

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Applications of Comcast Corporation,) MB Docket No. 10-56
General Electric Company)
and NBC Universal, Inc.)
)
For Consent to Assign Licenses and)
Transfer Control of Licensees)
)

MEMORANDUM OPINION AND ORDER

Adopted: January 18, 2011

Released: January 20, 2011

By the Commission: Chairman Genachowski and Commissioner Clyburn issuing separate statements,
Commissioners McDowell and Baker concurring and issuing a joint statement,
Commissioner Copps dissenting and issuing a statement.

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I. INTRODUCTION

1. In this proceeding, Comcast Corporation (“Comcast”), General Electric Company (“GE”), and NBC Universal, Inc. (“NBCU”)—collectively referred to as “the Applicants”—seek authorization to assign and transfer control of broadcast, satellite, and other radio licenses from GE to

Comcast.¹ The proposed transaction would combine, in a single joint venture (“Comcast-NBCU” or “the JV”), the broadcast, cable programming, online content, movie studio, and other businesses of NBCU with some of Comcast’s cable programming and online content businesses. The JV’s assets would include two broadcast television networks (NBC and Telemundo), 26 broadcast television stations, and NBCU’s cable programming (such as CNBC, MSNBC, Bravo, and USA Network), all of which would be under the control of Comcast, the nation’s largest cable operator and Internet service provider.

2. Under federal law, the Commission reviews such transactions to ensure that they are in the public interest, convenience, and necessity.² This review entails a thorough examination of the potential harms and benefits of the proposed transaction, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose remedial conditions to address potential harms likely to result from the transaction. If, on balance, the benefits associated with the proposed transaction outweigh the remaining harms, the Commission must approve the transfer if it serves the public interest.

3. This transaction would effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers offline and, increasingly, online as well. The harms that could result are substantial. For example, Comcast-NBCU would have both greater incentive and greater ability to raise prices for its popular video programming to disadvantage Comcast’s rival multichannel distributors (such as telephone companies and direct broadcast satellite (“DBS”) providers). It would also have the incentive and ability to hinder the development of rival online video offerings and inhibit potential competition from emerging online video distributors that could challenge Comcast’s cable television business. Moreover, the transaction presents concerns with respect to our statutory mandate to promote diversity and localism in broadcast television and video programming distribution.

4. Because of these and other threats posed by the proposed transaction to competition, innovation, and consumer welfare, the Commission has developed a number of targeted, transaction-related conditions and Comcast has offered a number of voluntary commitments to mitigate the potential harms the proposed combination might otherwise cause. These conditions and voluntary commitments, as discussed in further detail below, fall into three main categories as they relate to competition issues:

Ensuring Reasonable Access to Comcast-NBCU Programming for Multichannel Distribution.
Building on successful requirements adopted in prior, similar transactions,³ we make

¹ Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast Corporation, Transferee (Jan. 28, 2010), as amended on May 4, and November 3, 9, 17, 18 and 29, 2010 (together, the “Application”). The Media Bureau placed the Application on public notice on March 18, 2010, establishing a comment cycle for this proceeding. See *Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, 25 FCC Rcd 2651 (MB 2010) (“Public Notice”).

² 47 U.S.C. § 310(d).

³ See, e.g., *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473 (2004) (“*News Corp.-Hughes Order*”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006) (“*Adelphia Order*”).

available to rival multichannel video programming distributors (“MVPDs”) an improved commercial arbitration process for resolving disputes about prices, terms, and conditions for licensing Comcast-NBCU’s video programming. We believe that this remedy, designed to prevent harms from integrating content and distribution market power, will be even more effective and less costly than previous procedures. We apply the arbitration and standstill remedies to *all* Comcast-NBCU affiliated programming.

Protecting the Development of Online Competition. Recognizing the danger this transaction could present to the development of innovative online video distribution, we adopt conditions designed to guarantee *bona fide* online distributors the ability to obtain Comcast-NBCU programming in appropriate circumstances. These conditions respond directly to the concerns voiced by commenters—including consumer advocates, online video distributors (“OVDs”) and MVPDs—while respecting the legitimate business interests of the Applicants. Among other things, the Commission:

- Requires Comcast-NBCU to provide to all MVPDs, at fair market value and non-discriminatory prices, terms, and conditions, any affiliated content that Comcast makes available online to its own subscribers or to other MVPD subscribers.
- Requires Comcast-NBCU to offer its video programming to any requesting OVD on the same terms and conditions that would be available to an MVPD.
- Obligates Comcast-NBCU to make comparable programming available on economically comparable prices, terms, and conditions to an OVD that has entered into an arrangement to distribute programming from one or more of Comcast-NBCU’s peers.
- Restricts Comcast-NBCU’s ability to enter into agreements to hamper online distribution of its own video programming or programming of other providers.
- Requires the continued offering of standalone broadband Internet access services at reasonable prices and of sufficient bandwidth so that customers can access online video services without the need to purchase a cable television subscription from Comcast.
- Prevents Comcast from disadvantaging rival online video distribution through its broadband Internet access services and/or set-top boxes.
- Addresses threats to Hulu, an emerging OVD to which NBCU provides programming, that arise from the transaction.

Access to Comcast’s Distribution Systems. In light of the significant additional programming Comcast will control—programming that may compete with third-party programming Comcast carries on its MVPD service—we require that Comcast not discriminate in video programming distribution on the basis of affiliation or non-affiliation with Comcast-NBCU. Moreover, we require that, if Comcast “neighborhoods” its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood. We also adopt as a condition of the transaction Comcast’s voluntary commitment to provide 10 new independent channels within eight years on its digital tier.

5. We also impose conditions and accept voluntary commitments concerning a number of other public interest issues, including diversity, localism, and broadcasting, among others. For example, to protect the integrity of over-the-air broadcasting, network-affiliate relations, and fair and equitable retransmission consent negotiations with the JV, we adopt a series of conditions that were independently negotiated between the Applicants and various network affiliates.

6. In addition to these and other conditions, which are designed to remedy potential harms, we also look to the affirmative benefits of the proposed transaction, both those inherent in the combination as well as additional voluntary commitments made by the Applicants, in order to ensure that this transaction serves the public interest. These commitments, which we make enforceable through this Order, include but are not limited to:

Broadband Adoption and Deployment. Comcast will make available to approximately 2.5 million low income households: (i) high-speed Internet access service for less than \$10 per month, (ii) personal computers, netbooks, or other computer equipment at a purchase price below \$150, and (iii) an array of digital-literacy education opportunities. Comcast will also expand its existing broadband networks to reach approximately 400,000 additional homes, provide broadband Internet access service in six additional rural communities, and provide free video and high-speed Internet service to 600 new anchor institutions, such as schools and libraries, in underserved, low income areas.

Localism. To further broadcast localism, Comcast-NBCU will maintain at least the current level of news and information programming on NBCU's owned-and-operated ("O&O") broadcast stations, and in some cases expand news and other local content. Comcast-NBCU's O&O NBC and Telemundo stations also will provide thousands of additional hours of local news and information programming to their viewers, and some of its NBC stations will enter into cooperative arrangements with locally focused nonprofit news organizations. Additional free, on-demand local programming will be made available as well.

Children's Programming. Comcast-NBCU will increase the availability of children's programming on its NBC and Telemundo broadcast stations, and add at least 1,500 more choices to Comcast's on-demand offerings for children. It will provide additional on-screen ratings information for original entertainment programming on the Comcast-NBCU broadcast and cable television channels and improved parental controls. Comcast-NBCU also will restrict interactive advertising aimed at children 12 years old and younger and provide public service announcements addressing children's issues.

Programming Diversity. Building on Comcast's voluntary commitments in this area, we require Comcast-NBCU to increase programming diversity by expanding its over-the-air programming to the Spanish language-speaking community, and by making NBCU's Spanish-language broadcast programming available via Comcast's on demand and online platforms. As noted above, Comcast also will add at least 10 new independent channels to its cable offerings.

Public, Educational, and Governmental ("PEG") Programming. Comcast will safeguard the continued accessibility and signal quality of PEG channels on its cable television systems and introduce new on demand and online platforms for PEG content.⁴

7. The combination of Comcast and NBCU has important implications for consumers, competitors, and the future development of online video distribution. As reflected in the extensive discussion that follows, the Commission has given the transaction the careful consideration it deserves, and approached with an open mind the arguments of the Applicants, their supporters, and those opposed to the transaction. Through the voluntary commitments and other conditions we impose on the

⁴ Appendix A contains the conditions we place on our grant of the requested assignments and transfers of control.

combination of Comcast and NBCU, we address the risks associated with it, while ensuring that the American public will realize significant benefits from it.

8. We therefore find that the grant of the proposed assignments and transfers of control of broadcast, satellite, and other radio licenses by the Commission will serve the public interest and, accordingly, the proposed transaction should be approved, as conditioned, pursuant to Section 310(d) of the Communications Act of 1934, as amended (“Act”).⁵

II. DESCRIPTION OF THE PARTIES

A. Comcast Corporation

9. Comcast owns and operates cable systems serving nearly 24 million subscribers in 39 states and the District of Columbia.⁶ Comcast’s cable systems offer both traditional and advanced video services, including broadcast programming, national, regional and local cable channels, premium movie channels, programming for minority audiences, pay-per-view, and high definition programming.⁷ Comcast offers broadband Internet access service over its cable plant and currently has nearly 16 million customers.⁸ In addition, Comcast provides facilities-based voice services to over seven million customers.⁹

10. Comcast owns interests in 11 national programming networks, five of which are wholly-owned: E!, Golf Channel, Versus, Style, and G4. Comcast holds an attributable interest in PBS KIDS Sprout, TV One, NHL Network, Current Media, MLB Network, and Retirement Living Television.¹⁰ Comcast also has interests in a variety of regional and local programming networks and in several regional sports networks (“RSNs”).¹¹ Comcast owns a minority stake in Metro-Goldwyn-Mayer Studios Inc. (“MGM”), which allows it to obtain licenses for MGM and Sony movies and television series.¹²

11. Additionally, Comcast holds online and wireless interests, including a 9.4 percent interest in Clearwire Communications LLC.¹³ Comcast is developing and operating online and cross-platform entertainment and media businesses, including Fancast Xfinity. Xfinity is an online portal to broadcast and cable programming that Comcast carries on its MVPD service, as well as other programming.¹⁴

⁵ 47 U.S.C. § 310(d).

⁶ Application at 17.

⁷ *Id.* at 18.

⁸ *Id.* at 19.

⁹ *Id.*

¹⁰ *Id.* at 19-20.

¹¹ *Id.* at 20-21.

¹² *Id.* at 21-22. MGM is currently undergoing restructuring under the supervision of the United States Bankruptcy Court. See *In re Metro-Goldwyn-Mayer Studios Inc.*, Case No. 10-15774 (SMB) (S.D.N.Y. filed Nov. 3, 2010).

¹³ Application at 22-24.

¹⁴ *Id.* at 23. A complete list of Comcast’s ownership interests is set forth in Appendix D hereto.

B. General Electric Company

12. GE is a diversified conglomerate with interests in technology, financial services and media employing over 285,000 people in more than 100 countries. As relevant to this transaction, GE holds an 80 percent interest in NBCU with the remaining 20 percent owned by Vivendi S.A. By the time the proposed transaction closes, GE expects to have acquired Vivendi's interest.¹⁵

C. NBC Universal, Inc.

13. NBCU is a large media, entertainment, and communications company. It owns and operates two broadcast networks (NBC and Telemundo), 26 broadcast television stations, a number of cable programming networks, a motion picture studio, a television production studio and an international theme park business.¹⁶ NBCU distributes NBC network programming nationally through ten of its O&O television stations and more than 200 independently owned affiliated stations. Telemundo, the second largest United States Spanish language broadcast network, is distributed over 15 of NBCU's other O&O broadcast stations, 45 affiliates and over nearly 800 cable systems.¹⁷ NBCU is also the licensee of a television station that is not affiliated with a network.¹⁸

14. NBCU owns a number of cable programming channels, including CNBC, MSNBC, Bravo, Oxygen, and USA Network.¹⁹ Its studio assets include Universal Pictures, which creates and distributes both theatrical and non-theatrical filmed entertainment; and Focus Features and Focus Features International, which produce and distribute original films throughout the world.²⁰

15. In association with its television and national cable networks and its O&O broadcast stations, NBCU owns and operates a number of online sites. For example, nbc.com is the website for the NBC television network. Hulu.com, in which NBCU owns a 32 percent interest, is an online video service offering TV shows and movies in the United States.²¹ Finally, NBCU owns Universal Studios Hollywood and has significant interests in Universal Studios Florida and Universal Studios Japan.²²

III. THE PROPOSED TRANSACTION**A. Description**

16. On December 3, 2009, Comcast, GE, NBCU, and Navy LLC (the Applicants' joint venture vehicle) entered into a Master Agreement, which sets forth the steps necessary to create a joint venture between Comcast and GE.²³ After receipt of necessary government approvals and the satisfaction

¹⁵ *Id.* at 24-25.

¹⁶ *Id.* at 26. A complete list of NBCU's ownership interests is set forth in Appendix D hereto.

¹⁷ The 26 NBCU O&O television stations are set forth in Appendix D.

¹⁸ NBC owns an independent Spanish-language station KWHY-TV, Los Angeles, California. *See* Application at 30.

¹⁹ *Id.* at 30-31. NBCU also owns a minority interest in the Weather Channel and A&E Television Networks.

²⁰ Application at 31.

²¹ *Id.* at 31-33. Other NBCU-owned online sites are CNBC.com and iVillage.

²² *Id.* at 33.

²³ Master Agreement dated as of December 3, 2009 among General Electric Company, NBC Universal, Inc., Comcast Corporation and Navy, LLC, Application, Appendix 3.

or waiver of all other conditions precedent specified in the Master Agreement, and immediately prior to the closing, Comcast and GE will cause certain internal restructurings of entities to be contributed to the joint venture. After these restructurings, GE will acquire the 20 percent interest in NBCU currently held by Vivendi S.A. to give it complete ownership of NBCU.²⁴

17. NBCU will then borrow \$9.1 billion from third-party lenders which it will issue as a dividend to its parent, GE. Following payment of the dividend, GE will contribute NBCU and certain other assets primarily used in NBCU's business to the JV.²⁵ Comcast will then contribute certain assets to the JV comprising its content business, including RSNs, other programming networks, and certain Internet businesses. Comcast will not contribute its cable systems to the joint venture.²⁶ In addition to the contribution of assets, Comcast will make a cash payment to GE in the amount of approximately \$6.5 billion. It then will own 51 percent of the JV.

18. Following completion of all the transactions contemplated by the Master Agreement, GE and Comcast will enter into an Operating Agreement for the joint venture ("LLC Agreement").²⁷ The JV will be governed by a board of five directors (three nominated by Comcast and two selected by GE). The board will make its decisions by majority vote although GE will have special approval rights for matters outside the ordinary course of business.²⁸ Comcast's current Chief Operating Officer, Steve Burke, will be the joint venture's initial CEO.²⁹ The LLC Agreement prohibits Comcast and GE from transferring their respective interests in the JV to third parties for four years and three and a half years, respectively, after the closing. After these periods of time each party will be allowed to sell its interest in the JV publicly or privately, subject, in the case of a sale by GE, to a fair market value purchase right in favor of Comcast. If Comcast decides to sell its entire ownership interest in the JV, GE may require Comcast to include GE's entire ownership interest in the sale on the same terms.³⁰

19. The parties have certain put and call options exercisable at various times during the eight years following the closing of the transaction. Through these rights, GE can require that the JV acquire its entire interest or Comcast can acquire GE's entire interest.³¹

²⁴ See Detailed Description of the Transaction, Application, Appendix 2 at 1. Appendix 2 contains a detailed description of the various *pro forma* changes in control and assignments resulting from the restructurings for which Commission approval is required.

²⁵ Application, Appendix 2 at 1; Appendix 3 at 16.

²⁶ Application at 12; Appendix 2 at 9-14; Appendix 3 at 8-14. Similarly, Comcast's wireless holdings and certain of its online assets will not be contributed to the joint venture and will be retained by Comcast.

²⁷ Amended and Restated Limited Liability Company Agreement of Navy, LLC, Application, Appendix 4; Application at 13.

²⁸ *Id.* at 13-14. GE's approval rights terminate if its interest in the JV falls below 20 percent.

²⁹ See Comcast Corp., *Comcast and GE Name Steve Burke Chief Executive Officer of NBC Universal* (press release), Sept. 26, 2010, available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1009>

³⁰ Application at 14-15. Comcast and GE will be granted demand and piggyback registration rights exercisable, in the case of Comcast, after approximately four years and, in the case of GE, after approximately three-and-a-half years. The parties' registration rights will be subject to various restrictions on timing, frequency (including "blackout" periods in various circumstances) and, in the case of GE, amount. Also, if Comcast sells its entire ownership interest in the JV it can require GE to sell its entire interest to the same buyer on the same terms.

³¹ *Id.* at 15. There are also restrictions on related-party transactions.

B. Application and Review Process

20. On January 28, 2010, GE, NBCU and Comcast filed the Application.³² On March 18, 2010, the Commission released the Public Notice accepting the Application for filing and establishing a pleading cycle which was subsequently revised by the issuance of the Second Public Notice.³³ Public notice of the Application was initially delayed because the filing was incomplete. Further, due to the requirement that the Applicants submit additional economic reports, the Media Bureau released an order suspending the pleading cycle to enable commenters to have sufficient time to respond to the Application and those economic reports.³⁴ Thirteen petitions to deny and over 29,000 public comments and filings were received in this proceeding.³⁵ In addition to building its record through public comment, the Commission requested additional information from the Applicants on May 21, 2010 and again on October 4, 2010.³⁶ The Applicants' responses to those requests are included in the record, subject to the protections of the Protective Orders issued in this proceeding.³⁷ The Commission augmented the record

³² See *supra* note 1.

³³ *Id.* The Public Notice established May 3, 2010 as the deadline for filing comments or petitions to deny. A second public notice issued on May 5, 2010 established June 21, 2010 as the new deadline for filing comments or petitions to deny, July 21, 2010 as the deadline for responses to comments or oppositions to petitions to deny, and August 5, 2010 for replies to responses or oppositions. See *Commission Announces Revised Pleading Schedule for its Review of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, 25 FCC Rcd 4407 (MB 2010) ("Second Public Notice"). The reply deadline was subsequently extended to August 19, 2010. See *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign Licenses or Transfer Control of Licenses*, Order, 25 FCC Rcd 10201 (MB 2010).

³⁴ See *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Order, 25 FCC Rcd 3802 (MB 2010).

³⁵ Petitions to Deny were filed by: Bloomberg L.P., Communications Workers of America ("CWA"), jointly by Consumer Federation of America, Consumers Union, Free Press, and Media Access Project ("Free Press"), DISH Network L.L.C. and EchoStar Corporation ("DISH"), Earthlink, Inc., Elan Feldman, The Greenlining Institute, Rita Guajardo Lepicier, Mabuhay Alliance, National Coalition of African American Owned Media ("NCAAOM"), National Telecommunications Cooperative Association and the Western Telecommunications Alliance ("NTCA"), Public Knowledge, and WealthTV L.P.

³⁶ See Letter to Bryan N. Tramont, Kenneth E. Satten, David H. Solomon and Natalie G. Roisman, Wilkinson Barker Knauer, LLP, Counsel for NBCU, from William T. Lake, Chief, Media Bureau (May 21, 2010) and Letter to Michael H. Hammer, James H. Casserly, Michael D. Hurwitz and Brien C. Bell, Willkie Farr & Gallagher LLP, Counsel for Comcast, from William T. Lake, Chief, Media Bureau (May 21, 2010). See also Letter to David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBCU, from William T. Lake, Chief, Media Bureau (Oct. 4, 2010) and Letter to Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, from William T. Lake, Chief, Media Bureau (Oct. 4, 2010).

³⁷ On March 4, 2010, the Media Bureau adopted two protective orders. The first allows third parties to review confidential or proprietary materials submitted by the Applicants. See *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Protective Order, 25 FCC Rcd 2133 (MB 2010) ("First Protective Order"). The second allows certain persons to review highly confidential or proprietary materials submitted by the Applicants. See *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Second Protective Order, 25 FCC Rcd 2140 (MB 2010) ("Second Protective Order"). In this Order, "[REDACTED]" indicates confidential or proprietary information, or analysis based on such information, submitted pursuant to the *First Protective Order* or the *Second Protective Order*. The unredacted

(continued....)

in this proceeding by holding a public forum to discuss the proposed transaction in Chicago on July 13, 2010,³⁸ and a workshop for economists representing the Applicants and a number of the commenters on August 27, 2010.³⁹

21. In addition to Commission review, the proposed transaction is subject to review by the United States Department of Justice (“DOJ”) pursuant to its concurrent authority in Section 7 of the Clayton Act.⁴⁰

IV. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

22. Pursuant to Section 310(d) of the Act, we must determine whether the proposed assignment and transfer of control of certain licenses and authorizations held and controlled by Comcast and NBCU will serve “the public interest, convenience, and necessity.”⁴¹ In making this determination, we must assess whether the proposed transaction complies with the specific provisions of the Act,⁴² other applicable statutes, and the Commission’s Rules.⁴³ If the transaction would not violate a statute or rule, the Commission considers whether a grant could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.⁴⁴ The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁴⁵ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁴⁶ If

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version of this Order will be available upon request to qualified persons who execute and file with the Commission the signed acknowledgements required by the protective orders in this proceeding.

³⁸ See *Media Bureau Announces Agenda for its Public Forum to Discuss Proposed Comcast/NBCU/GE Joint Venture* (press release), Jul. 7, 2010. A transcript of the event is available at <http://webapp01.fcc.gov/ecfs/document/view?id=7020917953>.

³⁹ The transcript of the Economist Workshop is subject to the protections of the *First Protective Order* and *Second Protective Order*.

⁴⁰ 15 U.S.C. § 18.

⁴¹ 47 U.S.C. § 310(d).

⁴² Section 310(d) requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). See *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12363, ¶ 30 (2008) (“*Sirius-XM Order*”); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276, ¶¶ 22 (2008) (“*Liberty Media-DIRECTV Order*”); *SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶ 16 (2005) (“*SBC-AT&T Order*”).

⁴³ See *Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3276, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16.

⁴⁴ *Id.*

⁴⁵ *Id.*; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 15.

⁴⁶ See *Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30, *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Application for Consent to Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23255, ¶ 26 (2002) (“*Comcast-AT&T Order*”).

we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the Application for hearing.⁴⁷

23. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁴⁸ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public,⁴⁹ and generally managing spectrum in the public interest. Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁵⁰ In conducting this analysis, the Commission may consider technological and market changes as well as trends within the communications industry, including the nature and rate of change.⁵¹

24. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by but not limited to traditional antitrust principles.⁵² The DOJ reviews communications transactions pursuant to Section 7 of the Clayton Act, and if it wishes to block a transaction, it must demonstrate to a court that the transaction may substantially lessen competition or tend to create a monopoly.⁵³ The Commission’s competitive analysis under the public interest standard is somewhat broader. For example, the Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.⁵⁴

⁴⁷ 47 U.S.C. § 309(e); *see also* *Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (“*EchoStar-DIRECTV HDO*”).

⁴⁸ *Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21544, ¶ 41 (2004) (“*Cingular-AT&T Wireless Order*”); *News Corp.-Hughes Order*, 19 FCC Rcd at 483-84, ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd at 23255, ¶ 27; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, ¶ 26.

⁴⁹ 47 U.S.C. § 521(4); *see also* 47 U.S.C. § 532(a).

⁵⁰ *See* *Sirius-XM Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41; *Comcast-AT&T Order*, 17 FCC Rcd at 23255, ¶ 27.

⁵¹ *See* *Sirius-XM Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 23; *Comcast-AT&T Order*, 17 FCC Rcd at 23255, ¶ 27.

⁵² *See* *Sirius-XM Order*, 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544-45, ¶ 42; *News Corp.-Hughes Order*, 19 FCC Rcd at 484, ¶ 17; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, ¶ 27; *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Authorizations and Application to Transfer Control of a Submarine Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, ¶ 23 (2000) (“*Bell Atlantic-GTE Order*”).

⁵³ 15 U.S.C. § 18.

⁵⁴ *See* *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278-79, ¶ 25; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047, ¶ 23; *AT&T Corp., British Telecommunications, plc, VLT Co.*

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25. Our analysis recognizes that a proposed transaction may have both beneficial and harmful consequences. Our public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions targeted to ensure that the public interest is served by the transaction.⁵⁵ Section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with the law, which may be necessary to carry out the provisions of the Act.⁵⁶ Indeed, unlike the role of antitrust enforcement authorities, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that a transaction will yield overall public interest benefits.⁵⁷ In exercising this broad authority, the Commission generally has imposed conditions to confirm specific benefits or remedy specific harms likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes.⁵⁸

26. This Order examines the proposed transaction as follows. First, we assess the potential competitive harms from the vertical and horizontal aspects of the transaction, as well as the potential impact on a number of other public interest considerations, including the impact on diversity and localism. Second, we evaluate the public interest benefits that the Applicants claim will result from the transaction. At each stage, we consider and, where appropriate, impose conditions to ameliorate the harms or confirm the benefits. Third, we balance the public interest harms posed by, and the benefits to be gained from, the transaction. Finally, we examine whether the transaction complies with the Act, other applicable statutes and the Commission's Rules and policies.

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L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connections with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19147-48, ¶ 15 (1999) (“*AT&T Corp.-British Telecom Order*”); *Comcast-AT&T Order*, 17 FCC Rcd at 23256, ¶ 28.

⁵⁵ See *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46, ¶ 43; see also *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, ¶ 10 (1998) (“*WorldCom-MCI Order*”) (stating that the Commission may attach conditions to the transfers).

⁵⁶ 47 U.S.C. § 303(r). See *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 43; *WorldCom-MCI Order*, 13 FCC Rcd at 18032, ¶ 10 (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to Section 303(r)); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (holding that Section 303(r) permits the Commission to order a cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to Section 303(r) authority).

⁵⁷ See, e.g., *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 43; *News Corp.-Hughes Order*, 19 FCC Rcd at 477, ¶ 5.

⁵⁸ See, e.g., *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33.

V. ANALYSIS OF POTENTIAL HARMS

27. Commenters have alleged that the proposed transaction will generate numerous potential harms to core public interest values including competition, diversity, and localism. With respect to competition, corporate mergers and acquisitions may give rise to concerns regarding increases in vertical integration and/or horizontal concentration, depending on the lines of business in which the firms are engaged, as well as other public interest-related concerns. A vertical transaction involves firms and their suppliers, customers, or other sellers of complements.⁵⁹ A horizontal transaction involves firms that sell products or services that are substitutes to buyers.⁶⁰ The same transaction can have both vertical and horizontal elements. Both types of transactions can reduce competition among the firms participating in a relevant market, potentially leading to higher prices to buyers, a reduction in product quality, or a reduced likelihood of developing new, better, or cheaper products and services.⁶¹ Below, we analyze the potential harms to competition arising from both the vertical and horizontal aspects of the proposed transaction. After analyzing the alleged competitive harms, we examine other alleged harms, including harms to over-the-air broadcasting, diversity, localism, journalistic independence, public interest programming, and employment. Where we find substantial evidence supporting an alleged potential harm, we consider remedial measures—both those suggested by the Applicants and alternative or additional ones.

A. Potential Competitive Harms Arising From Vertical Elements of the Transaction

28. We begin by considering whether the Applicants, as a result of the transaction, would have an increased incentive and/or ability to engage in the anticompetitive exclusionary strategies identified in economic theory, practical experience, and regulatory precedent as potential results of the vertical integration of content and distribution. We have found that the vertical integration from the proposed transaction raises three potential areas of anticompetitive concern that require further analysis. First, we consider program access issues as they relate to existing MVPD markets. That is, we consider whether the Applicants could use their control over video programming to harm competing MVPDs by withholding content or raising programming prices. Second, we address the emerging market in online video programming distribution, evaluating whether the Applicants could use their control over video programming, broadband, or set-top boxes to harm current and emerging online rivals. Finally, we address program carriage issues, which involve the Applicants' potential anticompetitive use of their control over video distribution to deny unaffiliated video programmers access to Comcast subscribers or impose unreasonable terms for distribution on Comcast's systems.

1. MVPD Access to Comcast-NBCU Programming

a. Potential for Exclusionary Conduct

29. The proposed transaction creates the possibility that Comcast-NBCU, either temporarily or permanently, will block Comcast's video distribution rivals from access to the video programming content the JV would come to control or raise programming costs to its video distribution rivals. These exclusionary strategies could raise distribution competitors' costs or diminish the quality of the content available to them. As a result, Comcast could obtain or (to the extent it may already possess it) maintain

⁵⁹ See *Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; KIP VISCUSI, JOHN M. VERNON AND JOSEPH E. HARRINGTON, JR., *ECON. OF REG. AND ANTITRUST* 192, 233 (3d ed. 2000) (“VISCUSI *et al.*”).

⁶⁰ See *Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; *News Corp.-Hughes Order*, 19 FCC Rcd at 507, ¶ 69.

⁶¹ See *Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; ABA Sec. of Antitrust Law, *Antitrust Law Developments* 327 (5th ed. 2002); see generally VISCUSI *et al.*

market power in video distribution,⁶² and charge higher prices to its video distribution subscribers than those consumers would have paid absent the transaction. To address this potential harm, we impose an arbitration remedy, with a number of procedural improvements from arbitration remedies in previous transactions, that applies to all Comcast-NBCU programming.

30. *Positions of the Parties.* Some commenters express concern that Comcast-NBCU would foreclose video programming distributors that compete with Comcast from access to joint venture programming, or that Comcast-NBCU would use the threat of foreclosure to obtain a higher price in negotiations over the terms of arrangements for such programming.⁶³ Commenters also point out that Comcast has engaged in foreclosure strategies in the past when it had even less ability and incentive to do so.⁶⁴ Some commenters express special concern about foreclosure involving specific programming genres, notably broadcast networks and sports programming.⁶⁵

31. These commenters assert that foreclosure strategies will harm the ability of Comcast's video distribution rivals to compete in the video distribution market.⁶⁶ Commenters disagree, however, about how we should define this market for purposes of our analysis. Some commenters argue that our traditional definition of the "video programming distribution" product market as constituting all MVPD

⁶² Under antitrust jurisprudence, market power generally is defined as the ability to withhold supply or output or otherwise restrict competition in order to raise price above a competitive level. See Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission, August 19, 2010, at Section 1 ("*Horizontal Merger Guidelines*") available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf> (last visited Dec. 9, 2010).

⁶³ Comments of American Cable Association at iv, vi-viii, 16, 19, 25-27 (filed Jun. 21, 2010) ("ACA Comments"); Comments of Avail-TVN at 6 (filed Jun. 21, 2010) ("Avail-TVN Comments"); Comments of DIRECTV, Inc. at 6, 12-13, 15-17, 30, 36, 38-40 (filed Jun. 21, 2010) ("DIRECTV Comments"); Comments of Entertainment Studios, Inc. at 7 (Jun. 21, 2010) ("Entertainment Studios Comments"); Comments of the Fair Access to Content & Telecommunications Coalition at iii (filed Jun. 21, 2010) ("FACT Comments"); Letter from Senator Al Franken to Marlene Dortch, Secretary, FCC, at 1-2 (filed Jun. 21, 2010) ("Franken Letter"); Comments of the United States Telecom Association at 4 (filed Jun. 21, 2010) ("U.S. Telecom Comments"); Comments of the Writers Guild of America, West at 16 (filed Jun. 21, 2010) ("WGAW Comments"); Joint Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, and Media Access Project at 32-33 (filed Jun. 21, 2010) ("Free Press Petition"); Petition to Deny of Greenlining Institute at 30-33 (filed Jun. 21, 2010) ("Greenlining Petition"); Petition to Deny of WealthTV L.P. at 37 (filed Jun. 21, 2010) ("WealthTV Petition"); Free Press Reply at 14.

⁶⁴ ACA Comments at 26; Comments of AOL Inc. at 7 (filed Jun. 21, 2010) ("AOL Comments"); Avail-TVN Comments at 10; Declaration of Dr. Mark Cooper, Fellow, Donald McGannon Center for Communications Research, Fordham University, at 102 (filed Jun. 21, 2010) ("Cooper Declaration"); DIRECTV Comments at 8-10, 37; Petition to Deny of DISH Network L.L.C. and EchoStar Corporation at 14-15 (filed Jun. 21, 2010) ("DISH Petition"); Free Press Petition at 36-40; Greenlining Petition at 33; Reply of DISH Network L.L.C. to Comcast and NBCU'S Opposition to Petitions to Deny and Response to Comments at 25 (filed Aug. 19, 2010) ("DISH Reply"); Reply to Opposition to Petitions to Deny and Response to Comments of the Fair Access to Content & Telecommunications Coalition, The National Telecommunications Cooperative Association, and the Western Telecommunications Alliance at 18-23 (filed Aug. 19, 2010) ("FACT Reply").

⁶⁵ Avail-TVN Comments at 10-11; DIRECTV Comments at ii-iii, 13, 36-37; Comments of TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network at 5 (filed Jun. 21, 2010) ("MASN Comments"); Free Press Petition at 32; WealthTV Petition at i-ii, 9; Reply Comments of the New Jersey Division of Rate Counsel at 18-19 (filed Jul. 21, 2010) ("NJRC Reply"); Comments of Trail Blazers, Inc. at 2-3 (filed Jun. 21, 2010).

⁶⁶ ACA Comments at 26-27; FACT Comments at 6-7; Petition to Deny or in the Alternative Impose Conditions of Communications Workers of America at 29 (filed Jun. 21, 2010) ("CWA Petition"); Free Press Petition at 18-19, 30-31.

services⁶⁷ is too narrow, and that it should be broadened to include broadcast television distribution⁶⁸ and online video distribution.⁶⁹ Other commenters recommend that we not modify our traditional product market, and instead recognize that online video distributors are potential rivals and therefore should be treated as future market participants.⁷⁰

32. The Applicants respond by observing that Comcast-NBCU will control programming for only 12.8 percent of MVPD program network revenues.⁷¹ They suggest that foreclosure of access to this limited fraction of upstream inputs would be insufficient to harm rival distributors.⁷² The Applicants further contend that Comcast-NBCU's fiduciary obligation to GE will eliminate its ability to engage in exclusionary strategies that benefit Comcast's video distribution business at the expense of its programming business, and that this restriction would preclude the type of exclusionary strategies at issue here.⁷³

33. The Applicants contend that broadcast television should not be included in the MVPD product market definition because it is not a sufficiently close substitute,⁷⁴ and that online video distribution should be excluded because it is currently a complementary product and is likely to remain so in the future.⁷⁵ They further argue that Comcast-NBCU would not find it profitable to exclude Comcast's video distribution rivals from access to video programming, given that it would lose program access fees and advertising revenues were it to do so.⁷⁶

34. *Discussion.* Congress and the Commission have long been concerned about the possibility that an integrated video firm may exploit its ability to exclude its distribution rivals from access to its programming, or raise programming prices to harm competition in video distribution.⁷⁷ The

⁶⁷ See, e.g., *Comcast-AT&T Order*, 17 FCC Rcd at 23281-82, ¶ 89.

⁶⁸ See, e.g., Free Press Petition at 13 n.16 (citing Appendix A, Declaration of Dr. Mark Cooper, Consumer Federation of America, and Adam Lynn, Free Press, at 6-7) ("Cooper/Lynn Declaration"); see also Greenlining Petition at 2, Appendix II; Comments of Christopher S. Yoo at 16-17 (filed May 20, 2010) ("Yoo Comments").

⁶⁹ See, e.g., CWA Petition, Attachment B, Declaration of Hal J. Singer at 28 ("Singer Declaration").

⁷⁰ AOL Comments at 5; Letter from Senator Herb Kohl to Christine Varney, Assistant Attorney General, Antitrust Division, DOJ, and Julius Genachowski, Chairman, FCC, at 3 (filed May 26, 2010) ("Sen. Kohl Letter"); DISH Petition at 2; see also ACA Comments at 36-37; NJRC Reply at 9.

⁷¹ Applicants' Opposition at 160.

⁷² *Id.* at 128-29.

⁷³ *Id.* at 134, 140-41; see also Applicants – Israel/Katz March Report at ¶¶ 16, 45.

⁷⁴ Application at 83-84; Applicants' Opposition at 91-92. Specifically, the Applicants note that the Commission has stated that, "[a]lthough broadcast stations offer some degree of the specialized programming provided by the specialized basic cable network services," local broadcast television services do not offer sufficient "specialized programming" to be deemed "close substitute[s]" to MVPD services. Applicants' Opposition at 91-92.

⁷⁵ *Id.* at 85-86, 88.

⁷⁶ Application at 103-105, 113-116; Applicants' Opposition at 127, 130-33, 137.

⁷⁷ This "input foreclosure" concern is consistent with economic theory. See Michael H. Riordan and Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L. J. 513, 527-38 (1995) ("*Riordan and Salop*"); see also Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 YALE L. J. 209, 234-38 (1986) ("*Krattenmaker and Salop*"). Moreover, as we will

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Commission's program access rules⁷⁸ were promulgated in response to congressional concerns expressed in the 1992 Cable Act. Specifically, the Congress was concerned that vertically integrated program suppliers have the ability and incentive to favor their affiliated cable operators, allowing them to impair competition from existing competitors, new entrants, and new technologies (such as DBS).⁷⁹ This power, in turn, could result in higher prices and more limited consumer choice.⁸⁰ In 2007, the Commission extended the prohibition in its program access rules against exclusive contracts for any vertically integrated programming, finding that competing MVPDs need access to vertically integrated programming to remain viable substitutes to the incumbent cable operator in the eyes of consumers.⁸¹

35. Notwithstanding the program access rules, the Commission previously has found it necessary to impose additional transaction-related safeguards as conditions for approving vertical transactions between MVPDs and video programming networks. The record in those proceedings supported allegations that the vertical integration of certain video program networks with a particular MVPD would harm MVPD competition and enhance the integrated MVPD's market power despite the Commission's rules.⁸² In 2003, in *News Corp.-Hughes*, the Commission found that News Corp. would have an increased incentive to adopt a strategy of temporary foreclosure to uniformly raise the price of its broadcast television and regional sports programming and to obtain other carriage concessions.⁸³ The Commission imposed several conditions to maintain the balance of bargaining power between News Corp. and other MVPDs at roughly pre-transaction levels.⁸⁴ In the *Adelphia Order* in 2006, the Commission imposed a similar but modified condition to deal with the potential anticompetitive use of

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discuss in connection with program carriage, Comcast can harm competition in video programming through "customer foreclosure" by limiting its programming rivals' access to its downstream customers.

⁷⁸ 47 C.F.R. §§ 76.1000-76.1004.

⁷⁹ Congress enacted Section 628 of the 1992 Cable Act to "promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies." 1992 Cable Act § 2(a)(5), 47 U.S.C. § 548(a).

⁸⁰ See H.R. Conf. Rep. No. 102-862, at 93 (1992), reprinted in 1992 U.S.C.C.A.N. 1231, 1275; S. Rep. No. 102-92, at 28 (1991), reprinted in 1992 U.S.C.C.A.N. 1133, 1161.

⁸¹ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition, Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17792-94, 17814 ¶¶ 1-3, 37 (2007) ("2007 Program Access Order").

⁸² See e.g., *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3294-96, ¶¶ 65-69, *News Corp.-Hughes Order*, 19 FCC Rcd at 511-12, ¶¶ 79-80.

⁸³ *News Corp.-Hughes Order*, 19 FCC Rcd at 514, ¶ 87. In that transaction, the Commission approved the application of General Motors Corporation, Hughes Electronics Corporation, and the News Corporation Limited ("News Corp.") for consent to transfer control of various Commission licenses and authorizations held by Hughes and its wholly- or majority-owned subsidiaries to News Corp. Among News Corp.'s video programming assets at the time were 35 owned and operated broadcast stations, the Fox broadcast television network, ten national cable programming networks, and 22 regional cable programming networks.

