TESTIMONY OF

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Competition in the Media and Entertainment Distribution Market

Before the
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Committee on the Judiciary

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Good Morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to appear before you today. I am Larry Cohen, President of the Communications Workers of America. CWA represents more than 700,000 workers in communications, media, airlines, manufacturing, and the public sector. Specifically, we represent workers at both Comcast and NBC-Universal and can provide a unique perspective on the impact that this proposed merger would have on them and the industry.

The purpose of this hearing is to explore the potential anticompetitive impact of Comcast Corporation's proposed acquisition of NBC Universal. My testimony will focus on three areas: 1) the impact of the Comcast-NBC combination on jobs and the potential erosion of labor standards; 2) the anticompetitive behavior that currently pervades the video distribution and content markets and how that behavior will be exacerbated by this merger; and 3) the potential harms that such a transaction would pose to the emerging Internet video marketplace. At bottom, the public must be protected from the significant harms created by a combination of such unprecedented scale.

I. Impact on Workers

The proposed Comcast acquisition of NBC poses considerable harm to workers. It likely will result in the loss of good jobs, the erosion of employee rights, and undermine living standards in the communications and media industries.

The new venture will be financially weaker the day after the merger. As part of the transaction, NBC debt will increase by approximately $8 billion. As a result, the new entity will be under intense pressure to cut costs and jobs. This is an all too familiar pattern in the media sector. Media companies over-leverage to pay for a merger, and then cut jobs to improve their balance sheets, only to discover that they do not have enough staff to produce quality news and entertainment programming. This in turn leads to a vicious cycle of declining audience share, less revenue, and even more cost-cutting. Absent firm commitments from Comcast and NBC to maintain current employment levels, there is no reason to believe that the Comcast/NBC joint venture will not follow this pattern. With official unemployment now at 10 percent, this is a time to evaluate all corporate transactions through a screen that assesses the impact on jobs. We should not support a corporate deal that would eliminate good jobs.

The communications and media sectors historically have been a source of good jobs for American workers, the result of more than 70 years of collective bargaining. But a Comcast acquisition of NBC would reverse this progress and undermine employment standards for workers in these sectors.

Comcast has adopted a low-road labor policy, one based on the violation of workers' rights. Comcast has a sordid track record of aggressive action to eliminate worker organization at companies that it has acquired.

In 2002, Comcast acquired AT&T Broadband. At the time, CWA represented about 5,000 cable employees there. After the transaction was announced, I met with Comcast executives and they made a commitment to me that they would respect their employees' right to a union voice on the job. Let me tell you what a Comcast commitment means. Soon after Comcast took control of AT&T Broadband, a senior vice president in Oregon announced: "We're going to wage war to decertify the CWA." And that is precisely what Comcast did in multiple locations.

Most of the organized units that Comcast acquired were in the process of negotiating a first contract. Comcast delayed bargaining for years, denied workers wage and benefit improvements provided to non-union employees, and supported decertification elections. Comcast refused to reach agreement on a first contract in 16 of the organized units that it acquired from AT&T.[1]

Comcast has fired and retaliated against workers that try to form a union. Before a union election, Comcast instructs its supervisors to ride along with technicians on the job, to meet

[1] American Rights at Work, *No Bargain: Comcast and the Future of Workers' Rights in Telecommunications,"* 2004 (available at http://www.americanrightsatwork.org/publications/general/no-bargain-comcast-and-the-future-of-workers-rights-in-telecommunication.html).

repeatedly with workers one on one, and to hold mandatory meetings to convey its anti-union message.

CWA today represents Comcast employees in the Pittsburgh area. Comcast workers were forced to go through four union elections there in five years – three of them decertification attempts orchestrated by the company – before they finally won their union voice. Getting a first contract required overcoming further Comcast delaying tactics. Finally, Comcast has recognized that the workers there want a union voice and has negotiated a contract with CWA.

CWA represents Comcast employees in the San Francisco Bay and Detroit metropolitan areas. In both locations, Comcast has shifted about half the work to non-union lower-wage contractors, reducing secure jobs in areas hard-hit by unemployment.

