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

In the Matter of	)
	)
Applications for Consent to the Transfer of Control of Licenses	))
	)
General Electric Company, Transferor,	))
	)
To	)
	)
Comcast Corporation, Transferee	))

APPLICATIONS AND PUBLIC INTEREST STATEMENT

DESCRIPTION OF TRANSACTIONS, PUBLIC INTEREST SHOWING, AND RELATED DEMONSTRATIONS

COMCAST CORPORATION
2001 Pennsylvania Ave, NW
Suite 500
Washington, D.C. 20006

GENERAL ELECTRIC COMPANY
1299 Pennsylvania Avenue, NW
9th Floor
Washington, D.C. 20004

NBC UNIVERSAL, INC.
1299 Pennsylvania Avenue, NW
9th Floor
Washington, D.C. 20004

EXECUTIVE SUMMARY

With this filing, Comcast Corporation ("Comcast") and General Electric Company ("GE") seek approval to create a new content-focused joint venture that will promote the public interest by increasing the quantity, quality, diversity, and local focus of video content and accelerate the innovative "anytime, anywhere" future that Americans want. The joint venture will retain the NBC Universal ("NBCU") name and will be majority-owned and managed by Comcast.

NBCU, currently majority-owned 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 owns Telemundo, the nation's second-largest Spanish-language broadcast network, with substantial production facilities located in the United States. NBCU's other assets include local broadcast stations, national cable programming networks, a motion picture studio, a TV production studio, and an international theme park business. All of NBCU's businesses will be contributed to the joint venture.

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 platforms for content and services. Although Comcast owns and produces some cable programming channels and online content, it accounts for only a tiny percentage of the content industry. Most of Comcast's content businesses will be contributed to the joint venture. Comcast's cable systems will not; they will remain under Comcast's ownership and control.

The proposed transaction will bring important public interest benefits to consumers across this country. In particular, the proposed transaction will advance the Commission's public policy goals of diversity, localism, competition, and innovation:

- *Diversity*. The new venture will expand the amount, quality, variety, and availability of content better than either company could on its own, thus promoting the Commission's touchstone goal of diversity.

- *Localism*. In addition, the new venture will provide more and better local programming, including local news and information programming, thereby advancing a second of the Commission's most fundamental public interest goals, localism.

- *Competition.* By linking NBCU with Comcast, a company that is focused on and committed to investing in the media and communications industry, the joint venture will create new opportunities to better serve consumers. NBCU and Comcast will be stronger, more effective players in video programming and distribution, spurring other content producers and distributors to invest and innovate, thereby enhancing competition.

- *Innovation*. Combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and television and film libraries will foster innovation by accelerating the "new media" future of in-home and mobile entertainment.

Comcast brings to this transaction a well-documented history of developing innovative video, high-speed Internet, and voice products and committing the resources needed to deliver those products to American consumers. For example, Comcast pioneered the video-on-demand ("VOD") business, and, through the end of 2009, its customers have viewed VOD programming more than 14 billion times. Indeed, because many multichannel video programming distributors ("MVPDs") followed Comcast's leadership and developed VOD platforms of their own, consumers across the country have benefited from the dramatic growth in programming choices available on VOD platforms. Comcast's creative vision and willingness to invest in its vision will enable the new NBCU to offer video and other products that respond to consumers' desire for "anytime, anywhere" access.

Not only will the transaction yield the public interest benefits of diversity, localism, competition, and innovation, but the Applicants also propose to enhance those benefits by offering an unprecedented array of public interest commitments. Applicants propose that these commitments be included in any Commission Order approving the transaction and become binding on the parties upon the completion of the transaction.

Viewed from every angle, the transaction is pro-competitive. The programming and distribution businesses are each highly dynamic and competitive, and becoming more so every day. Hundreds of national television programming networks and scores of regional programming networks compete vigorously with each other for consumers' attention. Today no MVPD is or can be a "gatekeeper."

Consumers can also access high-quality video content from myriad non-MVPD 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 competitors like Netflix and others who provide DVDs by mail. Video content – both professionally produced and user-generated – is available from a rapidly growing number of online sources ranging from Amazon, Blinkx, and Clicker.com to Veoh, Xbox, and YouTube.

Moreover, there is no plausible basis for claims that the proposed venture will have anticompetitive effects. First, combining Comcast's and NBCU's cable programming assets will give rise to no cognizable competitive harm. In total, the new NBCU will account for about 12 percent of overall national cable network advertising and affiliate revenues, still trailing Disney/ABC, Time Warner, and Viacom. Even after the completion of the proposed transaction, approximately six out of every seven networks carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU.

Second, while Comcast will own both cable systems and broadcast stations in a limited number of Designated Market Areas, Congress and the Commission long ago repealed the rules that prohibited such cross-ownership, and the case for any new restrictions is even weaker today. In addition, the local areas in question are major communities with a significant number of media outlets – each has at least seven non-NBCU broadcast stations as well as other media outlets, including radio. Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain in each of these areas following the transaction.

Third, the combination of Comcast's and NBCU's Internet properties poses no threat to online competition. There is abundant, aggressive, and growing competition for online video content. NBCU holds approximately a 32 percent, non-controlling, non-management interest in Hulu, a site that provides access to certain online video content but has only a single-digit share of online viewing – about one-tenth the share of Google. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share of an exceptionally dynamic and competitive field.

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. The video programming, video distribution, and Internet businesses are all fiercely competitive, and the proposed transaction does not reduce that competition.

In addition, there is a comprehensive regulatory structure already in place, namely the Commission's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law, that provide further safeguards against any conceivable harms arising from the post-transaction conduct of the parties.

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, the enhancement of its media and communications assets. This transfer of control, along with the contribution of Comcast's complementary content assets, will enable the new NBCU to better serve consumers and advance the Commission's policy goals of diversity, localism, competition, and innovation. Applicants respectfully request the Commission's expeditious approval of the transaction.

TABLE OF CONTENTS

LIST OF APPENDICES

1. List of Licenses To Be Transferred

2. Detailed Description of Transactions

3. Master Agreement Among General Electric Company, NBC Universal, Inc., Comcast Corporation, and Navy, LLC, dated December 3, 2009

4. Amended and Restated Limited Liability Company Agreement of Navy, LLC (To Be Executed at Closing)

5. Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2008, Comcast Corporation, SEC Form 10-K, filed February 20, 2009

6. Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended September 30, 2009, Comcast Corporation, SEC Form 10-Q, filed November 4, 2009

7. Declaration of Robert Pick, Senior Vice President, Corporate Development, Comcast Corporation

8. Applicants' Voluntary Public Interest Commitments

9. Expert Declaration of Matthew L. Spitzer Concerning Diversity and Localism Issues Associated with the Proposed Comcast-NBCU Transaction

10. Lexicon of Acronyms

I. INTRODUCTION

General Electric Company ("GE") and Comcast Corporation ("Comcast") (collectively, "Applicants") seek approval from the Federal Communications Commission ("Commission" or "FCC") to transfer certain broadcast, broadcast auxiliary, satellite earth station, and business radio licenses as part of a proposed transaction that is pro-consumer, pro-competitive, and strongly in the public interest. The transaction will combine the broadcast, cable programming, movie studio, theme park, and online content businesses of NBC Universal ("NBCU") with the cable programming and certain online content businesses of Comcast. This content-focused joint venture, which will retain the NBCU name, will be majority-owned and managed by Comcast.

The new NBCU will advance the most central policy goals of the Commission: diversity, localism, competition, and innovation. With Comcast's demonstrated leadership 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 presents no cognizable risk of harm in any market or to the public interest.

NBCU, currently owned 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. Two highly regarded cable news networks, CNBC and MSNBC, also draw on the capabilities of NBC News. NBCU also 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, 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.

Thus, the proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms. Antitrust law, competition experts, and the Commission have long recognized that vertical combinations can produce significant benefits. Experts and the Commission 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 nationwide 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 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 Commission 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, Electus, 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 creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The Applicants' 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, any risks are further reduced by the Commission's existing program access, program carriage, and retransmission consent rules and regulations, as well as the additional public interest commitments made by the Applicants.

At the same time, the transaction's public interest benefits – particularly for the Commission's cornerstone interests in 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 one of the Commission's oldest and most fundamental public interest goals, *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, the Applicants 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.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries not only will result in the 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. This is because the proposed transaction will remove negotiation impediments that currently inhibit 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. Consumers responded positively to Comcast's VOD initiatives, and once Comcast demonstrated to content owners that the VOD model worked, more of them made compelling content available for this platform. The formation of the new NBCU similarly 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.

Thanks to Comcast's MGM investment and its 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. There is every reason to believe that the transaction proposed here will create a similar 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 Commission has observed, will help to drive broadband adoption, another key Commission 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 approximately 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 – *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 broadcast stations in a limited number of Designated Market Areas ("DMAs"), the Commission'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 Commission. 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, the local areas in question are major DMAs with a significant number of media outlets, each including at least seven non-NBCU over-the-air television stations 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 almost 40 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 vastly more than 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 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 Commission's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law, that provide 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 Applicants have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. In addition, Applicants have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction. Applicants propose that the commitments as presented herein be included in any Commission Order approving the transaction and become binding on the parties upon completion of the transaction.

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 the most central policy goals of the Commission: 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.

Applicants intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. Applicants, therefore, respectfully request that the Commission approve the transaction expeditiously, incorporating the public interest commitments that Applicants have advanced.

II. DESCRIPTION OF THE TRANSACTIONS

A. The Proposed Transactions

A list of the licenses to be transferred is attached as Appendix 1. The transactions contemplated by the Applicants are fully described in Appendix 2. The following is an abbreviated description.

As set forth in the Master Agreement among Comcast, GE, NBCU, and Navy, LLC ("Newco") dated December 3, 2009 (the "Master Agreement"), creation of the joint venture will occur through several steps and will be subject to the receipt of the necessary governmental approvals and the satisfaction or (to the extent permissible) waiver of other conditions specified in the Master Agreement.[1] At the time of the closing, and immediately prior to the contribution of businesses and assets to Newco by Comcast and GE, both Comcast and GE will effect certain internal restructurings of entities to be contributed to Newco. Certain of the steps in each of these internal restructurings will result in *pro forma* changes in control of FCC licensees.[2]

Following the internal restructurings, GE will acquire the 20 percent of NBCU that it does not currently own in a transaction that does not require Commission approval.[3] Then,

---

[1] The Master Agreement is attached as Appendix 3. The Master Agreement was also filed with the Commission on December 31, 2009, pursuant to 47 C.F.R. § 73.3613.

[2] Appendix 2 provides a detailed description of the *pro forma* changes in control resulting from the restructurings for which FCC approval is requested.

[3] The current owner of that 20 percent interest is Vivendi SA.

NBCU will borrow $9.1 billion from third-party lenders (the “NBCU Financing”) and distribute the proceeds from the NBCU Financing to GE (the “NBCU Dividend”).[4] The contribution to Newco of NBCU as well as certain other assets used primarily in NBCU’s business will then occur through a series of *pro forma* transfers of control.[5] Comcast then will contribute its content business comprising regional sports networks, other programming networks, and certain Internet businesses, as well as certain other assets used primarily in those businesses, to Newco.[6] Comcast’s cable systems will not be contributed to Newco and will be retained and operated separately by Comcast. Similarly, Comcast’s wireless holdings and certain online assets (including Comcast.net and Fancast) will be retained and operated separately by Comcast. As a result of the foregoing contribution of its content business to Newco and a cash payment by Comcast to GE currently estimated to be $6.5 billion (Comcast will make a cash payment of $7.1 billion minus 51 percent of the free cash flow of NBCU between signing and closing), Comcast will own 51 percent of the ownership interest in Newco, while GE will retain a 49 percent interest in Newco.[7] A simplified diagram of the key steps in the transaction appears below.

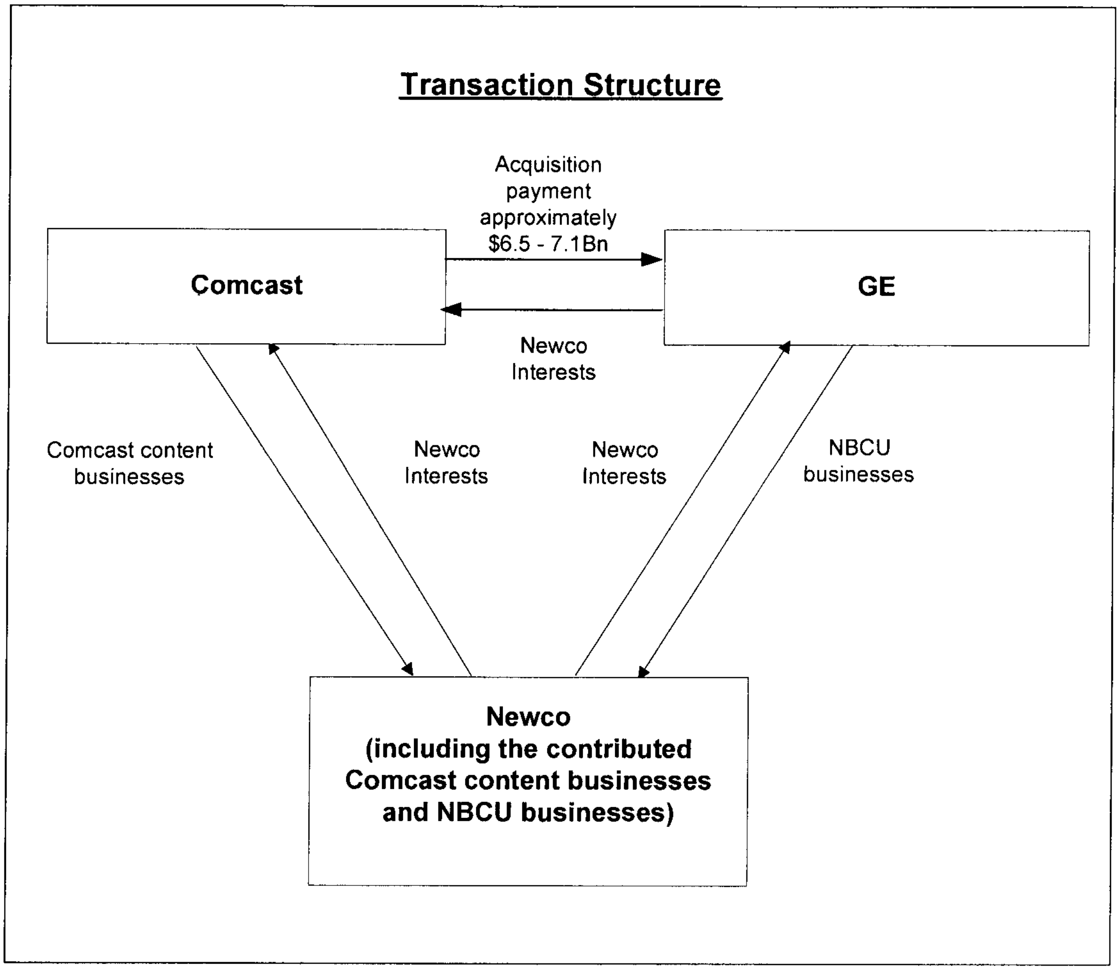
---

[4] Beginning shortly after closing, Newco is expected to maintain maximum leverage of 2.75x EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) and hold an investment grade credit rating. If any borrowings by Newco to fund GE’s redemptions would result in Newco’s leverage ratio exceeding 2.75x EBITDA or the venture losing investment-grade status, Comcast will provide a backstop of up to $2.875 billion for each redemption, subject to a maximum amount of $5.75 billion.

[5] These steps are also described in more detail in Appendix 2.

[6] The Comcast content businesses will be contributed to NBCU as a wholly-owned subsidiary of Newco, and not to Newco directly. To distinguish between pre- and post-transaction NBCU, these contributions are described herein as being made to Newco to make clear that the contributions will be made to the new joint venture and not to NBCU under its present ownership.

[7] The amount of both the NBCU Dividend and the cash payment by Comcast to GE are subject to adjustment in certain circumstances.



Upon the consummation of the transactions contemplated by the Master Agreement, Comcast and GE will enter into an operating agreement for Newco (the "LLC Agreement"[8]), which will serve as Newco's primary operating document and provide for the management and governance of Newco. Pursuant to the LLC Agreement, Newco will have an internal management board of directors initially consisting of three Comcast designees and two GE

[8] The Draft Amended and Restated Limited Liability Company Agreement of Navy, LLC ("LLC Agreement") is attached as Appendix 4. The LLC Agreement was also filed on December 31, 2009, pursuant to 47 C.F.R. § 73.3613 (the LLC Agreement is an attachment to the Master Agreement as filed). The LLC Agreement will be signed at the closing.

designees.[9] The LLC Agreement will contain an enumerated list of approval rights reserved solely for the board of directors.[10] Board decisions will be made by majority vote, provided that GE will have consent rights with respect to certain non-ordinary course matters.[11] GE's consent rights terminate if GE's ownership interest in Newco falls below 20 percent. Jeff Zucker, current President and Chief Executive Officer of NBCU, has been selected as Newco's initial Chief Executive Officer. In the event of a vacancy in the position of Chief Executive Officer within the first three-and-a-half years of operation of Newco, GE will have the right to veto up to two candidates proposed by Comcast. After two such vetoes, the Newco board of directors will have the right to select the Chief Executive Officer.

The LLC Agreement will prohibit Comcast from transferring its ownership interest in Newco for approximately four years after closing, and GE will be prohibited from transferring its ownership interest for three-and-a-half years, at which respective point either party may sell its ownership interest in Newco publicly or privately, subject, in the case of sales by GE, to a fair-market-value purchase right in favor of Comcast.[12] If Comcast sells its entire ownership interest

---

[9] The internal management board will consist of Michael J. Angelakis, Stephen B. Burke, Jeffrey R. Immelt, Brian L. Roberts, and Keith S. Sherin. GE's representation right will be reduced to one director if GE's ownership interest in Newco falls below 20 percent, and GE will lose its representation right if GE's ownership interest in Newco falls below 10 percent, with Comcast designees replacing the outgoing GE directors.

[10] These include approval of certain incurrences or repayments of debt, removal of the CEO or employees reporting directly to the CEO, certain acquisitions and dispositions, entering into certain non-ordinary course agreements, approval of new strategic plans, and material amendments to or departures from existing strategic plans and the Company's annual budget.

[11] *See* LLC Agreement, §4.10(a). These include (i) certain acquisitions, (ii) material expansions of Newco's scope of business or purpose, (iii) certain issuances or repurchases of equity, (iv) certain distributions to equity holders, (v) certain debt incurrences, (vi) certain loans made outside of the ordinary course of business, and (vii) a liquidation or voluntary bankruptcy of Newco.

[12] Comcast and GE will be granted demand and piggyback registration rights exercisable, in the case of Comcast, after approximately four years and, in the case of GE, after approximately three-and-a-half years. The parties' registration rights will be subject to various restrictions on timing, frequency (including "blackout" periods in various circumstances) and, in the case of GE, amount.

in Newco, it can require GE to sell its entire interest to the same buyer on the same terms, subject to certain minimum-purchase-price requirements as set forth in the LLC Agreement. If Comcast chooses to sell its entire ownership interest in Newco, GE may require Comcast to include GE's entire ownership interest in the sale on the same terms.[13]

In addition, subject to certain conditions, GE will be granted the right to elect, during the six-month period beginning three-and-a-half years after closing, to require Newco to purchase 50 percent of its ownership interest (a redemption) and, during the six-month period beginning seven years after closing, to require Newco to purchase all of the ownership interests then held by GE. If GE exercises its first redemption right, Comcast will have the right to purchase the remainder of GE's ownership interest, exercisable during the 10-business-day period after the determination of the purchase price payable in connection with the first redemption right. If GE does not exercise its first redemption right, then after the fifth anniversary of the closing Comcast will have the right to purchase 50 percent of GE's initial ownership interest. Comcast will also have the right to purchase GE's remaining ownership interest, if any, after the eighth anniversary of the closing. The LLC Agreement contemplates a mechanism whereby, in connection with certain of the potential transactions allowing GE to dispose of its interest in Newco, GE will retain a preferred interest in the venture through a holding company.

Finally, for as long as GE directly or indirectly retains an ownership interest in Newco, Newco or its subsidiaries generally may only enter into a transaction, agreement, or arrangement with Comcast or any of its affiliates (a "Related Party Transaction") if the transaction is on arm's-length terms. This arm's-length requirement applies to, among other agreements,

---

[13] The LLC Agreement also allows Comcast to effect a spin-off of its interest in Newco in specified circumstances.

programming agreements, affiliation agreements, and other commercial agreements of a type that are entered into between content producers and distributors in the ordinary course of business. Prior to entering into a proposed Related Party Transaction involving annual payments or annual incurrence of obligations by Newco or a subsidiary of Newco in excess of $7.5 million, Newco will provide GE with a written summary of the material terms of the proposed transaction and will provide GE a reasonable opportunity to consult with representatives of Newco and Comcast concerning the transaction. GE will have 10 business days from the date of receipt of notice of the Related Party Transaction, or, with respect to a Related Party Transaction that is not the subject of such notice, 10 business days from the date GE obtains knowledge of the transaction, to require arbitration concerning an ordinary course Related Party Transaction in the manner provided for in the LLC Agreement. GE will have a veto right with respect to non-ordinary course Related Party Transactions. GE's arbitration right and veto right no longer will be applicable if GE's ownership in Newco falls below 10 percent.

B. The Applicants

1. Comcast

Comcast began offering cable service with a single system in 1963 in Tupelo, Mississippi, serving just over 1,000 cable customers.[14] Under the leadership of the Roberts family,[15] Comcast has experienced extraordinary growth in its business. After decades of investment, innovation, and old-fashioned hard work, Comcast has become a leading provider of cable television, high-speed Internet, digital voice, and other services to millions of customers.

---

14 Comcast's financial qualifications to enter into the Transactions are established in Comcast's 2008 SEC Form 10-K Annual Report, attached as Appendix 5, and Third Quarter 2009 SEC Form 10-Q, attached as Appendix 6.

15 Brian L. Roberts, son of Comcast founder Ralph J. Roberts, is Comcast's Chairman, President and Chief Executive Officer.

In the process, it has developed, deployed, and improved a wide range of new technologies and services and established a reputation as an industry leader in technology, financial performance, and operational efficiency. Comcast has also delivered the benefits that it promised in both of the other major transactions involving Comcast that the Commission has approved during the past decade.[16] In all of its businesses, Comcast faces substantial competition.

a. Cable Systems and Video Services

Comcast currently owns and operates cable systems serving approximately 23.8 million customers in 39 states and the District of Columbia.[17] Since 1996, Comcast and its predecessors-

---

[16] A principal public interest benefit that the Commission recognized when it approved the AT&T/Comcast and Adelphia/Time Warner/Comcast transactions was that Comcast would invest to expand capacity and bring new services to consumers. *See In the Matter of Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee,* Memorandum Opinion and Order, 17 FCC Rcd 23246 ¶¶ 182-184 (2002), *aff'd sub nom. Consumer Fed'n of Am. v. FCC,* 348 F.3d 1009 (D.C. Cir. 2003) ("*AT&T-Comcast Order*") ("[W]e conclude that the proposed transaction is likely to have a positive impact on deployment of broadband services. We agree with Applicants that the merged entity is likely to accelerate the deployment of broadband services in AT&T service areas."); *In the Matter of Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 8203 ¶¶ 256-259 (2006) ("*Adelphia Order*") ("As the Commission has stated many times, the deployment of advanced video services is a recognized public interest benefit. . . . In this case, we have considered whether Adelphia subscribers are more likely than not to obtain additional or superior advanced video services, VoIP service, and high-speed Internet service post-transaction or to obtain these services more quickly than would otherwise be the case. Thus, we find it more likely than not that the proposed transactions will have a positive impact on the deployment of certain advanced services to Adelphia subscribers. We also find it likely that Comcast and Time Warner will improve the quality and availability of advanced services on Adelphia's systems and that Adelphia subscribers will benefit from the transactions in this regard. . . . We also find that the transactions likely would accelerate the completion of upgrades on Adelphia's systems and the deployment of advanced video services.") (internal citations omitted).

Comcast has delivered on those commitments. In the Adelphia merger proceeding, Comcast stated that it would spend $150 million to upgrade Adelphia systems. In fact, Comcast significantly exceeded that investment. Between August 2006 and March 2008, Comcast spent over $660 million to upgrade systems acquired from Adelphia and continues to invest in those systems. Similarly, between January 2003 and December 2005, Comcast spent $6.8 billion to upgrade systems acquired from AT&T Broadband and continues to invest in those systems. As a result, despite the poor conditions of many of the cable systems Comcast acquired from AT&T Broadband and Adelphia, more than 99 percent of the homes Comcast passes now have available to them digital cable, HD channels, VOD, and High-Speed Internet.

[17] Under the Commission's rules, Comcast is also attributed with ownership of some additional cable systems, which serve approximately 600,000 customers, through partnerships with U S Cable of Coastal Texas, LP, MidContinent Communications, and Bresnan Broadband Holdings. Because Comcast does not control these systems, the commitments offered herein would not apply to them.

in-ownership have invested nearly $60 billion to upgrade network infrastructure by installing fiber optics and other technological enhancements.[18] As a result of these investments, Comcast now provides over 99 percent of its customers with a state-of-the-art, two-way network.

Comcast's cable systems offer subscribers a full array of both traditional and advanced video products, including: local broadcast station programming; national, regional, and local cable channels; premium movie channels; programming packages for Hispanic, South Asian, Filipino and other minority audiences; pay-per-view ("PPV") services; an impressive range of high-definition ("HD") programming; over 17,000 VOD choices over the course of a month (with more than 2,600 choices in HD), most of which are available to digital video customers at no additional charge[19]; digital video recorder ("DVR") services; and interactive programming guides. In addition, Comcast digital cable service is now available to virtually all Comcast customers, and approximately 18 million subscribers – representing approximately 76 percent of Comcast's cable customer base – now have one or more digital cable connections.

---

[18] Comcast's network has approximately 140,000 miles of fiber optic plant, enough to crisscross the country more than 45 times.

[19] The large majority of VOD content is made available to Comcast digital customers at no additional charge to their digital service price. For example, if a customer has a particular linear channel included in his or her service (*i.e.*, Discovery, ESPN, or HBO), the VOD content associated with that channel is available for unlimited viewing at no additional charge. To access VOD content, a customer must have a two-way digital set-top box, or tru2way CableCard-enabled retail device. All digital customers can obtain a leased standard-definition two-way set-top box (or a CableCard for retail devices) for the primary outlet on the account at no additional charge. Furthermore, in markets where Comcast is migrating expanded basic channels to digital (so-called "Project Cavalry" markets, which will be complete across approximately 80 percent of Comcast's footprint by the end of this year), Comcast has priced its entry level digital service at parity with the analog expanded basic level of service. In these markets, analog customers are able to obtain a two-way standard-definition digital set-top box at no additional charge to their current rate, and access VOD content from any of the channels in their digital package. Customers with HD-capable equipment, which is typically available for an incremental equipment fee, are also able to access HD VOD content at no additional charge.

b. Broadband Internet and Digital Voice

Comcast's High-Speed Internet ("HSI") service, also delivered over Comcast's cable plant, currently has approximately 15.7 million customers and is available to approximately 50.8 million homes. Comcast is the nationwide leader in the number of homes and businesses to which it makes DOCSIS 3.0 ("D3") technology available; it had deployed D3 across more than 75 percent of its footprint as of year-end 2009. This technology allows Comcast to offer customers world-class speeds – up to 50 Mbps downstream and up to 10 Mbps upstream – with even faster speeds to come. Deployment of D3 also has enabled Comcast to double the speeds available to existing HSI customers, without increasing the price of the service. Provisioned speeds on Comcast's standard ("Performance") tier of HSI service have doubled – from 6 Mbps to 12 Mbps downstream and from 1 Mbps to 2 Mbps upstream.

Comcast also provides competitive facilities-based voice services – called Comcast Digital Voice ("CDV") – to approximately 7.4 million customers, and CDV is available to approximately 48.1 million homes. Comcast also has a growing business providing voice and broadband Internet services to small- and medium-sized businesses, in many cases bringing the first-ever facilities-based competitive alternative to these businesses.

c. Programming

The vast majority of programming delivered by Comcast to its customers is obtained from suppliers that are not affiliated with Comcast. In fact, Comcast owns attributable interests in only 11 national programming networks, none of which ranks among the top-30 rated national cable networks.[20] These include five wholly-owned national programming networks – E!, Golf

[20] Comcast's top-rated network is E! Entertainment Television, which was the 35th most highly rated network based on average full-day Nielsen ratings in 2009. *See* Nielsen Media Research, *Program Based Dayparts, Live, Ad-Supported Cable* (2009).

Channel, Versus, Style, and G4 – and six networks in which Comcast has an attributable but non-controlling interest (with the percentage interest shown in parentheses) – PBS KIDS Sprout (40 percent), TV One (33.5 percent), NHL Network (15.6 percent), Current Media (10 percent), MLB Network (8.3 percent), and Retirement Living Television (3.4 percent). Comcast's interests in E!, Golf Channel, Versus, Style, G4, PBS KIDS Sprout, TV One, and Retirement Living Television will be contributed to the joint venture. Comcast's interests in NHL Network, Current Media, and MLB Network will be retained by Comcast and will not be contributed to the joint venture.

In addition, Comcast has partial ownership interests in three companies providing PPV or VOD programming (with the percentage interest shown in parentheses): Exercise TV (65 percent), a VOD service that features fitness experts and personalities who help viewers achieve their fitness and weight loss goals; iN DEMAND Networks (53.7 percent), which provides a variety of PPV and VOD offerings; and FEARnet (33.3 percent), a VOD service focused on horror, thriller, and suspense content.[21] Comcast's interests in Exercise TV and FEARnet will be contributed to the joint venture. Comcast's interest in iN DEMAND will be retained by Comcast and will not be contributed to the joint venture.

Comcast also has interests in a variety of regional and local programming networks, including the following (with the percentage interest shown in parentheses): The Comcast Network (100 percent), New England Cable News (100 percent), Comcast Entertainment Television (100 percent), Comcast Hometown Television (100 percent), C2 (100 percent), CN100 (100 percent), Comcast Television Network (100 percent), Pittsburgh Cable News (30

---

[21] In addition, Comcast owns a 12.4 percent equity interest in MusicChoice, a provider of VOD music videos and commercial-free, compact disc-quality music channels to MVPD systems.

percent), and certain local origination channels. These networks provide original local and regional news, public affairs, sports, and/or family-oriented programming in a variety of states, including California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, Pennsylvania, South Carolina, Virginia, and Washington, D.C. Comcast's interests in The Comcast Network and New England Cable News will be contributed to the joint venture. Comcast's interests in Comcast Entertainment Television, Comcast Hometown Television, C2, CN100, Comcast Television Network, Pittsburgh Cable News, and certain local origination channels will be retained by Comcast and will not be contributed to the joint venture.