⁸⁴ *Id.*

Comcast's RSNs to disadvantage MVPD competitors within Comcast's expanded footprint.⁸⁵ Most recently, in *Liberty Media-DIRECTV* in 2008, a similar condition was imposed and modified to address the potential harm arising from the transfer of control of DIRECTV from News Corp. to Liberty Media.⁸⁶ Accordingly, as part of our analysis, we will consider whether additional transaction-related safeguards are appropriate for this transaction.

36. Our analysis adapts an analytical framework employed in antitrust law.⁸⁷ First, we agree with commenters who assert that this transaction gives Comcast an increased ability to disadvantage some or all of its video distribution rivals by exclusion, causing them to become less effective competitors. The record shows that the loss of Comcast-NBCU programming, including the programming contributed by NBCU, would harm rival video distributors, reducing their ability or incentive to compete with Comcast for subscribers. This is particularly true for marquee programming, which includes a broad portfolio of national cable programming in addition to RSN and local broadcast programming; such programming is important to Comcast's competitors and without good substitutes from other sources.⁸⁸

37. As explained more fully in the Technical Appendix, the record evidence supports a finding that without Comcast-NBCU's suite of RSN, local and regional broadcast and national cable programming, other MVPDs likely would lose significant numbers of subscribers to Comcast,⁸⁹ substantially harming those MVPDs that compete with Comcast in video distribution.⁹⁰ This conclusion

⁸⁵ *Adelphia Order*, 21 FCC Rcd at 8207, 8273-77, ¶¶ 5, 155-65. In the *Adelphia Order*, the Commission approved the acquisition by Time Warner Cable Inc. and Comcast Corporation of substantially all of the domestic cable systems owned or managed by Adelphia Communications Corporation.

⁸⁶ *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3268, 3296-3304, ¶¶ 5, 72-84. In *Liberty Media-DIRECTV*, the Commission approved a series of transactions by which Liberty Media exchanged its ownership interest in News Corp. for News Corp.'s ownership interest in DIRECTV, resulting in Liberty Media having a *de facto* controlling interest in DIRECTV.

⁸⁷ See Andrew I. Gavil *et al.*, *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* 596 (2d. ed. 2008) (similar framework applied to analyze exclusion generally under the antitrust laws); see generally *Riordan and Salop*; *Krattenmaker and Salop*. Vertical mergers may have collusive as well as exclusionary effects; this analytical approach applies to exclusionary concerns. See Gavil *et al.* at 869 (suggesting collusive and exclusionary theories for analyzing a particular vertical merger).

⁸⁸ See generally Appendix B; see also Letter from Susan Eid, Senior Vice President, Government Affairs, DIRECTV, Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH, and Ross J. Lieberman, Vice President of Government Affairs, ACA, to Julius Genachowski, Chairman, FCC (Nov. 23, 2010); Letter from William M. Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC (Oct. 7, 2010). We evaluate exclusionary strategies involving blocks of programming as well as individual networks, in part because program access, affiliation, and retransmission consent negotiations increasingly are combined and cover larger bundles of programming than in the past.

⁸⁹ See generally Appendix B. The Applicants' argument that Fox's RSNs and team-owned RSNs are much closer substitutes to Comcast's RSNs than are any programming networks offered by NBCU does not refute the demonstrated loss of subscribers due to foreclosed access of marquee, non-replicable content. See Applicants' Opposition at 113.

⁹⁰ Moreover, cable programming is highly differentiated, so the foreclosed rivals cannot practically or inexpensively avoid the harm by substituting other programming. See DIRECTV Comments at 37 n.101; *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, 770, ¶ 34 & n.133 (2010) ("*Terrestrial Loophole Order*") (quoting *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 17 FCC Rcd 12124, 12139,

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is consistent with our previous finding that Comcast's withholding of the terrestrially delivered Comcast SportsNet Philadelphia RSN from DBS operators caused the percentage of television households subscribing to DBS in Philadelphia to be 40 percent lower than what it otherwise would have been.⁹¹ In addition, we find that Comcast-NBCU will negotiate more aggressively relative to the pre-transaction NBCU when selling NBCU content to Comcast's video distribution rivals. Unlike the pre-transaction NBCU, the integrated firm will take into account the possibility that any harm from failure or delay in reaching agreement would be offset to some extent by a benefit to Comcast, as reaching a higher price would raise the costs of Comcast's rivals. As a result, the transaction will improve Comcast-NBCU's bargaining position, leading to an increase in programming costs for Comcast's video distribution rivals.⁹²

38. We also find that Comcast-NBCU will have the power to implement an exclusionary strategy, notwithstanding that the programming would be owned by a joint venture between Comcast and GE. We evaluate this transaction as if Comcast will obtain all the profits generated by any exclusionary strategy by Comcast-NBCU because Comcast is acquiring the right to acquire sole ownership from GE and may exercise that right without further Commission approval. Moreover, we conclude that Comcast-NBCU's fiduciary duty to GE does not preclude exclusionary strategies that benefit Comcast-NBCU. For example, Comcast-NBCU could raise the price of programming to Comcast at the same time it raises prices to Comcast's rivals, thereby shifting to Comcast-NBCU some of the profits that Comcast earns by exercising market power in video distribution. As in past transaction review proceedings,⁹³ therefore, we find that duties imposed by corporate and securities laws do not adequately protect the public interest in this transaction.

39. Second, we find that successful exclusion (whether involving complete foreclosure or cost-raising strategies) of video distribution rivals would likely harm competition by allowing Comcast to obtain or (to the extent it may already possess it) maintain market power. We reach this conclusion by defining video distribution markets, and finding that Comcast could use exclusionary program access strategies to reduce competition from all significant current and potential rivals participating in those markets.⁹⁴ We also conclude that Comcast would find it profitable to engage in exclusionary conduct in these markets.

40. The Commission has analyzed the possible competitive harms of past vertical transactions on the distribution of video programming with relevant markets defined as all MVPD

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¶ 33 (2002)) ("cable programming—be it news, drama, sports, music, or children's programming – is not akin to so many widgets").

⁹¹ See *Terrestrial Loophole Order*, 25 FCC Rcd at 768, ¶ 32 (citing *Adelphia Order*, 21 FCC Rcd at 8271, ¶ 149); see also *2007 Program Access Order*, 22 FCC Rcd at 17817-18, ¶ 39.

⁹² See Appendix B.

⁹³ *News Corp.-Hughes Order*, 19 FCC Rcd at 510-513, 515-520, ¶¶ 76-83, 89-100; see also *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3289-3294, ¶¶ 54-63.

⁹⁴ Even if the exclusionary conduct were limited to some but not all video distribution rivals, it would confer market power on Comcast so long as the foreclosed rivals constrain Comcast's pricing or the remaining rivals would go along with allowing output in the market to fall and the market price to rise rather than treating that outcome as an opportunity to compete more aggressively. These possibilities may permit Comcast to harm competition by targeting exclusionary strategies against specific rivals to the extent it can do so within the constraints of our program access rules.

services within local cable franchise areas.⁹⁵ We adopt the same definition here. We decline to include broadcast television in the definition of MVPD services.⁹⁶ The Commission has previously held that broadcast television is not sufficiently substitutable with the services provided by MVPDs to constrain attempted MVPD price increases, and hence declined to broaden the MVPD product market.⁹⁷ This conclusion was based on factors including the degree of specialized programming provided, the number and diversity of channels offered, the fee charged for MVPD service, and the provision of premium movie channels, video on demand, and pay-per-view programming.⁹⁸

41. We do not determine at this time whether online video competes with MVPD services. In the last few years, the Internet has evolved into a powerful method of video programming distribution.⁹⁹ We recognize that the amount of video content available on the Internet continues to increase significantly each year, and consumers are increasingly turning to the Internet to view video programming.¹⁰⁰ As discussed below, we conclude that regardless of whether online video is a complement or substitute to MVPD service today, it is potentially a substitute product.¹⁰¹ When identifying market participants, therefore, we will include online video distributors as potential competitors into MVPD services markets.

42. The Commission has determined in the past that the relevant geographic markets for MVPD services are local, because consumers subscribe to MVPD services based on the choices available to them at their residences. Consumers are unlikely to change residences to avoid a small but significant

⁹⁵ See, e.g., *Adelphia Order*, 21 FCC Rcd at 8235, ¶ 63; *Comcast-AT&T Order*, 17 FCC Rcd at 23281-82, ¶ 89. The Commission has defined MVPDs to include cable operators, DBS providers, and “overbuilders.” See, e.g., *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3280, ¶ 30; *Adelphia Order*, 21 FCC Rcd at 8234, ¶ 61. The term “overbuilders” refers to MVPDs, other than DBS providers, which compete against cable incumbents in their local franchise areas. We have also considered local exchange carriers that provide facilities-based video service, such as Verizon and AT&T, to be MVPDs. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542 (2009) (“*Thirteenth Annual Report*”).

⁹⁶ We emphasize that we are defining programming distribution markets for the purpose of evaluating vertical foreclosure allegations. Our conclusion here does not preclude us from concluding, as we do below when evaluating harms from horizontal aspects of the transaction, that broadcast networks (which may also be distributed through MVPDs) compete with cable networks for inclusion in the package of programming that MVPDs distribute.

⁹⁷ See *News Corp.-Hughes Order*, 19 FCC Rcd at 509 ¶ 75 (citing *Competition, Rate Deregulation, and the Commission’s Policies Relating to the Provision of Cable Television Services*, Report, 5 FCC Rcd 4962, 5003, ¶ 69 (1990)); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20607-09 ¶¶ 109-115.

⁹⁸ *Competition, Rate Deregulation, and the Commission’s Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd at 5003, ¶ 69; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20607-08, ¶¶ 109-112.

⁹⁹ See, e.g., Reply to Opposition to Petition to Condition or Deny of EarthLink at 3-8 (filed Aug. 19, 2010) (“*EarthLink Reply*”); DISH Reply at 4 (citing Report of Professor Simon J. Wilkie, *Competition and the Impact of the Proposed Comcast/NBCU Transaction*, Aug. 19, 2010, at ¶ 8); CWA Petition at 39-40.

¹⁰⁰ *Thirteenth Annual Report*, 24 FCC Rcd at 549-50, 613, ¶¶ 17, 150.

¹⁰¹ Our concern here is with the anticipated development of online products that buyers would view as substitutes for what MVPDs offer today. In the event that the growth of online video distribution creates opportunities for price discrimination (e.g., through bundling of services or product windowing) or leads to the development of new products (e.g., disaggregated but searchable programming) that buyers do not view as close substitutes for MVPD services, we could define different or additional product markets in the future, which could be associated with different geographic markets and have different market participants.

increase in the price of MVPD service.¹⁰² To simplify the analysis, however, we aggregate consumers who face the same choice of MVPD products into larger relevant geographic markets, as we have done in the past.¹⁰³ We have received no comments questioning the geographic market definition for the MVPD services market and find it appropriate to follow this approach in the current transaction. Because the major MVPD competitors in most areas are the local cable operator and the two DBS providers, and consistent with the Commission's approach in prior license transfer proceedings,¹⁰⁴ we conclude that the franchise area of the local cable operator is the relevant geographic market for purposes of our analysis.

43. Comcast has a substantial share of the total MVPD subscribers in each of its franchise areas.¹⁰⁵ In each of its franchise areas, moreover, Comcast competes with multiple MVPD rivals. They include two direct broadcast satellite firms, which participate in every such market, as well as overbuilders such as telephone companies offering MVPD services in some markets. Every MVPD rival that participates along with Comcast in these relevant markets purchases most if not all of Comcast-NBCU's programming, including most if not all of the programming to be contributed to Comcast-NBCU in this transaction. Comcast-NBCU has the ability to exclude all of Comcast's rivals from the JV's programming, whether by withholding the programming or raising its price, thereby harming competition in MVPD services in each of Comcast's franchise areas.

44. We further conclude that this anticompetitive exclusionary program access strategy would often be profitable for Comcast. Comcast's improved bargaining position would arise without additional expenditures—and so the resulting price increases would be profitable to Comcast's cable operations in all markets. However, because Comcast-NBCU would lose revenues from the foreclosed MVPD were it to withhold programming from that firm, the profitability of withholding strategies requires a more involved analysis. As demonstrated in the Technical Appendix, the permanent or temporary withholding of a local broadcast station from an MVPD that competes with Comcast in various geographic markets would be profitable for Comcast in many markets even if it did not result in a negotiated price increase. The increased profits from diverting customers to its MVPD business at pre-transaction prices would exceed the costs in lost revenues.¹⁰⁶ We conclude that the profitability analysis would be similar if Comcast were instead to withhold other marquee programming, whether individual

¹⁰² See *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3281, ¶ 32; *Adelphia Order*, 21 FCC Rcd at 8235, ¶ 64; *News Corp.-Hughes Order*, 19 FCC Rcd at 505, ¶ 62; *Comcast-AT&T Order*, 17 FCC Rcd at 23282, ¶ 90; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20610, ¶ 119.

¹⁰³ See *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3281, ¶ 32; *Adelphia Order*, 21 FCC Rcd at 8235, ¶ 64; *News Corp.-Hughes Order*, 19 FCC Rcd at 505, ¶ 62.

¹⁰⁴ *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3281, ¶ 32; *Adelphia Order*, 21 FCC Rcd at 8235-36, ¶ 64; *News Corp.-Hughes Order*, 19 FCC Rcd at 505, ¶ 62.

¹⁰⁵ The Applicants submitted data that provide the number of homes passed and video subscribers in every DMA where Comcast operates a cable system. See Applicants – Israel/Katz March Report, Atts. 10-13. From these data we calculate that Comcast serves a minimum of [REDACTED] of all homes and up to [REDACTED] of homes in some franchise areas. On average, [REDACTED] of all homes in the Comcast footprint subscribe to their video service as of January 1, 2010.

¹⁰⁶ For temporary foreclosure to be profitable in the context of MVPDs' access to programming, a significant number of subscribers must respond by switching MVPDs to obtain the integrated firm's programming without immediately switching back to the competitor once the foreclosure has ended. In markets exhibiting such consumer inertia, temporary foreclosure may be profitable even where permanent foreclosure is not. See *News Corp.-Hughes Order* at 511-12, ¶¶ 79-80.

networks or blocks that collectively have marquee status. Accordingly, we conclude that post-transaction Comcast will have the ability as well as the incentive to employ program access strategies to exclude all its MVPD rivals in every franchise area market, by raising prices in all markets or withholding programming in at least some. As a consequence, without conditions, the transaction would likely harm competition in every such market. Our conclusion is also supported by Comcast's past behavior in foreclosing competing MVPDs from accessing certain programs.¹⁰⁷

45. We reject the Applicants' contention that in the *News Corp.-Hughes Order* and the *Adelphia Order* the Commission established general precedent that national programming networks never present a risk of foreclosure.¹⁰⁸ All adjudicatory findings are fact specific and based on the evidence in the record in a specific matter. Although the Commission found no evidence in the record of either of those transactions to support an effective or credible foreclosure strategy resulting in anticompetitive harms for the specific networks, we reach a different determination based on the record before us here.¹⁰⁹

46. In the extensive record before us now, many credible concerns have been raised that post-vertical integration price increases will result for Comcast-NBCU national cable programming¹¹⁰—as well as for O&O programming and RSN programming. Video programming has evolved over time—today certain national cable programming networks produce programming that is more widely viewed and commands higher advertising revenue than certain broadcast or RSN programming.¹¹¹ Based on our analysis in the Technical Appendix, we also believe that the bargaining model used in the economic expert reports submitted by ACA and DISH supports the conclusion that the transaction could lead to price increases that target MVPD rivals.¹¹²

47. In fact, the Applicants' own documents support the conclusion that some of the national cable networks combined in this transaction have such loyal viewers that the transaction will allow

¹⁰⁷ See, e.g., DIRECTV Reply at 39 n.120 (noting that from September 2009 through February 2010 DIRECTV did not carry Comcast's Versus network as a result of Comcast's demand that DIRECTV take down the channel at the expiration of the prior contract).

¹⁰⁸ See Applicants' Opposition at 155-56.

¹⁰⁹ Applicants' reliance on a post-transaction 12.8 percent market share of video programming thus is misplaced. See Applicants' Opposition at 160. Video programming is a differentiated product. An assessment of the consequences of foreclosure of the programming at issue in a particular transaction must be made on a case-by-case basis, considering whether the foreclosure to rival MVPDs of access to the specific programming networks offered by the parties to the transaction likely would result in the loss of subscribers to MVPDs having access. As the Commission concluded in the *Terrestrial Loophole Order*, the salient point for purposes of Section 628(b) is not the total number of programming networks available or the percentage of these networks that are vertically integrated with cable operators. Rather, the relevant issue is the popularity of the particular programming that is withheld and how the inability of competing MVPDs to access that programming in a particular local market may impact their ability to provide a commercially attractive MVPD service. See *Terrestrial Loophole Order*, 25 FCC Rcd at 770, ¶ 34.

¹¹⁰ See Letter from Barbara S. Esbin, Counsel for ACA, to Marlene H. Dortch, Secretary, FCC (Nov. 5, 2010) at Exhibit 1, Table 3; DIRECTV Reply – Murphy Report at Exhibit 4 ([REDACTED]).

¹¹¹ See, e.g., Derek Baine, *Cable Networks the Winner in Q2 Ad Revenue Race*, SNL Kagan, Aug. 20, 2010, at 2; see also DIRECTV Reply – Murphy Report at 16 & Exhibit 4.

¹¹² ACA Comments – Rogerson Report at 21-22; DIRECTV Comments – Murphy Report at 5-7. This model is similar to that proposed in the *News Corp.-Hughes Order* and used in the *Adelphia Order*, but our modeling has evolved since those transactions. See ACA Comments – Rogerson Report at 22.

Comcast-NBCU to extract higher rents from MVPDs. Comcast concedes as much when it stated that “[REDACTED].”¹¹³ In addition, Comcast intends for the transaction to allow it to leverage [REDACTED].¹¹⁴

48. We therefore conclude that conditions are necessary to ameliorate these potential harms for all categories of programming, as explained in more detail below.

b. Remedial Conditions

49. As a threshold matter, we conclude that our program access rules are insufficient to remedy the potential harm identified above. As the Commission found in the *News Corp.-Hughes Order*, a strategy of uniform price increases for video programming would not necessarily violate our current rules because the price increases would not involve discriminatory conduct.¹¹⁵ To facilitate the combined entity’s exercise of a uniform-price-increase strategy, Comcast could pay the same fees as its MVPD rivals or could choose to pay the highest fee that NBCU charges a competing MVPD. Therefore, our program access rules, which address discriminatory pricing, inadequately address the potential harms presented by the increased ability and incentive of Comcast-NBCU to uniformly raise Comcast’s rivals’ fees.¹¹⁶

50. To address this concern in prior transactions, the Commission has imposed baseball-style arbitration to maintain the pre-integration balance of bargaining power between vertically integrated programming networks and rival MVPDs.¹¹⁷ We do so here, with modifications. We establish in Appendix A a mechanism whereby an aggrieved MVPD may choose to submit a dispute with Comcast-NBCU over the terms and conditions of carriage of Comcast-NBCU affiliated programming to commercial arbitration. As in prior transactions, the arbitrator is directed to pick between the final contract offers submitted by Comcast-NBCU and the complainant MVPD based on which offer best reflects the fair market value of the programming at issue. This neutral dispute resolution forum will prevent Comcast-NBCU from exercising its increased market power to force Comcast’s MVPD rivals to accept either inordinate fee increases for access to affiliated programming or other unwanted programming concessions, and will effectively address price increase strategies that could otherwise be used to circumvent our program access rules.

¹¹³ See 31-COM-00000298, [REDACTED] at 35.

¹¹⁴ See *id.* at 25, 30, 37.

¹¹⁵ See *News Corp.-Hughes Order*, 19 FCC Rcd at 513-14, ¶¶ 84-87.

¹¹⁶ In addition, our program access rules do not apply to broadcast programming. See generally 47 C.F.R. §§ 76.1001, 76.1003(d).

¹¹⁷ See *News Corp.-Hughes Order*, 19 FCC Rcd at 552-53, 572-73, ¶¶ 175-76, 220-21.

51. After considering the record in this proceeding, we have modified our arbitration procedures from past transactions in order to make them more effective and less costly, for example by limiting the discovery that is presumptively available. We also require Comcast-NBCU to permit the MVPD to continue to carry the programming that is the subject of arbitration while the dispute is being resolved.¹¹⁸

52. While we previously have imposed an arbitration remedy only for RSN and broadcast programming, as we have noted recently,¹¹⁹ the need for arbitration has grown as the market has changed. On the basis of the record in this proceeding, as well as past problems in defining the limits of remedies prescribed for particular categories of programming, we believe it prudent to extend the arbitration and standstill remedy to all Comcast-NBCU affiliated programming. The record supports allegations that certain national cable programming networks are marquee programming for which subscribers would switch to a different MVPD in order to regain access.¹²⁰ Accordingly, our public interest mandate requires that we extend the arbitration and standstill remedy to all such programming.

53. Applying the arbitration and standstill provisions to all programming eliminates the need for the Commission to draw lines among various cable networks that would pose significant practical and constitutional concerns. The application of the arbitration remedy to all affiliated cable network programming also avoids the need to reclassify networks as marquee or non-marquee if Comcast-NBCU were to shift programming from one network to another. In addition, Comcast-NBCU may invest in specific networks that may not be considered marquee today but that could evolve into marquee programming networks. Meanwhile, given the evidence in the record supporting the costs and burdens that the aggrieved MVPD must incur in order to use the arbitration and standstill remedies, we believe it unlikely that an MVPD would invoke this remedy for less critical programming.

54. We also extend the arbitration remedy to a wide array of programming types, including most movies and bonus features, which Comcast-NBCU makes available to any party, including Comcast's systems. The record here demonstrates that these aspects of video programming are necessary for MVPDs to compete in the evolving MVPD marketplace. We clarify that the program access conditions and arbitration remedies apply to high-definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules.¹²¹ We further clarify that the program access conditions and arbitration remedies set forth in this Order also shall apply to video-on-demand (VOD) and pay-per-view (PPV) programming. The Commission previously has suggested that these formats are included under "video programming."¹²² Because of their increasing importance to MVPD competition, we clarify that they are included in our remedy here.¹²³

¹¹⁸ We clarify that this standstill provision applies both to the continued provision of the linear programming to the affected MVPD for the duration of the dispute, as well as to the continued provision of the programming online, to avoid the harm to consumers that may result from removal of free online video programming in the event of a carriage dispute. Cf. Brian Stelter, *Internet Is a Weapon in Cable Fight*, N.Y. TIMES, Oct. 20, 2010, at B3, available at <http://www.nytimes.com/2010/10/20/business/media/20hulu.html>.

¹¹⁹ Recently we have recognized the need to extend this remedy to other types of programming on a case by case basis. See *Terrestrial Loophole Order*, 25 FCC Rcd at 778, ¶ 48.

¹²⁰ See *supra* ¶ 36.

¹²¹ See Application at 117.

¹²² See 47 U.S.C. § 522(20) (defining "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station"). This definition was added to the Act by

(continued....)

55. We follow our approach in the *Adelphia Order* by applying our program access conditions to the benefit of all MVPDs, not just those that compete directly with Comcast in the geographic markets that we have defined for the purpose of analyzing vertical aspects of the transaction threatening program access.¹²⁴ To successfully raise programming prices for Comcast's rivals, the JV would need to raise the prices charged not only to Comcast, but also to non-rival distributors outside its footprint. There are at least two reasons why this is the case. First, as discussed in the Technical Appendix, price increases could spread to MVPDs that do not directly compete with Comcast through the operation of "most favored nation" ("MFN") provisions in affiliation agreements. Second, prices to non-rival distributors might be used as "benchmark" evidence in proceedings brought by rivals (arguing either that the JV was improperly discriminating by charging higher rates to rivals of its affiliate than to non-rivals of its affiliate, or that the JV's prices to them were above fair market value).¹²⁵

56. Commenters express concern about a number of other remedy-related issues. For example, some commenters argue that we should prohibit Comcast-NBCU from offering volume-based discounts for its video programming.¹²⁶ We find that such a prohibition is unnecessary here. The Commission's program access rules already contemplate that a complaint may be filed challenging volume-based pricing in certain circumstances. On the filing of such a complaint, a cable-affiliated programmer may be required "to demonstrate that such volume discounts are reasonably related to direct and legitimate economic benefits reasonably attributable to the number of subscribers . . . but may also

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the 1984 Cable Act, and the Commission has accordingly interpreted this term to mean programming comparable to that provided by broadcast television stations in 1984. *See Telephone Company-Cable Television Cross-Ownership Rules*, Second Report and Order, 7 FCC Rcd 5781, 5820, ¶ 74 (1992). The Commission has concluded that, "to the extent a service contains severable video images capable of being provided as independent video programs comparable to those provided by broadcast stations in 1984, that portion of the programming service will be deemed to constitute 'video programming'." *See id.* at 5820-21, ¶ 74. The Commission found that "video-on-demand images can be severed from the interactive functionalities and thereby constitute video programming." *See Telephone Company-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 244, 296, ¶ 109 (1994).

¹²³ We decline the invitation of some commenters to extend our program access conditions to the so-called "transport market" for VOD and PPV programming. *See, e.g.,* Avail-TVN Comments at 6-10; Petition to Deny and Comments of the National Telecommunications Cooperative Association and the Western Telecommunications Alliance at 10 (filed Jun. 21, 2010) ("NTCA Petition"); FACT Comments at 22-23; WealthTV Petition at 11-15. We believe that the evidence in our record does not demonstrate that there is a transaction-related harm in the transport market. *See Applicants' Opposition* at 277-78. Furthermore, we agree with the Applicants that the ease of entry into transport and the existing alternatives for competing MVPDs negate Comcast-NBCU's ability to harm competition in this market. *See Letter from Jonathan Friedman, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 3* (Dec. 3, 2010).

¹²⁴ *See Adelphia Order*, 21 FCC Rcd at 8274, ¶ 156; *see also 2007 Program Access Order*, 22 FCC Rcd at 17841, ¶ 72 (citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992-Sunset of Exclusive Contract Prohibition*, Report and Order, 17 FCC Rcd 12124, 12140-41, ¶¶ 36-39 (2002)).

¹²⁵ DIRECTV also states that the JV can benefit by weakening a current or potential rival even in markets where Comcast does not compete because reducing that rival's customer base in other markets would raise the rival's average cost of serving customers in Comcast's markets, thereby reducing the rival's competitive strength. *See DIRECTV Comments* at 39-40.

¹²⁶ *See, e.g.,* FACT Comments at 28-29.

identify non-cost economic benefits related to increased viewership.”¹²⁷ Because the specific matter of volume-based discounts is adequately addressed by the Commission’s program access rules, we find no basis to adopt conditions regarding this issue.

57. Other commenters express concerns about Comcast-NBCU’s bundling of video programming in negotiating carriage with MVPDs. While potentially providing efficiencies such as lower prices, bundling may also harm competition, for example by facilitating anticompetitive exclusion. We are particularly concerned about the anticompetitive possibilities arising from bundling of marquee programming. According to our analysis, Comcast-NBCU’s marquee programming includes at least its broadcast programming, its RSN programming, and its broad portfolio of national cable programming. Therefore, we permit MVPDs, in demanding a final offer from Comcast-NBCU, to demand a standalone offer for (1) broadcast programming, (2) RSN programming, (3) the bundle of all cable programming, and/or (4) any bundle that a Comcast-NBCU programmer has made available to a similar MVPD. The standalone offer requirement we adopt here, as in prior proceedings, will help to mitigate the potentially anticompetitive effects of bundling post-transaction by allowing MVPDs to unbundle those categories of marquee programming we have identified. This requirement also mitigates unreasonable bundling without preventing Comcast-NBCU from obtaining efficiencies in program packaging.

58. Finally, ACA argues that small and medium-sized MVPDs may be at particular risk.¹²⁸ We agree. Given the size of their subscriber bases and financial resources, small and medium-sized MVPDs may be less able to bear the costs of commercial arbitration than large MVPDs, thus rendering the remedy of less value to them. Therefore, we have modified our arbitration rules to make them more efficient and cost-effective, as explained above. We also specify that MVPDs with 1.5 million or fewer subscribers may choose to appoint an independent agent to bargain and (if necessary) arbitrate collectively on their behalf for access to Comcast-NBCU affiliated programming. In addition, we impose asymmetrical fee shifting to level the playing field. If an MVPD with 600,000 or fewer subscribers is the prevailing party in an arbitration, it shall be entitled to recover its legal fees and costs of arbitration. If it loses, however, it shall not be required to reimburse Comcast-NBCU’s corresponding fees and costs.

59. Our arbitration condition is intended to push the parties towards agreement prior to a breakdown in negotiations. Final offer arbitration has the attractive “ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer of the other side may be selected by the arbitrator.”¹²⁹ We find that the availability of an arbitration remedy will support market forces and help to prevent this transaction from distorting the marketplace.

2. Online Video Content

60. In this section, we examine the role of the Internet in the delivery of video programming, which has progressed from negligible just a few years ago to an increasingly mainstream role today. Major companies deliver video content over the Internet to consumers over websites and other applications. Consumers are more and more able to view this content not just on their television sets, but also on a multitude of other devices, such as PCs, tablets, and mobile phones. The amount of professional video that consumers watch over the Internet is still relatively small, but Internet viewing is popular and

¹²⁷ 47 C.F.R. § 76.1002(b)(3) note.

¹²⁸ ACA Comments at 44-45.

¹²⁹ STEVEN J. BRAMS, NEGOTIATION GAMES: APPLYING GAME THEORY TO NEGOTIATION AND ARBITRATION, 264 (2003).

growing. Parties on both sides of this proceeding agree that consumers are demanding the ability to watch video programming “anytime, anywhere” and that watching video over the Internet is becoming an important service that they demand.¹³⁰

61. We find that, as a vertically integrated company, Comcast will have the incentive and ability to hinder competition from other OVDs, both traditional MVPDs and standalone OVDs,¹³¹ through a variety of anticompetitive strategies. These strategies include, among others: (1) restricting access to or raising the price of affiliated online content; (2) blocking, degrading, or otherwise violating open Internet principles with respect to the delivery of unaffiliated online video to Comcast broadband subscribers; and (3) using Comcast set-top boxes to hinder the delivery of unaffiliated online video.

62. We impose a set of measures carefully tailored to safeguard against these potential harms. The online video market is expanding, and has the potential to increase consumers’ choice of video providers, enhance the mix and availability of content, drive innovation, and lower prices for OVD and MVPD services.¹³² A robust OVD market also will encourage broadband adoption, consistent with the goals of the Commission’s National Broadband Plan.¹³³

a. Background

63. Internet delivery of video programming is an established and growing business. For example, Apple, Amazon and Walmart offer movies and television shows to rent or purchase by downloading them over the Internet. Netflix, which originally distributed DVDs through the mail, now also offers Internet streaming of movies and television shows. Major League Baseball, the National Basketball Association and the National Hockey League each offer subscription services that allow subscribers to watch live non-local games over the Internet. The websites of the four major broadcast networks each offer free, advertising-supported streaming video of most of their recent programming, and CBS offered live streaming of the preliminary rounds of the NCAA men’s basketball championship tournament. Hulu and other websites offer advertising-supported streaming video of recent television programs and other programming.¹³⁴

64. Services and devices capable of delivering online video to television sets are proliferating rapidly and are becoming easier to use.¹³⁵ For example, many game consoles (*e.g.*, Microsoft Xbox,

¹³⁰ See, *e.g.*, Application at 37; Applicants’ Opposition at 56; DISH Petition at 2, 9.

¹³¹ The issue of whether a certain type of OVD qualifies as an MVPD under the Act and our regulations has been raised in pending program access complaint proceedings. See, *e.g.*, *VDC Corp. v. Turner Network Sales, Inc., et al.*, Program Access Complaint (Jan. 18, 2007); *Sky Angel U.S., LLC v. Discovery Communications LLC, et al.*, Program Access Complaint (Mar. 24, 2010). Nothing in this Order should be read to state or imply our determination on this issue.

¹³² See, *e.g.*, EarthLink Petition at 12-17; Greenlining Petition at 40.

¹³³ See National Broadband Plan, Chapter 2 at 9-11. See also Bloomberg Response to Petitions to Deny and Comments at 21-22 (filed Jul. 21, 2010) (“Bloomberg Response”); FACT Comments at 7-9; FACT Reply at 13; Greenlining Response at 7-8.

¹³⁴ Hulu is a joint venture currently owned by News Corp., NBCU, Providence Equity Partners and The Walt Disney Company Application at 32-33. Hulu also recently introduced the Hulu Plus subscription service, which provides access to additional content for a monthly fee.

¹³⁵ Ian Olgeirson and Liza Castaneda, *Over-the-Top Threat Looms Despite Multichannel Penetration Gains*, SNL Kagan, Multichannel Market Trends at 2 (Jun. 29, 2010). See also 64-COM-00002078, [REDACTED].

Nintendo Wii, and Sony PlayStation) and Blu-ray players allow viewers to rent programming over the Internet and view it on their television sets. Roku offers an inexpensive box that connects to a television set, allowing viewers to access Netflix and Major League Baseball, among other programming. Google has begun offering its GoogleTV application via its own box and other devices. Most of the major television set manufacturers now offer sets that allow access to various sites that provide programming over the Internet (e.g., Netflix, Vudu).

65. Internet video viewing is growing. One half of American consumers watch some video over the Internet.¹³⁶ Although the amount of viewing is still relatively small—one estimate is that it makes up nine percent of all viewing¹³⁷—it is clearly increasing.¹³⁸ The number of United States-based viewers in 2009 who watched video online grew 19 percent over 2008, and the number of “videos” watched increased 95 percent.¹³⁹ By 2010, the average user was online almost 97 hours per month, with “real-time entertainment” comprising almost half (45 percent) of all downstream Internet traffic.¹⁴⁰ During evening hours, this represented a 45 percent increase over 2009.¹⁴¹ Netflix estimates that by the end of 2010, a majority of its subscribers will watch more content streamed over the Internet than delivered on physical DVDs.¹⁴² Usage on mobile devices shows a similar pattern, with entertainment accounting for 45 percent of all data use and users staying online for almost 24 hours per month.¹⁴³

66. Not surprisingly, then, the Internet figures prominently in the plans of many MVPDs and other OVDs. The Applicants and the commenters agree that consumers want to watch programming “anytime, anywhere”¹⁴⁴—and that there is every reason to believe this trend will continue.¹⁴⁵ It is against

¹³⁶ See *Online and Time-Shifted Viewing Rises Significantly Among American Consumers*, Morpace Omnibus Report, Morpace Market Research and Consulting at 1-2 (Aug. 2010) (51 percent of consumers watched at least some video from an online source, and 23 percent of consumers used a streaming video source such as Netflix) (“Morpace Omnibus Report”); *The State of Online Video*, Pew Internet & American Life Project, Pew Research Center (Jun. 3, 2010), available at <http://www.pewinternet.org/Reports/2010/State-of-Online-Video.aspx> (finding from a June 2009 survey that 32 percent of adult Internet users watch movies or television shows online). See also 64-COM-00001565, [REDACTED]; 64-COM-00002275, [REDACTED]; 64-COM-00000788, [REDACTED].

¹³⁷ Morpace Omnibus Report at 2.

¹³⁸ See 64-COM-00001565, [REDACTED]. See generally *The State of Online Video*, Pew Internet & American Life Project, Pew Research Center (Jun. 3, 2010). The Applicants note that online video viewing continues to accelerate, with more people watching more videos online for longer periods of time. Applicants’ Reply at 56 n.148.

¹³⁹ comScore, *The 2009 U.S. Digital Year in Review, A Recap of the Year in Digital Marketing*, Feb. 2010. In December 2009, the Hulu website alone accounted for 1 billion streams and just under 100 million hours of viewing—an increase of 140 percent from the year before.

¹⁴⁰ Fall 2010 Global Internet Phenomena Report, Sandvine, Inc., at 11, 18 (“Sandvine Report”). “Real-time entertainment” is defined as streamed video and audio, peercasting, and place shifting (e.g., via Slingbox). Twenty percent of the 45 percent came from Netflix alone, while YouTube made up only 10 percent of downstream Internet traffic during 2010. *Id.* at 15.

¹⁴¹ See *id.* at 13 (42.7 percent during 2010; 29.5 percent during 2009).

¹⁴² Netflix, Inc., *Netflix Announces Q3 2010 Financial Results* (press release), Oct. 20, 2010.

¹⁴³ Sandvine Report at 12 (real-time entertainment accounts for 44.8 percent of mobile traffic), 18.

¹⁴⁴ See, e.g., Application at 37; Applicants’ Opposition at 56; DISH Petition at 2, 9; DIRECTV Reply at 8-9.

this backdrop that we evaluate the claims of many commenters that the transaction will increase the Applicants' incentive and ability to take a variety of anticompetitive actions against other MVPDs and OVDs.

b. Online Video Content to MVPDs

67. *Positions of the Parties.* MVPD commenters argue that, because online video is becoming such an important part of the viewing experience, Comcast-NBCU will have the incentive and ability to discriminate against Comcast's MVPD rivals by raising prices for online access to affiliated video programming and/or refusing to provide it in the same time frame (generally known as the "window") or in the same quality (e.g. in standard definition as opposed to high definition).¹⁴⁶ This incentive extends beyond full length programming (both movies and television programs) to include programming-related enhancements, such as clips and bonus features.¹⁴⁷ DISH argues that its ability to offer online video is critical to maintaining its ability to compete with its MVPD rivals, noting that every major MVPD offers an online video service in addition to the linear channels it provides.¹⁴⁸ DIRECTV and others share these concerns.¹⁴⁹ Commenters also note that Comcast has a history of withholding programming from its rivals. For example, Comcast withholds its RSN in Philadelphia from both DISH and DIRECTV. Similarly, WOW!, which is a mid-sized MVPD, claims that it has had difficulty obtaining Comcast's online programming.¹⁵⁰

68. Commenters also argue that Comcast could deny them access to important third-party content by entering into restrictive agreements with third-party programming providers.¹⁵¹ They contend

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¹⁴⁵ Applicants' Opposition at 56.

¹⁴⁶ See, e.g., DIRECTV Comments at 33-34; DISH Petition at 9-19; DISH Reply at 3-6; ACA Comments at 34-37; see also FACT Reply at 9-10. DISH alleges that NBCU has deliberately downgraded the quality of the video experience of DISH Network's online video platforms in comparison to NBCU's proprietary video platforms, such as Hulu and nbc.com. DISH Petition at 16 and Shull Declaration at ¶12; DISH Reply at 20. DISH also claims that Hulu requires the use of its proprietary online video player, which diminishes the ability of competitors to use better video player software technology; does not allow competitors the use of full metadata, such as show availability notes; and prohibits content distribution using new platforms and formats, such as the Apple iPad or HTML5. See DISH Petition at 17 and Jackson Declaration at ¶ 21. Under the condition we are adopting, insofar as Comcast-NBCU makes content available on the Comcast website or to Comcast or other MVPD subscribers, it must provide the same quality programming to other MVPDs, with no additional restrictions.

¹⁴⁷ DIRECTV Comments at 6; DISH Reply at 26.

¹⁴⁸ DISH Petition at 3, 6-9. These websites typically offer both content available to all users and content limited to the MVPD's subscribers (termed "authenticated" because subscribers need to be verified before accessing the content).

¹⁴⁹ See, e.g., DIRECTV Reply at 8-9; ACA Comments at 34-37; FACT Comments at 8-9; FACT Reply at 10.

¹⁵⁰ Testimony of Colleen Abdoulah, Pres. and Chief Exec. Officer, WOW!, Hearing on An Examination of the Proposed Combination of Comcast and NBC Universal before the House Energy and Commerce Subcommittee on Communications, Technology and the Internet, Transcript at 3, 4-5 (Feb. 4, 2010). In the *Terrestrial Loophole Order*, the Commission found several examples of MVPDs withholding affiliated content that the Commission's rules did not require them to sell to other MVPDs. *Terrestrial Loophole Order*, 25 FCC Rcd at 766-67, ¶ 30.