Through these tactics, Comcast has managed to limit union representation to a small percentage of its workforce. Telecommunications has been a source of good jobs in this country, largely a result of more than 70 years of collective bargaining. The telecommunications industry has provided good jobs for women and minorities, with the result, as one economist wrote, that this industry is one of the few that has overcome market-based pay discrimination.[2] But Comcast – which competes directly with unionized telecom companies for voice, video, and broadband service – drags down the industry wage and benefit standards.

In contrast, NBC-Universal has a 70-year history of collective bargaining with multiple unions. To be sure, negotiations often deal with contentious issues, and the National Association of Broadcast Employees and Technicians (NABET) sector of CWA is currently in difficult negotiations with NBC-Universal on a contract covering technicians at the NBC network and stations in Washington, D.C., New York, Chicago, and Los Angeles. The contract expired 11 months ago. We are hopeful that we can resolve the issues that currently divide us. Although

[2] Vicky Lovell, Heidi Hartmann, Jessica Koski, *Making the Right Call: Jobs and Diversity in the Communications and Media Sector*, Washington, D.C.: Institute for Women's Policy Research, 2006 (available at http://www.iwpr.org/pdf/C364.pdf).

these are challenging negotiations, the bottom line is that NBC workers have a collective voice through their union – a right that Comcast has aggressively denied to their employees.

With the merger, an aggressively anti-union Comcast would be in control of labor relations, and an employer that has taken the low-road employment strategy will expand its ability to put downward pressure on living standards throughout the communications and media sectors.

Furthermore, the Comcast acquisition of NBC-Universal from General Electric represents a giant step backward on corporate governance practices. General Electric uses a one-share one-vote rule in shareholder voting. In contrast, Comcast has two classes of stock that gives super-majority voting rights to its CEO, Brian Roberts. Although Mr. Roberts owns only 1.23 percent of Comcast shares, he has 33 percent voting power. The Corporate Library, an independent shareholder research organization, has given Comcast an "F" on corporate governance practices. Comcast's undemocratic corporate governance structure mirrors its anti-democratic labor-management relations as well as its domination of the media marketplace.[3]

II. Anticompetitive Harms to Today's Video Marketplace

The proposed combination of Comcast, the nation's largest video service distributor, and NBC Universal, a leading video content producer, would create a vertically integrated entity with market power to increase cable rates, block competition in the video marketplace, and reduce jobs.

There is already too little competition in the video marketplace, as evidenced by the ever increasing rates that consumers pay year after year. The FCC estimates that from 1995 to 2008, the price of expanded basic service grew at three times the rate of inflation -- from $22.35 to $49.65, an increase of 122.1 percent, compared with an increase in the Consumer Price Index of 38.4 percent over the same period. (*See* chart, attached).[4] This merger would provide

[3] The Corporate Library, Comcast Corporate Governance Report, Feb. 23, 2010.

[4] *In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, MM Docket No. 92-266 ¶ 2, Chart 1 (2009).

Comcast/NBC with added incentive and ability to engage in anti-competitive practices that would raise cable rates for consumers.

Today, competing video distributors are often forced to purchase large bundles of channels that they and their customers do not want. Following the merger, Comcast will have more premium content and will have the ability to bundle its less desirable cable channels with must-have NBC programming to secure higher rates and more favorable placement of its programming. This forced bundling will raise other video providers' costs, and those added costs translate into higher cable rates for consumers.

This is particularly problematic for small rural operators and new video competitors with a smaller subscriber base. Because Comcast and NBC give bulk discounts, they charge themselves less than they charge small and rural carriers on a per subscriber basis, raising the costs for cable subscription for customers of rural operators and new video entrants.

Today, some companies are trying to compete with incumbent cable operators, investing significant resources to build out their networks and enter the video marketplace. This merger would provide Comcast/NBC with the incentive and ability to block or limit that competition, and block or limit the investment and jobs that accompany those efforts.

