC-TV in Memphis and WSMV-TV in Nashville, toward a business model to sustain free-over-the-air service that can be workable in the evolving economic and technological environment.

Combining NBCU’s extensive content creation capabilities and video libraries with Comcast’s expertise in multiplatform content distribution not only will result in creation of more and better programming, but also will encourage investment and innovation that will accelerate the arrival of the multiplatform, “anytime, anywhere” future of video programming that Americans want. Post-transaction, Comcast will have access to more content, including the new NBCU’s national and regional networks, that it can make available on more outlets, such as Comcast’s cable systems (including those in Tennessee), as well as its VOD and online platforms.

The current marketplace for video is extremely competitive, and this transaction will serve to make it even more so. As Comcast increases the value of the services it



provides, Comcast's competitors – programmers, MVPDs, and online content providers – will be stimulated to improve their products and services.

You also mentioned in the hearing that you were interested in how this deal will affect the content production community. We think this combination will be good for content producers, as well. Because Comcast is a company dedicated to the entertainment and information business, we will be more focused in our support of and investment in NBCU's businesses. We want to create more programming and make it available on more platforms than ever before. We want to create sustainable economic models that facilitate the production of high-quality programming. This, in turn, will provide quality jobs for thousands of actors, writers, stagehands, set and costume designers, etc. We also hope to play a leading role in addressing copyright and piracy concerns in a way that protects both the consumer and the creative community.

**2. This committee spent a lot of time last year considering satellite legislation known as SHVERA. The heart of that legislation is a compulsory copyright license that Congress makes available to satellite companies. Likewise, 30 years ago Congress adopted a cable compulsory license to spur the growth of a then-nascent cable industry and foster competition in the market for video delivery. For 30 years producers of movies and TV shows, like NBC Universal, have subsidized the cable industry through government-set, below-market rates for their content. Yet today, cable companies are among the largest and most successful businesses in the country, to the point that we are here today reviewing the proposed acquisition by a cable operator of one of the nation's leading content providers. Could you share your thoughts on phasing out the cable compulsory license, to allow these negotiations to take place in the marketplace?**

While we don't agree with the characterization of the issues contained in this question, we agree that market-based licensing is typically the best mechanism for licensing the carriage of copyrighted programming. However, the carriage of broadcast stations on cable systems has presented unique licensing challenges for some 40 years. The satellite reauthorization legislation represents a compromise that was very difficult to reach. All companies need to continue to approach these issues constructively and realistically, and with a spirit of cooperation. We will continue to embrace that approach in dealing with these issues.

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Responses to questions for the record submitted by Representative Rick Boucher

**1. Comcast offers The RedZone, which gives consumers the opportunity to view NFL football content beyond what is offered on standard network and cable channels, as a premium service to its subscribers. There is a possibility that negotiations between the NFL and the NFL Players Association could lead to a lockout during the 2011 football season. If a lockout led to a reduction in the number of football games that The RedZone could offer, would Comcast still be obligated to pay the NFL for those unplayed games? If so, could consumers face higher monthly cable bills to replace the lost advertising revenue from unplayed games on The RedZone?**

While Comcast’s contract with the NFL is subject to strict confidentiality requirements, I can assure you that the scenario you describe is highly unlikely to affect the prices for cable services, including for the Sports and Entertainment Tier on which Comcast carries The RedZone.

**2. If the Comcast/NBC combination is approved, will Comcast commit to offering the video programming owned by the combined company to competing multichannel video programming distributors on reasonable terms, so that the competing MVPDs can offer that programming to their subscribers online?**

The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to all consumers when they want, where they want, and on the devices they want. Providing content that consumers want online – through Comcast’s distribution platform and those of our competitors – is essential to that effort. Comcast’s goal is to expand the amount of content available online now and in the future; and to do so through business models that support the continued production of high-quality content. Accordingly, to the extent we have decided to make our content available online to Comcast customers, we have made the same content available for distribution by other multichannel video competitors, and we expect that the new NBCU will apply similar policies to its broadcast and cable network content.

For example, on February 18, 2010, Comcast SportsNet Chicago (“CSN-Chicago”) contacted MVPDs distributing the network, including smaller cable operators, to advise them that, beginning March 19, 2010, it will stream online the final six regular season Chicago Bulls games, and it offered these MVPDs an opportunity to make the streamed games available to their customers. CSN-Chicago made this offer at the same time to all MVPDs that carry the network. (Until this recent announcement regarding Bulls games, CSN-Chicago hasn’t participated in *any* TV Everywhere trials, including with Comcast’s Fancast Xfinity TV.) Other Comcast Networks (E!, Style, and G4) have participated in

very limited TV Everywhere trials (with Fancast Xfinity TV), and Comcast networks currently have a very limited amount of authenticated content available online. We have made available to competing MVPDs all programming that is intended to be distributed on an authenticated platform. In the future, we anticipate making available to other MVPDs that carry our networks, for distribution on their platforms, the same programming that we make available on our own, on reasonable terms.

The fact that Comcast Cable has agreements with unaffiliated programmers to feature their content on Fancast Xfinity TV does not mean that Comcast Cable can offer that content to another MVPD. It's not Comcast Cable's content to give or license to another distributor; those rights have to be obtained from the underlying rights holders. The important point here, however, is that we don't have exclusive agreements with online programmers. They are free to license to other distributors.

Finally, we anticipate that there will be many different models for distributing video content online. At various times, Comcast has licensed content to Hulu, YouTube, iTunes, Verizon V-Cast, CBS Interactive, and MySpace, among other online outlets. Economic models for online video are still in an early and ill-defined stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription. It is important that this experimentation and innovation continue unrestricted.

**3. If the Comcast/NBC combination is approved, will Comcast commit to not requiring a video programming provider to give the combined company a financial interest in any program service as a condition for carriage?**

Yes. This is an unambiguous requirement of Section 616 of the Communications Act, which applies to all MVPDs. We are committed to following the law.

**4. If the Comcast/NBC combination is approved, will Comcast commit to not asking or requiring video programming providers to limit the availability of their content to competing MVPDs, including on other platforms like the Internet?**

As I have said publicly, we do not – and we will not – require programmers to limit the availability of their content to competing MVPDs, whether on a linear channel or on other platforms like VOD and online. The terms Comcast negotiates for each of the cable and broadcast networks it carries are unique to each particular network and the specific arrangements vary considerably from agreement to agreement. While I am constrained by confidentiality obligations, Comcast's agreements generally *do not* prohibit cable or broadcast networks – including NBC Universal networks – from dealing with any other distributors, whether MVPD, Internet distributor, or otherwise.

In negotiating agreements with cable networks, Comcast generally seeks terms limiting the extent to which certain full episodes of cable shows are distributed on the Internet *free of charge* (i.e., on an ad-supported basis) at the same time, or shortly after, the shows are telecast on the cable networks for which Comcast and its customers pay substantial license fees. These terms are premised on our belief (shared by the programmers) that it is not fair or reasonable to expect an MVPD customer to pay to watch a network's shows via cable or satellite, when the network also makes those shows available to everyone without charge at the same time online. Nevertheless, affiliation agreements do not preclude all ad-supported

online distribution of pay cable network content; instead, these agreements generally permit some ad-supported distribution of pay content for promotional uses – e.g., video clips or a limited number of full episodes. In addition, there typically are no restrictions on a cable network’s right to enter into a pay distribution arrangement with an Internet distributor (e.g., Apple).

I should note that certain affiliation agreements may contain most-favored-nation clauses that extend to Comcast the benefit of certain terms, generally including economic terms that networks offer to other distributors. These clauses, however, in no way restrict any network from doing any deal that it chooses with another distributor, which is evidenced by the vast number of deals and the large amount of content that is already made available by distributors such as Apple and Netflix.

**5. As part of their filing at the FCC, Comcast and NBC Universal have pledged that if their joint venture is approved, they will make broadcast content of any kind previously made available at a per-episode charge on Comcast’s On Demand service and currently made available at no additional charge to the consumer available at no additional charge for the three-year period after closing. Please clarify what is meant by programming that was previously offered at a charge but is now made available for free. How much programming, and what programs, fall into this category?**

Comcast previously offered selected episodes of certain shows from the NBC Television Network to its customers for a charge of \$0.99 per episode. We generally offered about four episodes of each of five different shows at any given time. Under a new agreement struck by the companies last year, prior to and independent of the proposed joint venture, we acquired the right to provide those shows to our customers on VOD for no additional charge. We now have the opportunity to carry on VOD the four most recent episodes of seven top shows from the NBC Television Network. The shows available in this fashion may change from time to time but generally will include seven of the top 10 shows in terms of quality and popularity, and may from time to time include some additional programming. The current inventory includes several episodes each of *Heroes*, *The Office*, *Chuck*, *Parks & Recreation*, *30 Rock*, *Mercy*, and *Community*, selected portions of *Saturday Night Live*, plus the initial episodes of *Parenthood* and *The Marriage Ref*. While this current arrangement is likely to evolve over time, it is clear that our goal is to deliver more VOD content to consumers for no additional charge.

**6. As part of their filing at the FCC, Comcast and NBC Universal have pledged that if their joint venture is approved, they will make certain promises “as long as the FCC’s current program access rules remain in place.” Specifically, Comcast and NBC will voluntarily accept the application of program access rules to the high-definition feeds of any network whose standard definition feed is subject to the program access rules and will commit to extending voluntarily the key components of the FCC’s program access rules to retransmission consent negotiations relating to carriage of the signals of NBC and Telemundo owned and operated stations for as long as the Commission’s current program access rules remain in place. Please explain what is meant by “as long as the FCC’s current program access rules remain in place.” For example, as you know, last month, the FCC revised its program access rules as they relate to programming that is delivered terrestrially,**

**and those rules could be subject to reconsideration or a court challenge. If the FCC were to modify its rules as part of the reconsideration process, or if a court were to invalidate the FCC's recent changes or direct the FCC to modify them, would that constitute a situation in which the FCC's current program access rules were no longer in place, thereby invalidating these two voluntary conditions?**

Because of competition, the new NBCU will have every incentive to make its programming widely available. Today, there are over 500 national cable programming networks, and scores more regional networks, and with rare exception, it is in the best interest of an owner of programming to license its programming broadly and gain distribution to as many homes as possible. No single MVPD serves over 25 percent of MVPD households. If a given network owner refuses to license programming to a particular MVPD, or seeks to charge more than that programming is worth, it risks losing the affiliate fees that would be generated by that carriage and the advertising revenue that is associated with distribution to a larger number of homes. We offered our voluntary commitments to give further assurances – in addition to those already provided by robust competition – that Comcast and the new NBCU will treat competitors fairly and appropriately.

When we worded the commitment in terms of the current rules as of December 3, 2009, remaining in effect, we meant to signal a commitment that would remain in place for as long as the Commission, Congress, and the courts deem the program access rules necessary. We also meant to leave open the possibility that Congress or the FCC would determine that the need for the rules had expired. We did not mean to suggest that the commitment would expire if the FCC made the slightest change to its program access rules, but neither did we want to put ourselves in a position where we were agreeing to changes in our retransmission consent commitment that would result from unforeseen changes in the program access rules.

It is important to recognize that there are many variables in play here; for instance, the FCC's extension of the program access exclusivity prohibition has been under appeal (the court ruled on March 12, 2010 that the prohibition would remain in effect), and the recently adopted revisions to the rules have not yet gone into effect. Due to this state of flux, we think it is prudent to discuss the precise details of these commitments with the FCC once the record is more fully developed and the specific issues are clear.

**7. As part of their filing at the FCC, Comcast and NBC Universal have pledged that if their joint venture is approved, they will launch two independent channels per year for three years. How many independent channels has Comcast launched each year for each of the last five years?**

The number of new networks Comcast launches varies from year to year. Over each of the past five years, Comcast has launched between two and six English-language networks that are "independent," as we defined it in our Public Interest Statement (networks that (1) are not currently carried by Comcast Cable, and (2) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of networks, as measured by revenues), on one or more of its systems. Specifically, we launched two networks in 2005, six networks in 2006, two networks in 2007, five networks in 2008, and five networks in 2009.