¹⁵¹ See, e.g., AOL Comments at 8; CWA Petition at iv, 48-49, 55; DIRECTV Comments at iv, 35; WealthTV Petition at 7, 35; EarthLink Petition at 22-23; Free Press Reply at 65; Greenlining Reply at ii, 32; Reply to Opposition to Petitions to Deny and Response to Comments of WealthTV at 31 n.101 (filed Aug. 19, 2010)

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that Comcast could use its new control over the distribution of NBCU's content to enhance the popularity of the joint venture's online offerings, thereby increasing its ability to negotiate exclusive online rights from unaffiliated content providers.

69. The Applicants generally respond that they have no incentive to withhold online distribution rights from other MVPDs.¹⁵² They do not, however, argue that their incentives to withhold such rights are any different than their incentives to withhold linear channels and other programming from their rivals.¹⁵³ With regard to entering into restrictive agreements with other independent programmers, the Applicants maintain that they lack the market power to coerce any programmer to enter into such arrangements, and they confirmed to Congress that they would not ask independent programmers to sign exclusivity deals with Comcast or with Comcast's TV Everywhere partners.¹⁵⁴

70. *Discussion.* We conclude that, without conditions, the transaction would cause competitive harms to rival MVPDs and, ultimately, consumers. Online viewing is indisputably becoming an important service demanded by consumers—one that every major MVPD is offering its subscribers. Without access to online content on competitive terms, an MVPD would suffer a distinct competitive disadvantage compared to Comcast, to the detriment of competition and consumers. This reality will give Comcast-NBCU the incentive, similar to that discussed above, to withhold or otherwise discriminate in providing online rights to video programming in order to prevent Comcast's MVPD rivals from competing aggressively with it. And Comcast will gain an increased ability to act on this anticompetitive incentive through the acquisition of NBCU's video content.

71. We cannot rely on Comcast's assurances that it will not use its control of NBCU content anticompetitively. Comcast currently chooses to withhold content from its rivals, thereby contradicting its contentions that, for whatever theoretical reason, it would not do so in the future. For example, Comcast's refusal to provide the Philadelphia RSN is not due to a dispute about price or terms, but rather is merely Comcast's "long-standing business policy," as Comcast's own correspondence states.¹⁵⁵

72. Therefore, we impose conditions, as described further in Appendix A, to ameliorate the potential competitive harms that could result from Comcast's control of Comcast-NBCU's online rights. As a condition of our approval of the transaction, we require Comcast-NBCU to provide to all other

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("WealthTV Reply"); Letter from Rep. Rick Boucher, U.S. House of Representatives, to Chairman Julius Genachowski, FCC, at 2 (Aug. 2, 2010) ("Rep. Boucher Letter"). See also Petition to Deny of Bloomberg L.P. at 67 (filed Jun. 21, 2010) ("Bloomberg Petition").

¹⁵² Applicants' Opposition at 184; Applicants' Reply at 24-26.

¹⁵³ Instead, the Applicants claim that "online video is not a substitute for traditional linear MVPD service" and that "foreclosure of competing online video providers would not be profitable for the joint venture." Applicants' Opposition at 184. See also Applicants' Reply at 25.

¹⁵⁴ Statement of Brian L. Roberts, Chairman and Chief Executive Officer, Hearing on An Examination of the Proposed Combination of Comcast and NBC Universal before the House Energy and Commerce Subcommittee on Communications, Technology and the Internet, Transcript at 56 (Feb. 4, 2010) (responding to question from Rep. Peter Welch).

¹⁵⁵ See DISH Reply, Attachment C (Letter from Amy B. Cohen, Vice President and Associate General Counsel, Comcast SportsNet, to Dave Shull, Senior Vice President, Programming, DISH Network L.L.C. (Jul. 23, 2010)). As Free Press notes, Comcast has also entered into at least one contract with a programmer that [REDACTED]. Free Press Reply at 16-17 (citing 20-COM-0000071 at 10).

MVPDs, at fair market value and non-discriminatory prices, terms and conditions, any affiliated content that it makes available online to Comcast's own subscribers or to other MVPD subscribers.¹⁵⁶

73. We also conclude that Comcast-NBCU will have increased leverage to negotiate restrictive online rights from third parties, again to the detriment of competition. Comcast-NBCU's demand of restrictive online rights in exchange for carriage may also cause harms to consumer choice, diversity, and broadband investment.¹⁵⁷ The Applicants emphasize that the distribution of online rights is non-exclusive, and that a content provider is free to license its content to the online platforms of other MVPDs.¹⁵⁸ They have reiterated in this proceeding that they will adhere to this principle.¹⁵⁹ To ensure that the Applicants adhere to their commitments in this proceeding, and as a condition of our approval, we prohibit Comcast-NBCU from entering into restrictive agreements with third-party content providers regarding online rights, except under limited circumstances. We also prohibit Comcast-NBCU from impeding access to its own content by entering into overly restrictive agreements for online rights to that content. These conditions, described in greater detail in Appendix A, apply to a broad range of provisions that would impede distribution of video programming, including MFNs.

c. Online Video Content to Non-MVPDs

74. *Positions of the Parties.* A number of petitioners and commenters argue that non-MVPD OVDs (such as Hulu, Netflix, GoogleTV, and iTunes) already—or soon will—provide viable commercial alternatives to traditional MVPDs.¹⁶⁰ They argue that Comcast-NBCU will have the incentive and ability to harm these new OVDs by preventing or hindering them from delivering video content over the Internet. And they contend that the obstacles cited by the Applicants as impediments to the development of the OVD industry—network capacity constraints, content price, and content rights—can and are being overcome.¹⁶¹

75. The Applicants respond that they have neither the ability nor the incentive to withhold NBCU content or otherwise harm OVDs.¹⁶² They argue that they will lack market power in any market

¹⁵⁶ This condition does not affect the rights of the Applicants to allow MVPDs to provide online content only to their subscribers as an “authenticated” service. It merely requires the Applicants to provide other MVPDs with the ability to provide their subscribers the same content that Comcast provides its subscribers (or other MVPDs' subscribers), on the same terms and conditions.

¹⁵⁷ We do not conclude that agreements giving specific video distributors exclusive rights to video content necessarily or invariably harm competition, only that absent conditions, the transaction before us gives Comcast an increased ability and incentive to reach such agreements for anticompetitive reasons.

¹⁵⁸ We note that the TV Everywhere principles, which Comcast helped develop and espouses, provides that “TV Everywhere is open and non-exclusive; cable, satellite or telco video distributors can enter into similar arrangements with other programmers.” Application at 59 n.100, 61.

¹⁵⁹ Letter from James L. Casserly, Counsel for Comcast, to Marlene Dortch, Secretary, FCC (Aug. 20, 2010).

¹⁶⁰ See, e.g., CWA Petition at 39-43; EarthLink Petition at 13-14, 27-31; EarthLink Reply at 3-6; FACT Reply at 9-10; Free Press Petition - Cooper/Lynn Declaration at 53-59; Cooper Declaration - Marvin Amori Study at 10-15; Petition to Deny of Public Knowledge at 8-9 (filed Jun. 21, 2010) (“Public Knowledge Petition”). See also DISH Reply at 2; Sen. Franken Letter at 3 (stating that online video poses an “existential threat” to cable providers); Comments of the American Antitrust Institute at 17 (filed Jun. 21, 2010) (“AAI Comments”) (viewing online video distribution as an emerging platform that competes with the existing platform of content delivered through MVPDs).

¹⁶¹ EarthLink Reply at 8-12.

¹⁶² See Application at 122-26; Applicants' Opposition at 185-186.

for online video content¹⁶³ and that withholding Comcast-NBCU content would not significantly harm any OVD. Because Comcast reaches only 24 percent of the country's households, the Applicants argue, withholding content from OVDs would be unprofitable.

76. More generally, the Applicants make two overarching arguments. First, they claim that Internet viewing does not compete with MVPD service but is a supplement.¹⁶⁴ People use the Internet to watch shows they have missed or at different places, they say, and there is little evidence of cord-cutting.¹⁶⁵ Second, they argue that OVDs cannot exist as a profitable business,¹⁶⁶ because (1) it is too expensive for OVDs to purchase professional video from the content owners, who make significantly more money by selling to the traditional MVPDs; and (2) there is insufficient Internet capacity for OVDs to provide a full substitute for MVPD service, which would involve over 250 hours of viewing per month for each household.¹⁶⁷

77. Several commenters dispute these assertions. Commenters argue that OVDs need NBCU content to be effective competitors. They contend that cord-cutting is indeed occurring. Further, they say, Comcast's own documents show that it is concerned about the competitive threat posed by OVDs.¹⁶⁸ DISH argues that regardless of whether online video is currently a complement or a substitute for MVPD services, the online distribution of video is an "indispensable input, either as a component of a traditional linear offering or as an emerging substitute for it."¹⁶⁹ Commenters assert that even if OVDs are not a viable competitive alternative to MVPDs today, they will become one in the near future.¹⁷⁰ Thus, they contend, the Commission should impose conditions to ensure that Comcast-NBCU does not "choke off" the OVD industry in its infancy.¹⁷¹

78. *Discussion.* We conclude that Comcast-NBCU will have the incentive and ability to discriminate against, thwart the development of, or otherwise take anticompetitive actions against OVDs. OVDs offer a tangible opportunity to bring customers substantial benefits. They can provide and promote

¹⁶³ Applicants' Opposition at 182-84; Applicants' Reply at 25.

¹⁶⁴ Application at 100-101; Applicants' Opposition at 86-101; Applicants' Reply at 25-26.

¹⁶⁵ Application at 99-100; Applicants' Opposition at 86-92.

¹⁶⁶ Application at 100-101; Applicants' Opposition at 93-101.

¹⁶⁷ Applicants' Opposition at 93-96. The Applicants also argue that the OVD industry is a nascent industry and the Commission should not speculate as to how it might develop. This objection misses the point. Although the Commission must be mindful of uncertainty, it is under an obligation to ensure that this transaction does not unnecessarily harm online video. *See Horizontal Merger Guidelines* at 23, Section 6.4 Innovation and Product Variety.

¹⁶⁸ *See, e.g.*, Letter from Corie Wright, Free Press, to Marlene H. Dortch, Secretary, FCC, at 1 (Nov. 18, 2010); Letter from Donna Lampert, Counsel for EarthLink, Inc., to Marlene H. Dortch, Secretary, FCC, at 3 (Nov. 9, 2010).

¹⁶⁹ DISH Reply at 2.

¹⁷⁰ *See, e.g.*, FACT Reply at 9-10; DISH Petition at 2-9; ACA Comments at 4, 34-37; NJRC Reply at 9, 11-15; Public Knowledge Petition at 1-15; AOL Comments at 5-8; Free Press Reply at 6-11; Bloomberg Response at 14.

¹⁷¹ Free Press Petition at 22. *See also* Reply to Comcast-NBC Universal Opposition, Communications Workers of America at 19-20 (filed Aug. 19, 2010) ("CWA Reply"); DISH Reply at 11-15; FACT Reply at 12-13; WGAW Comments at 17-19; AAI Comments at 16-17; AOL Comments at 5-8. Public Knowledge argues the Commission should be especially watchful of efforts to leverage market power in emerging markets. *See* Public Knowledge Petition at 3-4; *see also* EarthLink Petition at 12-14.

more programming choices, viewing flexibility, technological innovation and lower prices. The availability of OVD choices may also drive consumers to purchase broadband services where they have not already. New OVD services and new deals are announced seemingly daily. Comcast has an incentive to prevent these services from developing to compete with it and to hinder the competition from those that do develop.¹⁷²

79. Whether viewers are “cutting the cord” has been examined by a multitude of studies.¹⁷³ Although the amount of online viewing is growing, the record indicates that cord-cutting is relatively infrequent. We therefore agree with the Applicants that most consumers *today* do not see OVD service as a substitute for their MVPD service, but as an additional method of viewing programming. We nonetheless conclude that Comcast has an incentive and ability to diminish the potential competitive threat from these new services for the reasons set forth below.

80. First, the fact that most OVD services do not currently offer consumers all popular linear channels does not mean that they cannot and will not do so in the near future.¹⁷⁴ By all accounts, OVD services have just begun. The growing popularity of online video, combined with the burgeoning technological options for viewing online video on television sets, is likely to heighten consumer interest in cord-cutting, provided a sufficient amount of broadcast and cable programming is replicated on the

¹⁷² See, e.g., Michael J. Angelakis, Chief Financial Officer, Comcast, Remarks at Goldman Sachs Communacopia XIX Conference at 3 (Sep. 22 2010) (“And when we think about cord cutting or sort of the flavor of the day, we look at that as primarily competition to our VOD business not to our core business.”); 64-COM-00001504, [REDACTED]; 28-NBCU-0000005, [REDACTED].

¹⁷³ See, e.g., Cable & Telecommunications Association for Marketing, *84% of Web Video-to-TV Watchers Also Digesting More Regularly-Scheduled TV* (press release), Nov. 15, 2010 (commissioned research by Nielsen Co. shows only three percent of people who watch video from the Internet on their television sets planning to drop cable subscriptions; 84 percent watching as much or more regularly scheduled television than when they began watching streaming video); *Consumers Like Video Content from New Sources but Few Are Ready to “Cut the Pay-TV Cord,” According to Survey*, ABI Research, Oct. 4, 2010 (concluding that “early indicators suggest online media will eventually compete with pay-TV” and stating that although only 13 percent of consumers surveyed said they would consider cancelling their pay-TV subscription, 32 percent expressed interest in watching online video on their television set, which is double the interest found in a 2008 survey); Craig Moffett, *Ruminations on Cord Cutting, Household Formation, and Memories of 2005*, Bernstein Research, Sept. 24, 2010 (finding the information regarding slower household formation to be inconclusive with respect to cord-cutting, but concluding that weak income growth could make pay-TV unaffordable and lead to a perception among consumers that alternative sources of video are “good enough”); *Communacopia Conclusions for Entertainment Investors*, Goldman Sachs, Sep. 24, 2010, at 1-6 (reporting that most entertainment companies attribute recent declines in video subscribers to economic factors and view cord-cutting as low risk, and predicting a greater threat to premium cable networks than to basic networks).

¹⁷⁴ See, e.g., 64-COM-00002078, [REDACTED]; 11-COM-00000400, [REDACTED]; 64-COM-00000475, [REDACTED]; 28-NBCU-0000645, [REDACTED].

Internet.¹⁷⁵ This effect may be more pronounced among younger consumers, the most frequent viewers of online video,¹⁷⁶ which could lead to a more significant rise in cord-cutting in the long term.

81. Second, even today OVDs may provide some competition for Comcast and affect the prices it charges consumers. For example, an OVD that rents or sells movies competes against Comcast's pay-per-view movie service and, hence, competes with Comcast for revenue. [REDACTED]¹⁷⁷ Comcast therefore has an incentive to deny that OVD access to NBCU content, including movies distributed by Universal Studios. If consumers have a choice for some of Comcast's services at a lower price, Comcast may be forced to lower its price in order to keep those customers.¹⁷⁸

82. An OVD service may have become particularly attractive to those subscribers who watch some or all of their programming at times other than when it is originally aired.¹⁷⁹ As Comcast itself argues, more and more people want to watch programming when and where they want. Viewing is no longer limited to the television set at the times the programming is broadcast. Indeed, just 51 percent of all viewing is of scheduled television, the rest being made up of delayed viewing using digital video recorders ("DVRs"), on demand viewing, and Internet viewing.¹⁸⁰ This season, more than 10 percent of the total viewership of several popular shows has been via DVRs rather than through the scheduled broadcast.¹⁸¹ The Nielsen Company estimates that between the second quarters of 2009 and 2010, the number of viewers watching television on a time shifted basis increased by 18 percent.¹⁸² If viewers are

¹⁷⁵ See, e.g., Craig Moffett, *Ruminations on Cord Cutting, Household Formation, and Memories of 2005*, Bernstein Research, at 1 (Sept. 24, 2010) (finding the information regarding slower household formation to be inconclusive with respect to cord-cutting, but concluding that weak income growth could make pay-TV unaffordable and lead to a perception among consumers that alternative sources of video are "good enough").

¹⁷⁶ See, e.g., *The State of Online Video*, Pew Internet & American Life Project, Pew Research Center (Jun. 3, 2010), available at <http://www.pewinternet.org/Reports/2010/State-of-Online-Video.aspx> (finding that young adult Internet users, 18 to 29 year olds, continue to be the heaviest consumers of online video); 64-COM-00002078, [REDACTED]; 64-COM-00001760, [REDACTED]; see also 60-NBCU-0000443, [REDACTED]; Thomson Reuters StreetEvents, Final Transcript, "Verizon at Goldman Sachs Communicopia XIX Conference" at 8 (Sept. 23, 2010) (transcribing discussion with Ivan G. Seidenberg, Chairman and Chief Executive Officer of Verizon, in which he stated that "[y]oung people are pretty smart. They're not going to pay for something they don't have to pay for. So you've got to watch the market, over the top there is going to be a pretty big issue for cable.").

¹⁷⁷ See 64-COM-00000871, [REDACTED]; 64-COM-00000001, [REDACTED]; 25-COM-00000472, [REDACTED]; 31-COM-00001952, [REDACTED]; 64-COM-00000478, [REDACTED]; but see 64-COM-00000519, [REDACTED]. See also Transcript, Discussion with Michael J. Angelakis, Chief Financial Officer and Exec. Vice President, Comcast Corp., Bank of America Merrill Lynch Securities Media, Communications and Entertainment Conference, at 13 (Sept. 15, 2010).

¹⁷⁸ Analysts agree that not all MVPD users need to switch to an OVD before it will have an effect on the MVPDs. See, e.g., 11-COM-00000016, [REDACTED]. Comcast has recognized that OVDs may provide competition for its services. See 25-COM-00000017, [REDACTED].

¹⁷⁹ See, e.g., 64-COM-00001733, [REDACTED]; 60-NBCU-0000518, [REDACTED]; 64-COM-00003825, [REDACTED]; 60-NBCU-0001762, [REDACTED].

¹⁸⁰ Morpace Omnibus Report at 2.

¹⁸¹ See Lisa de Moraes, "Hawaii Five-O's" Record-Breaking DVR Surge, THE WASH. POST, Oct. 12, 2010, at C06 (reporting that "Hawaii Five-O" is "the most DVR'd show of all time").

¹⁸² Nielsen Co., *State of the Media: TV Usage Trends: Q2 2010* (Nov. 2010).

able to watch television and other programming online, when they want, that service will compete against Comcast's DVR and on demand services and, as stated above, will have an effect on the number of people who subscribe to its traditional MVPD service.¹⁸³

83. Third, we find no merit in the Applicants' argument that OVDs cannot replace Comcast's MVPD service (and thus Comcast has no incentive to discriminate against them) because the Internet lacks the capacity to deliver popular sports and other heavily watched programming. The evidence is to the contrary. In fact, Comcast's own documents belie its assertions.¹⁸⁴ Three of the major U.S. professional sports leagues already offer access to out-of-market games over the Internet. [REDACTED].¹⁸⁵ Cablevision is starting to use its all-digital network to provide virtual DVR service to all of its customers: the recorded programs are stored at the cable head-end, not on the equipment in the customer's home.¹⁸⁶ Comcast uses the same type of digital platform. We conclude that if a cable system has the capacity to handle the playback of stored video by all its subscribers, it has the capacity to handle the streaming of a popular sports program. And if it does not, the cable system can be easily and inexpensively expanded.¹⁸⁷

84. Fourth, we are unpersuaded by the Applicants' economic study that purports to show that they would have no economic incentive to withhold programming from OVDs after this transaction.¹⁸⁸

¹⁸³ A 2010 analyst report observes that a segment of consumers will purchase products with certain attributes, such as low price, simplicity, convenience, and flexibility, if their quality is "good enough." It provides examples such as free VoIP in place of traditional telephone service, Netbooks in place of laptop computers, and the Flip digital video camera in place of full featured camcorders. The report posits that, for certain consumers, the combination of Netflix and HD broadcast stations may be a "good enough" replacement for MVPD service. In this regard, it notes that approximately 48 percent of television viewing falls into programming categories—feature films, sitcoms, drama series, children's programming, varieties, game shows, and serials—that are available online. Spencer Wang, *Convergence 2010: Untangling the Future of Video*, Credit Suisse (undated) at 20-21, 61. See also Spencer Wang, *An Uncertain Time for Big Media: Downgrade to Underweight*, Credit Suisse (Sept. 16, 2010) at 18-29; 25-COM-0000594 [REDACTED].

¹⁸⁴ See 64-COM-00000769, [REDACTED].

¹⁸⁵ See 64-COM-00000769, [REDACTED]; 64-COM-00001467, [REDACTED]; 64-COM-00001470, [REDACTED].

¹⁸⁶ Transcript, James Dolan, Chief Executive Officer, Cablevision Systems Corp., Bank of America Merrill Lynch Media Communications and Entertainment Conference at 5-6 (Sept. 16, 2010).

¹⁸⁷ *Id.* ("The HFC architecture . . . is a highly expandable architecture. . . . We've deployed a DOCSIS 3.0 platform. So we can keep putting capacity into our network at relatively small capital dollar investment and satisfy our customer needs.").

¹⁸⁸ Applicants – Israel/Katz May Report at 37-82. That study uses a similar framework to that employed by the Applicants to evaluate the profitability of MVPD foreclosure (which we analyze in detail in the Technical Appendix). The study is limited to analyzing the profitability of complete foreclosure from Comcast's content and does not address anticompetitive strategies that Comcast might employ to harm nascent or mature OVD rivals short of complete foreclosure, such as raising the price of its content, with which we are also concerned. We do not find it persuasive with respect to complete foreclosure because its results turn on arbitrary assumptions that are impossible to verify. The Applicants acknowledge that their online video study makes the "speculative" assumption that an OVD business will look much like a traditional MVPD, with comparable video content, rather than employing some other business model (*e.g.*, one limited to content in a specific genre, such as children's programming). *Id.* at 38. Its conclusions also depend on other speculative and unverifiable assumptions, including assumptions as to the

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Given that OVDs currently account for a small share of aggregate programming revenues, moreover, we question the assumption that refusing to sell content to OVDs that compete with the MVPDs to which the Applicants already sell content would cost the Applicants significant revenues today.¹⁸⁹

85. Finally, despite their arguments in this proceeding, the Applicants' internal documents and public statements demonstrate that they consider OVDs to be at least a potential competitive threat.¹⁹⁰ The record here is replete with e-mails from Comcast executives and internal Comcast documents showing that Comcast believes that OVDs pose a potential threat to its businesses, that Comcast is concerned about this potential threat, and that Comcast makes investments in reaction to it.¹⁹¹ The record also contains NBCU e-mails and documents showing that many of the other cable companies are similarly concerned about the OVD threat and that NBCU feels pressure to avoid upsetting those companies with respect to any actions it might take regarding the online distribution of its content.¹⁹² Comcast also publicly told the Commission in 2006 that the growth and popularity of online video is "certain to continue" and listed examples of online offerings by traditional broadcast and cable networks that it described as "providing consumers with an interactive alternative to traditional TV-set viewing."¹⁹³

86. For all these reasons, we find that OVDs pose a potential competitive threat to Comcast's MVPD service, and that the Applicants therefore will have an incentive to take actions to hinder that

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proportion of OVD subscribers that would drop their service if they lost all Comcast and NBCU programming and the profits Comcast would earn from its MVPD customers in the event it faces competition from unaffiliated OVDs.

¹⁸⁹ We also reject Comcast's argument that the terms of its joint agreement with GE prevent it from sacrificing NBCU's revenues to gain profits for Comcast's cable systems. *See supra* ¶ 38.

¹⁹⁰ *See, e.g.,* Jeff Baumgartner, *Comcast Nears 'TV Everywhere' Launch*, LR Cable News Analysis, Sept. 9, 2009, at http://www.lightreading.com/document.asp?doc_id=181548&site=lr_cable&print=yes (visited Nov. 8, 2010) (quoting Steve Burke, Comcast Chief Operating Officer, "We have the exact same interests that the content providers have in making sure that we get ahead of the steamroller that is the Internet. . . . So many other businesses in the media space. . . didn't get ahead of it. Whether it is music or newspapers or radio, [they] didn't have a model that protected their core business, and then, boom, here comes the Internet as this destroyer of wealth."); Bloomberg Reply at 49 (citing past pleadings filed by Comcast and NBCU in Commission proceedings on the status of video programming competition in which the Applicants acknowledge the increasing influence of online video distribution); CWA Reply at 20 (same); FACT Reply at 9-10 (same). *See also* Free Press Reply at 7-12, Cooper/Lynn Declaration at 5-11, 31-33 (citing documents); *but see* Letter from Michael D. Hurwitz, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 1-5 (Oct. 22, 2010) (arguing the documents are mischaracterized and taken out of context).

¹⁹¹ *See, e.g.,* 64-COM-00002747, [REDACTED]; 64-COM-00000233, [REDACTED]; 64-COM-00003825, [REDACTED]; 64-COM-00002841, [REDACTED]; 64-COM-00001565, [REDACTED]; 64-COM-00002275, [REDACTED]; 64-COM-00000457, [REDACTED]; 64-COM-00001675, [REDACTED]; 64-COM-00001583, [REDACTED]; 64-COM-00001757, [REDACTED].

¹⁹² *See, e.g.,* 60-NBCU-0000776, [REDACTED]; 60-NBCU-0000632, [REDACTED]; 60-NBCU-00000550, [REDACTED]; 60-NBCU-0001688, [REDACTED]; 68-NBCU-0000387, [REDACTED]; 60-NBCU-0001687, [REDACTED]; 68-NBCU-0000182, [REDACTED].

¹⁹³ *Annual Assessment of Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Comments of Comcast Corporation at 31 & n.121 (filed Nov. 29, 2006) ("[A]s people increasingly connect computers to TV screens, networks like TheSailingChannel.com, JumpTV and Heavy.com may eventually challenge linear channels." (quoting David Goetzl, *Cracking the Market*, Broad. & Cable (Sept. 18, 2006))).

competition.¹⁹⁴ We disagree with the Applicants' argument that the JV's refusal to provide programming to OVDs would have no significant effect on OVDs' ability to compete. As discussed above, we find that the Applicants' withholding of linear programming, VOD rights, and online rights would have significant effects on the effectiveness of competition from rival MVPDs. Likewise, the Applicants' withholding of the online rights to similar NBCU programming would make OVDs less competitive.¹⁹⁵ If an OVD is to fully compete against a traditional MVPD, it must have a similar array of programming. Comcast has strong incentives not to let this occur.¹⁹⁶

87. Accordingly, we adopt targeted conditions, as detailed in Appendix A, to ensure that OVDs retain non-discriminatory access to Comcast-NBCU video programming, while permitting the continued evolution of the online market.¹⁹⁷ First, we require Comcast-NBCU to offer its video programming to any requesting OVD on the same terms and conditions that would be available to a traditional MVPD. To take advantage of this condition, an OVD will have to make the Comcast-NBCU programming available to its users as an MVPD would, which we expect typically will require the OVD to provide a linear video stream alongside any VOD content. By granting OVDs substantially similar rights to video programming as MVPDs, this condition generally protects them from discriminatory treatment aimed at keeping OVDs from competing directly with Comcast for video subscribers.

88. We also recognize, however, that many OVDs may wish to offer video services that differ from traditional MVPD service. Because the terms by which video programming vendors offer their programming to such services are unsettled and likely to change rapidly, we conclude that the best way to ensure that Comcast-NBCU treats such services fairly is to require it to offer its programming on terms comparable to those offered by its non-vertically integrated peers, which lack Comcast-NBCU's incentive to harm online providers. Specifically, once an OVD has entered into an arrangement to distribute programming from one or more Comcast-NBCU peers, we require Comcast-NBCU to make comparable programming available to that OVD on economically comparable terms.¹⁹⁸ This market-driven approach will ensure access to programming by OVDs as the online services develop, without prejudging the direction that dynamic market will take.

89. We provide for enforcement of these conditions by baseball-style arbitration. As set out more fully in Appendix A, this arbitration mirrors the program access procedures we have found effective for MVPDs, with slight adjustments to reflect differences in the relevant conditions. We also augment the

¹⁹⁴ Under our public interest review, we seek to ensure that market forces fairly determine the direction the industry will take, not to impose our view of how it should develop. In order to support the development of a competitive market, we analyze whether the transaction would allow Comcast-NBCU to take anticompetitive actions with regard to the emerging OVD services and impose conditions to prevent those actions.

¹⁹⁵ This is especially true of the online rights to NBC network programming and movies from Universal Studios, but also applies to online rights to the Applicants' other programming.

¹⁹⁶ Cf. 47 U.S.C. § 548 (Congress recognized the incentives of MVPDs to withhold programming from their rivals and determined that it was in the interest of both competition and viewers that such programming be made available to subscribers of rival MVPDs.); *Terrestrial Loophole Order*, 25 FCC Rcd at 761-75, ¶¶ 25-40 (Commission finding that despite Section 628, cable operators continue to have the incentive and ability to withhold or take other unfair acts with their affiliated programming in order to hinder competition in the video distribution market).

¹⁹⁷ These conditions are based on the particular circumstances before us and do not bind the Commission in any other context, *see, e.g., In re High-Cost Universal Serv. Support et al.*, 51 Communications Reg. 434 at 5 n.37 (2010), and should not be construed as imposing specific requirements or procedures on an industry-wide basis.

¹⁹⁸ See Appendix A.

specific requirements governing online program access and other matters through a number of prohibitions against unfair practices and retaliatory conduct.

90. In addition, we impose conditions to foster the continued viability of Hulu, an emerging OVD in which NBCU was an original participant. We do not believe that Comcast-NBCU has the same incentives as pre-transaction NBCU to facilitate the ongoing development of Hulu, so we require Comcast-NBCU to hold its interest in Hulu solely as an economic interest. In other words, neither Comcast nor Comcast-NBCU shall exercise any right to influence the conduct or operation of Hulu, including that arising from agreements, arrangements or operation of its equity interests. Furthermore, we require Comcast-NBCU to contemporaneously renew its existing agreements with Hulu on substantially the same terms and conditions, provided that the other two content provider partners have renewed their agreements with Hulu, as explained in greater detail in Appendix A. Finally, provided that the other two content provider partners continue to provide Hulu with programming of a type, quantity and quality consistent with their practice during the one year period prior to the date of this Order, we require Comcast-NBCU to provide its programming to Hulu on an equivalent basis.

d. Broadband Internet Access Service

91. *Positions of the Parties.* Several commenters raise concerns that Comcast, in its capacity as a provider of Internet access services, will have an increased incentive to degrade the delivery of, or block entirely, traffic from the websites of other content providers or OVDs, or speed up access to their own content and aggregation websites.¹⁹⁹ These commenters argue that Comcast has demonstrated its ability to engage in network management practices that have a discriminatory effect on selected content, and retains the ability to use technologies such as deep packet inspection to discriminate between packets.²⁰⁰ Some commenters argue that Comcast would also have an increased incentive to set usage caps that would penalize Comcast's broadband subscribers for viewing unaffiliated content, or for viewing content delivered by an unaffiliated OVD.²⁰¹

92. While the Applicants note that the transaction “[REDACTED],”²⁰² they contend that that the marketplace for online video is dynamic, vibrant, and competitive, and as a result is “particularly ill-

¹⁹⁹ AAI Comments at 21; AOL Comments at 4; Cooper Declaration at 128; Sen. Franken Letter at 4, 9; Rep. Johnson Comments at 2; WGAW Comments at 18; Bloomberg Petition at 43-44; DISH Petition at 19; EarthLink Petition at 22; Free Press Petition at 28-29 and Cooper/Lynn Declaration at 22-23; Greenlining Petition at 40-41; Public Knowledge Petition at 6, 8-10; WealthTV Petition at 22; Bloomberg Response at 15-16; Bloomberg Reply at 47, 54; DIRECTV Reply at ii, 8; DISH Reply at 2-3, 5-7, 23; EarthLink Reply at 2, 14, 18; NJRC Reply at 14, 30. The American Antitrust Institute argues that the transaction will increase Comcast's incentive to limit competition between two platforms (or systems): content delivered through MVPDs and content delivered online. AAI Comments at 17. This contention raises two concerns involving the foreclosure of emerging non-MVPD rivals to post-transaction Comcast: foreclosure from access to online video content (input foreclosure), which we address in section V.A.2.c, and foreclosure from access to broadband subscribers (customer foreclosure), which we address here.

²⁰⁰ See AAI Comments at 21; Cooper Declaration, Marvin Amori Study at 3; FACT Comments at 27; Sen. Franken Letter at 9; Bloomberg Petition at 43-44; DISH Petition at 9-12 and Jackson Declaration at ¶ 15; EarthLink Petition at 37; Free Press Petition – Cooper/Lynn Declaration at 27-29; Greenlining Petition at 40-41; Public Knowledge Petition at 4-5; WealthTV Petition at 21; Bloomberg Response at 16; NJRC Reply at 29-30.

²⁰¹ See ACD Comments at 6; DISH Petition at 20 and Jackson Declaration at ¶ 15; Bloomberg Response at 16-17.

²⁰² 64-COM-00000283, [REDACTED].

suited for government regulation or transaction conditions.”²⁰³ Elsewhere, Comcast has affirmed its “unwavering commitment” to operate its broadband Internet access service in accordance with certain basic principles.²⁰⁴

93. *Discussion.* Although we agree with the Applicants that these concerns affect all ISPs,²⁰⁵ we also identify particular transaction-related harms that arise from the increased risk that Comcast will engage in blocking or discrimination when transmitting network traffic over its broadband service. Specifically, we find that Comcast’s acquisition of additional programming content that may be delivered via the Internet, or for which other providers’ Internet-delivered content may be a substitute, will increase Comcast’s incentive to discriminate against unaffiliated content and distributors in its exercise of control over consumers’ broadband connections. Post-transaction, Comcast will gain control of NBCU [REDACTED],²⁰⁶ which is composed primarily of video programming assets. Comcast-NBCU will also control a 32 percent interest in Hulu,²⁰⁷ the second most-watched source of online video²⁰⁸ and the [REDACTED].²⁰⁹ Comcast-NBCU will have a roughly five percent share of the market in online video distribution sites.²¹⁰ Few other OVDs control such a high percentage of the content they distribute, and no others are vertically integrated with the nation’s largest residential broadband provider. Furthermore, if Comcast or Comcast-NBCU were to discriminate against disfavored online content or distributors after the transaction, that conduct could render our online program access conditions ineffective.

94. To address these transaction-related concerns, the Applicants have offered a number of voluntary commitments. The Applicants have agreed that, in their provision of broadband Internet access services, neither Comcast nor Comcast-NBCU shall prioritize affiliated Internet content over unaffiliated Internet content.²¹¹ In addition, any Comcast or Comcast-NBCU broadband Internet access service offering that involves caps, tiers, metering, or other usage-based pricing shall not treat affiliated network traffic differently from unaffiliated network traffic. Comcast and Comcast-NBCU shall also comply with all relevant FCC rules, including the rules adopted by the Commission in GN Docket No. 09-191,²¹² and, in the event of any judicial challenge affecting the latter, Comcast-NBCU’s voluntary commitments concerning adherence to those rules will be in effect.²¹³

²⁰³ Applicants’ Opposition at 7.

²⁰⁴ *Id.* at 7, 193-95.

²⁰⁵ *Id.* at 196.

²⁰⁶ 64-COM-00001613, [REDACTED].

²⁰⁷ Application at 8-9.

²⁰⁸ CWA Reply at 21-22 (citing comScore, Inc. *U.S. Online Video Market Continues Ascent as Americans Watch 33 Billion Videos in December* (press release), Feb. 5, 2010). In November 2009, Hulu accounted for [REDACTED]. 64-COM-00000214, [REDACTED].

²⁰⁹ 64-COM-00002018, [REDACTED].

²¹⁰ *See* Application at 123.

²¹¹ Letter from Kathy A. Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 17, 2011).

²¹² *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201 (rel. Dec. 23, 2010).

²¹³ We will rely upon Comcast-NBCU’s agreement to adhere to the terms of the Open Internet rules, including

(continued....)

95. Some services, such as IP-enabled “cable television” delivery, may be provided to end-users over the same facilities as broadband Internet access service, but may be classified as Specialized Services (as defined in Appendix A) distinct from broadband Internet access services. We prohibit Comcast and Comcast-NBCU from offering a Specialized Service that is substantially or entirely comprised of affiliated content. If Comcast or Comcast-NBCU offers any Specialized Service that makes content from one or more third parties available to (or that otherwise enables the exchange of network traffic between one or more third parties and) Comcast or Comcast-NBCU subscribers, Comcast-NBCU shall allow any other comparable third party to be included in a similar Specialized Service on a nondiscriminatory basis.

e. Set-Top Boxes

96. *Positions of the Parties.* Another potential point of discrimination raised by commenters involves next generation, IP-enabled set-top boxes (“STBs”). Unlike previous generations of STBs that were used only for the delivery of video programming provided over the consumer’s MVPD service, IP-enabled STBs allow subscribers to view both MPVD programming and online video programming on their television screens regardless of whether the programming is affiliated with their MVPD. These STBs can be purchased from a third-party vendor,²¹⁴ but they are more frequently rented from the MVPD.²¹⁵ Commenters have raised the concern that Comcast could prevent or hinder subscribers to competing MVPD services and Comcast broadband from viewing IP content using a Comcast-provided CPE device,²¹⁶ while allowing Comcast MVPD subscribers to do so.²¹⁷

(...continued from previous page)

submission to enforcement by the Commission. This agreement contains voluntary, enforceable commitments but is not a general statement of Commission policy and does not alter Commission precedent or bind future Commission policy or rules. *See, e.g., In re Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5984 n.79 (2010); *In re Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8741, 8745 n.29 (2009).

²¹⁴ CWA suggests that in order to ensure consumers can obtain Internet access on their television sets, we should bar Comcast-NBCU from tying the purchase of MVPD service to the purchase of a Comcast STB, and instead compel the company to permit its cable television subscribers to purchase a STB from an independent provider. CWA Petition at 56-57; *see also* NJRC Reply at 28, 44. We find this condition unnecessary, as subscribers to Comcast MVPD service currently do not purchase STBs directly from Comcast, *see* Comcast June Response at 95-96, and there is no indication in the record that Comcast has restricted the ability of consumers to purchase STBs of their own choosing. *Seattle et al. Municipal Commenters* have raised concerns regarding the rates charged to Comcast subscribers for STB rental. *Seattle et al. Municipal Commenters Comments* at 4-5, 19; *see also* NJRC Reply at 43 (supporting recommendation that basic-only subscribers should be charged the lowest rate available for set-top devices). But as there is no evidence in the record that Comcast’s acquisition of NBCU will change those rates, we find that those concerns are not transaction-related and thus not appropriate to address in the context of this Order.

²¹⁵ The vast majority of STBs are leased, rather than purchased by the consumer. *See* National Broadband Plan, § 3.2 at 18.

²¹⁶ CPE in this context refers to equipment that is located in a consumer’s home that connects to a broadband connection, such as modems, routers, or other end-user devices.

²¹⁷ DISH Petition at 21-22. FACT alleges that Comcast disables the online function for digital video subscribers using TiVo-brand DVRs. FACT Reply at 11-12. This concern is addressed by the conditions imposed above, which would prevent Comcast from the blocking, degrading, or discriminatory display of search results for Internet content by a Comcast-supplied STB.