As competitors' costs increase, those companies trying to compete will invest less in building out their networks and hire fewer people. As a result of this proposed merger, Comcast/NBCU will have the market power to stifle competitive entry by new video operators. As a result, there will be fewer companies competing to provide traditional cable video services, fewer choices and higher prices for consumers, and lost jobs from these potential competitors.

In the past, Comcast has used its ownership of sports programming in an anti-competitive way. For example, Comcast has prevented DirecTV and Dish Network from accessing its SportsNet Philadelphia channel, which carries the games of Major League Baseball's Phillies, the NBA's Sixers and the NHL's Flyers. (Comcast has a controlling interest in the Sixers and Flyers.) By withholding the games of the three Philadelphia professional sports teams from its rivals, Comcast has had a powerful marketing advantage against satellite TV competitors.

Comcast has faced numerous FCC complaints from programmers for discrimination and anti-competitive behavior. The NFL Network, the Tennis Channel, MASN, a regional sports network, and Wealth TV, an emerging HD programmer, have filed formal FCC complaints against Comcast. These complaints allege that Comcast carried its own programming on favorable terms while refusing to carry independent programming on equal terms – or to carry such programming at all. Should regulators approve the Comcast-NBCU merger, Comcast will have more affiliated content and even more of an incentive to favor its own programming in its carriage decisions.

This may result in Comcast refusing to carry competitors' programming, paying them less for carriage, or placing them on a program tier with fewer viewers. After acquiring NBC programming, Comcast will have even greater incentives to favor its own array of programming, shutting out the independent voices of other programmers, leaving consumers with less quality, choice and diversity in programming. In fact, Comcast Cable's President and COO Steve Burke made remarks during the NFL's program carriage complaint with the FCC that Comcast treats affiliate networks "like siblings as opposed to strangers."

Meanwhile, bringing a carriage access complaint to the FCC is not a meaningful remedy. The complaint process currently lacks any concrete deadlines for FCC action, with many complaints languishing at the Commission for years.

Today, Comcast's regional and local programming networks compete with NBC's owned and operated stations for news and entertainment programming. A merged Comcast/NBCU would have the incentive to merge these operations, reducing quality, diversity, competition, and employment in video programming. Already, NBC has pioneered local news sharing agreements that in effect merge NBC's local news gathering with those of its broadcast competitors. Under these arrangements, NBC and its former competitors jointly determine news assignments and crew assignments, replacing what were once competing news operations with shared news gathering. In New York City, for example, six stations owned by four different owners (including NBC's owned and operated station and its Telemundo station) cooperate in a local news sharing venture.

This merger also threatens to eliminate a current competitor for local advertising. Contrary to Comcast/NBC claims today, Comcast is a major and sometimes even the most significant competitor for local ad dollars in some local advertising markets. In 2006, NBC made this very argument to the Federal Communications Commission. NBC stated that cable's local advertising dollars exceeded the total advertising dollars at NBC local stations, and actually were greater than advertising revenues at the number one ranked station in several markets, including Philadelphia (greater than the ABC station by $26 million) and San Francisco (greater than the Fox station by $70 million).[5] Comcast's local ad share has grown since then. In addition, an independent broadcaster will not be able to offer the volume discounts and package deals for advertising across dozens of channels that the merged entity will be able to do.

This translates into less revenue for competing broadcasters to produce local news and to hire workers. As a result, broadcasters will no doubt be forced to scale back local news production, with negative impact on diversity, competition, and adequate staffing that drive quality news.

In terms of local market share, Comcast's ad penetration is analogous to NBC trying to merge with the number one ranked station in the market, a practice prohibited by the FCC under its dual network rule. That rule permits common ownership of multiple broadcast networks but prohibits a merger of the "top four" networks, i.e., ABC, CBS, Fox, and NBC.

