Testimony of

Samuel Kang
Managing Attorney
The Greenlining Institute

Before the

U.S. House of Representatives
Committee on the Judiciary

Regarding

The Proposed Combination of Comcast and NBC-Universal

June 7, 2010

TABLE OF CONTENTS

INTRODUCTION

Mr. Chairman, and Members of the Committee, I am pleased to appear before you today to discuss Comcast Corporation's ("Comcast") proposed joint venture with General Electric Company ("GE") and NBC Universal, Inc. ("NBCU").[1] I am the managing attorney of the Greenlining Institute, a non-profit organization dedicated to empowering communities of color, low income communities, and other disadvantaged groups. Started in 1993 by the Greenlining Coalition, the Greenlining Institute seeks to protect consumer interests while partnering with some of the largest companies in America to better serve this country's multi-ethnic and underserved communities. The Greenlining Coalition is perhaps the oldest and most diverse coalition of Asian/Pacific Islander, Black, and Latino community leaders. Beyond ethnic diversity, the coalition represents diverse constituents that include faith-based organizations, minority business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets. Members of the Greenlining Coalition reside in communities served by Comcast and NBCU, and many are subscribers to their services. The proposed merger will directly and adversely impact the communities the Greenlining Institute represents.

Before the Federal Communications Commission (FCC) may grant an application for the transfer of control of any authorization and licenses it must find that the transfer will "serve the public interest, convenience and necessity."[2] Comcast, GE and NBCU "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest."[3] Here, they have not met their burden. Specifically, the transaction will promote neither competition, diversity, nor localism. Moreover, Applicants' "Voluntary Public Interest Commitments" are insufficient to mitigate the potential harms. Without a more complete understanding of how this transaction will impact communities across the nation, this transaction should not be allowed to proceed.

I. THE PROPOSED MERGER WILL ELIMINATE DIVERSE PERSPECTIVES AS IT WILL EXACERBATE MEDIA CONSOLIDATION.

In today's society, Americans depend heavily on media to learn about local and national news, participate in civic issues, and gather information pertinent to their communities. Accordingly, because of the important role media plays in people's lives, it is of utmost importance that media reflect a diversity of viewpoints and provide equal access to information for all persons, regardless of which platform they choose.

Unfortunately, millions of Americans do not have access to quality media that meets their information and entertainment needs. As a result of massive media consolidation smaller media outlets have been pushed out of the market or have been purchased by giant media

[1] *Applications for Consent to the Transfer of Control Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Applications and Public Interest Statement* (filed Jan. 28, 2010) ("Application").
[2] The Communications Act, 47 U.S.C. § 301(d) (2009).
[3] *DirectTV- Liberty Media Order*, 23 FCC Rcd 3265 ¶ 22. *See also*, *SBC-AT&T Order*, 20 FCC Rcd 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd 18443 ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd 23255 ¶ 26; *EchoStar-DIRECTTV HDO*, 17 FCC Rcd 20574 ¶ 25.

conglomerates. As such, it is unsurprising that diversity, localism and competition in media have been severely harmed.

A few months ago, in protest of the merger, Congressman Maurice Hinchey, supported by 6 other House members,[4] wrote the FCC and DOJ, urging them to acknowledge dangers of this merger and stressed that media consolidation over the last 20 years diminished independent voices and sources of information. To emphasize his point Congressman Hinchey provided theses shocking statistics:

> "Today, five companies own the broadcast networks, 90 percent of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70 percent of the prime time television market share. These same companies own the nation's most popular newspapers and networks also own over 85 percent of the top 20 Internet news sites. There has also been a severe decline in the number of minority-owned broadcast stations. In 2007, minorities owned just 3.2 percent of the U.S. television stations and 7 percent of the nation's full power radio stations, despite making up more than 34 percent of the population."[5]

A. Consumers Will be Harmed by a Merger That Creates a Media Goliath With Too Much Market Control

If Comcast's acquisition of NBC is approved, the transaction will create a behemoth that would control content production and content distribution at an unprecedented level.

NBC is one of the nation's largest networks and has an impressive portfolio, which includes numerous broadcast stations, broadcast rights to the Olympics, numerous national cable channels, film and production studios, several Internet properties and a theme park. Comcast is already the largest cable company and the largest Internet service provider in the United States. It serves customers in 39 states and the District of Columbia. Comcast has 23.5 million cable subscribers, 18.8 million digital cable subscribers, 16.3 million high-speed Internet customers and 7.9 million voice customers. Comcast serves customers in 39 states and the District of Columbia. Comcast is also a joint shareholder of Metro-Goldwyn-Mayer and the owner of several sports teams. [6]

This merger will create a media Goliath that would have the market power to control what content consumers can access, which platforms consumer can use, and how much consumers have to pay.

This is especially concerning as our media systems transition from the old system of broadcasting and cable to digital platforms and the Internet. Comcast undoubtedly wants to assert as much control over the new media system as they have been able to do over the old system of broadcasting and cable, and this merger will help them maintain and grow their power.

---

[4] Congresswoman Donna Edwards (D-MD), Congressman John Olver (D-MA), Congressman Bob Filner (D-CA), Congressman Pete Stark (D-CA), Congresswoman Lynn Woolsey (D-CA), and Congresswoman Carolyn McCarthy (D-NY) follows:
[5] http://www.house.gov/list/press/ny22_hinchey/morenews/242010comcastnbcletters.html
[6] http://www.freepress.net/ownership/chart/main

This merger will give Comcast the ability to control the industry and use its assets as leverage throughout broadcast, cable, and potentially on the Internet.

B. Ownership Diversity

i. *The current number of minority-owned media outlets does not reflect the number of minorities in the US*

Between the 1980 and 2000 censuses, the number of people identifying themselves as White fell from 83% to just over 75% of the U.S. population.[7] During this same period other demographic groups increased. For example, the Asian/Pacific Islander population grew from 1.5% of the population in 1980 to 3.6% in 2000.[8] The biggest growth came in people who identified themselves in the U.S. Census as Hispanic or Latino. In 1980, there were 14.6 million self-described Hispanics and Latinos, representing 6.4% of the U.S. population. By 2000, there were 35.3 million self-described Hispanic and Latinos, representing 12.5% of the U.S. population.[9]

Census data revealed that people of color made up 53% of California's population in 2000. More specifically, Asians accounted for 11% of California's population, African Americans accounted for 6% of California's population, and Latinos accounted for 32% of California's population.[10] These are statistics from 10 years ago, and we expect that the number of minorities in California is even greater.

Looking simply at the demographic shifts over the past years, it would stand to reason that the nation's ethnic media would grow. However, the current number of minority-owned media outlets does not even come close to representing the number of minorities in the US.

A recent study found that while minorities comprise 34% of the U.S. population, they own just 3.15% of television stations.[11] African American media provides an example of how dire the situation is. Approximately 12% of the nation's African American homes are in the New York City and Los Angeles markets. However, there are no African American-owned stations in these markets. Moreover, African Americans do not own stations in cities with large black populations like Detroit, Atlanta and New Orleans. African American owned stations reach just 5.3% of the African American TV households in the US.[12]

---

[7] 1. US Census data. Charts: "Race and Hispanic or Latino: 2000" and "Race and Hispanic Origin 1790 to 1990." factfinder.census.gov
[8] *Id*
[9] ***Id.;*** The Census figure for "Blacks" does not include African Americans of Hispanic or Latino background who chose to identify themselves as "Hispanic/Latino."
[10] http://www.cpehn.org/demochartdetail.php?btn_viewchart=1&view_144.x=53&view_144.y=15&view_144=Get+Statistics%21
[11] http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4848291
[12] "Out of the Picture 2007: Minority & Female TV Station Ownership in the United States" by Derek Turner and Mark Cooper

NCAAOM similarly reported that African Americans make up almost 13% of the U.S. population, according to the U.S. Census Bureau but own less than 1% of the country's television channels.[13]

These statistics are shocking and, unfortunately, they are not simply a representation of our past. Because of massive media consolidations and the application for the merger between Comcast and NBC, hope is dim that minority-ownership will improve.

ii. *Market concentration is a key factor in pushing out minority-owned media*

The media industry plays a vital role in informing and entertaining the public. As such, it is indisputable that media ownership and the availability of diverse programming are crucial. However, studies have consistently shown that massive consolidation and market concentration are key structural factors keeping minorities from accessing the public airwaves.[14] Minority owners tend to have smaller operations or own a single station. Therefore, they find it difficult to compete with their big-media counterparts for programming and advertising revenue, and the few minority-owned stations that exist are often pushed out of the market.[15] Furthermore, consolidation has a particularly onerous impact on minority owners, 61% of whom are single-station operators, because investors want to put their money into larger media conglomerates.[16]

iii. *Many minority stations are owned by large media conglomerates*

Comcast may state that there is not a problem and point to diversity success stories like BET, TV One and Oxygen. The reality is that none of these channels is minority-owned. The truth is that many "minority stations" are in fact owned by large media conglomerates. Viacom owns BET; Comcast holds a substantial ownership in TV One; and a large interest in Oxygen belongs to Time-Warner.[17] The only cable network that meets the government's definition of "minority-owned"[18] is Univision, which is one of the most popular Spanish-language channels in the country.

iv. *Ownership diversity impacts programming diversity*

Media mergers have proven to be bad for diverse programming. When media companies consolidate and there are fewer owners and the diversity of viewpoints, cultures and voices can dramatically decrease.

Studies show that poor representation in programming occurs when minorities are unable to gain access to ownership and employment within the media industry. For example, a study by the National Association of Hispanic Journalist found that "of the estimated 16,000 stories

[13] http://www.theskanner.com/article/view/section/23/page/2/id/12282
[14] http://www.stopbigmedia.com/=minorityvoices
[15] "Out of the Picture 2007: Minority & Female TV Station Ownership in the United States" by Derek Turner and Mark Cooper
[16] http://www.hearusnow.org/mediaownership/20/

[17] http://www.hearusnow.org/mediaownership/20/
[18] Government definition of slightly more than 50% minority ownership

that aired on ABC, CBS, CNN and NBC in 2004, only 115, or 0.72 percent, were exclusively about Latinos."[19] Another example is from a recent study by Children Now who found that the 8:00-9:00 pm television-viewing "family hour" is the least ethnically diverse, with only one in eight programs having a mixed cast. Children Now contends that this sends highly skewed messages about diversity in America to viewers, especially children.[20]

The UCLA Chicano Studies Research Center found that television programming was not representative of the nation's ethnic and racial diversity.[21] More specifically, the study found that nearly 40% of all prime-time series had all-white characters and 80% of all primetime series were "white themed." In comparison, there was just one Latino-themed series in 2004, down from two during 2002 and 2003.[22] The study also found that viewers could watch 16 prime-time series featuring Latino regular characters or they could watch 93 series without any Latino characters.[23] The lack of minorities on television is both disproportionate and unsettling and does not reflect our nation's changing demographics.

Cable companies, such as Comcast, have not adequately shown concern or commitment to diversity of viewpoints, despite these glaring disparities. Rather, Comcast's history shows a consistent pattern against diversity of expression. An article about the cable industry's diversity programming revealed some interesting truths. Comcast, for example, refused to air ads against the war in Iraq.[24] Comcast refused to support an expansion of public access in such communities as Seattle and San Jose.[25] Comcast also rejected the programming ventures of two African-American creative artists (Russ Simmons and Tim Reid) because it felt their programming plans for news and entertainment were too "high-minded."[26]

v. *Programming and content diversity play an important role in all communities*

Greenlining is not simply objecting to a media merger. We are standing up for the sort of diverse and democratic media that a great nation requires.