97. *Discussion.* We are concerned that to protect its newly increased holdings in affiliated video programming, Comcast will have a heightened incentive to harm video distribution competition by using its new IP-enabled STBs to discriminate against online content that its MVPD subscribers attempt to view via the STB. To address this concern, the Applicants have made a voluntary commitment. The Applicants have agreed that, to the extent that a Comcast-affiliated STB (and/or CPE or software that is functionally equivalent to a STB)²¹⁸ has a capability that enables a customer to receive broadband Internet access service, the requirements described in paragraph 94 shall apply. In addition, to the extent that a Comcast-affiliated STB has a capability that enables a consumer to access a Specialized Service, the requirements described in paragraph 95 shall apply. We thus will ensure that any Comcast-affiliated STB accesses and displays unaffiliated content from the public Internet or over a Specialized Service in a non-discriminatory manner.²¹⁹

98. As an example, to the extent a Comcast-affiliated STB is capable of accessing any portion of the public Internet, the STB cannot permit users to access content available on nbc.com, but prevent access to content available on abc.com. This does not mean that STBs would be required to provide access to the public Internet, but if Comcast-supplied STBs do allow consumers public Internet access, it must be offered in a non-discriminatory manner that is compliant with the broadband Internet access service rules described in paragraphs 94 and 95.

99. In addition, if Comcast-affiliated STBs employ a search function to navigate programming on the public Internet, they must display search results in a non-discriminatory manner. For example, the STB may not return non-affiliated search results for “action adventures” but display them after all the results for Comcast-NBCU affiliated programming without a reasonable basis for doing so. This requirement does not require the Applicants to use any particular methodology for their search results. They must only be able to establish that the system used is based on a non-discriminatory approach consistently applied (*e.g.*, alphabetical, ratings). And after public Internet content is located and selected, any Comcast-affiliated STB must deliver that content in a non-discriminatory manner. At a minimum, any non-affiliated content must not be blocked or degraded in comparison to affiliated content.²²⁰

²¹⁸ To address concerns that Comcast could hinder subscribers to competing MVPD and Comcast broadband services from viewing content using a Comcast-provided CPE device, all of the conditions that we impose here on STBs also apply to Comcast-provided CPE devices that perform the function of a STB (for example, any CPE device that Comcast provides to allow a gateway device to act as a STB). In addition, to the extent Comcast provides software that is functionally equivalent to a STB and allows customers to view Comcast video programming—such as a widget on an Internet-capable TV or an application on an iPad or other viewing device—this software also is subject to these conditions.

²¹⁹ See DISH Petition at 19; NJRC Reply at 30.

²²⁰ See 25-COM-00000575, [REDACTED]. The Applicants have agreed not to attempt to create a competitive advantage for an affiliated station post-transition by forcing or automatically tuning STBs to a local, in-market NBCU station. See ABC/CBS/Fox Comments at 3; ABC, CBS, and Fox Affiliates Agreement at 1-2. Delay of delivery of video programming is permissible to the extent that it is technically necessary because of STB functions.

100. These conditions should not be unduly burdensome since they are the logical extension of Comcast's existing commitment to a protocol agnostic network management practice for its broadband pipe, and they are narrowly tailored to address the specific harms that could arise from Comcast's desire to protect its increased holdings in online programming post-transaction.²²¹

f. Other

(i) Bundling Broadband Internet Access Services with Video Services

101. *Positions of the Parties.* Currently, customers may purchase Comcast's broadband Internet access services without also having to purchase cable or phone services. Several parties urge the Commission to condition approval of the transaction upon Comcast's continuance of a standalone broadband option for consumers.²²² They argue that Comcast could limit consumer choice and harm other MVPD and OVD providers by requiring broadband subscribers to purchase a cable subscription.²²³ EarthLink and DISH also express concern that Comcast will have an increased incentive post-transaction to raise the price of its standalone broadband service, thereby effectively tying its cable and broadband services by making the bundled option the consumer's only reasonable economic choice.²²⁴

²²¹ Applicants' Opposition at 194; 47-COM-00000067, [REDACTED]; 11-COM-00000166, [REDACTED]; *see also Formal Complaint of Free Press and Public Knowledge against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications*, WC Docket No. 07-52, Memorandum Opinion and Order, 23 FCC Rcd 13028, 13059-60, ¶ 54 (2008) ("Comcast has committed in this proceeding to end [discriminatory network management] practices by the end of this year and instead to institute a protocol-agnostic network management technique."). We note that this change in network management practices was voluntary, and could be amended as a result of market pressures.

²²² AAI Comments at 27; DISH Petition at 28-29, 35; NJRC Reply at 40, 42; Letter from Linda Kinney, Vice President, DISH Network, to Marlene H. Dortch, Secretary, FCC, Att. at 6 (Apr. 28, 2010) (proposing that Comcast be required to offer a low-cost, standalone broadband service with speeds up to 4 Mbps at a monthly rate of \$15).

²²³ EarthLink Petition at 44-45; DISH Petition at 28-29; *see also* AAI Comments at 19-20.

²²⁴ EarthLink Petition at 23, 44-45 (arguing that Comcast already prices its service bundles to discourage standalone broadband subscriptions); EarthLink Reply at 12-13; DISH Reply at 28; *see also* Letter from Donna C. Lampert, Lampert, O'Connor & Johnston, P.C., Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, at 4 (Nov. 10, 2010). In addition, EarthLink requests as a condition on the transaction that we require Comcast to enter into an agreement to provide wholesale standalone broadband access at reasonable rates to at least four national unaffiliated ISPs. *See* EarthLink Petition at 51-62 & Appendix 1 at 1; *see also* Public Knowledge Petition at 14-15; DISH Reply at 27-30. EarthLink argues that, among other benefits, such a condition would allow consumers to "break the bundle" and encourage open Internet practices. EarthLink Petition at 55, 62. While we agree with EarthLink that stimulating development, innovation and investment in the OVD market, and in the broadband market as a whole, are critical public policy goals, we find that the open Internet and standalone broadband conditions that we are imposing on this transaction are sufficient to protect the broadband industry and the interests of consumers.

102. *Discussion.* As we previously explained, Comcast's ability to harm potential competition with its video distribution business will be enhanced by this transaction. We believe that this threat would be reduced and future competition in video distribution markets would be protected by ensuring that consumers have the flexibility to choose an MVPD provider that is separate from their broadband provider. Given the limited choice of broadband providers that many Americans have, particularly for higher speed connections,²²⁵ Comcast could, for example, hinder competition from DBS and OVD providers, both of which provide video over a third-party's broadband network, by requiring a cable subscription in order to receive broadband services or by charging an excessive price for standalone broadband services.

103. We believe that imposing a standalone broadband requirement would be minimally disruptive to Comcast, given that it currently offers such an option.²²⁶ We further believe that such a requirement would serve several of the Commission's statutory policy objectives.²²⁷ Accordingly, we will require that Comcast continue to provide standalone broadband Internet access service to customers with offerings consisting of speed tiers currently offered in each service area at reasonable market-based prices. At a minimum, Comcast shall offer a service of at least 6 Mbps down at a price no greater of \$49.95 for three years, provided that if Comcast offers additional speeds in conjunction with other bundled service packages, Comcast shall also offer such speeds on a standalone basis at reasonable, market-based prices. In each case, the standalone offering shall be on equivalent terms and conditions (including but not limited to usage caps) to the most comparable broadband Internet access service offered in a bundled offering.²²⁸ In addition, we require Comcast to visibly offer and actively market standalone retail broadband Internet access service. In order to monitor compliance with this condition, Comcast shall make available to the Commission the information specified in Appendix A.

(ii) Bundling Fancast Xfinity TV with MVPD Subscription

104. *Positions of the Parties.* Some of Comcast's video programming is available online only on an "authenticated" basis, *i.e.*, available only to individuals who also receive the programming through a Comcast MVPD subscription.²²⁹ Commenters argue that Comcast should not be allowed to condition

²²⁵ See *Internet Access Services: Status as of December 31, 2009* at 7, Figure 3(a) (WCB Dec. 8, 2010) available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1208/DOC-303405A1.pdf.

²²⁶ We note that the Commission's orders in the Verizon-MCI and AT&T-SBC merger proceedings included a condition that the applicants offer standalone DSL service for two years. *Verizon Communications Inc. and MCI, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18437, 18537, ¶¶ 3, 217, 221, App. G (2005) (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14853 (2005) (accepting, and adopting as conditions, the applicants' voluntary commitments to adhere to the principles set forth in the Commission's 2005 Internet Policy Statement for two years and to offer standalone DSL service for two years); *SBC Communications, Inc. and AT&T Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18293, 18391-92, ¶¶ 3, 207, 211, App. F (2005) (same).

²²⁷ For example, this condition would serve the goals of promoting competition and diversity in the delivery of video programming and the availability of advanced services. See 47 U.S.C. § 548(a); 47 C.F.R. § 76.1302(a).

²²⁸ See DISH Petition at 35.

²²⁹ See Comcast June Response at 28. Fancast Xfinity TV is "an authenticated, online video-on-demand service" through which Comcast cable subscribers "obtain online access at no additional charge to content associated with their individual video subscription levels." *Id.* at 65; see also Application at 23, 60. Comcast explains that "[t]he 'Fancast' website also provides some ad-supported and transactional video content on an unauthenticated basis...." Comcast June Response at 65.

access to online content on the purchase of an MVPD subscription.²³⁰ They contend that by requiring an MVPD subscription to access online content, the Applicants may hinder the growth of OVD providers and their ability to compete effectively,²³¹ and ensure that consumers will be unable to “cut the cord.”²³² According to certain commenters, Comcast and NBCU already have used authentication to foreclose consumers from accessing certain video programming online unless they subscribe to MVPD service and such foreclosure will likely increase post-transaction.²³³

105. The Applicants, supported by other commenters, disagree.²³⁴ They argue that authentication arrangements “are pro-consumer, pro-competitive, and nonexclusive, and are necessary to strike a proper balance between (a) providing consumers access to video content where and when they want it and (b) providing content producers with an economically sustainable business model that supports the significant costs associated with production of high-quality video content.”²³⁵ The Applicants explain that it would not make sense to offer Fancast Xfinity TV as a national product, instead of as a supplement to Comcast’s traditional MVPD service, due to the substantial costs and fees coupled with limited revenue.²³⁶ The Applicants further note that they may lack the rights necessary to provide certain programming online on an unauthenticated basis.²³⁷ The Applicants also state their intention to make their content they provide online to authenticated subscribers available to other MVPDs on reasonable terms, to provide online to those MVPDs’ own authenticated subscribers.²³⁸

106. *Discussion.* We decline to impose a condition in this proceeding restricting Comcast-NBCU’s ability to limit the online availability of certain programming to individuals who subscribe to MVPD service. To the degree the concern is merger-related, we have addressed the primary concerns of the commenters—that consumers have access to the Applicants’ video programming regardless of their

²³⁰ See, e.g., WealthTV Petition at 7; CWA Reply at iii; Free Press Reply at 65; WealthTV Reply at 31 n.101; Sen. Franken Letter at 10; Sen. Kohl Letter at 5.

²³¹ See, e.g., AOL Comments at 4; CWA Petition at ii, 44-45; EarthLink Petition at 22; Public Knowledge Petition at 13; WealthTV Petition at 21; CWA Reply at ii, 19-20, 24; CWA Reply - Singer Declaration at 30-31; Greenlining Reply at ii, 27-28; NJRC Reply at 13.

²³² See, e.g., AAI Comments at 19-20; Free Press Reply at 12.

²³³ See, e.g., DIRECTV Comments at 30; Greenlining Petition at 39-40.

²³⁴ See Time Warner Reply at 8; Letter from David S. Turetsky, Counsel for HDNet, LLC, to Marlene H. Dortch, Secretary, FCC, at 4 (Aug. 20, 2010).

²³⁵ Applicants’ Opposition at 205 (footnotes and quotations omitted); see also Applicants’ Opposition at 208; Applicants’ Reply, App. A at 17.

²³⁶ Applicants’ Opposition at 207-208.

²³⁷ See Comcast June Response at 53 (many of Comcast’s MVPD affiliate agreements “state that Comcast’s networks cannot allow full episodes of current programming to stream online on ad-supported services on an unauthenticated basis”); Applicants’ Opposition at 117 n.370 (while networks “may ‘own’ the rights to aggregate a program into a channel that they can license to MVPDs, they may not ‘own’ the rights to license that programming for over-the-top distribution, or on the Internet except to authenticated MVPD subscribers, or to a transactional or ad-supported distributor”).

²³⁸ See Letter from James L. Casserly, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Aug. 20, 2010); see also Applicants’ Reply, App. A at 16; *supra* Section V.A.2.b.

video distributor—through our online program access conditions.²³⁹ This will give OVDs access to content despite the alleged added value of authentication.

(iii) Migration of Online Video Content to Fancast XfinityTV

107. *Positions of the Parties.* NBCU currently makes a limited amount of NBC broadcast programming available on the Internet for no charge on its websites, including nbc.com. Some commenters have expressed concern that the Applicants will migrate at least some of this programming exclusively to Comcast's authenticated website or to other platforms for which a subscription or fee is required.²⁴⁰ They claim that consumers will be harmed as more content is captured by Fancast Xfinity TV's authentication model with less content available to consumers who do not subscribe to an MVPD service.²⁴¹ Some parties recommend divestiture of Hulu and/or Fancast as a means of preventing the combined company from limiting distribution of video content to free online platforms or restricting access to such platforms.²⁴²

108. *Discussion.* We agree that the public interest could be harmed if the Applicants move NBCU broadcast content currently available online for free to restricted online platforms that require a subscription or payment. Moving free NBCU online content behind a pay wall would reduce consumer choice and access to information and entertainment that consumers benefit from pre-transaction. In addition, such action could hinder the development of the OVD industry, as some consumers may choose to replace their MVPD service with a combination of free online programming and paid OVDs' offering of movies and cable networks. The Applicants have an incentive to withhold free access to their online content in order to prevent this type of cord-cutting.²⁴³

109. During a congressional hearing, the Applicants made assurances that programs available at that time over-the-air on NBC and then available on the nbc.com website would not be migrated into the TV Everywhere format.²⁴⁴ They reaffirmed this intention to Commission staff on August 20, 2010.²⁴⁵ We therefore will require as a condition for approval of the transaction that the Applicants continue to make available on nbc.com (or any successor website) video programming that is equivalent in type,

²³⁹ Economist Workshop Transcript at 187-88 ([REDACTED]).

²⁴⁰ Rep. Boucher Letter at 1; *see also* CWA Petition at 47; Greenlining Petition at 39-40; NJRC Reply at 12-13; Responsive Comments by the People of the State of Illinois by Illinois Attorney General Lisa Madigan at 5 (filed Jul. 21, 2010) ("Illinois Comments").

²⁴¹ *See* Free Press Petition at 23.

²⁴² *See, e.g.*, AAI Comments at 27; NTCA Petition at 10; CWA Petition at 55-56; CWA Reply at 30; NJRC Reply at 39.

²⁴³ We conclude, however, that there is no transaction-related justification for Greenlining's request that the Commission ensure continued access, free of subscription or premium charges, to online content that Comcast currently makes available to all users for no additional charge on its associated websites, such as Fancast.com. *See* Greenlining Reply at 32.

²⁴⁴ U.S. House Energy and Commerce Subcommittee on Communications, Technology and the Internet, Transcript at 33 (Feb. 4, 2010).

²⁴⁵ Letter from James L. Casserly, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 2 (Aug. 20, 2010) (stating that "Comcast expects that the programs that are delivered over-the-air by NBC today and then are available at the nbc.com website for online viewing will continue to be made available in that fashion, and will not migrate into the TV Everywhere model").

quantity and quality to that offered through nbc.com as of the date of release of this Order, so long as at least one of the other major broadcast networks provides a similar service.²⁴⁶ We believe this requirement, as well as our conditions relating to Hulu, obviate the need for any further remedy.

3. Program Carriage Issues

110. Several parties contend that the proposed transaction would increase Comcast's ability and incentive to reduce competition from rival video programming networks/providers by withholding carriage of such programming or imposing unreasonable terms or conditions of carriage. We agree that the vertical integration of Comcast's distribution network with NBCU's programming assets will increase the ability and incentive for Comcast to discriminate against or foreclose unaffiliated programming. We conclude that the adoption of a non-discrimination requirement, a condition to make ten channels available to independent programmers over a period of time, and a narrowly tailored neighborhooding requirement will mitigate any potential public interest harms.²⁴⁷

111. *Background.* In order to prevent MVPDs from taking undue advantage of programming vendors, Congress enacted Section 616 of the Act, which directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other [MVPD] and video programming vendors."²⁴⁸ Accordingly, the Commission established rules governing program carriage and adopted procedures for the review of program carriage complaints as well as appropriate penalties and remedies.²⁴⁹ As required under the statute, the Commission's program carriage rules specifically prohibit a cable operator or other MVPD from engaging in three types of conduct: (1) requiring "a financial interest in any program service as a condition for carriage" of such service;²⁵⁰ (2) coercing a programmer to grant exclusive carriage rights or retaliating against a programmer for refusing to grant such rights;²⁵¹ and (3) engaging in conduct that unreasonably restrains "the ability of an unaffiliated programming vendor to compete fairly" by discriminating against such vendor "on the basis of affiliation or nonaffiliation."²⁵²

²⁴⁶ For example, the restriction applies to future episodes of a program within that program's series (e.g., all future episodes of the NBC program "The Office"). The restriction also applies to future programs developed by the combined company that are equivalent in type, quantity and quality to the free content now available through the nbc.com website.

²⁴⁷ When used with respect to program carriage, the term "foreclosure" refers to a vertically integrated MVPD's refusal to carry the programming of an unaffiliated network such that the programmer would exit the market or would be deterred from entering the market. See *Adelphia Order*, 21 FCC Rcd at 8256, ¶ 115 n.408.

²⁴⁸ 47 U.S.C. § 536. Section 616 was added to the Act by the 1992 Cable Act.

²⁴⁹ See *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd 2642 (1993); see also *Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage*, Memorandum Opinion and Order, 9 FCC Rcd 4415 (1994). The Commission's program carriage rules are set forth at 47 C.F.R. §§ 76.1300 - 76.1302.

²⁵⁰ 47 C.F.R. § 76.1301(a); see also 47 U.S.C. § 536(a)(1).

²⁵¹ 47 C.F.R. § 76.1301(b); see also 47 U.S.C. § 536(a)(2).

²⁵² 47 C.F.R. § 76.1301(c); see also 47 U.S.C. § 536(a)(3).

112. *Positions of the Parties.* Notwithstanding our program carriage rules, commenters express concerns that Comcast will have an incentive and ability to disadvantage independent, competing programmers through measures ranging from refusing to carry an independent network to “relegating independent channels to programming tiers with a limited reach and/or neighborhoods far removed from related content.”²⁵³ Bloomberg contends that “neighborhooding,” which is “the industry practice of placing channels of the same genre adjacent to one another in the system’s channel line-up,” is important because it enables consumers to find programming more easily and facilitates competition between programs.²⁵⁴ Commenters express particular concern that Comcast will use strategic tier placement to disadvantage competitors, and that Comcast will place competing programming on service tiers that are less widely penetrated.²⁵⁵ WealthTV claims that Comcast “often” refuses to place unaffiliated programming in basic channel neighborhoods,²⁵⁶ and other commenters express similar concern that Comcast has engaged in discriminatory behavior in the past.²⁵⁷

113. Further, Bloomberg and Allbritton express concern that Comcast will have the ability and incentive to discriminate against independent news programming in particular. Bloomberg points out that its business news network, Bloomberg TV, competes directly with CNBC, NBCU’s news channel and the top-ranked business news network.²⁵⁸ Bloomberg claims that Comcast has a history of discriminating against unaffiliated programming networks, and is concerned that Comcast will use its distribution system, which holds a 40 to 65 percent share of the pay television subscriber market in major business centers within the top 15 DMAs,²⁵⁹ to favor CNBC over other business news competitors.²⁶⁰ Similarly, Allbritton is concerned that Comcast will leverage its post-transaction position in the Washington D.C. market—in which its independent cable news channel, TBD TV (formerly NewsChannel 8), offers local news programming—to threaten TBD TV’s continued viability.²⁶¹

114. Commenters also argue that the Commission’s existing program carriage rules are insufficient, in terms of both substance and process, to provide a meaningful remedy.²⁶² Commenters claim that the complaint process is slow and costly,²⁶³ and therefore favors companies with greater financial resources, such as Comcast, over independent networks.²⁶⁴ Finally, commenters claim that the

²⁵³ WealthTV Reply at 8; *see also* Comments of The Tennis Channel, Inc. at 13 (filed Jun. 21, 2010) (“Tennis Channel Comments”).

²⁵⁴ Bloomberg Reply at 30, n.87 (citing Bloomberg Petition at 29); *see also* MASN Comments at 1.

²⁵⁵ *See* Bloomberg Petition at 34; Allbritton Reply at 11 (citing Bloomberg Petition at 29-37); Greenlining Reply at 4.

²⁵⁶ WealthTV Petition at 16-17. *See also* MASN Comments at 4 n.5.

²⁵⁷ *See* Bloomberg Reply at 17-20 (referencing results from economic analysis conducted by Dr. Leslie Marx).

²⁵⁸ Bloomberg Reply at 29.

²⁵⁹ *Id.* at 42-44.

²⁶⁰ *Id.* at 29-30.

²⁶¹ Allbritton Reply at 11.

²⁶² WealthTV Petition at 23.

²⁶³ *See, e.g.,* Sen. Franken Letter at 7-8; Entertainment Studios Comments at 7; WealthTV Reply at 20-21.

²⁶⁴ *See, e.g.,* Tennis Channel Comments at 8; Entertainment Studios Comments at 7; Sen. Franken Letter at 7-8, 10; CWA Petition at 57.

ability of Comcast and other cable operators to engage in retaliatory actions can deter the filing of a program carriage complaint.²⁶⁵

115. In response, the Applicants assert that Comcast will have neither the ability nor the incentive to engage in foreclosure strategies against unaffiliated video programming. The Applicants argue that the MVPD market is “intensely competitive,”²⁶⁶ with Comcast accounting for less than 24 percent of MVPD subscribers in the United States.²⁶⁷ The Applicants argue that Comcast has little ability to foreclose competing programming because “the unaffiliated network could continue to seek carriage on MVPDs serving more than 76 percent of United States MVPD subscribers.”²⁶⁸ The Applicants also argue that true harm to a network comes only from the loss of carriage on more than one MVPD. Therefore, a foreclosure strategy would result only in the competing provider’s offering its programming to other MVPDs for a lower price, rendering Comcast’s MVPD service more expensive and less attractive to consumers.²⁶⁹ In addition, the Applicants contend that, given the number of substitutes available for NBCU’s national cable television networks, Comcast would have to refuse carriage for a substantial number of competing networks before NBCU’s networks could realize a benefit.²⁷⁰ The Applicants assert that they carry a significant amount of programming aimed at diverse groups,²⁷¹ and they submit data suggesting that Comcast is particularly likely to carry non-affiliated women’s and sports networks.²⁷²

116. *Discussion.* Based on the record, and consistent with the concerns about vertical integration addressed by Congress in Section 616 of the Cable Act,²⁷³ we find that the combination of Comcast, the nation’s largest cable service provider and a producer of its own content, with NBCU, the nation’s fourth largest owner of national cable networks, will result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks. Comcast’s extensive cable distribution network affords it the ability to use its video distribution market position to harm other

²⁶⁵ See, e.g., Sen. Franken Letter at 8; Free Press Petition at 44; WealthTV Reply at 23-24.

²⁶⁶ Applicants’ Reply at 22.

²⁶⁷ Applicants’ Opposition at 164 (citing Applicants – Israel/Katz July Report at ¶ 132), 186 (citing Applicants – Israel/Katz May Report at ¶ 107 (citing MediaBusiness Corporation, *Media Census, All Video by DMA*, 4th Quarter 2009)); see also Prepared Testimony of Thomas W. Hazlett, Panel on the Comcast-NBCU Venture, U.S. House of Representatives, Judiciary Committee Hearings, at 2-3 (Feb. 25, 2010) (“Today, there are about 3.4 competitors per market today: the local cable operator, two satellite TV rivals (each with a national footprint), and – in nearly half the country – a telco TV provider.”).

²⁶⁸ Applicants’ Opposition at 164-65 (citing *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009), the D.C. Circuit’s decision to vacate the Commission’s order adopting a cable horizontal ownership limit prohibiting cable operators from owning or having an attributable interest in cable systems serving 30 percent of multichannel video programming subscribers nationwide).

²⁶⁹ Applicants’ Opposition at 166; Applicants’ Reply, Appendix A, at 18.

²⁷⁰ Applicants’ Opposition at 167.

²⁷¹ Application at 47-48; Applicants’ Jun. 2, 2010 Response to Questions Submitted by Several Members of the U.S. House of Representatives at 4-6, Request 4.

²⁷² Applicants – Israel/Katz July Report at 119-123.

²⁷³ See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460, § 2(a)(5) (1992).

competing video programming firms and harm competition in video programming. Comcast is the nation's largest multiple system operator ("MSO"), with nearly 24 percent of MVPD subscribers nationwide.²⁷⁴ Furthermore, Comcast's market share in some of the nation's highest-ranked DMAs is considerably greater—for example, Comcast's market share is as much as 62 percent in the Chicago DMA and 67 percent in the Philadelphia DMA.²⁷⁵ While the transaction does not increase this significant share that Comcast has in distribution, that share gives Comcast an ability not possessed by pre-transaction NBCU to disadvantage rival networks that compete with NBCU networks. Comcast's large subscriber base potentially allows it to limit access to customers for any network it wishes to disadvantage by either denying carriage or, with a similar but lesser competitive effect, placing the network in a less penetrated tier or on a less advantageous channel number (making it more difficult for subscribers to find the programming). In doing so, Comcast can reduce the viewership of competing video programming networks, which in turn could render these networks less attractive to advertisers, thus reducing their revenues and profits. As a result, these unaffiliated networks may compete less aggressively with NBCU networks, allowing the latter to obtain or (to the extent they may already possess it) maintain market power with respect to advertisers seeking access to their viewers.

117. These conclusions are supported by the evidence set forth in the Technical Appendix that Comcast may have in the past discriminated in program access and carriage in favor of affiliated networks for anticompetitive reasons.²⁷⁶ These conclusions also are supported by our analysis of the consequences of this transaction for the structure of programming markets. As we have found in previous transactions, the video programming market is a differentiated product market.²⁷⁷ Whether the content of one network is an effective substitute for the content of another network must be considered from the perspective of advertisers, distributors, and viewers, and, as such, is frequently difficult to determine.²⁷⁸

118. The transaction also increases Comcast's incentives to discriminate in favor of its affiliated programming. Upon consummation of the transaction, Comcast will compete with an increased pool of unaffiliated programming vendors offering content that viewers might consider substitutes for its

²⁷⁴ See Applicants – Israel/Katz May Report at 66 (citing Media Business Corporation, "Media Census, All Video by DMA," 4th Quarter 2009).

²⁷⁵ For example, based on second quarter 2010 data, of the top 10 DMAs in the United States, Comcast has at least 42 percent of total MVPD subscribers in seven. Comcast has over 60 percent of MVPD subscribers in the third (Chicago, 62 percent) and fourth (Philadelphia, 67 percent) largest MVPD markets. Of the 20 largest DMAs, Comcast holds more than 40 percent of the market in 13 of them. In those 13 markets, Comcast's market share ranges from a low of 43 percent in Houston, Texas to a high of 67 percent in Philadelphia, Pennsylvania. See U.S. Multichannel Operator Comparison by Market, 2010 Q2 available at: <http://www1.sn1.com/interactivex/OperatorComparisonByMarket.aspx> (SNL Kagan/ MediaBiz 2010).

²⁷⁶ See Appendix B, Section I.E. We do not reach any conclusion as to whether Comcast has discriminated against any particular unaffiliated network in the past.

²⁷⁷ *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3282, ¶¶ 35-36; *Adelphia Order*, 21 FCC Rcd at 8236, ¶ 66. Differentiated products are products that are similar in many respects but nonetheless differ in one or more significant respects and that are viewed as imperfect substitutes by consumers. See Dennis W. Carlton and Jeffrey M. Perloff, *MODERN INDUSTRIAL ORGANIZATION* 281 (2d ed. 1991) ("*Carlton and Perloff*").

²⁷⁸ Recently, we have explained that while certain programming may be "easily replicated," other programming "may be non-replicable" and sufficiently valuable to viewers that they would switch to a different MVPD if necessary to continue viewing that programming. *Terrestrial Loophole Order*, 25 FCC Rcd at 750, ¶¶ 8-9; see also *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3282, ¶ 35; *Adelphia Order*, 21 FCC Rcd at 8236-8237, ¶ 66; *News Corp.-Hughes Order*, 19 FCC Rcd at 504, ¶ 59.

affiliates' programming content and against which it could potentially pursue foreclosure or discrimination strategies in order to favor that content. NBCU's content offerings include both broadcast and cable networks including the USA Network, the top-rated basic cable network,²⁷⁹ CNBC, the number one business news channel, and MSNBC, the second-rated cable news channel.²⁸⁰ In addition, Telemundo is the second-largest global provider of Spanish language content.²⁸¹ Post-transaction, content will be a significant source of revenue for Comcast. Comcast acknowledges that the transaction "[b]rings together outstanding content creation and distribution capabilities," and that "[c]able channels represent 82% of the new joint venture's [operating cash flow] and drive its profitability."²⁸² Five of NBCU's cable channels generate over \$200 million in annual operating cash flow.²⁸³

119. While video programming is a differentiated product market, it is nevertheless evident that Comcast-NBCU's affiliated programming will include networks that could be considered close substitutes for a much larger set of unaffiliated programming than is currently the case for Comcast. For example, Bloomberg TV is likely a close substitute for Comcast-NBCU's CNBC and CNBC World networks,²⁸⁴ and networks such as ESPN and Fox Sports Network may be close substitutes for Comcast-NBCU's Versus network,²⁸⁵ which also offers a variety of sports programming.²⁸⁶ Even within a densely packed product market with differentiated products, buyers may see some differentiated products as closer substitutes than others, so Comcast's ability to disadvantage or foreclose carriage of a rival

²⁷⁹ According to NBCU's "Media Village" website, USA Network is "[t]he #1 network in basic cable" and "is seen in nearly 94 million U.S. homes." See www.nbcumv.com/mediavillage/networks/usanetwork.

²⁸⁰ Comcast Investor Presentation at 20 (Dec. 3, 2009) available at http://www.comcast.com/nbcutransaction/pdfs/Investor_Presentation_Comcast-NBCU_FINAL%20-%20No%20Notes.pdf ("Comcast Investor Presentation").

²⁸¹ *Id.* at 14; Application at 28.

²⁸² *Comcast Investor Presentation* at 4.

²⁸³ *Id.* at 18.

²⁸⁴ While Comcast argues that there is no "business news" market, the CNBCU and CNBCU World networks describe themselves as business news programming. See Applicants' Opposition at 168-171 (no meaningful evidence of a distinct "TV business news programming" market); *but see* "About CNBC U.S." available at <http://www.cnbc.com/id/15907487/> ("CNBC is the recognized world leader in business news"); "About CNBC World," available at <http://www.cnbc.com/id/15837872/site/14081545/> ("CNBC World combines the resources of CNBC Asia and CNBC Europe into a 24-hour a day, global business news network"). It is unnecessary for us to define a discrete business news market in order to find that CNBCU and BloombergTV could be considered close substitutes by viewers.

²⁸⁵ See "Comcast Cable Networks – Versus," available at <http://www.comcast.com/corporate/about/pressroom/comcastcablenetworks/comcastcablenetworks.html> (VERSUS shows programming from the NHL, NBA, UFL, NASCAR, NCAA football and basketball).

²⁸⁶ We do not find it necessary to define submarkets for specific genres or clusters of programming. While it is likely that viewers will substitute networks with similar programming (such as substituting one national sports network for another), this is not necessarily the case (viewers might substitute general entertainment and sports). As we discuss in greater detail below, using programming focused on a female audience as an example, networks that appeal to both a male and female demographic may attract ratings shares for women that are even higher than networks directed at a female demographic. See *infra* ¶ 140. Furthermore, programming lineups change over time, potentially changing which networks viewers might consider close substitutes.

programming network can harm competition.²⁸⁷ In other words, the loss of a substitute product by itself can harm competition by reducing a competitive constraint, with an adverse effect that increases with perceived substitutability. By foreclosing or disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content.

120. In an effort to address commenters' concerns, the Applicants voluntarily commit to several carriage obligations. Among its voluntary commitments, Comcast commits to add at least ten new independently owned and operated programming services to the digital (D1) tier over the eight years following closing of the transaction.²⁸⁸ Comcast has assured the Commission that this commitment creates "floors, not ceilings," and that it will add additional independent channels and/or add them faster if possible.²⁸⁹ Further, for seven years after the closing of the transaction, Comcast commits that it will not discriminate "against local, in-market non-NBCU stations in favor of NBCU stations with respect to certain technical signal carriage matters."²⁹⁰

121. Although these commitments are helpful, they are not sufficient to allay our concerns. We believe it is in the public interest to adopt additional remedies regarding program carriage disputes. Specifically, we condition the approval of this transaction on the requirement that Comcast not discriminate in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection of, or terms or conditions for, carriage, including in decisions regarding tiering and channel placement. If program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation. A vendor proceeding under this condition will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules. This non-discrimination requirement will be binding on Comcast independent of the Commission's rules, and will extend to non-discriminatory treatment in placement within search menus as well as channel placement. We also prohibit retaliation for bringing a program carriage complaint.

122. In addition, although we decline to adopt a requirement that Comcast affirmatively undertake neighborhooding, in accordance with the special importance of news programming to the public interest, we adopt a narrowly tailored condition related to channel placement for independent news

²⁸⁷ See *Horizontal Merger Guidelines* at 20, Sections 6 and 6.1 ("The elimination of competition between two firms that results from their merger may alone constitute a substantial lessening of competition. Such unilateral effects are most apparent in a merger to monopoly in a relevant market, but are by no means limited to that case. ... The extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects. Unilateral price effects are greater, the more the buyers of products sold by one merging firm consider products sold by the other merging firm to be their next best choice."). For purpose of the analysis in this section, it does not matter whether we view the buyer of programming as the MVPD (assembling a portfolio of channels to sell to subscribers), the household, or the viewer.

²⁸⁸ Letter from David L. Cohen, Comcast Executive Vice President, to Hon. Bobby Rush, at 2, 4-5 (Jul. 2, 2010); Applicants' Opposition at 44-45. This commitment supersedes Comcast's prior voluntary commitment that, once Comcast has completed its digital migration company-wide, 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." See Application at 112-13.

²⁸⁹ Letter from Kathy Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 16, 2011).

²⁹⁰ Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Aug. 6, 2010) (attaching ABC, CBS and Fox Affiliates Agreement).

channels.²⁹¹ Specifically, we require that if Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood.²⁹²

123. We believe that our existing program carriage rules, together with the requirements we adopt herein, are sufficiently broad to encompass a wide range of allegations of discrimination, while allowing Comcast and programming vendors sufficient flexibility to enter into individualized contracts that suit their particularized needs and circumstances.²⁹³ Allegations that Comcast has placed unaffiliated programming in a detrimental tier or channel neighborhood, based on considerations of affiliation, therefore, can be considered in any commercial arbitration proceeding or complaint process brought under the Commission's rules. At the same time, we note that channel and tier placement of the sort discussed by some of the commenters may not necessarily reflect discriminatory behavior.²⁹⁴ MVPDs may choose to place their programming with unrelated programming for independent business reasons.²⁹⁵

124. In light of these considerations, we do not believe it is in the public interest for the Commission to impose specific channel placement requirements on Comcast beyond the narrow condition we impose for news programming. As when the Commission initially adopted the program carriage rules implementing Section 616, we "must strike a balance that not only prescribes behavior prohibited by the specific language of the statute, but also preserves the ability of affected parties to engage in legitimate, aggressive negotiations."²⁹⁶ We intend to evaluate the parties' behavior in the context of the specific facts

²⁹¹ See *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

²⁹² For purposes of this condition, an "independent news channel" is a video programming network that is (i) unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, (ii) unaffiliated with one of the top 15 programming networks, as measured by annual revenues, and (iii) whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone. See Letter from Stephen Diaz Gavin, Counsel for Bloomberg L.P., to Marlene H. Dortch, Secretary, FCC (filed Dec. 2, 2010).

²⁹³ Consistent with Section 616(a)(3), the Commission's rules, as well as the non-discrimination condition adopted herein, proscribe an MVPD from discriminating in "video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage." 47 C.F.R. § 76.1301(c).

²⁹⁴ The Commission recently recognized that decisions such as tier placement are not necessarily indicative of prohibited discrimination. See *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Memorandum Opinion and Order, FCC 10-202 ¶ 13 n.68 (released Dec. 22, 2010) ("We find no basis in the record to conclude that TWC's carriage of its affiliated RSNs on basic or expanded basic tiers while refusing such carriage to MASN was motivated by considerations of affiliation rather than by the demand, cost, and bandwidth considerations presented by each network.").

²⁹⁵ Comcast-NBCU argues that evolving interactive guides and navigation features have the potential to make neighborhooding less important in the future, as viewers may find programming through a search function. See Letter from Michael Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 4-5 (filed Oct. 22, 2010). Our condition, however, would only take effect if Comcast-NBCU undertook to neighborhood its news or business news channels, which therefore would indicate that there was some value to neighborhooding despite additional search capabilities.

²⁹⁶ *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd 2642, 2648 (1993).

pertaining to each negotiation.²⁹⁷ By our actions today, we take measures to prohibit program carriage discrimination while allowing parties the flexibility to engage in good faith, arm's-length transactions.²⁹⁸ We believe that these measures are sufficient to address the program carriage concerns raised by the vertical integration of Comcast and NBCU.²⁹⁹ Particularly in light of the protections afforded by the program carriage rules, we are not persuaded by Allbritton that it is necessary for Comcast-NBCU to take the costlier step of divesting its NBCU O&Os in DMAs in which Comcast may have market power in order to protect unaffiliated programmers.³⁰⁰

B. Potential Competitive Harms Arising from Horizontal Elements of the Transaction

125. In analyzing the horizontal elements of the proposed transaction, we examine the effects of the joint venture on competition in: (1) local distribution markets in which Comcast is the dominant cable provider and NBCU owns broadcast television stations; (2) the sale of video programming to MVPDs; (3) content production; and (4) online video content. We also examine the effects of the proposed transaction on advertising in video programming on both cable and broadcast television and on the Internet.

1. Linear Programming

a. Distribution

126. *Positions of the Parties.* Commenters allege that the proposed transaction will decrease competition by increasing concentration in local video distribution markets where Comcast is the dominant cable provider and an NBCU O&O broadcast station falls within the footprint of Comcast's cable operations.³⁰¹ These commenters state that Comcast and NBCU currently compete in the distribution of video within many large metropolitan areas throughout the United States, and that the joint venture will concentrate their shares of audiences in each of these overlap locations.³⁰²

²⁹⁷ See *id.*

²⁹⁸ [REDACTED]. See, e.g., 60nbcu0000040-43, [REDACTED]; 60nbcu0000159-61, [REDACTED].

²⁹⁹ To the extent commenters raise concerns regarding the Commission's program carriage rules more generally, we note that the Commission has an open rulemaking proceeding regarding these issues. We defer discussion of the Commission's program carriage rules to the larger rulemaking proceeding. See *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Notice of Proposed Rulemaking, 22 FCC Rcd 11222 (2007).

³⁰⁰ We also believe that requiring divestiture of the NBCU O&Os could be counterproductive to the concerns identified in Section V.C.1 of this Order. See Letter from Jennifer Johnson, Counsel for the NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC (Dec. 9, 2010); Comments of the NBC Television Affiliates at 15-16 (filed Jun. 21, 2010) ("NBC Affiliates Comments").

³⁰¹ See, e.g., Free Press Petition – Cooper/Lynn Declaration at 6-7, 19, 47-52 (discussing competition in local video markets and in advertising); Free Press Petition at ii, 13 (focusing on the impact of the transaction on local advertising and the provision of news).