In addition to these channels, Comcast has launched a number of new, independent, non-English language and international channels on one or more of its systems. There have been about a dozen apiece in each of those categories both last year and the year before.

We have been pleased to see the supportive letters sent to the Senate Commerce Committee by several independent programmers: Outdoor Channel, Ovation TV, and Reelzchannel. A copy of each letter is attached.



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800-770-5750 • 951-699-6991 • Fax 951-699-6313

March 10, 2010

Jay D. Rockefeller, IV  
Chairman  
Committee on Commerce, Science, and Transportation  
United States Senate  
Dirksen Senate Office Building 508  
Washington, DC 20510

Kay Bailey Hutchison  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate  
Dirksen Senate Office Building 508  
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison:

I am writing as the President and Chief Executive Officer of Outdoor Channel, an independent cable network focused on hunting, fishing, and outdoor adventure. We appreciate the opportunity to share our perspective on the pending merger between Comcast and NBC Universal – and to tell you why we believe that Comcast has been a good partner – and why the dynamics of the video business, in our opinion, will encourage Comcast to continue to be a good partner following its merger.

First, to give you some perspective on what it means to be an independent content provider in today's cable landscape, and some perspective on the audience we uniquely serve, let me provide you with some background on Outdoor Channel. Our network is the quintessential independent programmer. We were originally founded in 1994 by a family of outdoor enthusiasts as a programming service for other enthusiasts. In the last 16 years, we have grown into a profitable, financially stable publicly traded company (NASDAQ: OUTD) with annual revenue in excess of \$75 million.

Outdoor Channel features quality programming designed to educate and entertain outdoor enthusiasts of all skill levels. We promote the traditional outdoor activities that are a vital part of our national heritage including fishing, hunting, shooting sports and other outdoor adventures. Our programs are designed to appeal to enthusiasts of all ages with a focus on activities that the entire family can enjoy in the great outdoors. Outdoor Channel promotes the spirit of conservation in all of our programs, emphasizing responsible hunting, fishing and habitat maintenance. We also broadcast programs that highlight conservation and preservation initiatives, helping outdoor enthusiasts understand the importance of maintaining and improving our lands. According to Nielsen Media Research, we serve approximately 36 million cable, satellite and telco subscribers in both rural and urban communities around the country.

It is important to emphasize that the key to our success as an independent network is that we have continued to invest heavily in our business. Our ongoing investments in compelling programming that includes the best and brightest celebrity talent, innovative formats like High Definition (HD) and Video on Demand (VOD) and building a robust digital presence has made our growth possible and enabled us to maintain our leadership position. We have also heavily invested in branding, marketing and research to support our sales and marketing efforts.

Against that background, let me turn to Outdoor Channel's relationship with Comcast. Comcast has been an important partner for us, and our relationship has been mutually beneficial. Given my experience in the cable television industry, I can attest that with Comcast, our carriage negotiations, back office functions and day to day dealings have always been reasonable and forthright.

Outdoor Channel relies on cable distributors like Comcast to provide household delivery in two ways. First, we look for Comcast to carry our network in the greatest number of cable systems possible. Comcast evaluates the fit for each network on a market specific basis and is under no obligation to carry Outdoor Channel in every market it serves. With that carriage flexibility in mind, we are pleased to be carried in most of Comcast's markets around the country. In the markets where Outdoor Channel is available on Comcast's channel line-up, Outdoor Channel reaches approximately 30% of the total potential subscribers.

Second, Outdoor Channel provides Comcast the latitude to package Outdoor Channel in ways that best serve their markets and business objectives. Over the past two years, in recognition of Outdoor Channel's broad appeal and program quality improvements, Comcast has repackaged our network to more highly penetrated packages that reach substantially greater numbers of potential viewers.

Comcast, like other distributors, has seen the value of Outdoor Channel increase over time. They have recognized that our network is more than a concept – it's a proven, sustainable entity. As we've grown our business, we've proven that we are filling a critical content void in the market, and we have staying power. Considering Outdoor Channel's growing base of viewers, high-quality programming and innovative formats like HD, Comcast has continued to give us additional opportunities to bring our network to new markets.

We were particularly pleased to see the interest we were receiving for upgraded packaging at the local system level supported at Comcast's corporate office where these decisions are ultimately approved. We have invested in staffing a professional field sales force and we were gratified to see the benefit of this investment, coupled with our commitment to best in class programming, paying dividends in the form of increased subscriber growth. We are encouraged that continued investment in first-rate content, advanced technology such as HD, and innovative marketing partnerships will continue to be recognized with additional growth opportunities for our networks throughout Comcast's systems.

Additionally, Outdoor Channel looks toward distributors like Comcast to be strong marketing partners. Each year, we run two network consumer promotions: *Spring Fever* and *Gear Up & Go*. The purpose of these sweepstakes-based promotions is to enhance our brand's awareness and increase viewership and consumer engagement. During these promotions, we partner with cable affiliates, asking them to run promotional television spots on their systems to increase sweepstakes enrollment and programming tune-in. Historically, Comcast systems have participated heavily in these promotions. For the 2009 *Gear Up & Go* promotion, Comcast systems representing over 4 million subscriber households participated. These Comcast systems ran promotional television spots valued in excess of \$1.5 million which in turn helps us to increase viewing which drives our advertising sales business.

In line with our belief in the compelling logic of thoughtful, sustainable independent programming, we have taken note of the "Commitments" Comcast and NBCU have made in their testimony to legislators as guarantees of their post merger intentions. We are especially encouraged by Commitment #13 – "Carriage for Independent Programmers." We applaud the concept behind that commitment of adding new independently owned and operated channels to Comcast's digital lineup. At the same time, as one of the few true independents operating today, we frankly would like to see that commitment modified to include granting broader distribution to proven independents whose programming capabilities and financial stability are already established.

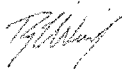
In closing, I would like to draw the Chairman's attention to another aspect of our relationship with Comcast that we believe speaks to a larger sense of that company's progressive attitude toward programmers and to its role as a supporter of the social responsibility initiatives that are dear to us and our viewers. Outdoor Channel participates in dozens of community initiatives each year. Together with our local distribution partners in markets across the country, we organize events to highlight and benefit conservation-related causes and mobilize outdoor enthusiasts to make a positive impact on their communities.



Comcast has become a major partner for us in local markets as we develop, organize and participate in community campaigns in their systems' territories. One recent example was in Chattanooga, Tennessee where Outdoor Channel, Comcast Chattanooga and the Chattanooga Chapter of Safari Club International (SCI), teamed up with the Chattanooga Community Kitchen for the area's first annual "Sportsmen Against Hunger" event. This event was held this past October when local outdoor enthusiasts joined together to serve meals to the hungry. Together, we fed more than 300 people with donated food from local area residents. We can cite dozens of other similar local community examples, including our sponsorship with Comcast for the Eastern Sports & Outdoor Show, which attracted more than 800,000 outdoor enthusiasts and provided a significant economic boost for the host city of Harrisburg, Pennsylvania as well as the thousands of retailers associated with the event.

With our long history working with Comcast, we have no doubts about its commitment to serving the public interest and working with independent programmers like Outdoor Channel. We've negotiated with Comcast for carriage in the past and expect that under this combined company, our carriage relationship will remain intact and unobstructed, and in no way impact any potential future negotiations. We expect the same as it relates to our community service initiatives and only hope that under a merged entity there will be additional new opportunities to develop and distribute Outdoor Channel content on Comcast Systems.

Sincerely,



Roger L. Werner  
President & Chief Executive Officer  
Outdoor Channel

cc: Senator John F. Kerry, Chairman, Subcommittee on Communications and Technology  
Senator John Ensign, Ranking Member, Subcommittee on Communications and Technology

The Honorable John D. Rockefeller IV  
531 Hart Senate Office Building  
Washington, DC 20510

The Honorable Kay Bailey Hutchison  
284 Russell Senate Office Building  
Washington, DC 20410

At the heart of American democracy is our commitment to free speech and expression. Therefore it is vital to our freedom that Americans enjoy unrestricted access to that same free speech and expression.

Since 1996, Ovation TV, a privately funded, independent cable television network, has dedicated itself to providing viewers the best in creative expression through arts and culture programming. Ovation is one of a kind. No other national network offers viewers this type of content day after day. And having provided over \$5 million in cash and in-kind support over the past three years, Ovation is also a key partner of America's cultural institutions and arts education initiatives in cities and towns nationwide.

Since acquiring and re-launching Ovation in 2007, the network has grown from 5 million to 38 million homes. Much of this success is in part due to our outstanding business relationship with Comcast Cable. Comcast has become an outstanding distributor of our unique programming, adding over 3 million homes to our distribution base. Most importantly, they have become a key partner in numerous local arts education initiatives; including assistance in providing access to free museum visits and building awareness of cultural events.

While critics are fast to point out that these 3 million homes represent a small portion of the Comcast foot print, the relationship with the “new” Ovation is a young one. As we continue to deliver on our promise of providing a unique Arts service to their customers, we believe Comcast will continue to roll us out and make us available in all of their digital homes. We also believe that a NBCU/Comcast merger will not affect that rollout.

It has been our experience that Comcast pays competitive rates to independent programmers. Those rates enable us and other programmers to invest in even greater programming for their viewers and more marketing to reach them, all the while creating lasting jobs in a variety of communities. We are hopeful that an NBCU/Comcast merger will not affect the rates that Comcast pays to us nor to any other independent programmers.



Comcast has a strong record of launching viable, independent channels. Viable is the key term here. Not everyone with an idea for a channel deserves carriage nor can Comcast be expected to accept every idea that comes through their door. As in the case of Ovation, Comcast has been responsive to those channels with solid plans to meet the interests of viewers not currently being served in the marketplace, the right team with proven expertise, solid financial backing and a compelling value proposition that includes fair and competitive rates.

Comcast has also stated they will continue to create more opportunities for viable, independent programmers. They have committed, upon completing their digital migration companywide in 2011, to add two new independently owned and operated channels to their line up each year for the next three years under customary terms and conditions.

Comcast has recognized Ovation's many attributes, including its service in the community, and has provided us with growing distribution on their platform at competitive rates. We enjoy a relationship that has required good faith negotiations and we are confident that relationship will continue to grow stronger after the merger.

The issues facing independent programmers like Ovation relative to large distributors can be summarized in two words, carriage and rates. In our experience, Comcast has been a fair partner in both of these areas. Thank you for your commitment to supporting independent programmers and ensuring that our voices be heard.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Segars", with a long horizontal flourish extending to the right.

Charles Segars  
Chief Executive Officer  
Ovation

CC: The Honorable John Kerry  
The Honorable John Ensign

March 10, 2010



Honorable Jay D. Rockefeller, IV  
Chairman  
Committee on Commerce,  
Science & Transportation  
United States Senate  
Dirksen Senate Office Building 508  
Washington, D. C. 20510

Honorable Kay Bailey Hutchison  
Ranking Member  
Committee on Commerce,  
Science & Transportation  
United States Senate  
Dirksen Senate Office Building 508  
Washington, D. C. 20510

Re: TESTIMONY OF STANLEY E. HUBBARD BEFORE THE COMMERCE  
COMMITTEE OF THE UNITED STATES SENATE

Dear Chairman Rockefeller and Ranking Member Hutchison:

I appreciate this opportunity to share my perspective on the impact Comcast has had on independent cable and satellite networks attempting to gain acceptance and distribution in an increasingly crowded and competitive environment. Quite simply, without Comcast's support, REELZCHANNEL would probably never have been launched and would certainly not be approaching its fourth anniversary and the critical 50 million subscriber mark.

