Prepared Testimony of Thomas W. Hazlett
Panel on the Comcast-NBCU Venture
U.S. House of Representatives, Judiciary Committee Hearings
Washington, D.C.
February 25, 2010

I. INTRODUCTION

My name is Thomas W. Hazlett. I am a professor of law & economics at George Mason University, where I head the Information Economy Project. I formerly served as Chief Economist of the Federal Communications Commission, and am a columnist for the *Financial Times*. I have written widely on the economics of telecommunications markets and the effect of government regulation in the sector. I am also the author of PUBLIC POLICY TOWARD CABLE TELEVISION, with Matthew L. Spitzer (MIT Press; 1997).

In the proposed transaction being discussed here today, Comcast becomes a 51% owner of Newco, with General Electric receiving 49%. The new venture will combine Comcast's cable TV program networks with NBCU's broadcasting network, cable networks and broadcast TV stations, along with Telemundo's broadcast network and stations. In addition, other assets of NBC, including the Universal Studios theme park, will be contributed to the enterprise.

The transaction is large, but not among the largest mergers historically. The joint venture is estimated to be worth about $28 billion, less than the $34 billion Viacom purchase of CBS in 1999, for example, or the $35 billion Sprint purchase of Nextel in 2005. And the 51% Comcast stake, at about $15 billion, is much less than these and many other corporate transactions.

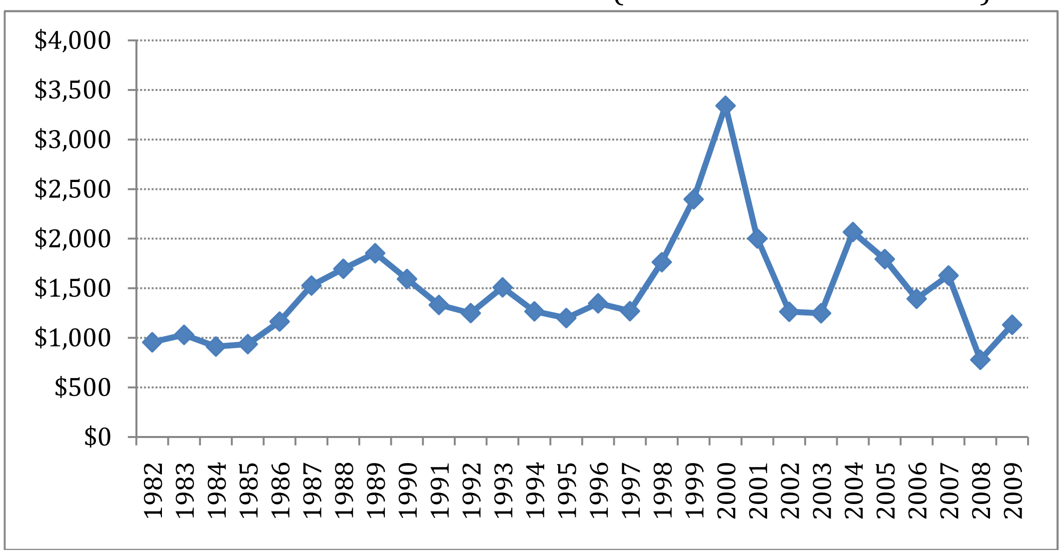
II. COMPETITIVE ANALYSIS

The economic policy question concerns how the deal impacts market competition. On that score, the issues are straightforward. The merger is primarily a vertical combination where Comcast, a cable operator distributing video programming to millions of household subscribers, is acquiring ownership of additional programming assets. This does not lessen competition in any market, but allows the content distributor to achieve efficiencies by producing complementary products.

There are special cases in which vertical integration can lead to anti-competitive foreclosure, but the evidence indicates that these special circumstances do not apply. Studies of vertical integration in cable generally confirm the baseline analysis: efficiencies typically result when firms elect to combine programming and distribution.[1] As an empirical matter, the trend in the sector is away from vertical integration, meaning that operators do not believe that they can increase profits via vertical foreclosure. The ownership of cable program networks has sharply declined over the past two decades; the spin-off of cable TV systems by Viacom (in 1996) and Time Warner (in 2008) are key components of this trend.