³⁰² See, e.g., Free Press Petition – Cooper/Lynn Declaration at 6-7, 19, 47-52; Free Press Petition at ii, 13. Cooper and Lynn concentrate their analysis on six cities where the NBC O&O and the Comcast cable system overlap—San Francisco, Philadelphia, Chicago, Miami, Hartford, and Washington, DC—stating that this is where excessive concentration is most likely to occur. They conclude that the TV licenses in these regions should not be transferred. They also state that the licenses in Boston, Denver, Fresno, and Houston, which is where there is an overlap between and NBCU-owned Telemundo station and a Comcast cable system, should not be transferred, but do not provide the same level of analysis of these locations. See Free Press Petition – Cooper/Lynn Declaration at 47-52. They note

(continued....)

127. Another commenter states that proposed transaction's effect on competition and concentration in video distribution would be minimal.³⁰³ He asserts that the proposed transaction would neither increase nor decrease concentration among MVPD providers or broadcast television services providers because NBCU does not possess any MVPD properties and Comcast does not possess any broadcast television stations.³⁰⁴ He concludes that the transaction is unlikely to have adverse competitive effects and requires no further analysis.³⁰⁵

128. The Applicants assert that the overlap between Comcast's cable systems and NBCU's O&Os in a limited number of DMAs will not adversely affect competition in any relevant market because, as the Commission has previously held, local broadcast television services are not part of an MVPD product market.³⁰⁶ The Applicants continue that, in any event, the proposed transaction would not reduce competition among the video services available to consumers in each such overlap area. They state consumers would enjoy many alternatives, including at least seven non-NBCU broadcast stations as well as other media.³⁰⁷

129. *Discussion.* The Commission previously has found that MVPD services and broadcast television are not sufficiently close substitutes to warrant including them in the same product market.³⁰⁸ No evidence has been submitted in this proceeding suggesting otherwise. Accordingly, we continue to view MVPD services and broadcast television as different relevant product markets. In light of the fact that NBCU does not own any MVPD properties and Comcast does not hold an interest in any broadcast television stations, the transaction will neither increase concentration in the MVPD services in any geographic market nor increase concentration in the 9.5 percent of homes that rely solely on over-the-air delivery of broadcast signals in any region.³⁰⁹ Consequently, the combination of Comcast's MVPD assets

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that Comcast's subscriber share is well over 50 percent in every area in which it provides service and close to 60 percent in many, including Boston, Philadelphia, and Chicago. See Free Press Petition at 15; Free Press Petition – Cooper/Lynn Declaration at 35, 47-52 (citing SNL Kagan, Video Market Share (Cable & DBS & Telco Video) by DMA – 4th Quarter 2009) (limiting their analysis to the overlap markets).

³⁰³ Yoo Comments at 9, 12-14.

³⁰⁴ *Id.* at 14.

³⁰⁵ *Id.* at 17-18 (providing HHIs for the national MVPD market as of the end of 2009 to demonstrate that the market is unconcentrated according to the *Horizontal Merger Guidelines*). During our review of this proposed transaction, the DOJ and the Federal Trade Commission updated the thresholds—based on the Herfindahl-Hirschman Index (“HHI”)—used to measure market concentration. See *Horizontal Merger Guidelines* Section 5.3; U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines* Section 1.51 (issued Apr. 2, 1992; revised Apr. 8, 1997), available at <http://www.justice.gov/atr/public/guidelines/hmg.pdf> (last visited Dec. 9, 2010). For the purposes of consistency and clarity, we are applying the thresholds in the currently applicable *Horizontal Merger Guidelines* in our analysis and discussion of the arguments presented by commenters.

³⁰⁶ Application at 83-84, 101-102 (citing *News Corp.-Hughes Order*, 19 FCC Rcd at 509, ¶ 75); Applicants' Opposition at 119-120.

³⁰⁷ Application at iv, 7-8, 79-80, 101-102.

³⁰⁸ *News Corp.-Hughes Order*, 19 FCC Rcd at 509, ¶ 75 (“The Commission has previously held that broadcast television is not sufficiently substitutable with the services provided by MVPDs to constrain attempted MVPD price increases, and hence, is not in the same relevant product market.”).

³⁰⁹ See Nielsen, 2009-2010 Universe Estimates – Media Related TV Households and Penetrations by DMA, July 2010.

with NBCU's broadcast television station assets is unlikely to harm competition in any video distribution market.

130. Even considering a possible broader video distribution product market that encompasses both MVPD services and broadcast television, we would not find a competitive problem in any geographic market. Consistent with the evidence in the record, we analyze the effects of the proposed joint venture in the six local areas in which an NBC O&O broadcast station overlaps with Comcast's cable service, and hence in which the transaction would be most likely to increase concentration in the broader product market.³¹⁰ After this transaction, multiple firms will participate along with Comcast in all of these regions, including DBS providers, telco-provided MVPD services, and other unaffiliated broadcasters.³¹¹ In each area, moreover, Comcast is a reseller of the network broadcast by the NBC O&O, limiting the extent to which the two entities act as horizontal rivals pre-transaction. Thus, we conclude that the combination of these assets would be unlikely to harm competition for subscribers or viewers in any geographic market, either in the MVPD services product market or in a possible broader product market combining the MVPD services and broadcast television markets.

b. Video Programming

131. *Positions of the Parties.* Commenters allege that the combination of the Applicants' video programming assets would harm competition by leading MVPDs to pay higher prices for video content. Generally, commenters argue that the concentration of NBCU and Comcast's programming assets would harm competition in a market for cable network programming in various geographic regions.³¹² Commenters allege that these proposed combinations of NBCU's and Comcast's programming assets would confer greater market power on Comcast-NBCU by allowing it to charge higher programming fees in its negotiations with MVPDs, which would, in turn, be passed through to subscribers in the form of higher subscription fees.³¹³ Some commenters posit that the greatest threat of harm from this aspect of the proposed combination is in the six regions of the country served by both an

³¹⁰ There are seven local areas—San Francisco, Philadelphia, Chicago, Miami, Hartford, Washington, DC, and New York—in which the NBC O&O and the Comcast cable system overlap. The overlap in the New York DMA is small and Comcast's market share is 9.2 percent; therefore, we find that there will be only a minimal increase in concentration in the New York region. See SNL Kagan, New York, NY (DMA® Rank: 1) Video Subscribers (3rd Quarter 2010), available at <http://www.snl.com/InteractiveX/BriefingBook/TvMarket/VideoSubscribers.aspx?id=1> (last visited Dec. 9, 2010). Thus, we analyze the six areas in which the commenters allege greater increases in concentration. See *supra* note 302.

³¹¹ See SNL Kagan, U.S. Multichannel Market Subscriber Summary (3rd Quarter 2010), available at http://www.snl.com/InteractiveX/Tv_MarketSubscriberSummary.aspx?displayRank=55&metric=SubscribersVideo&fromYear=2010Q3&toYear=2010Q3&RestoreDefaults=0 (last visited Dec. 9, 2010) (providing links to individual market data). In addition to competing MVPD providers, these six markets have between 10 to 20 full-power broadcast television stations that are unaffiliated with NBCU. BIA, Media Access Television Analyzer Database, www.bia.com (staff analysis of data provided therein).

³¹² See, e.g., ACA Comments at iv-vi, 3-4, 18-19 (citing ACA Comments – Rogerson Report at 9-18); NJRC Reply at 18, 25; CWA Petition at 13; DIRECTV Petition at 36-39, 41-42.

³¹³ See, e.g., ACA Comments at iv-v, 3-4, 18-20 (citing ACA Comments – Rogerson Report at 11); CWA Petition at 13 (discussing the possibility of forced bundling of networks); DIRECTV Comments at 6, 36-39; Free Press Petition at 31; NTCA Petition at 4; NJRC Reply at 18, 22-24; Illinois Comments at 4; Sen. Kohl Letter at 2; Sen. Franken Letter at 1-2; Greenlining Petition at v, 30. ACA provides empirical analysis in support of this allegation. See generally ACA Comments – Rogerson Report; ACA Reply – Rogerson Report at 23-37.

NBC O&O station and a Comcast RSN.³¹⁴ These commenters also argue that the transaction threatens to harm competition in regions served by a Comcast RSN but not served by an NBC O&O, because in such regions, the combination of NBCU's national cable networks and Comcast's RSNs will enhance Comcast-NBCU's ability to raise programming fees.³¹⁵ Commenters conclude that the ability to raise programming fees is further exacerbated by the combined control of certain bundles of marquee channels, including NBCU's and Comcast's cable network programming, providing Comcast-NBCU with the incentive and ability to raise prices beyond what the channels could command in separate negotiations.³¹⁶

132. One commenter, on the other hand, provides an analysis suggesting that the general combination of all NBCU and Comcast programming (and, separately, the combined national cable networks) would not result in concentrated markets, according to the standards set forth in the antitrust agencies' *Horizontal Merger Guidelines*. As a result, he concludes the transaction would be unlikely to harm competition.³¹⁷ This commenter asserts that the proposed joint venture would control 16 percent of all national television networks³¹⁸ and 12.1 percent of all national cable programming networks,³¹⁹ based on industry revenues, placing it fourth among cable programming companies—the same placement NBCU has pre-transaction.³²⁰

³¹⁴ See, e.g., ACA Comments at 3-4, 19, 24-25 (citing ACA Comments – Rogerson Report at 9-18); NJRC Reply at 18, 25; CWA Petition at 13; DIRECTV Petition at 42.

³¹⁵ See, e.g., ACA Comments at vi, 25 (citing ACA Comments – Rogerson Report at 18); CWA Petition at 13 (citing CWA Petition – Singer Report at 14, ¶ 13); DIRECTV Petition at 41; NJRC Reply at 25-26.

³¹⁶ See, e.g., ACA Comments at 19; ACA Comments – Rogerson Report at 9-11; CWA Petition at 14-15; DIRECTV Petition at 38-39; DIRECTV Reply at 36; NJRC Reply at 18; Sen. Kohl Letter at 2.

³¹⁷ Yoo Comments at 21-25.

³¹⁸ *Id.* at 24, Figure 8 (data from SNL Kagan, SNL Kagan Cable Network Ownership Data, Economics of Basic Cable Networks (2009 ed.)) (stating that currently NBCU's and Comcast's networks have 13.5 percent and 2.5 percent of the market based on revenues, respectively). Yoo asserts that the post-transaction HHIs, based on total industry revenue, would be 1186 and would lead to an increase of 67 points. *Id.* Yoo states that the results are similar when analyzing market concentration based on primetime Nielsen ratings; the joint venture would have a combined market share of approximately 16.2 percent. *Id.* at 24-25, Figure 9 (citing Nielsen Media Research National MIT; SNL Kagan, Economics of Basic Cable Networks (2009 ed.); company websites and Form 10-K filings) (stating that NBCU and Comcast programming have market shares of 14.7 percent and 1.4 percent, respectively). The post-transaction HHI, based on primetime Nielsen ratings, would be 1114 and the transaction would lead to an increase of 42 points. *Id.* at 24.

³¹⁹ *Id.* at 22, Figure 6 (data from SNL Kagan, SNL Kagan Cable Network Ownership Data, Economics of Basic Cable Networks (2009 ed.)) (stating that currently NBCU's and Comcast's cable networks have 8.8 percent and 3.3 percent of the market based on revenues, respectively). Yoo asserts that the post-transaction HHI, based on industry revenues, would be 1202 and would lead to an increase of 58 points. *Id.* Similarly, in terms of market share based on primetime Nielsen ratings, the joint venture would have a market share of 13.9 percent. *Id.* at 23, Figure 7 (citing Nielsen Media Research National MIT; SNL Kagan, Economics of Basic Cable Networks (2009 ed.)) (stating that NBCU and Comcast have market shares of 11.5 percent and 2.4 percentage, respectively). The post-transaction HHI, based on primetime Nielsen ratings, would be 1249 and the transaction would lead to an increase of 55 points. *Id.*

³²⁰ *Id.* at 22-23.

133. Commenters also allege that the proposed transaction will result in the undue concentration of certain categories of programming. This concentration, they say, would likely reduce the development of new programming and merge local news and entertainment operations, which will have adverse effects on the price, quality and diversity of programming.³²¹ Commenters have specifically identified sports, news, and women's programming as categories of programming where the combination of NBCU programming and Comcast's national cable networks and regional programming may harm the public interest.³²² Specifically, commenters argue that the transaction will eliminate competition and reduce the diversity of viewpoints by combining (1) the national sports presence of NBC Sports³²³ with Comcast's dominance of regional sports programming,³²⁴ (2) NBC's broadcast and cable news assets and Comcast's local and regional news programming,³²⁵ and (3) NBCU's and Comcast's women-oriented cable programming networks.³²⁶

134. The Applicants state that there will be no harm as a result of the proposed horizontal consolidation of the NBC television network, Comcast's RSNs, and both NBCU's and Comcast's cable network programming because these three categories of programming content are not close substitutes and are in separate markets.³²⁷ They stress that Comcast does not own a broadcast network, so the transaction will not reduce competition among broadcast networks, and NBCU does not own any RSNs, so there can be no reduction in competition among RSNs.³²⁸ Further, the Applicants state that the proposed transaction will not affect competition between cable networks because NBCU and Comcast cable networks are not close substitutes.³²⁹ The Applicants also argue that there are hundreds of national cable television networks and regional cable networks—many owned by large and well-established competitors³³⁰—that compete to obtain license fees, advertiser revenues, and consumers' attention.³³¹

³²¹ See, e.g., CWA Petition at 31; Sen. Franken Letter at 3, 4-7.

³²² See, e.g., Free Press Petition at ii, 18-21; NJRC Reply at 18-20; ACA Response at 17. Commenters also state that the joint venture will have a substantial market share in Spanish language programming. See, e.g., Free Press Petition at 18, 20 (citing Free Press Petition – Cooper/Lynn Declaration at II(B)(4)); NJRC Reply at 18, 20-21; ACA Response at 17. Although NBCU owns Telemundo and mun2, Comcast does not own or control any interest in any station the shows Spanish language programming. Thus, the proposed transaction does not increase concentration in Spanish language programming.

³²³ Some commenters assert that NBCU owns the rights to “arguably the most desirable lineup of national sporting events in the industry,” including exclusive rights to Olympic programming. See, e.g., CWA Petition at i-ii, 3; NJRC Reply at 19.

³²⁴ See, e.g., Free Press Petition at 18-19 (citing Free Press Petition – Cooper/Lynn Declaration at II(B)(1)); Avail-TVN Comments at 11; NJRC Reply at 18-19; Sen. Franken Letter at 3.

³²⁵ See, e.g., Free Press Petition at 19-20, 52-53 (citing Free Press Petition – Cooper/Lynn Declaration at II(B)(2)); Bloomberg Petition at 3, 19-22, 27; Sen. Franken Letter at 3, 7; Greenlining Petition at 19.

³²⁶ See, e.g., Free Press Petition at 20-21 (citing Free Press Petition – Cooper/Lynn Declaration at II(B)(3)); NJRC Reply at 20.

³²⁷ Application at iii-iv, 85-86, 89-92 (finding overlap solely in NBCU's and Comcast's cable networks); Applicants' Opposition at 102, 106-113; Applicants' Opposition – Israel/Katz Report at 73-94.

³²⁸ Applicants' Opposition at 106-107; Application at 90 n.191.

³²⁹ Applicants' Opposition at 107-113; Applicants' Opposition – Israel/Katz Report at 78, 88-94.

³³⁰ Time Warner, Disney, Viacom, News Corp., CBS, Discovery, Liberty Media, and E.W. Scripps, as well as scores of smaller competitors, own numerous cable networks. Therefore, the Applicants assert that the combination
(continued....)

They state that the proposed transaction will not materially increase concentration in the market for video programming supplied to MVPDs under any plausible market definition. Therefore, they say, the transaction is unlikely to harm competition or lead to higher programming prices.³³²

135. *Discussion.* The ability of a company to obtain greater bargaining power because of a horizontal transaction is a well-established concern in antitrust enforcement,³³³ and the theoretical possibility that this could occur here is accepted by the Applicants.³³⁴ In order for the transaction to allow Comcast-NBCU to raise the prices for its programming, the price must be set by negotiation, as opposed to settings in which transactions occur at market prices not resulting from bargaining between buyers and sellers.³³⁵ That is certainly true here. Comcast-NBCU and the MVPDs to which it will sell programming negotiate over the terms and conditions of the programming carriage agreements.

136. In addition, a decision not to purchase the bundle of products that Comcast-NBCU offers post-transaction must result in more severe consequences to the buyer than not purchasing either Comcast or NBCU's products prior to the transaction. If failing to reach an agreement with the seller will result in a worse outcome for the buyer—if its alternatives are less attractive than they were before the transaction—then the buyer's bargaining position is weakened and it can expect to pay more for the products.³³⁶ In this case, for example, prior to the transaction, if an MVPD did not reach an agreement with Comcast to carry the RSN, the NBC network programming would still be available; and if the MVPD did not reach an agreement to carry NBC, it could still carry the RSN. Post-transaction, if the MVPD does not reach an agreement with Comcast-NBCU, it will not be able to carry either. If not carrying either the NBC network or the RSN places the MVPD in a worse competitive position than not carrying one but still being able to carry the other, the MVPD will have less bargaining power after the transaction, and is at risk of having to pay higher rates.³³⁷

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of Comcast's and NBCU's cable television networks will not diminish competition or otherwise harm consumers. Application at 91-92 (providing an HHI analysis for national cable network programming to demonstrate that it is an unconcentrated market according to the *Horizontal Merger Guidelines*); Applicants' Opposition at 102-103.

³³¹ Application at 7-8, 79; Applicants' Opposition at 102-106 (citing *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 24 FCC Rcd 542, 550-51 ¶ 20 (2009)).

³³² Application at 90; Applicants' Opposition at 103, 105-107 (stating that the joint venture will account for 12.8 percent of basic cable television viewing and that the proposed transaction will result in an unconcentrated market under the *Horizontal Merger Guidelines*).

³³³ *Horizontal Merger Guidelines* Section 6.2; Gregory J. Werden & Luke M. Froeb, *Unilateral Competitive Effects of Horizontal Mergers*, HANDBOOK OF ANTITRUST ECONOMICS 62-64 (Paolo Buccirossi ed., 2008); U.S. Department of Justice and Federal Trade Commission, Commentary on the Horizontal Merger Guidelines 2006, at 34-36 (Mar. 2006), available at <http://www.justice.gov/atr/public/guidelines/215247.pdf> (last visited Dec. 9, 2010) (providing a summary of relevant case law).

³³⁴ See Applicants' Opposition – Israel/Katz Report at 74-76.

³³⁵ *Horizontal Merger Guidelines* Section 6.2. For example, consumer goods are an example of products whose price is generally not arrived at through bargaining. Rather, consumers enter into a store and decide whether or not to purchase a product at the price listed.

³³⁶ *Id.* This proposition is well established in the economic literature on bargaining. See Appendix B, Section I.B.

³³⁷ Whether this is so depends critically on the alternatives the buyer has available, and whether those alternatives grow less attractive if it is unable to obtain both networks than if it merely has to replace one of the two.

137. One commenter pointed to evidence that when a single entity controlled the local broadcast rights to multiple broadcast networks, that entity was able to secure a substantial bargaining advantage in retransmission consent negotiations with the local MVPD, leading to an increase in retransmission consent fees of at least 20 percent.³³⁸ The Applicants present a study claiming that joint ownership in a local market of a broadcast network affiliate and an RSN does not improve the bargaining position of the owner and does not lead to higher prices for the programming.³³⁹ The Applicants also argue that harm to competition is unlikely because, they contend, Comcast's RSNs and the NBC television network are unlikely to be substitutes for MVPDs.³⁴⁰ However, an analysis of the relevant data, presented in the Technical Appendix, suggests that joint ownership of an RSN and broadcast station in the same region may lead to substantially higher prices for the jointly owned programming relative to what would be observed if the networks were under separate ownership.³⁴¹ This evidence is consistent with a concern about the potential for horizontal harms resulting from the transaction.³⁴²

138. We conclude that commenters have raised a legitimate concern about the effect the combination of Comcast's RSNs and the NBC O&O stations will have on carriage prices for both of those networks. Nonetheless, we find that this potential harm will be mitigated in the context of this transaction because the program access-related conditions we impose will prevent Comcast-NBCU from using any increased bargaining power it might obtain to raise rates above market levels for each of the Comcast RSNs and the NBC O&Os individually.³⁴³

139. We are also concerned that the horizontal integration of Comcast's cable network programming (including its RSNs) and NBCU's cable programming may confer greater bargaining power, resulting in anticompetitive harm. This possibility is suggested by the evidence presented in the Technical Appendix that if an MVPD were foreclosed from access to the bundle of NBCU cable networks, the subscriber loss would be at least as large as the departure rate from foreclosure to the NBC broadcast network.³⁴⁴ Thus, the bundle of NBCU cable networks may collectively constitute marquee programming, much as the NBC broadcast network does on its own. If so, the combination of the NBCU cable networks with Comcast's RSNs would bring together marquee programming and, consequently, potentially increase Comcast-NBCU's bargaining power over that collection of programming when negotiating with MVPDs. We are unable to determine definitively on our record, however, whether the Comcast bundle of national programming networks being contributed to the joint venture is a substitute

³³⁸ ACA Comments – Rogerson Report at 14-17; ACA Comments at 22-23.

³³⁹ Applicants' Opposition – Israel/Katz Report at 73-103 (discussing not only the effect of the combination of broadcast stations and RSNs, but also the combined ownership of the Comcast RSNs and NBCU cable networks and Comcast's and NBCU's national cable networks).

³⁴⁰ Applicants' Opposition – Israel/Katz Report at 77, 78, 85-86.

³⁴¹ We conduct our analysis of the possibility that the combination of Comcast's and NBCU's programming harms competition by conferring increased bargaining power on Comcast-NBCU in markets for the sale of video programming to MVPDs within local franchise areas. Our analysis employs analytical tools that do not rely on market definition and do not require market share and market concentration information, and we find that measures of market shares and market concentration do not illuminate our analysis of the competitive concern we address in this section. *See Horizontal Merger Guidelines* Section 4.

³⁴² *See* Appendix B, Section I.C.

³⁴³ *See* discussion of program access remedial conditions *supra* Section V.A.1.b.

³⁴⁴ *See* Appendix B, Section I.B.

for the bundle of NBCU programming from the perspective of MVPDs, and thus whether the consolidation of Comcast-NBCU programming would be expected to increase the prices for these national programming bundles. We do not need to resolve this factual issue, because the program access conditions we impose will address this possibility as well.³⁴⁵

140. We do not accept the other arguments made by commenters regarding increased market power over certain categories of programming. Our record is insufficient to reach the conclusion that the horizontal combination of programming within these categories—sports programming,³⁴⁶ local news networks,³⁴⁷ and programming viewed by women³⁴⁸—would substantially lessen the alternatives available to MVPDs seeking to attract subscribers interested in programming in these categories. In each of these categories, comparable programming will remain available on numerous unaffiliated broadcast networks and national cable networks. In the absence of other evidence suggesting that the combination of networks with programming in these categories will increase the bargaining leverage the joint venture has in negotiating the price for such programming with MVPDs, we have no basis for requiring conditions to address these specific concerns, beyond the relief afforded by the program access conditions we impose.³⁴⁹

c. Content Production

141. *Positions of the Parties.* Commenters assert that the Applicants have overlapping interests in filmed entertainment, with NBCU owning Universal Pictures, one of the six major American movie studios, and art house studios Focus Features and Focus Features International. Comcast has a minority stake in MGM, which owns distribution rights to a large collection of movies and television programming.³⁵⁰ Commenters argue that such consolidation will reduce choice for both writers seeking

³⁴⁵ See discussion of program access remedial conditions *supra* Section V.A.1.b.

³⁴⁶ NBCU programs sports on the NBC network. It also has a financial interest in the Universal Sports Network. Comcast's sports programming appears on several RSNs, the Versus Network, and The Golf Channel. It also has financial interests in MLB Network and NHL Network. See Appendix D.

³⁴⁷ Comcast owns and operates one regional news channel, New England Cable News (NECN), which can be viewed throughout New England. Comcast also owns (i) The Comcast Network, which provides "local viewers with more targeted sports programming and public affairs" in the Philadelphia and Washington, DC areas, and (ii) CN100 – The Comcast Network ("CN100"), which shows similar programming in Chicago. Even if we were to consider The Comcast Network and CN100 as news networks, an NBC O&O and a Comcast local or regional news programming network would only overlap in Hartford (which receives NECN), Philadelphia, Chicago, and Washington. Comcast's local news offerings have a limited viewership in these four overlap regions. Comcast does not have a national or regional news offering on CN100 in Chicago or The Comcast Network in Philadelphia and Washington during the prime local news time slot from 6:00-6:30 pm, and the programming that is offered does not attract a high enough viewership to be reportable in the Nielsen ratings. Similarly, Comcast's New England Cable News, with an apparent focus on news coverage in the Boston, Massachusetts area as opposed to Hartford, Connecticut, has no measurable Nielsen presence in the Hartford DMA. See NECN, <http://www.necn.com/> (last visited Dec. 9, 2010); CSN, <http://www.csnphilly.com> (last visited Dec. 9, 2010); CSN, <http://www.csnwashington.com> (last visited Dec. 9, 2010); CN100, <http://www.cn100.tv> (last visited Dec. 9, 2010).

³⁴⁸ Post transaction, Comcast-NBCU would have interests in networks, including Oxygen Media, Style Network, and a minority interest in the Lifetime Networks, which feature programming directed at female audiences and other channels with high female viewership. See Appendix D.

³⁴⁹ See discussion of program access remedial conditions *supra* Section V.A.1.b.

³⁵⁰ See, e.g., Bloomberg Petition – Marx Report at 15.

employment within a shrinking pool of employers and consumers seeking diverse entertainment, news, and information.³⁵¹ Some commenters argue that the consolidation among content producers could further diminish competition in what is already a consolidated industry and would further reduce the amount of independent programming on television.³⁵²

142. The Applicants respond that no competitive harm will result from combining the movie studio holdings.³⁵³ They assert that Comcast does not control a movie studio and that its minority interest in MGM affords it only limited veto rights, and it has no directors on the MGM board.³⁵⁴

143. *Discussion.* Although the combination of Universal Studios and MGM would result in further consolidation of the content production market, we agree that the proposed transaction is unlikely to result in competitive harm to the market.³⁵⁵ Post-transaction, five of the largest studios and several independent studios will remain unaffiliated with Comcast. Universal and Focus Features had a combined share of approximately 9.9 percent of the market by total gross revenues in 2009 and were the sixth and eleventh ranked movie studios.³⁵⁶ MGM, which was not ranked in the top twelve studios,³⁵⁷ had a market share of approximately 0.7 percent in 2009.³⁵⁸ The combined market share of these companies would result in Universal remaining the sixth largest studio.³⁵⁹ We anticipate that the remaining studios will provide adequate competition in the production of video programming content.³⁶⁰

³⁵¹ See, e.g., WGAW Comments at 2, 5; Reply Comments of WGAW at 2 (filed Aug. 19, 2010) (“WGAW Reply”); Greenlining Petition at 7-12; Greenlining Response at 4-5; Sen. Franken at 4-7.

³⁵² See, e.g., WGAW Comments at 2; WGAW Reply at 2, 4-5; Sen. Franken Letter at 4-7; Greenlining Petition at 7, 11-12.

³⁵³ Application at 102-103.

³⁵⁴ *Id.* Further, the Applicants state that, “[e]ven if Comcast were deemed to ‘control’ MGM, the combination of Universal’s 8.2% share and MGM’s share of less than 1.5% gross-revenue share (for 2009) would not materially increase horizontal concentration in the movie studio industry.” *Id.* at 103 (citing Box Office Mojo, Studio Market Share 2009, at <http://www.boxofficemojo.com/studio/?view=company&view2=yearly&yr=2009&p=.htm> (last visited Jan. 26, 2010)).

³⁵⁵ For further discussion of the transaction’s effect on independent programmers and diversity, see *infra* Section V.C.2.

³⁵⁶ Box Office Mojo, Box Office by Studio - <http://www.boxofficemojo.com/studio/?view=company&view2=yearly&yr=2009&p=.htm> (last visited Dec. 9, 2010) (combining Universal and Focus Features).

³⁵⁷ *Id.*; SNL Kagan, SNL Kagan Box-Office Report – Week 52, <http://www.snl.com/interactivex/article.aspx?id=10535591&KLPT=6> (Dec. 31, 2009) (last visited Dec. 9, 2010) (box office revenues by distributor).

³⁵⁸ SNL Kagan, SNL Kagan Box-Office Report – Week 52, <http://www.snl.com/interactivex/article.aspx?id=10535591&KLPT=6> (Dec. 31, 2009) (last visited Dec. 9, 2010) (box office revenues by distributor).

³⁵⁹ See *id.*

³⁶⁰ For similar reasons, we reject the argument that this transaction results in harm to the television content production market. See, e.g., Sen. Franken Letter at 5-6; Greenlining Petition at 11-12.

2. Online Video Content

144. *Positions of the Parties.* Generally, the commenters express concern about the elimination of direct competition between Comcast and NBCU in the dissemination of professional content for online video platforms.³⁶¹ Most commenters focus their discussion on the impact that the proposed transaction will have on the availability of full-length professional video content for online distribution because of the elimination of actual or potential competition between Hulu and Comcast Xfinity/Fancast.³⁶²

145. The Applicants assert that the transaction will not harm competition because it will not result in any meaningful increase in concentration of sites making online video content available for distribution.³⁶³ The Applicants state that Comcast's online video properties account for only 0.3 percent of videos viewed online, NBCU accounts for 0.7 percent of videos viewed, and Hulu accounts for approximately four percent of video online viewing.³⁶⁴ The Applicants further assert that Comcast-NBCU will represent only a small share of "professional" on-line video content.³⁶⁵ Currently, Comcast and NBCU properties account for approximately one percent and two percent, respectively, of the online "professional" market by number of videos viewed. Hulu accounts for approximately ten percent of the online "professional" market by number of videos viewed.³⁶⁶

146. *Discussion.* We have no evidence in our record to suggest that combined ownership of Comcast's and NBCU's online properties poses a harm that requires additional remedies other than the remedies discussed above.³⁶⁷ Currently, there are multiple online sources from which consumers can view professional video content, including broadcast and cable networks, as well as content

³⁶¹ See, e.g., Free Press Petition at 22-23; EarthLink Petition at 24-25; Sen. Kohl Letter at 3; NJRC Reply at 11-12. Commenters assert that post transaction, the joint venture would control more than 30 digital media properties, including the second-most highly watched video website, Hulu.com. See, e.g., FACT Comments at ii; WealthTV Petition at ii, 4; CWA Reply at 22.

³⁶² See, e.g., EarthLink Petition at 24; NJRC Reply at 12; Free Press Petition at 22-23; Sen. Kohl Letter at 3.

³⁶³ Application at iv, 93-95; Applicants' Opposition at 113-154; see also Yoo Comments at 26. The Applicants also conclude that there will be no significant increase in concentration in a market encompassing all Internet content. Application at 93. The Applicants assert that Comcast-NBCU's Internet holdings account for 0.3 percent of total daily unique pages viewed and 1.6 percent of total advertising revenues. Application at 93 (citing comScore Media Metrix Report, November 2009, available at <http://www.comscore.com/>; comScore Ad Metrix Report, October 2009, available at <http://www.comscore.com/>); Applicants' Opposition at 114 (same).

³⁶⁴ Application at 94 (citing comScore, Media Metrix Report, November 2009, available at <http://www.comscore.com/>); Applicants' Opposition at 114-15 (same); see also Yoo Comments at 25 (same). The Applicants argue that Hulu should not be attributed to the joint venture since it will hold only a 32 percent non-controlling interest in Hulu. Further, the Applicant's argue that Hulu is operated by an independent management team and that NBCU's governance rights will continue to be limited. Application at iv, 8-9, 95, n.201.

³⁶⁵ Application at iv, 9, 95-99; Applicants' Opposition at 115. The Applicants defined "Professional" video as "[c]ontent that is usually created or produced by media and entertainment companies using professional-grade equipment, talent, and production crews that hold or maintain the rights for distribution and syndication." Application at 95 n.203 (citing Internet Advertising Bureau, IAB Long Form Video Overview, at 6, available at <http://www.iab.net/media/file/long-form-video-final.pdf>).

³⁶⁶ Application at 96 (citing comScore Media Metrix Report, November 2009, available at <http://www.comscore.com/>); Applicants' Opposition at 115, n.362.

³⁶⁷ See discussion of online video content to non-MVPDs *supra* Section V.A.2.c.

aggregators.³⁶⁸ We conclude that the combined ownership of Comcast's and NBCU's online properties would not pose a competitive harm that requires additional remedies to address horizontal aspects of this transaction.

3. Advertising

147. *Positions of the Parties.* Commenters generally allege that the proposed transaction will reduce competition for local, regional, and national advertising sales.³⁶⁹ Commenters argue that, as the sole sources of video programming that provide local advertising, broadcasters and cable operators compete directly for local advertiser dollars.³⁷⁰ Specifically, commenters assert that the transaction will consolidate control over previously separate cable and broadcast local advertising sales in markets where Comcast will acquire an NBC O&O station within the Comcast cable system footprint. Thus, Comcast will have an increased ability and incentive to dictate and profitably raise the price of advertising.³⁷¹

148. Commenters also contend that, as a result of the proposed transaction, Comcast will be in control of a large number of advertising platforms, which include broadcast networks, ad-supported cable networks, and local cable systems, as well as online advertising.³⁷² These commenters suggest that Comcast would be able to leverage the combined companies' advertising inventory by offering advertising package deals and volume discounts, resulting in an enhanced ability to lead advertisers away

³⁶⁸ comScore, comScore Releases October 2010 U.S. Online Video Rankings (Nov. 15, 2010), available at [http://www.comscore.com/Press_Events/Press_Releases/2010/11/comScore_Releases_October_2010_U.S._Online_Video_Rankings/\(language\)/eng-US](http://www.comscore.com/Press_Events/Press_Releases/2010/11/comScore_Releases_October_2010_U.S._Online_Video_Rankings/(language)/eng-US) (last visited Dec. 9, 2010); comScore, comScore Releases September 2010 U.S. Online Video Rankings (Oct. 12, 2010), available at [http://www.comscore.com/Press_Events/Press_Releases/2010/10/comScore_Releases_September_2010_U.S._Online_Video_Rankings/\(language\)/eng-US](http://www.comscore.com/Press_Events/Press_Releases/2010/10/comScore_Releases_September_2010_U.S._Online_Video_Rankings/(language)/eng-US) (last visited Dec. 9, 2010); comScore, comScore Releases August 2010 U.S. Online Video Rankings (Sept. 30, 2010), [http://www.comscore.com/Press_Events/Press_Releases/2010/9/comScore_Releases_August_2010_U.S._Online_Video_Rankings/\(language\)/eng-US](http://www.comscore.com/Press_Events/Press_Releases/2010/9/comScore_Releases_August_2010_U.S._Online_Video_Rankings/(language)/eng-US) (last visited Dec. 9, 2010); comScore, comScore Releases July 2010 U.S. Online Video Rankings (Aug. 16, 2010), [http://www.comscore.com/Press_Events/Press_Releases/2010/8/comScore_Releases_July_2010_U.S._Online_Video_Rankings/\(language\)/eng-US](http://www.comscore.com/Press_Events/Press_Releases/2010/8/comScore_Releases_July_2010_U.S._Online_Video_Rankings/(language)/eng-US) (last visited Dec. 9, 2010).

³⁶⁹ Commenters state that Comcast currently accounts for a significant portion of advertising, especially in regions where its cable footprint overlaps with NBCU's O&O broadcast properties, and competes for advertising revenue with other national and local media, including other television and cable networks. *See, e.g.*, CWA Petition at 31-32 (citing CWA Petition – Singer Declaration at 11); Free Press Petition at 48-52 (stating that the combined local broadcast and cable advertising shares yields an HHI increase above acceptable thresholds according to the *Horizontal Merger Guidelines*); Allbritton Reply at 14-16 (providing Washington, DC as an example); WealthTV Petition at 13. Commenters also note that as part of its programming license agreements with unaffiliated programming networks, Comcast receives an allocation of scheduled advertising time that it sells to local, regional, and national advertisers. *See, e.g.*, WealthTV Petition at 13; Bloomberg Petition at 45.

³⁷⁰ *See, e.g.*, Free Press Petition at 50; CWA Petition at 31-33; NJRC Reply at 34.

³⁷¹ *See, e.g.*, Free Press Petition at 48-49 (citing Free Press Petition – Cooper/Lynn Declaration at II(C)(2)) (presenting advertising data showing that these markets would be moderately or highly concentrated, according to the *Horizontal Merger Guidelines*, based on Cooper's and Lynn's analysis of NAB data); CWA Petition at 32 (citing CWA Petition – Singer Report at 10-11); Greenlining Petition at 5.

³⁷² *See, e.g.*, AOL Comments at 2; Free Press Petition at 50-51; DISH Petition at 22.

from competing networks and platforms and toward Comcast's advertising products,³⁷³ to extract exclusivity commitments from advertisers,³⁷⁴ and to impose multi-media tying arrangements on different platforms (e.g., require advertisers to run ads on both Comcast cable services and online).³⁷⁵ Some commenters state that the proposed transaction could particularly harm competition for advertising for genre-specific programming, such as local television news, business news, sports, and women's programming.³⁷⁶

149. The Applicants respond that the proposed transaction will result in only a very small increase in concentration in the broad advertising marketplace and that commenters have not supplied any economic analysis demonstrating competitive harm in any plausible market for national or local advertising.³⁷⁷ They note that neither NBCU nor Comcast currently has a large share in the broad, dynamic marketplace for advertising,³⁷⁸ and that the commenters fail to consider all advertising methods, such as "Internet, radio, newspapers, mobile phones, billboards, yellow pages, direct mail, and other 'out-of-home' advertising" in their analysis of the market.³⁷⁹ Moreover, they claim that the commenters' concerns that the proposed transaction will reduce competition in advertising markets are not supported by evidence or analysis and are rebutted by those most likely to be affected—the advertising and marketing agencies—which have filed comments expressing their support for the transaction, and agreeing that the innovations that will result present a significant benefit.³⁸⁰ The Applicants also contend that, in those markets where there is an NBCU O&O and Comcast owns a cable system and/or operates an RSN, local cable and broadcasting advertising are not close substitutes.³⁸¹

³⁷³ See, e.g., DISH Petition at 22; NJRC Reply at 34-35; Bloomberg Petition at 12, 37-38, 45-46, 68-69; Bloomberg Petition – Marx Report at 40-41, Appendix at 41-43; CWA Petition at 32; Free Press Petition at 50-51; Free Press Reply at 25-27; Allbritton Reply at 15.

³⁷⁴ See, e.g., AOL Comments at 9; Allbritton Reply at 4, 15.

³⁷⁵ See, e.g., AOL Comments at 9; see also Free Press Reply at 26-27.

³⁷⁶ See, e.g., Allbritton Reply at 14-16; Bloomberg Petition at 45-46 (discussing the consolidation of advertising outlets that reach the Bloomberg/business news demographic); Bloomberg Petition – Marx Report at 8, 40-41, Appendix at 41-43; Sen. Franken Letter at 3; Free Press Petition – Cooper/Lynn Declaration at 44.

³⁷⁷ Application at 82 n.163; Applicants' Opposition at 120.

³⁷⁸ Applicants' Opposition at 122 (citing Applicants' Opposition – Rosston/Topper Report at 24-26).

³⁷⁹ Application at 82 n.163; Applicants' Opposition at 120-21, 126-128 (citing Applicants' Opposition – Rosston/Topper Report at 21-22); Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC at 2 (Oct. 22, 2010) ("Oct. 22 *Ex Parte* Letter") (stating that Allbritton defines an artificially narrow advertising market that includes both broadcast and cable television but ignores competition from other media).

³⁸⁰ Applicants' Opposition at 122-123 (citing Letter from Curt Hect, CEO, VivaKi, to Chairman Julius Genachowski, *et al.*, FCC (Jun. 18, 2010), Letter from Steve Farella, Chairman and CEO, TargetCast, to Chairman Julius Genachowski, *et al.*, FCC (Jun. 18, 2010), Letter from Laura Desmond, Global CEO, Starcom MediaVest, to Chairman Julius Genachowski, *et al.*, FCC (Jun. 18, 2010)); October 22 *Ex Parte* Letter at 2, 5-6; Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC at 4 (Aug. 18, 2010).