In addition, Comcast has interests in several regional sports networks ("RSNs"). Comcast owns a controlling interest (with the percentage interests shown in parentheses) in Comcast SportsNet California (100 percent), Comcast SportsNet Mid-Atlantic (100 percent), Comcast SportsNet New England (100 percent), Comcast SportsNet Northwest (100 percent), Comcast SportsNet (Philadelphia) (100 percent), Comcast Sports Southwest (100 percent), Cable Sports Southeast (81 percent), Comcast SportsNet Bay Area (67 percent), and Comcast SportsNet Chicago (30 percent). Comcast owns a non-controlling interest in SportsNet New York (8.2 percent). Comcast's interests in these RSNs will be contributed to the joint venture. In addition, Comcast owns a 50 percent interest in The Mtn. – MountainWest Sports Network ("The Mtn."), which is sold on a national basis and features coverage of more than 200 college sports contests, including football, men's and women's basketball, and men's and women's Olympic sports. Comcast's interest in The Mtn. will be contributed to the joint venture.

d. Filmed Entertainment

Five years ago, Comcast entered into a partnership with Sony Pictures and other investors to acquire MGM. Through this partnership, Comcast acquired a minority stake (18.8 percent) in

MGM and obtained licenses to MGM and Sony movies and television series. Comcast does not control this venture, has limited veto rights, and has appointed none of the current directors on the MGM Board. Comcast's interest in MGM will not be contributed to the joint venture.

e. Online Interactive Services

Comcast Interactive Media ("CIM") is a division of Comcast focused on developing and operating online and cross-platform entertainment and media businesses, all of which are relatively small players on the Internet (in terms of page views), including Comcast.net,[22] Fandango,[23] DailyCandy,[24] and Plaxo.[25] Only the Fandango and DailyCandy businesses will be contributed to the joint venture.

CIM is also the home of Fancast. Fancast's purpose is to aggregate information and content for people interested in all things "entertainment and content." Fancast is a national site that helps users find and manage content regardless of the viewing window or platform (linear TV, online, DVR, VOD, DVD, and theatrical), and online video is just one piece of the offering. Fancast partners with CBS, Hulu, and other content providers, and lets anyone with an Internet connection stream certain video content without charge, regardless of whether he or she has a subscription to any Comcast service. For Comcast's cable customers, Fancast provides additional value because they can search, manage, and access their cable subscriptions across multiple platforms (*e.g.*, TV, laptop, and mobile devices) using tools such as remote DVR and VOD Watchlist.

---

22 Comcast.net is Comcast's interactive portal, which provides multiple e-mail addresses and online storage, as well as a variety of content and value-added features and enhancements for Comcast customers.

23 Fandango is an online entertainment site and movie-ticket service.

24 DailyCandy is an e-mail newsletter and website.

25 Plaxo is an address book management and social networking website service.

Most recently, CIM developed the On Demand Online service Fancast Xfinity TV,[26] a pioneering implementation of the "TV Everywhere" principles announced by Time Warner, Inc. and Comcast in June 2009.[27] The TV Everywhere model is designed to create an open and non-exclusive[28] approach to online video that gives MVPD customers access to high-quality content that, in the absence of a viable business model, would not otherwise be made available online.[29] Fancast Xfinity TV, which is now in national beta release,[30] affords authenticated Comcast Cable subscribers online access to a vast library of content – from blockbuster movies to TV shows – at no additional charge. Following Comcast's national beta launch of Fancast Xfinity TV in December 2009, Comcast is moving ahead in 2010 to the next phase of authentication trials to provide consumers with "anytime, anywhere" access to video content. To that end, Comcast is working this year to provide its cable customers with the ability to access Fancast Xfinity TV content using the network of any Internet service provider ("ISP") or, for a particular content owner's content, from that owner's website.[31]

---

26 "On Demand Online" and "Fancast Xfinity TV" are used interchangeably throughout this document.

27 *See* Press Release, Comcast Corp., *Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online; Comcast and Time Warner Develop Principles for "TV Everywhere Model"; Comcast to Begin National Technical Trial of "On Demand Online"* (June 24, 2009), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=883 ("*TV Everywhere Press Release*").

28 The TV Everywhere principles provide that "TV Everywhere is open and non-exclusive; cable, satellite or telco video distributors can enter into similar agreements with other programmers." *See id.*

29 The objective is to provide customers with more choice and convenience, while also giving content producers reliable revenue streams that will let them sustain and grow their content creation. This is one of many different and competitive approaches being taken by content creators and video distributors to create a secure and sustainable environment for online video.

30 *See* Press Release, Comcast Corp., *Comcast Makes On Demand Online Video Entertainment Experience Available Nationally* (Dec. 15, 2009), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=946.

31 *See generally* Steve Donohue, Comcast to Expand 'Xfinity' to DSL Subs, Light Reading, Jan. 12, 2010, *available at* http://www.lightreading.com/document.asp?doc_id=186603&site=cdn&f_src=lightreading_gnews.

f. <u>Wireless</u>

Comcast offers consumers a mobile wireless broadband service, Comcast High-Speed 2go. Comcast High-Speed 2go is a wireless high-speed data service that provides the fastest available wireless Internet in the nation via wireless data cards. Comcast High-Speed 2go's 4G service is provided using the Clearwire network, in which Comcast holds a non-controlling 9.4 percent equity interest, and its 3G service is provided by Sprint's nationwide 3G network.[32] Comcast also owns a controlling interest in SpectrumCo, LLC, which is currently engaged in efforts to clear the spectrum band it acquired at auction. Comcast's wireless interests will not be contributed to the joint venture.

2. General Electric Company

GE is a diversified technology, financial services, and media company focused on solving some of the world's toughest challenges. With products and services ranging from aircraft engines, power generation equipment, and locomotives, to medical imaging, business and consumer financing, media content, and consumer and industrial products, GE serves customers in more than 100 countries and employs more than 285,000 people worldwide. GE traces its beginnings to Thomas Edison, who established Edison Electric Light Company in 1878. In 1892, a merger of Edison General Electric Company and Thomas-Houston Electric Company resulted in the creation of GE. GE is the only company listed in the Dow Jones Industrial Index today that was also included in the original index in 1896.

Today, GE's largest and most important components are its Energy Infrastructure and Technology Infrastructure businesses. These businesses accounted for approximately 74 percent

---

[32] To date, Comcast's High-Speed 2go service has been launched in the following cities: Atlanta, Chicago, Philadelphia, Portland, and Seattle. *See* Todd Spangler, *WiMax Blooms in Chicago, Seattle, Dallas,* Multichannel News, Dec. 1, 2009, *available at* http://www.multichannel.com/article/391314-WiMax_Blooms_In_Chicago_Seattle_Dallas.php.

of GE's 2009 total segment profits.[33] As GE's Chairman and Chief Executive Officer, Jeff Immelt, explained during GE's December 15, 2009 Annual Outlook Investor Meeting, GE intends to be a simpler company going forward by focusing on its core high-tech infrastructure businesses and on financial services: "I think going forward we really just have a simpler task. It's to continue to invest and grow in our infrastructure technology businesses. And it's to create value in our capital finance businesses."[34]

GE's media and entertainment arm dates from its acquisition of NBC's parent company, RCA, in 1986. NBCU was created when GE and Vivendi merged NBC and Vivendi Universal Entertainment in 2004. GE currently owns 80 percent of NBCU and Vivendi owns the remaining 20 percent.[35] NBCU, in turn, indirectly owns 44.4 percent of the voting power of NBC Telemundo, Inc., which is the immediate parent of NBC Telemundo License Co., the primary FCC license-holding entity within GE/NBCU. NBC Telemundo License Co. in turn indirectly owns three other license-holding entities: Station Venture Operations, LP, Telemundo Las Vegas License, LLC, and Telemundo of Puerto Rico. The remaining 55.6 percent of the voting power of NBC Telemundo, Inc. is owned indirectly by GE, which gives GE control over all of the NBC Telemundo licensee entities. For ease of reference, NBCU and the licensee entities are referred to collectively herein as "NBCU."

---

33 By contrast, NBCU accounted for only approximately 12 percent of GE's 2009 total segment profits.

34 GE Annual Outlook Investor Meeting, Conference Call Transcript, at 4 (Dec. 15, 2009).

35 Vivendi is a global communications and entertainment company. Vivendi has chosen to sell its stake in NBCU at the closing of the Comcast transaction. Accordingly, following consummation of the proposed transaction, Vivendi will no longer have any interest in NBCU.

3. NBCU

NBCU is a preeminent media, entertainment, and communications company. It has grown from the early days of the National Broadcasting Company's "red" and "blue" radio networks to become a leader in the development, production, and global marketing of entertainment, news, and information. As further described below, NBCU owns and operates two broadcast networks, 26 local broadcast stations, numerous successful and diverse cable programming networks, a motion picture studio with a library of several thousand films, a TV production studio, and an international theme park business. NBCU also has a number of international subsidiaries that deliver a full range of entertainment experiences to local audiences across the globe.

The company's commitment to excellence in news and public affairs programming is well-documented. Over the course of its history, the company has received 39 Humanitas Awards and 16 Peabody Awards and has produced and broadcast the longest running TV network public service campaign, *The More You Know*. Most recently, NBCU launched its "Green is Universal" effort, a commitment to bring an environmental perspective to NBCU's networks, platforms, audiences, and communities.

a. <u>Broadcast Assets</u>[36]

NBC Television Network. NBC is an American icon. At the heart of NBCU's content production is NBC, the nation's first television broadcast network and home of one of the crown jewels of NBCU, NBC News. For nearly 70 years, the NBC Television Network has led the way

[36] In addition to the full-power television broadcast licenses discussed below, NBCU also owns, and hereby requests consent to transfer to the joint venture, numerous low power broadcast television licenses, transmit-and-receive satellite earth station licenses, business radio licenses, and broadcast auxiliary licenses. *See* Appendix 1.

in commercial television.[37] The NBC Television Network's strength derives from combining NBC's strong national identity, the programming of its O&Os (described in more detail below), and its more than 200 independently owned affiliated stations in communities across America. With a passion for offering both global and local perspectives on noteworthy events, NBC has worked to earn the trust of the American public through periods of national tragedy and triumph. NBC continues today to be a trusted provider of news, sports, and entertainment programming to the American public and worldwide:

- NBC News has been a leading source of global news and information for more than 75 years, first on radio, and today via broadcast and cable television, the Internet, radio, and mobile phones. Operating around the clock with bureaus in key cities in the U.S. and overseas, NBC News provides immediate coverage and in-depth reporting of major events to a worldwide audience.[38] NBC News provides more than 25 hours of weekly television news programming, including the top-rated *Nightly News with Brian Williams*, *Today*, *Dateline*, and *Meet the Press* programs.

- NBC Universal Sports & Olympics has brought many national sports events to the public for the first time and is home to many of today's top sporting events, including the U.S. Open Championship, The Ryder Cup, Presidents Cup, Kentucky Derby, Preakness Stakes, Notre Dame football, Wimbledon, the French Open, and the Stanley Cup Finals.[39] NBC Sports has broadcast 16 Super Bowls (tied with CBS for the most Super Bowl broadcast by a single network) and is home to *NBC Sunday Night Football*, the primetime broadcast NFL game of the week. As America's Olympic Network, NBC has broadcast more Olympic Games than any other network and has garnered high ratings for its Olympic broadcasts. The 2008 Beijing Summer Olympic Games attracted 215 million American viewers, making it the most-watched event in television history. NBC owns the U.S. exhibition rights to the Summer and Winter Olympic Games through 2012.

---

[37] At the 1939 World's Fair in New York, RCA President David Sarnoff described television as "a new art so important in its implications that it is bound to affect all society. It is an art which shines like a torch of hope in a troubled world. It is a creative force which we must learn to utilize for the benefit of all mankind." *See* Marc Robinson, *Brought to You in Living Color: 75 Years of Great Moments in Television & Radio From NBC*, at 22 (2002). With this mission in mind, NBC sought and was awarded the first commercial television license in 1941 for W2XBS, which subsequently became WNBT.

[38] *See* NBC Universal, Company Overview, NBC Universal Television Group, *at* http://www.nbcuni.com/About_NBC_Universal/Company_Overview/NBC_Universal_Television_Group.shtml# (last visited Jan. 25, 2010).

[39] *See id.*

- <u>NBC Entertainment</u>'s programs and line-ups have earned the network critical acclaim, numerous awards, and ratings success for decades. The network has received more Emmy Awards than any network in television history.[40] From Milton Berle and Howdy Doody to today's *The Office* and *30 Rock*, NBC programs have resonated with the American public. Hit series such as *Cheers*, *The Cosby Show*, *Family Ties*, *Homicide*, *Friends*, and *Seinfeld* consistently ranked among the most-watched programs during their network runs, along with television's most successful franchise, *Law & Order*. *ER* was the top-rated drama on television for 10 seasons and is the most-nominated show in Emmy history. Today, popular dramas and unscripted series on NBC include *Heroes*, *Chuck*, *Deal or No Deal*, *The Biggest Loser*, *Celebrity Apprentice*, and *America's Got Talent*. *Saturday Night Live* recently entered its thirty-fifth season, and has won 21 Emmy Awards and – with 114 Emmy nominations over its history, SNL ranks among the most Emmy-nominated programs of all time.[41] On Saturday mornings, the network broadcasts *qubo* on NBC, a three-hour block that features fun, entertaining, and educational programming for kids, including the award-winning animated series *Veggie Tales*.

Telemundo Network. In 2002, NBC acquired Telemundo, the second-largest U.S. Spanish-language broadcast network. Like NBC, Telemundo has a long history of bringing important and desirable programming to television viewers. For example, Telemundo's Spanish-language broadcasters opened the door to allow Puerto Rican viewers to watch the 1968 World Series and man's first step on the moon.[42] Today, Telemundo has substantial Spanish-language production facilities located in the United States and broadcasts unique and outstanding national and local entertainment, news, and sports programming to the fast-growing U.S. Hispanic audience. Telemundo reaches 93 percent of U.S. Hispanic viewers through 15 owned-and-operated stations, 45 broadcast affiliates, and distribution to nearly 800 cable systems in more

---

40 *See id.*

41 *See* Saturday Night Live, About the Show, http://www.nbc.com/saturday-night-live/about/ (last visited Jan. 25, 2010); *see also*, Academy of Television Arts & Sciences, 2008-2009 Primetime Emmy® Awards Facts & Figures, http://www.emmys.tv/publicdownload/2008-2009-primetime-emmy%C2%AE-awards-facts-figures (last visited Jan. 25, 2010).

42 *See* Telemundo, Corporate Information – English, http://msnlatino.telemundo.com/legal_corporate/ (last visited Jan. 25, 2010).

than 200 markets.[43] Telemundo is in the process of rolling out a strong, new Spanish-language public affairs program, featuring the highly respected journalist, Jose Diaz-Balart.[44]

Owned and Operated TV Broadcast Stations.[45] NBCU owns and operates 26 full-power television broadcast stations. Specifically, NBCU owns and operates 10 local television stations that broadcast NBC Television Network programming in the following markets (with 2009-2010 DMA rank): New York (1); Los Angeles (2); Chicago (3); Philadelphia (4); Dallas-Ft. Worth (5); San Francisco (6); Washington, D.C. (9); Miami-Ft. Lauderdale (17); San Diego (28); and Hartford-New Haven (30).[46] Each of these stations is associated with a locally-focused website that provides news, entertainment, and information for the community.[47] As noted above, NBCU also owns 15 local television stations that broadcast Telemundo Network programming in

---

43 Telemundo has been granted a permanent waiver of the network representation rule, 47 C.F.R. § 73.658(i). *See Amendment of 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales et al.*, Report and Order, 5 FCC Rcd 7280 (1990); *see also Azteca International Corporation Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Order, 18 FCC Rcd 10662 (MB 2003).

44 *See infra* Section IV.A.

45 Independently-owned affiliated television stations also are an integral part of NBC's and Telemundo's overall broadcast service. NBCU does not own these stations, negotiate for their carriage, or control their programming decisions, but their success is important to NBCU. In addition to airing NBC's and Telemundo's national programming, affiliates serve their communities by producing news, sports, and public affairs programming that addresses local needs. As noted in the memorandum released on the day the joint venture was announced, the combined company will remain "committed to continuing to provide free over-the-air television through its O&O stations and through local broadcast affiliates across the nation. As we negotiate and renew agreements with our broadcast affiliates, we will continue our cooperative dialogue with our affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment." *See* Memorandum from David L. Cohen, Executive Vice President, Comcast, "Comcast/GE Announcement Regarding NBC Universal," at 2 (Dec. 3, 2009).

46 The NBCU owned-and-operated stations broadcasting NBC Network programming are: WNBC (New York, NY); KNBC (Los Angeles, CA); WMAQ-TV (Chicago, IL); WCAU (Philadelphia, PA); KNTV (San Francisco, CA); KXAS-TV (Ft. Worth, TX); WRC-TV (Washington, D.C.); WTVJ (Miami, FL); KNSD (San Diego, CA); and WVIT (New Britain, CT).

47 *See* WNBC, New York, NY, www.nbcnewyork.com; KNBC, Los Angeles, CA, www.nbclosangeles.com; WMAQ-TV, Chicago, IL, www.nbcchicago.com; WCAU, Philadelphia, PA, www.nbcphiladelphia.com; KNTV, San Francisco, CA, www.nbcbayarea.com; KXAS-TV, Dallas-FT. Worth, TX, www.nbcdfw.com; WRC-TV, Washington, D.C., www.nbcwashington.com; WTVJ, Miami, FL, www.nbcmiami.com; KNSD, San Diego, www.nbcsandiego.com; and WVIT, New Britain, CT, www.nbcconnecticut.com.

the following markets (with 2009-2010 DMA rank): New York (1); Los Angeles (2); Chicago (3); Dallas-Ft. Worth (5); San Francisco (6); Boston (Manchester) (7);[48] Houston (10); Phoenix (Prescott) (12); Denver (16); Miami-Ft. Lauderdale (17); San Antonio (37); Las Vegas (42); Fresno (55); Tucson (66); and Puerto Rico (no DMA rank).[49] Many of these Telemundo O&Os also have associated websites. NBC also owns an independent Spanish-language station, KWHY-TV in Los Angeles.[50]

b. Cable Programming

NBCU owns a number of leading cable programming channels, including two highly regarded cable news networks, CNBC and MSNBC. NBCU also owns Bravo, Chiller, CNBC World, mun2, Oxygen Media, Sleuth, Syfy, Universal HD, and USA Network. In 2008, NBCU

---

[48] GE and NBCU hold a shared 32.7 percent interest in television station WWDP, Norwell, MA. The proposed transaction does not represent a control event with respect to this station. NBCU previously held a non-attributable equity interest in ION Media Networks, Inc. (formerly known as Paxson Communications Corporation) ("ION"). *See In the Matter of Paxson Management Corporation and Lowell W. Paxson, Transferor, and CIG Media LLC, Transferee for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 22224 (2007). That equity interest was extinguished in ION's Chapter 11 proceeding. NBCU no longer holds any current or future interest in ION. *See* Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation, Exhibit 7.

[49] The NBCU-owned stations broadcasting Telemundo Network programming are: WNJU (Linden, NJ); KVEA (Corona, CA); WSCV (Ft. Lauderdale, FL); KTMD (Galveston, TX); WSNS-TV (Chicago, IL); KXTX-TV (Dallas, TX); KVDA (San Antonio, TX); KBLR (Las Vegas, NV); KSTS (San Jose, CA); KTAZ (Phoenix, AZ); KNSO (Merced, CA); KDEN-TV (Denver, CO); WNEU (Merrimack, NH); KHRR (Tucson, AZ); WKAQ-TV (San Juan, PR). Puerto Rico stations historically have not been assigned to a DMA. Three of these stations (WNEU, KNSO, and KVDA) are subject to time brokerage agreements with ZGS Communications, Inc. pursuant to which ZGS provides programming during non-network hours and certain sales and operational services.

[50] Several of the NBCU stations are the subject of pending applications for renewal of license. Consistent with the Commission's policy permitting consummation of a multi-station transfer of control overlapping with a renewal cycle, the Transferee hereby assents to succeeding to the place of the current licensees for these pending renewal applications. *See, e.g., ION Media Networks Liquidating Trust and Media Holdco, LP Applications for Transfer of Control of ION Media Networks, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 14579 ¶ 14 (MB 2009) ("'[I]n multi-station transactions, [the FCC] will grant the transfer of control application while [a] renewal application is pending as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding.'") (quoting *In the Matter of the Applications of Shareholders of CBS Corporation, Transferor, and Viacom, Inc., Transferee, for Transfer of Control*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 16072 ¶ 3 (2001)). A detailed discussion of this matter can be found in Exhibit 14 of the application to transfer control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation.

joined forces with private equity firms Bain Capital and the Blackstone Group to acquire The Weather Channel Companies ("TWCC"). NBCU owns (and is proposing to transfer to the joint venture) a 25 percent, non-controlling interest in TWCC. NBCU also owns minority, non-controlling interests in A&E Television Networks and ShopNBC.

c. Filmed Entertainment

Universal Pictures,[51] which will be celebrating its centennial in 2012, creates and distributes theatrical and non-theatrical filmed entertainment, including internally developed titles, co-productions, local acquisitions, specialty motion pictures, direct-to-video titles, specialty video, classic titles, and consumer products. These films and videos then provide content for television and other ancillary Universal businesses. Universal has achieved both popular success and critical acclaim with its recent Academy Award winners *Atonement*, *The Bourne Ultimatum*, *King Kong*, *Brokeback Mountain*, *Ray*, *A Beautiful Mind*, *The Pianist*, and *Lost in Translation*. Classic, Academy Award-winning films from Universal include *All Quiet on the Western Front* (1930), *To Kill a Mockingbird* (1962), *The Deer Hunter* (1978), and *Schindler's List* (1993).

In addition to Universal Pictures, NBCU owns Focus Features and Focus Features International (FFI), which together produce and distribute original films worldwide.

d. Online Interactive Services

NBCU owns and operates a number of online sites associated with its two television networks, its national cable networks, and its O&O broadcast stations. These sites include:

---

[51] In 1991, consumer electronics company Matsushita Electric Industrial Co. acquired MCA. In 1995, Joseph Seagram Company, Ltd. obtained an 80 percent interest in MCA, which subsequently was renamed Universal Studios, Inc. Seagram Company and its subsidiaries Vivendi and Canal+ formed a strategic business combination to create Vivendi Universal.

NBC.com. NBC.com, the NBC broadcast network website, is an online and mobile destination for television and interactive entertainment.[52] With both derivative and web-exclusive programming, NBC.com pioneered the "360" experience with *Heroes 360*, which gave viewers a way to extend their entertainment experience beyond the broadcast, and the first weekly social networking experience attached to a primetime entertainment program.

CNBC.com. Launched in December 2006, CNBC.com has become an online destination for global business news, accurate and actionable information, original reporting, and in-depth analysis.[53]

iVillage. iVillage is an online community for women, with more than 1,000 active message boards that allow women around the world to connect, share ideas, and seek advice and support. iVillage is also a daily destination for women seeking compelling content on parenting & pregnancy, health, fitness, entertainment, beauty & style, home & garden, green, food, and relationships.[54]

Hulu.com. NBCU owns approximately a 32 percent non-controlling interest in Hulu. Hulu is an online video service that offers hit TV shows, movies, and clips at Hulu.com and other online destination sites in the United States.[55] Hulu is co-owned by NBCU, News Corp.,

---

[52] The site offers full episode streaming of many NBC Entertainment shows as well as short clips, interactive games, and social networking, including user-generated content. The site is the recipient of multiple Emmy and Webby awards for its content and applications.

[53] One of the fastest-growing business news sites on the web, CNBC.com features real-time quotes and extensive charts, an unprecedented amount of video, close to 30 original industry and topic-specific blogs authored by both CNBC and CNBC.com award-winning journalists and guests, and a wide variety of investing tools. Additionally, CNBC.com provides videos, live streaming of events and market opens in Asia and Europe, and industry and topic-specific blogs from its award-winning reporters and guests.

[54] iVillage has a strategic partnership with BlogHer, the leading participatory news, entertainment, and information network for women online.

[55] Hulu brings together a large selection of videos from nearly 170 leading content companies, including NBC Universal, Fox, ABC, Comedy Central, Lionsgate, MGM, MTV Networks, National Geographic, Paramount, PBS,

The Walt Disney Company, and Providence Equity Partners. Hulu is operated independently by a dedicated management team and has its headquarters in Los Angeles.[56]

e. Theme Parks

Universal Parks & Resorts features some of the world's most popular entertainment destinations. NBCU wholly owns Universal Studios Hollywood[57] and has significant interests in Universal Orlando Resort[58] and Universal Studios Japan in Osaka. Each year, millions of guests visit Universal's theme parks in Florida, California, and Japan to experience world-famous attractions that combine interactive ride and show technology with popular characters in movies and pop culture. New theme parks have been licensed in Singapore and Dubai, both of which are in development by local operators.

III. STANDARD OF REVIEW

The Commission has stated that it will approve a transfer of control of authorizations and licenses connected with a proposed transaction under Section 310(d) of the Act if the proposed transaction does not violate a statute or rule, and if, after weighing "the potential public interest harms of the merger against the potential public interest benefits," it concludes that, "on

---

Sony Pictures Television, Warner Bros., and more. Hulu allows users to enjoy great videos on Hulu.com and on 35 other popular Web sites across the Web. Hulu videos are available on AOL, IMDb, MSN, MySpace, and Yahoo! in the U.S. as well as a growing network of personal blogs, fan sites, and other Web sites where users choose to embed the Hulu video player.

56 NBCU owns an interest in msnbc.com, which boasts the state-of-the-art technology of Microsoft and the first-rate reporting of NBC News. Microsoft and NBCU jointly own (50/50) msnbc.com. NBCU also owns an interest in The Weather Channel Interactive, a leading weather provider on all digital platforms, including weather.com, The Weather Channel Mobile, and The Weather Channel Desktop.

57 Universal Studios Hollywood includes a movie-based theme park and Studio Tour; the CityWalk entertainment, shopping, and dining complex; the Universal Cinemas; and the Gibson Amphitheatre concert and special event venue.

58 Universal Orlando Resort has created some of the world's most innovative theme park attractions based on pop culture's most compelling films and stories.

balance," the transfer "serves the public interest, convenience and necessity."[59] This standard involves balancing potential public interest benefits from the transfer against potential harms,[60] and the applicants "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest."[61]

In assessing the potential public interest benefits of a proposed transaction, the Commission "focuses on demonstrable and verifiable public interest benefits that could not be achieved if there were no merger."[62] The Commission's analysis of potential harms encompasses both an examination of potential anticompetitive effects and an inquiry into whether the transaction would violate the Act or the Commission's implementing rules, or otherwise substantially frustrate the Commission's implementation or enforcement of the Act.[63] The Commission's public interest evaluation includes, among other things, a "deeply rooted preference for preserving and enhancing competition in relevant markets, [and] accelerating

---

59 *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 ¶ 8 (2000) ("*AT&T-MediaOne Order*"); *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8741 ¶ 9 (2009).

60 *See In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473 ¶ 15 (2004) ("*News Corp.-Hughes Order*"); *AT&T-Comcast Order* ¶ 26.

61 *In the Matter of News Corp. and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, Applications for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265 ¶ 22 (2008); *see also In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662 ¶ 19 (2007) ("*AT&T-BellSouth Order*"); *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 ¶ 16 (2005); *In the Matter of SBC Communications Inc. and AT&T Corporation Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶ 16 (2005).

62 *AT&T-MediaOne Order* ¶ 154.

63 *See id.* ¶ 9; *News Corp.-Hughes Order* ¶ 16.

private sector deployment of advanced services."[64] The Commission has repeatedly stressed that a transaction review proceeding must focus on *transaction-specific* harms (and benefits) and is not an open forum for airing pre-existing disputes or industry-wide policy debates, which are better addressed, as appropriate, in separate adjudicatory or industry-wide rulemaking proceedings.[65]

As set forth in Section V below, the proposed transaction will comply fully with the Communications Act and the Commission's rules. Thus, the Commission's task in reviewing this proposed transaction is to weigh the public interest benefits against the potential public interest harms. As set forth in Sections IV and VI, the proposed transaction will generate substantial public interest benefits and – with competition already robust, as well as pre-existing rules and the additional public interest commitments in place – no public interest harms. Accordingly, Applicants request that the Commission grant this Application.

---

64 *See In the Matter of Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements,* Memorandum Opinion and Order, 24 FCC Rcd 13915 ¶ 28 (2009) ("*AT&T-Centennial Order*").

65 *See*, *e.g.*, *id.* ¶ 141 ("We find that the proposed conditions prohibiting exclusive handset arrangements are not narrowly tailored to prevent a transaction-specific harm, but apply broadly across the industry and are more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments. RCA filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis, and the Commission will be able to develop a comprehensive approach on handset exclusivity based on a full record in that proceeding.") (internal citations omitted); *AT&T-BellSouth Order* ¶ 56 n.154 ("To the extent commenters allege that . . . contracts of the type used by AT&T and BellSouth are anticompetitive in general, this is not a merger-specific harm, but rather is an issue that has been raised, and is better addressed, in the Commission's pending special access rulemaking."); *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547 ¶ 6 (2001) ("*AOL-Time Warner Order*") ("It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies of the Communications Act that flow from the proposed transaction – *i.e.*, harms and benefits that are 'merger-specific.' The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.").

IV. THE TRANSACTION WILL GENERATE SUBSTANTIAL PUBLIC INTEREST BENEFITS.

The proposed transaction will be pro-consumer, pro-competitive, and strongly in the public interest. NBCU is a diversified media, entertainment, and communications company with a storied past and a promising future. Comcast is a pioneer in enabling consumers to watch what they want, when they want, where they want, and on the devices they want. By combining these two companies, the transaction will advance the Commission's public policy goals of diversity, localism, competition, and innovation:

- *Diversity*. The new venture will expand the amount, quality, variety, and availability of content more than either company could on its own, thus promoting the Commission's touchstone goal of diversity.
- *Localism*. In addition, the new venture will provide more and better local programming, including local news and information programming, thereby advancing a second of the Commission's most fundamental public interest goals, localism.
- *Competition.* By linking NBCU with Comcast, a company that is focused on and committed to investing in the media and communications industry, the joint venture will create new opportunities to better serve consumers. NBCU and Comcast will be stronger, more effective players in video programming and distribution, spurring other content producers and distributors to invest and innovate, thereby enhancing competition.
- *Innovation*. Combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and television and film libraries will foster innovation by accelerating the "new media" future of in-home and mobile entertainment.