Historically, the ethnic media have served multiple roles. They cover stories that are largely ignored by the mainstream press, they provide ethnic angles to news, and they report on events and issues taking place in their communities and back in the home countries from which those populations or their family members emigrated. Importantly, ethnic media provide communities a voice, which strengthens a community's cohesion.

Ethnic media plays an important role for civic activities and keeping government accountable because it fosters an informed populace. The public can become wise participants in societal decision-making if they have knowledge of current events and issues.

---

[19] "Network Brownout" http://www.nahj.org/NAHJbrownoutreport03.pdf
[20] http://www.ethnicmajority.com/media_home.htm
[21] http://www.chicano.ucla.edu/press/reports/documents/crr_04Dec2004_000.pdf
[22] *Id.*
[23] *Id.*
[24] http://www.democraticmedia.org/diversity/alacarte_diversity
[25] *Id.*
[26] *Id.*

I would like to provide two good examples from a recent publication about the danger of losing ethnic media that demonstrate the importance of minority media.

> "[Ethnic media considers] it important to correct misperceptions promulgated by the rest of the news. They report about the community from the inside out, sometimes quite literally. When inmates of the Reeves County Detention Center protested poor medical care at the privately run Texas facility, most outlets highlighted the damage to buildings. Telemundo's station in Midland/Odessa, Texas, also described the plight of hundreds of inmates - detained there on immigration violations - who slept outside in makeshift tents despite the freezing weather." [27]

> "When the New Yorker ran its infamous caricature of Barack and Michelle Obama, the mainstream news interviewed comedians who worried about making fun of a black president. But Eric Easter of Ebony/Jet offered more insight. He wrote about the powerful impact of grotesque, racialized cartoons, from political propaganda of the Nazi era to family fare of recent decades, that "still find their ways . . . into the backs of our minds. "'The New Yorker cover did not affront because the joke failed, but because it harkened back to the dehumanizing imagery that takes up residence in our reactive minds.'"[28]

C. California Does Not Need a Jobless Merger

This merger is much more than a transaction that will affect consumers and media. This $30 billion transaction will undoubtedly affect issues of employment and economic recovery. In California, people of color have been disproportionately impacted by the recession. For example, in California in the third quarter of 2009, the unemployment rate for whites was 9.6%, while it was 15.4% for African-Americans and 15.6% for Latinos.[29]

Comcast CEO Brian Roberts reassures the public that the merger will lead to 'no massive layoffs." However, with concerns of a 'jobless recovery' on everyone's mind, the feeble guarantees presented by Comcast and NBC beg the question of the need for a jobless merger.

D. Comcast Must Show a Greater Commitment to Increasing Supplier Diversity

Comcast poses a threat to California's economy. As the largest cable company and second largest interest service provider, Comcast employs and contracts with numerous business enterprises in the state. Therefore, the fact that Comcast has not demonstrated a commitment to contracting with minority-owned business enterprises is concerning.

For over 20 years, numerous energy and telecom companies, such as Verizon and AT&T, have submitted numbers on their supplier diversity and meets with Greenlining on an annual

---

[27] http://theragblog.blogspot.com/2009/03/ethnic-media-important-voice-in-danger.html
[28] http://theragblog.blogspot.com/2009/03/ethnic-media-important-voice-in-danger.html
[29] *See* Kai Filion, "Downcast Economic Forecast: Targeted Job Creation Policies Necessary to Offset Grim 2010 Projection," Economic Policy Institute, Issue Brief #270, January 14, 2010, Tables 2-4; http://epi.3cdn.net/d9904b716d3cf62538_psm6bnec9.pdf

basis.[30] Unfortunately, Comcast has been an outlier when it comes to providing statistics or participating in dialogues regarding supplier diversity even though it states on its corporate website that they "believe that diversity in our supply base is integral to our continued success."[31] For example, this year both AT&T and Verizon's filings were over 35 pages. Comcast's filing, on the other hand, was only 4 pages. Further, Verizon had a 36.48% spend specific to minority businesses and AT&T had a 34.78% spend. Comcast only had a 15.4% spend. More specifically, in 2009 Verizon spent a total of $111,733,139 on contracts with minority owned businesses and AT&T spent a total of $479,618,142.

These dollar figures and statistics are significant because the merger has the potential to jeopardize the industry's prospects for improvement in diversity practices. If accepted, the vertically-integrated Comcast-NBC conglomerate will wield a dominating share of several markets. Comcast's history of poor customer service and lack of diversity commitments coupled with NBC's lack of content diversity negatively influence the rest of the industry and local economies.

For communities of color in California, small businesses are a significant source of economic development and jobs in California. For example, in 2006, small businesses accounted for 52.1% of private-sector employment in California.[32] Many regions and communities, especially inner-city and rural communities of color, do not benefit from working with larger businesses, such as Comcast. Instead, such communities rely most heavily on small businesses for jobs and economic development. Comcast's corporate practices have a significant impact on the entire industry. Therefore, without a specific plan for increasing the number of contracts with minority owned businesses, Comcast has the potential to destabilize minority businesses and the economy of minority communities.

Comcast continues to believe that it should be allowed to operate with little state regulation even as they compete for customers with regulated companies. However, without greater commitments to diversity, competition from Comcast takes customers away from regulated companies with better, more inclusive business practices. Comcast must fully embrace not just the components but also the culture of supplier diversity that is deeply ingrained into California's business practices. Otherwise, Comcast will continue to be the lowest common denominator that could destabilize the economy of minority communities.

E. Comcast and NBC Must Demonstrate Their Commitment to Diversity

Comcast states that it has a strong commitment to diversity. On its corporate website it states that it "know[s] that an organization's commitment to diversity can truly work only when it has been embraced at all levels - starting from the top." Despite this, the reality is that Comcast has a poor track record when it comes to its executive and workforce diversity. During

[30] Greenlining consistently works with the CPUC and numerous companies on this issue and provides consultation of how companies can improve their numbers and why increased spend on contracts with minority-owned business improve their profits.
[31] http://www.comcast.com/corporate/about/diversity/suppliers/suppliers.html
[32] U.S. Small Business Administration, Office of Advocacy, "Small Business Profile: California (2008), available at http://www.sba.gov/advo/research/profiles/08ca.pdf

Congressional hearings on the merger, Comcast CEO Brian Roberts provided that its 13 member board of directors includes only one woman and one person of color.[33] Further, a report by the Hispanic Association on Corporate Responsibility gave Comcast a grade of 50 out of 100 on the diversity of its workforce.[34] It seems that Comcast's commitment to diversity is a façade that that does not reflect its true practices.

NBC similarly has a poor track record. For example, during Congressional hearings, NBC's CEO Jeff Zucker admitted that even though NBC runs Telemundo, one of the largest Latino TV networks in the country, they have no Latinos on the board or executive team.[35] Furthermore, the report by the Hispanic Association on Corporate Responsibility also gave NBCU an overall C+ grade and an F grade for "creative executives" for not having any Latinos in its creative executive roster.

These facts and statistics should be a wakeup call for Comcast and NBC. These companies say they are serious about diversity, but at the end of the day the number of minorities within their workforce and management who actually have the ability to hire or influence content falls woefully short of their desired goals.

II. THE PROPOSED MERGER WILL HARM THE PUBLIC INTEREST BY REDUCING LOCAL NEWS, POLITICAL COVERAGE AND COMMUNITY RESPONSIVE PROGRAMMING.

Localism, the third important element of the public interest, "has been a cornerstone of broadcast regulation for decades."[36] Under the localism principle, broadcasters, as trustees of the public's airwaves, must air programming that serves the interests and needs of their communities of license.[37] In particular the FCC has recognized the provision of: (i) political programming; (ii) programming targeting underserved audiences; (iii) community-responsive programming; (iv) beneficial network affiliation relationships; and (v) disaster warnings, among others, as specific facets of localism.[38] Here, the proposed merger has the potential to reduce local political programming, the qualityand amount of community-responsive programming by upsetting the network-affiliate balance, the timeliness and efficacy of disaster warnings in California, and fails to address the needs of traditionally underserved audiences.

---

[33] http://www.mije.org/richardprince/nbc-comcast-pressed-diversity
[34] http://waters.house.gov/News/DocumentSingle.aspx?DocumentID=184596
[35] *Id. See also http://www.diversityinc.com/article/7375/ComcastNBC-Merger-Spotlights-Lack-of-Diversity/*
[36] *Localism Notice of Inquiry*, 19 FCC Rcd 12425 ¶ 1 (2004) (hereinafter *Localism NOI*). *See also*, *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955) ("Fairness to communities is furthered by a recognition of local needs . . . .").
[37] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) ("It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."). *See also, Localism NOI*, supra note 36, at ¶ 1.
[38] *Localism NOI*, *supra* note 36, at ¶¶ 12-29; *Report on Broadcast Localism*, 23 FCC Rcd 1324 ¶10 (2008) (hereinafter *Localism Report*).

A. The Proposed Merger Will Result in a Reduction of Local Television Newscasts, Which are Integral to a Participatory Democracy.

It has long been recognized that "public deliberation is essential to democracy"[39] however, in modern societies this deliberation is "largely *mediated*, with professional communicators rather than ordinary citizens talking to each other and to the public through mass media of communications."[40] Therefore, professional communicators must be more than merely a profit center; rather they bear the onus of informing the public of current events and political issues. Two provisions of the Communications Act impose affirmative duties to air political programming but, these two duties are limited in their application and scope.[41] As a result, stations vary widely in the amount of political programming they air.[42]

Perhaps more importantly, local television news remains the primary news source that the majority of Americans turn to.[43] While many, including Comcast,[44] may cite the increase in the number of websites and blogs as mitigating the effects of media consolidation, the reality is that internet news websites rarely report original hard news; instead they provide merely opinion or commentary and link to content from traditional news media.[45] Since, the internet is not

---

[39] *Hearing on Public Interest and Localism Before the S. Comm. on Commerce, Science, and Transportation* 108th Cong. 1 (2003) (statement of Martin Kaplan, Assoc. Dean, USC Annenberg School for Communication) *available at* < http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=b24d6d6b-2c07-47ee-8fe4-3b4a08a7f175&Statement_id=37ff5962-3d6e-479f-a18f-3f4a45c46213&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=7&YearDisplay=2003> (quoting Thomas Jefferson's statement that "the strength of our democracy would depend on how well-informed the American electorate is.").

[40] BENJAMIN I. PAGE, WHO DELIBERATES DEMOCRACY? MASS MEDIA IN MODERN DEMOCRACY 1 (1996).

[41] 47 U.S.C. §312(a)(7) (the reasonable access provision grants the FCC the authority to revoke the license of any broadcaster that does not provide reasonable access to candidates for *Federal* offices; however, it only applies to Federal, not state or local, candidates and is satisfied if the station allows a candidate to *purchase* reasonable amounts of time); 47 U.S.C. § 315(a) (the equal opportunities provision requires that broadcasters provide equal access to broadcasting to all political candidates but is only triggered if the *broadcaster* permits a candidate for public office to use the broadcasting station.).

[42] *Localism NOI*, *supra* note 36, at ¶ 56.