III. Anticompetitive Harms in Emerging Online Video Market

Another area of concern posed by the Comcast-NBC Universal merger is in the developing online video marketplace. New entrants are beginning to offer a number of video streaming services on the Internet and "over the top" services that bring Internet video directly to the television. This premium content that is available online increases the value of broadband subscription to consumers. Thus, the availability and ease of accessing video online is an important means to encourage the deployment and adoption of broadband. And as broadband

[5] NBC Media Ownership Comments, FCC 06-121 (Oct. 2006).

adoption increases, some users are able to choose to "cut the cable cord," canceling their cable subscription and relying on the Internet for television. In fact, the FCC recently concluded that internet video and video devices are an important part of developing a National Broadband Plan.[6]

The Comcast-NBC merger has the potential to bring this to a halt by limiting the ability of over-the-top service providers to provide video. A combined Comcast/NBC could limit consumers' online access to NBC content altogether or charge consumers higher prices to access that content unless they already subscribe to cable services. This is the TV Everywhere model that Comcast and NBC have already begun to deploy, bundling content with cable subscription, thereby forcing internet customers to buy cable packages in order to see content online from NBC.

TV Everywhere is an initiative being pursued by a number of cable companies, but led by Comcast. Under the TV Everywhere model, Comcast video subscribers have access to video content online for free, just as they do today. Online consumers, however, are forced to pay higher rates or restricted from accessing the content at all. For example, that is what is happening with some Olympic coverage from NBC today. In the biggest TV Everywhere trial, NBC restricts access to live streaming and full replay of Olympic events to consumers who can "authenticate" that they are paying cable subscribers.

TV Everywhere creates a mechanism for programmers and content providers to have a "walled garden" of online video content, only available to those who pay their monthly cable subscriptions. In doing so, TV Everywhere denies independent video distributors access to must-have programming, and creates a barrier to entry in the video distribution market for Internet-only video distributors. This extension and protection of the cable business model effectively "cablizes" the Internet as we know it today, thus diminishing innovation, depressing investment in broadband and ultimately eliminating jobs.

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[6] *Comment Sought on Video Device Innovation*, NBP Public Notice #27, GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80 (Dec. 21, 2009).

In the end, consumers lose out. TV Everywhere would protect the cable business model by imposing its subscription pricing structure on the Internet. Where customers have traditionally accessed content for free, they would now be forced to pay. Where the internet use to be a source of expanding consumer choice and diversity of programming content, it would be used to protect the current cable incumbents.

A merged Comcast/NBC would have the ability to force this business model on other distributors through their ownership of NBC's content. Today, NBC owns a 30 percent interest in a website called Hulu.com that offers free, advertising-supported streaming video of broadcast and cable television shows and movies. In acquiring NBC, Comcast would secure a substantial interest in Hulu.com, which is the second leading online video provider. As a result, Comcast would play a critical role in the public's ability to continue accessing the Internet's growing video services.

All of the actions I have just described restrict the Internet from developing into a platform for competitive video alternatives. These actions in essence protect the cable-channel business platform at the expense of new video entrants, thereby devaluing the broadband investment of competitive companies. The end result is that companies will invest less in broadband deployment, put less fiber in the ground and hire fewer people.