REELZCHANNEL is an independent cable and satellite network that is all about movies, the way Food Network, for example, is all about food. In fact, our tagline is TV ABOUT MOVIES®. Hubbard Broadcasting, REELZCHANNEL's parent company, developed the channel's concept starting in 2000, refining the underlying idea, business premise and focus for more than a year before introducing the channel concept to the distribution marketplace, which includes cable and satellite.

By way of background, Hubbard pioneered the Direct Broadcasting Satellite (DBS) industry in 1994, when it introduced the Digital Satellite System, in cooperation with DIRECTV, through its subsidiary U.S. Satellite Broadcasting (USSB). With USSB, we were a distributor of movie-driven services such as HBO and Showtime, and experienced first hand our subscribers' love affair with movies and the need for a service that would help viewers learn about and find more movies (in all windows of release) that would match their interests.

Our business strategy with REELZCHANNEL was simple: we knew it was a difficult environment for new channels – especially independent channels not associated with large programming companies that have the ability to leverage their existing channels and business relationships into new channel launches of their own. We felt that, unlike other independents that had launched and failed over the years, it was important to get as many distribution agreements completed

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as possible PRIOR to committing to the massive expenditures required to launch and operate a national television network.

To that end, in the summer of 2001, we first reached out to Comcast, then a recent and former competitor to our USSB, for an initial meeting with their top programming executives who welcomed us to their Philadelphia headquarters within weeks of our request. At that initial meeting, to a person, they were respectful of us as individuals and, in fact, enthusiastic about our ideas for REELZCHANNEL. They were also clear that since this was a first meeting it would take some time for us to prove our viability and to get to the point of entering into an actual distribution agreement, especially since we weren't launched yet and didn't yet have a target date for launch. But they did make specific suggestions on how to keep the process in forward motion: First, they encouraged us to present our ideas to some of their key people at systems and divisions in the field so that those folks could feed back their thoughts and ideas to the corporate programming department; and second, they asked us to keep them informed as we got closer to establishing an actual launch date, as well as our status in getting agreements done with other distributors around the country.

We followed their advice, kept them informed of our progress toward launch, and did our diligence in the field. Over a period of 24 months we visited all of their key systems and divisions, and without exception we were met with helpful, interested people who encouraged us to press for a distribution agreement at the corporate level. Further, the Comcast people in the field provided detailed feedback to their corporate programming department about REELZCHANNEL.

In 2004, Comcast programming executives orally agreed to enter into a distribution agreement with REELZCHANNEL and, over the following months, both sides negotiated in good faith, and executed a final agreement in September of 2005. Our agreement with Comcast was completed more than a year in advance of our actual launch, and proved to be a critical milestone for REELZCHANNEL because it demonstrated to the rest of the industry that Comcast was behind us and had vetted us as being viable. It is important to note that, as is the usual case, no specific commitments were made by Comcast in terms of distribution of our channel. Instead, we were granted what is known as a "hunting license," essentially a "right" for us to approach their systems one by one, and, if those systems were truly interested, they could go ahead and launch us pending the approval of the division and corporate office that oversaw them.

The Comcast agreement was also very important to the Hubbard Broadcasting board of directors in deciding whether to authorize the new business investment needed to launch REELZCHANNEL. Our financial model required distribution from both cable and satellite in order to be successful and an early distribution agreement with Comcast added significantly to our board's confidence in our ability to secure mass cable distribution as an important part of our business imperatives.

Comcast has continued to play an important and straightforward role in REELZCHANNEL's development. The Comcast system in Minneapolis/Saint Paul became the first major metropolitan cable system to launch REELZCHANNEL coincidental with our launch in September, 2006. Today almost five million Comcast subscribers receive REELZCHANNEL as part of their subscription, including those located in large cities such as Chicago, Detroit, Boston, Atlanta, Houston and Miami, to name a few. We continue to work with Comcast's division and system management and are hopeful that in the next 12 to 24 months we will launch our service in systems in Seattle, Portland, Denver, Washington, D. C., and the San Francisco Bay area, among others. To date, in every instance of a local system wanting to launch REELZCHANNEL, Comcast corporate programming executives have approved the launch request.

Comcast continues to support the independent REELZCHANNEL by adding us to more and more of their systems, even though the demands on bandwidth for both cable and satellite have continued to increase substantially since our initial meeting in 2001. The increasing demands on bandwidth are due to the rapid evolution of HDTV, high speed internet services, telephony, expanded business services, the broadcast digital transition and more channels being introduced by large programming companies with the ability to leverage even the largest operators into launch commitments for their new channels. Comcast officials have always been clear on the realities of the changing environment and also clear on how we need to sharpen and shape our vision for our network so that REELZCHANNEL could become an even more compelling proposition. Accordingly, today, we are engaged in discussions with Comcast on a number of fronts. At their urging we have developed video-on-demand content for Comcast, and other distributors, that ties into and promotes our brand. They are also working with us on a 2010 roll-out of a high definition version of REELZCHANNEL and Comcast systems are enthusiastic participants in our big summer consumer promotion: The Guaranteed Movie Recommendation.

In summary, we could not be more appreciative of the advice and support we have received from Comcast for the launch and development of our independent cable network, REELZCHANNEL. We have found the people at Comcast to be universally supportive of REELZCHANNEL ever since our initial conversations almost 9 years ago. Comcast personnel at the corporate headquarters and in the field across the nation are consistently accessible, openly communicative to us and organized in a way that provides guidance, creative suggestions and committed follow-up to help our business grow with them. We truly feel there is a commitment to our growth and economic well-being that is built on a sense of overall fairness and continuing mutual respect.

The strength of our relationship is demonstrated by the steady stream of Comcast systems which continue to launch REELZCHANNEL. We believe that this relationship will remain strong in the future and we do not believe that the

NBCU/Comcast merger will in any way affect that relationship or commitment to success of our independent network, REELZCHANNEL.

Thank you for the opportunity to provide these insights. If you have any other questions, please contact me directly.

**Yours most respectfully,**

A handwritten signature in dark ink, appearing to read 'Stanley E. Hubbard', with a long, sweeping horizontal line extending to the right.

Stanley E. Hubbard  
President & CEO

U.S. House of Representatives Committee on Energy and Commerce,  
 Subcommittee on Communications, Technology, and the Internet  
 Hearing on "An Examination of the Proposed Combination of Comcast and NBC  
 Universal"

March 19, 2010

Responses to questions for the record submitted by Representative Steve Buyer

**1. I understand that Comcast does not currently allow its video competitors to advertise their services on Comcast's cable channels. If you (Comcast) provide the advertising space, how will this deal likely affect the rates you charge? Will your competitors pay more for air time on NBC than other companies of similar size and scope that do not compete with you?**

Comcast generally does not sell ads to its video competitors for the "avails" that are sold by the advertising arm of Comcast's cable systems (Comcast Spotlight) or the advertising minutes controlled by Comcast's regional sports networks. However, Comcast's national cable programming networks (like Golf Channel, E!, and Style) do sell advertising time to Comcast's video competitors. We expect a similar approach for the NBCU networks and the NBCU broadcast stations after the transaction. Thus, nothing will change in this regard as a result of the proposed transaction.

In any event, Comcast's video competitors would continue to have ample opportunity to vigorously promote their products and services on Comcast's systems, and of course they have innumerable other ways to reach consumers, including radio and television channels, newspapers, direct mail, outdoor advertising, and the Internet.

**2. I am not aware of any commitments that Comcast has made regarding the availability of the Comcast and NBCU programming for [distribution] online. The ability of consumers to enjoy their favorite programming online or to take it with them on various devices is a new frontier. Will Comcast make a commitment that it will not deny its video distribution rivals access to NBCU broadcast and cable programming for online distribution?**

The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to all consumers when they want, where they want, and on the devices they want. Providing content that consumers want online – through Comcast's distribution platform and those of our competitors – is essential to that effort. Comcast's goal is to expand the amount of content available online now and in the future; and to do so through business models that support the continued production of high-quality content. Accordingly, to the extent we have decided to make our content available online to Comcast customers, we have made the same content available for distribution by other multichannel video competitors, and we expect that the new NBCU will apply similar policies to its broadcast and cable network content.

For example, on February 18, 2010, Comcast SportsNet Chicago ("CSN-Chicago") contacted MVPDs distributing the network, including smaller cable operators, to advise them that, beginning March 19, 2010, it will stream online the final six regular season



Chicago Bulls games, and it offered these MVPDs an opportunity to make the streamed games available to their customers. CSN-Chicago made this offer at the same time to all MVPDs that carry the network. (Until this recent announcement regarding Bulls games, CSN-Chicago hasn't participated in *any* TV Everywhere trials, including with Comcast's Fancast Xfinity TV.) Other Comcast Networks (E!, Style, and G4) have participated in very limited TV Everywhere trials (with Fancast Xfinity TV), and Comcast networks currently have a very limited amount of authenticated content available online. We have made available to competing MVPDs all programming that is intended to be distributed on an authenticated platform. In the future, we anticipate making available to other MVPDs that carry our networks, for distribution on their platforms, the same programming that we make available on our own, on reasonable terms.

The fact that Comcast Cable has agreements with unaffiliated programmers to feature their content on Fancast Xfinity TV doesn't mean that Comcast Cable can offer that content to another MVPD. It is not Comcast Cable's content to give or license to another distributor; those rights have to be obtained from the underlying rights holders. The important point here, however, is that we don't have exclusive agreements with online programmers. They are free to license to other distributors.

Finally, we anticipate that there will be many different models for distributing video content online. At various times, Comcast has licensed content to Hulu, YouTube, iTunes, Verizon V-Cast, CBS Interactive, and MySpace, among other online outlets. Economic models for online video are still in an early and ill-defined stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription. It is important that this experimentation and innovation continue unrestricted.

U.S. House of Representatives Committee on Energy and Commerce,  
Subcommittee on Communications, Technology, and the Internet  
Hearing on "An Examination of the Proposed Combination of Comcast and NBC  
Universal"

March 19, 2010

Responses to questions for the record submitted by Representative Mike Doyle

**1. Not too long ago, constituents of mine told FCC Commissioners at their field hearing in Pittsburgh on the Future of the Internet that DSL was not available to them; their only consumer broadband provider was Comcast.**

There have been many news articles about how some in the copyright business have been pressuring ISPs to disconnect their users from the Internet if they're alleged to be illegally downloading copyrighted materials. This has been labeled as a "three strikes" program, or "graduated response." I checked with your staff, and I'm told that Comcast does not currently disconnect users based on the allegation from copyright holders. I agree with Comcast and other ISPs with that policy because innocent people have been disconnected by those providers that cut accused users off, and I fear that there are not processes in place to help aggrieved consumers fight back and show their side. I hope Congress doesn't pass an explicit mandate for three strikes; so absent one, will Comcast commit to not cut consumers off the Internet for being accused of illegally downloading copyrighted movies without due process?

Both Comcast and NBCU understand the importance of protecting intellectual property, which is the foundation of U.S. creative industries that employ millions of Americans in a wide range of fields. The U.S. entertainment industry is second to none, and a major contributor to our balance of trade. Copyright infringement, including online piracy, hurts content providers and, ultimately, consumers, because it makes providers less likely to develop and put their high-value content online.

We share NBCU's determination to be more effective with respect to online piracy in ways that provide customer choice and control while respecting the intellectual property rights of content providers. We also share your concern that Internet users have clear rules regarding their use of copyright materials and a well-defined process for challenging copyright owners' claims of alleged infringement. To that end, we have supported content owners voluntarily for many years, including by complying with the Digital Millennium Copyright Act ("DMCA") by forwarding to our customers notices of alleged copyright infringements that we receive from music, movie, video game and other content companies. The DMCA includes a process by which users who are subject to copyright owners' claims of alleged infringement may challenge those claims through a counter-notification. We have an automated system that forwards the substance of copyright owners' notices to our High-Speed Internet customers by email. In 2009, we sent over 1 million emails to our customers based on DMCA notifications we received from copyright owners. We support better consumer education about copyright as well as effective efforts to encourage them to use legitimate sources of content instead of

pirate sources. Our Fancast Xfinity TV service is one great example of an effort to bring more content online in a legitimate way that is easy for consumers to access and use.