Comcast brings to this transaction a well-documented history of developing innovative video, high-speed Internet and voice products and committing the resources needed to deliver those products to American consumers. For example, as discussed in more detail below, Comcast pioneered the free video-on-demand business, and, through the end of 2009, its customers have viewed VOD programming more than 14 billion times. Indeed, because many MVPDs followed Comcast's leadership and developed free VOD platforms of their own, consumers across the country have benefited from the dramatic growth in programming choices available on VOD platforms. One of the key elements in accelerating the growth of this new offering was Comcast's ability to gain access to new feature films as well as an extensive library of video content as part of its acquisition of an ownership interest in MGM.[66] Similarly, the proposed transaction, by linking NBCU's content with Comcast's multiple distribution platforms, will give the combined entity greater incentive and ability to deliver more content choices to consumers sooner than either company could do alone. Moreover, Comcast's creative vision and willingness to invest in its vision will enable the new NBCU to more efficiently respond to consumers' desire for "anytime, anywhere" access in the rapidly evolving "new media" landscape.[67] Given the intense competition in the entertainment environment, it is reasonable to expect that Applicants' investments and innovations will spur advancements by other distributors, networks, service and applications providers, and content creators in order to maintain their competitiveness, thereby promoting the growth of video on the Internet and accelerating broadband adoption, another important Commission goal.[68]

---

[66] *See* Declaration of Robert Pick, Senior Vice President, Corporate Development, Comcast Corporation ¶¶ 11-13 (Appendix 7) ("Pick Declaration").

[67] As Commissioner Copps recently observed, "I can't tell you what the media landscape will look like in 15 years, or for that matter in five years, given the rapid speed of changes in technology." Commissioner Michael J. Copps, FCC, Remarks, Practising Law Institute, Washington, D.C., at 4 (Dec. 10, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295142A1.pdf.

[68] *See, e.g.*, Commissioner Meredith A. Baker, FCC, The Rise of Broadband Video and the Future of Digital Media, Address, Silicon Flatirons Center, at 2-3 (Oct. 12, 2009) ("If consumers are offered more of the type of high quality online video content that they want to see, such as acclaimed motion pictures and popular television programs, [broadband] adoption will increase. . . . We at the Commission welcome these developments, which can only increase the richness of the material available and therefore enhance the attractiveness of broadband use to consumers."), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294144A1.pdf; John Horrigan, Consumer Research Director, Omnibus Broadband Initiative, FCC National Broadband Plan Workshop: The Role of Content in the Broadband Ecosystem, Tr. 10:19-11:30 (Sept. 17, 2009) ("Broadband adoption and acceptability is directly linked to the availability of compelling content – content like good movies and television shows and other forms of entertainment. And these good entertainment products will drive a great deal of the reason why people will want this enhanced online experience."); Commissioner Robert M. McDowell, FCC, Luncheon Address, Broadband Policy Summit III, Crystal City, Virginia, at 13 (June 7, 2007) ("And as video becomes the latest 'killer app,' our broadband adoption rate continues to increase."), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-273742A1.pdf.

Not only will the transaction yield the public interest benefits of diversity, localism, competition, and innovation, and, consequently, plainly satisfy the statutory merger review standard, but the Applicants also propose to enhance those benefits by offering an unprecedented array of specific and verifiable public interest commitments to expand the amount, quality, and diversity of programming across multiple platforms. These commitments, which are described throughout this Public Interest Statement and are aggregated in full in Appendix __, build upon the capabilities of Comcast and NBCU and the opportunities that this transaction makes possible.[69] Applicants propose that these commitments be included in any Commission Order approving the transaction and become binding on the parties upon completion of the transaction.

Section IV.A below explains that the transaction will benefit consumers by expanding the amount, quality, and diversity of programming available across multiple platforms. Section IV.B explains that the transaction will benefit consumers by accelerating the future of VOD, online, and mobile entertainment. Section IV.C explains why these benefits cannot be achieved without the transaction by reliance on contracts between independent companies. Section IV.D explains that the combined entity will better support and serve the interests of local communities. Section IV.E explains the cost savings and synergies that could be achieved as a result of the transaction.

---

[69] When the transaction was announced, Comcast also made an additional commitment pertaining to labor relations that is not a subject within the Commission's jurisdiction, and Applicants ask that the commitment not be made a part of the Commission's Order. However, Comcast reiterates that it recognizes and respects the relationship that NBCU has with its current employees, and it is Comcast's desire to embrace, not disrupt, this relationship. Accordingly, Comcast has represented that it will honor all of NBCU's collective bargaining agreements, and Applicants do not anticipate that any fundamental changes will be made to the manner in which NBCU conducts labor relations. In fact, senior representatives of the companies have begun to correspond and meet with representatives of guilds and unions in the businesses which would be directly affected by the transaction.

A. The Proposed Transaction Will Increase Consumer Choice by Expanding the Amount, Quality, and Diversity of National and Local Programming for Consumers Across Multiple Platforms.

With the closing of the transaction, Comcast Cable and the new NBCU will be better able to serve consumers, particularly in the areas of local programming, children's programming, and programming for diverse audiences. Applicants will use a variety of tools to provide viewers with information about where and when they can access this programming.

Free over-the-air television. There are fundamental benefits to the public interest that can accrue from changing ownership and management of a media company from a broadly diversified corporation to a "media company that has a proven record of innovation and success."[70] In particular, this transaction will strengthen the NBC and Telemundo networks, their local O&Os, and their local broadcast affiliates. The current media marketplace is turbulent, to say the least, and national broadcast networks and local broadcast stations face unprecedented challenges to the continuing vitality of their business models.[71] In this environment, 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.

---

70 *News Corp.-Hughes Order* ¶ 363.

71 Broadcasters have faced declining advertising revenue and plummeting capital investment in 2008 and 2009. *See, e.g.*, Brian Rich, Catalyst Investors, Remarks at the FCC Media Ownership Workshop on Financial and Marketplace Issues, Washington, D.C. (Jan. 12, 2010) (describing how investors' interest in broadcast media has waned and noting that wireless and Internet platforms will continue to take away advertising money from broadcasters), *available at* http://www.fcc.gov/ownership/workshop-011210/rich.pdf; Ryan Lawler, *Could Retransmission Fees Save the Broadcasters?*, Bus. Week, Jan. 5, 2010 (describing how broadcasters are seeking higher retransmission consent fees to offset a weakening advertising market), *available at* http://www.businessweek.com/technology/content/jan2010/tc2010015_469788.htm.

NBCU's broadcast businesses are valuable and attractive assets for Comcast, which will have strong incentives to invest in them. The broadcast businesses are valuable to Comcast because, among other things, they can (1) reach millions of viewers who rely solely on over-the-air television; (2) strengthen the brand identity of the cable networks that Comcast is contributing to the new NBCU; (3) provide the opportunity for cross-promotion; and (4) share talent, facilities, and programming with the combined entity's other programming businesses, thereby achieving economies of scale and scope. Thus, the transaction places the ownership of NBCU's free over-the-air broadcast businesses into a joint venture that will have greater incentives to grow and strengthen these businesses, to the benefit of the company, its broadcast affiliates, and consumers. Consistent with this vision, Applicants offer the following commitment:

- ***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.**

Local news and information programming. The Commission has recognized that "production and delivery of new sources of local and regional programming is a public interest benefit" of a proposed transaction.[72] That determination is applicable here, where the proposed transaction will strengthen the companies' local content businesses, both by making the existing local news and other local programming available to consumers at more times and on more platforms than ever before, and by facilitating and encouraging the creation of new local programming. For example, the NBC O&Os air their locally produced, regularly-scheduled news programs in limited time periods each day. The proposed transaction creates significant

[72] *AT&T-Comcast Order* ¶ 203; *see also Adelphia Order* ¶ 259 ("[W]e find it likely that the Applicants would be able to provide local VOD content sooner than Adelphia could absent the transactions.").

opportunities to extend that news programming to other outlets and platforms, such as Comcast's local and regional cable networks, VOD, and online, thereby increasing consumers' access to high quality local news and information. Making this programming available at more times, to more people, and on more outlets and platforms enhances the overall value of the programming. This, in turn, can generate further incentives to create local programming and to increase its quality, thus addressing the Commission's "core policy objective of facilitating robust democratic discourse in the media."[73]

Comcast's ability to distribute local programming on its cable systems, its local and regional cable networks, its VOD service, and its online platform will provide the new NBCU with the opportunity to expand the production and reach of local programming, to the benefit of consumers. For example, Telemundo is in the process of rolling out a new Spanish-language public affairs program featuring the award-winning journalist Jose Diaz-Balart.[74] Mr. Diaz-Balart produces Spanish-language news and public affairs programming for Telemundo. Working together, NBCU and Comcast will develop new ways to make that programming available to millions of potential viewers, at more times, and on more platforms than would be the case without the transaction.

Expanding the availability of local programming is in the public interest. In order to underscore their resolve to generate these benefits, Applicants offer the following commitment:

---

[73] *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 ¶ 32 (2003) ("*2002 Biennial Review Order*").

[74] Mr. Diaz-Balart was the first person in the country to broadcast news in both English and Spanish on television. He has served as host of various news programs for Telemundo, including the morning shows, "Hoy en el Mundo" and "Esta Mañana." He is the recipient of two Emmy Awards and a four-time honoree for Excellence in Hispanic Journalism. He was named one of the best Hispanic journalists in the country by Hispanic Media 100, and Hispanic Business Magazine named him one of the 100 most influential Hispanics in the United States.

- ***<u>Commitment # 2</u>. 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.***

Specifically, Applicants commit that for three years following the closing of the transaction, the NBC O&Os will maintain the same amount of local news and information programming they currently provide. This is a particularly significant commitment to promote localism given the economic challenges facing all broadcasters today.

In addition, Applicants commit that the NBC O&Os will collectively produce an additional 1,000 hours per year of local news and information programming. This will consist of a range of local and regional content, including general interest news and public affairs programming, weather, traffic, and other informational programming focused on community events, local lifestyle, fashion, arts, and multicultural features.[75]

Applicants will use a combination of distribution platforms to make this new local content available to consumers, including the NBC O&O stations, Comcast's local and regional networks, VOD, and online, as appropriate for each local market.[76]

Children's programming. The combined entity will increase the distribution of programming appealing to children and families, a longstanding public interest goal of the Commission.[77] In order to promote that goal, Applicants offer the following commitment:

---

[75] As the Commission has recognized, viewpoint diversity and localism is furthered not only by diverse news and public affairs programming but also by content other than traditional newscasts, such as newsmagazine programs that routinely address matters of public concern. *See 2002 Biennial Review Order* ¶¶ 32-33.

[76] Comcast currently does not provide cable service in certain of NBCU's O&O markets, and therefore it cannot provide VOD distribution in those markets, but the combined company will develop other opportunities for distribution.

- ***<u>Commitment # 3</u>. 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.***

The new NBCU will increase the amount of children's content available on VOD and online. This is important because, with each passing year, more of America's children are watching video on VOD and online. For example, approximately 77 percent of Comcast's frequent VOD users (those who use VOD almost every day) watch children's VOD programming. About 48 percent of Comcast customers with VOD watch children's programming on a monthly basis. This adds up to a total of 60 to 70 million VOD uses per month devoted to children's programming (a five-fold increase since 2005).

Similarly, children's online viewing is escalating. According to Nielsen:

- In May 2009, children aged 2-11 comprised nearly 16 million, or 9.5 percent, of the active online population.

- Since 2004, the number of children online has increased 18 percent, as compared to 10 percent for the total active online user population.

- Average time per month spent online among children aged 2-11 increased 63 percent in the last five years, from nearly seven hours in May 2004 to more than 11 hours online in May 2009. By contrast, time spent online for the overall population grew 36 percent over the same time period.[78]

In order to address children's evolving viewing patterns, Comcast will make more high-quality children's and family programming – from unaffiliated as well as affiliated programmers – available on VOD and online. First, within 12 months of closing the transaction, Comcast will add an additional 500 VOD programming choices appealing to children and families to its

---

77 *See In the Matter of Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660 ¶ 14 (1996).

78 The Nielsen Company, *Growing Up, and Growing Fast: Kids 2-11 Spending More Time Online* (July 6, 2009), *available at* http://blog.nielsen.com/nielsenwire/online_mobile/growing-up-and-growing-fast-kids-2-11-spending-more-time-online/.

central VOD storage facilities. The majority of Comcast's cable systems will have the ability to connect to those facilities and provide access to this VOD content by that time. In addition, Comcast will make the same programming available online to authenticated subscribers to the extent it has the rights to do so.

Second, within three years of closing the transaction, Comcast will add another 1,000 VOD programming choices appealing to children and families, for a total of 1,500 additional programming choices for children and families. By that time, substantially all of Comcast's cable systems will have the ability to provide access to this additional VOD content. Comcast will also make this programming available online to authenticated subscribers to the extent it has the rights to do so.

The combined entity will also increase carriage of children's programming on the digital spectrum of its O&Os. Specifically, it commits that, for three years after closing the transaction, it will provide one additional hour per week (above the current three-hour requirement) of children's educational and informational programming in each market utilizing one of the multicast channels of NBC's O&Os.[79]

In addition, the combined entity offers the following commitment to provide leadership in improving the tools for parents to monitor and control their children's viewing across all platforms – broadcast, cable, and online:

---

[79] *See* 47 C.F.R. § 73.671(d)-(e) (requiring three hours per week of educational and informational "core programming"). This commitment is the type of innovation the Chairman has called for: "I'm hopeful that the evolving media landscape will produce innovation and new business models to increase the amount of educational programming and content available to all children, and enhance the ability of parents to pick and choose." Statement of Julius Genachowski, Chairman, FCC, *Rethinking the Children's Television Act for a Digital Media Age*, Hearing Before the United States Senate Committee on Commerce, Science and Transportation, 6 (July 22, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292168A1.pdf.

- ***<u>Commitment # 4</u>. 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's broadcast and cable programming networks currently provide on-screen programming ratings information consistent with broadcast industry norms. Promptly after consummation of the transaction, NBCU will adopt the cable industry's "best practices" for the provision of visual program ratings.[80] This means that the on-screen notices of programming ratings will appear on screen longer and more visibly than they currently do on NBCU programming. Specifically, NBCU will triple the time that program ratings information remains on the screen from five seconds to 15 seconds after each commercial break. NBCU will also make the program ratings information more visible to viewers by making it more distinct and presenting it in a larger format each time it appears on the screen. These commitments will further empower families and children by providing clear and frequent information about the programming on all of NBCU's broadcast and cable networks.

Finally, the Applicants offer the following commitment to strengthen its expanding partnership with Common Sense Media, one of the country's most respected non-profit and non-partisan organizations dedicated to providing parents with information that helps them make informed media and technology decisions for their families:

---

[80] *See generally* Press Release, Nat'l Cable & Telecomms. Ass'n, *New "Take Control. It's Easy" Public Service Announcements Alert Consumers to Parental Controls* (May 17, 2005), *available at* http://www.ncta.com/ReleaseType/MediaRelease/370.aspx.

- ***<u>Commitment # 5</u>. 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.***

Currently, Comcast has given CSM content prominent placement in both the "Movies/Trailers & Reviews" and "Kids" sections of its VOD menus, and recently launched CSM's "Family Movie Reviews" on its VOD service and began promoting those reviews on a barker channel.[81] In addition, CSM's "411 for Parents" has been renamed "Make Kids Media Safe," and this resource now appears on both the "Kids" and "Life & Home" menu options on Comcast's VOD platform. These practical tools have given parents easy-to-find and important information from a trusted source.

But the Applicants know that more can be done in this important area. Therefore, they commit to work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast is currently in discussions with CSM about a broader partnership to be launched upon completion of the transaction. Applicants believe that this partnership will ultimately make all media experiences safer and more enjoyable for children and families.

To expand further on this partnership, in response to the growing opportunities – and potential challenges – created by the rapidly changing world of digital media, Comcast and CSM have been exploring 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

---

[81] A "barker channel" is used to inform viewers of programming options and various user controls. Comcast's On Demand platform features a barker channel to help users navigate the many available options.

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.

Many of these proposed coordinated broadband adoption and digital literacy efforts will target both urban and rural areas that are underserved, with particular attention to regions with high concentrations of low-income residents and communities of color. These efforts, in partnership with CSM, will also target Latino communities with specifically tailored Spanish-language materials.

Programming for Diverse Audiences. The proposed transaction will provide the combined entity with the ability and incentive to make more programming available for diverse audiences. Comcast has been working hard to increase the diverse programming options available to its subscribers for several years.[82] The proposed transaction will help the combined entity explore ways to deliver more diverse programming faster, on top of what Comcast alone would otherwise achieve. Because the combined entity will be able to increase the number of platforms on which such programming can be delivered – in effect, expanding the potential audience – it will have a greater incentive to explore innovative business models to support the production and distribution of more and higher quality diverse programming. This, of course, redounds to the benefit of consumers. With the new company's interest in Telemundo and

---

[82] For example, Comcast's digital migration brought Portland viewers more than 20 new Spanish-language channels (for a total of more than 45 Spanish-language channels), in addition to 65 new HD channels (for a total of more than 100 HD channels), four new international channels, and six new standard-definition ("SD") channels.

mun2, and with Comcast's founding role in TV One and its extensive offerings of cable channels meeting the needs and interests of diverse viewers, the combined entity will be second to none in providing and promoting programming that reflects a wide range of perspectives in a variety of formats and content, thereby furthering the Commission's policy goals of viewpoint and program diversity.[83]

In this regard, the Applicants offer the following commitment:

- ***<u>Commitment # 6</u>. 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.***

The combined entity will use the Telemundo O&Os' digital broadcast spectrum to significantly increase the amount of Spanish-language programming available to the public. Telemundo has a large library of attractive content, and the proposed transaction will provide the Applicants with the ability and incentive to enhance distribution of it. Specifically, within 12 months of closing the transaction, Applicants will launch a new multicast channel on Telemundo's digital broadcast spectrum, utilizing library programming that has had limited exposure. Applicants believe there is demand for this type of programming and expect that MVPDs will recognize the value of carrying the channel. Telemundo will also make this network available to its affiliated stations on reasonable commercial terms. This commitment is particularly important in light of the benefits that accrue from the enhanced availability of Spanish-language programming.[84]

---

83 *See 2002 Biennial Review Order* ¶ 18.

84 *See, e.g.*, Commissioner Robert M. McDowell, FCC, Remarks at the National Hispanic Foundation for the Arts Noche de Gala, at 4 (Oct. 2, 2007) ("I hope to see Spanish-language broadcasters expand the local news and information and entertainment they provide to their local communities by using the additional channels that spectrum technology can now provide."), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277106A1.pdf; Press Release, The City of New York, Office of the Mayor, Mayor Michael R. Bloomberg, *The*

The Telemundo and mun2 programming can be carried on Comcast's VOD and online platforms as well:

- ***<u>Commitment # 7</u>. Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.***
- ***<u>Commitment # 8</u>. Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.***

Today, there is relatively little Spanish-language programming available on VOD. Telemundo currently provides about five hours per month of content to VOD platforms. Telemundo and mun2 commit to make available for VOD an expanded package of programming including news, telenovelas, variety, and sports programming.

Comcast, in turn, commits to carry this programming on its VOD and online platforms, an especially significant commitment in Comcast Cable markets such as South Florida, the Bay Area, Chicago, and Houston, where there are large Spanish-speaking populations. Comcast will expand its carriage in two stages.

First, within 12 months of closing the transaction, Comcast will increase the number of Telemundo and mun2 VOD programming choices on its central VOD storage facilities from approximately 35 to 100 choices. By that time, the majority of Comcast's cable systems will have the ability to connect to those facilities and provide access to this additional VOD content. In addition, Comcast will make the same programming available online to subscribers to the extent it has the rights to do so.

National Academy of Television Arts & Sciences and NYC Big Events Announce New York City Will Host "Leaders in Spanish Language Television" Awards for the First Time (July 24, 2006) (quoting National Academy of Television Arts & Sciences president Peter Price as saying, "Spanish language television is an important part of the television landscape, with close to 40 million viewers nationwide and growing"), *available at* http://www.emmyonline.org/releases/pdf/leaders_in_spanish_television_release.pdf.

Second, within three years of closing the transaction, Comcast will add another 200 VOD programming choices from Telemundo and mun2 to its central VOD storage facilities, for a total of 300 additional programming choices. By that time, substantially all of Comcast's cable systems will have the ability to provide access to this additional diverse VOD content. Comcast will also make this programming available online to subscribers to the extent it has the rights to do so.

Sports programming. The proposed transaction will create opportunities for the new NBCU to increase the quantity and quality of local, regional, and national sports programming.

First, on the national side, NBCU's affiliated cable networks generally are not sports networks; Oxygen, Bravo, and MSNBC, for example, do not typically show sports programming. The transaction will allow for NBC's sports programming to be distributed on Versus, Golf Channel, and Comcast's multiple RSNs, where brand identity would be greater and opportunity costs would be lower than if the sports programming were distributed on NBCU's current non-sports networks such as Oxygen, Bravo, or MSNBC. Similarly, by combining the NBC network with Comcast's national sports cable networks, new opportunities will be created for the combined entity to negotiate for broader rights packages and to expand cross-promotion of broadcast and cable sports. Combining the sports-oriented networks of NBCU and Comcast is not only good for the new NBCU, but it is good for sports fans as well because they will have more high-quality sports programming available on more platforms and at more times.

The combined company will also have opportunities to increase distribution of its sports content on Comcast's VOD and online platforms. The ability to distribute content across a number of different platforms also can create incentives to increase investment in sports programming with the potential for more and higher-quality sports programming becoming available to consumers on more platforms and at more times than ever before. Indeed, the Commission has recognized the public interest benefits to be derived from combining two companies with different but complementary histories and expertise in a way that will advance the expansion of media content to different distribution platforms.[85]

The transaction will also provide new opportunities for the new NBCU to enhance local and regional sports coverage. For example, Comcast's RSNs could collaborate with NBC's O&Os to augment local and regional sports news programs and features on both the RSNs and the local O&Os.[86] Pro-consumer synergies like this are not speculative. For example, in 2009 Comcast acquired a controlling interest in New England Cable News ("NECN"), a regional channel providing news, weather, sports, and other information of interest to viewers in the New England area. Comcast also owns an RSN in the same area, Comcast SportsNet New England ("CSN-NE"). Once Comcast acquired control of NECN, it was able to arrange for CSN-NE to use the news facilities and personnel of NECN to launch new morning and evening local sports news programs that have been popular with sports fans.[87] At the same time, NECN has drawn

---

85 *See, e.g., AT&T-MediaOne Order* ¶ 183 (finding that "the combination of the Applicants' complementary assets and capabilities will allow them to compete more effectively . . . in the provision of . . . new services . . ."); *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025 ¶ 199 (1998) ("[W]e conclude that WorldCom and MCI have made a sufficient showing that, as a result of combining certain of the firms' complementary assets, the merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger.").

86 Comcast owns or has interests in RSNs in seven DMAs where NBCU has O&O stations: Boston, Chicago, Hartford, New York, Philadelphia, San Francisco-Oakland-San Jose, and Washington, D.C.

87 *See, e.g.*, Johnny Diaz, *NECN, SportsNet Find Way to Share Strengths*, Boston Globe, Oct. 31, 2009, *available at* http://www.boston.com/business/articles/2009/10/31/necn_beefs_up_sports_programming_as_sportsnet_makes_more_hires ("SportsNet plans to launch a live 30-minute sports show that will air three times a day on both channels seven days a week, starting in December. The show, called 'SportsNet Central,' will provide sports news, analysis, and commentary on New England's sports teams. . . . And even though many stations are trimming workforces and budgets, [CSN-NE] has hired 40 producers, sports reporters, and writers for the show, which will bring SportsNet's staff to 100 employees."); *See also* Chad Finn, *Hitting the Ground Running; Comcast Show Is off to Strong Start*, Boston Globe, Dec. 11, 2009 (explaining that CSN-NE's sports news

on CSN-NE's strengths to add more local sports content to its news programming.[88] The end result benefits not only Comcast and the networks but the public as well.

Women's programming. For similar reasons, the proposed transaction will provide the combined entity with the ability and incentive to expand the development of quality women's programming. By combining NBCU's interests in Oxygen and iVillage with Comcast's interests in E!, Style, and Daily Candy, the combined entity will have the ability to share programming, production facilities, reporting, and on-air talent among multiple women's-oriented networks and websites and on multiple platforms. These opportunities to more effectively and efficiently employ resources should lead to an increase in the quality and quantity of women's programming available on broadcast, cable, and online.

In this area, as in the others discussed above, the combined entity will have the increased ability to extensively cross-promote this programming, experiment with new online content that could be transformed into traditional cable programming (or vice versa), and build stronger and deeper overall brand identities. These valuable cross-promotional activities are unlikely to occur absent the transaction.[89] Again, the result is to afford consumers a wider array of programs, on more platforms, with greater ease of access and more user choice, information, and control.

* * *

In the preceding discussion, Applicants described, among other things, the ways in which the proposed transaction would create incentives to use Comcast's VOD platform to increase the

---

programming has been significantly enhanced since Comcast acquired NECN), *available at* http://www.boston.com/sports/other_sports/articles/2009/12/11/hitting_the_ground_running/.

[88] *See* Johnny Diaz, *supra* note 87 ("The news cable channel [NECN] is getting more sports programming and a $1 million-plus upgrade to high-definition broadcasting, while the sports outlet is hiring more journalists.").

[89] *See* Pick Declaration ¶ 20.

availability of a variety of specific types of programming, including local programming, children's programming, and diverse programming. Applicants offered specific, detailed commitments related to the use of Comcast's VOD platform.

Today, Comcast provides a vast amount of VOD programming to consumers free or at no additional charge. Applicants assure the Commission that Comcast not only will continue to provide the same amount of VOD programming free or at no additional charge, but also, as Comcast's VOD capacity expands, will increase the number of VOD choices available free or at no additional charge.

Accordingly, the Applicants offer the following commitment:

- ***<u>Commitment # 9</u>. 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.***

This commitment ensures that consumers will have access to more and better programming – free or at no additional charge – on a user-friendly VOD platform that has become an incredibly popular way to watch video programming.[90]

When the transaction was announced, the Applicants put forth a related commitment regarding Comcast's VOD offering of certain NBCU shows. Pursuant to a pre-existing

---

[90] When the Applicants initially announced this commitment, they expressed it as follows: "Comcast will commit that at least 75 percent of its On Demand programming library will be available to Comcast Cable subscribers at no extra charge for the three-year period after closing." However, Applicants have concluded that the commitment should be restated as a volume, rather than as a percentage, commitment. VOD technology and the VOD business model are changing rapidly in this dynamic environment. Applicants are concerned that a percentage-based commitment may place constraints on the quantity of VOD content that Comcast makes available to consumers. Applicants believe that the restated commitment better ensures that the quantity of free or no additional charge VOD choices that consumers have today will be maintained and increased substantially even as the attractive paid movie and premium content VOD choices grow as well.

agreement between Comcast Cable and NBCU, Comcast Cable has the right, but not the obligation, to offer NBC programs on VOD, and the contract does not specify the price at which Comcast Cable must offer the shows on VOD to consumers. Comcast initially offered NBC shows on VOD for $0.99 per episode. The commitment made at the time of the announcement was to provide the NBC VOD shows at no cost to consumers for three years. Applicants are pleased to report that NBC now provides the shows to Comcast for no additional charge, and Comcast now provides them to its customers at no additional charge on VOD and intends to continue to do so. Events thus have overtaken this commitment, but Applicants are prepared to make it binding and to continue this arrangement for at least three years after closing of the transaction.

- ***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.**

B. The Transaction Will Accelerate the "New Media" Future of In-Home and Mobile Entertainment.

By combining Comcast's extensive experience in multiplatform content distribution with NBCU's world-class brands, broadcast assets, and television and film libraries, the combined company will be in a better position than either company alone to invest, innovate, and pursue sustainable "new media" business models that will accelerate the future of in-home and mobile entertainment.[91] The incentive to create more content depends upon the availability of distribution to reach viewers, and the incentive to invest in distribution depends upon the

91 This desirable outcome has been recognized by respected industry observers. *See, e.g.*, Brian Steinberg, *Comcast Play for NBC Universal Is a Bet on Future of Advertising; Union Would Allow Experiments in DVR, Addressable Campaigns*, Advertising Age, Nov. 9, 2009, *available at* http://adage.com/print?article_id=140383 (quoting Sanford Bernstein analyst Craig Moffett as saying, "There are real potential synergies that could arise from an NBCU deal, including . . . better windows for video-on-demand and faster development of addressable advertising").

availability of content. When content owners and distributors are not affiliated, the interdependence between investment incentives may impede efforts to expand programming. The proposed transaction will contribute to overcoming this impediment.[92]

As a result of this transaction, more consumers will be able to watch what they want, from NBC and Telemundo entertainment and award-winning news and information shows, to sports, children's programming, and movies, whenever and wherever they want it – on TV, on demand, online, and on mobile devices. This multiplatform approach will accelerate the growth of video on the Internet and on mobile devices, helping to promote broadband adoption, a key Commission public policy goal.[93]

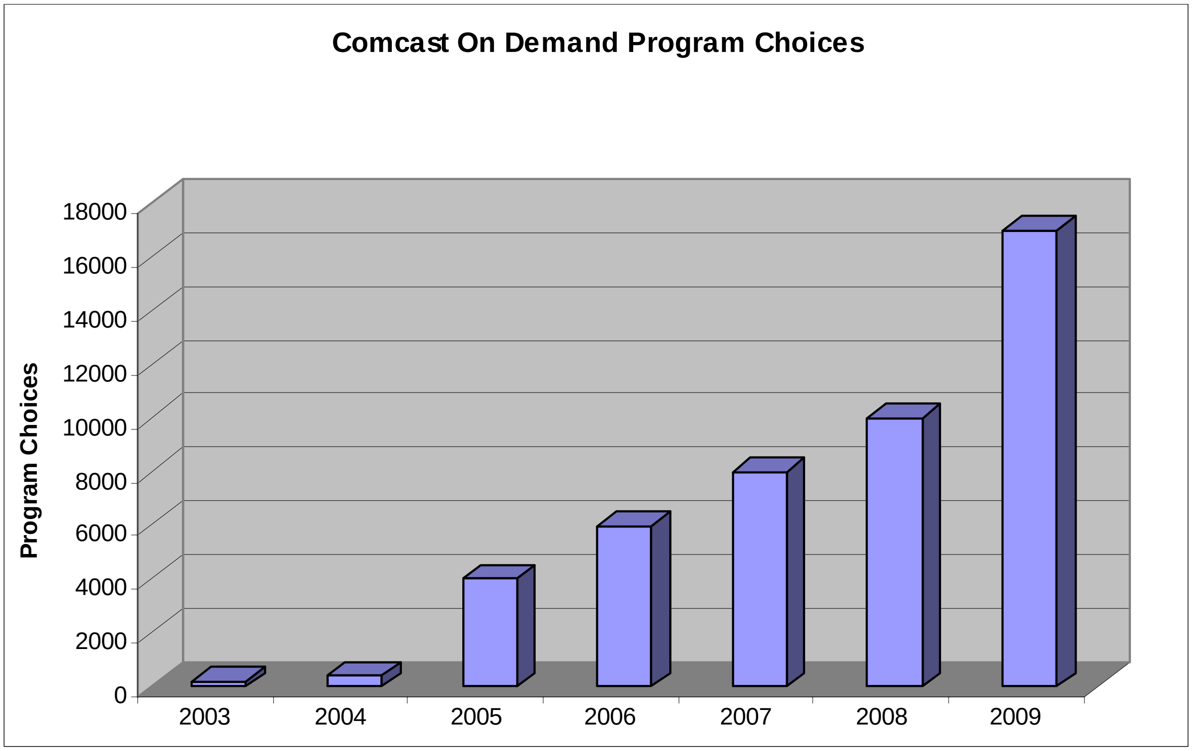
The past is prologue. For example, in the early 2000s, Comcast pioneered the nascent free VOD business, but for reasons that are discussed further in Section IV.C below, Comcast was unable to convince movie studios to enter into contracts to provide content that was sufficiently compelling to make VOD attractive for consumers. As part of the arrangements through which Comcast (along with Sony and others) acquired an ownership interest in MGM in 2005, Comcast obtained expanded rights to provide Sony and MGM movies free on VOD. With greater access to these movie libraries, Comcast was able to significantly enhance the free VOD content it offered consumers. As its VOD offering became more robust, consumer reaction became more favorable. And, importantly, the studios recognized that the success of this new business did not cannibalize their existing businesses. Once other content owners saw this

---

[92] Of course, while the proposed transaction will afford both Comcast and NBCU greater flexibility to overcome impediments that have in the past delayed bringing innovative services to consumers, the parties' programming agreements will reflect marketplace terms and conditions. This will be buttressed by the requirement that the new NBCU may only enter into a transaction, agreement, or arrangement with Comcast or any of its affiliates if the transaction is on arm's-length terms. *See supra* Section II.A.