³⁸¹ Application at 82, n.163; Applicants' Opposition at 125-126 (citing Applicants' Opposition – Rosston/Topper Report at 44-47); Oct. 22 *Ex Parte* Letter at 4 (stating that there are important differences in targeting, inventory, reach, and demographics between the advertising sold by Comcast Spotlight and the NBC O&O within the Washington, DC market). The Applicants state that local-zoned advertising, which is usually purchased by small, local businesses, accounts for between [REDACTED]. Applicants' Opposition at 125. As an example, the Applicants state that local-zoned advertising accounts for [REDACTED] of Comcast Spotlight's advertising

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150. The Applicants also state that the commenters have not supplied evidence of a national television market nor economic analysis demonstrating harm in such a market.³⁸² The Applicants allege that, even if a national market encompassing only broadcast and cable television advertising exists, the transaction would not alter the competitive landscape in any meaningful way. They continue that, to the extent that such a market exists, it would be highly fragmented, consisting of not only the major four broadcast networks, but also the more than 150 national cable television networks that generate advertising revenues.³⁸³ The Applicants further state that advertisers would not find their advertising options limited as a result of the combination of online programming.³⁸⁴

151. The Applicants contend that to the extent that the transaction permits them to offer superior and more affordable products, such as packages of complementary advertising inventory and volume discounts, such an outcome is pro-competitive, more innovative, and an efficiency of the proposed transaction.³⁸⁵ They also assert that the joint venture will not be able to harm competition by tying advertising across multiple platforms or by requiring exclusivity from advertisers.³⁸⁶ They also state that Comcast lacks the incentive and ability to foreclose competitors from any local advertising market,³⁸⁷

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revenues in Washington, DC and reaches only [REDACTED] of the market. In contrast, the NBC O&O does not sell geographically targeted advertising, yet reaches nearly the entire market. Therefore, the Applicants contend that advertisers who want to reach the entire DMA do not view Comcast Spotlight as a substitute for the NBC O&O. October 22 *Ex Parte* Letter at 4. The Applicants conclude that the closest substitute for the NBC O&O in Washington, DC would be the other local full-power commercial broadcast stations as opposed to advertising sold by Comcast. *Id.*

³⁸² Applicants' Opposition at 124; Applicants' Opposition – Rosston/Topper Report at 24-28.

³⁸³ Applicants' Opposition at 124. The Applicants explain that, "in such a market, the transaction would increase NBCU's 2009 share of national television advertising revenues by only 1.7 percent (from 19.5 percent to 21.1 percent) and the HHI by only 65 (from 1,196 to 1,261)—well below a level that might raise competition concerns." *Id.* (citing Applicants' Opposition – Rosston/Topper Report at 29 & Ex. 7). Additionally, the Applicants state that Comcast will account for only 12 percent of overall national cable network advertising. Application at 7; Applicants' Opposition at iii, 2.

³⁸⁴ Applicants' Opposition at 115. The Applicants note that Hulu competes for advertising sales with its media member owners and will continue to sell advertising in competition with the combined company post-transaction. *See* Application at 95 n.201.

³⁸⁵ Applicants' Opposition at 121-23; Applicants' Opposition – Rosston/Topper Report at 24, 48; October 22 *Ex Parte* Letter at 5.

³⁸⁶ Applicants' Opposition at 123; Applicants' Opposition – Rosston/Topper Report at 25.

³⁸⁷ October 22 *Ex Parte* Letter at 2. The Applicants state that if their broader market definition is used when analyzing the local advertising market in Washington, DC, Comcast Spotlight and the NBC O&O have a [REDACTED] and [REDACTED] market share, respectively, and the market is not highly concentrated, as Allbritton claims. *See id.* at 2-3. In fact, they assert that if local radio and newspaper advertising are added, the HHI drops dramatically and drops even further if Internet and out-of-home advertising is added. *See id.* at 3 (citing Applicants' Opposition – Rosston/Topper Report at 43). The Applicants argue that, "because national advertisers often use local advertising avails in larger DMAs like Washington, D.C. to supplement national advertising campaigns or aggregate local avails in multiple DMAs to substitute for national advertising campaigns, the Washington, D.C. local advertising sold by Comcast Spotlight and WRC-TV also competes with national television advertising sold by national cable and broadcast networks." October 22 *Ex Parte* Letter at 3. Thus, they assert that "[n]ational advertisers substitute network advertising with national spot advertising depending on relative prices and would respond to any attempted increase in spot prices in Washington, D.C. by decreasing their purchases of spot

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including a hypothetical market for advertising on local television news programming³⁸⁸ or any hypothetical national market that includes advertising on business news or women's programming.³⁸⁹

152. *Discussion.* We find that the proposed transaction is unlikely to harm competition in advertising.³⁹⁰ Broadcast and cable programming advertising are not sufficiently close substitutes to advertisers to warrant defining a product market that would include both. Additionally, there is insufficient evidence in the record to demonstrate the existence of or quantify the substitutability of advertising on NBC O&O broadcast stations and Comcast cable network and RSN programming. We find that many advertisers on cable networks would not substitute advertising on broadcast networks, because broadcast advertising generally does not allow targeting within the broadcast station's footprint. We also find that many advertisers on broadcast networks would not substitute cable advertising, because they find it cost-effective to assemble their desired demographic coverage by targeting the larger audiences generally available with individual broadcast programming. Finally, the advertisers that would substitute across these platforms are likely insufficient to warrant treating the two products as substitutes for the purpose of market definition. Our view is consistent with the DOJ's conclusion that cable and broadcast advertising are in separate product markets because there are many advertisers for which there

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advertising," which provides an additional competitive constraint on the ad prices charged by Comcast Spotlight and WRC-TV in the Washington, D.C. DMA. *See id.* at 3-4 (citing Applicants' Opposition – Rosston/Topper Report at 42-43 & n.116). They also state that Allbritton's claim that Comcast can harm NewsChannel 8 by bundling the two-minutes of advertising it receives per hour as the MSO is inaccurate, because [REDACTED]. October 22 *Ex Parte* Letter at 6-7. The Applicants also assert that anticompetitive bundling or any type of predation strategy would not occur in any overlap markets, because advertisers will have many alternatives to acquiring advertising time from the Applicants. *See id.* at 6-7.

³⁸⁸ October 22 *Ex Parte* Letter at 6 (stating that, while the Commission should disregard Allbritton's claim that advertising on local news is a separate market, there is no increase in concentration as a result of the proposed transaction because Comcast does not produce any localized news programming in Washington, DC and because there is no unique audience that advertisers can reach solely by advertising on local TV news).

³⁸⁹ Applicants' Opposition at 123 & n.392; Applicants' Opposition – Rosston/Topper Report at 28-32 (asserting that there is no support for the use of such narrow advertising markets and that there are many close substitutes for advertisers to reach the demographic that views such programming).

³⁹⁰ We decline to adopt commenters' suggestions that we require Comcast-NBCU to accept certain advertising from its competitors. *See, e.g.*, Free Press Reply at 27, 29; Letter from Pantelis Michalopoulos, Counsel for DISH Network, L.L.C., to Marlene H. Dortch, Secretary, FCC, at 1 (Oct. 28, 2010); Declaration of Tamani Chio at ¶ 5 Exh. A (filed Oct. 28, 2010). While there may be isolated incidences where Comcast has rejected advertisements offered by its competitors, we do not believe that these practices are sufficient to create unfair dominance or bottleneck capacity, as Free Press claims, or that limiting integration opportunities is inconsistent with either Comcast's or NBCU's stated advertising practices with competitors. NBCU indicates that [REDACTED], and that locally, the owned and operated broadcast stations frequently air MVPD advertisements. NBCU June Response at 33. Comcast indicates that its national networks will sell advertising to any MVPDs or OVDs, including competitors, as long as the advertisements are acceptable under customary industry standards and practices rules. Comcast June Response at 83. Locally, Comcast Spotlight will accept limited advertisements from competitors and Comcast RSNs do not accept advertising for products competitive with Comcast. Likewise, the RSNs do not accept advertising for other sports genre networks. Comcast June Response at 84. Furthermore, post-transaction, competing advertisers may continue to purchase advertising time from all national markets, as well as competing local cable networks and broadcast stations.

is no substitute for broadcast television.³⁹¹

153. We also have evaluated data provided by the Applicants regarding the top twenty buyers of local cable and broadcast advertising for the overlap markets. These data suggest that, even if the local advertising markets could be combined in the manner suggested by some commenters, the overlap in cable and broadcast advertising is minimal. In [REDACTED], there is [REDACTED] in advertisers between Comcast's local advertising offering, Comcast Spotlight, and the NBC O&O. In [REDACTED], there are between [REDACTED] and [REDACTED] overlapping advertisers out of the top twenty advertisers.³⁹² The broad reach of broadcast advertising appeals to one set of advertisers, while cable's zip code targeting and low cost per advertising buy appeal to another set of advertisers. This evidence is consistent with our view that broadcast and cable network advertising are not sufficiently close substitutes to warrant inclusion in the same product market.

154. To the extent that online advertising is a discrete product market, we also find that there will be no competitive concern from the transaction. In analyzing the top twenty advertisers on the largest websites devoted to NBCU and Comcast national programming, we find that overlaps in advertising exist; however, these overlaps between NBCU and Comcast Internet properties are minimal. The only websites with measurable overlap between NBCU and Comcast websites are the combined [REDACTED] website.³⁹³ Similarly, when analyzing the advertising overlaps on the websites devoted to NBCU programming and Comcast regional programming, the overlaps between the NBCU and Comcast websites range between [REDACTED] overlaps to [REDACTED] overlaps among the top twenty advertisers.³⁹⁴ The lack of significant overlaps in the top twenty advertisers suggests that Comcast and NBCU online networks serve different target audiences and that this transaction is unlikely to harm competition in online advertising. Finally, we find that packaging advertising across multiple platforms may provide an efficiency that reduces the effective price of advertising and, if so, would constitute a public interest benefit of the transaction.

³⁹¹ *U.S. v. Raycom Media, Inc*, Complaint, Case 1:08-cv-01510-RMU, at 3-4 (Aug. 28, 2008), available at <http://www.justice.gov/atr/cases/f236600/236613.htm> (“[C]able television advertising is not a meaningful substitute for broadcast television spot advertising because the viewership of cable television networks, even when the networks are combined and packaged together, is significantly smaller than the viewership of broadcast television stations and is more demographically homogeneous.”). DOJ also recognized that these “customers would not switch to another advertising medium – such as radio, cable, internet, or newspaper – or some combination thereof, if broadcast television spot advertising prices increased by a small but significant amount.” *Id.* at 4.

³⁹² See 69nbcu0000003-69nbcu0000010; Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at Appendix A (Nov. 5, 2010) (attaching Comcast Spotlight local advertising data).

³⁹³ See 93-COM-00000002, Versus.com Advertisers 2009; 93-COM-00000004, GolfChannel.com Top 20 Advertisers-2009; 93-COM-00000016-19, E!/E! Mobile/MyStyle 2009 Top 20 Advertisers; 93-COM-00000028, Comcast.net Spotlight Top Advertisers 2009; 70nbcu0000002_0005-0012, Top 20 Online Advertisers 2009. We note that this sole area of overlap applies to only [REDACTED] out of the top twenty advertisers, and it is likely that, if E! and Style were considered separately, that the number of overlaps would decrease. See 93-COM-00000016-19, E!/E! Mobile/MyStyle 2009 Top 20 Advertisers.

³⁹⁴ See 93-COM-00000046-51, RSN Online Advertisers YTD 2010; 70nbcu0000002_0011-0016, Top 20 Online Advertisers 2010 Q1-Q3.

C. Other Potential Harms

1. Broadcasting Issues

155. In this section, we address potential harms arising from the transaction to over-the-air (“OTA”) broadcast television and the continued availability of broadcast programming to consumers.

a. Potential Harm to Over-the-Air Broadcasting

156. *Positions of the Parties.* Several commenters warn that the transaction will harm OTA broadcasting and, therefore, the public interest.³⁹⁵ The NBC Television Affiliates (“NBC Affiliates”) and the American Federation of Television and Radio Artists (“AFTRA”) maintain that sustaining and enhancing the viability of local OTA broadcast television is an important public interest goal. Broadcast stations, they say, are unique among media in their ubiquity as well as their ability to invest in local news and journalism.³⁹⁶ The NBC Affiliates warn that Comcast’s acquisition of a controlling interest in NBCU would increase the ability of Comcast to advance its non-broadcast interests at the expense of free OTA broadcasting and the American public.³⁹⁷ FACT asserts that the Application fails to ensure that NBC and Telemundo remain intact with their core broadcast programming.³⁹⁸

157. Other commenters warn that the Applicants could migrate broadcast programming, particularly marquee sports programming, to their national and regional cable networks, at the expense of OTA broadcasting.³⁹⁹ CWA and DIRECTV argue that Comcast-NBCU has added ability and incentive to migrate popular sports programming to its online and VOD outlets, in order to circumvent the Commission’s program access rules.⁴⁰⁰ FACT and DIRECTV cite NBCU’s recent limitation of online access to its coverage of the 2010 Olympic Games as an example.⁴⁰¹

158. In response, the Applicants note that NBCU pays substantial licensing fees to air major events such as the Olympics and NFL games. Therefore, the Applicants maintain that they would have no economic incentive to forego the national advertising revenues commensurate with broadcast network-sized audiences by limiting access to such programming to Comcast’s smaller subscriber base or moving

³⁹⁵ See, e.g., Free Press Petition at 62; FACT Comments at 30. Likewise, Greenlining and the NBC Affiliates raise concerns about the transaction’s impact on the broadcast network-affiliate relationship. NBC Affiliates Comments at 5; Greenlining Reply at 4.

³⁹⁶ NBC Affiliates Comments at 5; AFTRA Reply at 2. The National Black Caucus of State Legislatures and the National Hispanic Caucus of State Legislatures (“NHBSL”) believe that the Applicants’ commitment to invest in OTA broadcasting will ensure that seniors and low-income households have access to high-quality television programming. NHBSL Reply at 1.

³⁹⁷ NBC Affiliates Comments at 5-6. See also Illinois Comments at 4-5.

³⁹⁸ FACT Comments at 30.

³⁹⁹ NBC Affiliates Comments at i, 3, 6-9; NBC Affiliates Reply at 1, 6-7; Illinois Responsive Comments at 4-5; Cooper Declaration at 77; Free Press Petition at 62; CWA Petition–Singer Report at ¶ 241; see also Kohl Comments at 4, n.6; Boucher Reply at 2.

⁴⁰⁰ FACT Comments at 19; DIRECTV Comments at 28-30; see also CWA Petition – Singer Declaration at 152. DIRECTV argues that Comcast need not migrate marquee sporting events in their entirety from broadcast to online distribution in order to create an anticompetitive harm. See DIRECTV Reply at 6.

⁴⁰¹ DIRECTV Comments at 30; FACT Comments at 19.

content online.⁴⁰² Furthermore, the Applicants maintain that even if Comcast-NBCU wished to migrate sports events from OTA to cable or online, marketplace realities preclude it from doing so.⁴⁰³

159. In part to address these concerns, the Applicants reached an agreement with the NBC Affiliates on June 3, 2010 (the “NBC Affiliates Agreement”).⁴⁰⁴ The NBC Affiliates Agreement contains several provisions that seek to mitigate harms to OTA broadcasting that may result from the transaction including, among other things, a general requirement to maintain NBC “as a premier general entertainment programming service” that is competitive with the other broadcast television networks and limitations on the possible migration of sports programming from free, OTA television to cable distribution.⁴⁰⁵

160. Several parties find the NBC Affiliates Agreement lacking.⁴⁰⁶ Greenlining maintains that the NBC Affiliates Agreement is insufficient to mitigate Comcast’s power to harm free OTA broadcasting.⁴⁰⁷ Free Press notes that the Applicants have not entered into similar agreements with smaller, independent stations that could also be adversely affected by the transaction and are more vulnerable than affiliates of the major four networks.⁴⁰⁸ Other commenters warn that the Agreement contains exceptions and is not permanent.⁴⁰⁹

161. *Discussion.* We adopt as a condition Section 2 of the NBC Affiliates Agreement relating to the possible migration of major sporting events from broadcast to cable for the duration specified within the Agreement, as requested by the NBC Affiliates.⁴¹⁰ We believe that adopting such a condition,

⁴⁰² Applicants’ Opposition at 161-162. They maintain that “it is inconceivable that GE (the 49 percent owner of the joint venture) would agree to such a strategy.” *Id.*

⁴⁰³ The Applicants claim that [REDACTED]. Applicants’ Opposition at 157; Applicants’ Opposition–Israel/Katz Report at ¶¶ 30-33.

⁴⁰⁴ A copy of the NBC Affiliates Agreement was submitted to the Commission on August 6, 2010 and is provided in Appendix F. *See* Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC (Aug. 6, 2010) (“Applicants’ Aug. 6, 2010 Ex Parte Letter”).

⁴⁰⁵ Appendix F, NBC Affiliates Agreement, Sections 1, 2 and 6. Specifically, Section 1 of the Agreement obligates NBC to provide “a mix of high-quality programming that is generally consistent with the mix, quality and schedule” of that of ABC, CBS and Fox and to “devote sufficient resources to program development” so that NBC’s programming will be competitive with that of those other networks. The Agreement also requires the inclusion of certain provisions in NBC affiliate agreements and commits Comcast-NBCU to continue to extend certain cooperative arrangements and branding and advertising availabilities to affiliates. *Id.*, Sections 5, 8 and 9.

⁴⁰⁶ *See, e.g.*, Free Press Reply at iv, 40; WGAW Reply at 3. They feel similarly about the ABC, CBS, and Fox Affiliates Agreement, described in more detail below. *See* Section V.C.1.b. *infra*.

⁴⁰⁷ Greenlining Reply at 7-8. Greenlining mistakenly contends that the only provision in the NBC Affiliates Agreement not subject to the general seven-year term is the first provision (effective for 10 years after consummation of the transaction), which commits Comcast to maintaining the quality of the NBC Television Network. *Id.* Greenlining cites the time frames as a reason why it believes the NBC Affiliates Agreement is insufficient to address harms to public interest goals of competition, diversity, and localism. Greenlining Reply at i.

⁴⁰⁸ Free Press Reply at 40.

⁴⁰⁹ CWA Petition – Singer Declaration at 8, n.19; Greenlining Reply at 8, 12, 25; DIRECTV Reply at 6, n.20; FACT Reply at 25-26.

⁴¹⁰ NBC Affiliates Comments at 3, 6-9, Appendix A.

as well as those discussed in the following subsection, sufficiently ameliorates any potential public interest harm from the transaction to OTA broadcasting. We agree that, absent the NBC Affiliates Agreement, the Applicants would have an increased incentive and ability to migrate marquee sports programming from NBC and the NBC O&Os to Comcast's cable networks, and that such action would harm consumers who rely exclusively on OTA broadcasting. We note that, with respect to future rights to major sporting events, Comcast has agreed to use commercially reasonable efforts to negotiate for appropriate distribution on NBC.⁴¹¹ Given the dynamics of the television marketplace, any further constraints on Section 2 of the NBC Affiliates Agreement might unreasonably interfere with the Applicants' incentive and ability to invest and develop the innovative use of new distribution technologies for such programming.

162. We decline the request of some parties to further restrict the migration of specific programming from broadcast networks to cable networks or online sites.⁴¹² Although NBCU has acknowledged that it has occasionally moved or re-purposed television series from its broadcast networks to cable networks, and *vice-versa*,⁴¹³ we believe that the NBC Affiliates Agreement sufficiently addresses commenters' concerns about the transaction's potential harm to OTA broadcasting.⁴¹⁴ Declining to adopt such restrictions also eliminates the practical and constitutional concerns raised by Commission intrusion into matters affecting the content of programming.⁴¹⁵

b. Network-Affiliate Relations and Retransmission Consent

163. *Positions of the Parties.* The NBC Affiliates contend that control of NBCU would enable Comcast-NBCU to threaten them with the withdrawal of NBC affiliation as a penalty for failing to accept unreasonable retransmission consent terms and conditions,⁴¹⁶ or *vice-versa*.⁴¹⁷ They claim that, under

⁴¹¹ NBC Affiliates Agreement, Section 2, Subsections B, C.

⁴¹² See, e.g., Sen. Kohl Letter at 6 (requesting a condition "that Comcast [may] not migrate the principal programming of the NBC broadcast network to any cable network in which Comcast has a financial interest for ten years"); FACT Comments at iii (recommending that the Commission include a condition to restrict the migration of NBC broadcast network programming, including sports, to any basic or online sites, as well as premium cable networks, controlled by the joint venture); CWA Petition – Singer Declaration at 152 (proposing that, "as an alternative to extending the program access conditions to the combined company's Internet properties, the Commission could simply prevent the new entity from transferring NBC's affiliated programming to either its affiliated cable networks or to its affiliated online portals").

⁴¹³ See, e.g., NBC June Response at 26.

⁴¹⁴ We also decline to impose any prohibition on migration of programming on Telemundo, as suggested by Greenlining. Greenlining Reply at 8. [REDACTED]. NBCU June Response at 31-33.

⁴¹⁵ *Turner Broadcasting System, Inc. v. U.S.*, 512 U.S. 622, 650 (1994) ("The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.") (internal quotations and cites omitted).

⁴¹⁶ NBC Affiliates Comments at i, 3, 9-12. See also Greenlining Response to Comments at 5. Greenlining posits that the transaction will drastically alter the balance of network-affiliate relations, and notes that the NBC Affiliates Agreement lacks any commitments with respect to affiliates' rights to preempt national or regional content with local programming. See Greenlining Petition at 23-25, 47; Greenlining Reply at 12. These potential harms are already addressed by the Commission's network affiliation rules. See 47 C.F.R. § 73.358(e); see also *Network*

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such an “affiliate squeeze,” if Comcast-NBCU were to tie NBC affiliation negotiations to retransmission consent negotiations with Comcast, “NBC affiliates in Comcast markets would be unfairly hampered in their ability to serve their communities and to compete with other stations in the market, which, unlike many NBC affiliates, will not be negotiating network affiliation with their largest cable partner.”⁴¹⁸ The NBC Affiliates maintain that local broadcasters rely on retransmission consent revenues to invest in local news programming.⁴¹⁹ Therefore, the NBC Affiliates claim that interference by Comcast-NBCU in their retransmission consent negotiations would inhibit their ability to provide such programming, as well as their general financial health.⁴²⁰ Other parties argue that the transaction itself would harm Comcast-NBCU’s competitors due to potential information sharing between NBCU’s broadcast operations and Comcast cable systems regarding negotiations for network affiliation and retransmission consent.⁴²¹

164. The NBC Affiliates also note that broadcast networks, including NBC, have historically granted network non-duplication rights to their affiliates. They call these rights “a cornerstone of the network-affiliate distribution system.”⁴²² Nevertheless, the NBC Affiliates posit that the joint venture would give the Applicants the incentive and ability to interfere with their retransmission consent negotiations by either (1) importing the signal of another NBC affiliate into the negotiating station’s market, or (2) supplying the Comcast cable system with which an NBC affiliate has a retransmission consent dispute with a direct linear feed of NBC programming (effectively turning it into a cable network)

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Affiliated Stations Alliance (NASA) Petition for Inquiry into Network Practices and Motion for Declaratory Ruling, Declaratory Ruling, 23 FCC Rcd 13610 (2008).

⁴¹⁷ NBC Affiliates Comments at i, 3, 9-12.

⁴¹⁸ NBC Affiliates Comments at 11.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ ABC, CBS, and Fox Affiliates Comments at 2-3; Allbritton Reply at 3, n. 1; Illinois Comments at 4, n.6; Free Press Petition at iv, 46-47; NJRC Reply at 34, 41. *See also* Free Press Petition Appendix A, Declaration of Mark Cooper and Adam Lynn, at 20, 50. In addition, Free Press asserts that Comcast could refuse to carry the multicast stream of broadcast stations that compete with the NBCU affiliates, or only carry the NBCU affiliates’ multicast channels in HD format. Free Press Petition at iv, 46-48. *See also* Free Press Petition, Appendix A, Cooper/Lynn Declaration at 20, 50. Free Press claims that by refusing to carry the multicast channels of competitors to NBC affiliates, Comcast-NBCU would give these broadcasters a disincentive to develop their multicast capabilities and programming, thereby reducing the overall amount and diversity of programming available within a television market. *Id.* at 20. As Free Press notes, however, cable operators are not required to carry the multicast channels of broadcast stations. *See Carriage of Digital Television Broadcast Signals*, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516 (2005). Moreover, there is no evidence in the record suggesting that Comcast currently carries a significant number of multicast channels or that, in the absence of the transaction, has plans to do so. Accordingly, we do not believe it appropriate to impose such an obligation on Comcast.

⁴²² NBC Affiliates Comments at 14-15. The Commission’s network non-duplication rules protect a local commercial broadcast television station’s right to be the exclusive distributor of network programming within a specified zone, and require an MVPD to black out programming subject to the rules when the MVPD imports another station’s signal into the local station’s zone of protection. 47 C.F.R. §§ 76.92 and 76.122. The rights are contingent upon the terms of the broadcast station’s network affiliation agreement. 47 C.F.R. §§ 76.93, 76.94(f), and 76.122(b), (i). *See also* FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, MB Docket No. 05-28 (MB, rel. Sept. 8, 2005) (“*SHVERA Section 208 Report to Congress*”).

during or in anticipation of such a dispute.⁴²³ The NBC Affiliates maintain that “such bypass strategies would weaken the affiliate’s presence in local markets and hobble the affiliate’s ability to negotiate fair terms of retransmission consent with Comcast.”⁴²⁴ They argue that bypass strategies would undermine the economic viability of the affiliates and ultimately harm members of the public who rely on OTA broadcast television.⁴²⁵

165. To address these concerns, the Applicants have entered into two agreements. The first is the NBC Affiliates Agreement, discussed above, which contains three sections relating to network-affiliate relations and the retransmission consent process: (1) separate and independent negotiation of retransmission consent agreements and NBC affiliation agreements with NBC affiliates; (2) restrictions on the ability of Comcast-NBCU to provide a direct NBC feed to a Comcast system in an NBC affiliate’s market; and (3) a commitment by Comcast that it will not seek the repeal of the current retransmission consent rules.⁴²⁶ The second agreement involves certain non-NBCU broadcast stations (the “ABC, CBS, and Fox Affiliates Agreement”).⁴²⁷ The Agreement generally requires the separation of Comcast’s retransmission consent negotiations with ABC, CBS and Fox affiliates from the knowledge and influence of NBCU. The Agreement also prohibits Comcast from discriminating against ABC, CBS and Fox affiliates in favor of any NBCU O&O or a station affiliated with the NBC or Telemundo networks. The ABC Television Affiliates Association, the CBS Television Network Affiliates Association, and the Fox Affiliates Association state that they would not object to the proposed transaction, provided that the Commission adopts certain provisions of this agreement as conditions.⁴²⁸

166. A number of commenters find fault with the NBC Affiliates Agreement. For example, Greenlining maintains that Section 3 of the NBC Affiliates Agreement, which separates the negotiation of network affiliate agreements and retransmission consent agreements within Comcast-NBCU, does not adequately protect broadcast stations that compete with NBC and its O&Os and affiliates.⁴²⁹ Time Warner Cable opposes the Commission’s imposition of a condition based upon Section 7 of the NBC Affiliates Agreement, which prohibits Comcast-NBCU from providing a direct feed of NBC network programming to a Comcast cable system during a retransmission consent dispute with a local NBC affiliate.⁴³⁰ In its view, by prohibiting direct feeds, Section 7 would increase the ability of broadcasters to “misuse the retransmission consent process.”⁴³¹

167. The New Jersey Division of Rate Counsel supports the ABC, CBS, and Fox Affiliates’

⁴²³ NBC Affiliates Comments at ii, 3, 14-15.

⁴²⁴ *Id.* at 3.

⁴²⁵ *Id.* at 13-14.

⁴²⁶ See Appendix F, NBC Affiliates Agreement, Sections 3, 4, and 7.

⁴²⁷ A copy of the ABC, CBS, and Fox Affiliates Agreement was submitted to the Commission on August 6, 2010 and is provided in Appendix F.

⁴²⁸ ABC, CBS, and Fox Affiliates’ Comments at 2-3.

⁴²⁹ Greenlining Reply at 6-7. As Greenlining interprets it, this section applies only until the date at which NBC is no longer jointly owned by Comcast, and therefore will sunset once Comcast obtains GE’s remaining interest in NBCU.

⁴³⁰ Time Warner Cable Reply at 18-21. See also Sen. Kohl Comments at 4-5.

⁴³¹ *Id.* at 20.

proposal to make the Agreement's provisions conditions.⁴³² In contrast, Greenlining believes that the ABC, CBS, and Fox Affiliates Agreement is insufficient to address competitive harms posed by the transaction, stating that all of the provisions, including those imposing a retransmission consent firewall and non-discrimination, expire after seven years.⁴³³ Free Press recommends that the Applicants apply the non-discrimination provisions to all unaffiliated broadcast stations, not just to the affiliates of the major four networks.⁴³⁴

168. *Discussion.* We agree that the transaction poses the potential for the Applicants to harm the network-affiliate relationship, as well as interfere with the retransmission consent process. We are satisfied that the conditions suggested by the ABC, CBS, Fox, and the NBC Affiliates Associations, as reflected in their respective Agreements with the Applicants, generally address these potential harms. Specifically, we impose as conditions the "affiliate market integrity" provision (Section 7 of the NBC Affiliates Agreement), and the non-discrimination provisions (Sections 2 and 6 of the ABC, CBS, and Fox Affiliates Agreement) of the respective Agreements. In addition, we impose as conditions Sections 3, 4, and 5 of the ABC, CBS, and Fox Affiliates Agreement, as well as Section 3 of the NBC Affiliates Agreement, that relate to retransmission consent.⁴³⁵ We generally impose these conditions for the respective periods of applicability negotiated by the parties given the dynamics of the marketplace.⁴³⁶ However, because Comcast has an ongoing incentive and ability to use information gleaned in NBC's retransmission consent negotiations to harm ABC, CBS and Fox affiliates in their retransmission consent negotiations, we extend the term of Section 3 of the ABC, CBS, and Fox Affiliates Agreement such that it remains effective as long as Comcast and NBCU are commonly owned and/or controlled.⁴³⁷ We also extend that the ban against information sharing in this section to any NBC affiliate on whose behalf NBC negotiates, in addition to the NBCU O&Os, as the Commission did with regard to the retransmission consent-related conditions that it imposed in the *News Corp.-Hughes Order*.⁴³⁸

169. In adopting these conditions, we note that the Commission's decision in *News Corp.-Hughes* does not require a different outcome with regard to the information sharing provisions. In that proceeding, the Commission declined to prohibit information sharing, reasoning that such a practice was unlikely to occur because of the confidentiality provisions of the retransmission consent agreements.⁴³⁹ Moreover, the record in *News Corp.-Hughes* established that Fox did not negotiate retransmission consent on behalf of its independently owned network affiliates.⁴⁴⁰

170. In contrast, the record in this proceeding and other sources indicate that the role of

⁴³² NJRC Reply at 44-45.

⁴³³ Greenlining Reply at i, 7 and 7, n.28. In fact, the provisions may expire earlier once NBCU and its O&Os are no longer owned or controlled by Comcast. See Appendix F, ABC, CBS, Fox Affiliates Agreement, Section 1.

⁴³⁴ Free Press Reply at 67.

⁴³⁵ In response to Greenlining's concerns, we clarify that Section 3 of the NBC Affiliates Agreement will remain effective as long as Comcast and NBCU are commonly owned and/or controlled. See Greenlining Reply at 7, n.27.

⁴³⁶ See *supra* ¶ 161.

⁴³⁷ This is the period during which the corresponding provision of the NBC Affiliates Agreement will be in effect.

⁴³⁸ *News Corp.-Hughes Order*, 19 FCC Rcd at 572, ¶ 218.

⁴³⁹ *Id.* at 571-572, 592, ¶¶ 216, 268.

⁴⁴⁰ *Id.* at 572 ¶ 218.

broadcast networks in the retransmission consent negotiation process is changing. Broadcast networks are under increasing financial pressure to supplement their advertising income with retransmission consent revenues. To that end, as some have noted,⁴⁴¹ [REDACTED].⁴⁴² The Applicants further state that [REDACTED].⁴⁴³

171. We concur with the Applicants that [REDACTED].⁴⁴⁴ We do not take a position on whether this practice makes the retransmission negotiations more efficient. However, the increasing presence of networks, including NBC, at the negotiating table on behalf of their independently owned affiliates as well as their O&Os reduces the significance of confidentiality provisions in retransmission consent agreements upon which we relied in the *News Corp.-Hughes Order*. The importance of the prohibition on information sharing is underscored by the fact that the NBC Affiliates and the ABC, CBS and Fox Affiliates successfully negotiated these contractual protections with Comcast-NBCU and have requested that we condition our Order on Comcast-NBCU's adherence to those safeguards.

172. NBCU notes that [REDACTED].⁴⁴⁵ Given these circumstances, we decline to apply this remedy to Telemundo broadcast affiliates.⁴⁴⁶

173. With regard to the "affiliate market integrity" provisions of the NBC Affiliates Agreement, we likewise note that the Commission's analysis in *News Corp.-Hughes* is not dispositive here. In that proceeding, the National Association of Broadcasters ("NAB") asserted that post-transaction, News Corp. would have the incentive and ability to use a national network feed to distribute the programming it offered via local television broadcast stations prior to the transaction.⁴⁴⁷ The Commission rejected NAB's assessment of the likelihood that News Corp. would employ this strategy.⁴⁴⁸ We reasoned that if Fox bypassed local affiliates, News Corp. would lose not only the advertising revenue associated with those rival MVPD subscribers that did not receive over-the-air broadcast signals but also the advertising revenue associated with all non-DIRECTV subscribers.⁴⁴⁹ The Commission also concluded that, because the proposed transaction would have a *de minimis* impact on News Corp.'s

⁴⁴¹ See DIRECTV Comments at 22-23; ITTA Comments at 1-2; ACA Response at 16-17.

⁴⁴² NBCU June Response at 31-33. See also 29nbcu0011267-00011270, [REDACTED]; ACA Response at 16, n.43-44 (citing 39nbcu0001687). ACA also cites [REDACTED] ACA Response at 16-17 & n.44 (citing 31-COM-00000616).

⁴⁴³ Applicants' Reply at 33.

⁴⁴⁴ *Id.*

⁴⁴⁵ NBCU June Response at 33.

⁴⁴⁶ We also decline to adopt Free Press's proposal that we extend the non-discrimination provision regarding retransmission consent to all broadcast stations unaffiliated with any of the major four broadcast networks. Free Press Reply at 67. Free Press was alone in urging this extension. Because most independent stations assert must-carry rights, rather than opt for retransmission consent, the record does not establish as great a risk of harm to these stations as to those affiliated with ABC, CBS, Fox or NBC.

⁴⁴⁷ *News Corp.-Hughes Order*, 19 FCC Rcd at 590, 593, ¶¶ 265, 274 (citing NAB Comments, Declaration of J. Gregory Sidak (Jun. 16, 2003) (asserting that the harm to Fox affiliates would have a ripple effect across the broadcast industry).

⁴⁴⁸ *Id.* at 592 ¶ 268.

⁴⁴⁹ *Id.* at 594 ¶ 275.

incentive to engage in this behavior, affiliate bypass was not a likely outcome of the transaction.⁴⁵⁰

174. Our record here leads us to a different conclusion. Internal NBCU documents indicate that [REDACTED].⁴⁵¹ In addition, [REDACTED].⁴⁵² We believe that, once Comcast obtains a controlling interest in NBCU, it will have an even greater incentive and ability to bypass the NBC affiliates to advantage its cable systems in retransmission consent disputes. Moreover, since the *News Corp-Hughes Order*, the retransmission consent process has become more contentious.⁴⁵³ In this heated negotiating atmosphere, we believe that Comcast, as the nation's largest cable operator with control of a broadcast network, would have an increased incentive to engage in affiliate bypass. Accordingly, we believe that specification of the affiliate market integrity condition based on Section 7 of the NBC Affiliates Agreement, bargained for and sought by the NBC Affiliates, is appropriate.

175. We disagree with Time Warner Cable's contention that such a condition could enable the NBC Affiliates' to "misuse the retransmission consent process."⁴⁵⁴ Although Time Warner Cable maintains that "the effects of this restraint would likely be broader," it does not explain how a condition prohibiting Comcast-NBCU from sending a direct feed of NBC network programming to Comcast would cascade to other MVPDs.⁴⁵⁵ We note that the NBC Affiliates have agreed to withdraw the direct feed ban upon the later of 10 years or if and when one of NBC's major competitors—*i.e.*, ABC, CBS, or Fox—opts to authorize a same-day linear feed to one or more major cable system operators.⁴⁵⁶ We therefore adopt the "affiliate market integrity" condition requested by the NBC Affiliates.

176. We do not, however, apply this condition to Telemundo. To begin with, no party has specifically proposed extending "affiliate integrity" conditions to Telemundo affiliates. Moreover, NBCU states [REDACTED].⁴⁵⁷ [REDACTED] Thus, neither Telemundo's incentive nor ability to engage in such a practice is related to this transaction. In addition, there is no evidence in the record of any transaction-related harms to Telemundo affiliates, which generally opt for must-carry. Similarly, we will not extend the conditions that we impose arising from the ABC, CBS, and Fox Affiliates Agreement to independent stations that are not affiliated with ABC, CBS, Fox or NBC. The record does not reflect the licensee of any such station requesting such Commission action, and we see no independent need to take such action, absent a demonstrated need for us to do so.

⁴⁵⁰ *Id.*

⁴⁵¹ See 29nbcu0011267-000111276, [REDACTED].

⁴⁵² See *id.*

⁴⁵³ See, e.g., Brian Stelter and Bill Carter, *Fox-Cablevision Blackout Reaches a 2nd Day*, NEW YORK TIMES, Oct. 17, 2010, available at http://www.nytimes.com/2010/10/18/business/media/18cable.html?_r=1&pagewanted=print; Sarah Barry James, *ABC Affiliate Pulls Signal from Time Warner Cable*, SNL KAGAN MEDIA AND COMMUNICATIONS REPORT, Sept. 3, 2010.

⁴⁵⁴ Time Warner Cable Reply at 20.

⁴⁵⁵ *Id.* at 21.

⁴⁵⁶ See Appendix F, NBC Affiliates Agreement, Section 7C.

⁴⁵⁷ NBCU June Response at 32.

177. We also decline to impose conditions that reflect the remaining provisions of the NBC Affiliates Agreement, which the NBC Affiliates did not ask to be made conditions.⁴⁵⁸ Those sections⁴⁵⁹ promote the particular interests of the NBC Affiliates, rather than the public interest, or would require Commission intrusion into matters affecting content of programming.⁴⁶⁰

178. As a final matter, a number of commenters have criticized the fact that the terms of many of the provisions of the NBC Affiliates Agreement and of the ABC, CBS and Fox Affiliates Agreement that we have made conditions here will end within seven years, eliminating the protections to over-the-air broadcasting that they will provide. As noted above, the video marketplace is changing, and, in light of that evolution, we are reluctant to impose indefinite terms for conditions based upon the contractual provisions with fixed terms negotiated by the parties.