Comcast's DMCA policy is posted online at <http://www.comcast.net/terms/use/#dmca>. It is Comcast's policy in accordance with the DMCA to reserve the right to terminate the High-Speed Internet service provided to any customer or user who is either found to infringe third-party copyright or other intellectual property rights, including repeat infringers. Comcast does not terminate Internet users' accounts based on allegations of infringement, and we do not follow a "three strikes and you're out" policy. We are open to considering a "graduated response" policy with the right balancing of interests, because it makes sense for ISPs to have a role in helping to educate users about copyright infringement and offering them the chance to go to legitimate sources of content. But we do not support termination of Internet service based on mere allegations or without due process. It is in the best interests of customers, ISPs, and content providers that any "graduated response" process be clearly designed and communicated, be based on reliable, accurate information, and have a straightforward mechanism for customers to seek more information about – or to challenge – copyright infringement notifications about their accounts. There are important interests at stake here, and this transaction creates even more of an incentive for us to help devise workable solutions for customers, ISPs, and content providers.

We look forward to working with your office on this important issue.

U.S. House of Representatives Committee on Energy and Commerce,  
Subcommittee on Communications, Technology, and the Internet  
Hearing on "An Examination of the Proposed Combination of Comcast and NBC  
Universal"

March 19, 2010

Responses to questions for the record submitted by Representative Anna G. Eshoo

**My constituents are Comcast customers. My concern is about my constituents' ability to view local and diverse programs and whether this merged entity will truly fulfill its public service obligations. I expect the FCC to keep these issues at the forefront of its review process and in doing so, the FCC should consider NBC's 2006 Media Ownership comments which contained specific complaints about the inability of broadcasters to compete with Comcast for increasingly scarce advertising revenue. NBC said of the San Francisco market that there was a \$70 million disparity between the ad revenues earned in 2005 by Comcast's consolidated system and the revenues of the leading station, Fox's KTVU – a difference that was projected to nearly double by now.**

**1. What are the actual ad revenue differences at this juncture? Explain to me how other stations will be able to compete against a merged competitor like NBC and Comcast in one local market.**

While Comcast is not privy to Fox KTVU's actual ad revenues, the most recent third-party estimates available indicate that FOX KTVU's ad revenues *exceeded* Comcast Spotlight's by \$8 million in 2008.

Regardless, the transaction would not pose any threat to competition in local advertising markets. First, cable and broadcast advertising are not close substitutes. The U.S. Department of Justice has previously recognized that, at least as to a significant number of advertisers, cable television advertising is not a meaningful substitute for broadcast television spot advertising. This is generally true of Comcast Spotlight and NBC owned-and-operated broadcast stations as well: each focuses to a large degree on advertisers that would be ill-served by the other.

Second, to the extent that certain advertisers regard local cable and local broadcast advertising as reasonable substitutes, those advertisers will continue to enjoy a number of alternatives to NBC O&O stations and Comcast Spotlight. These alternatives include at least seven non-NBCU broadcast stations, as well as other media, in each city in which NBCU owns an NBC station and Comcast operates a cable system. Advertisers can also turn to a variety of other local advertising media, including Internet, radio, newspapers, billboards, and other "out-of-home" advertising, and direct mail.

Finally, the NBC comments to which you refer do not allege that broadcasters are unable to compete with cable operators in selling advertisements. Those comments do explain that broadcasters operate in a dramatically different marketplace than 40 years ago. They explain that advertising revenues have grown faster for cable operators than for broadcasters and that local online spending is growing faster still: "the growth rate of

local online spending is now outpacing all other forms of media, including cable, broadcast (radio and television), newspapers, national online and outdoor advertising.” The principal points that NBC made in those comments were that “[t]oday’s highly competitive media environment provides Americans with access to an overwhelming amount of information from numerous and diverse local sources and offers advertisers a wealth of directly competing platforms on which to place ads” and that “[t]he Commission’s consideration of the local television ownership rules must account for these dramatic developments and allow local stations the opportunity to compete fully and fairly.” Comcast does not disagree with the notion that regulations should be reduced as competition increases, and, in fact, we have made that same point in other contexts.

**2. Are we in danger of losing some of our smaller, independent stations, and diverse programs and viewpoints nationwide to advertisement suffocation?**

Most, if not all, broadcast stations have faced challenges as the viewing options available to consumers have continued to increase and, especially, as the recession has curtailed advertising expenditures. That said, nothing about the transaction will adversely affect the ability of smaller broadcast stations to serve their communities. Program and viewpoint diversity have been steadily increasing for decades, and it seems extremely unlikely that this trend will be reversed.

**3. I’m also very concerned about the plight of smaller cable stations that must obtain programming from Comcast. Ms. Abdoulah’s testimony was particularly instructive on the problems faced by these companies and the potential affect on consumers. She testified that WOW cannot get Comcast programming for WOW’s online service. Would Comcast make its programming available to online video distributors?**

The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to all consumers when they want, where they want, and on the devices they want. Providing content that consumers want online – through Comcast’s distribution platform and those of our competitors – is essential to that effort. Comcast’s goal is to expand the amount of content available online now and in the future and to do so through business models that support the continued production of high-quality content. Accordingly, to the extent we have decided to make our content available online to Comcast customers, we have made the same content available for distribution by other multichannel video competitors, including WOW, and we expect that the new NBCU will apply similar policies to its broadcast and cable network content.

For example, on February 18, 2010, Comcast SportsNet Chicago (“CSN-Chicago”) contacted MVPDs distributing the network, including smaller cable operators like WOW, to advise them that, beginning March 19, 2010, it will stream online the final six regular season Chicago Bulls games, and it offered these MVPDs an opportunity to make the streamed games available to their customers. CSN-Chicago made this offer at the same time to all MVPDs that carry the network. (Until this recent announcement regarding Bulls games, CSN-Chicago has not participated in *any* TV Everywhere trials, including with Comcast’s Fancast Xfinity TV.) Other Comcast Networks (E!, Style, and G4) have

participated in very limited TV Everywhere trials (with Fancast Xfinity TV), and Comcast networks currently have a very limited amount of authenticated content available online. We have made available to competing MVPDs all programming that is intended to be distributed on an authenticated platform. In the future, we anticipate making available to other MVPDs that carry our networks, for distribution on their platforms, the same programming that we make available on our own, on reasonable terms.

The fact that Comcast Cable has agreements with unaffiliated programmers to feature their content on Fancast Xfinity TV doesn't mean that Comcast Cable can offer that content to another MVPD. It's not Comcast Cable's content to give or license to another distributor; those rights have to be obtained from the underlying rights holders. The important point here, however, is that we don't have exclusive agreements with online programmers. They are free to license to other distributors.

Finally, we anticipate that there will be many different models for distributing video content online. At various times, Comcast has licensed content to Hulu, YouTube, iTunes, Verizon V-Cast, CBS Interactive, and MySpace, among other online outlets. Economic models for online video are still in an early and ill-defined stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription. It is important that this experimentation and innovation continue unrestricted.

**4. I'm also wondering if the FCC needs to expand the scope of the program access rules to online content. Could you comment on this situation?**

We do not think it is necessary – or advisable – to apply program access rules to the content available on the Internet. Competition in the online video marketplace is fierce as content providers fight for online viewers. Content owners have a strong incentive to distribute their content as widely as possible. Competition requires that content owners and distributors alike act in a pro-competitive manner to provide the best services possible to consumers. We do not believe that a regulatory backstop is needed in this instance.

The program access rules were written for a different time and for different circumstances. Those rules were enacted in 1992, when cable faced very little competition, DBS had not yet launched, telephone companies were statutorily prohibited from providing cable services, and the majority of national cable programming networks were owned in whole or in part by cable operators. DBS has now achieved enormous marketplace success, and telephone companies are coming on strong in the video marketplace. And the percentage of national cable networks that are vertically integrated with cable operators has plummeted from 57 percent at the time Congress enacted the rules to below 15 percent today. As you may be aware, Congress scheduled the exclusivity prohibition of the program access rules to sunset in 2002, envisioning – correctly, we believe – that competition would obviate the need for these rules.

There is no reason to apply monopoly-era content rules to the Internet. This is the most competitive, fragmented, and dynamic video marketplace ever, and its success is due in significant part to the wise decision made by Congress and President Clinton to establish a national policy “to preserve the vibrant and competitive free market that presently

exists for the Internet and other interactive computer services, unfettered by Federal or State regulation” (47 U.S.C. § 230(b)(2)) and the concept woven into the 1996 Act that, as competition increased, regulation should recede. Given that the Internet has developed into the vibrant communications tool that policymakers envisioned, and more, we do not think it is necessary or advisable to regulate it now.

**5. I think this proposed merger is the best argument yet for Network Neutrality rules or legislation. Until we can get rules or legislation in place, FCC-imposed conditions would be essential to protecting the open architecture of the Internet. Please explain why Comcast is fighting network neutrality principles in court but in public statements claiming to support Net Neutrality.**

We are not fighting net neutrality principles in court or at the FCC. We support an open Internet and have consistently done so.

In September 2008, we appealed the FCC’s Network Management Order because the old FCC abandoned due process in the way it dealt with the complaint against us. As we made clear in our briefs to the court, and as our counsel made clear at oral argument in January 2010, we are not challenging the FCC’s authority to adopt net neutrality/open Internet rules. Rather, we are challenging whether the FCC was acting within its statutory authority in prosecuting us for behavior that we had no reason to believe might be illegal. Regardless of whether you believe that our previous network management practices were reasonable, there is widespread agreement that the process the FCC followed in that case was a radical departure from the norms of due process.

Today’s FCC has chosen the better path, from both a legal and policy-making perspective, and we commend Chairman Genachowski and his colleagues on the Commission for adopting this approach. Because the FCC published a notice of proposed rulemaking with thoughtful questions and draft proposed rules, we expect to see the kind of forthright, open, fact-based debate that we need to have on these important questions about the future of the Internet, and we are participating constructively in the process Chairman Genachowski has initiated. This approach will lead to more thoughtful, and ultimately more sustainable, outcomes for consumers and all parties in the Internet ecosystem.

Comcast was one of the very first companies to deliver the promise of broadband to American homes. Ever since we first started offering our High-Speed Internet service in 1996, we have operated it in a manner consistent with the openness embodied by the four principles of the FCC’s Internet Policy Statement. Our commitment to doing so in the future is unwavering, regardless of whether the FCC adopts any of the open Internet rules currently under consideration.

However, there is nothing about the facts of this transaction that would warrant special “net neutrality” conditions on the parties. The issues of net neutrality and an open Internet affect all ISPs and all participants in the Internet ecosystem, and are most appropriately considered in a general rulemaking proceeding such as the one the FCC now has underway.

For further elaboration on some of the points made above, I am attaching a blog posting from our Executive Vice President, David Cohen, earlier this year.

## Comcast, the FCC, and "Open Internet" Rules: Where We Stand

Posted by David L. Cohen, Executive Vice President, in Broadband

On Friday, Comcast presented oral argument before the U.S. Court of Appeals for the D.C. Circuit in the company's challenge to the FCC's "Bit Torrent" Order. Comcast has challenged the FCC's 2008 Order which found, in the absence of any applicable federal law, that Comcast violated "federal Internet policy" in the way it chose to manage congestion on its network – engineering decisions designed in good faith to provide the best possible Internet experience to as many of our customers as possible. In March 2008, while the FCC was considering the matter, Comcast announced that it had chosen to move to a different technique for managing network congestion. Unfortunately, the FCC proceeded to issue an order against Comcast in August 2008. We and many others (including two FCC Commissioners) thought the order was simply wrong, both legally and factually.

A little history: In 2005, the FCC had adopted a very short, four-point "Internet Policy Statement" that, among other things, described what consumers should be able to expect from their Internet service provider, including "reasonable network management." But policy statements are not law. They are not the same thing as enforceable rules. Members of the FCC and even advocates of "net neutrality" regulation made that very point at the time. When that Statement was issued, Comcast made it clear that we supported the four principles. We served (and still serve) our customers consistent with those principles.