In video programming, there is a horizontal aspect to the combination: Comcast currently owns some cable network assets, and those will merge with direct rivals owned currently by General Electric. But the Comcast share is meek; combined with NBC-Universal program assets it will account for only about 12% of total U.S. cable program network revenues. This will yield some economies of scale, or so Comcast hopes, but it hardly moves the needle in terms of the concentration of the industry. The GE-owned cable assets are smaller, in total, than those owned by Disney, Time Warner, and Viacom, and will – with Comcast's assets – remain so.

FIGURE 1. VALUE PER CABLE TV SUBSCRIBER (CONSTANT 1982-84 DOLLARS)



Source: CABLE TV INVESTOR, SNL Kagan (Jan. 25, 2010).

The very good news for consumers (and programmers) in recent years is that local market competition has taken off. Twenty years ago, one local cable TV system dominated multi-channel video program distribution in each franchise area. Today, there are about 3.4 competitors per market: the local cable operator, two satellite

[1] Tasneem Chipty, *Vertical Integration, Market Foreclosure, and Consumer Welfare in the Cable Television Industry*, 91 AMERICAN ECONOMIC REVIEW 428 (Jun. 2001); George S. Ford and John D. Jackson, *Horizontal Concentration and Vertical Integration in the Cable Television Industry*, 12 REVIEW OF INDUSTRIAL ORGANIZATION 501 (Aug. 1997); Austan Goolsbee, *Vertical Integration and the Market for Broadcast and Cable Television Programming,* paper for the Federal Communications Commission (Sept. 5, 2007); Thomas W. Hazlett, *Vertical Integration in Cable Television: The FCC Evidence,* paper submitted to the FCC (Oct. 19, 2007).

TV rivals (each with a national footprint), and – in nearly half the country – a telco TV provider.

Even before thinking about the next generation of broadband video, the market power of incumbent cable systems has been dealt a lethal blow. This is seen in examining market prices for cable TV systems, now selling (in constant dollars) for about what they sold for in 1990. See Figure 1. This is despite the fact that systems now deliver not just video but broadband data and voice, the "triple play," and that they deliver hundreds more channels to subscribers. These modern, two-way, high-capacity digital platforms are substantially more costly to build, meaning that the returns realized by cable system investors are a fraction of what they were a generation ago.[2] This is directly attributable to the outbreak of competitive rivalry. Nothing in the Comcast-GE deal threatens to disturb that trend.

III. A QUESTION OF BUSINESS STRATEGY

In acquiring additional programming assets, Comcast swims against the tide. The company is wagering that it can make more productive use of GE's cable and broadcast networks. It does so knowing that its markets are in tumult. Video products are jumping from platform to platform – not just from cable to satellite, but from television to broadband, from linear channels to on-demand networks, from pay to freemium, from TV screens to mobile devices. Some financial analysts have praised Comcast for its bold new enterprise; many have condemned it. *Didn't they learn anything from the failed AOL-Time Warner merger?* is a fairly popular reaction.

The simple fact is that no one fully understands where today's tide is headed. Cable operators do not know if they need fear Verizon or Echostar, Google or Apple. Time Warner believes that splitting its cable operations from its program ownership is the best way to prepare for the coming storm. Comcast has come to a much different conclusion. Markets allow these rival strategies to be tested and winning strategies rewarded. I wish Comcast and General Electric shareholders well in their educated guesses.

[2] Thomas W. Hazlett & Dennis L. Weisman, *Market Power in U.S. Broadband Services*, George Mason University Law and Economics Research Paper Series 09-69 (Nov. 2009); http://mason.gmu.edu/~thazlett/pubs/Hazlett.Weisman.Broadband.SSRN-id1525568.pdf.