2. Diversity

179. *Positions of the Parties.* A number of commenters have voiced concerns that the proposed transaction would harm viewpoint, program, and source diversity because Comcast's acquisition of NBCU would consolidate the Applicants' respective programming and distribution operations.⁴⁶¹ Several claim that the Application, including the Applicants' voluntary commitments, understates the importance of diversity.⁴⁶² They raise concerns that viewpoint diversity would be harmed because the proposed transaction would result in a significant concentration of media ownership and intensify Comcast-NBCU's editorial power over the content of its affiliated channels.⁴⁶³ Greenlining, moreover, maintains that both Comcast and NBCU have a "poor track record" with regard to diversity, with Comcast having rejected African American programming vendors and NBCU having gutted and consolidated Telemundo O&O operations after it acquired Telemundo.⁴⁶⁴ Mabuhay Alliance has expressed concern about the lack of positive references in the Applicants' programming to Asian Americans, Blacks and Latinos, and has asked that the Commission seek data from the Applicants regarding such programming.⁴⁶⁵ WGAW criticizes the Applicants' diversity promises as lacking

⁴⁵⁸ See NBC Affiliates Comments at 1, Appendix A; *see also* Letter from Jennifer Johnson, Counsel for the NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC (Dec. 9, 2010).

⁴⁵⁹ See Appendix F, NBC Affiliates Agreement, Sections 1, 4, 5, 6, 8, and 9.

⁴⁶⁰ See *supra* ¶ 162.

⁴⁶¹ See, e.g., Bloomberg Petition at 4, 16; Earthlink Petition at i, 2, 4; Petition to Deny of National Coalition of African American Owned Media at 16-17 (filed Jun. 21, 2010) ("NCAAOM Petition"); Entertainment Studios Comments at 10-11; Sen. Franken Letter at 4; Letter from Harold Feld, Legal Director, Public Knowledge, to Marlene H. Dortch, Secretary, FCC (Nov. 4, 2010).

⁴⁶² Sen. Franken Letter at 4-5; Free Press Petition at 10-11; Letter from Jarrett T. Barrios, President, Gay & Lesbian Alliance Against Defamation, to Julius Genachowski, Chairman, FCC (Jul. 20, 2010).

⁴⁶³ Free Press Petition at 46; Greenlining Petition at 4; CWA Petition at 2; CWA Reply at 3.

⁴⁶⁴ Greenlining Petition at 10-11; Greenlining Reply at 3-4.

⁴⁶⁵ Opposition to Comcast Acquisition of NBC Universal of Mabuhay Alliance at 2 (Mar. 15, 2010) ("Mabuhay March 15 Opposition"); Petition Opposing Comcast Acquisition of NBC Universal of Mabuhay Alliance at 2 (Mar. 22, 2010). See *also* Entertainment Studios Comments at 6-7; NCAAOM Petition at 11-12 (alleging Comcast discriminates against African American-owned programming).

protection of source diversity because they fail to guarantee that any proposed programming will come from independent or diverse sources.⁴⁶⁶

180. Commenters also express concern that the transaction poses potential harm to independent producers, programmers, writers and directors because, with the combination of Comcast's distribution infrastructure and its programming with that of NBCU, the combined entity will be less inclined to carry programming of independent producers.⁴⁶⁷ These commenters fear the transaction would lead to further consolidation of distribution and programming pipelines, which will result in a decrease of the number of alternative, independent and diverse programs and viewpoints.⁴⁶⁸ Others caution about the impact of the consolidation of creative production, over-the-air broadcast, basic and premium cable, and telephone and Internet facilities with a cable television infrastructure that can control the distribution of this vast content to the U.S. consumer.⁴⁶⁹ Still other commenters believe that the Commission's former financial interest and syndication ("fin/syn") rules⁴⁷⁰ should be reinstated or, in the alternative, that the Commission should impose conditions on the transaction that mirror the aims of the fin/syn rules by requiring the joint venture to carry on its cable and broadcast platforms a certain threshold of independently produced programming.⁴⁷¹

181. The Applicants maintain that their new venture will expand the amount, quality, variety and availability of content better than either Comcast or NBCU could do on its own, thus promoting

⁴⁶⁶ WGAW Reply at 3. To ameliorate this potential harm, WGAW urges that the Commission require that at least 25 percent of the NBC primetime series and the merged entity's entertainment networks contain programming produced by independent sources. *Id.* at 4. It would also have the Commission require the Applicants to air a "meaningful" amount of programming that is owned and produced by independent producers – studios or entities that are not owned or affiliated with a major broadcast or cable network or MVPD. *Id.* at 4-5.

⁴⁶⁷ WGAW Comments at 8-9, 16; WGAW Reply at 6; AFTRA Letter at 2; Sen. Franken Letter at 5-7; Letter from The Caucus for Producers, Writers & Directors to Marlene H. Dortch, Secretary, FCC, at 4-5 (filed Jun. 17, 2010) ("Caucus Letter"); CWA Petition at 33-39; Public Knowledge Petition at 4-5; NCAAOM Petition at 2; NCAAOM Reply at 11; ESI Reply to Comcast-NBCU Opposition at 12 (filed Aug. 19, 2010) ("Entertainment Studios Reply"); Greenlining Petition at iv-v, 11-12, 28-29; Greenlining Reply at 8.

⁴⁶⁸ WGAW Comments at 19; Greenlining Petition at 7, 11-12; NCAAOM Petition at 2, 13.

⁴⁶⁹ Caucus Letter at 4; Cooper Declaration at 63; Sen. Franken Letter at 5; Bloomberg Reply at 61-62.

⁴⁷⁰ The former fin/syn rules limited the amount of programming in prime time and syndication that the broadcast networks could own. The Commission repealed the rules in the mid-1990s. *Review of the Syndication and Financial Interest Rules*, Report and Order, 10 FCC Rcd 12165 (1995). Among other suggestions, WGAW recommends that the Commission require Comcast-NBCU networks to devote not less than 25 percent of their broadcast and cable networks' primetime schedule (across each programming category, including scripted content) to programming that is owned and produced by independent producers. WGAW Reply at 4. The Caucus urges the imposition of a similar minimum percentage of independent programming. Caucus Letter at 1.

⁴⁷¹ *See, e.g.*, Cooper Declaration at 61-63. In response, the Applicants state that there is no conceivable justification for reinstatement of the rules but, if they were, they should be made applicable on an industry-wide basis as the result of a rulemaking, not imposed against a single company as the result of a specific transaction. Applicants' Opposition at 239. The Caucus advocates a prohibition on the Applicants' owning of the copyright and rights to sharing in the profits from independent programming. Caucus Letter at 3. We agree with the Applicants that, notwithstanding the scope of the proposed transaction, any such restrictions should be imposed on an industry-wide basis after appropriate public notice and comment. Because the alleged harms are not transaction-related, a rulemaking proceeding would be the appropriate forum to consider reinstating the fin/syn rules.

diversity.⁴⁷² They also note that the combined entity would have more platforms on which programming can be delivered, thus allowing them to reach greater audiences and providing them the incentive to acquire more diverse programming.⁴⁷³

182. The Applicants have made commitments to further their objective to reach and better serve greater, often underserved audiences with a diversity of programming offerings.⁴⁷⁴ In the Application, the Applicants commit to (1) expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital spectrum of Telemundo's O&Os and offering it to Telemundo affiliates, including the launch of a new multicast channel on Telemundo's DTV spectrum using library content;⁴⁷⁵ (2) use On Demand and On Demand Online platforms to feature Telemundo programming;⁴⁷⁶ (3) expand the availability of mun2 on the Comcast cable, On Demand and On Demand Online platforms;⁴⁷⁷ and (4) add two new independently owned and operated channels to Comcast's digital lineup each year for the next three years on customary terms and conditions, once company-wide digital migration is completed (anticipated to be no later than 2011).⁴⁷⁸ They also propose to increase the quality and quantity of women's programming on broadcast, cable and online.⁴⁷⁹

183. The Applicants also state that, since filing their Application containing their initial commitments, they have reached agreements that both expand their commitments and make additional ones to further ensure that the transaction will result in diverse program offerings.⁴⁸⁰ On July 6, 2010, Comcast filed with the Commission a Memorandum of Understanding between it, NBCU and a group of Hispanic leadership organizations ("Hispanic MOU").⁴⁸¹ The stated purpose of the Hispanic MOU is to enhance policies and programs by which Latinos "may realize greater participation in five areas and . . .

⁴⁷² Application at ii, 36.

⁴⁷³ *Id.* at 47.

⁴⁷⁴ *Id.* at 48.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* at 49-50.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.* at 112-113. DIRECTV urges that Comcast-NBCU roll out the new channels immediately. *See* DIRECTV Comments at 64. NCAAOM and Entertainment Studios believe the number of new channels should be more than ten. *See* NCAAOM Reply at 11; Entertainment Studios Reply at 10.

⁴⁷⁹ Application at 52.

⁴⁸⁰ Applicants' Opposition at 39-49.

⁴⁸¹ Letter from Michael Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Jul. 6, 2010). The Hispanic MOU is provided in Appendix G. Hispanic organizations that are signatories to the MOU include Cuban American National Council, Hispanic Federation, League of United Latin American Citizens, National Council of La Raza, National Hispanic Media Coalition ("NHMC") and SER-Jobs for Progress National, Inc. NHMC has requested that the Commission require enforcement of the MOU as a condition of this Order. Letter from Jessica J. Gonzalez, Vice President, Policy and Legal Affairs, NHMC, to Marlene H. Dortch, Secretary, FCC (Sept. 27, 2010).

identify and pursue actions by which the Hispanic Leadership Organizations can support the growth of Comcast and NBCU's business within the Latino consumer market.⁴⁸²

184. On July 12, 2010, Comcast submitted to the Commission its letter to Congressman Bobby Rush dated July 2, 2010.⁴⁸³ The letter sets forth a variety of diversity commitments agreed to by Comcast pursuant to discussions with Representative Rush. Attached to the Rush Letter is a Memorandum entitled "Comcast and NBCU's Summary of Diversity Commitments," which is referred to in the Rush Letter as "a comprehensive list" of Comcast and NBCU's diversity commitments ("Diversity Memorandum").⁴⁸⁴ Many of these commitments echo those contained in the Hispanic MOU and the Rush Letter and discussed in the Application. There are, however, several unique commitments contained in the Diversity Memorandum.⁴⁸⁵

185. On July 29, 2010, the Applicants executed an Agreement with the Independent Film and Television Alliance ("IFTA").⁴⁸⁶ The IFTA Agreement sets forth a range of actions the joint venture will take over the Agreement's four-year term to "create substantial opportunities for independently-produced programming to be considered for NBCU and Comcast platforms."

186. On December 15 and 17, 2010, the Applicants filed with the Commission Memoranda of Understanding that they entered into with Asian American and African American leadership organizations.⁴⁸⁷ These Memoranda of Understanding are similar in scope and purpose to the Hispanic

⁴⁸² Hispanic MOU at 2. The five focus areas are corporate governance; employment/workforce recruitment and retention; procurement; programming; and philanthropy and community investments. *Id.* at 3.

⁴⁸³ Letter from Michael H. Hammer, Counsel for Comcast Corporation to Marlene H. Dortch, Secretary, FCC (Jul. 12, 2010) (providing Letter from David L. Cohen, Executive Vice President, Comcast Corporation to the Honorable Bobby Rush (Jul. 2, 2010) ("Rush Letter")).

⁴⁸⁴ The Rush Letter and attached Diversity Memorandum are provided in Appendix G.

⁴⁸⁵ For example, Comcast will conduct a benchmark study of the diversity initiatives in the areas of governance, workforce recruitment and career development, supplier diversity, programming and community investment and partnerships. Comcast also agrees to provide, on an annual basis, diversity data to the Advisory Councils subject to a non-disclosure agreement and the understanding that the data will be used only for internal discussions and development of progress reports by the Joint Council. Diversity Memorandum at 1. Separately, NBCU will report annually on its corporate diversity efforts, with particular emphasis on programming/content, procurement, and pipeline programs, to a Coalition consisting of these four organizations: National Association for the Advancement of Colored People, Inc.; American Indians in Film and Television; National Asian-Pacific American Media Coalition; and National Latino Media Council. *Id.* at 2. Comcast also will expand the quantity of diverse video on its On Demand platforms, stating that it has already launched Black Cinema On Demand and has plans to launch later this year Asian Cinema On Demand, which will offer Asian Pacific Islander and Hispanic-themed films, respectively. *Id.* at 6-7. An attachment to the letter confirms Comcast's commitment to establish four external Diversity Advisory Councils, which will provide advice to the senior executive teams at Comcast and NBCU regarding, among other things, the companies' programming practices. *Id.* at Attachment 1.

⁴⁸⁶ Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Jul. 12, 2010) (submitting a copy of the IFTA Agreement). The IFTA Agreement is provided in Appendix G.

⁴⁸⁷ Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Dec. 15, 2010) (submitting a copy of the Memorandum of Understanding between Comcast Corporation, NBC Universal, Inc. and the Asian American Justice Center, East West Players, Japanese American Citizens League, Organization of Chinese Americans and Media Action Network for Asian Americans (the "Asian American MOU")); Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon,

(continued....)

MOU, with the objective of maintaining and enhancing Comcast-NBCU's diversity efforts regarding, respectively, the Asian American and African American communities.

187. *Discussion.* Diversity is one of the guiding principles of the Commission's broadcast ownership policies.⁴⁸⁸ It advances the values of the First Amendment, which, as the Supreme Court has stated, "rest[s] on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."⁴⁸⁹ The Commission has elaborated on the Supreme Court's view, positing that "the greater the diversity of ownership, in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."⁴⁹⁰ As discussed below, the transaction complies with the Commission's broadcast ownership rules.⁴⁹¹

188. Based on the record as a whole, we find that the Applicants have addressed the concerns that the transaction will harm viewpoint, program, and source diversity. We believe the following voluntary commitments that the Applicants describe in their Application, and that have been enhanced by the Hispanic, Asian American and African American MOUs, the Rush Letter and Diversity Memorandum, the IFTA Agreement, and elsewhere in the record,⁴⁹² will promote viewpoint, program, and source diversity: (1) make 10 new independently owned and operated cable channels available on Comcast's digital (D1) tier over eight years following the closing; (2) launch a new multicast channel on Telemundo O&Os using library programming within 12 months of closing, made available to Telemundo affiliates; (3) launch a weekly business news program produced with an independent producer on Telemundo O&Os in 2011 and make it available to Telemundo affiliates and to cable systems to which it directly provides Telemundo programming; and (4) increase Telemundo and mun2 VOD choices from 35 to 100 within one year of the closing, and to 300 within three years, and make such programming

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Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Dec. 17, 2010) (submitting a copy of the Memorandum of Understanding between Comcast Corporation, NBC Universal, Inc. and NAACP, National Urban League and National Action Network (the "African American MOU")). The Asian American MOU and the African American MOU are provided in Appendix G.

⁴⁸⁸ *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13627, ¶ 17 (2003).

⁴⁸⁹ *Associated Press v. United States*, 326 U.S. 1, 20 (1945); *Turner Broadcasting System v. FCC*, 520 U.S. 180, 189-190 (1997); *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 566 (1990), overruled in part on other grounds in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Nat'l Citizens Committee for Broadcasting v. FCC*, 436 U.S. 775, 795 (1978).

⁴⁹⁰ *Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Report and Order, 45 F.C.C. 1476, 1477 ¶ 3 (1964).

⁴⁹¹ See *infra* Section VIII.

⁴⁹² See, e.g., Letter from Javier Palomarez, President & CEO, United States Hispanic Chamber of Commerce, to Marlene Dortch, Secretary, FCC (Dec. 14, 2010) (discussing the Applicants' promise to expand broadcast distribution of *Hispanics Today*, a program dedicated to "help remedy the lack of representation of Hispanics on TV" and "tell the American story through the eyes and voices of Latinos"); Letter from Kathy Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 16, 2010) (discussing Comcast's commitment to expand its Corporate Responsibility Report to include a Diversity Progress Report, and make it available on its website).

available online to authenticated subscribers to the extent Comcast has the rights to do so. To enhance the voluntary commitments proposed by the Applicants and to ensure that the public interest benefits of the transaction manifest, we will condition grant of the Application on these commitments. We also believe that conditioning grant of the Application on these commitments is warranted in light of legitimate localism concerns raised by commenters that are discussed in the next section.⁴⁹³

189. We note that many of the Applicants' other commitments under the Hispanic, Asian American and African American MOUs, the Rush Letter, the Diversity Memorandum and the IFTA Agreement are intended to address concerns raised by commenters regarding the treatment of minority and other groups by Comcast and NBCU. We commend the Applicants for meeting with a broad range of stakeholders in this proceeding and effectuating agreements by which the Applicants state their intent to be bound. While these specific additional commitments do not change our analysis of the diversity issue, they, along with the others that the Applicants have made that are noted above, should further mitigate the potential harms to diversity.⁴⁹⁴

190. We decline, however, to mandate specific minimum percentages or hours of independent programming that the Applicants must air or carry over their various distribution platforms. The IFTA Agreement should create opportunities for suppliers of independent programming to learn of the programming requirements of Comcast-NBCU, such that they can tailor their proposals.⁴⁹⁵ However, the ultimate determination of which proposals should be selected for further development is a creative one that should be dictated by Comcast-NBCU's individual evaluation of each proposal under consideration.⁴⁹⁶ Moreover, consistent with the Commission's program carriage rules, we expect Comcast-NBCU to bargain in good faith with unaffiliated program suppliers. We similarly decline to require Comcast-NBCU to carry independent channels on the basic tier,⁴⁹⁷ or to offer the same placement to similarly situated affiliated and non-affiliated programmers,⁴⁹⁸ as advocated by other commenters.

191. We also decline to impose the various conditions sought by commenters that would impose quotas on the amount of minority-produced or directed programming that the Applicants must offer on various platforms. The imposition of such requirements is not necessary, given the other diversity-related conditions imposed on the Applicants and their other related commitments. In addition,

⁴⁹³ See *infra* ¶ 197. As we discuss further below, we also conclude that the diversity and localism commitments (among others) made by the Applicants confer public interest benefits as well as addressing potential harms.

⁴⁹⁴ We also require that Comcast-NBC periodically report to us on the nature and amount of independent programming that it is airing on its broadcast O&Os and its programming networks. See Appendix A.

⁴⁹⁵ IFTA characterizes the Agreement as creating "a significant opportunity for independent producers to build business relationship with a major U.S. media conglomerate...to give independent producers an entrée to a marketplace in which they have excelled in the past and can once again succeed." Comments of the Independent Film & Television Alliance at 5 (filed Aug. 17, 2010). See also Letter from Claudia James, Podesta Group, to Marlene Dortch, Secretary, FCC (Dec. 10, 2010), Attachment, "Independent Film & Television Alliance Reaches Television, New Media Agreement With Comcast Corporation and NBC Universal" (dated Jul. 12, 2010).

⁴⁹⁶ Greenlining criticizes the IFTA Agreement for its failure to commit Comcast-NBCU to air independent programming. See Greenlining Reply at 10; see also WGAW Reply at 4.

⁴⁹⁷ See Greenlining Petition at 43.

⁴⁹⁸ See WealthTV Petition at 34; WealthTV Reply at 8; Greenlining Reply at 32; WGAW Comments at 21 (prohibiting Comcast-NBCU from bumping currently carried networks to be replaced by affiliated ones).

the First Amendment,⁴⁹⁹ Section 326 of the Act, and Commission precedent limit our ability to dictate the programming policies of our licensees.⁵⁰⁰

3. Localism

192. *Positions of the Parties.* Several commenters assert that the joint venture would reduce the quality and quantity of locally responsive programming, including news and public affairs programming.⁵⁰¹ Many commenters speculate that such a diminution in localism would be driven by the Applicants' concerns over costs, particularly in light of the debt load that will result from the proposed transaction.⁵⁰² They maintain that the joint venture likely would reduce and consolidate local news outlets to cut costs, thereby resulting in less localism. Commenters also express their concern that the combined entity will have the market power to require that a local network or station broadcast only centrally produced regional or national content, thereby preempting all local programming targeted to "niche" audiences, such as communities of color, low income communities, or other traditionally underserved audiences.⁵⁰³

193. The Applicants maintain that these concerns are unfounded. In their Application, they indicate that the new venture would provide more and better local programming, including local news and information.⁵⁰⁴ The Applicants state that NBCU has an unparalleled commitment to localism, with the average NBC O&O airing more than 30 hours per week of local news and public affairs programming.⁵⁰⁵ They represent that, after the transaction, Comcast will make focused investments in both NBC and the NBC O&Os to provide the highest quality programming.⁵⁰⁶ The Applicants cite to the Expert Declaration of University of Southern California Institute of Technology Professor Matthew Spitzer for the proposition that the proposed transaction is fundamentally a vertical transaction that would not reduce diversity or localism.⁵⁰⁷

194. The Applicants also have made voluntary commitments to address concerns that the transaction may result in harms to localism. They have committed to "preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations" and to "expand the availability of such programming through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and the use of windows on the O&O schedules."⁵⁰⁸ They

⁴⁹⁹ See *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Johnson v. California*, 543 U.S. 499 (2005); *Lutheran Church-Missouri Synod v. FCC*, 141 F. 3d 344, 354 (D.C. Cir. 1998).

⁵⁰⁰ See *supra* at ¶ 162.

⁵⁰¹ See, e.g., Free Press Petition at 46; Greenlining Petition at 16-21; Greenlining Reply at 4, 11-13; Sen. Franken Letter at 7; NJRC Reply at 33-36.

⁵⁰² See CWA Petition at 8; Greenlining Petition at 21, 26.

⁵⁰³ *Id.* at 24.

⁵⁰⁴ Application at 36.

⁵⁰⁵ Applicants' Opposition at 19.

⁵⁰⁶ *Id.*

⁵⁰⁷ Declaration of Matthew L. Spitzer, Concerning Diversity and Localism Issues Associated with the Proposed Comcast-NBCU Transaction (Jan. 26, 2010) ("Spitzer Declaration"), Application, Appendix 9 at 9.

⁵⁰⁸ Application at 42.

specifically commit that “the NBC O&Os will maintain the same amount of local news and information that they currently provide.”⁵⁰⁹ In the Hispanic MOU, they note their commitment to “an increased investment in local newscasts at the Telemundo stations.” In addition to the launch of a weekly business news program in 2011, they state that they are “committed to the production of local newscasts in the communities where stations are located” and “will not reduce the number of local Telemundo newscasts and will consider expanding local Telemundo newscasts” and will “continue to expand local content in Telemundo station newscasts.”⁵¹⁰

195. Additionally, the Applicants agree to preserve and enrich the output of local news, local public affairs, and other public interest programming on NBC O&O stations with the production, for five years after closing, of an additional 1,000 hours per year of local news and information programming. This programming will be distributed through the use of Comcast’s On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows in the O&O schedules.⁵¹¹ The Applicants describe this programming as local and regional content, including general interest news and public affairs programming, weather, traffic, and other informational programming focused on community events, local lifestyle, fashion, arts and multicultural features.⁵¹²

196. Some commenters do not believe these commitments are sufficient. Free Press faults the Applicants for failing to make a specific commitment in the Application, similar to that made for the NBC O&Os, to invest in news programming for the Telemundo O&Os.⁵¹³ They also point to the potential harm posed by the transaction to local Spanish language communities in the delivery of news, information and public service programming,⁵¹⁴ including emergency alerts.⁵¹⁵ Commenters also take issue with the validity and effectiveness of the Applicants’ 1,000 hour commitment.⁵¹⁶

⁵⁰⁹ *Id.* The Applicants note that the proposed transaction will allow the combined company to air the O&Os’ local news programs on other platforms, such as Comcast local and regional cable networks, VOD and online, expanding the reach of such programming. *Id.* at 40-41.

⁵¹⁰ Hispanic MOU at 9.

⁵¹¹ Application at 42.

⁵¹² *Id.* The Applicants indicate that diverse programming is not limited to traditional news content and may include newsmagazines. *Id.* at 42 n.75. Greenlining suggests as a condition that in the month leading up to any election, the Applicants commit that all NBC and Telemundo O&Os will air a minimum of 10 minutes per day of local political coverage, particularly regarding issues affecting communities of color and low income communities. Greenlining Reply at 30.

⁵¹³ Free Press Reply at 44. Free Press adds that agreeing “not to reduce the *number*” of local Telemundo newscasts reflects no positive change from the *status quo*; moreover it is not even a promise by the Applicants to maintain the same amount of news content in these newscasts. *Id.* at 45 (emphasis in original). Free Press also rejects the Applicants’ voluntary commitment to add 1,000 hours a year of local news programming on NBC O&Os as “trivial,” amounting to only an additional 16 minutes per day. Free Press Petition at 54; *see also* Greenlining Petition at 45, 48; DIRECTV Comments at 62-63.

⁵¹⁴ In its Reply, Free Press states, “When NBC acquired Telemundo in 2002, it promised to improve the quality of Spanish-language news. Instead, it gutted local newscasts and jobs at Telemundo stations, replacing them with ‘hubbed’ regional newscasts.” Free Press Reply at 44. It maintains that rather than funnel resources into serving the Spanish community through the Telemundo O&Os, NBC laid off 700 employees, many of them Telemundo staff, and eliminated local newscasts at five Telemundo stations in Houston, Dallas, Denver, San Jose and Phoenix, replacing them with a single “hubbed” newscast out of Fort Worth, TX. Free Press Petition at 57. Free Press attaches as Appendix B to its Petition the Declaration of Ivan Roman, Executive Director of the National

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197. *Discussion.* Localism, along with competition and diversity, is a longstanding core Commission broadcast policy objective.⁵¹⁷ The Commission has consistently interpreted the localism obligation to require that broadcasters air material that is responsive to the needs and interests of the communities that their stations serve, including local news, information, and public affairs programming.⁵¹⁸ That the proposed transaction is largely vertical and complies with the Commission's ownership rules does not ensure that localism obligations will be honored by the O&Os.⁵¹⁹ Moreover, Comcast's proposal to distribute such programming on multiple platforms as well as over Comcast-NBCU's O&Os is insufficient to protect localism.⁵²⁰ The Commission's localism goal, which Professor Spitzer notes overlaps with diversity,⁵²¹ seeks the dissemination of such programming "from as many different sources, and with as many facets and colors as possible."⁵²²

198. The Applicants have addressed many of the concerns in the record regarding the impact of the proposed transaction on localism, and we adopt several of their commitments as conditions of this Order.⁵²³ In addition, in light of the legitimate concerns expressed in the record by commenters concerning the potential impact of the proposed transaction on localism, we believe that we must impose conditions calling for additional affirmative steps by the Applicants to ensure that the Commission's localism objective will be served.

199. We note the Applicants' voluntary commitment regarding the increased provision of local news, local public affairs and other public interest programming on NBC's O&O stations, particularly their commitment to add 1,000 hours annually of additional news and information

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Association of Hispanic Journalists, who opposes the proposed transaction in light of its adverse impact on Telemundo and the Spanish language community. *See also* Greenlining Reply at 8.

⁵¹⁵ Free Press Petition at 55-57.

⁵¹⁶ Greenlining urges that the Applicants be required to: (a) hire at least three new minority reporters at each NBC O&O, who will be featured on prime time newscasts; (b) return news crews at Telemundo O&Os to pre-2006 consolidation staffing levels; (c) fulfill the 1,000 hour news commitment with local, rather than regional, programming, which level will be maintained indefinitely; and (d) commit that the Telemundo O&Os will also produce an additional 1,000 hours of local news in the year following the closing, which they will maintain indefinitely. Greenlining Reply at 29. Free Press also questions the allocation of the 1,000 hours and whether the programming will be *bona fide* news and public affairs material. Free Press Petition at 54-55; *see also* AFTRA Letter at 2.

⁵¹⁷ *See, e.g., In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004) ("*Localism NOP*").

⁵¹⁸ *Id.* at 12425.

⁵¹⁹ Spitzer Declaration at 5-6; *see also* Free Press Petition at 40-41.

⁵²⁰ Spitzer Declaration at 10-11.

⁵²¹ *Id.* at 11.

⁵²² *Associated Press v. United States*, 326 U.S. 1, 28 (1945).

⁵²³ *See* Appendix A. In addition to the commitments and conditions noted herein, the Applicants have also expressed their commitment to continuing to provide free OTA through their O&Os and broadcast affiliates throughout the nation, and have also entered into agreements with the NBC Affiliates and those of ABC, CBS and Fox. *See* Appendix F. These commitments and agreements will strengthen the financial viability of those stations, which will assist them in continuing to produce and broadcast locally responsive programming.

programming over those facilities, and make them conditions to this Order. To ensure the robustness of this commitment, we require that this additional 1,000 hours of programming be original news and information, locally produced by each NBC O&O, and that it air on the primary or multicast channel of each station that produces it.⁵²⁴

200. Furthermore, all broadcast stations, including the Telemundo O&Os, have an obligation to honor the localism obligation and provide their communities with locally oriented news, public affairs, and other informational programming. We are particularly mindful of the distinct news, information and emergency alert needs of the Spanish language audience. Thus, we extend the condition requiring the Applicants to air additional original, locally produced and locally oriented news programming over the NBC O&Os to require a similar commitment, for 1,000 hours per year, with regard to the Telemundo O&Os, which will air the programming on the primary channel of each producing Telemundo O&O. We do not believe that these conditions will unduly intrude on Comcast-NBCU's editorial discretion because it will be free to determine what programming its stations will air to meet these obligations.⁵²⁵ We only direct it to provide original, locally responsive news and information programming, consistent with its localism obligation as a broadcast licensee. We also note that, in creating these additional hours of local news and information programming, the Applicants have voluntarily committed to provide for increased opportunities for participation by journalists and programming creators from the local communities for which it is creating these local news and information programs.⁵²⁶

201. In order to allow the Commission to monitor the combined companies' performance of these obligations, we require that they submit quarterly reports to the Commission identifying the number, nature, and duration of local news and information programs aired over each O&O station.⁵²⁷ These reports will also reflect the amount of local news aired over each NBC and Telemundo O&O, consistent with the Applicants' commitment to increase such programming. To allow transparency to the public, Comcast-NBCU must post these reports on its website and on those of each of its O&Os.

202. In light of our goal to ensure that communities will continue to have access to diverse and vibrant sources of news and information that will enable the local citizens to enrich their lives, their communities and our democracy,⁵²⁸ we also welcome Comcast-NBCU's commitment to engage in cooperative arrangements between certain of its NBC O&Os and locally focused non-profit news organizations that provide reporting on issues of interest to each such station's market or region. The Applicants have committed that, within 12 months of the closing, at least half of the NBC O&Os will have in place such cooperative arrangements, and that they will continue such activities for three years. We make this commitment a condition to our Order. To inform us about the progress of these efforts, we also require Comcast-NBCU to file reports with the Commission every six months, until the expiration of

⁵²⁴ If the additional news and information programming is carried on a multicast channel of an NBC O&O, that multicast channel must, at the time of the broadcast, achieve actual distribution to at least 50 percent of the television households within the DMA.

⁵²⁵ *See supra* ¶ 162.

⁵²⁶ Letter from Kathy A. Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 16, 2011).

⁵²⁷ Sen. Franken and Free Press each have called for such a reporting requirement. *See* Sen. Franken Letter at 11; Free Press Reply at 42-43; *see also* Greenlining Reply at 12.

⁵²⁸ *See FCC Launches Examination of the Future of Media and Information Needs of Communities in A Digital Age*, Public Notice, 25 FCC Rcd 384 (MB, OSP 2010).

this condition, providing specific information about the nature of its arrangements and the result of their joint efforts. To provide the public access to this information, Comcast-NBCU must post each report on the website of the participating O&O.

4. Journalistic Independence

203. *Positions of the Parties.* A number of commenters contend that Comcast's ownership interest in the joint venture may unduly influence the journalistic independence of NBC News operations.⁵²⁹ Specifically, Greenlining asserts that NBC News must not be hampered in reporting on the activities of GE or Comcast.⁵³⁰

204. The Applicants state that, since GE's acquisition of NBC in 1986, GE has ensured that the content of NBC's news and public affairs programming is not influenced by the non-media interests of GE. Under this policy, which was noted with favor when the Commission approved GE's acquisition of NBC, NBC and its O&O stations have been free to report about GE without interference or influence.⁵³¹ In addition, GE appointed an ombudsman to further ensure that the policy of independence of NBCU's news operations would be maintained.⁵³² Although the Applicants contend there is no legal requirement that they do so, they offer to maintain this policy and to retain the ombudsman position in the post-transaction entity to ensure the continued journalistic integrity and independence of NBCU's news operations.⁵³³

205. Some commenters contend that this commitment is unsatisfactory. Bloomberg asserts the ombudsman does not ameliorate Comcast's potential anticompetitive actions which would result from ownership of a controlling interest in NBCU and its programming.⁵³⁴ Greenlining says that it is unclear what authority the ombudsman would have, whether this authority can be increased or decreased at will by Comcast, and what the ombudsman's term of appointment will be, including whether the ombudsman can be removed without cause.⁵³⁵

206. *Discussion.* As discussed above, under the Commission's localism requirement, each broadcast licensee must air programming, including news and information, that is responsive to the needs and interests of the community that its station is licensed to serve.⁵³⁶ In order to help enable licensees that carry the news programming of the combined entity to meet this obligation, it is important that the proposed transaction not compromise the journalistic operations of NBCU. Such independence is a basic tenet of our communications policy, designed to allow "the widest possible dissemination of information

⁵²⁹ See Greenlining Petition at 46; Bloomberg Petition at 53.

⁵³⁰ Greenlining Petition at 46.

⁵³¹ Application at 132 & n.297 (citing *Applications of Stockholders of RCA Corporation, Transferors, and General Electric Company, Transferees*, Memorandum Opinion and Order, 60 RR 2d 563, 573 (1986) ("GE-NBCU Merger Order")). The Applicants assert that GE extended this policy to the news operations of CNBC, MSNBC, Telemundo, and its O&Os as they were created or acquired. Application at 132.

⁵³² *Id.*

⁵³³ See *id.* at 132-33.

⁵³⁴ Bloomberg Petition at 53.

⁵³⁵ Greenlining Petition at 46 & n.207. Greenlining proposes several structural changes to strengthen the authority and independence of the ombudsman. See Greenlining Reply at 30.

⁵³⁶ *Localism NOI*, 19 FCC Rcd at 12425, ¶ 1.

from diverse and antagonistic sources.”⁵³⁷ Particularly in light of the continued reliance by Americans on broadcast television as their primary source of news and information,⁵³⁸ and the importance of an informed electorate to our democracy, it is fundamental that news and public affairs programming be diverse and free from undue influence.⁵³⁹

207. For these reasons, we conclude that it is appropriate to condition our approval of this transaction on the Applicants’ commitment to ensure the continued journalistic independence of the Applicants’ news operations. We have stated previously that the manner by which diversified companies integrate broadcast station ownership and operations into their corporate structure and overall business activities is not within the province of this agency.⁵⁴⁰ We do, however, expect such companies to fully discharge their supervisory and other responsibilities with respect to broadcast operations under their ownership and control.⁵⁴¹ Because no commenter has offered evidence that GE’s current policy and ombudsman system have failed to prevent undue corporate influence compromising NBC’s news reporting, we do not find a basis in the record to require more from the Applicants beyond their commitment to continue and extend this policy to their combined operation.

5. PEG Channels

208. *Positions of the Parties.* Several parties comment on the impact that the proposed transaction would have on public, educational, and governmental (“PEG”) channel programming.⁵⁴²

⁵³⁷ See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994).

⁵³⁸ See The Pew Research Center for The People & The Press, *Public Evaluations of the News Media: 1985-2009 at 13* (2009), available at <http://people-press.org/reports/pdf/543.pdf> (“When it comes to local news, television also is where most of the public turns: 64% say they get most of their news about issues and events in their area from television, compared with 41% who say they get most local news from newspapers.”); see also The Pew Research Center for The People & The Press, *Ideological News Sources: Who Watches and Why at 13* (2010), available at <http://people-press.org/reports/pdf/652.pdf> (“Television remains the most prevalent source of news; 58% of Americans say they watched the news or a news program on television yesterday, a percentage that has changed little over the past decade.”); www.hearst.com/press-room/pr-2101130a/php (according to survey by Frank N. Magid Associates, Inc. announced by Hearst on November 30, 2010, “81% of respondents cited local TV news as the ‘most important’ news source among local, network broadcast and cable TV news”).

⁵³⁹ See *Editorializing by Broadcast Licensees*, Report, 13 FCC 1246, 1249, ¶ 6 (1949) (“It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day.”)

⁵⁴⁰ *GE-NBCU Merger Order*, 60 RR 2d at 573.

⁵⁴¹ *Id.*

⁵⁴² See generally Comments of Alliance for Communications Democracy (“ACD”) (filed Jun. 21, 2010) (“ACD Comments”); Reply Comments of ACD (filed Aug. 19, 2010) (“ACD Reply”); Reply Comments of American Community Television (“ACT”) (filed Aug. 19, 2010) (“ACT Reply”); Comments of Greater Metro Telecommunications Consortium (“GMTC”) (filed Jun. 21, 2010) (“GMTC Comments”); Comments of National Association of Telecommunications Officers and Advisors (“NATOA”) (filed Jun. 21, 2010) (“NATOA Comments”); NJRC Reply. Further, the City of Detroit and the Leased Access Producers Association of Wilmington, Delaware raise certain concerns about local franchise matters that we do not address because they are not transaction-related. See generally Comments of the City of Detroit (filed Jun. 21, 2010) (“Detroit Comments”); Reply Comments of the City of Detroit (filed Aug. 19, 2010) (“Detroit Reply”); Letter from Rev. Louis McDuffy, Leased Access Producers Association, to FCC (Aug. 19, 2010) (arguing that the Commission should not approve the proposed transaction since, given Comcast’s past practices, the Commission cannot assume that Comcast will comply with applicable laws and rules). The City of Detroit has filed suit against Comcast seeking to enforce the

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They argue that the increased inventory of programming content and broadcast outlets that the combined entity would own or control poses a threat to all independent programming and content, especially PEG programming, because Comcast-NBCU would have the incentive to use its available channels, including those occupied by PEG channels, for its affiliated programming.⁵⁴³

209. Comcast represents that it will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (*i.e.*, until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.⁵⁴⁴ Some commenters, however, are not satisfied with this commitment.⁵⁴⁵ They urge the Commission to require Comcast to make all PEG channels on all its cable systems universally available on the basic service tier and in the same format as local broadcast channels unless the local government specifically agrees otherwise.⁵⁴⁶ Commenters also ask that the Commission require Comcast to group PEG channel locations with local broadcast channel locations unless the local government specifically agrees otherwise.⁵⁴⁷ Some commenters further urge the Commission to prohibit discrimination against PEG channels and ensure that these channels will have the same features, functionality, and signal quality as that of local broadcast channels carried on the Comcast cable systems.⁵⁴⁸

210. Comcast commits to develop a platform to host PEG content On Demand and On Demand Online and select five Comcast service area locations to serve as trial sites within three years of closing.⁵⁴⁹ Some commenters, though, argue that (1) PEG content should be available as Comcast rolls out its video portals, not three years thereafter; (2) Comcast should file status reports regarding this roll-out semi-annually; and (3) including PEG in On Demand platforms should be in addition to, and not in

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PEG support and other provisions of its franchise agreement with Comcast. *City of Detroit v. Comcast of Detroit, Inc.*, Case No. 2:10-cv-12427 (E.D. Mich. 2010).

⁵⁴³ ACD Comments at 1, 5-6; NATOA Comments at 1; NJRC Reply at 36.

⁵⁴⁴ See Application at 68-69. The Applicants note that this commitment is consistent with the Consent Judgment agreed to in its February 2010 settlement of litigation with certain franchise authorities in Michigan, which did not include those in Detroit. See *id.* at 68, n.118. See generally *City of Dearborn v. Comcast of Michigan III, Inc.*, Case No. 08-10156 (E.D. Mich.).

⁵⁴⁵ See generally ACD Comments; ACD Reply; ACT Reply; GMTC Comments; NATOA Comments; NJRC Reply.

⁵⁴⁶ ACD Comments at 8; ACD Reply at 5; GMTC Comments at 4-5; NATOA Comments at 4-5; NJRC Reply at 45.

⁵⁴⁷ ACD Comments at 10-11; ACD Reply at 7-8; NJRC Reply at 46.