When in 2007 the FCC instituted proceedings based on a complaint against Comcast's network management and told us we needed to show why we had not violated "federal Internet policy," we were surprised. And when the FCC ultimately issued an order telling us what they thought we had done wrong — and telling the world for the first time how the FCC intended to interpret and enforce this "policy" — we were very disappointed. We felt our network management practices were reasonable and consistent with the Internet Policy Statement. Perhaps more importantly, from a legal standpoint, we felt the FCC had not given us (or anyone else) fair notice of what its standard was for determining whether conduct (including network management) was permissible. It also didn't give fair notice that it would try to directly enforce the aspirational Policy Statement regarding consumer expectations against us (or anyone else).

When the FCC issued its Order finding of a violation of federal standards based on our network management practices that we believed in good faith were reasonable, we had no choice but to challenge it in court.

It remains our hope that the court will tell the FCC to vacate (withdraw) the Comcast order, and thereby set the record straight and clear our name. In the meantime, last fall the new FCC began doing what the previous FCC should have done in the first place — FCC Chairman Julius Genachowski asked the agency to start a proceeding to adopt rules to "preserve an open Internet" that are based, in significant part, on the FCC's 2005 Internet Policy Statement. In other words, the FCC is now determining whether there is a need for enforceable rules and, if so, to properly establish them and to decide what guidance those rules should give to Internet Service Providers and others in the Internet ecosystem. The current rulemaking proceeding will also create a proper record for the FCC to consider its legal authority to proceed with any rules it ultimately decides to adopt. And Comcast, in turn, has been supportive of this FCC's actions to bring some clarity to this unsettled area.



Some activists insist that Comcast's challenge to the FCC is "a fight about net neutrality." That's simply not true. The primary basis for our challenge, and the basis on which we hope the court will decide this case, is that no federal agency can subject any company or individual to sanctions for violation of federal standards when there was no law in the first place. This is a basic issue of fair notice, regardless of the issue at stake. So it shouldn't matter whether you are for or against "net neutrality" regulation — this is simply not the way the government should conduct its business. If the FCC — or any agency — wants to regulate in an area, it needs first to establish binding regulations and apply them properly, consistent with the process that Chairman Genachowski has now proposed.

So where does Comcast stand on whether rules are needed? As I've noted before, we support the Chairman's commitment to an "open, transparent, fact-based and data-driven" rulemaking proceeding on this topic. In an interview on CNBC last Friday, our Chairman and CEO Brian Roberts also endorsed the FCC trying to make clear what the rules of the road are moving forward. He noted our support of the Chairman's process, and pledged our constructive participation.

And while, as we will make clear in our comments, we continue to question whether the record will show a need for new rules — because broadband competition and consumer demand will ensure that the Internet remain open as it has always been — the FCC may decide otherwise. If that is the result, we are obviously better off having "clear rules," as Brian stated, than with the confusion of having the FCC try to enforce an unenforceable and vague "policy statement."

It's truly sad that the debate around "net neutrality," or the need to regulate to "preserve an open Internet," has been filled with so much rhetoric, vituperation, and confusion. That's gone on long enough. It is time to move on, and for the FCC to decide, in a clear and reasoned way, whether and what rules are needed to "preserve an open Internet," and to whom they should apply and how. In launching the rulemaking, the FCC said that greater clarity is required, and we agree. Comcast will join many other interested parties in making comments to the FCC this week regarding its proposed open Internet rules. Our goal is to move past the rhetoric and to provide thoughtful, constructive, and fact-based guidance as the FCC looks for a way forward that will be lawful and that will effectively balance all the important interests at stake.

U.S. House of Representatives Committee on Energy and Commerce,  
Subcommittee on Communications, Technology, and the Internet  
Hearing on “An Examination of the Proposed Combination of Comcast and NBC  
Universal”

March 19, 2010

Responses to questions for the record submitted by Representative Jay Inslee

**1. In Washington, Comcast has required your competitors to carry the Trailblazer channel. You made this requirement as part of our obligation so that they could get the channel for their Portland area systems. As a result, customers in Seattle got a channel they weren't interested in, but that they have to pay for, which added to their monthly subscription costs. Can you please explain why you require competitors to carry programming that they do not want for one market, in order to get access to that programming for another market?**

Comcast SportsNet Northwest (“CSN-NW”) does not – and indeed, cannot – “require” carriage on any multichannel video provider under any terms. Like other programming networks that depend on license fees and advertising, CSN-NW has a strong incentive to be distributed as broadly as possible on terms that distributors find acceptable. The many distributors who have agreed to carry CSN-NW have done so voluntarily because it made business sense to carry CSN-NW’s valuable programming to their subscribers. Indeed, Comcast has worked with distributors in the Seattle area to construct flexible tiering arrangements to the benefit of distributors, subscribers, and the network.

Since the Seattle SuperSonics left Seattle in 2008, the Portland Trail Blazers’ NBA-designated home territory has included the greater Seattle area. The Trail Blazers received permission from the NBA to take over broadcast rights that the SuperSonics previously held. Negotiations between CSN-NW and various distributors in CSN-NW’s television territory (which includes the entire states of Oregon and Washington) have been characterized by good-faith bargaining. In many instances, those negotiations have been successful, and in other instances the parties have not yet reached mutually satisfactory agreements. Some distributors have thus far chosen not to carry CSN-NW, and that is their prerogative. It is a sign of the current highly competitive marketplace that networks and distributors can agree to disagree – and that some distributors make different choices than others.

Those distributors that carry CSN-NW in the Seattle area have chosen to do so because CSN-NW has very valuable programming that is of interest to their subscribers. CSN-NW carries 60 games of the Trail Blazers each season, among other valuable programming such as live games of the Vancouver Canucks (whose hometown is closer to Seattle than to Portland) and coverage of college sports.

Since the departure of the SuperSonics from Seattle, the popularity of the Portland Trail Blazers in Seattle has sharply increased. For example, the ratings for the Blazers 2009 broadcasts on CSN-NW through 27 games were up 15.3 percent from the same period in 2008 (higher than the NBA’s average RSN coverage of 11.7 percent). During the same period, the Trail Blazers averaged a 4 rating (a steep figure in comparison to the 1.36

rating the SuperSonics averaged in 2008). Another sign of the Trail Blazers' popularity is that a local Seattle broadcaster, KING-TV, is televising 15 Trail Blazers games this season.

The Trail Blazers have strong ties to Seattle. Two of the Trail Blazers' most talented players (Brandon Roy and Martell Webster) played high-school basketball in Seattle's surrounding areas before going straight to the NBA. The Trail Blazers are owned by Paul Allen, who has strong Seattle ties. Tod Leiweke (the CEO of the Seattle Seahawks) now oversees the management of the Trail Blazers.

CSN-NW expects that it will continue to grow its distribution and bring significant value and enjoyment to the viewing public in Oregon, Washington, Montana, and Idaho.

**2. In your Public Interest Filing (pg 59-60) in a footnote you say that TV Everywhere is "open and nonexclusive" to any video distributor. You also state in your written testimony that there are "no significant barriers to entry to online video distribution" and you say "entry is easy." How do you define a significant barrier to entry?**

Whatever one's definition of barriers to entry, the current condition of the video over the Internet sector demonstrates that it is easy to start a website for online video; innovators large and small are developing and launching new online video sites every day. There are literally thousands (if not tens or hundreds of thousands) of websites to choose from, each with its own business model and its own incentive to compete for consumers. In fact, FCC Commissioner Clyburn recently described someone who, because he was dissatisfied with the availability of minority programming in "traditional media," founded an online platform featuring professionally produced original programming for minority audiences – with an initial investment of only \$526. We think this illustrates that the barriers to entry to online video distribution are low. Someone with a good idea does not need millions or even thousands of dollars to bring that idea to life on the Internet.

While the barriers are low, not every market entrant will, or can, become the next YouTube. There is no guaranteed access to someone else's creative content – it will remain the decision of the content provider to choose whether and to whom it will license its content online. Just a couple of weeks ago, we saw Viacom withdraw popular Comedy Central content like *The Daily Show* and *The Colbert Report* from Hulu because the parties could not reach a mutually satisfactory agreement. Importantly, consumers still can find Comedy Central content online, just through a different source. Despite the fact that entry into the online video marketplace is easy, the pressure is on both the content providers and the platform operators to provide a valuable service to one another, and to consumers, in the nascent online video market.

Comcast believes that the TV Everywhere model capitalizes upon the opportunity for consumers to get anytime, anywhere access to the content they want – and that they already pay for through their MVPD subscription. We think it is an innovative service that will give customers online access to movies and TV shows that have never been available online before, offering them more value for their money. But it also strikes the right balance by providing content producers with a sustainable business model that supports high-quality video content. And because TV Everywhere is "open and non-exclusive," TV Everywhere will spur additional competition in online video.

We anticipate that there will be many different models for distributing video content online. At various times, Comcast has licensed content to Hulu, YouTube, iTunes, Verizon V-Cast, CBS Interactive, and MySpace, among other online outlets. Economic models for online video are still in an early and ill-defined stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription. It is important that this experimentation and innovation continue unrestricted.

**3. Ms. Abdoulah testified that she can't get Comcast programming for WOW's online service. Are you making your own content available online to any distributor?**

The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to all consumers when they want, where they want, and on the devices they want. Providing content that consumers want online – through Comcast's distribution platform and those of our competitors – is essential to that effort. Comcast's goal is to expand the amount of content available online now and in the future and to do so through business models that support the continued production of high-quality content. Accordingly, to the extent we have decided to make our content available online to Comcast customers, we have made the same content available for distribution by other multichannel video competitors, including WOW, and we expect that the new NBCU will apply similar policies to its broadcast and cable network content.

As noted above, this is already occurring. For example, on February 18, 2010, Comcast SportsNet Chicago ("CSN-Chicago") contacted MVPDs distributing the network, including smaller cable operators like WOW, to advise them that, beginning March 19, 2010, it will stream online the final six regular season Chicago Bulls games, and it offered these MVPDs an opportunity to make the streamed games available to their customers. CSN-Chicago made this offer at the same time to all MVPDs that carry the network. (Until this recent announcement regarding Bulls games, CSN-Chicago has not participated in *any* TV Everywhere trials, including with Comcast's Fancast Xfinity TV.) Other Comcast Networks (E!, Style, and G4) have participated in very limited TV Everywhere trials (with Fancast Xfinity TV), and Comcast networks currently have a very limited amount of authenticated content available online. We have made available to competing MVPDs all programming that is intended to be distributed on an authenticated platform. In the future, we anticipate making available to other MVPDs that carry our networks, for distribution on their platforms, the same programming that we make available on our own, on reasonable terms.

The fact that Comcast Cable has agreements with unaffiliated programmers to feature their content on Fancast Xfinity TV doesn't mean that Comcast Cable can offer that content to another MVPD. It's not Comcast Cable's content to give or license to another distributor; those rights have to be obtained from the underlying rights holders. The important point here, however, is that we don't have exclusive agreements with online programmers. They are free to license to other distributors.

Finally, as noted above, we anticipate that there will be many different models for distributing video content online. At various times, Comcast has licensed content to

Hulu, YouTube, iTunes, Verizon V-Cast, CBS Interactive, and MySpace, among other online outlets. Economic models for online video are still in an early and ill-defined stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription. It is important that this experimentation and innovation continue unrestricted.

**4. Do you think the program access rules should be expanded to online content?**

We do not think it is necessary – or advisable – to apply the program access rules to the content available on the Internet. Competition in the online video marketplace is fierce as content providers fight for online viewers. Content owners have a strong incentive to distribute their content as widely as possible. Competition requires that content owners and distributors alike act in a pro-competitive manner to provide the best services possible to consumers. We do not believe that a regulatory backstop is needed in this instance.