[43] MARTIN KAPLAN & MATTHEW HALE, USC ANNENBERG SCHOOL FOR COMMUNICATION & JOURNALISM, LOCAL TV NEWS IN THE LOS ANGELES MEDIA MARKET: ARE STATIONS SERVING THE PUBLIC INTEREST? (2010) *available at* <http://www.learcenter.org/pdf/LANews2010.pdf>; Pew Research Center for the People and the Press, *Stop the Presses? Many Americans Wouldn't Care a Lot if Local Papers Folded*, PEWRESEARCHCENTERPUBLICATIONS, March 12, 2009, <http://pewresearch.org/pubs/1147/newspapers-struggle-public-not-concerned> (Found that most people (68%) get their news from local television); Adam Lynn, S. Derek Turner & Mark Cooper, Traditional Content is Still King as the Source of Local News and Information 3-4 (Paper Presented at the Annual Meeting of the International Communications Association, Montreal, Quebec, Canada, May 21, 2008), *available at* <http://www.allacademic.com/meta/p233147_index.html> (Found that over 86% of people rely on traditional media for local news and information).

[44] *Application*, *supra* note 1, at 4.

[45] Lynn, Turner & Cooper, *supra* note 43, at 13 (finding that "only 3.6 percent of the entire sample consisted of original hard news reporting"); S. Derek Turner and Mark Cooper, *Independent Local News Sites Do not Significantly Contribute to Source or Viewpoint Diversity*, *in* Reply Comments of Consumers Union, Consumer Federation of America and Free Press, *In the Matter of 2006 Quadrennial Regulatory Review*, Appendix B at 161, MB Docket No. 06-121 (Filed Jan. 16, 2007) (concluding that while 18% city specific internet sites was based on original reporting, most of this was on subjects dealing with arts and entertainment or food. In contrast, only 2.6% of the stories on city-specific websites contained original reporting on "hard topic" news like politics or community governance).

currently a generator of significant independent, original content, the consolidation of content production that will result from the proposed merger will have profound effects. Even if we close the digital divide, the effects of consolidation will not be mitigated by the presence of or duplication of information on the internet.

i. *Consolidated ownership reduces the quantity and quality of local news.*

The reason this consolidation will have such a drastic impact is because ownership matters with respect to local television news.[46] In general, independent stations broadcast more local content on their news; conversely "consolidated media ownership negatively affects the production of local content on local television newscasts."[47] The presence of local content is the major indicia of the "quality" of a newscast.[48] This is why the related concern that "heavy concentration of ownership in local television by a few large corporations will erode the quality of news Americans receive" is particularly alarming.[49] Since our democracy depends on a well informed public, and the consolidation of media outlets is reducing the quality of the local news that keeps the public well informed, there will be significant consequences for participatory democracy.

This is nowhere more relevant than in majority-minority states, such as California.[50] Taking the Hispanic population as an example, there is evidence that Spanish-language local television news substantially boosts Hispanic voter turnout, especially in non-presidential election years.[51] In contrast, "Hispanics without access to local television news are significantly less likely to participate in elections."[52] The results are real and significant: "news in Spanish caused about a fifth of Spanish-language news viewers to *start* voting."[53] The perspectives of underserved audiences must be represented in order to ensure a politically engaged society.

---

[46] DANILO YANICH, OWNERSHIP MATTERS? CONTENT, LOCALISM & OWNERSHIP IN LOCAL TELEVISION NEWS (2010) *available at* <http://mediaresearchhub.ssrc.org/ownership-matters-content-localism-ownership-on-local-television-news/attachment>; Carolyn Byerly, Kehbuma Langmia & Jamila A. Cupid, *Media Ownership Matters: Localism, the Ethnic Minority News Audience and Community Participation* in DOES BIGGER MEDIA EQUAL BETTER MEDIA?: FOUR ACADEMIC STUDIES OF MEDIA OWNERSHIP IN THE UNITED STATES 4 (2006), *available at* <http://www.benton.org/sites/benton.org/files/archive_files/benton_files/mediaownership reportfinal.pdf>; PROJECT FOR EXCELLENCE IN JOURNALISM, DOES OWNERSHIP MATTER IN LOCAL TELEVISION NEWS: A FIVE-YEAR STUDY OF OWNERSHIP AND QUALITY (2003) *available at* <http://www.journalism.org/sites/journalism.org/files/ ownership.pdf> (Hereinafter PEJ LOCALISM STUDY).

[47] YANICH, *supra* note 46, at 4.

[48] A "quality" newscast has been described as one that should "1) cover the whole community 2) be significant and informative 3) demonstrate enterprise and courage 4) be fair, balanced and accurate 5) be authoritative [and] 6) be highly local." PEJ LOCALISM STUDY, *supra* note 46, at 2. *See also* YANICH, *supra* note 46, at 12 (how useful a newscast is to citizens depends on the degree of "local" content that is included).

[49] PEJ LOCALISM STUDY, *supra* note 46, at 2. More specifically, "concentration of vast numbers of TV stations into the hands of a few very large corporations . . . though it may prove the most profitable model, is likely to lead to further erosion in the content and public interest value of the local TV news Americans receive." *Id.* at 7.

[50] Texas, Hawaii, New Mexico and California are majority minority states; five others – Maryland, Mississippi, Georgia, New York and Arizona – are next in line. Press Release, U.S. Census Bureau, *Texas Becomes Nation's Newest "Majority-Minority" State, Census Bureau Announces* (August, 11, 2005) *available at* < http://www.census.gov/newsroom/releases/archives/population/cb05-118.html>.

[51] Felix Oberholzer-Gee & Joel Waldfogel, *Media Markets and Localism: Does Local News en Espagnol Boost Histpanic Voter Turnout?*, 99 AM. ECON. REV. 2120, 2127 (2009).

[52] *Id.*

[53] *Id.* at 2120 (emphasis added).

Unfortunately however, Comcast and NBCU have a poor track record of promoting minority perspectives and preserving local content.[54] This is demonstrated by the by the fate of KSTS (Channel 48) a Telemundo owned and operated station in San Jose, California. In December 2006 NBCU decided to eliminate locally produced Telemundo newscasts in seven markets, including San Jose, and replaced them with regional content transmitted from Forth Worth, Texas.[55] These markets comprise five of the top ten Hispanic markets in the country.[56] As a result, KSTS was forced to gut their operations, terminating dozens of reporters, camerapersons, production team members, and producers.[57] In response to audience outrage, NBCU decided to bring back four local newscasts in February 2010.[58] However these newscasts rely on reports and images received from NBC news sources, only a smattering of content is locally produced and the resources are still threadbare.[59]

ii. *Local news must not be migrated from broadcast channels to cable channels, video-on-demand, or online platforms.*

Finally, the risk of reduction in local broadcast news is heightened by the fact that broadcast television is simply not as profitable as cable television.[60] Cable news was the only sector that did not suffer declining revenue in 2009; local television ad revenue fell twenty-two percent.[61] Thus, while it makes economic sense for Applicants to transition news content from local broadcast channels to cable networks, it also flies in the face of their public interest commitments.

Unfortunately, Comcast has already indicated that this is what the future holds: the Application specifically states that Comcast intends to distribute local content through its "local and regional cable networks, its video-on-demand service, and its online platform."[62] For example, Comcast recently partnered with the U.S. Small Business Administration to provide

---

[54] *See also*, KAPLAN & HALE, *supra* note 43, at 7 (in a study of half-hour news broadcasts, KNBC broadcast the most ads, 9:22 min, and sports and weather content, 4:22 min, of all 8 major LA stations, but the least amount of local issues, 50 seconds, and only 32 seconds of local government coverage).

[55] *See, e.g.,* Meg James, *Less Local News for Some at Telemundo,* LOS ANGELES TIMES, Nov. 13, 2006 (Professor at USC Annenberg School for Communications commented: "No matter how they frame it, this means there will be less local news . . . .").

[56] Elena Shore, *Attention NBC Telemundo: Latinos Need Local News Too*, NEW AMERICAN MEDIA, November 1, 2006.

[57] *Unhappy Holiday News for Local TElemundo Staff*, LATINO PERSPECTIVES MAGAZINE, Dec. 2006 (Noting a Telemundo journalist's comment "I thought with the big chain buying us we'd get more resources, not less.")

[58] David Tanklefsky, *Telemundo Rolls Out Enhanced Local Newscasts in Key Markets*, Broadcasting & Cable, Feb. 2, 2010 (the markets are Dallas, Houston, San Jose and Phoenix), *available at* <http://www.broadcastingcable.com/article/447300-Telemundo_Rolls_Out_Enhances_Local_Newscasts_in_Key_Markets.php>.

[59] This information was provided anonymously to the Greenlining Institute. In order to protect that source, we cannot disclose his identity in this testimony. However, we strongly encourage the FCC to investigate the merits and accuracy of this claim.

[60] Broadcast television has only one source of revenue (advertising) whereas cable has two (advertising and consumer fees). *See infra* Appendix I.

[61] PEW PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM Overview 1 (2010), <http://www.stateofthemedia.org/2010/> (hereinafter STATE OF THE NEWS MEDIA 2010).

[62] Application, *supra* note 1, at 41.

video-on-demand coverage of business related workshops and seminars in San Francisco.[63] While it is laudable to include this content within the on-demand platform, this must not replace local broadcast coverage of these events. Simply put, relegating this type of content to the depths of the video-on-demand offering is not acceptable; it is not a substitute for local broadcast coverage. The U.S. Supreme Court has underscored this point, saying that "it is the *right of the public* to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[64] These rights must not be abrogated. At a minimum we must have public hearings to assess how this transaction will affect consumers and whether it should be allowed to proceed.

B. The Proposed Transaction Will Reduce Community Responsive Programming, Severely Alter the Network-Affiliate Relationship and Hinder the Dissemination of Effective and Timely Emergency-Disaster Warnings.

The localism principle mandates not only the provision of local news, but also the provision of programming tailored to other community needs, such as: (1) public affairs programs; (2) the right of network affiliates to reject or refuse to air programs offensive to their communities; and (3) the provision of adequate disaster warnings. The proposed transaction has the potential to reduce the amount of local public affairs programs, provide Comcast with the market power to strong-arm its network affiliates, and poses the threat of reduced or ineffective disaster warnings. It has been noted that "[t]he more disconnected the ownership of the media is from a community the less it is devoted to serving it."[65]

i. *The proposed transaction will reduce community responsive programming.*

I is unclear how Comcast, a company headquartered in Philadelphia, or NBCU, headquartered in New York City, can be responsive to communities in Oakland, San Jose, Los Angeles, or San Diego. At the risk of stating the obvious: the needs of communities in New York and Pennsylvania are vastly different from the needs of communities in California, Washington D.C., and everywhere in between. This transaction must not proceed until we have a thorough understanding of how this transaction will impact these needs.

In general, "local ownership is correlated with more Public Affairs and Family programming."[66] Specifically, smaller markets, and independent, locally owned or female owned stations have more public affairs programming.[67] Studies show that consolidation does

---

[63] Press Release, Comcast California, In Celebration of National Small Business Week, U.S. Small Business Administration & Comcast Partner to Help Small and Medium Sized Businesses (May 20, 2010), <http://comcastcalifornia.mediaroom.com/index.php?s=43&item=364>.
[64] Red Lion Broadcasting, 395 U.S. at 390 (emphasis added).
[65] Common Cause Education Fund, Media and Democracy in America Today: A Reform Plan for a New Administration 5 (2008) *available at* <http://www.commoncause.org/atf/cf/{fb3c17e2-cdd1-4df6-92be-bd4429893665}/MEDIAPLAN082108.PDF>.
[66] Gregory S. Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming*, Federal Communications Commission Media Ownership Study #3, p. 26 (July 23, 2007).
[67] *Id*. at 23 and Table 18.

not increase the quantity and quality of public affairs programming.[68] Simply put, Comcast's argument that the proposed transaction will increase public affairs programming does not hold water.[69]

ii. *The merged entity will have the market power to prevent affiliates from preempting regional and national content in favor of local and community responsive programming.*

A second area of concern with respect to community responsive programming, is the ability of the Comcast-NBC behemoth to strong-arm NBC network affiliates into carrying programs that are either not relevant or even patently offensive to the communities they serve. There are two FCC rules that regulate the network affiliate relationship.[70] However, the efficacy of these rules has recently come into question.[71] The FCC has recognized that "it is critical to maintain a balance in the network-affiliate relationship that affords local broadcasters ultimate power over programming decisions without risking undue financial hardship or implicit threats of unanticipated disaffiliation, so that they retain unfettered discretion to select what they air, including network-provided programming."[72] Here, the merged entity will have the market power to effectively mandate that a local station broadcast only centrally produced regional or national content. This would preempt all local programming targeted to "niche" audiences, such as communities of color, low income communities, or other traditionally underserved audiences. In an ethnically diverse 'majority-minority' state such as California, for any network to be truly responsive to its constituency, it must broadcast local programs targeted to those communities.