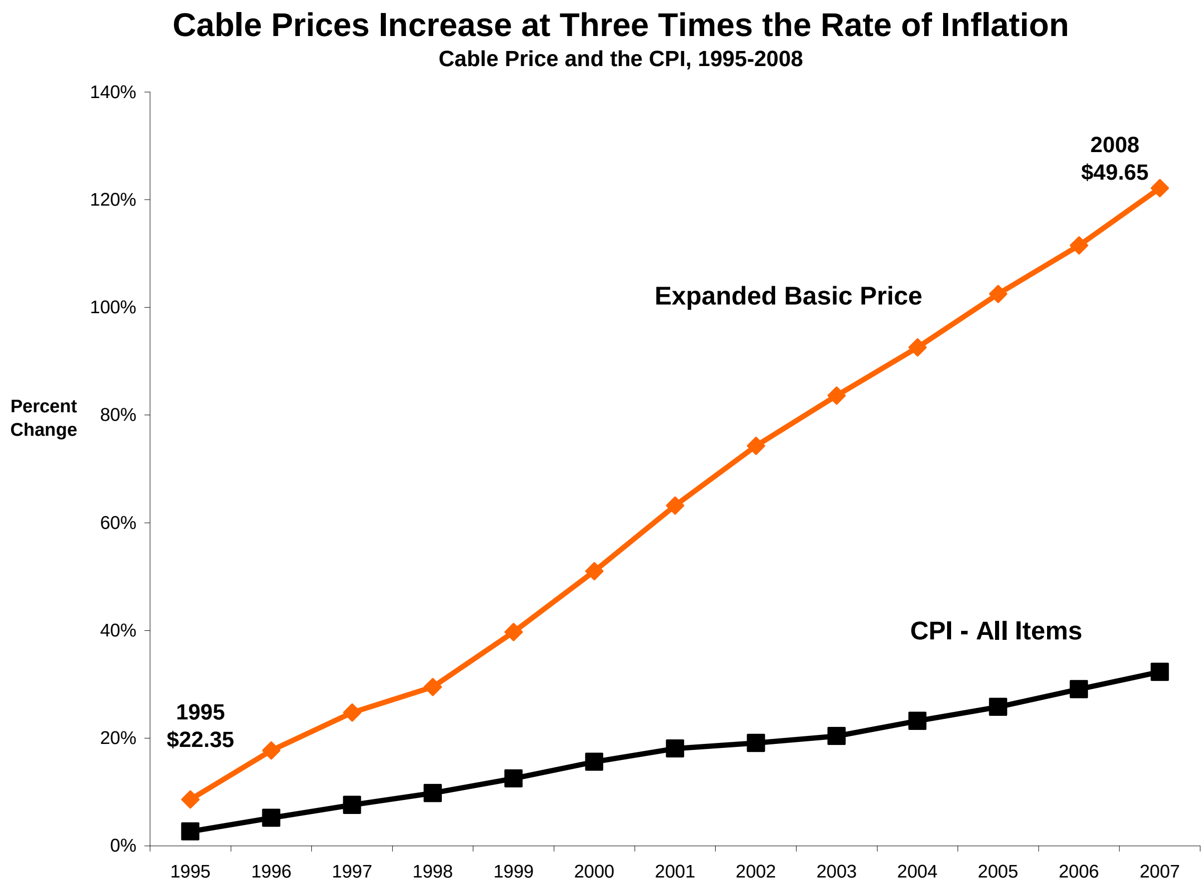
IV. Conclusion

The Comcast/NBC merger's potential to limit growth, investment and jobs is not in the public interest. Given its anticompetitive and anti-consumer effects, federal regulators cannot pass this merger without carefully considering the significant impact the merging companies will have on video competition, choice and jobs. Moreover, federal regulators cannot rely on the voluntary public interest commitments offered by Comcast and NBC Universal alone. The voluntary commitments are: 1) insufficient to address adequately the very real competitive harms; and 2) in many cases, rest on pending actions before federal regulators. As a result, prior to addressing this merger, CWA believes that both the DOJ and the FCC should complete many of the actions that will address some of these issues from a broader industry-wide perspective.

Federal regulators would then have the ability to craft any additional, specific merger conditions that are necessary to further address the potential harms caused by this combination.

Again, I want to thank the Committee for giving me the opportunity to testify today and for Chairman Conyer's leadership on this issue. I look forward to answering any questions that the Members of the Committee may have.

ATTACHMENT



Source: FCC, Report on Cable Prices, MM Docket No. 92-266, Chart 1, 2009

CITATIONS OF ONLINE REPORTS

[1] American Rights at Work, *No Bargain: Comcast and the Future of Workers' Rights in Telecommunications,"* 2004 (available at http://www.americanrightsatwork.org/publications/general/no-bargain-comcast-and-the-future-of-workers-rights-in-telecommunication.html)

[2] Vicky Lovell, Heidi Hartmann, Jessica Koski, *Making the Right Call: Jobs and Diversity in the Communications and Media Sector*, Washington, D.C.: Institute for Women's Policy Research, 2006 (available at http://www.iwpr.org/pdf/C364.pdf)