The program access rules were written for a different time and for different circumstances. These rules were enacted in 1992, when cable faced very little competition, DBS had not yet launched, telephone companies were statutorily prohibited from providing cable services, and a majority of national cable programming networks were owned in whole or in part by cable operators. DBS has now achieved enormous marketplace success, and telephone companies are coming on strong in the video marketplace. And the percentage of national cable networks that are vertically integrated with cable operators has plummeted from 57 percent at the time Congress enacted the rules to below 15 percent today. As you may be aware, Congress scheduled the exclusivity prohibition of the program access rules to sunset in 2002, envisioning – correctly – that competition would obviate the need for these rules.

There is no reason to apply monopoly-era cable rules to the Internet. This is the most competitive, fragmented, and dynamic video marketplace ever, and its success is due in significant part to the wise decision made by Congress and President Clinton to establish a national policy “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation” (47 U.S.C. § 230(b)(2)) and the concept woven into the 1996 Act that, as competition increases, regulation should recede. Given that the Internet has developed into the vibrant communications tool that policymakers envisioned, and more, we do not think it is necessary or advisable to regulate it now.

**5. Comcast has stated that you do not believe the program access rules are working, and even discussed remedies for the program access complaint process. How would you all reform the program access complaint process?**

Comcast has not stated that the program access rules do not work. We do not agree with those who have said this.

It is important to remember that the environment in which programmers and distributors negotiate and reach agreements is intensely competitive, and the program access rules remain available as a regulatory backstop to protect against anticompetitive behavior in the unlikely instance that marketplace forces fail to effectively discipline market participants. Today, there are over 500 national cable programming networks, and scores

more regional networks, and with rare exception, it is in the best interest of an owner of programming to license its programming broadly and to gain distribution to as many homes as possible. No single MVPD serves more than 25 percent of MVPD households. If a given network owner refuses to license programming to a particular MVPD, or seeks to charge more than that programming is worth, it risks losing the affiliate fees that would be generated by that carriage and the advertising revenue that is associated with distribution to a larger number of homes. Given these competitive forces, it is perhaps unsurprising that Comcast *never* has been found to be in violation of the FCC's program access rules.

If Congress or the FCC believe that 1992-era regulations are worth keeping and amending, Comcast believes that any such changes should be made in an industry-wide proceeding, not in the context of a single transaction. We would participate fully in any review that the FCC conducts of the program access rules, and would tender thoughtful and constructive suggestions for ways to improve the negotiation process and perhaps modify the rules as well.

**6. Have you made any public interest commitments to offer your online content to other video distributors?**

We have not made a specific commitment with respect to licensing online content to other video distributors. In light of the competitive marketplace, we do not think that a specific commitment of this sort is necessary or advisable. Economic models for online video are still in an early stage of evolution. Content owners and others are experimenting with a wide variety of business models, including ad-supported, authentication, pay-per-view, and subscription, and it is important that this experimentation and innovation continue.

**7. Comcast asserts many times that you all would be unable to withhold NBC programming from competitors because of the program access rules, however we have heard from Ms. Abdoulah, and many other cable providers, that the program access rules are broken. What assurances can you provide this Committee and the American public that you will not withhold programming?**

We do not think the program access rules are broken, and I will explain more about that in a moment. But the first thing to bear in mind is that competition is – and will remain – intense among cable programming networks. Competition does – and will continue to – act as a restraint against unfair practices in program access. The new NBCU will continue to have strong incentives to reach as broad an audience as possible. To do that, NBCU will need to secure the best possible distribution not only from Comcast, but also from other MVPDs, which in the aggregate serve over 75 percent of MVPD households. If NBCU charges excessive prices for its programming, it will risk losing distribution and that, in turn, will translate quickly into revenue losses as affiliate fees and advertising revenue both decline. So the realities of a competitive marketplace provide strong protection against the concerns that you identify.

Nonetheless, as discussed above, the FCC's program access regulations remain available as a backstop. The program access rules that currently apply to the Comcast cable networks will apply to NBCU's cable networks as well, providing a regulatory safeguard to prevent unfair practices and discrimination by distributors who are affiliated with

programmers. In addition, Comcast has agreed to voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the broadcast signals of NBC and Telemundo O&O stations for as long as the program access rules remain in place. Comcast always has abided by these program access rules and never has been found to have violated them.

And I want to correct two apparent mischaracterizations of the program access rules made by Ms. Abdoulay at the hearing. First, the burden of proof *does not* fall uniformly on the complainant. For exclusivity and discrimination complaints, the FCC uses a burden-shifting scheme. Second, in the FCC's 2010 program access order, it outlined procedures by which complainants may request a standstill during the pendency of a dispute.

U.S. House of Representatives Committee on Energy and Commerce,  
Subcommittee on Communications, Technology, and the Internet  
Hearing on "An Examination of the Proposed Combination of Comcast and NBC Universal"  
March 19, 2010

Responses to questions for the record submitted by Representative Bobby L. Rush

**1. Comcast addresses digital migration of PEG channels in its public interest commitments. I'd like to address equivalencies to Comcast's plans for its commercial channels. In Chicago today, Comcast carries PEG channels at the same quality and functionality as commercial channels. Will Comcast commit to continuing that practice in the future?**

The one technical issue that has been a point of contention between Comcast and certain local franchising authorities ("LFAs") involves digitization of PEG channels. We have sought to put this concern to rest by committing that we will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

Insofar as I am aware, there has never been any issue with regard to the quality of our PEG transmissions. We have no intention or plan to change the current quality of PEG channel delivery, and we believe the eventual move to digital carriage will only enhance that quality.

**2. In its FCC transfer application, Comcast refers to hosting an online platform for PEG content. Recent studies in Chicago show that 40% of the population remain less or unconnected to the Internet. It's important that PEG channels be available to the public in the same manner Comcast makes commercial channels available. Is the online platform in addition to carriage on its cable system or are you suggesting that it will be in lieu of carriage equivalent to that offered to commercial channels?**

Our clear intention in tendering this commitment was to provide a new platform *in addition to* our traditional carriage of PEG channels on cable systems. If and to the extent that the online platform proves to be a viable vehicle for viewing of PEG programming, we would be happy to discuss with LFAs the possibility of reducing traditional carriage of linear PEG channels.

**3. Where Comcast has provided financial support to PEG Access channels, like it does in Chicago, those channels have flourished and provided an important public service to local residents, nonprofit groups and educational institutions. That funding is small, but important in terms of benefiting the public. What is Comcast's commitment to funding PEG channels in the future?**

We expect PEG funding to continue to be set through bilateral negotiations between Comcast and individual LFAs, and we will continue to meet those commitments, subject to applicable law. Our consistent goal in negotiating franchise agreements is to balance the community's interest in PEG programming with the cost to our customers of providing that programming. It is worth remembering that any PEG funding obligations are *in addition to* the typical 5 percent franchise fee we pay, and that our two biggest competitors (DirecTV and Dish Network) pay no franchise fees, carry no PEG channels, and make no PEG support payments. If we lose customers to our satellite competitors (in part because these unique local payments make our



price uncompetitive), the community will lose franchise fees and fewer customers will receive PEG programming of any kind. (Plus, in systems where we pay a flat PEG fee, as opposed to a per-subscriber PEG fee, the PEG costs will be borne by a shrinking number of customers.)

QUESTIONS FOR THE RECORD ADDRESSED TO MR. ZUCKER

FROM MEMBERS OF THE HOUSE ENERGY AND COMMERCE COMMITTEE

FROM THE HEARING ENTITLED "AN EXAMINATION OF THE PROPOSED COMBINATION  
OF COMCAST AND NBC UNIVERSAL" HELD FEBRUARY 4, 2010

**The Honorable Rick Boucher**

*1. If the Comcast/NBC combination is approved, will NBC commit to offering video programming owned by the combined company to competing multichannel video programming distributors on reasonable terms, so that the competing MVPDs can offer that programming to their subscribers online?*

I believe it is in NBCU's interest to have the widest distribution of its programming possible under a sustainable business model that provides a reasonable return on investment. We are willing to talk to anyone who can offer a deal that meets that test.

The online video marketplace is in its infancy -- but competition is healthy and very robust. For example, NBCU's share of online video is just 0.7% (measured by videos viewed). When we combine with Comcast, which has a 0.3% share of online video, we will have not much more than 1% of online viewing. Hulu (in which we are co-investors with three other partners) has just 4.0% of online video. By way of comparison, Google sites represent over 50% of online viewing. Even these measures of competition, however, miss the true nature of this highly dynamic and rapidly changing industry. Consumers increasingly look to the Xbox, iPhone, Playstation and so many other new platforms and technologies for their entertainment and media choices. The Internet is a new and vibrant marketplace and I do not believe we can predict how it will develop.

Businesses need the freedom to experiment and develop successful business models so that consumers can have the best quality content when and where they want it and the programmers can recoup the cost of creating high quality programming. Ultimately the marketplace -- consumers, programmers and distributors -- are best positioned to decide how to access our programming.

*2. If the Comcast/NBC combination is approved, will NBC commit to not requiring a video programming provider to give the combined company a financial interest in any program service as a condition for carriage?*

The FCC's program carriage rules prohibit an MVPD from conditioning carriage of any program service on obtaining a financial interest in that program service. Because NBCU is a video programming vendor and not an MVPD, for purposes of the program carriage rules, this question is not appropriately addressed to NBCU.

*3. If the Comcast/NBC combination is approved, will NBC commit to not asking or requiring video programming providers to limit the availability of their content to competing MVPDs, including on other platforms like the Internet?*

The FCC's program carriage rules prohibit an MVPD from requiring that any video programming vendor grant exclusive rights to that MVPD as a condition of carriage. Because NBCU is a video programming vendor and not an MVPD, for purposes of the program carriage rules, this question is not appropriately addressed to NBCU.

*4. As part of their filing at the FCC, Comcast and NBC Universal have pledged that if their joint venture is approved, they will make broadcast content of a kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer available at no additional charge for the three-year period after closing. Please clarify what is meant by programming that was previously offered at a charge but is now made available for free. How much programming, and what programs, fall into this category?*

Because this question asks about programming available on Comcast's On Demand service, please refer to the answer Comcast submitted to the Committee.

*5. As part of their filing at the FCC, Comcast and NBC Universal have pledged that if their joint venture is approved, they will make certain promises "as long as the FCC's current program access rules remain in place." Specifically, Comcast and NBC will voluntarily accept the application of program access rules to the high-definition feeds of any network whose standard definition feed is subject to the program access rules and will commit to extending voluntarily the key components of the FCC's program access rules to retransmission consent negotiations relating to carriage of the signals of NBC and Telemundo owned and operated stations for as long as the Commission's current program access rules remain in place. Please explain what is meant by "as long as the FCC's current program access rules remain in place." For example, as you know, last month, the FCC revised its program access rules as they relate to programming that is delivered terrestrially, and those rules could be subject to reconsideration or a court challenge. If the FCC were to modify its rules as part of the reconsideration process, or if a court were to invalidate the FCC's recent changes or direct the FCC to modify them, would that constitute a situation in which the FCC's current program access rules were no longer in place, thereby invalidating these two voluntary conditions?*

Please refer to the answer Comcast has submitted to the Committee.

*6. During recent retransmission consent negotiations, it came to light that the Fox television network has insisted that its affiliates remit to the network a portion of the revenue they receive from multichannel video programming distributors for*

*retransmission consent. Does NBC currently engage in a similar practice? If not, does it anticipate doing so in the future?*

NBC does not currently require its affiliates to remit to the network a portion of the revenue they receive from MVPDs for retransmission consent. NBC has discussed with its affiliates the possibility of acting as an agent for a consenting affiliate in retransmission consent negotiations and receiving a portion of the revenues derived from a successful negotiation.