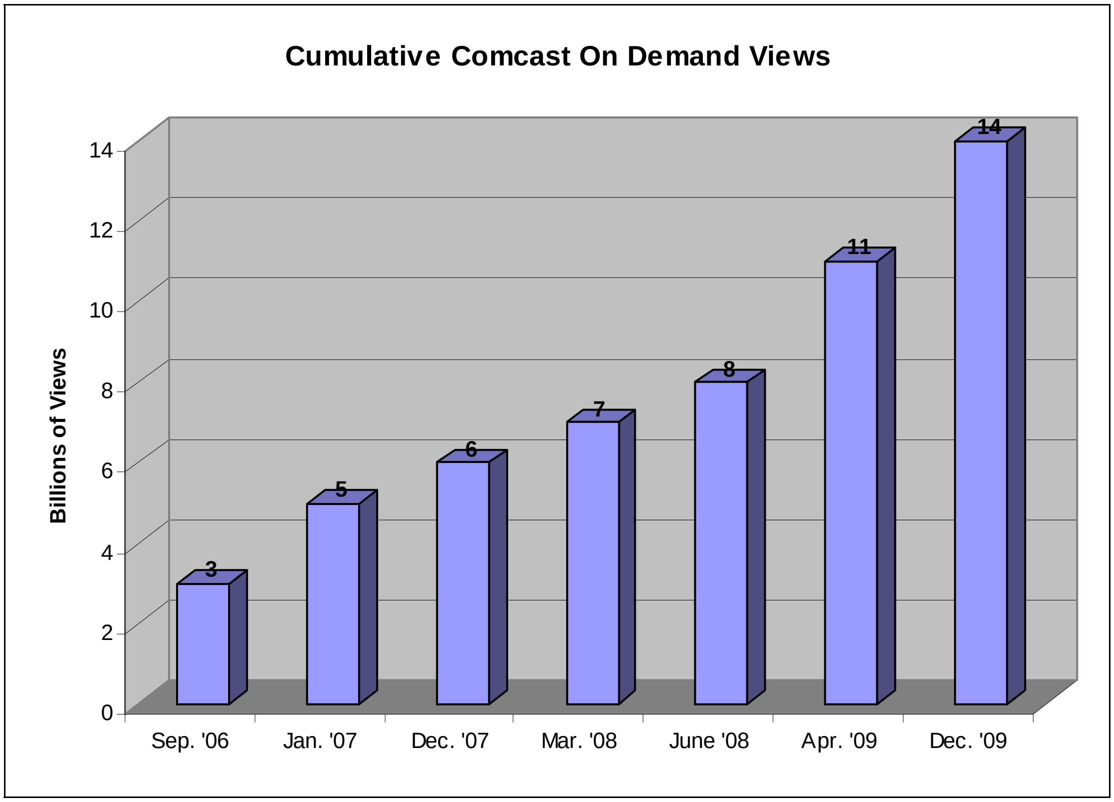
[93] *See supra* note 68.

dynamic, they began to make their content available for VOD, resulting in a dramatic increase in the VOD options available to Comcast's consumers, as the below graph illustrates:



VOD has, of course, gone on to become a huge success; many more programmers have put their content on VOD, and Comcast customers have viewed programming through Comcast's On Demand platform more than 14 billion times,[94] as shown in the chart below:

[94] The number of Comcast On Demand views exceeds the 8.5 billion total files that have been downloaded through Apple's iTunes platform since 2003. *See* Diana ben-Aaron, *Nokia's Music Plan: Too Little, Too Late?*, Bus. Week, Dec. 16, 2009, *available at* http://www.businessweek.com/globalbiz/content/dec2009/gb20091216_963956.htm.



By driving the growth of VOD, Comcast has been able to benefit not only its customers, but all industry stakeholders who gain from increased distribution of programming. Comcast's initiative spurred other MVPDs to emulate this model, advancing competition, technology, and consumer choice. The formation of the new NBCU similarly will enable Comcast to craft deals that provide content owners with marketplace financial terms and expand Comcast Cable's access to programming that it can use to develop novel video products and services for consumers across an array of platforms.[95]

Comcast is currently attempting to pioneer another "new media" business model that would increase the number of motion pictures that are available to its customers at the same time they become available on DVD (referred to as "day-and-date release"). Comcast has been

---

[95] *See* Pick Declaration ¶¶ 9, 17-18.

working on this for at least four years, but has not progressed as quickly as it would like because of content owners' understandable concerns that this innovation could threaten existing revenue streams (*e.g.*, from DVD and Blu-ray disc sales).[96] In 2007, Comcast was able to offer consumers only nine movies for "day-and-date" release. That number grew to 35 in 2008 and 100 in 2009.[97] Comcast would like to have more content available so that it can offer consumers a more compelling product.[98] Comcast believes there is genuine consumer demand for this innovative offering. In 2009, for example, eight of the 10 most popular movies on Comcast's VOD platform were "day-and-date" movies.

The Applicants anticipate that the proposed transaction, by reducing the "transaction cost" difficulties of negotiating contracts with unaffiliated parties for this new, unproven business (discussed in more detail in Section IV.C, *infra*), will help Comcast realize its desire to offer more in-home on-demand movies closer to the time of DVD release. Applicants understand that developing a sustainable business model with release dates closer to the date DVDs are released will require discussions with all interested stakeholders. In particular, Applicants acknowledge the continued importance of theatrical releases and DVD distribution (including in particular the newly developed Blu-ray Discs) and underscore that they value greatly their relationships with DVD retailers and retail movie distributors. However, Applicants are confident that, just as in the VOD example described above, the combined entity can work

---

96 For example, Netflix recently announced an agreement with Warner Bros. that prohibits Netflix from distributing to its subscribers any Warner Bros. movies on DVDs or Blu-ray discs until 28 days after they have been available for purchase from retail outlets. *See* David B. Wilkerson, *Netflix, Warner Bros. Reach New Deal*, Wall St. J., Jan. 6, 2010, *available at* http://online.wsj.com/article/BT-CO-20100106-710531.html.

97 *See* Press Release, Comcast Corp., *Comcast Announces 100th Movie Available On Demand Same Day as DVD Release* (Dec. 17, 2009), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=948.

98 *See* Pick Declaration ¶ 14.

with all stakeholders to find business models that work better for consumers, accommodate the needs of theater owners and DVD distributors, and sustain the overall revenue streams of content owners – revenue streams that are necessary to maintain the investment in movies that American audiences want to watch. With this approach, other content owners are likely to make their content more readily available, leading to even more consumer viewing options.

The proposed transaction will accelerate new developments in online video as well. Two years ago, Comcast announced "Project Infinity," which will allow Comcast to deliver exponentially more video content to consumers.[99] While the announcement focused particularly on expansion of VOD choices, Comcast's vision explicitly encompasses expanding consumers' choices on TV, online, and on other platforms. That vision is the reason why Comcast joined with Time Warner, Inc. to develop the pioneering TV Everywhere principles.[100] Promptly after

---

99 Brian Roberts has explained that "Project Infinity plans to give consumers the best and most content they will find On Demand anywhere – more HD, more sports, more movies, kids' programs and network TV. Project Infinity builds on our commitments to bring more content to people across all platforms at home and on the go, and we'll work with our partners, programmers and video producers to deliver on this vision." *See* Press Release, Comcast Corp., *Comcast CEO Brian L. Roberts Announces Project Infinity: Strategy to Deliver Exponentially More Content Choice On TV* (Jan. 8, 2008), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=724.

100 The TV Everywhere model was "designed to be simple and attractive for any programmer and any video distributor to elect to adopt." *TV Everywhere Press Release*, at 1. The TV Everywhere Principles are as follows:

- Bring more TV content, more easily to more people across platforms.
- Video subscribers can watch programming from their favorite TV networks online for no additional charge.
- Video subscribers can access this content using any broadband connection.
- Programmers should make their best and highest-rated programming available online.
- Both networks and video distributors should provide high-quality, consumer-friendly sites for viewing broadband content with easy authentication.
- A new process should be created to measure ratings for online viewing. The goal should be to extend the current viewer measurement system to include advertiser ratings for TV content viewed on all platforms.

the announcement of the TV Everywhere principles in June 2009, Comcast began a technical trial of its authentication platform – On Demand Online, now renamed "Fancast Xfinity TV" – which has progressed to a national beta release. Fancast Xfinity TV offers Comcast's cable customers online access, at no additional charge, to content associated with their individual levels of cable subscriptions.[101]

Although Comcast is proceeding with its Fancast Xfinity TV venture and is pleased with the success to date of its Fancast Xfinity TV venture, progress remains slower than Comcast would like. As with free movies on VOD, many content owners have been cautious, limiting the content they make available for online access and generally refraining from making long-term commitments. To date, only a limited number of programmers, accounting for a total of 30 cable networks, have made content available for online access through this effort.[102]

The pairing of expanded content assets with distribution channels under common ownership is a market-driven solution that will help to overcome the transactional barriers Comcast is once again encountering and accelerate broader and more innovative uses of content. For example, NBCU's movie and production businesses include current TV shows, a 3,000+ episode library, and a 4,000+ movie library. With respect to this and other NBCU content, Comcast and the new venture will be in a better position to expand the convenient availability of television and movie content of all genres across multiple platforms on an accelerated basis through a workable and replicable business model, to the benefit of consumers.

- TV Everywhere is open and non-exclusive; cable, satellite or telco video distributors can enter into similar agreements with other programmers.

[101] Thus, a Comcast customer who subscribes to HBO would obtain online access to the HBO programming that has been posted to a secure website, once the customer's identity as a Comcast customer has been verified – or "authenticated."

[102] *See* Pick Declaration ¶¶ 15-17.

With the jump-start made possible by this transaction, these opportunities will accrue not only to the combined entity (including NBCU's production studios), but also to unaffiliated studios, networks, and other MVPDs – and, most importantly, to consumers. Pioneering new models, and proving them workable, will create momentum and competitive incentives for other networks and other MVPDs to participate in expanding consumer choice.[103] It bears emphasis that a fundamental element of the TV Everywhere principles mentioned above is that arrangements be open and non-exclusive. Thus, a programming vendor that agrees to make its content available on Fancast Xfinity TV is free to license its content to the online platforms of other MVPDs, and an MVPD that licenses content from one programming vendor is not precluded from licensing content from other programming vendors.

C. Comcast's Experience Demonstrates That, Absent the Transaction, the Parties Cannot Use Contracts To Achieve the Benefits of the Transaction.

Comcast has considerable experience trying to obtain the content that it needs to justify investments in innovative programming delivery platforms and services. Comcast has invested directly in a limited amount of its own content, but it also must obtain programs from networks and studios in order to have sufficient quality content. While Comcast has obtained some content from unaffiliated third parties, many deals that Comcast believes would make both consumers and suppliers better off are not made, and others move very slowly. As a result, Comcast has not been able to roll out video services such as VOD, "day-and-date" release, and TV Everywhere, as early or quickly as Comcast believes its customers wanted.[104] In short, given

103 *See id.* ¶¶ 9, 17.

104 *See id.* ¶¶ 4-8.

transactional friction, reliance solely on obtaining content from unaffiliated entities is preventing or delaying new services and enhanced content.[105]

Shortcomings Of Deals with Unaffiliated Parties. There are a number of reasons that negotiating with unaffiliated third parties does not always work smoothly to promote new and innovative video delivery. First, technology, costs, and demand for video products and services change rapidly. As a result, there is a high degree of uncertainty about what content, which delivery platforms, and which revenue models (*e.g.*, subscription and/or advertising) will work or work best.[106] Because of this uncertainty, Comcast and unaffiliated suppliers of programming, such as movie studios, TV studios, and networks, often have different assessments of the costs, sales, and profits. In addition, companies have different views of the level of risk and different appetites for risk. None of these views is demonstrably "wrong" – they just represent different perspectives on new and innovative business models. These uncertainties and differences hinder the parties' ability to reach agreements.

Second, licensing and distribution of video products is complex. For example, each video program can be made available to consumers in alternative sequences of windows on

---

105 The noted economist Oliver Williamson has described why a vertically-integrated firm has an enhanced ability to overcome this type of transactional friction. Arguing in favor of "internalization," defined as "the substitution of internal organization for market exchange," Williamson has cited several benefits of vertical integration in the face of "transactional failures" in markets. According to Williamson, "Perhaps the most distinctive advantage of the firm . . . is the wider variety and greater sensitivity of control instruments that are available for enforcing intrafirm in comparison with interfirm activities." Examples of such control instruments include lower cost access to data on own-performance, more refined reward and penalty instruments, a more efficient conflict resolution machinery and economies of information exchange. *See* Oliver E. Williamson, *The Vertical Integration of Production: Market Failure Considerations*, 61 Am. Econ. Rev. 112-123 (1971). Williamson was awarded the Nobel Prize in Economic Sciences in 2009 for his work on the boundaries of firms.

106 *See* Pick Declaration ¶¶ 4-5. Mr. Pick further explains that, in this extremely dynamic environment, "it is difficult to write contracts flexible enough to permit the experimentation and learning that both parties need as they develop new technologies and business models." *Id.* ¶ 7.

numerous platforms and types of services (theater, broadcast TV, premium-tier linear cable TV networks, basic tier linear cable networks, VOD cable channels, DVDs, online, etc.).[107]

Third, it is difficult for Comcast and content suppliers to anticipate all the potential issues that may arise with the development of a new technology in a dynamic market.[108] Contract renegotiation and enforcement in a rapidly evolving media marketplace are both time consuming and expensive, and may not be successful.

Fourth, one or both parties to a contract may be concerned that the other will take advantage of it after agreement has been reached and after it has made investments in reliance on the contract. The fear of the parties that their interests are not aligned can itself block progress. Often some actions that would increase the profits of one (*e.g.*, avoiding an expenditure that would increase quality) will reduce the profits of the other. However, these situations often cannot be anticipated or detected (*e.g.*, where measurement of quality is difficult).[109] A party to a potential contract may be particularly wary when the contract calls for it to make an investment

---

[107] The particular complexity arises because whether and when a program is shown on one platform or service is likely to influence the demand and audience size for that program, and hence revenues, on other platforms and services.

[108] *See* Pick Declaration ¶ 7.

[109] *See* Joseph Farrell & Philip L. Weiser, *Modularity, Vertical Integration and Open Access Policies: Towards a Convergence of Antitrust and Regulation in the Internet Age*, 17 Harv. J.L. & Tech. 85, 98 (2003). Farrell and Weiser discuss examples of integrative efficiencies. "By separating its operations vertically, Palm lost control of some important aspects of its product deployment. For instance, Palm's reliance on outsiders and an 'inability to crack the whip on its far-flung programmers' contributes (according to some observers) to its 'slow pace of innovation' in applications. By contrast, Sega developed the operating system, equipment and leading games (such as Sonic the Hedgehog) for its Sega Genesis system all in-house, presumably in order to control its product offerings and drive consumer demand for its system. Because the platform and the applications made for it are economically interdependent, an arms-length relationship can involve contractual hold-up hazards (on both sides, though especially threatening to competitive applications providers.) A closer vertical relationship can be an efficient response to such hazards."

that involves sunk costs and that is unlikely to earn a satisfactory return unless the other party fulfills the terms of the contract.[110]

For example, significant upfront and ongoing investments are required for the development of new media platforms.[111] There is a greater incentive for the distributor to make these investments when it has access on market terms to sufficient content to demonstrate the effectiveness of the new platforms.[112]

At the same time, content providers may be reluctant to commit content and increase investment in new content in the face of significant uncertainty about how new and unproven distribution models will develop and what their impacts will be on their other content businesses.[113] It is, therefore, difficult to structure the financial terms of contracts, and especially long-term contracts with unaffiliated parties.

---

110 Specifically, once one party has taken on substantial sunk costs, the return on which depends on performance by the other party, the second party may be in a position to appropriate at least some of the gains from the contract that were expected by the first party. *See generally* Francine Lafontaine & Margaret Slade, *Vertical Integration and Firm Boundaries: The Evidence*, 45 J. Econ. Literature 629-685 (2007) ("Lafontaine & Slade"). The authors state that "complexity and uncertainty lead to contractual incompleteness," and that "[t]he large body of empirical research in the area has found considerable support for the notion, derived from TCE [transaction-cost economics], that specific investments are economically and statistically important when it comes to the decision to organize the production of a given input internally or externally [to the downstream firm]. It also has established that backward integration is more likely for more complex inputs and when the environment within which the firms operate is more uncertain." *See also* Christopher S. Yoo, *Vertical Integration and Media Regulation in the New Economy,* 19 Yale J. on Reg. 171, 262 (2002). "The presence of the large upfront fixed costs discussed above leaves both cable modem and content providers vulnerable to being held up. Like other creators of media content, broadband content providers must make significant up-front investments in their content. They will not do so unless they can expect to recover those fixed costs later. Once the content is created, however, content providers are vulnerable to hold-up behavior, since once the costs of creating the content are sunk, the content owners' customers can try to beat them down to the marginal cost. Conversely, cable modem providers are similarly vulnerable to cost opportunism. . . . Once the costs are sunk, cable modem providers bear the risk of being beaten down to levels at which the fixed cost investment can no longer be recovered. The traditional method for redressing both of these concerns is either vertical integration or long-term exclusive dealing contracts. If unable to rely on such exclusive dealing arrangements, an inherently unstable situation results in which . . . both sides are left to settle on price through strategic behavior."

111 *See* Pick Declaration ¶ 18.

112 *See id.*

113 *See id.* ¶¶ 7-8.

Comcast's Difficulties In Obtaining Content From Unaffiliated Parties. In Comcast's experience, it has been difficult to develop new platforms and innovative services as expeditiously as consumer demand requires by relying on negotiations with unaffiliated parties to obtain content. Studios are not willing to provide content (and content of high quality) for distribution on new and unproven platforms designed to attract additional subscribers and/or audiences unless the studios expect to earn a sufficient return. At the same time, the incentive for Comcast to invest in an innovative platform depends on the availability and cost of enough good programming to attract the subscribers, audiences, and advertisers needed to earn a sufficient return. As discussed earlier, it is difficult to find innovative approaches and mechanisms to accommodate both parties' objectives. After this transaction, the combined entity will have the incentive and be motivated to find agreement that justifies the deal from both sides. Investments in new content and new distribution channels will be less risky if such marketplace agreements can be reached, and therefore have higher risk-adjusted returns for the combined entity with the transaction than for either firm without the transaction.

Comcast's experience in the early 2000s trying to start its VOD business (described above in Section IV.B) illustrates Comcast's difficulties in obtaining content by relying on negotiations with unaffiliated third parties. Comcast took a risk by investing in the technology to provide enhanced VOD service. However, Comcast was not able to convince movie studios to enter into contracts to provide content that would have been sufficiently compelling to make VOD attractive for consumers. Comcast believed it needed to populate its VOD offering with a significant amount of free content in order to capture consumers' interest. The content providers' concerns over the risk of joining Comcast in this effort were understandable because VOD was a new and untested business model with unclear revenue implications for the content providers' existing income streams. Comcast and the content providers had different assessments of and willingness to take attendant risks. The content providers' understandable caution substantially delayed deployment of an innovative and consumer-friendly VOD service.[114]

The transaction could also allow Comcast and NBCU to overcome the difficulties associated with cross-promotions. Cross-promotions help networks increase their audiences and ratings, build stronger and deeper brand identities, and can help new networks to survive and grow. At present there are no promotions of Comcast's channels on NBCU networks and vice versa, and absent the transaction it is highly unlikely that there would be any.[115] However, with the transaction, Comcast will have a greater opportunity to promote its content on NBCU's broadcast and cable networks and vice versa. Cross-promotion will benefit consumers by informing them about the existence, timing, and location of programs that they may otherwise not be aware of, leading to greater viewer enjoyment.[116]

Based on its experience with attempting to develop and expand new services relying exclusively on content obtained from unaffiliated parties and the difficulties faced with cross-promotions, Comcast has concluded that the benefits for consumers described in Sections IV.A and IV.B above cannot be achieved as fully or as rapidly as they will be absent the present transaction.

---

[114] *See id.* ¶¶ 10-13.

[115] *See id.* ¶ 20.

[116] *See id.* ¶¶ 19-21.

D. The Combined Entity Will Better Support and Serve the Interests of Local Communities.

The new company will enable Comcast and NBCU to continue and expand their roles in serving and supporting the local communities in which they operate. Comcast and NBCU have a proud history of active engagement with local communities and the organizations that serve those communities, from charitable causes like United Way, City Year, One Economy (promoting digital literacy and broadband adoption), the Emma Bowen Foundation (creating internship opportunities in communications and providing scholarship assistance), Boys & Girls Clubs, and Big Brothers/Big Sisters, to support for schools and libraries with free video and high-speed Internet services. Above and beyond supporting worthy causes through community involvement, Comcast and NBCU have ensured that their core businesses actively support and strengthen communities as well. The proposed transaction will only enhance the ability of NBCU and Comcast to serve local needs in innovative ways.

Comcast's business is local, having been built for over 40 years on the local cable franchise model. As a result, Comcast is involved not just at a metropolitan market level, but on the ground in cities and towns, suburbs, and urban neighborhoods.[117] Comcast has invested significantly in local content in many markets, particularly in the sports area, and also by bringing local content including community news, political debates, Comcast Newsmakers, Police Blotter, Pet Adoption, and Dating on Demand to new platforms like VOD. Comcast tailors the programming on its local cable networks (including VOD) to the needs and interests of local audiences.

---

[117] *See* Comcast Corp., 2009 Community Investment Report, *available at* http://www.comcast.com/MediaLibrary/1/1/About/IntheCommunity/CommunityInvestment/Comcast_ComInvest_bro_120109.pdf.

The NBC and Telemundo O&O stations are also deeply involved in their communities. Interaction with local community organizations – including local chapters of the American Red Cross, Autism Speaks, and Boys & Girls Club, as well as local domestic violence groups, universities, and health advocacy organizations – allows the stations to learn firsthand of the problems, needs, and interests of the people living within each station's viewing area. The local audience benefits directly from the community-oriented focus that is brought to bear in the stations' programming as a result of the substantial interaction between the stations and these community organizations, and the organizations, in turn, benefit from the stations' support.

As part of its commitment to the local communities it serves, and consistent with its contractual obligations to franchising authorities, Comcast's cable systems carry public, educational, and governmental ("PEG") channels which are generally part of the basic tier of service that is provided to all subscribers in a community. In a few communities, there has been controversy about how PEG channels will be treated as cable systems transition to digital technology. To address these concerns affirmatively, Applicants offer the following commitment:[118]

- ***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.**

In addition, the combined firm is committed to expanding the use of PEG programming and in that regard offers the following commitment:

---

[118] This commitment is consistent with the proposed Consent Order that has been agreed to by all parties in the pending proceeding in Michigan. *City of Dearborn v. Comcast of Michigan III, Inc.*, Case No. 08-10156 (E.D. Mich.).

- ***<u>Commitment # 12</u>. 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.***

As the largest distributor of public, educational, and governmental access programming, Comcast understands the value of locally produced programming. Done well, local public, educational, and governmental access programming can be an important source of news, information, and resources for local residents, and recent technological advances have the potential to increase consumers' ability to access local content anywhere, anytime. Based on Comcast's experience, and mindful of the great diversity in the amount and nature of PEG programming in these communities, Comcast recognizes the opportunity to develop a workable approach for wider distribution of public, educational and governmental access programming on new platforms. Comcast also notes that evolving technologies may quickly make today's solutions obsolete.

Accordingly, to develop the new platform within three years of closing, Comcast plans to select five locations in Comcast's service area to serve as trial sites. Sites will be chosen to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities. Comcast will consult with leaders in the trial communities to determine what programming – public, educational and/or governmental – would most benefit local residents by being placed on VOD and online.[119] Comcast further commits to filing annual reports with the Commission staff to inform them of progress on the trial and implementation of this groundbreaking initiative.

---

[119] Comcast has tested new approaches to community-specific programming in the past. For example, in November 2005, Comcast launched a collaborative pilot project with 25 greater Denver Metropolitan Area communities to identify how cable technology could be used in innovative ways to address the unique needs of local communities and increase the value of community programming to citizens on a regional level. The result was MetroBeat TV, which was comprised of five viewer-designed television programs and a dedicated MetroBeat TV website. During a two-year period, MetroBeat TV received much critical recognition and acclaim.

E. Cost Savings and Synergies

In the preceding discussion of public interest benefits from the transaction, Applicants have explained various ways in which the transaction would increase the combined entity's ability and incentive to expand programming and increase the quality and diversity of programming: Some of these ways relate to cost savings that would result from the transaction. For example, we have discussed the following:

First, there are economies of scale and scope in provision of video programming to viewers on different platforms and at different times. Once a program is created, the variable out-of-pocket costs of making it available for distribution at more times on more platforms is relatively low. As a result, when additional distribution to a wider audience is available, there is greater incentive to create more and higher quality programming.

Second, vertical integration reduces transaction and contracting costs between NBCU as a supplier of content and Comcast as a distributor. The reduction in these costs will increase the availability of content to Comcast and to the cable networks that Comcast is contributing to the new NBCU.

Standard merger analysis recognizes that cost savings – whether upstream or downstream – benefit consumers by constraining prices, improving product quality, and accelerating new product development.[120] Indeed, there is increasing recognition that fixed cost savings, which

---

[120] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines, 57 Fed. Reg. 41552, rev. § 4 (issued Apr. 2, 1992; rev. Apr. 8, 1997) ("*Horizontal Merger Guidelines*") ("Efficiencies generated through merger can enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products. For example, merger-generated efficiencies may enhance competition by permitting two ineffective (*e.g*., high cost) competitors to become one effective (*e.g*., lower cost) competitor."). Note that, while this section explicitly discusses what cost savings are "cognizable," it says nothing to discount upstream cost savings. To the contrary, it refers to "efficiencies resulting from shifting production among facilities," which clearly may involve upstream manufacturing operations, as among the most likely to be "cognizable and substantial." *Id.*

may not immediately be passed through to consumer prices, often lead to large consumer benefits particularly when they permit accelerated innovation.[121] Finally, to the extent cost savings and synergies are achieved, the combined entity will be stronger and more economically viable. Given the current turmoil and uncertainty in the media and entertainment business,[122] this is an important public interest benefit of the transaction.

V. THE PROPOSED TRANSACTION WILL COMPLY WITH THE REQUIREMENTS OF THE COMMUNICATIONS ACT, OTHER COMMUNICATIONS STATUTES, AND THE COMMISSION'S RULES.

The proposed transaction will not result in the violation of any provisions of the Communications Act, other applicable statutes, or the Commission's rules.

A. Cross-Ownership and Multiple Ownership Limits

Comcast's acquisition of NBCU will be in full compliance with the Commission's various cross-ownership and multiple ownership rules. Most important, Congress repealed the statutory prohibition against cable/broadcast cross-ownership in 1996.[123] Further, in 2002, the

---

121 *See* Antitrust Modernization Commission, Report and Recommendations, 58-59 (Apr. 2007) ("Failure to take account of and give proper weight to such fixed costs in evaluating a merger could deprive consumers and the U.S. economy of significant benefits from a procompetitive merger . . . As one witness explained, 'an increasing part of the economy is comprised of research-intensive products . . . such as computer chips, software, pharmaceuticals and media content [that] have very high fixed costs.' Mergers generally benefit consumers by making innovation more likely or less costly in such industries, rather than by reducing (the generally very low) marginal costs. . . . [T]he efficiencies do not necessarily lower prices to consumers immediately, but have the potential to bring significant benefits to consumers through new, improved, or lower priced products in the longer run."), *available at* http://govinfo.library.unt.edu/amc/report_recommendation/toc.htm.

122 *See, e.g.*, Amy Schatz, *Investors Urge FCC to Relax Media Ownership Rules*, Wall St. J., Jan. 12, 2010 (describing how investors detailed the financial woes of the media industry and the lack of interest among many investors in the sector at an FCC media ownership workshop on financial issues), *available at* http://online.wsj.com/article/SB126333303180026671.html?mod=WSJ_hpp_sections_business.

123 Prior to the Telecommunications Act of 1996, Section 613(a)(1) of the Communications Act, as amended (47 U.S.C. § 533(a)(1)) provided that:

> "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system." Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 613(a), 98 Stat. 2779, 2785, as amended.

United States Court of Appeals for the District of Columbia Circuit struck down the Commission's attempt to retain its cable/broadcast cross-ownership rule ("CBCO Rule").[124] The court held that, with respect to concerns about competition, the Commission "failed to justify its retention of the CBCO Rule as necessary to safeguard competition . . . and [failed] to put forward any adequate reason for believing the Rule remains 'necessary in the public interest.'"[125] With respect to diversity justifications, the court held that "the Commission's diversity rationale for retaining the CBCO Rule is woefully inadequate."[126] Given these infirmities, and because the court determined that "the probability that the Commission would be able to justify retaining the CBCO Rule is low," the court instructed the Commission to repeal the rule "forthwith."[127] In 2003, the Commission did so.[128]

With regard to other ownership rules, Comcast owns no TV or radio broadcast stations, or newspaper interests, so the proposed transaction creates no new combination that implicates the radio-television cross-ownership rule, the local TV duopoly rule, the national TV broadcast audience cap, or the newspaper/broadcast cross-ownership prohibition. In addition, NBCU is in

---

Section 202(i) of the Telecommunications Act of 1996, however, amended Section 613(a) of the Communications Act, among other things, "by striking paragraph (1)." Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(i)(1), 110 Stat. 56, 112 (1996).