---

[68] Michael Zhaoxu Yan & Yong Jin Park, *Duopoly Ownership and Local Information Programming on Broadcast Television: Before-After Comparisons*, 53(3) J. OF BROADCASTINGS & ELECTRONIC MEDIA 383 (2009). There is no benefit to public affairs broadcasting due to consolidation of media ownership; duopoly stations provided the least amount of programming and other stations in duopoly markets did not perform better than stations in non-duopoly markets. *Id*. at 397. Moreover, another study found that "[o]wnership by one of the BIG FOUR commercial broadcast networks [ABC, CBS, FOX and NBC] . . . significantly decreased the amount of local public affairs programming on Television." MICHAEL YAN & PHILLIP NAPOLI, MARKET STRUCTURE, STATION OWNERSHIP, AND LOCAL PUBLIC AFFAIRS PROGRAMMING ON LOCAL BROADCAST TELEVISION 13, *presented at* The Telecommunications Policy Research Conference (2004), *available at* <http://web.si.umich.edu/tprc/papers/2004/374/tprc2004_yan.pdf>.

[69] Application, *supra* note 1, at 40.

[70] The first is the time option rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time". 47 C.F.R. § 73.658(d). The second is the right to reject rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from: (1) rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) substituting a program which, in the station's opinion, is of greater local or national importance." 47 C.F.R. § 73.658(e).

[71] *Network Affiliated Stations Alliance Declaratory Ruling*, 23 FCC Rcd 13610 (2008) (In 2001 the Network Affiliated Stations Alliance, a.k.a. "NASA", filed a Petition for Inquiry into Network Practices with the FCC. In the intervening years, NASA and the Networks renegotiated their Affiliation Agreements to ameliorate their concerns. However, in order to avoid future controversies the FCC issued this Ruling, affirming various principles relating to the right-to-reject rule and option-time rules.). *See also*, *Localism Report*, *supra* note 38, at ¶¶ 94-96 (discussing the FCC's continuing concerns regarding network affiliation and seeking comment on the right to review programming in advance); *Localism NOI*, *supra* note 36, at ¶¶ 30-32 (stating the FCC is concerned "that the networks are hindering the affiliates' ability to preempt network shows for local programming.").

[72] *Localism Report, supra* note 38, at ¶ 94.

The merged entity will have the ability to drastically alter the network-affiliate balance and should not be permitted.

iii. *The proposed transaction may result in less effective disaster and emergency warnings*.

Finally, the provision of adequate emergency and disaster warnings is another way that broadcasters must be responsive to community needs.[73] Having effective, timely, over-the-air local broadcasting capabilities for severe weather and disaster warnings is imperative for communities in California, where earthquakes, severe wild-fires, and mudslides occur far too often. Moreover, local television broadcasts are likely the primary way that low income communities are apprised of the dangers and relief efforts during an emergency situation.[74] We must not forget the 2002 chemical spill disaster in Minot, North Dakota that resulted in death and more than a thousand injuries.[75] Because local radio stations were remotely owned and operated by an automated system, local emergency responders could not contact anyone to implement an emergency warning.[76] Over fifteen thousand local residents were unaware that an impending toxic ammonia cloud was bearing down on them and had no way to find out how to respond.[77] This example highlights the unique role that local broadcasters, both television and radio, play in ensuring the safety of the communities they serve. Comcast may tout the expansion of their on-demand platform, but it has utterly failed to address this basic and essential concern.

C. The Risk of Reduction in Localism is Unacceptably High.

As discussed above, ownership of media matters, not only for competition and diversity, but also for localism. Applicants allege that the "proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms."[78] However, this transaction is not merely a vertical integration; rather it has significant horizontal implications. Moreover, due to the unique nature of the television market,[79] "ownership structure at *any point in the chain* of *either* [the programming production, programming network, or distribution] market can influence outcomes like the quantity and quality of television programming provided to households."[80] Since Comcast and/or NBCU are involved in all three television markets, the proposed transaction can be expected to have a significant impact both vertically and horizontally.

---

[73] 47 U.S.C. § 151 (the FCC was created to promote: "safety of life and property through the use of wire and radio communication."). *See also*, *Localism NOI*, *supra* note 36, at ¶ 27 ("a fundamental way in which broadcasters use the medium to serve their communities of license is to provide emergency information."); *Localism Report*, *supra* note 38, at ¶ 87 (discussing whether the FCC should require a physical presence at a TV broadcasting facility or whether they should be allowed operate remotely).

[74] *Broadcast Localism Hearings Before the F.C.C.*, Rapid City, S. Dakota 56-60 (May 26, 2004) (statement of Park Owens, Director of Emergency Management in Rapid City and Pennington County, discussing the importance of access to local broadcasts) *available at* <http://www.fcc.gov/localism/rapid_city_transcript.pdf>.

[75] ERIC KLINENBERG, FIGHTING FOR AIR: THE BATTLE TO CONTROL AMERICA'S MEDIA 10 (2007).

[76] *Id*. at 9-10.

[77] *Id.* at 10-11.

[78] Application, *supra* note 1, at 2.

[79] *See infra* Appendix B.

[80] Crawford, *supra* note 66, at 6.

Moreover, both companies have demonstrated a willingness to sacrifice local content and operations for the sake of efficiency. For example, citing efficiency concerns as justification, Comcast has repeatedly consolidated operations. For example, in 2008 Comcast consolidated operations in Denver, Colorado, and shut off a local television channel that provided coverage of the community calendar, civic events and local political forums in nearby Colorado Springs.[81] That same year, Comcast consolidated its east-coast operations, cutting 300 positions by combining six regions into four.[82] In 2009, when Comcast became the sole owner of New England Cable News, a leading source of news in New England and one of the most recognized documentary producers in the country, it immediately fired the station's president in order to operate it under Comcast Sports Group.[83] Also in 2009, Comcast announced the purchase of DailyCady, a self-proclaimed 'insider's guide to your city', and ceased producing seven of the twelve local publications in favor of an 'Everywhere' edition.[84] Most recently, January, 2010, Comcast merged yet another two if its regions, this time Sarasota and Fort Myers-Naples in Florida.[85] NBCU is no different – perhaps this is a perfect match, one made in hell. As discussed above, NBCU closed seven local Telemundo news desks in favor of remotely produced content.[86] In addition, NBCU has pioneered content sharing agreements with other television news broadcasters, such as FOX and CBS, in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York.[87] Aside from the competition concerns that this collusion raises, it patently reduces the variety, quantity and quality of local news.

Finally, in their application to the FCC, Comcast and NBCU stated that the merger will enable them to "share talent, facilities, and programming with the combined entities other programming business, thereby achieving economies of scale and scope."[88] In other words, consolidation of content production and programming is already on the horizon. This will, in

---

[81] Ralph Routon, *Comcast Turns off Springs*, COLORADO SPRINGS INDEPENDENT, Mar. 13, 2008.
[82] *Comcast Cutting 300 Positions*, PHILADELPHIA BUSINESS JOURNAL, Oct. 21, 2008 (Comcast cut 300 by combining Philadelphia and New Jersey into "Freedom Region", and Potomac, Maryland, Delaware and Richmond regions into the "Beltway Region"); Mike Farrell, *Comcast To Lay Off 300: Top Cabler Combining Regions Within Eastern Division*, MULTICHANNEL NEWS, October 22, 2008.
[83] Johnny Diaz, *Comcast Assumes Full Ownership of NECN*, BOSTON GLOBE, June 18, 2009 (New England Cable News will be "folded into Comcast's programming division and be operated under Comcast Sports group").
[84] Dylan Stableford, *Comcast Casualty: Layoffs at DailyCandy*, THE WRAP, Dec. 4, 2009 *available at* <http://www.thewrap.com/ind-column/roller-coaster-day-comcast-dailycandy-ends-layoffs-11236>.
[85] Kevin McQuaid, *Comcast Merges Two of its Regions, Including Sarasota,* HERALD TRIBUNE, Jan. 12, 2010, at D1 (Comcast consolidating Sarasota and Fort Meyers-Naples DMAs to save money and raise efficiency).
[86] NBCU attempted to use efficiency considerations to justify the closure of seven Telemundo local news desks. *See* discussion *supra*.
[87] NBCU has concluded in News "Sharing Agreements" in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York. *See, e.g.,*P.J. Bedarski, *Philly Stations Like Share and Share Alike*, TVNEWSCHECK, Apr. 21, 2010 (the Local News Service has its own planners, assignment editors and photographers that distribute stories to NBC and Fox); Michael Malone, *New York Pool: WNYW, WNBC, WCBS, WPIX*, BROADCASTING & CABLE, June 8, 2009 (In NY, an independent editor will determine the daily coverage and distribute it to all participating stations); Michael Malone, *Three L.A. Stations to Begin Local News Video Share June 15*, BROADCASTING & CABLE, June 2, 2009 (In LA, the local news share desk will be housed at NBC and overseen by a NBC veteran); Michael Malone, *Ganett, Fox, NBC Share in DC*, BROADCASTING & CABLE, May 21, 2009 (In DC NBC shares ground and aerial news video coverage); Michael Grotticelli, *Chicago Stations Join to Share Video Crews for ENG*, BROADCAST ENGINEERING, May 8, 2009 (NBC, CBS, FOX and Tribune to pool content in Chicago); *Fox Television Stations and NBC Local Media Form Local News Service*, BUSINESS WIRE, Nov. 13, 2008 (Fox and NBC O&Os to share news video coverage in Philadelphia).
[88] Application, *supra* note 1, at 40

turn, directly reduce the amount and diversity of local content, not to mention jobs. Based on the Applicants' track records and stated intentions, the only reasonable conclusion is that this merger will result in less localism. Until these concerns are adequately addressed and all potential harms successfully mitigated, this transaction should not be permitted to go forward.