*7. When NBC televised the 2008 Summer Olympics, it made a great deal of content available for free at NBC.com. For coverage of the 2010 Winter Olympics, NBC has required that individuals subscribe to one of a list of multichannel video programming distributors, including Comcast, in order to view real-time and some other content at NBC.com. Why did NBC change its online viewing policies between the 2008 Summer and 2010 Winter Olympics? How did NBC choose the MVPDs whose subscribers would receive full access to NBC's Olympics content online? What other plans does NBC have to shift content from broad to limited availability on NBC.com?*

Since 2000, NBCU has split its TV programming of the Olympics into two parts: broadcast programming and cable subscription offerings. Each year since 2000, NBCU has provided more hours of Olympics programming to both broadcast and subscription services from summer games to summer games and from winter games to winter games. The Internet has largely followed the same evolution, with a large amount of material available online on an ad-supported basis. With the 2008 Beijing games, NBCU divided our online offerings between ad-supported programming and programming for which users had to identify themselves as subscribers. (It was a rudimentary system at that time.) So over time, the online ad-supported offering has gradually mirrored the TV broadcast presentation, with additional material being available on a subscription basis.

During the Vancouver Olympics, we gave U.S. Olympics fans more Olympics coverage, both online and on television, than during any prior winter Olympics. NBCU broadcast 190 hours of over-the-air Olympics programming over the course of 16 days of competition – an average of nearly 12 hours of over-the-air programming a day – which is more than any other Winter Olympics in history. NBCU also made available more than 250 hours of programming across four of its cable networks.

NBCU also made its Olympic coverage available online through a hybrid site, NBCOlympics.com. All fans with Internet connectivity had access to vast amounts of ad-supported material. This site provided the general public with more than 1,100 video highlights, such as the most popular "water cooler moments." In addition, videos of nearly every individual performance – with all individual medal-winning performances – from the games were also available on an ad-supported basis. This publicly accessible, ad-supported portion of the website also offered live coverage of several events, including the U.S. v Switzerland and U.S. vs. Finland hockey games. Further, the publicly accessible, ad-supported portion of the website also offered full replays of almost every event within 40 hours of airing.

The second aspect of the hybrid site presented enhanced offerings that consisted largely of long-form programming. This enhanced online offering was made available broadly to any MVPDs that agreed to pay NBCU an additional fee to receive supplemental Olympic coverage on various NBCU cable networks (the "Olympic Package"). MVPDs serving approximately 94% of MVPD households purchased the Olympic Package. NBCU spent close to one billion dollars to bring the Vancouver Olympics to U.S. fans. Without the financial support of the MVPDs, NBCU would have been unable to justify this massive investment in the Vancouver Olympic Games, and unable to bring U.S. fans the high quality, professionally produced content they demand. NBCU is also proud of the tremendous financial support this investment provides to the USOC and the Olympics.

NBCU has demonstrated its commitment to over-the-air broadcast by the richness of its offerings on the NBC television network and the richness of its ad-supported online programming.

**The Honorable Henry A. Waxman**

*In response to my question about the availability of NBC programming if the joint venture is consummated you stated "[t]he fact is that we would like our content to be as widely seen as possible."<sup>1</sup> In response to a question from Chairman Boucher concerning the migration of content behind a "wall" on the Internet that requires a cable subscription, Mr. Roberts assured Mr. Boucher that free over-the-air programming would not move behind such a wall.<sup>2</sup>*

*Since our hearing, it has come to my attention that NBC has limited access to online full length Olympic content that was originally shown on free, over-the-air television. According to reports, such full-length content is only available to online users who have a relationship with an approved video provider or multichannel video programming distributor (MVPD). Consumers who are not affiliated with an approved MVPD are denied access to full replay capabilities of events that may have aired on NBC over-the-air. In previous Olympics NBC reportedly made content available on a variety of platforms and formats, with no limitations based on association with a particular MVPD. Your response to the following questions will assist the Committee in its review of this matter:*

*1. At what point did NBC decide to place certain Olympic content behind a video subscription wall?*

Since 2000, NBCU has split its TV programming of the Olympics into two parts: broadcast programming and cable subscription offerings. Each year since 2000, NBCU has provided more hours of Olympics programming to both broadcast and subscription services from summer games to summer games and from winter games to winter games. The Internet has largely followed the same evolution, with a large amount of material available online on an ad-supported basis. With the 2008 Beijing games, NBCU divided our online offerings between ad-supported programming and programming for which users had to identify themselves as subscribers. (It was a rudimentary system at that time.) So over time, the online ad-supported offering has gradually mirrored the TV broadcast presentation, with additional material being available on a subscription basis.

During the Vancouver Olympics, we gave U.S. Olympics fans more Olympics coverage, both online and on television, than during any prior winter Olympics. NBCU broadcast 190 hours of over-the-air Olympics programming over the course of 16 days of competition – an average of nearly 12 hours of over-the-air programming a day – which

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<sup>1</sup> Hearing Transcript at 101.

<sup>2</sup> Hearing Transcript at 92. (*Mr. Boucher*: Can the two of you offer to us assurance that the programs that are delivered over the air by NBC today and are then available on the nbc.com Web site for on-line viewing will not migrate into the TV Everywhere format so that they then would be available only to people who have a cable subscription? Can you give us that assurance? *Mr. Roberts*: Yes).

is more than any other Winter Olympics in history. NBCU also made available more than 250 hours of programming across four of its cable networks.

Beginning in 2006, NBCU held discussions and conducted negotiations with many MVPDs in an attempt to renew Olympics carriage agreements that were set to expire at the end of 2008. In order to execute agreements and secure fees from the distributors for the 2010 and 2012 Olympics Games, NBCU decided to adopt the same hybrid strategy for the online platform that had worked successfully on linear television. With the Beijing games, we divided our online offerings between ad-supported programming and programming for which users had to identify themselves as subscribers. (It was a rudimentary system at that time.) These fees, generated by the multiple revenue sources, would help offset the enormous investment required of NBCU to secure U.S. television rights and produce first-rate Olympic coverage. For the Vancouver Winter Olympics, NBCU provided a record amount of ad-supported video content on the Internet to both the general public and MVPD subscribers.

*2. Please explain why NBC made this decision.*

Please see Answer to Question 1 above.

*3. How many MVPDs did NBC offer access to its 2010 Winter Olympics coverage package ("Olympic package") online for certain video subscribers only?*

The offer was made available broadly to the industry either directly to individual MVPDs or through purchasing cooperatives of which the majority of smaller MVPDs are members.

*4. Please provide a list of all MVPDs with which NBC entered into such an agreement and describe how NBC selected such MVPDs.*

NBCU has distribution agreements either directly or indirectly via purchasing cooperatives with approximately 1,000 MVPDs across the country (some of these, however, are inactive).

452 MVPDs contracted with NBCU for the right to distribute Olympics content and thus had the right to make the enhanced online offering available to their subscribers. According to Nielsen estimates, these 452 MVPDs serve approximately 97.5M subscribers or about 94% of the roughly 104M households that subscribe to an MVPD (based on February 2010 Nielsen estimates).

*5. Please provide a list of MVPDs that do not have access to this content due to failure to reach an agreement with NBC.*

Please see Answer to Question 4 above.

*6. Do consumers have an option to purchase such content online directly from NBC?*

A direct to consumer offering was not made available for the 2010 Winter Olympics. In connection with the 1992 Summer Games in Barcelona, Spain, NBCU did attempt to obtain additional revenue directly from consumers with a 3-channel Pay-Per-View offering called the “Olympics Triple Cast”. The “Triple Cast” offered 3 different levels of expanded Olympics coverage in partnership with Rainbow Programming for a fee. The effort was not successful. NBCU did not generate the required additional revenue to offset the costs of producing additional coverage, and in fact suffered a substantial financial loss as a result of the pay-per-view offering.

*7. Does NBC-Universal support the proposed open Internet rules as contained in the FCC’s October 22, 2009 Notice of Proposed Rulemaking? If you don’t, how do you see these rules as affecting NBC-Universal as a programmer?*

NBC Universal did not file independently in response to the FCC’s October 22, 2009 Notice of Proposed Rulemaking (the “NPRM”). NBCU did, however, join the MPAA’s filing in that docket. See <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020375849>.

As the MPAA filing noted, the primary concern of the MPAA and its member companies – including NBCU’s role as a programmer – was, and continues to be, that any rules imposed do not restrict ISP’s ability to combat illegal activities being carried out over their networks. This includes “digital theft:” copyright infringement being carried out online on a vast and unprecedented scale, with devastating effects on our economy and on jobs. Indeed, the AFL-CIO Executive Council recently issued a statement recognizing the enormous toll that digital theft takes on U.S. jobs: <http://www.aflcio.org/aboutus/thisistheaficio/ecouncil/ec03032010h.cfm>.

Thus, the MPAA filing (at page i) praised the NPRM for its recognition that ISPs should have the right to “take action to counter unwanted or harmful traffic . . . and [to] decline to carry unlawful traffic, or [to] decline to carry traffic if the transfer of content is prohibited by law, including copyright law.” It also urged the Commission (at page ii) “to make clear that ISPs are not only permitted, but encouraged, to work with content owners to employ the best available tools and technologies to combat online content theft.”

In addition, the MPAA filing supported rules allowing for the flexible development of business models. As stated in the filing (at page iii), “the Commission’s goals would be well served by an approach to network neutrality that allows for different means by which content providers and ISPs might arrange to deliver content, other than in instances involving demonstrably anti-competitive consequences or effects.”



**The Honorable Bobby L. Rush**

*1. Under your leadership at NBC-Universal, what have you or your executive team done to foster minority ownership of communications properties, or content, improve business relationships with the existing minority business owners – particularly content providers, and to recruit and retain minority employees, including women?*

NBC Universal is striving to create and improve business relationships with existing minority business owners, including content providers. We have had some successes. For instance, minority-owned production companies account for 15% of the production "pod" deals in which our broadcast TV group has entered, and minority writers have garnered 3 deals with our broadcast TV group to develop new programs. However, we have much room for improvement in finding opportunities to work with minority content providers. I would note, in addition, that my answer to your second question, below, demonstrates that we have entered into, and are accelerating, significant deals with minority-owned sourcing companies.

NBC Universal has not undertaken specific efforts to foster minority ownership of communications property or content. Our core business is to create and own communications properties and content ourselves, and it is therefore quite natural that we would not be actively engaged in fostering creation of competing business enterprises.

NBC Universal has several "pipeline" programs designed to recruit and retain minority employees, including women. Examples of these pipeline programs include:

- **Entertainment Associate Program (since 2000)**

Entertainment Program Associates gain hands on experience in the development and management of entertainment programming by analyzing and developing scripts and providing creative input to writers and producers on review of scripts, stories, casting and scheduling of programs.

The Entertainment Associate Programs which encompass TV and Film is 80% (8 of 10) ethnically diverse.

- **News Associate Program (since early 90's)**

This highly competitive program identifies outstanding aspiring journalists who bring diverse backgrounds to news production and news coverage. The News Associates program is designed to attract candidates of racial, ethnic, economic and geographical diversity, as well as candidates with disabilities.

The News Associate Program is 100% (6 of 6) ethnically diverse.

- **Diversity Initiative for Writers (since 2001)**

In order to further encourage diversity among our writers, NBC provides funding for a minority staff writer position for all scripted NBC Primetime Series. These positions are filled with writers selected and hired by the showrunner/producers of each show, with the guidance of the network and studio(s).

The Diversity Initiative has staffed 100 ethnically diverse writers over the 10 years it has been in effect.

- **Directors Fellowship Program (since 2008)**

The program is a shadowing program that provides candidates the opportunity to observe, consult, and learn different creative approaches from a DGA Director. The program is also intended to provide individuals with exposure to Executive Producers, Showrunners, and Creative and Production Executives on an NBC Universal Television Studios production. The goal of the program is to develop directors for shows produced by NBC Universal Television Studios. Directing assignments on an NBCU Television Studio production may be available after successful completion of the program but are not a guarantee.

In the Directors Fellowship Program 4 of the 7 directors who have gone through or are currently in the program are ethnically diverse.