124 *See generally Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) ("*Fox Television Stations*"), *modified on reh'g,* 293 F.3d 537 (D.C. Cir. 2002) (vacating the Commission's CBCO Rule).

125 *Fox Television Stations*, 280 F.3d at 1051.

126 *Id.* at 1052.

127 *Id.* at 1053.

128 *See In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order, 18 FCC Rcd 3002 (2003).

full compliance with the national TV broadcast audience cap.[129] Also, NBCU's existing TV duopolies comply with the local TV duopoly rule.[130]

With respect to the local television duopoly rule, there is a pre-existing issue regarding NBCU's ownership of three television stations in the Los Angeles, California DMA. Pursuant to a temporary waiver of the television duopoly rule, NBCU owns stations KNBC-(TV), KWHY-TV, and KVEA(TV).[131] NBCU has been engaged in good faith efforts to divest one of the Los Angeles stations.[132] Its ability to divest has been constrained by the severe economic conditions facing the country in general and the broadcasting industry in particular. Nevertheless, NBCU continues to consider potential sale structures and possible auction scenarios for one of the stations. Applicants request that the Commission extend the current temporary waiver for six months after the proposed transaction closes.[133] A six-month extension will allow for an orderly divestiture process and is consistent with prior Commission practice.[134] Further, Applicants

---

[129] *See Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation*, Exhibit 19.

[130] *See id*.

[131] *See In the Matter of Telemundo Communications Group, Inc., Transferor, and TN Acquisition Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 6958 ¶ 46 (2002) ("*Telemundo Order*") (granting a temporary waiver of 47 C.F.R. § 73.3555(b)).

[132] *See, e.g.*, Letters from Margaret L. Tobey, Assistant Secretary, NBC Telemundo License Co., to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. BTCCT-20011101ABK, *et seq.* (dated Oct. 14, 2009, and Jan. 15, 2010). NBCU will also continue to file status reports with the Commission. *See Telemundo Order* ¶ 53.

[133] *See Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation*, Exhibit 19.

[134] For instance, in a transaction involving Univision, the FCC gave Univision six months after closing to come into compliance with the newspaper/broadcast ownership rule either by divesting the properties implicating the rule or by placing those properties in an insulated divestiture trust within six months. *In the Matter of Univision Communications Inc., Transferor, and Broadcasting Media Partners, Inc., Transferee*, Memorandum Opinion and Order, 22 FCC Rcd 5842 ¶ 47 (2007); *see also In the Matter of Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 21196 ¶ 21 (2007).

propose that, during the six-month period following the close of the transaction, they will either (1) divest one of the Los Angeles stations or (2) place one of the stations in a divestiture trust that will insulate the station from the Applicants' influence and control.

As previously demonstrated, the ownership of any two of the Los Angeles stations will comply with the television duopoly rule.[135] Thus, divesting one of the Los Angeles stations will bring the combined firm into compliance with the rule.

In addition, the contour of KXAS-TV, Fort Worth, Texas, owned by GE and NBCU indirect subsidiary Station Venture Operations, LP, encompasses the entire community of publication of two small newspapers in which GE holds an attributable interest under the Equity-Debt-Plus ("EDP") rule.[136] On October 22, 2009, the licensee of KXAS-TV amended its pending license renewal application to inform the Commission of the attributable ownership interest held by General Electric Capital Corporation ("GECC") in American Community Newspapers ("ACN"), publisher of the two newspapers in question, resulting from a bankruptcy proceeding involving ACN and the conversion of a portion of GECC's loans to non-voting equity.[137] KXAS-TV and its licensee will be contributed to the new NBCU; GECC will be retained by GE. The amendment notes that, when it adopted the EDP rule, the Commission

---

[135] *Telemundo Order* ¶ 2; *see also Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation*, Exhibit 19.

[136] *See* 47 C.F.R. § 73.3555(d)(iii). GECC also has provided a credit facility to Coast Radio Company, Inc. ("Coast"), which owns and operates, through subsidiaries, three radio stations in the San Francisco, CA market. Two NBCU stations are located in the San Francisco-Oakland-San Jose, CA DMA. The GECC credit facility accounts for more than 33 percent of the total asset value of Coast. As a result, GE is attributed with both the NBCU stations as well as the three Coast FM radio stations in that market. Because there are more than 10 independent media voices in the DMA, and because the three FM radio stations may be commonly owned under the applicable local radio ownership rule, the interests attributed to GE fully comply with the radio/television cross-ownership rule. *See* Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation, Exhibits 7, 19.

[137] *See Application to Transfer Control of NBC Telemundo License Co. from General Electric Company to Comcast Corporation*, Exhibits 7, 19.

recognized that unforeseen circumstances could result in the conversion of a non-attributable interest to an attributable interest and noted that, in such circumstances, the Commission will afford parties a reasonable time (generally one year) to come into compliance with any ownership restriction made applicable as a result of a change in attributable status. The amendment further advises the Commission that, given the current economic climate, a reasonable time is most likely more than one year.[138]

Neither Comcast nor NBCU owns any attributable interest in a broadband radio service ("BRS") system or satellite master antenna television ("SMATV") system that would implicate the Commission's cable/BRS or cable/SMATV cross-ownership restrictions.[139] Finally, NBCU does not own a financial interest greater than 10 percent or have any management interest in a local exchange carrier ("LEC") providing telephone exchange service within any of Comcast's franchise areas, and therefore, the transaction will fully comply with the Commission's buyout restrictions.[140]

B. Channel Occupancy Limit

The Commission's "channel occupancy" rule requires that no more than 40 percent of the first 75 channels of a cable system be used to carry affiliated national programming services.

---

[138] *Application for Renewal of Broadcast Station License*, File No. BRCT-20060403BWM (amended Oct. 22, 2009). Please refer to the transfer of control application for Station Venture Operations, L.P. for further information on this matter.

[139] *See* 47 C.F.R. § 73.3555 (broadcast multiple ownership limits); *id.* § 27.1202 (cable/BRS cross-ownership limit); *id.* § 76.501(d) (cable/SMATV cross-ownership limit).

[140] *See id.* § 76.505(b) (LEC-cable buyout prohibition); *see also* 47 U.S.C. § 572(b) (statutory prohibition).

The Commission has clarified that this means that, for cable systems with 75 or more channels, at least 45 channels must be unaffiliated.[141]

To verify compliance with this rule, Comcast surveyed each of its cable systems – and individual channel line-ups within systems that have multiple channel line-ups. For each channel line-up that included more than 45 unaffiliated channels,[142] compliance with the rule was assured and no further analysis was required. For systems with less than 45 unaffiliated channels, individual channel line-ups were examined and the percentage of unaffiliated channels was determined. In every case, the percentage of unaffiliated channels exceeded the requisite 60 percent.

Although not necessary to demonstrate compliance, it is worth noting here that, thanks to Comcast's dramatic progress in upgrading and expanding the capacity of the cable systems it has acquired,[143] and more recently Comcast's progress in reclaiming analog bandwidth through the digitization project known as "Project Cavalry,"[144] Comcast cable systems routinely carry vastly

---

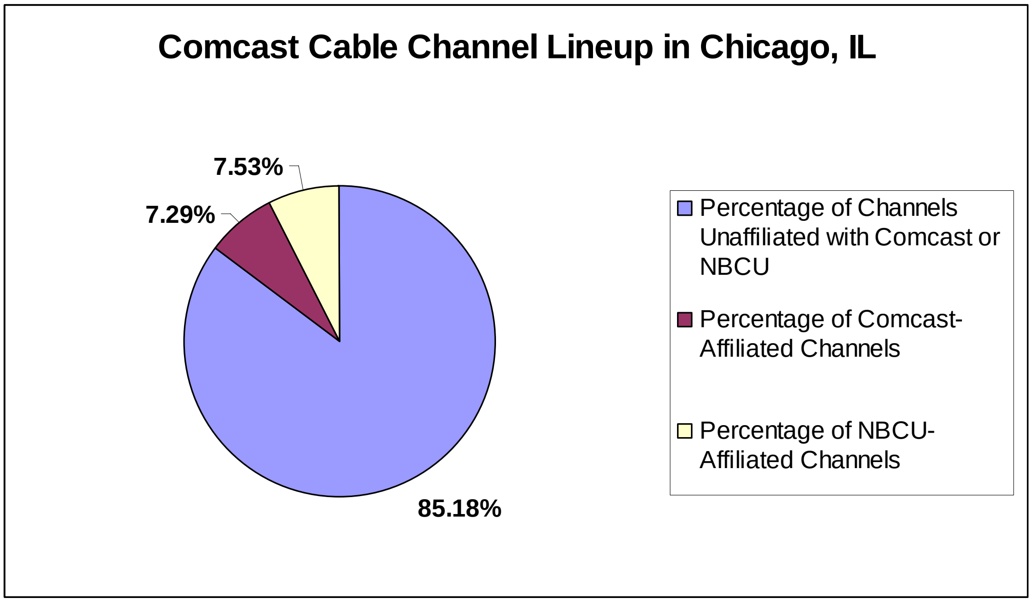
141 *See In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits*, Second Report and Order, 8 FCC Rcd 8565 ¶ 84 n.107 (1993) ("The channel occupancy limits need not necessarily apply to the first 75 channels. . . . On a system with 100 channels at least 45 channels would still be required to be devoted to the carriage of unaffiliated programming services, however, these 45 channels could be any of the system's 100 channels."); *see also Adelphia Order* ¶ 36 & n.134. Although the D.C. Circuit reversed and remanded the Commission's channel occupancy rule eight years ago, and a decision about what to do on remand remains pending, the Commission continues to enforce the rule. *See Time Warner Entm't Co, L.P. v. FCC,* 240 F.3d 1126, 1139 (D.C. Cir. 2001) ("*Time Warner II*") (reversing and remanding the rule); *In the Matter of Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, Further Notice of Proposed Rulemaking, 16 FCC Rcd 17312 ¶ 83 (2001) (inviting comment on whether "the Commission may relax, exempt specific cable operators from, or even forego imposing, vertical limits if the Commission determines that such a course of action would be justified given the prevailing market conditions"); *Adelphia Order* ¶¶ 36-38 (noting that "Comcast would be expected to comply with any revised limits that the Commission may adopt in the pending rulemaking proceeding.").

142 For purposes of this analysis, "unaffiliated" channels are those in which neither Comcast nor NBCU holds an attributable interest.

143 *See supra* note 16.

144 In Project Cavalry, channels that are on the Expanded Basic tier (which Comcast generally refers to as "B2") are delivered only in digital formats, allowing the recapture of (typically) several hundred megahertz of

more than 45 unaffiliated channels. Indeed, after the transaction, nearly six out of seven channels that Comcast carries will be unaffiliated with Comcast or the new NBCU, as the following graph illustrates:



VI. THE PROPOSED TRANSACTION WILL RESULT IN NO PUBLIC INTEREST HARMS.

The proposed transaction takes place against the backdrop of an extremely competitive and dynamic marketplace, and will not harm the public interest by diminishing competition in any relevant market. In particular, the transaction will neither materially increase horizontal concentration in any market nor create the ability or incentive for the combined firm to engage in vertical foreclosure – the two principal competitive concerns on which the Commission has focused in prior transactions. Nor will the transaction cause any harm to other cognizable public interests – most notably localism and diversity.

---

bandwidth that previously was used to deliver the channels in (less-efficient) analog format. The recaptured bandwidth can then be put to use to increase markedly the number of channels delivered in HD, to add more SD channels, to support more VOD, and to expand capacity for HSI.

A. Overview of Competitive Analysis

The Commission has previously observed that transactions in which one firm acquires an interest in another may potentially give rise to "concerns regarding 'horizontal' concentration and/or 'vertical' integration, depending on the lines of business engaged in by the two firms."[145]

As discussed below, the proposed transaction presents no "horizontal" competitive concerns: The competitive overlaps between Comcast's and NBCU's businesses are very limited, and the combined company will continue to face vigorous competition in each market in which the parties' activities arguably overlap.[146] Furthermore, the proposed transaction presents no cognizable threat of "vertical" anticompetitive effects. Such effects may arise when a transaction increases a vertically integrated firm's incentive or ability to raise its rivals' costs, either by withholding distribution from rivals in an upstream content market or by withholding content from rivals in a downstream distribution market.[147] As the Commission has recognized, both theories of vertical foreclosure require (1) that the combined company "possess market power," and (2) that the proposed "transaction increases the [parties'] incentive and ability to gain from withholding a given input," *i.e.*, either upstream content or downstream distribution.[148]

---

[145] *News Corp.-Hughes Order* ¶ 69. In this analysis, Applicants apply the framework developed by the Commission in prior merger transactions. The Applicants do not necessarily endorse or adopt all aspects of this framework, in particular with respect to certain market definitions and certain aspects of the competitive effects analysis. The Applicants note some (but not all) disagreements with the Commission's approach at various points in the following sections. The Commission need not address or resolve these disagreements in order to approve the transaction. To the contrary, if the Commission applies the same analytical framework developed in prior transactions, it should conclude that this transaction creates no risk of plausible public interest harms.

[146] *Id.* (explaining that transactions may present "horizontal" concerns where "they eliminate competition between . . . firms and increase concentration in the relevant markets").

[147] *See id.* ¶ 78; *see also Adelphia Order* ¶ 115.

[148] *News Corp.-Hughes Order* ¶ 85; *see also* Michael H. Riordan, *Competitive Effects of Vertical Integration*, *in* Handbook of Antitrust Economics 145, 147 (Paolo Buccirossi ed., 2008).

As discussed below, neither prerequisite is met in this instance. Comcast and others have documented at length in connection with the Commission's video competition inquiry the fact that the content and distribution markets implicated by this transaction are highly competitive and dynamic.[149] These markets will remain so following the transaction. With regard to video content, there are now literally hundreds of national cable programming networks and scores of regional networks that compete with each other and with other media to obtain license fees and advertiser revenues – and consumers' attention. With regard to distribution, there is intense competition among MVPDs. Consumers in every geographic area served by Comcast Cable can now choose from two ubiquitous national DBS MVPDs: DirecTV and Dish Network, which are now the second and third largest MVPDs in America, respectively.[150] Bolstered by robust HD offerings, DirecTV and Dish Network continue to add new subscribers at a rapid pace.[151] In addition, Verizon and AT&T, which (along with Google) are by far the largest communications and information companies in the United States,[152] have emerged as strong MVPD competitors.

---

149 *See generally In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542 (2009).

150 *Id.* ¶¶ 4, 5 (observing that, in addition to cable service, "almost all consumers are able to obtain programming through . . . at least two DBS providers," and that the "second and third largest MVPDs are DBS operators").

151 *See, e.g.*, Todd Spangler, *DirecTV Pads HD Capacity*, Multichannel News, Jan. 4, 2010 ("DirecTV got out in front of cable on high-definition TV – and it's looking to keep the lead."), *available at* http://www.multichannel.com/article/442196-DirecTV_Pads_HD_Capacity.php; Press Release, Dish Network, *Dish Network Introduces New National HD Channels* (May 8, 2009) (reporting that Dish Network is "fortifying its HD superiority and bringing its total national HD count to more than 140 channels"), *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=382837.

152 Verizon reported 2008 revenues of $97.4 billion and a market capitalization of $103.9 billion. *See* Verizon Communications Inc., Annual Report (Form 10-K), at 1, 18 (Feb. 24, 2009) (incorporating by reference Verizon Communications, 2008 Annual Report at 13 (2008)). AT&T reported 2008 revenues of $124.0 billion and a market capitalization of $198.5 billion. *See* AT&T Inc., Annual Report (Form 10-K), at 1, 12 (Feb 25, 2009) (incorporating by reference AT&T Inc., 2008 Annual Report at 22 (2008)). Google's 2008 revenues were $21.8 billion, but its market capitalization was $116.7 billion (and has increased significantly since then). *See* Google Inc., Annual Report (Form 10-K), at 1, 36 (Feb. 13, 2009). By contrast, Comcast had 2008 revenues of $34.3 billion and a market capitalization of $54.7 billion. *See* Comcast Corp., Annual Report (Form 10-K), at 21 (Feb. 20, 2009).

Along with other wireline overbuilders such as RCN and WideOpenWest, Verizon and AT&T have brought a fourth, and sometimes a fifth, MVPD choice to tens of millions of American households.[153] As the U.S. Court of Appeals for the D.C. Circuit recently found, competition among video providers is "ever increasing" and "[c]able operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992."[154] Moreover, as explained below, the transaction will not enhance the combined firm's incentives or ability to engage in vertical foreclosure. Accordingly, the proposed transaction will not harm the public interest by diminishing competition. Rather, like most vertical integration, the proposed transaction will lead to substantial benefits for consumers and competition, as explained in Section IV.A above.

Likewise, the transaction will not harm the public interest in localism and diversity. To the contrary, as explained in Section IV.A, the transaction will advance both localism and diversity.

---

[153] AT&T had two million U-verse TV subscribers in December 2009. See Press Release, AT&T Corp., *AT&T U-verse TV Marks 2 Million Customer Milestone* (Dec. 9, 2009), *available at* http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=30203&mapcode=. AT&T's U-verse network passed more than 20 million living units in October 2009. *See* Press Release, AT&T Corp., *U-verse Update: 3Q09*, available at http://www.att.com/Common/merger/files/pdf/3Q09_U-verseUpdate_10.22.pdf.

Verizon FiOS TV had 2.86 million subscribers, and FIOS TV was available to 11.7 million premises, as of Dec. 31, 2009. *See* Verizon, Verizon FiOS – Fact Sheet, *at* http://newscenter.verizon.com/kit/fios-symmetrical-internet-service/all-about-fios.html (last visited Jan. 26, 2010).

According to Pike & Fischer, "From 4Q08 through 2Q09, Verizon and AT&T have collectively netted the majority of new multichannel video subscriptions. . . . [T]he big telephone companies' entrance into the pay TV market appears to be having a dampening effect on customer loyalty for the more entrenched multichannel video service providers – particularly cable operators." Scott Sleek, *Telcos Double Share of U.S. Advanced Pay TV Households*, Pike & Fischer (Nov. 23, 2009).

[154] *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).

B. Relevant Markets

An important part of determining whether the proposed transaction would harm consumer welfare is to assess whether competition from other entities would be sufficient to protect consumers from any purported diminution of competition between Comcast and NBCU. The delineation of relevant markets provides a structure in which to make that assessment, and the Commission has typically commenced its analysis of the potential adverse competitive effects of prior transactions by defining the relevant market(s) in which the applicants operate.[155] Relevant markets are defined along two dimensions: the product market and the geographic market.[156] Assessing whether two goods or services should be included within the same relevant product or geographic market requires an appraisal of the extent to which buyers regard them as substitutes.[157]

In evaluating prior transactions, the Commission (relying upon antitrust precedent) has defined a relevant market "as a product or group of products and a geographic area in which the product or products are produced or sold such that a hypothetical profit-maximizing monopolist would impose at least a 'small but significant and nontransitory' increase in price, assuming the terms of sale of all other products are held constant."[158]

---

155 *News Corp.-Hughes Order* ¶ 50; *AT&T-Comcast Order* ¶ 42; *Adelphia Order* ¶ 59-60; s*ee also In the Matter of Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee),* Hearing Designation Order, 17 FCC Rcd 20559 ¶ 106 (2002) ("*EchoStar-DirecTV HDO*"). It is important to recognize that market definition is only a means to an end, not an end in itself. This is important because difficulties in market definition can sometimes be an obstacle to sound analysis.

156 *News Corp.-Hughes Order* ¶ 50; *Adelphia Order* ¶ 59; *EchoStar-DirecTV HDO* ¶ 106.

157 *News Corp.-Hughes Order* ¶ 50; *Adelphia Order* ¶ 59; *EchoStar-DirecTV HDO* ¶ 106.

158 *News Corp.-Hughes Order* ¶ 50 (citing *Horizontal Merger Guidelines*, § 1.0).

Under this approach, which is generally consistent with the approach that the federal antitrust agencies apply in evaluating mergers,[159] transactions may raise concerns "when they reduce the availability of substitute choices (*i.e.*, increase market concentration) to the point that the acquiring firm has a significant incentive and ability to engage in anticompetitive actions such as raising prices or reducing output."[160]

In analyzing prior transactions involving MVPDs, the Commission has generally examined two separate but related product markets: (1) the distribution of programming to consumers ("the distribution market") and (2) the acquisition of network programming ("the programming market").[161] The Commission has also examined (in lesser detail) the markets for (3) Internet access and (4) Internet content.[162] The Applicants' analysis of the proposed transaction follows these precedents.[163]

---

159 *See generally Horizontal Merger Guidelines* § 1.0.

160 *Adelphia Order* ¶ 59; *EchoStar-DirecTV HDO* ¶ 97.

161 *See, e.g.*, *News Corp.-Hughes Order* ¶ 51; *Adelphia Order* ¶ 60.

162 *AT&T-Comcast Order* ¶¶ 128, 141.

163 In addition to the markets that the Commission has examined, the Applicants also sell advertising in both national and local geographic markets. In evaluating past transactions involving MVPDs, the Commission has not attempted to define or analyze these markets. Instead, the Commission has focused on post-transaction conduct that could lead MVPDs to pay higher prices for content, which could in turn lead to higher prices for MVPD services, "thus injuring consumers." *News Corp.-Hughes Order* ¶ 80; *see also id.* ¶¶ 4, 77, 160, 209. Consistent with the approach that the Commission has adopted in evaluating prior transactions, this statement will not address advertising markets in any depth.

The proposed transaction will not, in any event, harm competition in any national or local advertising market. The Applicants are responsible for a very small fraction of national advertising, under any plausible market definition. While the Applicants arguably compete in certain local advertising markets (geographic markets in which NBCU owns and operates an O&O station and Comcast owns a cable system or operates a regional sports networks), the Applicants' services are not particularly close substitutes, and advertisers in each relevant area have a range of alternatives, including at least seven non-NBCU broadcast stations, as well as radio, newspapers, direct advertising and other media.

1. MVPD Services

a. <u>Product Market</u>

MVPDs include cable operators, DBS providers, and wireline competitors, such as telephone companies (*e.g.*, Verizon and AT&T) and "overbuilders" (*e.g.*, SureWest, RCN, and WideOpenWest). MVPDs acquire programming and offer it to consumers, deriving revenues from subscription fees and often from the sale of advertising time (to the extent they obtain the right to sell it through their carriage agreements).

The Commission has repeatedly found that the relevant product market in which to analyze competition faced by cable operators includes services offered by all MVPDs.[164] This approach is consistent with the approach to product market definition adopted by the federal antitrust agencies.[165] The Commission has expressly rejected arguments that DBS and cable are not part of the same product market.[166] There is no reason for the Commission to adopt a narrower product market definition in this case. It should be noted that the Commission has also concluded that MVPD services and local broadcast television services are *not* part of the same product market. The Commission has reasoned that local broadcast television is not sufficiently substitutable with the services provided by MVPDs to constrain attempted price increases.

---

164 *See*, *e.g.*, *Adelphia Order* ¶ 63; *AT&T-Comcast Order* ¶ 89; *AOL-Time Warner Order* ¶¶ 244-45; *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160 ¶ 21 (1999) ("*AT&T-TCI Order*").

165 *See, e.g.*, Compl. ¶¶ 24-27, *United States v. EchoStar Commc'ns Corp.*, No. 1:02CV02138 (D.D.C. filed Oct. 31, 2002) ("*DBS Complaint*").

166 *Adelphia Order* ¶¶ 62-63; *News Corp.-Hughes Order* ¶¶ 52-53; *Comcast-AT&T Order* ¶ 33; *AOL-Time Warner Order* ¶ 244.

Accordingly, by the Commission's reasoning, local broadcast television is not in the same relevant product market as MVPD services.[167]

b. Geographic Market

In prior transactions, the Commission has concluded that the relevant geographic market for MVPD services is local (typically the franchise area of the local cable operator). The Commission has reasoned that consumers select an MVPD provider based upon the MVPD choices available to them at their residences; consumers "are unlikely to change residences to avoid a small but significant increase in the price of MVPD service."[168] Moreover, to simplify the analysis, the Commission has aggregated consumers that face the same choice in MVPDs into larger relevant geographic markets.[169] Again, there is no reason for the Commission to diverge from its prior approach in this case.

2. Video Programming

Cable programming network rights and broadcast television retransmission rights are licensed by content owners to MVPDs. Companies that own cable or broadcast programming networks both produce their own programming and acquire programming produced by others. These companies "package and sell this programming as a network or networks to MVPDs for distribution to consumers."[170] Companies that own broadcast networks distribute their

---

167 *News Corp.-Hughes Order* ¶ 75; *see also In the Matter of Competition, Rate Deregulation, and the Commission's Policies Relating to the Provision of Cable Television Services*, Report, 5 FCC Rcd 4962 ¶ 69 (1990); *EchoStar-DirecTV HDO* ¶¶ 109-115. This conclusion is consistent with the positions that the federal antitrust agencies have adopted. *See, e.g.*, *DBS Complaint* ¶ 28.

168 *Adelphia Order* ¶ 64*; see News Corp.-Hughes Order* ¶ 62; *AT&T-Comcast Order* ¶ 90; *EchoStar-DirecTV HDO* ¶ 119.

169 *Adelphia Order* ¶ 64; *News Corp.-Hughes Order* ¶ 62.

170 *News Corp.-Hughes Order* ¶ 54; *see Adelphia Order* ¶ 61; *EchoStar-DirecTV HDO* ¶ 248; *AT&T-Comcast Order* ¶ 34; *see also In the Matter of the Commission's Cable Horizontal and Vertical Ownership Limits,* Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 9374 ¶¶ 65-66 (2005).

programming through O&O or affiliated television broadcast stations: "Television broadcast stations affiliated with broadcast networks combine network programming with their own locally originated programming and/or programming secured from other sources to provide over-the-air service."[171] Television broadcast stations redistribute their programming via cable or DBS pursuant to an election that each station makes of either voluntary commercial negotiations ("retransmission consent") or mandatory carriage ("must-carry").[172]

a. Product Market

The video programming market is highly dynamic and diverse and includes a wide array of national, regional, and local content. This market has experienced dramatic growth, and MVPDs today carry hundreds of networks that did not exist a decade ago.[173]

In prior transactions, the Commission has found that markets that include video programming are "differentiated product markets."[174] According to the Commission, the programming of different networks "differs significantly in terms of characteristics, focus, and subject matter."[175] This does not mean, however, that it is necessary or appropriate to define a multiplicity of video programming "markets."[176] To the contrary, video programming offerings

---

171 *News Corp.-Hughes Order* ¶ 54; *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting*, Further Notice of Proposed Rulemaking, 10 FCC Rcd 3524 ¶ 48 (1995).

172 *News Corp.-Hughes Order* ¶ 54.

173 For instance, there were 565 national programming networks in 2006, as compared to only 68 in 1992. *See* H.R. Rep. No. 102-628 at 41 (1992); Press Release, FCC, *FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report*, at 4 (Nov. 27, 2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278454A1.pdf.

174 *News Corp.-Hughes Order* ¶ 59; *Adelphia Order* ¶ 66. According to the Commission, "[d]ifferentiated products are products whose characteristics differ and which are viewed as imperfect substitutes by consumers." *News Corp.-Hughes Order* ¶ 59 n.206 (citing Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* 281 (2d ed. 1991)).

175 *Adelphia Order* ¶ 66; *News Corp.-Hughes Order* ¶ 59; *EchoStar-DirecTV HDO* ¶ 250.

176 *Adelphia Order* ¶ 67; *News Corp.-Hughes Order* ¶ 60.

may compete with each other for MVPD carriage as imperfect substitutes even if they feature highly different genres or subject matters.

In recognition of these characteristics of the video programming markets, the Commission concluded in prior transactions that it was not necessary to define all the possible relevant product markets for video programming networks.[177] The Commission adopted its most narrow and specific video programming market definitions in the *News Corp.-Hughes Order*. There, the Commission separated the programming offered by News Corp. into three categories: "(1) national and non-sports regional cable programming networks; (2) regional sports cable networks; and (3) local broadcast television programming."[178] Following this precedent, in the Adelphia transaction, the Commission evaluated two video programming markets: "(1) national cable programming networks and (2) regional cable networks, particularly regional sports networks."[179]

There is no need for the Commission to define video programming markets any differently or more narrowly in connection with this transaction. As explained below, however, even if the Commission were to take a narrower approach to video programming market definition, the transaction would raise no competitive concerns.

b. Geographic Market

In prior transactions, the Commission concluded that it was "reasonable to approximate the relevant geographic market for video programming by looking to the area in which the

---

177 *Adelphia Order* ¶ 67; *News Corp.-Hughes Order* ¶ 60.

178 *News Corp.-Hughes Order* ¶ 60 (internal citations omitted).

179 *Adelphia Order* ¶ 67.

program owner is licensing the programming."[180] Under this approach, the relevant geographic market for national programming networks is at least national in scope, as these networks are generally licensed to MVPDs nationwide.

Under the Commission's approach, the relevant geographic market for RSNs and other regional networks is regional.[181] Similarly, in the case of retransmission consent rights for local broadcast television programming, the Commission concluded that it is reasonable to use DMAs to approximate the relevant geographic market for each individual broadcast station.[182] According to the Commission, contracts between broadcast stations and the distributors of programming, as well as FCC regulations and broadcasting technology, limit the extent to which broadcast station signals can be distributed outside of the assigned market area.[183]

There is certainly no reason for the Commission to adopt narrower geographic market definitions in this matter. Under any plausible geographic market definition, there is no reason to conclude that the transaction raises competitive concerns.

3. Internet Services – Product and Geographic Markets

As noted above, Comcast offers a residential HSI service, which serves approximately 15.7 million customers. In earlier transactions, the Commission concluded that residential high-speed Internet services constitute a relevant product market.[184] The Commission concluded that

---

[180] *Adelphia Order* ¶ 68; *see News Corp.-Hughes Order* ¶ 64.

[181] *Adelphia Order* ¶ 68; *AT&T-Comcast Order* ¶¶ 59-60; *News Corp.-Hughes Order* ¶ 66.

[182] *News Corp.-Hughes Order* ¶ 201.

[183] Broadcasters have the right to prevent cable operators from carrying certain programming from the signals of broadcast stations from other markets. *See* 47 C.F.R. §§76.92-76.95 (network non-duplication rule); 47 C.F.R. §§ 76.101-76.110 (syndicated exclusivity rule).

[184] *AOL-Time Warner Order* ¶ 56; *AT&T-Comcast Order* ¶ 128. The Commission has found that the market for high-speed Internet services includes, among other things, Internet access services provided "over coaxial cable

the relevant geographic market for high-speed Internet services is local – just as with MVPD services. The Commission reasoned that a "consumer's choice of broadband Internet access provider is limited to those companies that offer high-speed Internet access services in his or her area."[185] There is no reason for the Commission to define a narrower product or geographic market in this transaction.