D. Applicants' Voluntary Public Interest Commitments are Insufficient to Mitigate the Potential Harms.

Voluntary public interest commitments have not been successful. Take for example, the voluntary commitment that broadcasters air 5 minutes per night (between 5 and 11:35 pm) of candidate centered discourse during the 30 nights prior to an election.[89] Among others, NBC made a public commitment to ensure that its owned and operated channels met this target.[90] Unfortunately however, a Lear Center study of the 2000 general election shows that only one of the 74 stations surveyed met the five minute target; NBC owned and operated channels averaged just over two and a half minutes of candidate centered discourse per night.[91] Thus, it is doubtful whether voluntary public interest commitments can provide a meaningful check on the myriad public interest harms that will flow from the proposed transaction. However, even if the public interest commitments suggested by Comcast are made binding and enforceable by the FCC order, they still do not prevent or remedy public interest harm. These concerns must be addressed. However, the petition process before the FCC is insufficient to adequately discern community needs. The FCC must hold public hearings in order to fully appreciate the impact of this transaction and so that they can craft appropriate mitigating conditions.

i. *Comcast has failed to show that local television newscasts and political coverage will not be harmed by the merger.*

As discussed above, the proposed transaction will result in a reduction in the amount and quality of local newscasts, in particular, coverage of local political issues. However, none of the public interest commitments addresses this harm. While Comcast asserts that it "intends to preserve and enrich the output of local news" in Commitment # 2, the only way they have suggested doing this is by putting local programming on cable networks, video-on-demand and online.[92] Simply put, transitioning or replicating content on multiple platforms does not increase the quality of local news. Comcast has not, for example, committed to increase the number of local reporters stationed at NBC and Telemundo news desks. Comcast states that the NBC owned and operated stations will "collectively produce an additional 1,000 hours per year of local news and information programming." However, this is not in the official Commitment # 2 and, even if it becomes binding, it is not clear how these hours will be allocated and whether this includes the fifteen Telemundo owned and operated stations or only the ten NBC owned and

---

[89] This was suggested by the Presidential Advisory Committee on Public Interest Obligations, co-chaired by Leslie Moonves, President of CBS. CHARTING THE DIGITAL BROADCASTING FUTURE, FINAL REPORT OF THE ADVISORY COMMITTEE ON PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 59 (1998) *available at* <http://www.benton.org/sites/benton.org/files/recs.pdf>.

[90] Norman J. Ornstein, *Broadcasters Need to Do More to Give Candidates Air Time*, Research Roll Call, June 23, 2004, *available at* <http://www.aei.org/article/20783>.

[91] Martin Kaplan & Matthew Hale, Local TV Coverage of the 2000 General Election 3, 15, *available at* <http://www.learcenter.org/pdf/campaignnews.PDF>.

[92] Application, *supra* note 1, at 41-42.

operated stations.[93] It is also unclear whether this commitment will continue year over year, or only during the first post-transaction year.

Further, Applicants have not committed to allocate or provide any air time to political programming. Of specific concern is the lack of any commitment dealing with air time for local political issues, especially those affecting low income communities and communities of color. While speech may be free, communication is expensive.[94] However, there is no commitment to establish a fund to subsidize or a commitment to provide free airtime to those candidates who are disadvantaged by the ever increasing cost of communications: minority or low income candidates. Likewise, Applicants have made no mention of, much less a commitment, ensuring adequate political coverage on the basic tier of service; instead they intend to relegate this to higher cost and less accessible platforms.[95] Finally, there is no commitment to air political programming on local television *at a time when most people would watch it* instead of airing it only during times when the only viewers are insomniacs. Any commitment without specifics of this sort is vacuous.

Finally, Commitment #16 alleges that the combined entity will "continue the policy of journalistic independence" and will retain the position of the NBC News ombudsman.[96] While at first glance, this appears to be a laudable claim, it is similarly toothless. It is unclear what authority the ombudsman would have, whether this authority can be increased or decreased at will by Comcast, and what the term of the position is.[97] In general, "the media [doesn't] initiate investigations of corporations, particularly their advertisers, until after the demise of the company."[98] If this is true for advertisers, how much more true will it be for their owners? NBC news must not be hampered in reporting on the activities of GE or Comcast. As it currently stands, the harm to local news and political programming is grave and unmitigated by the stated commitments.

ii. *Comcast has failed to show how they will be responsive to local communities.*

As discussed above, "[b]roadcasters have an obligation to serve the public's interests, not just their own commercial interests."[99] In Commitment #1, Applicants claim to be committed to the provision of free over the air television.[100] However, in the text accompanying this commitment, Comcast indicates that they intend for the NBC, Telemundo, and locally owned

[93] If it includes the Telemundo O&Os, this works out to 40hrs per station per year, or roughly 6.5 minutes per day. If it applies only to the NBC O&Os, it would be 100hrs per station per year, or roughly 16 minutes per day.
[94] Common Cause, *Public Interest Obligations*, http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773669 (last visited May 25, 2010).
[95] Application, *supra* note 1, at 41-42 (Comcast will put local content online and on the video-on-demand platform). *See also, id.* at 50 (Comcast will put Telemundo and mun2 programming on video-on-demand platform); *id.* at 68-69 (Comcast will put PEG content on video-on-demand platform).
[96] Application, *supra* note 1, at 133.
[97] For example, if the ombudsman can be removed by Comcast without cause, this offers very little independence or protection.
[98] Eric Chiappinelli, Adam Candeub, Jeffrey Chester, Lawrence Soley, *The Corporatization of Communication*, 30 SEATTLE U. L. REV. 959, 974-75 (2006-2007).
[99] The Benton Foundation, CITIZEN'S GUIDE TO THE PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 4 (2005), *available at* <http://www.benton.org/sites/benton.org/files/citizensguide.pdf>.
[100] Application, *supra* note 1, at 40.

and operated stations to share "talent, facilities, and programming with the combined entity's other programming businesses, thereby achieving economies of scale and scope."[101] By placing efficiency concerns above their obligation to serve the public, Comcast has shown itself to be an enemy rather than a champion of the public interest.

Secondly, Comcast has not indicated how it will assess the public interest needs of the various communities it will serve. There is no commitment to create citizen advisory boards, no suggestion of any sort of ascertainment process, and not even an acknowledgement of the fact that communities in California have very different needs than those in Philadelphia and New York. If the transaction is approved, Comcast will have the duty to serve local communities. Without meeting with community leaders in the major DMAs it will serve, it is unclear how they intend to fulfill this duty.

A related harm that Comcast has failed to address is the impact that the increased market share will have on its network-affiliate relationships. Comcast has not made any commitments with respect to local NBC affiliates preempting or refusing to air national or regional content. Similarly, Comcast has not indicated that the NBC and Telemundo owned and operated stations would be able to preempt regional or national content in favor of local programming. In sum, Comcast has proposed no way of discovering local needs and has provided no mechanism to ensure that local broadcast affiliates can serve those needs without fear of repercussions, increased retransmission fees, disaffiliation or non-carriage.

Moreover, Comcast has indicated that it intends that local must-have "NBC's sports programming to be distributed on Versus, Golf Channel, and Comcast's multiple RSNs."[102] In other words, sporting events such as the 2010 Olympic Summer Games, a significant number of NFL Sunday Night games, and even the 2012 Superbowl, could potentially no longer be aired on broadcast television channels.[103] For example, Comcast will have the power to move national 2012 Superbowl coverage to a cable channel, such as Versus. Similarly, if sports fans in the San Francisco/San Jose/Oakland DMA want to watch the Sharks, the Giants, the A's, or the Warriors, they will need to pay for Comcast SportsNet Bay Area, Comcast SportsNet California and Versus.[104] Taking local sports broadcasts and migrating them to expensive cable pay stations is simply not responsive to local needs.

Finally, Comcast has failed to address the fact that local broadcasters must be available to air emergency weather and disaster warnings. There are no commitments to ensure that a live person will staff NBC and Telemundo owned and operated stations on a 24-7 basis in order to ensure that timely warnings are effectively broadcast. An automated and remote service cannot substitute for a live person. This is particularly crucial in California, where a truly effective warning takes account for the multi-lingual population. This in effect requires warnings in languages other than English. No community should be endangered because it chooses to watch Telemundo rather than NBC.

---

[101] *Id*.
[102] *Id*. at 50.
[103] *See* Appendix C for a list of the various sports broadcast rights that Comcast and NBC currently hold.
[104] *Id*.

III. The Proposed Merger Would Create a Media Giant with Strong Control of Both the Video Programming and Distribution Market.

Comcast proposes the combination of two giants in the media industry. Comcast is the nation's largest multichannel video programming distributor (MVPD), with almost one-quarter of the market. Comcast also has control over vast amounts of video programming content and several popular online properties. NBCU is one of the nation's four main broadcast television networks and owns 27 broadcast television stations as well as a vast array of national cable networks and online properties. Comcast contends that as this is a largely vertical merger, there is a minimal reduction of competition in either the video distribution market or the video programming market. However, because the proposed entity would have unprecedented control over both video distribution and video programming, it would have new-found power and incentive to undertake a number of horizontal anti-competitive activities in both markets.

With a newly acquired wealth of programming content, the merged company would be able to price-gouge and force bundles of content onto its distribution competitors. As the most dominant player in the video distribution market, the proposed entity will also have the power and incentive to impose its terms on rival video programming producers that must access its strong distribution platform. Thus, this vertically integrated media giant would be able to affect considerable horizontal harms to both the video distribution and video programming markets. The ultimate effect on the consumer would be to raise prices for MVPD services and to reduce the variety and innovation of content. The merger should not be approved unless conditions are in place to protect against these negative effects on competition.

A. The Proposed Merger Would Have Strong Anti-Competitive Effects on the Video Distribution Market.

Comcast is the largest provider of MVPD services in the United States, serving 23.5 million subscribers, almost one-quarter of the national market. While the proposed merger will not add to Comcast's market position in the MVPD market, it will provide the merged company with a wealth of additional content with which it can price-gouge MVPD competitors.

In recent years, Comcast has increasingly gained control over vast amount of video content, acquiring such cable networks as the Golf Channel, E! Entertainment Television, Style Network, Versus and G4. Most significantly, Comcast also owns ten Regional Sports Networks (RSNs), which are considered must-have video programming by the FCC.[105] Besides the NBC and Telemundo network, NBCU also controls 14 popular cable networks, including the USA Network, Syfy, Bravo, CNBC, MSNBC, Oxygen, mun2, The Weather Channel and others.

The merged company would be able to raise prices for all of its content, most especially for must-have video programming. Must-have programming is not replicable, and must be carried by a MVPD distributor in order to retain its customers. Comcast already has such must-have programming in the form of its ten RSNs. The proposed company would be adding additional must-have programming from NBC, including NBC's national and news

[105] *See In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, MB Docket No. 07-198 (rel. Jan. 20, 2010) at ¶8.

programming, affiliated local new programming, NBC's sports programming, such as the 2012 Summer Olympics and other highly demanded content from NBC and its cable networks.

Previously, Comcast bargained tightfistedly with NBC for distribution of NBC/Telemundo content, attempting to keep the price down. If the merger is approved, Comcast could freely over-pay for NBC content, as it would simply be moving money from one pocket to another. However, this would set a price standard that must be matched by Comcast's competitors, such as DirectTV and AT&T, as well as the small cable companies that serve niche communities. Thus, the increased costs for NBC's content, artificially set by Comcast, would raise prices for MVPD services for all consumers.

The media giant would also be able to bundle less popular programming with highly demanded programming, thus forcing MVPD competitors to pay for content that may not be suitable for its customers. Comcast has already been accused of such practices involving its RSNs in California. In December 2009, two small cable companies serving the San Mateo Peninsula in California filed a program access complaint against Comcast for moving the games of Major League Baseball's Oakland A's and the National Hockey League's San Jose Sharks from its San Francisco RSN (CSN Bay Area) to its Sacramento-based RSN (CSN California).[106] According to the complaint, MVPD competitors are now required to buy both RSNs in order to continue to carry the "must-have" local sports programming. The complainants claim that Comcast raised the price of CSN Bay Area without replacing it with "reasonably equivalent" marquee sports programming that was lost, yet still charged more for CSN California to reflect the addition of the added sports programming. Thus, the result was an increase in the price of the same programming, now distributed among two separate RSNs.