- **Internship Program (ongoing)**

The NBCU internship program places college students in television broadcast/production areas, business operations and NBC interactive positions related to their major and career goals. NBC considers the use of interns an important recruiting tool and a feeder program to regular college hires.

Our internship program is currently 24% (335 of 1412) ethnically diverse.

*2. Please divulge what (and when did they take place) were some of the largest transactions that you or your executive team struck with minority-owned firms, and what were their respective values in terms of dollars and duration?*

NBCU's spend with diverse suppliers has increased by 600 plus % since 2005. In 2008 and 2009, the spend increased by 14.6% and 36% respectively. While women historically enjoy about 45% of our business, we have seen continued growth with Asian American, Hispanic American and African American suppliers.

Some of our largest transactions have been as follows:

- 1) Our relationship with Lopez Negrete, a Hispanic Media agency, has grown to \$10MM/yr over the last 2 years. Their original contract started in 3Q'07.

- 2) In 2007-2008, we consolidated several contracts and increased business with Igate, an Asian American supplier who now sells us in the range of \$20MM in services.
- 3) Agile 1, an African American woman-owned business, booked \$4MM in revenue from us in 2009, and that number will grow.

*3. Seeing that you will become the Chief Executive of the proposed combination of companies, what commitments to minority ownership and employment will you institute and what actions will you implement to promote doing business with minority firms and to hire and train minority and women employees?*

Since the day I took over the helm of NBC Universal, I made Diversity one of my five guiding business principles. During that time, spending on diversity staffing and programs has increased 700% and the diversity of our domestic employee population has increased from 24% to nearly 30% (excluding Telemundo). Women and minorities combined represent 60.8% of our work force and minority and women executives represent 39.7% of our executive ranks.

As Chief Executive of the new NBC Universal, I will continue this commitment to diversity, and will look to improve and expand upon the pipeline programs, diverse production deals, and other pro-diversity actions I described in my response to your first question.

**The Honorable Anna G. Eshoo**

*My constituents are Comcast customers. My concern is about my constituents' ability to view local and diverse programs and whether this merged entity will truly fulfill its public service obligations. I expect the FCC to keep these issues at the forefront of its review process and in doing so, the FCC should consider NBC's 2006 Media Ownership comments which contained specific complaints about the inability of broadcasters to compete with Comcast for increasingly scarce advertising revenue. NBC said of the San Francisco market that there was a \$70 million disparity between the ad revenues earned in 2005 by Comcast's consolidated system and the revenues of the leading station, Fox's KTVU – a difference that was projected to nearly double by now.*

*1. What are the actual ad revenue differences at this juncture? Explain to me how other stations will be able to compete against a merged competitor like NBC and Comcast in one local market.*

There is a highly competitive market for local advertising revenues in the San Francisco Bay Area today; that will be unchanged after the joint venture is effective.

There are three reasons for this. *First*, broadcast stations and cable systems are not considered to be close substitutes. Instead, cable systems offer “hyper-local” services,

targeted to particular geographical regions within a particular Designated Market Area ("DMA"). Broadcast stations, by contrast, offer the ability to reach all television households in a DMA. Thus, as the Antitrust Division has alleged, a significant number of advertisers do not view cable television advertising to be a meaningful substitute for broadcast television spot advertising. *See* Complaint filed by the Antitrust Division in *United States v. Raycom Media Inc.* (2008).

*Second*, even advertisers who do regard cable and broadcast advertising as substitutes would continue to enjoy a broad number of alternatives post-transaction. These include, first and foremost, advertising on other broadcast stations serving the San Francisco Bay Area, such as the ABC, CBS and Fox affiliates as well as the CW, My Network and others. All these compete for advertising revenues with each other and with other alternatives available for advertisers to choose from, including radio, the Internet, newspapers and billboards.

*Finally*, even if an artificial market were constructed consisting only of broadcast stations and MVPDs in the San Francisco Bay Area, advertisers would still have plenty of competitive choices. All the major network affiliates have ad revenues above or only slightly below that of Comcast and all of them have revenues above that of NBCU. The bottom line: Comcast and NBCU will only be able to make ad sales if they offer competitive pricing.

*2. Are we in danger of losing some of our smaller, independent stations, and diverse programs and viewpoints nationwide to advertisement suffocation?"*

I share your concern that broadcast is under a great deal of financial pressure but I believe this transaction will benefit the broadcast industry and the millions of viewers who depend on it for access to news, sports and entertainment. Comcast's stated commitment to broadcast has made me feel much better about the future of broadcast than I have for a long time. Comcast's investment in NBCU will strengthen and sustain NBC's network affiliate system for delivering free, over-the-air broadcast television. Importantly, Comcast has also pledged to play a constructive role in the negotiations with local broadcasters. I believe that having a cable company now have a stake in the success of these retransmission consent negotiations from both sides will be a constructive force. This will be very significant as broadcast continues to look for additional revenue streams and will help sustain broadcasting in the years to come. However, I would note that nothing about this deal changes the competitive dynamic of the marketplace or poses a threat to smaller, independent stations.

*3. I'm also wondering if the FCC needs to expand the scope of the program access rules to online content. Could you comment on this situation?*

There is no need to impose FCC regulation, like the program access rules, onto the Internet video marketplace. Congress created the program access rules, as part of the Cable Act of 1992, to address concerns that exclusive access to certain TV channels would enable then-existing MVPDs, which had little competition from multi-channel TV

distribution in their local areas, to dissuade potential competitors from making the enormous investments required to launch competing distribution services. Today's Internet video marketplace is a very different creature. There are virtually no barriers to entry in the Internet video distribution marketplace. Furthermore, the Internet video market is tremendously fragmented.

NBCU's share of online video is just 0.7% (measured by videos viewed). When we combine with Comcast, which has a 0.3% share of online video, we will have not much more than 1% of online viewing. Hulu (in which we are co-investors with three other partners) has just 4.0% of online video. By way of comparison, Google sites represent over 50% of online viewing. Even these measures of competition, however, miss the true nature of this highly dynamic and rapidly changing industry. Consumers increasingly look to the XBox, iPhone, Playstation and so many other new platforms and technologies for their entertainment and media choices. Therefore, the rationales behind creation of the program access rules for offline TV simply do not exist in the online world.

**The Honorable Bart Stupak**

*1. There has been a lot of discussion about how a new Comcast/NBC Universal company would change the dynamics of retransmission consent. How do you predict the dynamics would change when both a cable operator, who must pay retransmission consent for content, simultaneously owns a network that must sell access through retransmission consent?)*

The broadcast industry is under a great deal of financial pressure today. Recently this was highlighted by ABC's decision to significantly downsize its news staff. I believe our transaction comes at an important time for the broadcast industry and for the millions of viewers who depend on it for access to news, sports and entertainment programming. Comcast has pledged to play a constructive role in the retransmission negotiations with broadcasters. I believe that having a cable company now have a stake in the success of these retransmission consent negotiations will bring balance to these discussions. I expect Comcast to be a constructive force now that it will be able to see the arguments from both sides. This will be very significant as broadcast continues to look for additional revenue and makes me more optimistic that we will be able to sustain free, over-the-air broadcasting in the years to come.

**The Honorable Marsha Blackburn**

*1. Whenever we discuss business deals, whether they are smaller ones, or ones of this magnitude, my first reaction is, how will this affect the consumer? Can you please elaborate some more on why this is such a tremendous deal for my constituents in central and west Tennessee?*

Many aspects of this deal will benefit constituents in central and west Tennessee and other predominantly rural areas throughout the country, as well as consumers generally. In particular, for many consumers in rural and mountain areas, it is not always possible (or economically feasible) for consumers to view television via a cable subscription. For these consumers, Comcast's commitment to the continued strength and viability of free, over-the-air broadcast television will provide them a significant benefit. As explained in more detail below (see answer to Questions 3 and 4), the broadcast television business model has come under tremendous economic pressure recently. Comcast's commitment to maintain and to strengthen free, over-the-air broadcast television is one of the most under-appreciated but significant commitments that will happen as part of this deal. And this will provide a tremendous benefit to your constituents as it will all for consumers throughout the country.

There are other aspects of this deal that will benefit consumers as well. Comcast has committed to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC owned and operated stations, and it has committed to expand the availability all types of local and public interest programming through the use of its On Demand and On Demand Online platforms, and time slots on cable channels. Comcast has further committed to develop a platform to host public, educational and governmental (PEG) programming On Demand and On Demand Online within 3 years of closing. In addition, Comcast has committed to add 500 Video On Demand (VOD) programming choices appealing to children and families within 1 year of closing, and to add an **additional** 1,000 choices within 3 years (for a total of 1,500). Comcast has also committed to use its On Demand and On Demand Online platforms to develop additional opportunities to feature children's programming. As a distributor, these are benefits that Comcast can create for consumers that NBCU simply could not do on its own.

Comcast has also reaffirmed its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company. NBCU has committed to triple the time that program ratings remain on the air after commercials (from 5 to 15 seconds), and make them more visible by using a larger format. Comcast and NBCU will also expand their growing partnership with Common Sense Media to help guide family viewing decisions. Comcast has also committed to expand its VOD offerings generally for free (or no additional charge), and to add independent programming to its digital lineup. These are just some of the many benefits that this deal will bring to consumers, in Tennessee and throughout the country, and I look forward to the opportunity to be part of this exciting development in television history.

*2. This committee spent a lot of time last year considering satellite legislation known as SHVERA. The heart of that legislation is a compulsory copyright license that Congress makes available to satellite companies. Likewise, 30 years ago Congress adopted a cable compulsory license to spur the growth of a then-nascent cable industry and foster competition in the market for video delivery. For 30 years producers of movies and TV shows, like NBC Universal, have subsidized the cable industry through government-set, below-market rates for their content. Yet today, cable companies are among the largest and most successful businesses in the country, to the point that we are here today reviewing the proposed acquisition by a cable operator of one of the nation's leading content providers. Could you share your thoughts on phasing out the cable compulsory license, to allow these negotiations to take place in the marketplace?*

We agree that market-based licensing is typically the best mechanism for licensing the carriage of copyrighted programming. However, the carriage of broadcast stations on cable systems has presented unique licensing challenges for some 40 years. The satellite reauthorization legislation represents a compromise that was very difficult to reach. All companies need to continue to approach these issues constructively and realistically, and in a spirit of cooperation. We will embrace that approach in dealing with these issues.

*3. You have been associated with NBC for at least a decade and CEO of NBCU for 2 years. What do you think the prognosis is for free standing broadcast companies in this dynamic and turbulent environment?*

Healthy, free-standing broadcast affiliates are an essential element of the network-affiliate model that broadcast television has been built upon in this country. And in today's turbulent environment, free-standing broadcast affiliates are coming under tremendous economic pressure (as are NBCU's owned and operated stations). This is a critical time for the industry, as many are facing increasing financial pressure and seeking other sources of revenue -- as well as cutting costs -- in response to their financial difficulties. Relying solely on advertising revenue may no longer be a sufficient business model for these affiliates. This deal will bring a commitment from Comcast to the broadcasting side of the business that will help to strengthen NBCU's affiliates and help to sustain free, over-the-air broadcast television and benefit the millions of viewers who depend on it for access to news, sports and entertainment programming.

*4. What impact will this deal have on efforts by broadcast to develop additional revenue streams?*

As I have explained above, the broadcast industry is under a great deal of financial pressure today. Recently this was highlighted by ABC's decision to downsize its news staff significantly. I believe our transaction comes at an important time for the broadcast industry and for the millions of viewers who depend on it for access to news, sports and entertainment. Comcast has pledged to play a constructive role in the retransmission negotiations with broadcasters. I believe that having a cable company now have a stake



in the success of these retransmission consent negotiations from the broadcast side of the business will bring balance to these discussions. I expect Comcast to be a constructive force now that it will be able to see the arguments from both sides. This will be very significant as broadcast continues to look for additional revenue and makes me more optimistic that we will be able to sustain and strengthen a free, over-the-air broadcasting industry in the years to come.