4. Internet Content – Product and Geographic Markets

The Commission has never attempted to define a market or markets for Internet content with any precision.[186] Under any plausible market definition, however, an overall market for Internet content would be highly fragmented among numerous content providers, dynamic, and at least national in geographic scope.

Any relevant market(s) for online video distribution would share many characteristics with the market(s) for traditional video programming. Should the Commission attempt to define such market(s), it would be sensible to consider two distinct but related product markets: (1) an upstream market in which video content is licensed to online video distributors, and (2) a downstream market in which these distributors make that video content available to consumers online, whether via streams or downloads. Consumers would access these distributors' platforms via high-speed Internet service providers (a third market discussed in the preceding section).

The Applicants submit that the Commission need not attempt to define any formal market or markets for Internet content. Nonetheless, should the Commission choose to do so in this

---

in the form of cable modem service offered by cable operators and over copper wires in the form of digital subscriber line ("DSL") services by local exchange carriers." *AT&T-Comcast Order* ¶ 128.

185 *AOL-Time Warner Order* ¶ 74; *AT&T-Comcast Order* ¶ 128.

186 The most extensive discussion of the Internet content market in the context of merger may be found in *AT&T-Comcast Order* ¶¶ 140-45.

case, as explained in Section VI.C.2 below, there is no plausible basis to conclude that the combination of Comcast and NBCU will appreciably increase concentration in the Internet marketplace.

C. The Proposed Transaction Presents No "Horizontal" Concerns.

As discussed below, the proposed transaction presents no "horizontal" competitive concerns. Horizontal concerns, as a general matter, may arise in one of two ways. A merger may diminish competition by increasing the likelihood that firms selling in the relevant market engage in "coordinated interaction" that harms consumers.[187] A merger may also diminish competition, "even if it does not lead to increased likelihood of successful coordinated interaction, because merging firms may find it profitable to alter their behavior unilaterally following the acquisition by elevating price and reducing output"[188] (so-called "unilateral effects"). The proposed transaction will not increase the likelihood of coordinated or unilateral harms. The competitive overlaps between Comcast's and NBCU's businesses are extremely limited, and the combined company will continue to face vigorous competition in each market in which the parties' activities arguably overlap.

In discussing these markets, Applicants supply estimates of the Herfindahl-Hirschman Index ("HHI"), a measure used by the Horizontal Merger Guidelines to assess concentration levels. The Horizontal Merger Guidelines broadly characterize markets with HHIs below 1,000 as unconcentrated, markets with HHIs between 1,000 and 1,800 as moderately concentrated, and markets with HHIs above 1,800 as highly concentrated. As a threshold test, mergers are unlikely to have adverse competitive effects and ordinarily require no further analysis if they (1) result in

---

187 *See Horizontal Merger Guidelines* § 2.1.

188 *Id.* § 2.2.

unconcentrated markets; (2) produce an increase in the HHI of less than 100 points in moderately concentrated markets; or (3) produce an increase in the HHI of less than 50 points in a highly concentrated market.[189] Transactions falling outside these safe harbors are not necessarily anticompetitive, but may require further analysis to assess their pro- or anticompetitive effects.[190]

1. Limited Cable Network Overlap

The proposed transaction will not materially increase concentration in the market for video programming supplied to MVPDs under any plausible market definition.

If the relevant product market comprises all national cable network programming, the proposed transaction will not result in a significant increase in concentration, given Comcast's limited national programming assets.[191] Comcast's national cable networks account in the aggregate for only approximately three percent of overall cable network advertising and affiliate

---

189 *See id.* §§ 1.5, 1.51.

190 *See, e.g.*, *id.* § 1.5. It bears emphasis that HHIs are only a threshold measure for eliminating potential areas of concern. A transaction is not necessarily anticompetitive because it falls outside the HHI safe harbors described above; it may require additional analysis. *See, e.g.*, *News Corp.-Hughes Order* ¶¶ 276, 282 (concluding that "the MVPD market has been and will remain fiercely competitive" notwithstanding EchoStar's HHI-based contentions). Additionally, the federal antitrust agencies have routinely approved mergers that significantly exceed the HHI thresholds described above – leading many to propose revisions to or de-emphasis of these standards. *See* Comments of the ABA Section of Antitrust Law Regarding the Federal Trade Commission and Department of Justice Horizontal Merger Review Project, Project No. P092900, at 1 (Nov. 9, 2009), *available at* http://www.ftc.gov/os/comments/horizontalmergerguides/545095-00010.pdf (recommending that the HHI thresholds be increased to reflect more accurately the actual practice of the federal antitrust agencies, which "rarely challenge transactions where HHI levels are below 2500,"); *id.* at 18 (recommending that the Guidelines "clarify that . . . HHI calculations serve primarily as a screening tool for the agency at the outset of a merger inquiry, and that they are used as one indicator to the agency that a merger may warrant more in-depth investigation, but are not, standing alone, a sufficient demonstration of the competitive effects of a potential transaction to justify challenging a transaction"). The antitrust authorities are currently evaluating whether to change the role of HHIs in the Horizontal Merger Guidelines. *See* Federal Trade Commission & U.S. Department of Justice, *Horizontal Merger Guidelines: Questions for Public Comment* (Sept. 22, 2009), *available at* http://www.ftc.gov/bc/workshops/hmg/hmg-questions.pdf.

191 Even if broadcast networks were included in the relevant market definition, this would not affect the horizontal analysis of the proposed transaction. As Comcast does not own any broadcast networks, the proposed transaction will not increase concentration in markets in which broadcast networks are licensed.

revenues,[192] and none of Comcast's national cable networks ranks among the top 30 national cable networks – either by viewership or by total revenue.[193] As a result, the proposed transaction will result in only a modest increase in NBCU's share of overall national cable network advertising and affiliate revenues – from approximately nine percent to 12 percent – and leave the contours of the competitive landscape unchanged.[194] As shown in the chart below, the national cable network market is populated by a large number of dispersed competitors. Following the proposed transaction, the company will rank as the fourth largest owner of national cable networks, behind Disney/ABC, Time Warner, and Viacom – the same rank that NBCU has today.

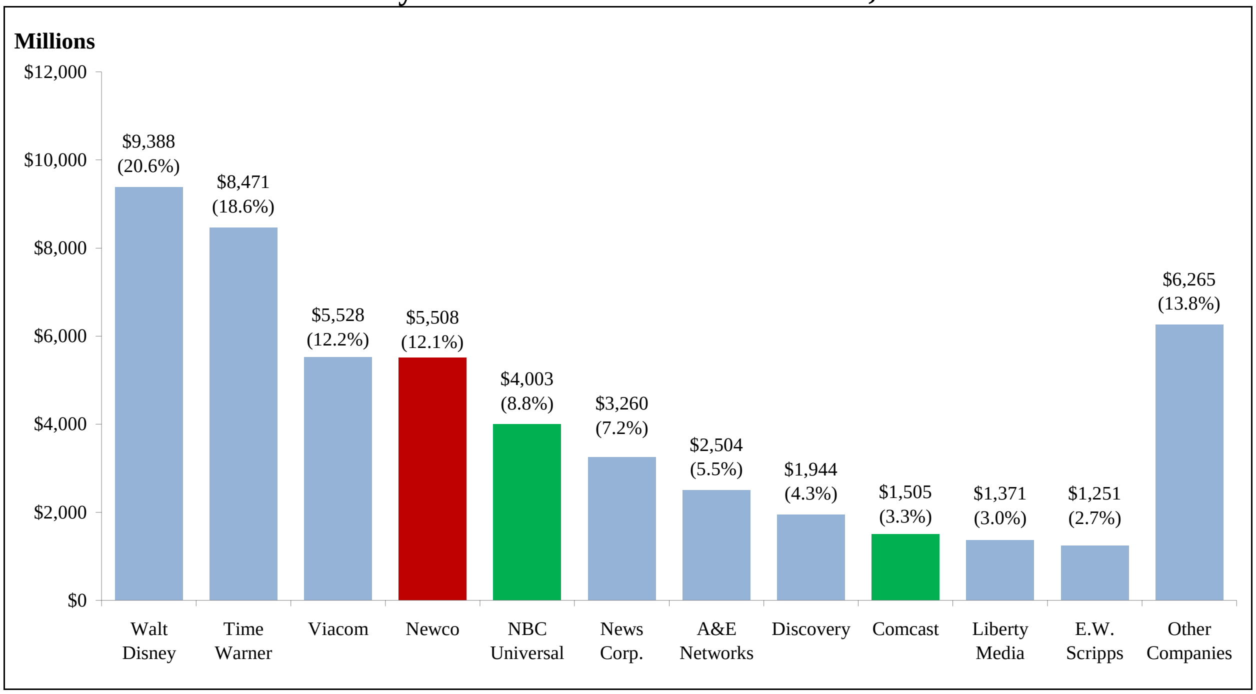
---

192 SNL Kagan Cable Network Ownership Data, Economics of Basic Cable Networks, 2009 Edition.

193 *Id.*

194 *Id.*

Top 10 National Cable Owners by Majority and Wholly-Owned Network Total Revenues, 2009



Notes: Includes all basic cable and pay networks listed by Kagan. "Other Companies" includes networks belonging to owners not in the Top 10 and networks with no clear majority owner. Total revenue equals net advertising plus affiliate fee revenue. Data excludes all RSNs.
Sources: Estimates by SNL Kagan; SNL Kagan Cable Network Ownership Data, Economics of Basic Cable Networks, 2009 Edition.

The post-transaction HHI in the market for national cable network programming will be only 1202, and the transaction will produce an increase in HHI of only 58.[195] The transaction is therefore unlikely to have adverse competitive effects.[196]

---

195 Even if the assumptions on which these share calculations are based are varied, the HHI results change very little, in all instances falling well within the Horizontal Merger Guidelines' safe-harbor provisions. For instance, substituting the Applicants' internal revenue data for SNL Kagan's estimates of their revenues yields a post-transaction HHI of 1203 with an increase of 49. Similarly, if each network's revenues were allocated among the network's owners by their percent ownership, the post-transaction HHI would be 1190 with an increase of 66.

196 *Horizontal Merger Guidelines* § 1.51(b) ("Mergers producing an increase in the HHI of less than 100 points in moderately concentrated markets post-merger are unlikely to have adverse competitive consequences and ordinarily require no further analysis.").

2. Limited Internet content overlap

a. <u>Video Content</u>

The transaction will also not result in any meaningful increase in horizontal concentration in the market for Internet content. For simplicity, the Applicants' Internet content businesses can be divided into three categories:

- Joint Venture ("JV") Internet Products: Fandango, DailyCandy, iVillage and sites affiliated with the parties' broadcast and cable networks;
- Comcast Internet Products: Internet products that Comcast will *not* contribute to the joint venture, namely, Comcast.net, Fancast.com, and Fancast Xfinity TV; and
- Minority Investments: various minority and non-controlling investments including a 32 percent interest in Hulu.[197]

If the Applicants' Internet products are deemed to compete with one another in a relevant market encompassing all Internet content, the proposed transaction would not result in a significant increase in horizontal concentration. The products above account for only a minimal portion of Internet content and Internet advertising revenues: 0.3 percent of total daily unique pages viewed and only 1.6 percent of total Internet advertising revenue.[198]

Likewise, the proposed transaction will not materially increase concentration in a hypothetical market for online video distribution. As is shown on the chart below, any such "online video" market is highly fragmented among numerous online video distributors and will remain so following the proposed transaction. Indeed, to the extent that any one company maintains a substantial advantage in attracting online video viewers, that company is Google –

---

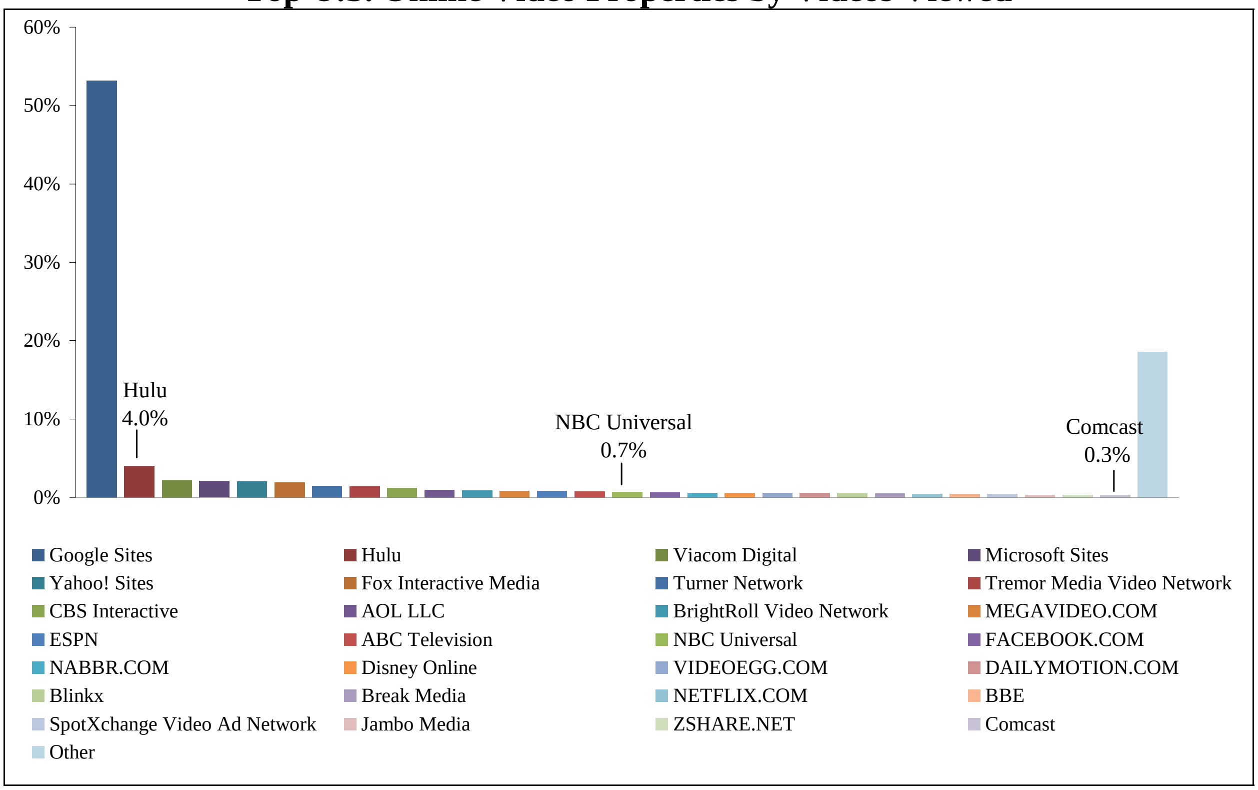
[197] Other minority investments include a 25 percent interest in weather.com and a 50 percent non-managing interest in msnbc.com.

[198] *See* comScore, Media Metrix Report, November 2009, *available at* http://www.comscore.com/; comScore, Ad Metrix report, October 2009, *available at* http://www.comscore.com/.

not Comcast or NBCU.[199] Moreover, the online video marketplace is highly dynamic, and market shares, however measured, are likely to change substantially, both as new competitors emerge and as existing competitors expand and improve their offerings.

Comcast's online video properties account for only 0.3 percent of videos viewed online; online video properties controlled by NBCU account for 0.7 percent of videos viewed; and Hulu accounts for approximately 4.0 percent of videos viewed.[200]

Top U.S. Online Video Properties by Videos Viewed



*Rankings based on video content sites. Online video includes both streaming and progressive download video.
Source: comScore, Media Metrix Report, November 2009. These estimates exclude adult video content.

---

[199] Nikesh Arora, Google's President of Global Sales, recently commented on the market leadership of Google's YouTube site and notes that the emergence of other successful online video distributors will produce benefits: "I don't think YouTube is going to be the only player in the online video space, and you already have a bunch of other players. So if you can have a few strong players in the market and you can see multiple instances of success, it actually will encourage more advertisers to play in that space and it probably will encourage more online content out there, faster." *Views on Comcast: NBC Universal from Media Execs*, Reuters, Dec. 4, 2009, *available at* http://www.reuters.com/article/idUSTRE5B25ZV20091204.

[200] *See* comScore, Media Metrix Report, November 2009, *available at* http://www.comscore.com/. All references to online video in this section exclude adult video.

Hulu's percentage should not – under applicable antitrust principles – be attributed to the combined company, since the new firm will hold only a minority, non-controlling interest in Hulu. Nevertheless, even if 100 percent of videos viewed on any online property in which either Comcast or NBCU holds an equity interest (controlling or otherwise) were attributed to the combined company, the company would account for just over 5.0 percent of the market for online video distribution.[201] Moreover, the combined company would continue to face competition in this market from numerous websites, most notably YouTube and other sites controlled by Google, which account for nearly 55 percent of online videos viewed.[202]

Even if the relevant market were more narrowly defined to include only websites that stream or download "professional" video content,[203] the proposed transaction would not result in a significant increase in concentration.

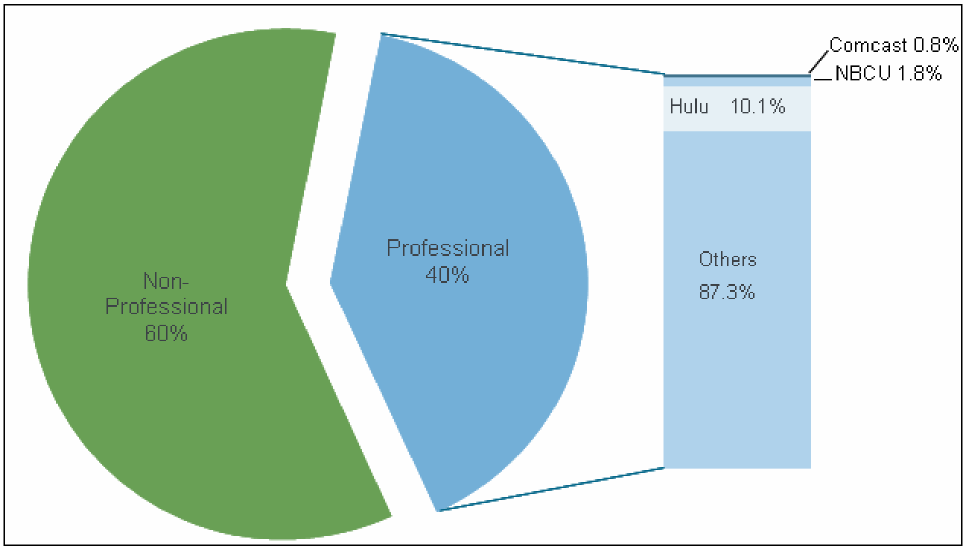
---

[201] This figure substantially overstates the combined company's market share, insofar as the combined company will hold only a non-controlling minority interest in Hulu. Hulu is and will remain operated by an independent management team. The combined company's governance rights with respect to Hulu, like NBCU's governance rights today, will be limited. Hulu now sells advertising (its only revenue source) in competition with its media member owners (NBCU, Disney, and Fox). Following the proposed transaction, Hulu will continue to sell advertising in competition with the combined company and with a large number of other online video sites.

[202] *See* comScore, Media Metrix Report, November 2009, *available at* http://www.comscore.com/.

[203] "Professional" video is "[c]ontent that is usually created or produced by media and entertainment companies using professional-grade equipment, talent, and production crews that hold or maintain the rights for distribution and syndication." Internet Advertising Bureau, IAB Long Form Video Overview, at 6, *available at* http://www.iab.net/media/file/long-form-video-final.pdf.

Shares of All Videos Viewed and of Professional Videos Viewed



*Rankings based on video content sites. Online video includes both streaming and progressive download video.
Source: comScore, Media Metrix Report, November 2009. These estimates exclude adult video content.

As shown on the chart above, Comcast's properties account for less than 1 percent, NBCU's properties for less than 2 percent, and Hulu for approximately 10 percent of such a market by number of "professional" videos viewed.[204] Post-transaction, the parties' competitors would continue to account for nearly ninety percent of professional video content viewed online. These competitors include Veoh.com, Sling.com, and CBS's TV.com. The transaction would produce an HHI increase of only 2.9 in a market for online distribution of "professional" video content (19.2 if Hulu is included among NBCU's properties) – in either instance well within the Horizontal Merger Guidelines' safe harbors for concluding that a transaction is unlikely to have adverse competitive effects and requires no further analysis. Even these HHI measures overstate the effects of the transaction; as noted by Comcast's Chief Operating Officer Stephen B. Burke

---

[204] *See* comScore, Media Metrix Report, November 2009, *available at* http://www.comscore.com/.

on the day the proposed transaction was announced, Comcast's TV Everywhere online platform and Hulu are more complementary than competitive services.[205]

Furthermore, defining a relevant market and determining concentration levels are simply initial steps in assessing the likelihood of horizontal anticompetitive effects.[206] Other factors are also of critical concern, including "whether entry would be timely, likely and sufficient either to deter or to counteract the competitive effects of concern."[207] Here, consideration of these factors reinforces the conclusion that the proposed transaction will not lead to any horizontal anticompetitive effects in a hypothetical market for online distribution of "professional" video content. No significant barriers prevent other entrants – especially content providers, MVPDs, and websites now distributing predominantly user-generated video content – from developing and offering similar services. Several third parties – including Akamai Technologies, Limelight Networks, and AT&T – now offer the technological infrastructure required to distribute video over the Internet.[208] Indeed, Hulu itself relies on third parties for key components of its own

---

[205] "Right now, NBC Universal is distributing a lot of their broadcast content on Hulu, and they have been quite careful not to put too much of their paid-for-cable content out for free over the Internet. We think both those strategies are smart and appropriate – not that they asked us – and we would see after the deal closing, lots of broadcast content going to Hulu and being available for free, and cable content that cable customers pay for, that cable companies and satellite companies and telcos pay for, being on TV Everywhere. So really I think in a way Hulu and TV Everywhere are complementary products, and I think right now, the way NBC Universal are managing those two ways of distributing are very similar to the way we would want to do it when the two companies come together." Comcast Investor Call Transcript, at 21 (Dec. 3, 2009), *available at* http://www.nbcutransaction.com/pdfs/Comcast_Transcript%2012.3.09.pdf.

[206] *See Horizontal Merger Guidelines* § 0.2.

[207] *Id.*

[208] *See, e.g.*, John Dobosz, *Shining a Light on Content*, Forbes, Sept. 7, 2009, *available at* http://www.forbes.com/forbes/2009/0907/makers-breakers-limelight-networks-shining-light-on-content.html.

technological infrastructure, including Akamai, which manages Hulu's content delivery networks, and Adobe Systems, which provides Hulu's video player platform.[209]

Availability of professional video content for online distribution likewise does not constitute a barrier that places new entrants at a disadvantage relative to incumbent online video distributors. Several online video distributors have reached agreements to license broadcast programming content and library content for online distribution.[210] Netflix, for instance, recently announced that it had reached agreement with Disney-ABC Television Group to make several ABC primetime series – including the first five seasons of *Lost* – available over the video-rental company's Internet-streaming site.[211] Netflix previously announced similar agreements with CBS, Starz Entertainment, MTV Networks, Showtime Networks, Discovery Communications and A&E.[212] Other online video distributors, such Veoh and Google, have reached similar deals to make broadcast and library content available online.[213] There is no reason to believe that new

---

[209] *See generally* Hulu, Technical Issues, *at* http://www.hulu.com/support/technical_faq (last visited Jan. 26, 2010); Jan Ozer, *Special Delivery: High-Def Video*, Streamingmedia.com, Feb. 15, 2008, *at* http://www.streamingmedia.com/article.asp?id=10114&page=2&c=31.

[210] As discussed below, *see infra* note 214 and accompanying text, online video distributors have not reached similar agreements to distribute premium video content. Concerns over whether online advertising revenues can support the creative infrastructure needed to produce premium video content have made producers of professional video content reluctant to make available for online distribution premium video content that they make available to subscribers of MVPD service. Content producers' reluctance to license premium video content for online distribution, however, affects new entrants and incumbent video distributors alike, and does not place the former at a disadvantage to the latter.

[211] *See* Rory Maher, *Netflix Cuts Deal With ABC To Stream 'Lost', 'Grey's Anatomy,'* The Business Insider, Aug. 3, 2009, *available at* http://www.businessinsider.com/netflix-inks-deal-with-disney-abc-to-stream-popular-tv-shows-2009-8.

[212] Todd Spangler, *Disney, CBS May Bite On Apple TV Service: Reports*, Multichannel News, Dec. 22, 2009, *available at* http://www.multichannel.com/article/441451-Disney_CBS_May_Bite_On_Apple_TV_Service_Reports.php.

[213] *See, e.g.*, Todd Spangler, *Cutting the Box Open*, Multichannel News, Jan. 13, 2008 (noting that Viacom reached an agreement with Veoh to distribute certain programming online), *available at* http://www.multichannel.com/article/89639-Cutting_the_Box_Open.php; Todd Spangler, *ABC, ESPN Syndicate Video To Veoh*, Multichannel News, June 23, 2008, *available at* http://www.multichannel.com/article/133743-ABC_ESPN_Syndicate_Video_To_Veoh.php; Alex Weprin, *Disney-ABC, ESPN Ink Deal With YouTube*,

entrants will be unable to negotiate similar agreements and provide offerings competitive with those of incumbent online video distributors.

b. Online and MVPD Video Distribution

In addition, there is no basis to conclude that the proposed transaction will increase concentration in the future by curtailing "potential competition" between NBCU's online video distribution business and Comcast's MVPD business. Currently, online video does not compete directly with MVPD service. The video content that online distributors now provide is far more limited than the video content that Comcast Cable and other MVPDs provide to their subscribers.[214] As a result, few consumers regard online video as a close substitute for MVPD service, and would therefore consider "cutting the cord."[215] Indeed, online video distribution is presently incremental and complementary to Comcast's cable business. Many who view television programs online do so to catch-up on missed episodes or to discover and sample new

---

Broadcasting & Cable, Mar. 30, 2009, *available at* http://www.broadcastingcable.com/article/190938-Disney_ABC_ESPN_Ink_Deal_With_YouTube.php.

214 Most online video distributors rely on a free, advertising-supported business model; moreover, video content, when shown online, includes fewer minutes of advertising than when the same video content is shown on over-the-air broadcast television or on an MVPD service. Will Richmond, *Online Video Creates New Complexities for TV Executives*, Online Media Daily, Oct. 6, 2009, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=114918. As a result, when a program is shown online, the program producer generates only a fraction of the revenue per viewer per program than when the same program is shown over-the-air or on an MVPD service. *See id.* (estimating that, when a program is shown online, broadcast networks generate only 20-25 percent of the revenue per viewer per program as they do when the same program is viewed over-the-air). Producers of cable network television, whose business models rely on advertising revenues and affiliate fees paid by MVPDs, have been understandably reluctant to make their programs available for free online, lest they jeopardize these sources of revenue. *See id.* (noting that MVPD subscribers are unwilling to pay higher bills to pay for content that is available for free online).

215 A survey of 1,250 households nationwide found that only three percent of all adults online strongly agreed that they would consider disconnecting their MVPD service to watch video online, down from four percent of adults online who responded to a similar survey the prior year. *See* Press Release, Leichtman Research Group, *Online Video Usage Continues to Grow* (Feb. 23, 2009), *available at* http://www.leichtmanresearch.com/press/022309release.html; *see also Web Play: Why Cable's Not Running from Online Video*, CableFax Daily, Mar. 2, 2009 (quoting Sanford Bernstein analyst Craig Moffett as saying "[v]ideo cord cutting . . . remains the province of urban myth"), *at* http://www.cablefax.com/cfp/cfax/ops/34306.html.

fare that is also available through their cable service.[216] According to a December 2009 Nielsen report, television viewing remained at a seasonal all-time high (with the average television viewer watching more than 140 hours of television per month), even as online video viewing grew (with the average online video viewer watching 3.5 hours of online video per month).[217] Given these facts, to adopt a market definition that encompasses both Comcast's MVPD business and NBCU's online video distribution assets would be inconsistent with, among other things, the Commission's recognition that cable distribution and over-the-air broadcast distribution are in separate product markets.[218]

It would also be inappropriate for the Commission to impose any conditions on the transaction based on the possibility that online video distributors might one day emerge as direct competitors to Comcast's terrestrial cable business.[219] *First*, this possibility is entirely speculative. Online video and MVPD service are at present complementary, not competitive.

---

216 *See Web Play: Why Cable's Not Running from Online Video*, CableFax Daily, Mar. 2, 2009 (reporting that "TV viewing continues to rise in tandem with Internet video viewing"), *at* http://www.cablefax.com/cfp/cfax/ops/34306.html; Richmond, *supra* note 214 (reporting that "Hulu and broadcast networks' own sites have become popular destinations for viewers looking to catch up on missed episodes, as well as easily sample new programs and browse older fare").

217 *See* The Nielsen Company, *Television, Internet, and Mobile Usage in the U.S.: A2/M2 Three Screen Report* (Dec. 18, 2009).

218 *See News Corp.-Hughes Order* ¶ 75 (citing *In the Matter of Competition, Rate Deregulation, and the Commission's Policies Relating to the Provision of Cable Television Services*, 5 FCC Rcd 4962 ¶ 69 (1990)); *see also In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 24 FCC Rcd 259 App. B ¶ 1 n.20 (2009) (finding that the MVPD product market consists of cable, cable overbuilders, and direct broadcast satellite, but not over-the-air broadcast). The Commission and the federal antitrust agencies have based their determination that cable distribution and over-the-air broadcast distribution are in separate product markets on their recognition that "[s]tandard over-the-air broadcast television does not include the variety of programming services that are available to MVPD subscribers: it does not provide nearly the number of channels; it does not provide access to popular services such as ESPN, CNN, TNT; and it does not permit access to premium services such as HBO or Showtime." *DBS Complaint* ¶ 28.

219 *See generally* Statement of the Federal Trade Commission Concerning Google/DoubleClick, FTC File No. 071-0170, at 13 (Dec. 11, 2007) (observing that "[a]ccounting for the dynamic nature of an industry requires solid grounding in facts and the careful application of tested antitrust analysis," and holding that where "the evidence [does] not support the theories of potential competitive harm, there [is] no basis on which to seek to impose conditions on [a] merger"), *available at* http://www.ftc.gov/os/caselist/0710170/071220statement.pdf.

No online video distributor provides the breadth of high-quality content that MVPDs provide to their subscribers, nor has any sustainable online-only multichannel business model emerged that is attractive both to consumers and to content providers.

Second, if such a business model were to emerge, neither NBCU nor Hulu would be uniquely capable of pursuing this business model. As discussed above, Applicants together account for only a minimal share (approximately five percent) of online video distribution, even if 100 percent of Hulu's share is attributed to Applicants. It follows that, if such a business model were to emerge, numerous other firms – including incumbent online video firms such as Apple, Google, and Netflix – would be fully capable of implementing such a service. Given the large number of potential entrants, it would be inappropriate to impose any conditions on a single potential entrant based on speculation that it might one day pursue an as-yet-nonexistent business model.