The proposed company could use similar bundling practices, mixing and matching Comcast's current content with NBC content. For example, the merged company will have the ability and the incentive to split programming from the 2012 Summer Olympic Games from NBC onto a number of different networks, including Comcast's current networks. In fact, the Applicants have stated such intentions.[107] The merged company can raise the price of these networks, citing the increased incentive of the Olympic Games. MVPD competitors will then be required to carry all of these networks, at the increased prices, if they want to give their viewers full access to the Olympics.

i. *Applicants' commitments are inadequate to prevent anti-competitive behavior in the video distribution market.*

The "public interest commitments" proposed by the Applicants to address anti-competitive behavior in the video distribution market are wholly inadequate. Under Commitment #15, Comcast would voluntarily extend the key components of the FCC's program

---

[106] *See In the Matter of WaveDivision Holdings, LLC, et al. v. Comcast Corporation, et al.*, CSR 8257-P. *See also* John Eggerton, *Stanford, San Bruno File Program Access Complaint Against Comcast*, The Business of Television Broadcasting & Cable, Dec. 29, 2009, available at http://www.broadcastingcable.com/article/441950-Stanford_San_Bruno_File_Program_Access_Complaint_Against_Comcast.php

[107] Applicants state that they will be able to distribute NBC's sports programming to Comcast's "sports networks" such as Versus, Golf Channel, and RSNs instead of to NBC's networks. *See* Application, p. 50.

access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo owned and operated stations for as long as the current program access rules remain in place. [108] This commitment is inadequate for a number of reasons. First, the program access rules are set to expire in 2012. In any case, the program access rules cannot protect against price-gouging because although they ostensibly prohibit discriminatory pricing between MVPDs, the rules place no restriction on quantity discounts. Therefore, the merged company will have unlimited freedom to charge competing MVPDs a much higher price for content than it charges itself – the largest MVPD and thus a recipient of a generous "quantity discount." Thus competitors will be forced to over-pay for NBC/Telemundo content, especially the smaller niche cable companies that cannot take advantage of any quantity discount. The American Cable Association, which represents small cable companies, estimates that its members are paying at least 20-30% more for programming than the larger cable operators.[109] Especially for smaller cable companies, Comcast's proposed mitigations provide absolutely no relief. Unless real protections are in place against such anti-competitive activities, the merger should not be approved.

ii. *The rising price of cable services continues to outstrip inflation despite the addition of competition from satellite television.*

Despite the addition of MVPD competitors such as satellite systems, in recent years, cable service has seen its prices far outstrip the cost of living. From 1995 to 2008, the price of expanded basic cable service grew from $22.35 to $49.65, an increase of 122.1 percent, more than three times the rate of inflation over the same period.[110] One would hope that the price increase of cable would stop or at least slow its rate of increase when faced by increasing competition from satellite television MVPD providers. However, the *rate* of price increase for cable has actually increased for each year in the three years leading up to January 2008.

Comcast may describe the increase in its rates as reflecting an increase in the value of its products, as more channels are added to the basic and expanded basic cable package. However, increasingly, such channels may be affiliated with Comcast, may constitute the same content split into separate channels (as in the case of CSN Bay Area and CSN California) or in the case of Comcast's competitors, may include undesirable channels and content bundled and forced upon the MVPD. Especially with increasing media conglomeration, an increase in the number of channels does not translate into a substantive increase in the variety of offerings.

The effect of anti-competitive practices such as price-gouging and forced bundling of programming would only exacerbate the already severe price increases for MVPD service for all

---

[108] Applicants' Commitment #14 also called for voluntary 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. However, earlier this year, an FCC ruling required much these same actions.
[109] *See* Testimony of Colleen Abdoulah, President and Chief Executive Officer, WOW!, Board Member, American Cable Association, March 11, 2010, before the Senate Committee on Commerce, Science & Transportation, Consumers, Competition, and Consolidation in the Video and Broadband Market, available at http://energycommerce.house.gov/Press_111/20100204/abdoulah_testimony.pdf
[110] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13th Annual Report, MB Docket No. 06-189, FCC 07-206 (rel. Jan. 16, 2009), at ¶2.

consumers. These severe price increases create a barrier to access of important media resources for all consumers, but especially for low-income consumers. To the extent consumers purchase their MVPD service bundled with broadband service, increased prices for MVPD service will retard broadband adoption and exacerbate the Digital Divide.

B. The Proposed Merger Would Harm the Video Programming Market.

The resulting media giant will have the incentive to impose its will over content producers, placing unaffiliated networks in disadvantageous situations compared to its affiliated networks. Comcast could move programming from unaffiliated entities from highly-penetrated basic cable tiers to more expensive low-penetration tiers. The effect on the merged company's programming competitors would be to lower the penetration of their networks, so that they will receive less advertising revenue. Comcast could also require that it receive interest in unaffiliated networks as a condition of carrying them on Comcast, thus increasing its control over programming.

In recent years, the NFL Network, the Tennis Channel, the Mid-Atlantic Sports Network and Wealth TV all filed complaints with the FCC against Comcast arguing that Comcast had discriminated against these unaffiliated networks in favor of networks owned by the cable operators. The combination of Comcast's already significant programming assets with NBC's extensive programming would give the merged entity many more opportunities and a strong incentive to discriminate against non-affiliated networks.

For consumers, the effect of such anti-competitive activities in the programming market will be that they will have to pay for more expensive cable tiers if they wish to continue to see the wide variety of programming that is not affiliated with the merged company. In many cases, competing content producers will not be able to survive these anti-competitive tactics and will cease operation. As a result, consumers will face a reduction of their programming options, as more and more content is controlled by the Comcast/NBCU behemoth or similar media conglomerates.

i. *Applicants' commitments would not prevent the proposed company from imposing its will on competitors in the video programming market.*

The Applicants claim that they will not have the incentive to discriminate against unaffiliated networks. They also propose Commitment #13, that Comcast will, 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 three years on "customary terms and conditions." Despite this commitment, there is nothing to prevent Comcast from adding these channels to its most expensive tier of service, where it will be available only to a low-penetration market. This commitment will not prevent anti-competitive harms to the video programming market.

ii. *The proposed merger would lead to increasing media conglomeration, further eliminating competition in both the video distribution and programming market.*

The proposed merger heralds much greater impairments to competition than those illustrated above, in that it could trigger a wave of further media consolidation. Other distribution and programming companies will need to merge – both horizontally and vertically – in order to have sufficient bargaining power to effectively compete against the Comcast/NBCU media giant. Media consolidation will become a self-fueling cycle, as smaller companies are absorbed by large media conglomerates. Only these large media conglomerates will be able to survive in this environment.

The effect on consumers will be an exacerbation in the rising price of MVPD service. As fewer and fewer gatekeepers have control of media, consumers will also have less variety and choice in media content. Independent sources of media will especially be lacking. In essence, consumers will be paying more, yet receiving less.

C. Comcast Should Leverage Its Increasing Domination of the Broadband Market to Support the Important Objectives of the National Broadband Plan, Not Strangle the Burgeoning Online Video Market.

Throughout its Application, Comcast states that it anticipates investments in the growth of on-line video viewership will accelerate broadband adoption, which Comcast recognizes as an important FCC goal.[111] Invariably, when Comcast claims the merger will benefit broadband adoption, in reality, they are merely citing the increasing reach of Comcast's broadband market and of its online properties and functionality. Despite its lip service to increasing broadband adoption, Comcast does not make any actual commitment of resources towards broadband adoption or any other of the nation's broadband goals.[112]

As part of the American Recovery and Reinvestment Act of 2009 ("the Recovery Act"), Congress directed the FCC to develop a National Broadband Plan to ensure that every American has "access to broadband capability."[113] Congress recognized the fundamental role of universal broadband access as the vehicle of the nation's social and economic health. For this reason, Congress required that the National Broadband Plan include a plan for maximizing the use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency,

[111] *See e.g.*, Application, pp. 7, 37, 55.

[112] Comcast promises to partner with Common Sense Media (CSM) and "[u]pon 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." *Id.*, p. 47. However, these resources are not definitively committed, and these public awareness efforts may look very similar to a marketing campaign for Comcast.

[113] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act), § 6001(k)(2).

education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes."[114]

Congress also recognized that the objectives of the Recovery Act and the National Broadband Plan cited above, which depended on universal broadband access, could only be achieved if broadband was actually affordable for all Americans. Thus, Congress charged the FCC with creating a "detailed strategy for achieving affordability of [broadband] service."[115] Unfortunately, the price for broadband service continues to rise exorbitantly.[116] Universal broadband access and affordability are two fundamental issues that must be addressed for the nation to continue its economic recovery and for the long-term viability of the nation's physical and social infrastructure.

Comcast is in a unique position to contribute to these vital national efforts. Comcast is by far the nation's largest broadband internet service provider, serving 16.3 million subscribers, also almost one-quarter of the market. Moreover, Comcast is continually increasing its share of the broadband market, greatly outpacing its competitors as it added 399,000 new broadband customers in the First Quarter of 2010 – Comcast's nearest competitor in the broadband market (AT&T) only added 255,000 broadband customers in the same time period.[117]

Comcast could utilize its increasing domination of the broadband market to support the universal access and affordability objectives of the National Broadband Plan. Instead, the proposed merger only heralds an attempt to corral the nascent online video marketplace.

D. The Proposed Merger Would Exacerbate Anti-Competitive Harms to the Burgeoning Online Video Market, Reducing Competition and Innovation.

Although the majority of video programming viewership continues to be through either traditional television broadcast or MVPD technology, an increasingly important emerging market is the nation's online video marketplace. A number of companies such as Youtube, Netflix, Amazon Video, and others offer video programming content online. Numerous companies, such as Roku, Boxee and Apple TV are developing technologies and business models to facilitate the delivery of video over the Internet. A free and open Internet offers the opportunity for innovative, independent production and distribution of video content free of the controls of traditional media powers. However, this burgeoning market and forum for innovative media may be choked off at its inception by the proposed media giant.

Online viewership is often a means by which viewers complement their traditional television viewership – for example, it is utilized to catch up on episodes that the viewer had missed watching on traditional television. However, increasingly, online video viewership is itself a competitive alternative to MVPD service. A recent industry report stated that 800,000

---

[114] *See id*, § 6001(k)(2)(D).
[115] *See id*, § 6001(k)(2)(B).
[116] The average monthly bill for broadband service nationwide in April 2009 was $39.00 an increase from $34.50 in May 2008. *See* John Horrigan, *Home Broadband Adoption 2009*, Pew Internet & American Life Project, June 2009, p. 29, available at http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx?r=1
[117] *See* Leitman Research Group, "1.4 Million Add Broadband in the First Quarter of 2010" May 12, 2010, available at http://www.leichtmanresearch.com/press/051210release.pdf

households (often referred to as “cord cutters”) dropped their MVPD subscriptions in the years 2008-2009, preferring to view video content over the Internet.[118] The report forecast that the number of “cord cutting” households will reach 1.6 million by year-end 2011.[119]

Comcast has its own online video provider services and, in acquiring NBCU, the merged company would have 32% ownership in Hulu, the nation’s second largest online video provider. Hulu delivers programming from the broadcast networks and cable channels of NBC, ABC and Fox, currently without charge to viewers.

The merged company would have the incentive to forestall the new online video market, in order to protect Comcast from losing customers that choose to eliminate their expensive MVPD service in favor of online viewing. The merged company could do so by denying its vast wealth of video content to online competitors, or by only offering the content at unfavorable terms. Additionally, the merged company could also place much of its content, including the content from NBC, behind a paywall, so that it would only be available to Comcast subscribers. In that way, Comcast could assure that viewers would be required to pay Comcast for content – either as Comcast MVPD subscribers or as Comcast broadband subscribers.

NBC’s programming assets have already been restricted from online viewing on a number of occasions. NBC restricted video of premiere competitions from the 2010 Winter Olympics to television viewing only, either on NBC or its affiliated cable networks. NBC only carried tape delayed video of premiere competitions, and live streams of other competitions on its Olympics website. However, for this online viewing, NBC instituted a web authentication system, restricting viewership to paid subscribers of cable, satellite or IPTV services. The merged company will have a strong incentive and free reign to use a similar web authentication system to further restrict online viewership of some or all of the upcoming 2012 Olympics to only Comcast cable subscribers. This is the essence of anti-competitive bundling, requiring consumers to purchase one product (Comcast cable services) in order to receive another product (Olympics programming online).

NBCU’s Hulu has already indicated its intention of restricting some of its content to a paid premium tier.[120] A Merger with Comcast will only exacerbate this move to a paywall for content – either by requiring a premium subscription to Hulu, or by restricting access to Comcast cable subscribers.

Such anti-competitive activities will strangle the nascent online video marketplace, and establish the proposed media giant as a controlling market player. This will not only reduce competition, but it can also arrest the development and implementation of new video technologies. Hulu has already acted in an anti-competitive manner with respect to innovative

---

[118] This figure was reported in the Convergence Consulting Group, Inc., “The Battle for the American Couch Potato: Bundling, Television, Internet, Telephone, Wireless,” April 2010.
[119] *See id*.
[120] *See* Dawn C. Chmielewski & Meg James, *Hulu pushes forward with $9.95 subscription service*, Los Angeles Times Business Blog, April 21, 2010, available at http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/04/hulu-pushes-forward-with-995-subscription-service.html

technologies, preventing Hulu's "free" content from being viewed by viewers using Boxee's online video technology. Unless protections are in place, the proposed merger will reduce competition and stifle innovation in the burgeoning online video marketplace.

i. *Applicants' commitments would not prevent anticompetitive activities against online video rivals.*

Throughout its application, Comcast and NBCU profess support for the online video marketplace. Comcast touts its new initiatives to bring video content on-line and its adherence to the "TV Everywhere" principles.[121] Comcast states:

> 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.[122]

While these stated open and non-exclusive "principles" are exemplary, in no way does Comcast actually proscribe the merged company from restricted programming content from competitors. Commitment #10 barely addresses the online video market, promising that "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 3 year period after closing." There would be nothing to prevent the merged company from denying NBC content to online competitors, or requiring a Comcast cable subscription for online viewing. And after three years, Comcast could begin charging for online NBC content.

ii. *Comcast could use its broadband services to discriminate against competing online video companies.*

As the nation's largest broadband service provider, with almost one-quarter of the market (and growing), Comcast will have the power to act as a gatekeeper to the Internet and discriminate against Online Video companies that compete with its affiliated Online Video platforms. With the addition of a large interest in Hulu, the nation's second largest online video provider, Comcast will have new found incentive to do so. Comcast has a history of using its broadband services to discriminate online against unaffiliated companies. For example, in 2007 Comcast subscribers began to notice that they had problems using BitTorrent and similar peer to peer file sharing technologies.[123] Comcast originally denied that it was unilaterally degrading

---

[121] *See* Application, pp. 59-60

[122] *See id*, p. 61.

[123] *See In re Formal Complaint of Free Press & Pub. Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling That Degrading an Internet Application Violates the FCC's Internet Policy Statement & Does Not Meet an Exception for "Reasonable Network Management*, Mem. Opin. and Order, 23 FCC Rcd. 13028 (2008), at ¶6.

any Internet traffic – but these denials later proved to be false.[124] The FCC investigated the issue, found fault with Comcast and in August 2008 issued a "cease and desist" order.[125] Unfortunately, the legality of Comcast's targeted throttling of lawful Internet usage is currently still at issue before the FCC and the courts. Unless the FCC institutes robust rules requiring Net Neutrality, Comcast will be free to discriminated and degrade the use of competing Online Video companies on its broadband service, just as it degraded BitTorrent users. This would be a significant setback for the nascent online video market, as Comcast controls almost one-quarter of the broadband market.

CONCLUSION

Comcast has not evidenced a thorough understanding of its public interest requirements much less mitigated the potential harms of the proposed transaction. It is irresponsible and reprehensible to entrust the nation's oldest broadcasting company to a corporation that does not fully appreciate the magnitude of the public interest responsibility it must shoulder. While Comcast may be able to disregard the needs of its customers as a mere cable provider, it cannot do so as a broadcast entity, where the needs of the public reign supreme. Moreover, it is the FCC's responsibility to ensure that broadcasters fulfill these obligations. The FCC must hold formal public hearings to get answers to these many questions. Until these concerns are fully understood and addressed the proposed transaction should not be approved.

Therefore, Greenlining Institute requests the following conditions be imposed if the transaction is approved:

- At least thirty-five (35%) set aside for minority owned media.
- At least 5 hours a week of primetime programming geared towards minorities on its network channels.
- At least 50 hours a week of minority and produced content on its network and cable channels.
- Establish an internal Content Advisory Board to consult the merged entity about increasing the number or minority characters in leading roles in its programming, increasing the number of minority actors represented in its programming, and increasing the number of programs geared towards minority viewers. The Advisory Board will also consult the merged entity about content to ensure an accurate depiction of minority characters without reinforcing negative stereotyping.
- Comcast will commit to have at least six minorities on its thirteen member board of directors. There will be at least one board member who represents each minority community (African-American, Asian-America, Latino, and multi-ethnic populations) at all times.
- The merged entity will commit to agree to attain executive and management teams comprised of at least 50% minorities.
- Comcast will commit to reporting its supplier diversity numbers to the California Public Utilities Commission and The Greenlining Institute on an annual basis.

---

[124] *See id,* ¶¶7-9.
[125] *See id,* ¶¶53-56.

- Comcast will commit to meeting with The Greenlining Institute on an annual basis to discuss its supplier diversity numbers.
- The merged entity will commit to increase local reporters at the owned and operated stations as follows:
    - With respect to NBC owned and operated stations, commit to hire at least three new minority reporters per station.
    - With respect to Telemundo owned and operated stations, commit return to the pre-2006 consolidation staff levels.
- The merged entity will ensure that the NBC owned and operated stations produce an additional 1,000 hours of local news in the year following the conclusion of the merger and will commit to maintain that level indefinitely. The merged entity will ensure that Telemundo owned and operated stations produce an additional 1,000 hours of local news in the year following the conclusion of the merger and will commit to maintain that level indefinitely.
- The merged entity will commit to establish a content advisory board to evaluate the diversity and localism aspects of all programming. A member of this board will be the NBC Ombudsman, who shall have a term of not less than 3 years, be removable only for cause, and who shall have the authority to recommend or remove news stories.
- The Comcast and the merged entity commits to include a provision in all of its network affiliation and retransmission agreements that indemnifies, holds harmless and covenants that it will not disaffiliate, undertake acts of financial retribution or refuse carriage, in the event an affiliate preempts regional or national programming in favor of local programming.
- Commitment that there will be one person staffing every owned and operated station on a 24-7 basis in order to ensure disaster and emergency warnings are timely transmitted.
- Political Programming
    - Commitment that, in the month leading up to any election, all NBC and Telemundo owned and operated stations will air 10 minutes per day of local political coverage, particularly issues affecting communities of color and low income communities.
    - Commitment to establish a philanthropic fund to subsidize airtime to minority or low income candidates. The amount of the fund shall match all lobbying contributions that Comcast has made in the same financial quarter.
    - Commitment to ensure that both the above types of coverage are on local broadcast television during primetime hours.
    - Commitment to provide as much time to substantive local political coverage as they do to political advertisements.
- Maintaining Competition
    - Adoption of the 11 conditions proposed by U.S. Senator Herb Kohl (D-Wisc), chair of the Senate Judiciary Antitrust Subcommittee, in his May 26, 2010 letter to Christine Varney, Assistant Attorney General of the U.S. Dept. of Justice and FCC Chairman Julius Genachowski.
    - The merged company will commit that all of its video programming content that is currently available for online viewing on any of Comcast's online properties free of subscription or premium charges will remain free of any subscription or premium charges.
- Supporting the Goals of the National Broadband Plan

- Comcast should commit to maintaining affordable broadband service by not raising prices at a rate above that of inflation without FCC approval.
- Comcast should commit to prioritizing the deployment of broadband infrastructure to low-income communities.
- Comcast should establish an independently administered fund dedicated to improving connectivity, enhancing hardware and training personnel of libraries and community-based organizations (CBOs) in low-income communities.
- Comcast should establish an independently administered fund dedicated to advancing digital literacy by conducting trainings and outreach in low-income communities.

APPENDIX A
COMCAST AND NBCU ASSETS

Comcast owns the following[126]:

- Cable Networks: E! Entertainment Television, Style, The Golf Channel, G4, CN8, Versus, Exercise TV, PBS Kids Sprout (partial), International Networks, FEARnet (partial), TV One (partial). Comcast SportsNet (CSN) includes CSN Bay Area, CSN California, CSN Chicago, CSN Philadelphia, CSN New England, CSN Mid-Atlantic, CSN Northwest, SportNet New York (partial), MountainWest Sports Network (partial), CSS (partial).
- High-speed Internet: Comcast has 14.9 million high-speed Internet subscribers and 6.5 Voice over IP (VoIP) subscribers.
- Online Holdings: Comcast.net, Fancast.com, Fandango.com, DailyCandy.com, Movies.com, Plaxo, thePlatform, Streamsage.
- Production and distribution: Comcast acquired Metro-Goldwyn-Mayer (MGM) with Sony Pictures and other investors.
- Sports: Comcast-Spectator is a sports and entertainment firm, which owns the Philadelphia 76ers and the Philadelphia Flyers. Comcast also runs and owns the Spectrum and the Wachovia Center, two major indoor arenas, and Flyers Skate Zone, a group of community skating rinks.
- Comcast-Spectator owns a majority interest in Global Spectrum, which markets and manages public assembly facilities, Ovations Food Services, a food vendor for sports arenas and major events, Front Row Marketing Services and New Era Tickets.
- Misc: Comcast Interactive Capital, Comcast Spotlight, TVWorks (partial), GuideWorks (50 percent).