Third, as explained in Section VI.D.4 below, the combined firm will lack the ability or incentive to prevent or forestall the emergence of such a business model – if it is financially viable.

3. No Cable System/Broadcast Station Competition Issue

Comcast owns cable systems in several regions in which NBCU owns and operates local broadcast stations.[220] This cable system/broadcast station "overlap," however, will not adversely affect competition in any relevant market.[221]

---

[220] Specifically, NBCU owns and operates NBC and/or Telemundo broadcast stations in Boston, Chicago, Denver, Fresno-Visalia, Hartford-New Haven, Houston, Miami-Ft. Lauderdale, New York, Philadelphia, San Francisco-Oakland-San Jose, Tucson, and Washington, D.C.

[221] As noted above, the Commission repealed its cable/broadcast cross-ownership rule in the face of a judicial determination that the Commission's justifications for the rule were unpersuasive given the then-current state of competition.

First, the Commission has repeatedly concluded that cable systems and broadcast stations are not within the same relevant product market. According to the Commission, "broadcast television is not sufficiently substitutable with the services provided by MVPDs to constrain attempted MVPD price increases, and hence, is not in the same relevant product market."[222] The closest competitors of MVPDs are other MVPDs. For this reason, in the *News Corp.-Hughes Order*, the Commission concluded that a transaction that would combine News Corp.'s Fox broadcast stations and DirecTV's MVPD business did "not present horizontal combination issues."[223]

Second, even if the Commission were to deem NBCU's broadcast stations and Comcast's cable systems competitors, the proposed transaction would not reduce competition or diversity among video services available to consumers. In each metropolitan area in which Comcast's cable systems and NBCU's owned-and-operated stations "overlap," consumers would enjoy many alternatives, including at least seven non-NBCU broadcast stations as well as other media, including radio.

4. No Issues for Theme Parks or Movie Studios

The remaining NBCU businesses (principally theme parks and a movie studio) have no parallels at Comcast. As noted above, Comcast is a minority owner in a joint venture that owns MGM, but does not control this venture, has limited veto rights, and has no directors on the MGM Board.[224] Comcast acquired its equity stake in MGM primarily to gain access to studio movie content for Comcast's VOD service. As discussed earlier, this transaction illustrates the

---

222 *News Corp.-Hughes Order* ¶ 75.

223 *Id.*

224 These limited veto rights are further described above in Section II.

ability of vertical transactions to spur the launch of new products and services. Even if Comcast were deemed to "control" 100 percent of MGM, the combination of Universal's 8.2 percent share and MGM's share of less than 1.5 percent gross-revenue share (for 2009) would not materially increase horizontal concentration in the movie studio industry.[225]

D. There Is No Risk That the Transaction Will Facilitate "Foreclosure" or Other Exclusionary Conduct.

Given the very limited "horizontal" overlaps in the parties' businesses, and Comcast's principal business as an MVPD, it is clear that the proposed transaction is essentially a "vertical" transaction. As the Commission has concluded, "vertical integration is less likely than horizontal integration to have anticompetitive effects."[226] This is so because "vertical transactions, standing alone, do not directly reduce the number of competitors in either the upstream or downstream markets."[227] In addition, the Commission has explained that vertical mergers "may generate significant efficiencies," such as "reduc[ing] transaction costs, limit[ing] free-riding by internalizing incentives, and tak[ing] advantage of technological economies."[228] Christine A. Varney, the current Assistant Attorney General of the Antitrust Division, has explained that "[v]ertical integration can lower transaction costs, lead to synergistic improvements in design,

---

225 *See* Box Office Mojo, Studio Market Share 2009, *at* http://www.boxofficemojo.com/studio/?view=company&view2=yearly&yr=2009&p=.htm (last visited Jan. 26, 2010).

226 *News Corp.-Hughes Order* ¶ 360. This conclusion is consistent with the conclusion that most economists have reached. *See, e.g.*, David Reiffen & Michael Vita, *Comment: Is There New Thinking on Vertical Mergers?*, 63 Antitrust L.J. 917 (1995).

227 *Adelphia Order* ¶ 71.

228 *News Corp.-Hughes Order* ¶ 70 (citing W. Kip Viscusi, John M. Vernon & Joseph E. Harrington, Jr., *Economics of Regulation and Antitrust* 219-21 (3d ed. 2000)); Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 Antitrust L.J. 513, 523-26 (1995); *see also Adelphia Order* ¶ 71.

production and distribution of the final output product and thus enhance competition. Consequently, most vertical arrangements raise few competitive concerns."[229]

This transaction is no different: In the dynamic and highly competitive media business, the combined company will continue to have strong incentives to distribute a broad range of unaffiliated content to consumers via television, the Internet, and other media. The combined company will likewise have strong incentives to make its own content available to consumers through both its own and competing distribution vehicles.

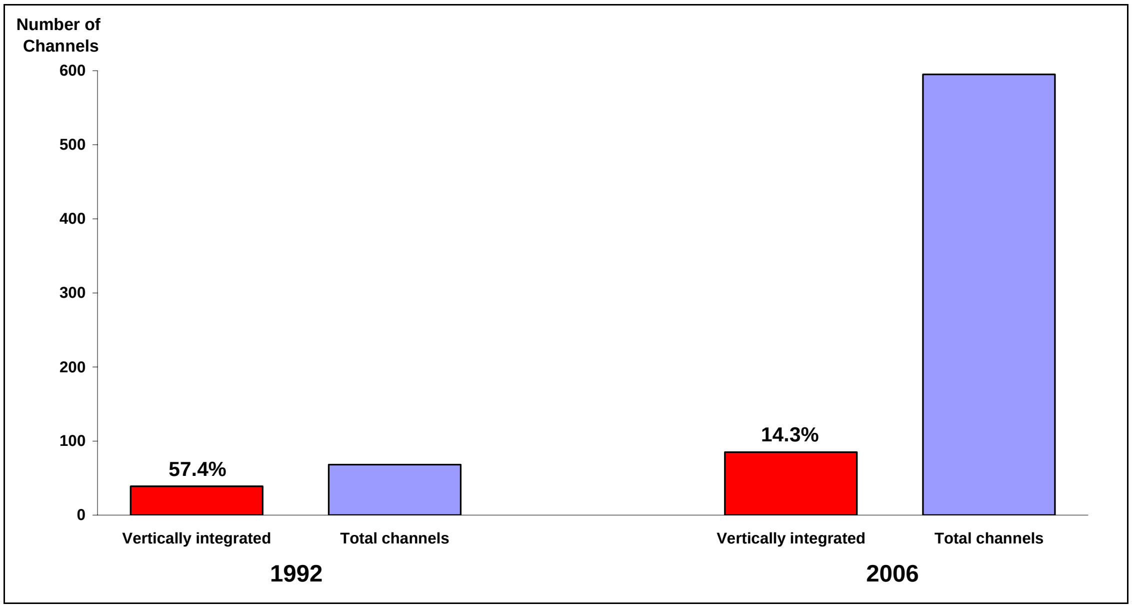
It also bears noting that the present transaction will not accelerate any trend toward greater vertical integration in the media business. Contrary to the claims of some, there has been no such trend. In fact, vertical integration has been *declining* in the media business. In 2006, only 15 percent of 565 national programming networks were vertically integrated (as compared to 57 percent of 68 national programming networks in 1992).[230]

---

[229] *See* Christine A. Varney, FTC, Remarks, *Vertical Merger Enforcement Challenges at the FTC*, Practising Law Institute, San Francisco, CA (July 17, 1995), *available at* http://www.ftc.gov/speeches/varney/varta.htm. Numerous empirical economic studies have confirmed that most vertical mergers are procompetitive. *See* Lafontaine & Slade, *supra* note 110 (surveying empirical studies and concluding that "[t]he data appear to be telling us that efficiency considerations overwhelm anticompetitive motives in most contexts"). This is consistent with empirical economics literature that shows that many vertical restraints increase efficiency and benefit competition and consumers. *See, e.g.*, James Cooper, Luke Froeb, Daniel O'Brien, & Michael Vita, *Vertical Restrictions and Antitrust Policy: What About the Evidence?*, 1(2) Competition Pol'y Int'l 45, 55-58 (2005).

[230] *See* H.R. Rep. No. 102-628 at 41 (1992); Press Release, FCC, *FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report*, at 4 (Nov. 27, 2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278454A1.pdf.

Vertical Integration of National Programming Networks: 1992 vs. 2006



Source: H.R. Rep. No. 102-628 at 41; Press Release, FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 13th Annual Report, at 4 (Nov. 27, 2007).

Since 2006, vertical integration has further declined in the media business: Within the last three years, Time Warner Cable has separated from Time Warner, Inc., and DirecTV has separated from News Corp. Following the transaction, the vast majority of video and Internet content will continue to be owned by firms that have no MVPD or HSI services.

1. Overview of Vertical Issues

In limited instances, a vertical transaction may give rise to competitive concerns. Harm arises when one division of a vertically integrated firm refuses to enter into an otherwise profitable and efficient transaction with another firm because the integrated firm wants to weaken the competition its other division faces. Such a strategy can be profitable only if the refusal to deal significantly weakens the independent competitor and that weakening leads to gains for the integrated firm's other division. Typically, the integrated firm would have to have significant market power in both the upstream and downstream markets in order for this to hold. Moreover, there would have to be a high rate of diversion (or "diversion ratio") from the weakened competitor to the integrated firm's division in order to render this strategy profitable.[231]

In evaluating past media transactions, the Commission has considered two principal theories of vertical anticompetitive harm. The first posits that a vertically integrated MVPD might deny or otherwise disfavor carriage of content owned by other companies that compete with the distributor's own content in order to benefit that content.[232] The second posits that a vertically integrated MVPD might refuse to license or might charge a higher price for key "must-have" content to competing MVPDs in order to induce customers to switch from competing MVPDs to the vertically integrated MVPD.[233]

The Commission has recognized that each foreclosure strategy requires a firm to sacrifice revenues in one business in an attempt to benefit another business.[234] For example, the second strategy noted above would require an MVPD to sacrifice content revenues in order to benefit its distribution business. In short, there are clear costs and risks to pursuing any foreclosure strategy, and these must be considered in analyzing the likelihood that any such strategy will be pursued. As shown below, the proposed transaction does not increase the likelihood of either distribution foreclosure or content foreclosure.

---

[231] A vertically integrated firm's decisions to refuse to deal with other companies or even to favor its own divisions, however, are not objectionable so long as those decisions are driven by efficiency considerations and an attempt to provide greater consumer benefits. A benefit of integration is that a company's different divisions can cooperate and coordinate more closely than they could were they separate entities.

[232] *News Corp.-Hughes Order* ¶¶ 101-108

[233] *Id.* ¶¶ 109-258.

[234] *See id.* ¶ 79. *See generally* Bruce M. Owen & Steven S. Wildman, *Video Economics*, Harvard University Press, 245–46 (1992) ("[D]iscrimination is costly. A cable system that refuses to carry a program service must give up the additional subscribers that would have been attracted by it. Similarly, to deny a program service to a competing local distribution medium is to lose the profits from that sale. The circumstances under which such discrimination is profitable in the cable television industry are rare.").

2. No Incentive or Ability To Pursue Anticompetitive Foreclosure Strategies Against Unaffiliated Content Providers

The combined company would have no enhanced ability or incentive to pursue anticompetitive foreclosure strategies by withholding distribution from competing "unaffiliated" content providers (*e.g.*, "independent" cable networks or unaffiliated providers of online video content). The anticompetitive theory is that an MVPD that owns cable networks may refuse to carry at least some unaffiliated cable networks in order to reduce the ability of the latter to compete for carriage on other MVPDs' systems. According to the theory, unaffiliated networks would be weaker competitors if a denial of carriage by a large MVPD prevented them from achieving substantial economies of scale.[235] The preconditions for any such anticompetitive foreclosure concerns simply do not exist.

First, Comcast lacks market power as a content buyer – an essential prerequisite for a successful foreclosure strategy. Comcast currently accounts for less than 25 percent of MVPD subscribers nationwide. As the Commission previously concluded in the *AT&T-Comcast Order*, that share is insufficient to create the "bottleneck" needed to implement a distribution foreclosure strategy vis-à-vis national cable networks.[236]

The U.S. Court of Appeals for the D.C. Circuit recognized this in its recent ruling on the cable ownership cap. The Commission had theorized that a cable operator with more than 30 percent of MVPD subscribers nationally would be able to foreclose a national programming

---

[235] Steven C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 Am. Econ. Rev. 267, 267 (1983).

[236] *See AT&T-Comcast Order* ¶ 56 (concluding that an MVPD with less than 30 percent share is unable to engage in successful foreclosure of unaffiliated national programmers); *see also Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 7, 46 (1984) (Brennan, J. and Marshall, J., concurring) (finding that a hospital with 30 percent market share is unlikely to create a "bottleneck"); *Adelphia Order* ¶ 36.

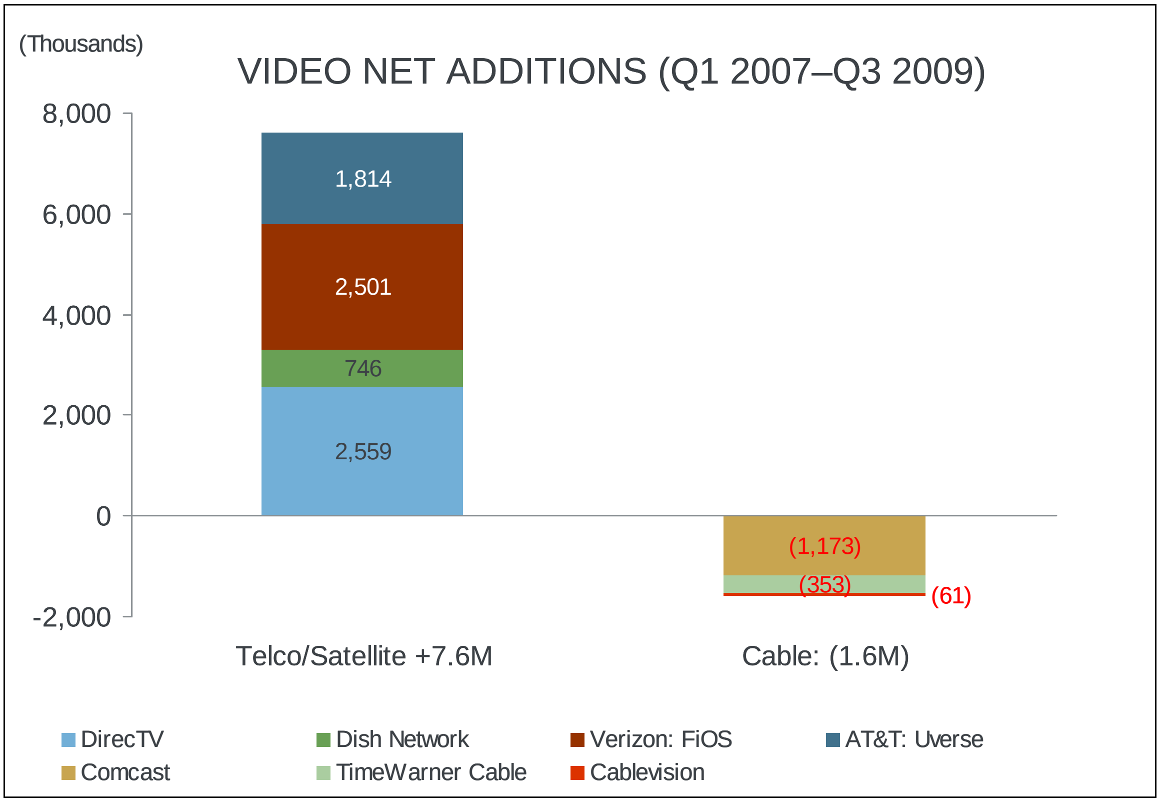
network from having a reasonable opportunity to achieve minimum viable scale, but the court found that the extensive evidentiary record demonstrated otherwise:

> [T]he record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.[237]

It follows that, even after the proposed transaction, Comcast would have nothing of significance to gain by denying carriage to non-affiliated networks.

It is important to note that Comcast's share of MVPD subscribers has been falling. The chart below demonstrates that, since 2007, new entrants – satellite and telecommunications providers – have gained over 7.6 million MVPD customers nationwide, while cable operators have lost 1.6 million, including 1.2 million lost by Comcast alone.

[237] *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).



All figures from 2007 Q1 thru 2009 Q3 based on publicly disclosed information.

Second, in addition to lacking the *ability* to implement a distribution foreclosure strategy, the combined company would also have no *incentive* to pursue such a strategy. Given the stiff competition it faces from other MVPDs, Comcast has strong incentives to deliver programming content that its customers will value. Today, Comcast carries scores of networks in which it has no ownership interest. These networks, which together account for the vast majority of content that Comcast carries,[238] include an extensive array of unaffiliated minority, diverse, and international programming. While much of this programming is obtained from entities that have extensive programming assets and expertise, Comcast also has a strong record of launching independent channels, including, in recent years, VeneMovies, The Africa Channel, WAPA

---

[238] *See* Comments of Comcast Corp., MB Docket No. 07-269, at 64-66 (May 20, 2009) (noting that "Comcast has entered into carriage agreements (both new and renewal agreements) with the owners of well over 100 channels unaffiliated with Comcast"). This includes programming obtained from both entities that have extensive programming assets and expertise, and independent channels.

America, HDNet, Gospel Music Channel, TeleFormula, qubo, ION Life, Ovation TV, and RFD-TV, among others.[239]

There is no prospect that the proposed transaction will diminish Comcast's reliance on unaffiliated content. Following consummation of the proposed transaction, Comcast will continue to rely on other content providers to provide the vast majority of its video content: post-transaction, nearly six out of seven channels Comcast carries will remain unaffiliated with Comcast or the new NBCU. There is simply no prospect of Comcast "going it alone" and relying exclusively or even primarily on NBCU content.

The costs of any move by the combined company to exclude or discriminate against unaffiliated content would outweigh the potential benefits. As discussed above, NBCU's national cable networks compete with a number of other cable networks that offer close substitutes to NBCU's programming.[240] Given the number of available, reasonably close substitutes, Comcast would need to deny carriage to a substantial number of unaffiliated cable networks before NBCU's cable networks would realize any appreciable benefit. Dropping such a large number of networks, however, would significantly degrade the quality of Comcast's MVPD service.

In light of the highly competitive market for MVPD services, this degradation would cause Comcast to lose a substantial number of subscribers to competing MVPDs.[241] In a

---

239 *See id*.

240 *See News Corp.-Hughes Order* ¶ 129 (noting that "general entertainment and news cable programming networks participate in a highly competitive segment of [the] programming market with available reasonably close programming substitutes").

241 The D.C. Circuit has concluded that favoring affiliated programmers "may threaten a competitive [MVPD's] very survival." *Time Warner II*, 240 F.3d at 1138 ("'Where [cable] systems face effective competition, their incentive to favor an affiliated programmer will be replaced by the incentive to provide programming that is most valued by subscribers.'") (quoting *In the Matter of Implementation of Sections 11 and 13 of the Cable*

marketplace in which cable operators, including Comcast, have been steadily *losing* subscribers, while DirecTV, Dish Network, Verizon, AT&T, and others have been rapidly *gaining* subscribers, pursuit of a distribution foreclosure strategy would accelerate Comcast Cable's loss of customers to rival MVPDs. As such, there is no realistic prospect that Comcast could profit from systematically denying carriage to or discriminating against desirable unaffiliated content.

Third, reinforcing the incentives created by the marketplace, there is an existing, comprehensive regulatory scheme to deter and constrain unreasonable, affiliation-based discrimination. Specifically, Section 616 of the Communications Act and Section 76.1301 of the Commission's rules prohibit MVPDs from "engag[ing] in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating . . . on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."[242]

Some parties have asserted that Comcast and other cable operators have discriminated on the basis of affiliation,[243] but these reckless charges have no basis and, therefore, not

---

Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 6828 ¶ 231 (1993)).

[242] 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c). The same provisions also prohibit MVPDs from "requir[ing] a financial interest in any program service as a condition for carriage" or "coerc[ing] any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage." 47 U.S.C. §§ 536(a)(1)-(3); 47 C.F.R. § 76.1301(a)-(b).

[243] For example, notwithstanding an October 2009 recommended decision by the Commission's Chief Administrative Law Judge finding that WealthTV's claims of unlawful discrimination were meritless, including any claim that the defendant cable operators copied WealthTV's programming, *see infra* notes 244-247, Free Press nonetheless continues to assert (citing only to a 2007 WealthTV press release) that "distributors may simply copy the programmers' format and deny carriage (or threaten to do so in negotiations)." *See* Marvin Ammori, Free Press, *TV Competition Nowhere: How the Cable Industry Is Colluding to Kill Online TV*, at 9 n.29 (Jan. 2010), *available at* http://www.freepress.net/files/TV-Nowhere.pdf; *see also* Ex Parte Letter from Kathleen Wallman, National Association of Independent Networks ("NAIN"), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-42, at 3 (June 5, 2008) (urging the Commission, among other things, to "make it clear that MVPD discrimination in the form of retaliation against independent programmers for their lawful assertion of their rights will not be tolerated, whether before, during or after carriage").

surprisingly, have never been substantiated. Recently, for example, a complainant that pressed its accusations against Comcast through a hearing and before an administrative law judge ("ALJ") "failed completely" to prove its claims of unlawful discrimination,[244] and its evidence was found to be unreliable and its witnesses not credible.[245] In contrast, the ALJ found Comcast's witnesses to be "consistent, competent, and credible,"[246] and further found – in rejecting the claim that Comcast improperly disfavored the complainant's network because it was unaffiliated with Comcast – that "the majority of networks that Comcast carries are unaffiliated companies"; that Comcast "closed on many carriage arrangements with unaffiliated networks" between 2004 and 2008; and that "Comcast's practice is . . . to carry unaffiliated networks if such carriage[] further[s] Comcast's business interests."[247]

Finally, independent of this transaction, Comcast Cable has been engaged in a massive company-wide effort to convert its expanded basic tier of service – and soon broadcast basic as well – to digital-only delivery so that analog bandwidth can be reclaimed for even more HD channels, more and better VOD, faster Internet speeds, and other new services. As this capacity is reclaimed, Applicants offer the following commitment to add even more independent networks to Comcast's cable systems:

- ***<u>Commitment # 13</u>. 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.***

---

[244] *In the Matter of Herring Broadcasting, Inc. d/b/a/ WealthTV v. Time Warner Cable Inc., et al.,* MB Docket No. 08-214, Recommended Decision of Chief Administrative Law Judge Richard L. Sippel, ¶ 63 (Oct. 14, 2009).

[245] *See id.* ¶¶ 17 n.62, 25, 32, 44 n.179, 46-47.

[246] *Id.* ¶ 44.

[247] *Id.* ¶ 47.

Under this commitment, 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 networks, as measured by revenues.[248]

3. No Increased Ability or Incentive To Discriminate Against Competing MVPDs

Market conditions, as well as Commission rules, will ensure that the combined company will have no enhanced ability or incentive to refuse to sell NBCU content to competing MVPDs or to charge discriminatory prices for that content. The theory is that an MVPD that owns key "must-have" cable or broadcast network content might refuse to license that content to competing MVPDs in order to weaken those MVPDs as competitors.

Following Commission precedent, the discussion here evaluates Comcast's likely post-transaction conduct with respect to three categories of video programming: (1) national cable networks, (2) local broadcast stations, and (3) regional sports networks.[249] It also evaluates the risks of "permanent" and "temporary" foreclosure. The Commission has defined permanent foreclosure as the refusal to sell video programming to a rival MVPD on a permanent basis.[250] The Commission has defined temporary foreclosure as the refusal to sell (or the threat to refuse to sell) video programming to a rival MVPD on a temporary basis – either to induce switching or as a negotiating tactic to obtain higher affiliation fees.[251] According to the Commission, "temporary foreclosure may be profitable even where permanent foreclosure is not, because,

---

[248] Even if Comcast's digital migration is not completed company-wide by 2011, Comcast will begin adding independent networks pursuant to this commitment no later than 2012.

[249] *News Corp.-Hughes Order* ¶ 60.

[250] *See Adelphia Order* ¶ 115 n.408.

[251] *Adelphia Order* ¶ 121.

during the period of foreclosure, downstream customers may switch to the integrated firm's downstream product and, due to inertia, then not immediately switch back to the competitor's product once the foreclosure has ended."[252] As explained below, the transaction will not increase Comcast's incentive or ability to engage in either temporary or permanent foreclosure with respect to any category of video programming.

a. National Cable Networks

The transaction will not increase Comcast's incentive or ability to engage in foreclosure strategies with respect to licensing of national cable networks to rival MVPDs.

First, the combined company lacks the market power needed to implement a successful temporary or permanent foreclosure strategy with respect to NBCU's cable networks. NBCU's cable networks, while valuable, represent a small fraction of the total market for video content. As discussed above in Section VI.C, cable networks that are majority or wholly owned by NBCU will constitute only 12 percent of all national cable networks by revenue. Moreover, there are close substitutes for the programming on all of Applicants' national cable networks. As a result, a refusal by the combined company to license its cable networks to MVPDs that compete with Comcast Cable would not make those rival MVPDs substantially less attractive to subscribers, and hence would not cause Comcast Cable to gain a substantial number of subscribers.

Consistent with these observations, the Commission has previously recognized that "general entertainment and news cable programming networks" of the type that NBCU owns "participate in a highly competitive segment of [the] programming market with available

---

252 *News Corp.-Hughes Order* ¶ 79.

reasonably close programming substitutes."[253] Accordingly, if a vertically integrated MVPD were to withhold such content from rival MVPDs (on either a permanent or temporary basis), most subscribers, rather than switching MVPDs, would instead watch substitute programming on their chosen MVPD.[254]

Second, the cost of pursuing such a strategy would undoubtedly outweigh any conceivable benefit. As the Commission has recognized, an MVPD that engages in an exclusionary strategy with regard to licensing of its affiliated networks would incur substantial costs in the form of lost advertising and licensing revenues that would otherwise have been earned by those networks. The costs of such a strategy (in terms of lost affiliate fees and advertising revenues) would likely outstrip any benefits (in terms of new revenues from diverted MVPD subscribers). For this reason, in both the *News Corp.-Hughes Order* and the *Adelphia Order*, the Commission concluded that there was no risk of temporary or permanent foreclosure with respect to national cable networks.[255] The same is true for the present transaction.

In this regard, it is important to distinguish the incentives of Comcast, which serves a number of local franchise areas, from the incentives of a DBS operator, like DirecTV, that has a national footprint. In the case of a national MVPD, the Commission has reasoned, the lost advertising and affiliate revenues that result from refusing to license affiliated national cable networks might be offset, because the national MVPD potentially stands to gain every subscriber that switches from its MVPD rivals. The Commission, however, found that cable operators, like Comcast, that "serve discrete franchise areas" would be unlikely to profit by refusing to license

---

253 *See id.* ¶ 129.

254 *See id*.

255 *News Corp.-Hughes Order* ¶ 129; *Adelphia Order* ¶¶ 168-69.

cable networks to MVPDs, including DBS systems, a substantial share of whose subscribers are not located in the cable operators' franchised cable system areas.[256] Attempting to pursue such an exclusionary strategy would cost the combined company lost advertising and affiliate revenues on a nationwide basis. The combined company's MVPD business, however, could potentially gain only a fraction of the subscribers who would switch MVPDs – those subscribers living within the franchise areas that Comcast serves. The proposed transaction represents a multibillion dollar investment by Comcast in NBCU content. Having made this substantial investment, it would be irrational for Comcast to forego revenues available from licensing NBCU content to the non-Comcast MVPDs that serve *more than three-quarters* of MVPD customers nationwide, in hopes that the losses could be made up by attracting new cable customers within Comcast Cable's limited footprint.

Third, the competitive pressures of the marketplace are once again backstopped by an existing regulatory regime that prohibits anticompetitive foreclosure. Section 628 of the Communications Act and Section 76.1002 of the Commission's rules generally require that competing MVPDs be afforded non-discriminatory access to cable-affiliated programming.[257]

---

256 *Compare News Corp.-Hughes Order* ¶ 4 ("Although News Corp., like other broadcast networks, engages or attempts to engage in this sort of [foreclosure] behavior today, ownership of a competing MVPD platform with a national footprint means that News Corp. stands to gain from any subscriber losses the affected MVPD suffers during the period of foreclosure when those subscribers move over to its competing MVPD platform to access the desired programming.") *with Adelphia Order* ¶¶ 116, 120 (noting that "cable operators serve discrete franchise areas" and vertical harms "are not likely to arise with respect to affiliated national or non-sports regional programming, or unaffiliated programming").

257 Section 628(b) of the Act provides that:

> It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. 47 U.S.C. § 548(b).

Specifically, these program access rules (1) prohibit exclusive contracts between cable-affiliated satellite-delivered cable programming networks and any cable operator; (2) prohibit a cable operator from unreasonably influencing or attempting to influence whether an affiliated network sells (or on what terms it sells) its programming to an unaffiliated MVPD; and (3) prohibit unreasonable discrimination in the prices, terms, and conditions of carriage agreements with unaffiliated MVPDs.[258] Comcast respects and adheres to these rules, and indeed has never been found in violation of them.

Fourth, to further mitigate one potential concern about anticompetitive foreclosure, Applicants offer the following commitment:

- ***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.**

Comcast does not currently withhold the HD feed of any affiliated network from a MVPD legally entitled to access the SD feed, but this commitment would eliminate any concern that Comcast will do so.[259]

Section 76.1001 of the Commission's rules contains virtually the same language. *See* 47 C.F.R. § 76.1001. In Comcast's view, MVPD competition has progressed to the point where such rules are no longer necessary.

[258] Section 76.1002(a) specifically prohibits a cable operator from exerting "[u]ndue or improper influence" over the prices, terms, and conditions of carriage of any affiliated programming. Section 76.1002(b) prohibits a cable operator from discriminating in prices, terms, and conditions of carriage for affiliated programming offered to competing MVPDs. Section 76.1002(c) generally bars exclusive contracts between cable operators and affiliated programmers.

[259] *See generally* John Eggerton, *Verizon Files Program Access Complaint Against Cablevision*, Multichannel News, July 8, 2009 (reporting program-access complaint filed by Verizon against Cablevision based on Cablevision's refusal to sell HD programming from its Madison Square Garden Network to Verizon and its FiOS multichannel video service), *available at* http://www.multichannel.com/article/307777-Verizon_Files_Program_Access_Complaint_Against_Cablevision.php.

b. Local Broadcast Stations

In addition, the transaction will not increase Comcast's incentive or ability to engage in foreclosure strategies with respect to local broadcast stations.