NBCU owns the following[127]:

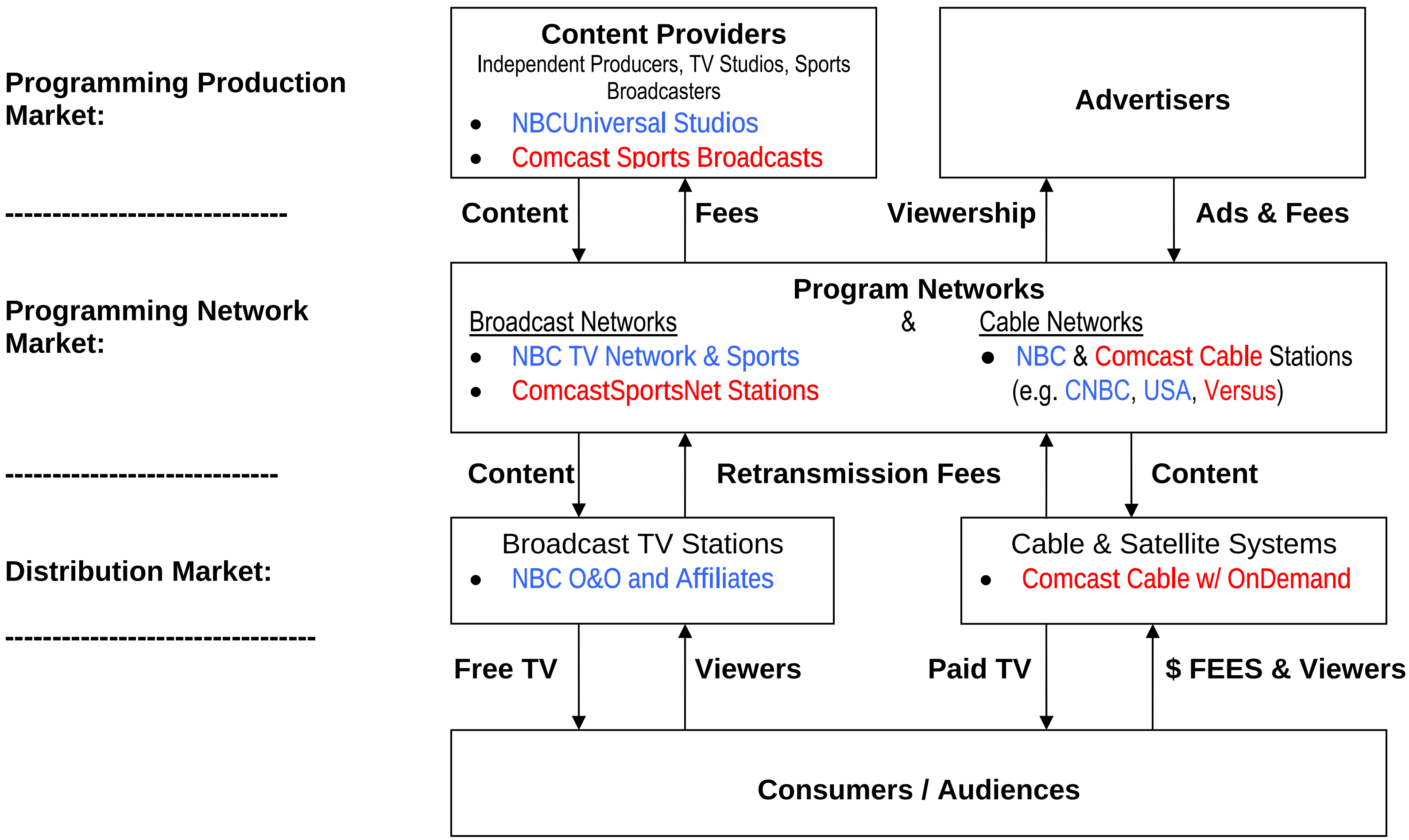
- Television networks: NBC Networks, Telemundo, Ion Media (partial stake).
- Cable: NBC Entertainment, NBC News, NBC Sports, NBC Television, NBC Universal, CNBC, CNBC World (Arabia, India, Asia, Europe), MSNBC, Bravo, Sci Fi Channel, Telemundo, USA, Oxygen, Weather Plus, Mun2, Sleuth, Chiller, Universal HD, A&E Networks (25%; includes A&E, the History Channel, History en español, the Biography Channel, Military History Channel, Crime & Investigation Network, A&E HD, the History Channel HD, History International), the Weather Channel (partial), Sci-Fi Channel HD.
- Production and distribution companies: NBC Universal Television Distribution, Universal Media Studios
- 26 television stations, owned under the “NBC Universal” division. These include NBC affiliates, 46 stations, Telemundo affiliates, and a small number of independents.
- International Channels**:** 13eme Rue (France), 13th Street (Germany), Studio Universal (Germany), Sci-fi Channel (Germany), Calle 13 (Spain), Sci Fi Channel UK, Movies 24

[126] http://www.freepress.net/ownership/chart/main
[127] http://www.freepress.net/ownership/chart/main

(UK), DivaTV (UK), Studio Universal (Italy), Universal Channel (Latin America), CNBC Asia, CNBC Europe, 18 Hallmark Channels (worldwide), KidsCo (worldwide, partial).

- Television networks: NBC Networks, Telemundo, Ion Media (partial stake).
- Programming: NBC Network News, NBC Universal Global Networks, NBC Universal International Channels, The Today Show, NBC Nightly News with Brian Williams, Dateline NBC, Meet the Press, Early Today, CNBC, Squawk Box, Mad Money, CNBC World, CNBC Arabia, CNBC-India TV-18, Hardball with Chris Matthews, the Rita Cosby Specials Unit, Morning Joe, Mun2, Sleuth, A&E [partial], the History Channel [partial], the Biography Channel (partial), ShopNBC (27%).
- Production: NBC Universal (80% ownership): Universal Pictures, Focus Features, Rogue Pictures. Universal has production agreements with Imagine Entertainment, Jersey Films, Tribeca Films, Shady Acres, the Kennedy/Marshall Company, Playtone Company, Strike Entertainment, Type A Films, Depth of Field, Stephen Sommers and Working Title Films (Europe).
- Distribution: Universal Studios Home Entertainment.
- Magazines: *SciFi* Magazine
- Online Holdings: NBC.com, CNBC.com, iVillage.com, Scifi.com, telemundo.com, nbc.com, hulu.com (a joint venture between NBC Universal and News Corp.), Bravotv.com, Triotv.com, msnbc.msn.com, nbcolympics.com, ShopNBC.com. Partial: aetv.com, biography.com, historychannel.com, military.history.com, Thehistoryhcannelclub.com, Historytravel.com, Newsvine.com.
- Military Production: Manufactures and maintains engines for the F-16 Fighter jet, Abrams tank, Apache helicopter, U2 Bomber, Unmanned Combat Air Vehicle (UCAV), A-10 aircraft, and numerous military equipment including planes, helicopters, tanks, and more.
- Parks: Universal Studios Theme Parks and Resorts (Orlando, FL; Hollywood, CA; Costa Durada, Spain; Universal City, Japan)
- Consumer Products: NBC Stores, ShopNBC (partial), GE Industrial (Formerly, GE Consumer and Industrial), AETN Consumer Products (37.5% equity).
- Other:
    - GE Commercial Finance: GE Capital Aviation Services, GE Commercial Equipment Financing, GE Corporate Financial Services, GE Structured Finance Global Energy Unit, GE Fleet Services, GE Healthcare Financial Services, GE Real Estate, GE Vendor Financial Services.
    - GE Consumer & Industrial (appliances, lighting, and Industrial Systems).
    - GE Healthcare (diagnostic and interventional medical imaging, information and services technology)
    - GE Infrastructure (comprised of GE Water Technologies, GE Silicones, GE Superabrasives, and GE Quartz, commercial aviation financing, and serves various industries including cosmetics, semi-conductors, oil drilling, construction and telecommunications)
    - GE Money

APPENDIX B
STRUCTURE OF THE TELEVISION MARKET



APPENDIX C
SPORTS BROADCASTING IN CALIFORNIA

Baseball – Major League

- National Content – shared between Fox / TBS / ESPN
- Local Content – local broadcasters negotiate with teams individually
    - SF Giants – **Comcast Sports Net Bay Area (CSNBA)** (118 games) / **NBC** (15 games) / Fox (5 games)
    - Oakland A's – **Comcast Sports Net California (CSNCA)** exclusive contract
    - LA Dodgers – KCAL (CBS) / PRIME (Fox) / Fox
    - LA Angels – Fox Sports West / ESPN / KCOP (Fox)
    - SD Padres – 4 San Diego (owned by Cox)
    - N.B. All games are available on MLB.TV which is a subscription service costing $99.95-119.95 per year OR $19.95-24.95 per month.

Basketball - NBA

- National Content – ABC / TNT / ESPN / NBA TV.
- Local Content – local broadcasters negotiate with teams individually
    - Warriors – **CSNBA** exclusive
    - LA Lakers – KCAL (CBS) / Fox Sports West
    - LA Clippers – PRIME (Fox)

Basketball - NCAA

- NCAA Mens Div. I Tournament (March Madness) – CBS / Turner / ESPN
- Regular Season Games – **Versus** / CBS / ESPN / Fox

Football

- All broadcast rights are negotiated by NFL, not individual teams, and shared between NBC, CBS, ESPN and NFLNetwork.
    - NBC = NFL Kickoff game; 16 Sunday Night Games; 2 wild-card playoff games; **Super Bowl XLVI (2012)**; 3 preseason games.
    - CBS: AFC Sunday afternoon games; 1 Thanksgiving Day game; 4 AFC playoff games; Super Bowl XLIV (2010); 3 preseason games.
    - Fox: NFC Sunday afternoon games; 1 Thanksgiving Day game; 4 NFC playoff games; Super Bowl XLV (2011); 3 preseason games.
    - ESPN: 17 Monday night games (Doubleheader Week 1, Singleheader Weeks 2–16); 4 preseason games
    - NFL Network: 8 late-season NFL games (starting early November) - six on Thursday nights, two on Saturday Nights. Also, all preseason games (aside from the above) are shown either live or on delay.

College Football

- Bowl Games – Fox / CBS / ABC / ESPN
- Pac-10 Conference – shared between **Versus** / ABC / Fox Sports Net
- Mountain West Conference – **Versus** / **Mountain West Sports Network**

Hockey - NHL

- National Coverage
    - **Versus** / NBC / **NHL Network** (part owned by Comcast)
    - All Stanley Cup PlayOffs**:** **Versus**
    - **Stanley Cup Finals:**
        - **Versus:** games 3 & 4 through 2011

- **NBC:** games 1&2 and 5-7 through 2011

- Local Coverage
  - SJ Sharks – **CSNCA**
  - LA Kings – Fox Sports West
  - Anaheim Ducks – PRIME (Fox)

Soccer – Major League

- National Content – ESPN / Fox / Univision until the end of this season
  - **Versus and MLS in talks regarding future coverage**
- Local Content
  - SJ Earthquakes – **CSNCA / CSNBA**
  - LA Galaxy – Fox Soccer Channel, Fox en Espagnol, Fox Sports West, Prime (Fox), Telefutura, ESPN, ESPN Deportes, Galavision

Cycling

- Tour de France – **Versus**
- UCI ProTour – **Versus**
- Tour of California – **Versus**
- Tour of Missouri – **Universal Sports (NBC)**

Golf

- The Players Championship – **Golf Channel** (first 2 rounds) / **NBC** (last 2 rounds)
- US Open – ESPN / **NBC**
- Ryder Cup – ESPN / **NBC**
- The Masters – ESPN / CBS
- British Open – ESPN
- PGA Championship – TNT / CBS
- Other PGA Tour Coverage – CBS / **NBC** / **The Golf Channel**

Miscellaneous

- Olympic Games – **NBC** has broadcast rights through 2012 Summer Games.
- America's Cup – **NBC**
- US Figure Skating Championships – **NBC**
- World Swimming Championships – **NBC** / **Universal Sports**
- IAAF World Championships in Athletics – **NBC** / **Versus**
- World Equestrian Games – **NBC**

Motor Sports

- NASCAR **–** Fox / TNT / ESPN / ABC
- IRL IndyCar Series – ABC airs Indy 500 + 4 others / **Versus** airs 13 races
- Other races on various other non-Comcast/NBC channels.

Tennis

- French Open: ESPN / Tennis Channel / **NBC**
- Wimbledon: ESPN / Tennis Channel / **NBC**
- Other Opens, Cups & Matches on either ESPN or the Tennis Channel.