First, the Commission concluded in the News Corp.-Hughes transaction that News Corp.'s acquisition of DirecTV did not increase its incentive or ability to engage in permanent foreclosure of access to local Fox broadcast stations for competing MVPDs.[260] The Commission based this conclusion on the staff's analysis, which showed that a very substantial number of subscribers would have to switch to DirecTV to make such a strategy profitable. The Commission agreed that such a large switch of subscribers was unlikely.[261] A similar conclusion should obtain in this case. There is no reason to think that more subscribers would switch MVPDs if NBC were withheld in 2010 than if Fox had been withheld in 2003. Indeed, it is even less likely that a sufficient number of subscribers would switch if NBC were withheld, since network viewing generally has declined substantially since 2003, and NBC today is the lowest ranked of the four major networks in primetime ratings (both overall and in the key 18 to 49 demographic).[262]

Second, while the Commission concluded that temporary foreclosure might be profitable for News Corp. following its acquisition of DirecTV, this is unlikely to be the case for Comcast following its acquisition of NBCU. NBC is a venerable network and a valuable asset, but it is

---

260 *News Corp.-Hughes Order* ¶ 205.

261 *Id.*

262 *See* Sergio Ibarra, *Ratings: It's Official – Fox Wins 18-49 Demo*, TVWeek, May 22, 2009, *available at* http://www.tvweek.com/news/2009/05/ratings_its_official_fox_wins.php; Bill Gorman, *The CW's Ratings Averages Are Well Ahead Of Last Season, But Don't Be Fooled*, TV by the Numbers, Dec. 23, 2009, *available at* http://tvbythenumbers.com/2009/12/23/the-cws-ratings-averages-are-well-ahead-of-last-season-but-dont-be-fooled/37074.

not the type of "must have" channel that would induce sufficient switching to make even temporary foreclosure profitable. As noted above, in the more than six years since the *News Corp.-Hughes Order*, the viewership of broadcast television has eroded substantially. According to Nielsen, the four broadcast networks – ABC, CBS, FOX, and NBC – have together lost an average of one million viewers a year over the last decade and had an average nightly audience of 38.6 million in 2009, compared to 48 million in 1999.[263] Cable network viewing now accounts for approximately 60 to 80 percent of television viewership, with the broadcast networks capturing as little as 20 percent of the viewing audience during the summer months. NBC has suffered greater losses than the other networks.[264] Moreover, it is increasingly common for certain shows on cable networks to place ahead of broadcast network shows in viewership.[265] Many industry observers have noted that it is artificial to treat broadcast television content as separate and distinct from content shown on cable television networks.[266] Given these realities, any attempt to engage in temporary foreclosure is likely to backfire on the

---

263 Peter Lauria, *Ranting on Ratings – Broadcast Execs Scramble to Fix Business Model*, N.Y. POST, Dec. 13, 2009, *available at* http://www.allbusiness.com/entertainment-arts/broadcasting-industry/13593651-1.html.

264 Tim Arango, *NBC's Slide to Troubled Nightly Punch Line*, N.Y. Times, Jan. 17, 2010 (noting that "[t]he other major broadcast networks – CBS, ABC and Fox – have all seen their profits decline in recent years, as ratings have dropped," but that "none [has] fallen harder than NBC"), *available at* http://www.nytimes.com/2010/01/17/business/media/17nbc.html.

265 R. Thomas Umstead, *Cable Keeps Its Groove Going In 2009*, Multichannel News, Jan. 4, 2010 ("The cable industry began the decade in the ratings shadow of the broadcast networks, but will end it towering above its Big Four competitors in record fashion."), *available at* http://www.multichannel.com/article/442183-Cable_Keeps_Its_Groove_Going_In_2009.php.

266 While content shown on broadcast television is similar to content shown on a given cable network, MVPD service and over-the-air broadcast service are not close substitutes, given the greater number and variety of networks available to MVPD subscribers.

combined firm: Losses in advertising revenues, affiliate revenues, and in-kind compensation received from affiliates would exceed any revenue gains from MVPD subscriptions.[267]

The likelihood that the combined company will pursue a temporary foreclosure strategy is further diminished by the fact that consumers need not rely on MVPD service to receive local broadcast network content: Consumers can obtain such content free, either over-the-air or, in some instances, over the Internet. Indeed, MVPDs in retransmission consent disputes with local broadcast stations have distributed antennas to their subscribers or provided their subscribers with instructions on how to obtain broadcast content from the Internet on their televisions.[268] Together with other trends discussed above, the availability of the programming for free makes it unlikely that the combined company would attempt temporarily to foreclose rival MVPDs' access to NBC broadcast network content.

Third, the combined company's economic incentive to ensure widespread distribution of the broadcast networks' programming is also backstopped by an existing regulatory regime. The Communications Act requires that broadcasters bargain in good faith with MVPDs regarding retransmission consent, and the Commission has adopted rules that provide clarity – and teeth – to that duty.[269]

---

267 Any attempt to predicate a foreclosure strategy on a one-off event, such as the Olympics, would likewise prove unsuccessful. Any strategy that prevented such an event from being seen by a significant share of viewers in major cities such as Chicago, Philadelphia, and San Francisco would have serious costs beyond lost licensing revenues. Such a strategy would not only reduce the rate that the combined company could charge per advertising minute, but also jeopardize the combined company's ability to acquire rights to broadcast such events in the future.

268 Todd Spangler, *Time Warner Cable Gives Tips for Getting Fox Shows Online, Over the Air*, Multichannel News, Dec. 30, 2009, *available at* http://www.multichannel.com/article/442011-Time_Warner_Cable_Gives_Tips_For_Getting_Fox_Shows_Online_Over_The_Air.php.

269 *See* 47 U.S.C. § 325(b)(3)(C); 47 C.F.R. § 76.65; *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 ¶ 40 (2000).

To provide further assurances against conduct that might be of concern in a marketplace that is changing rapidly,[270] Applicants offer the following commitment:

- ***<u>Commitment # 15</u>. 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.***

This commitment will have the effect of Comcast agreeing to apply the detailed non-discrimination and robust procedural rules that currently apply in the program access context to negotiations for retransmission consent for NBC or Telemundo O&Os, where they currently do not apply. This will benefit consumers by lessening uncertainties concerning continued carriage of popular broadcast programming as seen in the recent Time Warner Cable-News Corp. and Mediacom-Sinclair Broadcasting retransmission consent disputes. 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, thereby ensuring that competitive market conditions, not affiliation, will determine outcomes. It would also adopt the "burden-shifting" approach to proof of discriminatory pricing. And Applicants would accept the five-month "shot clock" that the Commission applies to program access adjudications. This commitment will remain in effect for as long as the Commission's current program access rules remain in place.

c. <u>Regional Sports Networks</u>

The Commission has previously found that a vertically integrated MVPD may have an incentive to engage in temporary foreclosure (but not permanent foreclosure) with respect to

---

[270] *See, e.g.*, Brian Stelter, *Next Up on Cable TV, Higher Bills for Consumers*, N.Y. Times, Jan. 3, 2010 (noting that Time Warner Cable agreed to pay retransmission consent fees for the Fox Broadcasting network), *available at* http://www.nytimes.com/2010/01/04/business/media/04cable.html.

RSNs.[271] With regard to RSNs, however, there is no transaction-specific reason why Comcast would have more of an incentive or opportunity to engage in foreclosure than it does pre-transaction. Comcast is acquiring no RSNs in this transaction, nor is it increasing its regional concentration in the MVPD business in any way (which was the basis for the Commission's concern in the *Adelphia Order*). Accordingly, there is no basis to conclude that this transaction will change in any way Comcast's incentives or ability to engage in foreclosure with respect to RSNs.[272]

4. No Threat of Vertical Harm to Competition in Online Video

The considerations described above apply with even greater force to the fragmented and dynamic market for online video distribution. The sections below consider the combined firm's incentives and ability to engage in foreclosure with respect to (1) online content; (2) online distribution platforms (*e.g.*, Hulu); and (3) high-speed Internet services.

a. <u>Content Foreclosure</u>

The combined company will not have the ability or incentive to benefit its distribution businesses by discriminating against rival online video distributors.

As an initial matter, the diversion analysis that the Commission has applied in assessing the likelihood of content foreclosure in the MVPD context is largely inapplicable to online video. Consumers need not select a single website on which to view all video content, and most consumers surely do not. The notion of "switching" simply makes no sense in the Internet context. If the combined company were to make its online video content available only through

---

[271] *See Adelphia Order* ¶ 123; *News Corp.-Hughes Order* ¶ 153. Applicants disagree with this conclusion, at least with respect to the analysis set forth in the *Adelphia Order*.

[272] Comcast, in any event, remains subject to a dispute-resolution condition for access to RSNs under the *Adelphia Order*, which condition does not expire until July 2012. *See Adelphia Order* ¶ 164.

its own Internet sites (*e.g.*, nbc.com and other affiliated sites), consumers would not "switch" to those sites from other online video sites. Instead, consumers would watch the combined company's content on the combined company's Internet sites, and continue to watch unaffiliated content – *i.e.*, the vast majority of all content – at other sites.

Even if an MVPD-style diversion analysis were applicable, the combined company would lack the market power in online video content required to make a foreclosure strategy feasible. As discussed above, the combined company's share of national cable network content (approximately 12 percent by total revenue) is too small to enable it to pursue such a strategy with respect to rival MVPDs; the combined company's share of all video content that can be distributed online is even smaller.

The combined company would also derive no benefit from pursuing a permanent or temporary foreclosure strategy vis-à-vis online video distributors. The company would not acquire additional subscribers for its MVPD service because, as discussed above, consumers do not regard online video and MVPD service as close substitutes. Nor would pursuit of a foreclosure strategy attract additional viewers to the Applicants' online video distribution sites, given the Applicants' small (roughly five percent) share of that market.

b. <u>Distribution Platform Foreclosure</u>

The combined company would likewise have no ability or incentive to pursue a distribution-foreclosure strategy with respect to online video distribution. The Applicants' combined share of the online video distribution market is about five percent (even if 100 percent of Hulu's share is attributed to the Applicants) – a share too low to provide the combined company with the market power needed to pursue a distribution foreclosure strategy. Content owners could readily find alternative distribution vehicles for their content, including their own websites and third-party online video distribution services from Amazon, Blinkx, Blip.tv, Boxee, Clicker.com, Crackle, Electus, iReel, iTunes, Netflix, Sezmi, SlashControl, Sling, Veoh, Vevo, Vimeo, VUDU, Vuze, Xbox, YouTube – and many more. Entry is easy; new Internet video sites are emerging every day.[273] These sites offer consumers enormous quantities of content, both professionally-produced and user-generated, for free, in subscription packages, and for individual purchase or rental.

In addition, the combined company's economic incentive to pursue such a foreclosure strategy is nonexistent: Given the Applicants' modest share of cable network content, and lower share of video content that can be streamed or downloaded over the Internet, the combined company would need to refuse to distribute a broad range of unaffiliated content online before its affiliated content would realize any benefit. Refusal to carry such a broad range of unaffiliated content on the Applicants' online video distribution sites, however, would degrade the quality of those sites, placing them at a disadvantage vis-à-vis competitors that can offer consumers a broader selection of content online.

c. High-Speed Internet Foreclosure

There is likewise no realistic prospect that Comcast will abuse its role as a provider of HSI services to constrain its customers from accessing content supplied by non-affiliated networks (or other non-affiliated sources of content). As an initial matter, Comcast lacks the market power in high-speed Internet service to make such a foreclosure strategy successful. Comcast currently provides service to only about 20 percent of HSI customers in the United

---

[273] *See*, *e.g.*, Prepared Remarks of Commissioner Mignon L. Clyburn, MMTC Broadband and Social Justice Summit, at 2-3 (Jan. 22, 2010) (noting that, "[f]or the first time, there are no immediate and overwhelming barriers to entry for upstart businessmen and women or 'cyberpreneurs'"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295888A1.pdf.

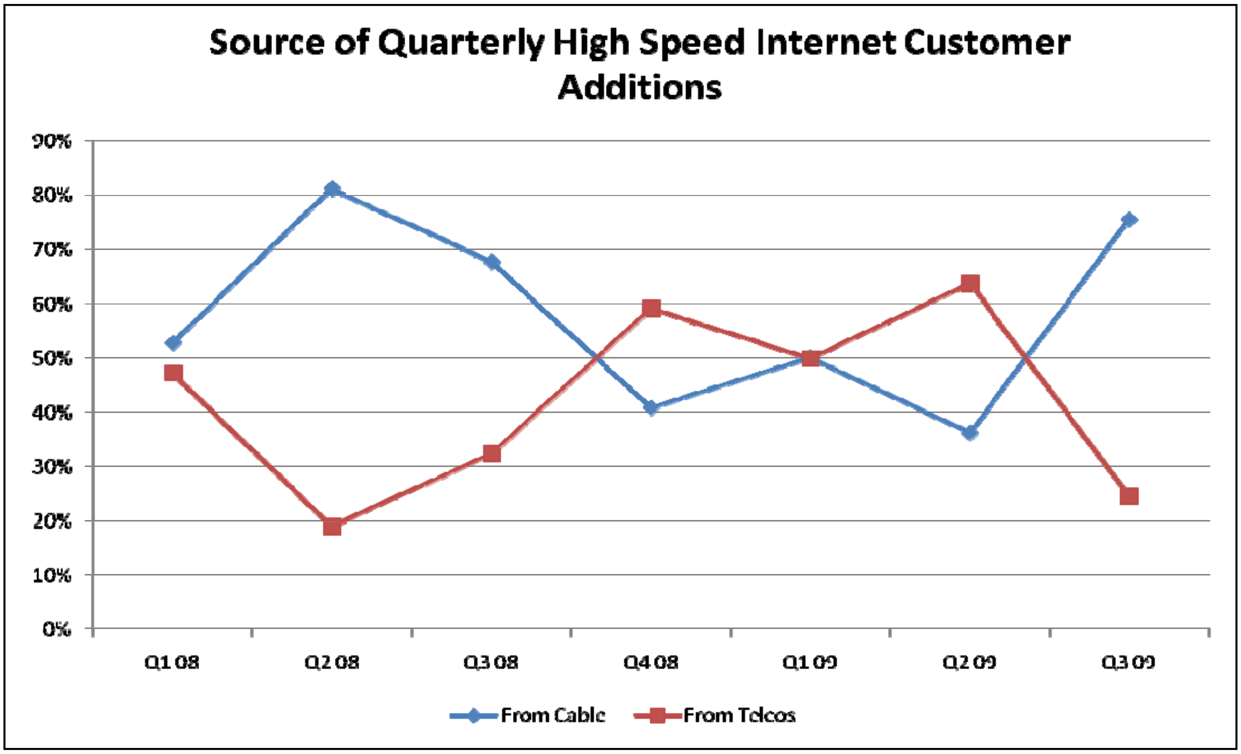
States,[274] and the market for HSI is highly and increasingly competitive, with intense rivalry to attract and retain customers.

In each geographic area in which Comcast has a significant number of HSI subscribers, Comcast faces competition from DSL and increasingly from fiber and wireless networks. Highly volatile trends in quarterly customer gains between cable and telephone company HSI providers (even putting aside the growing number of wireless broadband Internet subscribers) clearly demonstrate the dynamic and intensely competitive nature of the high-speed data industry.[275]

---

[274] The FCC's most recent report found 79.1 million residential high-speed Internet lines in the United States. *See* News Release, FCC, *Federal Communications Commission Releases Final Data on High-Speed Services Collected Under the Previous Form 477 Framework*, at 2 (July 23, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292194A1.pdf. Comcast's 15.7 million HSI subscribers constitutes less than 20 percent of that number.

[275] Since the first quarter of 2006, when compared to telephone operators (AT&T, Verizon, and Qwest), cable operators (Comcast, Time Warner Cable, Cablevision, and Charter) have accounted for as little as about 37 percent (in the second quarter of 2006) to as much as about 80 percent (in the second of 2008) of total quarterly customer gains. The quarterly shift was most pronounced between the second and third quarters of 2009: while cable operators only accounted for about 42 percent of total gains in the second quarter (with telcos at 58 percent), the timing of product innovation and certain marketing and pricing initiatives resulted in a dramatic shift for the third quarter, with cable operators accounting for about 75 percent of total gains (with telcos at 25 percent). *See* Jessica Reif Cohen & David W. Barden, Bank of America Merrill Lynch, *Battle for the Bundle: Cable Routs Bell Broadband*, at 5 (Nov. 20, 2009).



Cable company results represent Comcast, Time Warner Cable, Cablevision and Charter Communications. Telco company results represent Verizon, AT&T and Qwest.

The combined company would also lack incentive to pursue an HSI foreclosure strategy. Comcast has never blocked its HSI subscribers' access to lawful content, and the proposed transaction will not provide it with any incentive to alter its consistent and long-standing practice. Given that the combined company's share of cable network content is modest, and its share of video content that can be distributed over the Internet is even lower, Comcast would need to block or degrade its HSI subscribers' access to a broad range of Internet applications and services before its affiliated Internet content would realize any material benefit. If Comcast were to block or degrade its customers' access to such a broad range of online content, however, it would quickly pay a steep price – both economically in lost subscribers and in the court of public opinion.[276] Again, a foreclosure strategy would prove impracticable.[277]

---

276 *See In the Matter of AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5724-25 ¶ 117 (2007) ("[T]here is substantial competition in the provision of

E. The Transaction Presents No Threat to Diversity and Localism.

The Commission's media policies have traditionally focused on the core broadcast ownership concerns of diversity and localism, as well as competition.[278] The Commission's paramount goal in promoting diversity and localism has been to ensure that communities are well-served by a variety of independent voices that provide a variety of local and national perspectives, particularly with respect to news and public affairs programming. The proposed transaction does not threaten this goal and, in fact, enhances it, as explained above.

As discussed in the attached Expert Declaration of University of Southern California and California Institute of Technology professor Matthew Spitzer, an expert for three decades in the Commission's regulation of broadcasting and cable television, including regulation of media ownership and concentration, the proposed transaction is fundamentally a vertical transaction that simply does not reduce diversity or localism.[279] It thus is "fully consistent with the Commission's public interest approach along these dimensions."[280]

Internet access services. Broadband penetration has increased rapidly over the last year . . . . Increased penetration has been accompanied by more vigorous competition. Greater competition limits the ability of providers to engage in anticompetitive conduct since subscribers would have the option of switching to alternative providers if their access to content were blocked or degraded.").

[277] Any non-transaction-specific concerns about discrimination by ISPs are most appropriately addressed in rules of general applicability, and the Commission is currently considering rules on the subject. *See In the Matter of Preserving the Open Internet Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191 (Oct. 22, 2009).

[278] *See generally In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 ¶ 9 (2008) ("The media ownership rules are designed to foster the Commission's longstanding policies of competition, diversity and localism."); *2002 Biennial* Review Order ¶¶ 17-79.

[279] *See* Expert Declaration of Matthew L. Spitzer Concerning Diversity and Localism Issues Associated with the Proposed Comcast-NBCU Transaction (Appendix 9) ("Spitzer Declaration").

[280] Spitzer Declaration ¶ 26.

This transaction is *not* the sort of horizontal combination that has been at the core of the concerns about localism and diversity. As Professor Spitzer explains, the Commission's structural rules that control the ability of broadcasters to merge in the same market are

> founded on the concepts that having a healthy and robust marketplace of ideas requires independent voices, that the public benefits from having many types of programs from which to choose, and that a broadcaster must address the needs, interests, and issues of concern of the community that it is licensed to serve.[281]

Each of the Commission's media ownership rules is "designed to foster the Commission's longstanding public interest policies of competition, diversity, and localism," and, more specifically, "to protect against reduction in the number of independent broadcast voices in a local market."[282] Yet this transaction, as demonstrated above, does not implicate any of the Commission's media ownership rules.[283] Indeed, as Professor Spitzer demonstrates, the transaction does not even involve the types of situations the Commission's limits are intended to restrict: it is not the combination of two competing broadcast outlets, two cross-service broadcast outlets, or a newspaper and a broadcaster in the same market.[284] As Professor Spitzer writes, the transaction:

> is, from the standpoint of traditional Commission concerns, almost entirely a vertical transaction. Comcast does not have a broadcast network (or a daily newspaper) and has modest cable programming assets, and NBCU is bringing a pair of broadcast networks and a number of local broadcasting stations. Conversely, NBCU does not provide cable, high-speed Internet, or digital voice services which form the bulk of Comcast's business. Thus, in terms of traditional considerations, combining the NBCU content with Comcast distribution does not result in the sort of reduction in the number of local broadcast voices that has prompted Commission concern. Instead, at its core, it is much more a vertical

---

281 *Id.* ¶ 9.

282 *Id.* ¶ 12.

283 *See supra* Section V.A.

284 *See* Spitzer Declaration ¶ 3.

> combination, putting together a company which produces popular content (NBCU) with a company that distributes content over cable television systems (Comcast).[285]

The transaction thus in no way implicates "the Commission's central theory . . . that maintaining a sufficient number of independent voices is crucial to supporting the core concerns of diversity and localism."

With respect to diversity, Professor Spitzer examines both viewpoint and program diversity. He finds that the transaction will have no impact on viewpoint diversity because it will not reduce the number of independent broadcast voices in any local market. Thus, "[i]n no way does this combination of content with distribution impinge on the Commission's core concern – the *reduction* in the number of independent voices in local broadcast markets."[286] He similarly concludes that, post-transaction, there is "no basis to anticipate that NBC, Telemundo, or any of their O&Os will alter programming in a way that would decrease the diversity of programming."[287] Specifically, "there is no significant probability that diversity of programming in broadcasting will be adversely affected by this transaction due to horizontal integration."[288] In addition, although not addressed within the scope of Professor Spitzer's Declaration, it is important to note that the local markets with overlapping Comcast Cable systems and NBCU O&O stations are major markets with a significant number of media outlets, including at least seven non-NBCU over-the-air television stations. Accordingly, nothing about these combinations will compromise diversity in any way.

---

285 *Id.* ¶ 10.

286 *Id.* ¶ 16 (emphasis in original).

287 *Id.* ¶ 18.

288 *Id.* ¶ 19.

With respect to localism, the transaction does not threaten and, in fact, promotes the Commission's goals. It will in no way adversely affect the many positive, community-focused local efforts that already are undertaken by NBC and Telemundo O&O stations. As Professor Spitzer explains, the Commission "has long been interested in whether broadcasters provide 'enough' community-responsive programming."[289] He concludes that, "[b]ecause there is no reduction in the number of independent voices in any broadcast market in this transaction, there is nothing about the transaction that would lead us to expect any reduction in local news or public affairs programming, or similar community-responsive broadcast programming."[290] He also finds that nothing about the transaction "would lead the applicants to reduce service to underserved audiences," such as women and racial and ethnic minorities.[291] Finally, as Professor Spitzer explains, the O&O stations' interactions with viewers and community leaders will not be adversely affected by the transaction. The stations "will continue to learn about the needs and interests of their local communities, and will continue to air programming that responds to these needs and interests."[292]

For all these reasons, the transaction presents no threat to diversity or localism. To the contrary, as demonstrated above,[293] diversity and localism values will be advanced by approval of the transaction. Both Comcast and NBCU have made concerted efforts to reach and better serve underserved audiences, and the proposed combination will only increase their joint

---

289 *Id.* ¶ 22.

290 *Id.*

291 *Id.* ¶ 23.

292 *Id.* ¶ 24.

293 S*ee supra* Section IV.D.

incentive to do so. Moreover, the combined entity has affirmed that it will increase the amount and quality of local programming, including local news and information programming and PEG programming. As Professor Spitzer concludes, the companies' "additional efforts to promote localism . . . will further enhance the public interest benefits of the transaction."[294] The combined entity will also provide additional diverse programming, an effort that Professor Spitzer notes "provides further assurance that the public interest concern of diversity will be served by the transaction."[295] And it will make this local and diverse programming available across many more platforms than it is available today, including on local and regional cable networks, on cable local origination channels, on VOD, and online. The combined entity will use cross-promotion and other information tools so that consumers will know where and when they can access this programming.

In short, the combined entity's self-interest will best be served by enhancing local and diverse programming – because providing consumers the variety of programming they desire is how NBCU and Comcast can best compete.

F. The Journalistic Independence of NBC News Will Be Maintained.

The combined company will also maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints.[296] Since NBCU was acquired by GE in 1986, the owners have abided by a policy of ensuring that the content of NBC's news and public affairs programming would not be influenced by the non-

---

[294] Spitzer Declaration ¶ 24.

[295] *Id.* ¶ 18.

[296] "Viewpoint diversity" is one of the types of diversity specifically recognized by the Commission as a policy goal. It refers to the "availability of media content reflecting a variety of perspectives." *See 2002 Biennial Review Order* ¶ 19.

media interests of GE. Under this policy, which was approved by the Commission in 1986,[297] NBC and its local O&Os were free to report on GE without interference or influence from GE. GE was fully committed to this policy of news independence, and extended it to the news operations of CNBC, MSNBC, and Telemundo and its O&Os as they were created or acquired.

In addition, GE appointed an ombudsman to further ensure the independence of NBCU's news operations. The current ombudsman, appointed in 1993, is David McCormick.[298] In that role, Mr. McCormick provides an effective assurance that the policy of independence for NBCU's news operations is steadfastly maintained. NBCU will maintain that policy and the position of ombudsman post-transaction.

Although there is no legal requirement that it do so, Comcast offers to commit to adhere in all respects to the policy and to maintain the journalistic integrity and independence of NBCU's news operations. Accordingly, Applicants offer the following commitment:

---

[297] The FCC summarized the commitment in *In re Applications of Stockholders of RCA Corporation, Transferors, and General Electric Company, Transferees*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 563 ¶ 28 (1986):

> NBC advertising and programming policies will prohibit any use of NBC's networks and stations for the purpose of favoring the nonbroadcast interests of General Electric or for disfavoring non-broadcast interests of any entity which competes with General Electric. A central component of this overall policy will be that the content of NBC's news and public affairs programming may not be influenced by the nonbroadcast interests of General Electric.

[298] Mr. McCormick is also Vice President of Standards at NBC News. Mr. McCormick is responsible for maintaining and updating the network's standards manual for broadcast news, conducting seminars about journalistic standards, and handling complaints before and after the airing of news programming. He is a highly respected journalist who has worked as a writer and producer for local TV stations, as well as national assignment editor for NBC News. Mr. McCormick also served as a producer for NBC Nightly News and Manager and Bureau Chief for NBC's Frankfurt, London, and New York news operations. Mr. McCormick is an adjunct professor at Columbia University School of Journalism.

- ***<u>Commitment # 16</u>. 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.***

VII. PROCEDURAL MATTERS

The subsidiaries and affiliates of Comcast and GE that will be contributed to Newco hold a number of licenses and authorizations to operate full-power and low-power television service, broadcast auxiliary service, satellite transmit-and-receive earth station service, business radio service, and non-common carrier point-to-point microwave service. The proposed transaction will result in the transfer of control of all of these authorizations. Given the ongoing regulatory activity of both Comcast and GE and their subsidiaries, including the need for these parties to file applications with the Commission during the period in which the instant transfer of control will remain pending at the Commission, the Applicants request that the Commission's grant of its consent to the transfer of control of these licenses and authorizations include the authorization for Newco to acquire control of: (1) any authorizations issued to Comcast's contributed subsidiaries, or to GE's contributed subsidiaries, during the Commission's consideration of the transfer-of-control applications and the period required for the consummation of the transaction following approval; (2) construction permits held by licensees involved in this transfer of control that mature into licenses after closing and that may have been omitted from the transfer-of-control applications; and (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control. Such action would be consistent with prior decisions of the Commission.[299]

VIII. CONCLUSION

As demonstrated above, the proposed transaction manifestly serves the public interest, convenience, and necessity and should be approved. It will bring real consumer benefits by strengthening two broadcast networks and their O&O stations, by increasing the incentives and opportunities for multiple cable networks to increase the quality and quantity of their programming, and by accelerating the "anytime, anywhere" access to video choices that consumers want. Robust competition at all levels of the distribution chain, coupled with pre-existing rules, ensures against public interest harms. In addition, an unprecedented array of concrete and verifiable commitments, which can be made binding conditions of the Commission's approval, provide further assurances of public benefits and of the absence of harms.

Applicants have made the showing necessary to secure the Commission's approval. Applicants also recognize that the Commission must conduct its own evaluation and make its own judgment, after hearing from interested parties. Applicants will cooperate in that process and invite a constructive dialogue that addresses any legitimate issues. At the same time, it must be recognized that merger proceedings too often are used by various parties as a forum to ventilate imagined and even contrived grievances, and such tactics must not be permitted to obstruct or delay the Commission's processes. The Commission has set out a clear legal standard – only transaction-specific concerns will be addressed in a transaction review

---

[299] *See, e.g.*, *AT&T-MediaOne Merger Order* ¶ 185; *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160 ¶ 156 (1999); *Adelphia Order* ¶ 312; *AT&T-Comcast Merger Order* ¶ 224.

proceeding, and issues that are of general applicability, or are being addressed elsewhere, will not be considered. Applicants urge the Commission to conduct a disciplined review that adheres to this standard.

Applicants respectfully request the Commission's expeditious approval of the transaction.

Respectfully submitted,

COMCAST CORPORATION

/s/ Kathryn A. Zachem
Kathryn A. Zachem
Vice President, Regulatory and State Legislative Affairs
COMCAST CORPORATION
2001 Pennsylvania Ave, NW
Suite 500
Washington, DC 20006
(202) 379-7134

GENERAL ELECTRIC COMPANY

/s/ Brackett B. Denniston, III
Brackett B. Denniston, III
Senior Vice President & General Counsel
GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06828
(203) 373-2211

NBC UNIVERSAL, INC.

/s/ Richard Cotton
Richard Cotton
Executive Vice President & General Counsel
NBC UNIVERSAL, INC.
30 Rockefeller Plaza
New York, NY 10112
(212) 664-7024

Additional Counsel

Joseph W. Waz, Jr.
Senior Vice President, External Affairs and Public Policy
COMCAST CORPORATION
One Comcast Center
Philadelphia, PA 19103-2838
(215) 286-7607

Jordan Goldstein
Senior Director, Regulatory Affairs
COMCAST CORPORATION
2001 Pennsylvania Ave, NW
Suite 500
Washington, DC 20006
(202) 379-7124

Michael H. Hammer
James L. Casserly
Michael D. Hurwitz
Brien C. Bell
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

Arthur J. Burke
Ronan P. Harty
Rajesh James
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Ronald A. Stern
Vice President & Senior Competition Counsel
GENERAL ELECTRIC COMPANY
1299 Pennsylvania Avenue, NW
9th Floor
Washington, DC 20004
(202) 637-4372

A. Richard Metzger, Jr.
Regina M. Keeney
LAWLER, METZGER, KEENEY & LOGAN, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700

Margaret L. Tobey
Vice President, Regulatory Affairs
NBC UNIVERSAL, INC.
1299 Pennsylvania Avenue, NW
9th Floor
Washington, DC 20004
(202) 637-4262

Bryan N. Tramont
Kenneth E. Satten
David H. Solomon
Natalie G. Roisman
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
(202) 783-4141

January 28, 2010