⁵⁴⁸ ACD Comments at 11; ACD Reply at 8-9; ACT Reply at 8; NATOA Comments at 8; NJRC Reply at 46. As part of this requirement, commenters ask that the Commission require that all PEG programming be easily accessed on menus and easily and non-discriminatorily accessible on all Comcast platforms. ACD Comments at 13; ACD Reply at 10; NJRC Reply at 46.

⁵⁴⁹ See Application at 69. Sites will be chosen to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities, and Comcast will consult with leaders in the trial communities to determine what programming would most benefit local residents. Comcast further commits to filing annual reports with the Commission staff to inform it of progress on the trial and implementation. *Id.*

lieu of, continued PEG carriage in a linear channel format.⁵⁵⁰ Other commenters would like the Commission to make clear that the choice of programming made available on these additional platforms should be made solely by the PEG programmer, and that Comcast should have no role in this programming selection process.⁵⁵¹

211. The Applicants respond that these commenters fail to offer any evidence that the proposed transaction would have any harmful effect on PEG programming—and that many of their requests are not transaction-related and should not be included as conditions in this proceeding.⁵⁵² The Applicants believe that their commitments are sufficient to allay concerns regarding PEG.⁵⁵³ They further contend that requiring PEG channels to be maintained on the basic service tier would conflict with federal law and certain franchise agreements and state franchising laws that allow flexibility in PEG channel placement.⁵⁵⁴ In response to ACD's request that the Applicants place PEG channels with broadcast channels, the Applicants state that Comcast will comply with all applicable federal, state, and local requirements pertaining to PEG channel placement, but that the Act does not impose any such channel placement obligations.⁵⁵⁵

212. The Applicants also state that, because PEG channels are not statutorily protected by a non-discrimination provision, they need not have the same features, functionality, and signal quality as those of local broadcast channels.⁵⁵⁶ The Applicants state that their voluntary commitment related to On Demand and Online PEG programming goes beyond what is required of any company by current law.⁵⁵⁷ They also confirm that the VOD and online platform commitment is designed to enhance existing PEG channel carriage and is not a replacement for existing PEG franchise commitments.⁵⁵⁸ In response to the opposition to Comcast's selecting PEG content for VOD, the Applicants clarify that the effectiveness of this trial will depend upon collaboration with the PEG access community and local community

⁵⁵⁰ ACD Comments at 13; ACD Reply at 10; ACT Reply at 7-9; GMTC Comments at 6; NATOA Comments at 8; NJRC Reply at 46. As part of this proposed condition, commenters also ask that Comcast's commitment to develop a platform to host PEG content On Demand and On Demand Online within three years of closing apply to public access programming, as well as educational and governmental programming. Comcast notes in its Reply that this omission was a typographical error, and that it intends to include public access in its On Demand and On Demand Online commitment. Applicants' Reply at 19, n.58. We agree that public access channels should be included within the scope of this commitment.

⁵⁵¹ GMTC Comments at 8; NATOA Comments at 10.

⁵⁵² Applicants' Opposition at 307-311.

⁵⁵³ *Id.* at 307.

⁵⁵⁴ *Id.* at 308-309; Applicants' Reply at 18. The Applicants also argue that NATOA's proposal to move all PEG channels currently being provided in a digital format back to an analog format would force PEG programmers to abandon the advantages of digital carriage. Applicants' Opposition at 308.

⁵⁵⁵ Applicants' Opposition at 309.

⁵⁵⁶ *Id.* at 309, 311. They also assert that there is no regulatory requirement that PEG programming be accessible on all Comcast platforms. *Id.*

⁵⁵⁷ *Id.* at 54-55; Applicants' Reply at 19.

⁵⁵⁸ Applicants' Opposition at 54.

partners.⁵⁵⁹ Comcast therefore commits that it will not play an editorial role in determining which PEG programming will be available either on VOD or On Demand Online (subject to technical limitations such as VOD server space), but that it will work with communities to determine what works best from a technology, cost, and subscriber interest perspective.⁵⁶⁰ The Applicants believe the three year period to conduct and evaluate such tests is appropriate.⁵⁶¹

213. *Discussion.* We find that the Applicants' commitments in the proposed transaction would be beneficial to the continued viability of PEG programming, and thus to the public interest, and adopt them as conditions of the transaction, with some modifications. Congress afforded PEG channels special status in order to promote localism and diversity, and we believe that this transaction requires us to ensure that these objectives are preserved.⁵⁶² In addition, Congress has noted that "PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry."⁵⁶³ PEG channels serve these objectives by providing subscribers locally oriented educational information about health and cultural matters and the operation of their government.⁵⁶⁴ The availability of this information informs community members' voting and other civic decisions and improves the quality of their lives and those of their families.⁵⁶⁵

214. Therefore, we impose as a condition the Applicants' commitment to refrain from migrating PEG channels to digital until the entire system is converted to digital or until "a community agrees."⁵⁶⁶ Moreover, we believe the public interest is served by requiring Comcast to maintain PEG channels on its digital starter tier (D0), or on an equivalent tier that reaches at least 85 percent of Comcast's subscribers. We believe that this condition—in conjunction with maintaining PEG on the analog tier until a system goes all-digital or until the appropriate authority expressly agrees otherwise—is necessary in order to ensure that the Applicants do not harm PEG as a result of the increased inventory of programming content and broadcast outlets that the combined entity would own or control. To address concerns about discrimination in the delivery of PEG channels that arise because of this increased inventory, we also impose a condition that Comcast cannot discriminate against PEG with respect to the

⁵⁵⁹ See Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 1, 2010).

⁵⁶⁰ *Id.*

⁵⁶¹ Applicants' Opposition at 311; Applicants' Reply at 19. The Applicants note that Comcast has no interest in selecting the PEG content that is distributed in these trials, but that it is essential that it work with local community partners to determine what programming they believe is more effectively distributed over a particular platform.

⁵⁶² See, e.g., 47 U.S.C. §§ 531, 543(b)(7); H.R. Rep. No. 102-628 at 183 (1992) ("Making over-the-air broadcast and PEG access channels available on a separate tier promotes the time-honored principle of localism.").

⁵⁶³ H.R. Rep. No. 102-628 at 85 (1992).

⁵⁶⁴ See GMTC Comments at 3-4; NATOA Comments at 3-4; ACD Comments at 2-5; Detroit Comments at 4.

⁵⁶⁵ *Id.*

⁵⁶⁶ We clarify that, under this condition, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (*i.e.*, until all analog channels have been eliminated), or until the governmental entity that is responsible for the system's PEG operations pursuant to the law of the state in question otherwise expressly agrees, whichever comes first. In any event, Comcast will provide advance written notice to the system's franchising authority and the local community of its intent to migrate the PEG channels of the system in question.

functionality, signal quality, and features from those of the broadcast stations that it carries.⁵⁶⁷ We decline to adopt additional proposals regarding channel placement and movement discussed above. Placement of PEG channels is not an issue related to the proposed transaction, and is often dictated by franchise agreement and/or state and local regulations. We also decline to adopt NATOA's proposal that PEG programming currently being provided in a digital format be moved back to an analog format, as we believe such a mandate would be disruptive to consumers and not in the public interest.

215. With respect to the Applicants' On Demand and Online PEG commitment, we also make the commitment a condition and require them to submit semi-annual reports to the Commission, starting six months after closing the transaction, on the progress of its online and VOD platform development. We also establish a series of benchmarks for deployment, outlined in Appendix A. We believe that these time frames are reasonable to allow Comcast-NBCU to analyze the data from the tests necessary to properly develop these platforms in a manner that will maximize their long term benefit to the public. Finally, we believe that Comcast's commitment that it will not play an editorial role in determining which PEG programming will be available either on VOD or On Demand Online should allay the concerns about Comcast's involvement in selecting PEG content for VOD. We agree with the Applicants that all other PEG-related proposals by commenters are either not transaction-related or not in keeping with existing law, and we therefore will not apply them as conditions here.

6. Employment Matters

216. *Positions of the Parties.* Several commenters have raised concerns regarding the Applicants' organized labor and employment practices. They recommend that the Commission deny the Application, or in the alternative, impose conditions to protect workers' rights and community labor standards.⁵⁶⁸ CWA and others assert that, without the Commission's imposition of specific conditions to address such concerns, the transaction poses considerable potential harm to CWA members and other workers.⁵⁶⁹ In light of their concerns, CWA asks that the Commission impose certain conditions on the Applicants related to their labor and employment practices.⁵⁷⁰

217. The Applicants included a voluntary commitment addressing labor relations when they announced the transaction with NBCU.⁵⁷¹ However, in the Application, they ask that the commitment not be made a condition of the Commission's Order in this proceeding because, they assert, the matter is beyond the Commission's jurisdiction.⁵⁷² Nevertheless, Comcast states that it "recognizes and respects

⁵⁶⁷ With respect to signal quality, this condition will not require Comcast to carry a PEG channel in a higher quality format than that of the channel delivered to it, only that it not degrade the quality. For example, Comcast is not required to carry a PEG channel in high definition where the PEG signal is delivered in standard or enhanced definition, no matter in what format it carries local broadcast signals.

⁵⁶⁸ CWA Petition at 50.

⁵⁶⁹ CWA Petition at 8; *see also* Illinois Comments at 5-6; Greenlining Petition at 9; NJRC Reply at 46; AFTRA Letter at 1.

⁵⁷⁰ CWA Petition at 50-51; CWA Reply at 30-31.

⁵⁷¹ *See* Applicants' Opposition at 285, n.958 (citing Memorandum from David L. Cohen, Executive Vice President, Comcast, *Comcast/GE Announcement Regarding NBC Universal* (Dec. 3, 2009)).

⁵⁷² Application at 38 n.69; *but see Applications of AT&T, Inc. and BellSouth Corporation for Approval of Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5807 (2007) ("*AT&T-BellSouth Order*") (noting

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the relationship that NBCU has with its current employees, and it is Comcast's desire to embrace, not disrupt, this relationship," and has "represented that it will honor all of NBCU's collective bargaining agreements."⁵⁷³ The Applicants also represent that they "do not anticipate that any fundamental changes will be made to the manner in which NBCU conducts labor relations," and that "senior representatives of the companies have begun to correspond and meet with representatives of the guilds and unions in the businesses that would be directly affected by the transaction."⁵⁷⁴

218. The Applicants characterize CWA's allegations about Comcast's labor policies as "baseless," not transaction-related and beyond the Commission's jurisdiction.⁵⁷⁵ They contend that Comcast's participation in the National Labor Relations Board ("NLRB") process for resolution of labor disputes demonstrates its commitment "to addressing any complaints by adhering to the procedures established in the applicable CWA bargaining agreement."⁵⁷⁶ The Applicants also note that their proposed transaction has drawn letters of support from the Directors Guild of America and Joint Council 42 of the International Brotherhood of Teamsters.⁵⁷⁷ They state that "the proposed transaction will benefit not only consumers, but also employees of the new joint venture," noting that "numerous commenters have attested to the Applicants' status as 'excellent' employers that provide employees with 'competitive wages and quality benefits.'"⁵⁷⁸

219. Commenters also raise issues pertaining to both Comcast's and NBCU's past efforts to spur diversity among their management and staff and the potential impact of the proposed transaction on workforce diversity. For example, Greenlining states that the actual number of minorities within the management structures of these entities who have the ability to influence content and ensure viewpoint diversity falls "woefully" short.⁵⁷⁹ Mabuhay Alliance urges that any approval of the transaction should include conditions intended to enhance diversity, and contends that Comcast should be required to submit its 2009 employment data, including a breakdown of each level of employment by race, ethnicity and gender.⁵⁸⁰

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the commitment of merging AT&T/BellSouth "to providing high quality employment opportunities in the U.S." and agreeing to repatriate 3,000 jobs that they outsource).

⁵⁷³ Application at 38 n.69.

⁵⁷⁴ *Id.* The Directors Guild of America, Inc. supports the transaction, explaining that Comcast's commitment to add new independent channels and to invest new resources in news programming will provide additional jobs for its members. Letter from Jay D. Roth, National Executive Director, Directors Guild of America, to Marlene H. Dortch, Secretary, FCC (Jun. 21, 2010).

⁵⁷⁵ Applicants' Opposition at 287-291.

⁵⁷⁶ *Id.* at 291.

⁵⁷⁷ *Id.* at 285-286, n.959.

⁵⁷⁸ *Id.* at 291-292 (citing Letter from Beth Kirkland, Executive Director, Economic Development Council of Tallahassee/Leon County, Inc., to Julius Genachowski, Chairman, FCC (Jun. 21, 2010)).

⁵⁷⁹ Greenlining Petition at 10-11.

⁵⁸⁰ Final Comments of the Black Economic Council, The Latino Business Chamber of Greater Los Angeles, and Mabuhay Alliance: Diversity as Important as Net Neutrality, Exhibit A (filed Aug. 19, 2010) ("Mabuhay Final Comments") (suggesting, among other things, that, within six months of closing, the joint venture's Board of Directors must include at a minimum 40 percent minorities, and that employment at all levels of management must

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220. In response, the Applicants indicate that their employment structures reflect a dedication to diversity fully consistent with the Commission's rules, that Comcast's and NBCU's commitments to employment diversity have been widely recognized, and that each has a history of compliance with FCC Equal Employment Opportunity ("EEO") rules.⁵⁸¹ The Applicants state that NBCU "has a solid record in minority hiring and professional development that has been recognized positively by numerous commenters," including various governors, mayors, and civil rights organizations such as the National Urban League.⁵⁸² The Applicants note NBCU's diversity efforts in the areas of advancement, newsgathering opportunities, and its increases in overall African American and Hispanic diversity since 2007.⁵⁸³ Further, the Applicants state that Comcast is "proud of its diverse workforce" and has "a comprehensive series of initiatives to continually improve diversity at all levels."⁵⁸⁴

221. The Applicants have entered into agreements with representatives of the Hispanic, Asian American and African American communities, which seek to bolster their commitment to employment diversity.⁵⁸⁵ As noted in the Diversity Memorandum, and pursuant to the Hispanic, Asian American and African American MOUs, the Rush Letter and otherwise, the Applicants have agreed to implement a number of measures to enhance employment diversity in connection with the transaction.

222. Greenlining takes issue with the adequacy of some of these commitments, urging that Comcast's contemplated Diversity Councils should encompass many groups, including but not limited to African Americans, Asian Americans, Latinos and Native Americans.⁵⁸⁶ It also urges that the Joint Council be empowered to elect a member of Comcast's Board and a member of the joint operation until it is wholly owned by Comcast. Greenlining would require Comcast to elect at least one African American, one Asian American and one Latino to its Board within six months of the closing.⁵⁸⁷

223. *Discussion.* Although the concerns raised by commenters are important, these issues are not related to the transaction. Moreover, these matters are enforced by agencies of government other than the Commission: the NLRB has jurisdiction over issues related to compliance with the laws concerning

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reflect the percentage with proportionate representation of minority groups in the population or its general audience). These organizations assert that this goal is attainable because other prominent telecommunications firms have data that support and affirm their employment diversity goals. They also suggest that the Applicants establish a Minority Advisory Council that will reflect the minority diversity of the nations, with its members jointly selected by the FCC, community groups and Comcast-NBCU. *Id.* NABOB urges the Commission to require Comcast to sell "a significant number" of cable systems to African American-owned companies and to advertise with African American-owned broadcast stations. *See* Reply Comments of NABOB at 4-7 (filed Jul. 21, 2010).

⁵⁸¹ Applicants' Opposition at 247-248.

⁵⁸² *Id.* at 249-250.

⁵⁸³ *Id.* at 251-253.

⁵⁸⁴ *Id.* at 253-257.

⁵⁸⁵ *See* Appendix G.

⁵⁸⁶ Greenlining Reply at 31. The Applicants indicated in the Diversity Memorandum that they intend to establish four external Diversity Councils, collectively forming a Joint Council, "to facilitate open communication on the development, monitoring, and evaluation of the companies' diversity initiatives." Diversity Memorandum at 1.

⁵⁸⁷ *See* Greenlining Reply at 31.

union matters, and the Equal Employment Opportunity Commission, along with relevant state authorities, oversees the laws on workforce discrimination and diversity.⁵⁸⁸

224. With regard to organized labor matters, we accept the Applicants' representations that they will honor all of NBCU's collective bargaining agreements and that, where bargaining unit employees have chosen to be represented by a union, they will not delay good faith negotiations with the bargaining unit representatives. In addition, we note the Applicants' statement that there will be no fundamental change in the manner in which Comcast conducts labor relations and that they will not impede union negotiations or employee organizing activities. We strongly encourage the continuation of their early efforts at reaching out to the guilds and unions that represent their employees to establish the groundwork for positive relationships with them. In view of the scope and breadth of the instant transaction, it is appropriate that labor and management of the proposed joint venture pursue early good faith discussions, and we are pleased they have done so. We also note the Applicants' representations that additional investment and innovation that will result from the transaction will in turn promote job creation and preservation.

225. In view of the record as a whole, we also believe that the Applicants have substantially addressed concerns expressed in the proceeding regarding their past performance in employment diversity. We note the Applicants' voluntary commitments to develop more rigorous employment diversity practices. These include commitments to increase diverse hiring and retention at all levels, to develop career path, internship and scholarship programs, and to increase diverse participation in all programming efforts, in front of and behind the camera. We also note the nature of the undertakings to which the Applicants have committed themselves in their Application, the Hispanic, Asian American and African American MOUs,⁵⁸⁹ the Rush Letter and the Diversity Memorandum, as well as their ongoing efforts to enhance workforce diversity. However, especially in light of constitutional considerations,⁵⁹⁰ our analysis of the employment issues does not depend on these commitments. In light of these considerations and the Applicants' commitments, we also will not impose conditions incorporating the additional diversity obligations proposed by commenters such as Greenlining, Mabuhay Alliance and NABOB.⁵⁹¹

VI. ANALYSIS OF POTENTIAL PUBLIC INTEREST BENEFITS

A. Analytical Framework

226. In determining whether approval of a transaction is in the public interest, the Commission evaluates whether the transaction is likely to produce public interest benefits. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction specific. That is, the claimed benefit must be likely

⁵⁸⁸ Although the Commission maintains EEO rules for broadcasters and MVPDs, those rules focus on employment recruitment practices, rather than workforce diversity. See 47 C.F.R. §§ 73.2080, 76.71; *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002).

⁵⁸⁹ The Diversity Advisory Councils, with which the Applicants have agreed to consult, will include representation by the community elements proposed by Greenlining. See Hispanic MOU at 4; Asian American MOU at 4; African American MOU at 4.

⁵⁹⁰ See *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).

⁵⁹¹ See, e.g., Greenlining Reply at 31; Mabuhay March 15 Opposition at 5; Mabuhay Final Comments, Exhibit A; NABOB Reply at 7.

to occur as a result of the transaction but unlikely to be realized by other practical means having fewer anticompetitive effects. Second, the claimed benefit must be verifiable.⁵⁹² The Applicants, who possess much of the information relating to the potential benefit of a transaction, are required to provide sufficient supporting evidence to permit us to verify the likelihood and magnitude of each claimed benefit.⁵⁹³ Benefits expected to occur only in the distant future are inherently more speculative than more immediate benefits. Third, the Commission calculates the magnitude of benefits net of the cost of achieving them.⁵⁹⁴ Fourth, the benefits must flow through to consumers, and not inure solely to the benefit of the company.⁵⁹⁵

227. The Commission applies a “sliding scale approach” to its ultimate evaluation of benefit claims. Where potential harms appear both substantial and likely, the Applicants’ demonstration of claimed benefits must reveal a higher degree of magnitude and likelihood than the Commission would otherwise demand.⁵⁹⁶ On the other hand, where potential harms appear less likely and less substantial, we will accept a lesser showing.⁵⁹⁷

B. Alleged Benefits

1. Cooperation and Agreement Between the Parties

228. *Positions of the Parties.* The Applicants argue their vertical integration will reduce the barriers or friction preventing them from reaching agreements over content distribution, and that greater access to content will promote the creation of new programming and the accelerated deployment of new media distribution services.⁵⁹⁸ They state it is difficult to structure long-term contracts with unaffiliated content providers who are reluctant to commit their content to, or invest in new content for, new and unproven distribution models.⁵⁹⁹ They cite the difficulties Comcast experienced in launching its VOD, “day-and-date” movie releases, Fancast Xfinity TV/TV Everywhere, and advanced advertising

⁵⁹² *News Corp.-Hughes Order*, 19 FCC Rcd at 610, ¶ 317; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20630, ¶¶ 189-90.

⁵⁹³ *News Corp.-Hughes Order*, 19 FCC Rcd at 610, ¶ 317; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20630, ¶ 190.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Application of Western Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13053, 13100, ¶ 132 (2005).

⁵⁹⁶ *News Corp.-Hughes Order*, 19 FCC Rcd at 611, ¶ 318; *Applications of Ameritech and SBC Communications for Consent to Transfer of Control of Licenses and Authorizations*, 14 FCC Rcd 14712, 14825, ¶ 256 (1999).

⁵⁹⁷ *AT&T-BellSouth Order*, 22 FCC Rcd at 5762, ¶ 203.

⁵⁹⁸ See Application at 54-61; Applicants’ Opposition at 59-60 & n.160; Applicants – Rosston May Report at 28-29. Several commenters also agree the merger will promote innovation. See Letter from Frederic Kurkjian, Senior Vice President, Technicolor USA, Inc., to Julius Genachowski, Chairman, FCC, at 2 (Jul. 8, 2010); Comments of Cisco Systems, Inc. at 1 (filed Jun. 21, 2010); Comments of Motorola, Inc. at 1 (filed Jun. 21, 2010).

⁵⁹⁹ See Application at 64. The Applicants state that rapid changes in technology, costs and demand for video products and services give rise to uncertainty in contracting over what content, delivery platforms, and revenue models will work best. Licensing of video content also is claimed to be complex due to the number of platforms and services in play, the difficulty of anticipating issues arising from new technologies, the fear that parties’ interests are not aligned, or the possibility of *ex post* appropriation. See *id.* at 62-64.

services,⁶⁰⁰ and argue Comcast's eventual success with VOD (after acquiring an interest in MGM) exemplifies the synergies likely to arise from the joint venture.⁶⁰¹ They anticipate content gained through the transaction will accelerate developments in the business model for in-home on demand movies, as well as online video,⁶⁰² and encourage Comcast's investment in the joint venture's programming assets.⁶⁰³

229. Parties opposing the proposed transaction argue reduced transactional friction does not result in a transaction-specific benefit given that launch of the aforementioned services is likely, and indeed continues, even absent vertical integration.⁶⁰⁴ They also argue it is too speculative to draw the inference that Comcast would invest in NBCU properties in the same way it has invested in its own underperforming networks given the two sets of networks are not similarly situated.⁶⁰⁵

⁶⁰⁰ See Application at 61; Applicants – Rosston May Report at 12; Applicants' Opposition at 61 (citing Applicants – Rosston/Topper Report at 4).

⁶⁰¹ See Application at 57. The Applicants assert that Comcast's VOD service was slow to attract consumers until Comcast's acquisition of an ownership interest in MGM in 2005. That purchase, according to Applicants, expanded Comcast's rights to provide Sony and MGM movies free on VOD and consumer reaction to its VOD service subsequently became more favorable. The Applicants further contend that as studios realized VOD's success posed no threat to their existing business models, they further increased the amount of content they made available for VOD, resulting in benefits to both consumers and stakeholders. See *id.* at 55-57; Applicants – Rosston May Report at 17.

⁶⁰² See Application at 57-61; Applicants – Rosston May Report at 18-25.

⁶⁰³ Applicants' Opposition at 25; see also Applicants – Rosston May Report at 5-6. As proof that Comcast will make these investments, Applicants point out that Comcast's average increase in programming expenditure on its own cable networks was [REDACTED] between 2005 and 2009 – higher than the average increase of [REDACTED] for all other cable networks not owned by Comcast. See Applicants – Rosston/Topper Report at 8-9 (citing [REDACTED]).

⁶⁰⁴ Free Press Reply at 35-36. DIRECTV disputes Applicants' assertion that increased access to content accelerated the development of VOD, and argues that [REDACTED]. Furthermore, it asserts [REDACTED]. DIRECTV Reply at 44-45; see also DIRECTV Comments at 54. DIRECTV asserts that day-and-date movie releases would likely happen even if the proposed transaction is never consummated, noting that the Media Bureau recently granted a petition by MPAA to enable early releases of movies for in-home viewing. See DIRECTV Comments at 56 n.151 (citing *Motion Picture Association of America*, 25 FCC Rcd 4799 (MB 2010)). Furthermore, commenters note the nation's major studios (including Universal) and cable operators (including Comcast) recently launched a \$30 million national campaign to promote movies on demand, including day-and-date releases, and the President of Warner Bros. Home Entertainment Group stated he expects nearly all of their titles will be day-and-date this year. DIRECTV Comments at 56 & nn.152-53; see also Free Press Reply at 36-37 & n.101. Free Press also points to Comcast's Q2 2010 Earnings Call statement that about half the films it receives are approved for day-and-date release and that both Warner Brothers and Universal state such releases "make[] sense." Free Press Reply at 36 n.99 (citing Comcast Q2 2010 Earnings Call, Transcript Jul. 28, 2010).

⁶⁰⁵ DIRECTV Comments at 58-59. DIRECTV argues that contrary to the Applicants' assertions, Comcast's networks had very modest programming budgets and low ratings and required budget increases to enable them to become viable. See *id.* at 58. DIRECTV argues Rosston's May Report has not established that NBCU networks are similarly underperforming for lack of investment. See *id.* at 58-59. According to DIRECTV, internal documents that show that (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED]. DIRECTV Reply at 46 & nn.146, 149. Furthermore, DIRECTV states that an exhibit submitted shows that [REDACTED]. See *id.* at 47. Furthermore, DIRECTV argues that the evidence indicates Comcast may actually invest less in NBCU, [REDACTED]. See *id.* at 47-48 (citing 31-0000COM-1785, [REDACTED]).

230. The Applicants retort that they have never claimed launch and delivery of the aforementioned services was impossible without vertical integration—only that the transaction would accelerate innovation.⁶⁰⁶ Furthermore, by becoming a better and more efficient competitor, the Applicants argue they will not only benefit consumers directly, but will put pressure on competitors to follow suit and produce more competitive products and services.⁶⁰⁷

231. *Discussion.* We agree that the transaction will likely reduce some of the barriers and friction that exist when unaffiliated content providers and distributors negotiate to reach agreements. Particularly in a time of uncertainty and change, the difficulty of accurately predicting (and therefore allocating) the risks and rewards in agreements that involve departures from standard business models can inhibit the bargaining process and slow innovation. While we recognize this benefit, it is difficult to quantify aside from specific commitments and contexts. Nevertheless, we will give it some weight, since it is a transaction-related change in structure that will change incentives, while acknowledging its potential impacts, *e.g.*, on introduction of novel products and services, are hard to specify in advance.

2. Facilitate Broadband Goals

232. *Positions of the Parties.* This transaction holds the promise of promoting the growth of video on the Internet and accelerating broadband adoption. The Applicants state that given the intense competition in the entertainment environment, it is reasonable to expect that the Applicants' investments and innovations will spur advancements by others in order to maintain their ability to compete effectively.⁶⁰⁸ As discussed in this Order, online video does encourage the demand for broadband, and to support competition in the online video marketplace, we impose certain conditions to check the Applicants' enhanced ability and incentive to thwart innovation and new developments in online video services.⁶⁰⁹

233. *Discussion.* We note that the Applicants have made commitments to expand broadband deployment to unserved areas, including rural communities, and to facilitate increased broadband adoption by low income households.⁶¹⁰ Specifically, Comcast will expand its existing broadband networks to reach approximately 400,000 additional homes. Comcast also will provide Internet access service in additional rural communities and provide courtesy video and HSI service to 600 new locations (such as schools and libraries) in underserved, low-income areas. To further encourage broadband adoption, Comcast will make available to low-income households HSI access service for less than \$10 per month, and personal computers, netbooks, or other computer equipment at a purchase price below \$150. We find that these commitments will lead to greater broadband demand, deployment and adoption, and thus adopt them as conditions so that the public will realize these considerable benefits.

234. In addition, in the National Broadband Plan, in order to fill the critical need for more spectrum for wireless broadband, the Commission proposed to recover up to 120 MHz of spectrum from broadcast television through incentive auctions in which licensees would have the option of participating

⁶⁰⁶ Applicants' Opposition at 61-62; *see also* Applicants – Rosston/Topper Report at 4.

⁶⁰⁷ Applicants' Opposition at 76-77 & n.226. The Applicants suggest for example that the success of Comcast's VOD model has pushed other MVPD's to follow suit. *Id.* at 77-78; Applicants – Rosston May Report at 4.

⁶⁰⁸ Application at 37 & n.68.

⁶⁰⁹ *See supra* Section V.A.2.

⁶¹⁰ Letter from Kathy Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 23, 2010).

by contributing all or a portion of their stations' allocated spectrum.⁶¹¹ Comcast has agreed, subject to certain conditions, to continue to carry on its cable systems the programming of non-commercial educational television stations that have must-carry rights and that it currently carries, either pursuant to the signal carriage obligations under Section 76.55(a) of the Rules,⁶¹² or pursuant to a digital carriage agreement, in the event that the station opts to relinquish all of its spectrum in such an auction. Comcast's agreement to do so will provide the licensees of such stations an additional incentive to choose to participate in such auctions by enabling them to continue to provide programming to the public. We adopt this commitment as a condition of the transaction so that the public interest objective of acquiring much-needed additional spectrum for mobile broadband will be served, but not at the expense of our policy goals of program diversity and localism. Accordingly, we also find that, through this condition, the transaction will assist in meeting the Commission's broadband objectives.

3. Elimination of Double Marginalization

235. *Positions of the Parties.* Another transaction-specific benefit claimed by the Applicants is the elimination of "double marginalization" of programming costs.⁶¹³ The Applicants argue that NBCU currently sells content to Comcast and other MVPDs at a per-subscriber price that is above the marginal cost of that programming, and that MVPDs treat this price as a cost in making their own pricing decisions.⁶¹⁴ They further argue that a vertically integrated Comcast-NBCU would use the actual (and lower) marginal cost of programming as the basis for its pricing, and thus would charge a lower price to consumers or provide a more attractive package to attract customers to its service.⁶¹⁵ The Applicants claim that a substantial number of people that are not receiving NBCU programming would switch to Comcast's expanded basic service in response to a price decrease. The Applicants estimate that eliminating the double marginalization on these subscribers would save [REDACTED] per year.⁶¹⁶ They also argue, however, that this benefit might not be passed on as a reduction in Comcast's prices but instead as an increased investment by Comcast in programming and distribution leading to higher quality packages and more consumer choice.⁶¹⁷

⁶¹¹ National Broadband Plan, Chapter 5, Recommendation 5.8.5, at 88, 90-91.

⁶¹² 47 C.F.R. § 76.55(a).

⁶¹³ See, e.g., Application at 70; Applicants – Rosston May Report at 43-48.

⁶¹⁴ See Applicants – Rosston May Report at 43. The 'marginal cost' in economic terms is defined as the cost to NBCU to distribute its programming to an additional subscriber. In the programming industry, once the typically high fixed-costs of producing video programming are taken into account, the marginal cost is typically low. See *id.* at 43 n.124.

⁶¹⁵ See *id.* at 45. The Applicants modified their analysis after ACA pointed out that any quantification of double marginalization effects should take into account the opportunity cost of payments to NBCU from customers of MVPDs other than Comcast that would switch to Comcast in response to a lower subscriber price. ACA Reply, Att. A Report by Dr. William Rogerson ("ACA Reply – Rogerson Report"). See Applicants' Report by Dr. Mark Israel and Dr. Michael Katz (filed Oct. 25, 2010) ("Applicants – Israel/Katz October Report").

⁶¹⁶ Applicants' Report by Dr. Mark Israel and Dr. Michael Katz at 10 (filed Nov. 15, 2010) ("Applicants – Israel/Katz November Report").

⁶¹⁷ See *id.* at 44-45.

236. In response, ACA's economist calculates that the benefit of reduced double marginalization will be minimal.⁶¹⁸ ACA's economist disagrees with a number of the assumptions the Applicants made in calculating of the average opportunity cost of new customers purchasing NBCU programming from Comcast.⁶¹⁹ He finds a total consumer benefit of the transaction of only \$25.4 million per year and consumer harm of \$316.8 million per year.⁶²⁰ He concludes that over any reasonable range of parameters for double marginalization, the cost reductions will be vastly exceeded by the harm caused by the transaction.⁶²¹

237. *Discussion.* It is well accepted in economic theory that when both an upstream and a downstream firm set their prices above their marginal costs (as NBCU and Comcast do here), vertical integration of the two likely will lead to lower prices (or higher quality goods) for end-users. This is because, as the Applicants state, when considering its costs to set its downstream prices (*e.g.*, for MVPD service), the combined firm will no longer treat the marginal cost of the upstream product (*e.g.*, programming) as the price the downstream firm previously paid but as the lower amount it actually costs to produce it. The combined firm will see its combined marginal costs as lower than the two firms did separately, and it will price accordingly. For this reason, the "elimination of double marginalization" through vertical integration encourages lower downstream prices and increased output than would otherwise be achieved. We therefore agree with the Applicants that the elimination of double marginalization of NBCU programming costs likely will result in some benefits for consumers. But we conclude that the Applicants' calculations likely overstate these benefits. We agree with ACA's economist that the analysis of the benefits of double marginalization must account for revenues NBCU loses when subscribers who already receive NBCU programming from another MVPD switch to Comcast. As set forth in more detail in the Technical Appendix, we also question some of the key parameters that the Applicants' economists assume, and conclude that the Applicants have failed to substantiate some of the likely benefits to consumers of eliminating double marginalization and have overstated others.

4. Economies of Scale and Scope

238. *Positions of the Parties.* The Applicants assert their transaction will give rise to economies of scale and scope in their provision of video programming, advertising and cross-promotions. The Applicants claim the transaction will permit them to share resources in sports, local news, and entertainment programming such as on-air talent and studio capabilities, and thereby allow the combined company to reduce costs, expand output, and improve the quality of its programming.⁶²² They argue that once a program is created, the cost for making it available for distribution at more times and on more

⁶¹⁸ ACA Reply – Rogerson Report; Letter from Barbara Esbin, Counsel for ACA, to Marlene Dortch, Secretary, FCC (Nov. 8, 2010) Att. A, Report from Dr. William Rogerson ("ACA – Rogerson November Report").

⁶¹⁹ For instance, ACA's economist disagrees with the Applicants' assumption that rival MVPD customers switching to Comcast who are not currently receiving NBCU programming would be just as likely to sign up for NBCU programming as switching rival MVPD customers who are receiving NBCU programming. ACA – Rogerson November Report at 21-22. Further, he claims that the large majority of customers that Comcast adds from a price drop or improvement in product quality will have received NBCU programming from other MVPDs, and that the opportunity cost of adding these customers almost completely offsets the reduction in marginal costs. *Id.* at 26-27.

⁶²⁰ *Id.* at 27.

⁶²¹ *Id.* at 28.

⁶²² Applicants – Rosston May Report at 38-39.

platforms is low, and as a result, the joint venture's wider distribution will further encourage the creation of more high quality programming.⁶²³

239. For example, the Applicants proffer that consumers will benefit from the distribution of NBC's sports programming on Versus, Golf Channel and Comcast's multiple RSNs, from the increased distribution of sports content on Comcast's VOD and online platforms, and from enhanced local and regional sports coverage resulting from collaboration between NBC O&Os and Comcast's RSNs.⁶²⁴ The Applicants also expect that combining the NBC network with Comcast's national sports networks will create new opportunities for negotiating broader sports rights packages and expanding cross-promotion of broadcast and cable sports.⁶²⁵ Furthermore, the Applicants argue that combining NBCU's interests in Oxygen and iVillage with Comcast's interests in E!, Style, and Daily Candy will allow the sharing of programming, production facilities, reporting, and on-air talent among these multiple women's-oriented networks and websites, leading to increased quality and quantity of women's programming available on broadcast, cable, and online.⁶²⁶ They also assert that brands such as E! News could be extended into non-English programming via the airing of Spanish-language E! News updates on Telemundo.⁶²⁷

240. The Applicants also argue that the transaction will promote economies of scale and scope through Comcast and NBCU's sharing their advertising resources, leading to better tailored and targeted advertising for consumers, including interactive advertising.⁶²⁸ In a number of local markets, the parties have between two and four advertising sales forces between them – including Comcast Spotlight, the local advertising division of Comcast, as well as the sales forces associated with the local Comcast RSN, NBCU O&O, and Telemundo O&O.⁶²⁹ The Applicants assert that the joint venture could combine resources among these entities through their sharing market research and back office support.⁶³⁰

⁶²³ See Application at 70.

⁶²⁴ *Id.* at 50-51. For example, after acquiring an interest in New England Cable News ("NECN" - a regional channel providing news, weather, sports and other information of interest to viewers in the New England area), Comcast arranged for nearby Comcast SportsNet New England ("CSN-NE") to use the news facilities and personnel of NECN to launch new morning and evening local sports news programs without hiring new sports news workers; simultaneously, NECN drew on CSN-NE's strengths to add more local sports content to NECN's news programming. See *id.* at 51-52; Applicants – Rosston May Report at 39-40. The Applicants note that such potential synergies for sharing content and on-air talent also exist between NBC's broadcast sports programming and Comcast's Golf Channel, Versus and multiple RSNs. See Applicants – Rosston May Report at 39; see also Application at 50.

⁶²⁵ Application at 50. In response, DIRECTV argues Comcast and NBCU do not need to merge to bid for sports rights as a joint venture, as TNT and CBS did for the NCAA Men's Basketball Tournament. DIRECTV Comments at 59.

⁶²⁶ Application at 52; Applicants – Rosston May Report at 40. The Applicants argue the transaction will permit talent exchanges, whereby the host of one network program will appear on another network; for example, Al Roker has appeared on multiple NBCU outlets, including NBC News' "Today Show," WNBC-TV's "Live at 5" evening newscast, and The Weather Channel's "Wake Up With Al." Applicants – Rosston May Report at 39. The Applicants argue that sharing on-air talent across networks also makes it easier to retain top talent by increasing their exposure, value, and ultimately compensation. *Id.* at 40.

⁶²⁷ Applicants – Rosston May Report at 40.

⁶²⁸ *Id.* at 36-37; see also Applicants – Rosston/Topper Report at 48.

⁶²⁹ Applicants – Rosston May Report at 40-41.

⁶³⁰ *Id.* at 41.

Furthermore, while Comcast's current Spanish-language advertising sales are small and not a significant presence, the Applicants expect the joint venture will allow Telemundo sales teams with close relationships to Spanish-language advertisers to increase the sales of advertising time supplied by Comcast Spotlight.⁶³¹ Finally, the Applicants note Comcast's heavy investment in interactive advertising services such as Project Canoe.⁶³² [REDACTED]. However, the Applicants assert that successful implementation of interactive advertising will require network and advertiser participation which will be facilitated by NBCU and Comcast's common control.⁶³³ In response, DIRECTV asserts that Project Canoe's interactive advertising products are being adopted regardless of the transaction.⁶³⁴ However, the Applicants respond that the article cited by DIRECTV for support also acknowledges that Project Canoe has faced setbacks, failed to spark early interest among cable networks, and is still in preliminary stages and in limited markets.⁶³⁵

241. Finally, the Applicants argue the transaction could also allow the joint venture to realize efficiencies in cross-promotion.⁶³⁶ At present, there are no promotions of Comcast channels on NBCU networks or *vice versa*, and, absent the transaction, the Applicants assert it is highly unlikely there will be any. After the transaction, however, they anticipate an increase in the frequency and scale of cross-promotions.⁶³⁷ They argue the joint venture could promote regional and national sports programming on NBC and Comcast RSNs, and *vice versa*, or cross-promote among cable networks and broadcast channels, as well as over multiple media and platforms. They assert such cross-promotion will benefit consumers by raising their awareness of programming, leading to greater viewer enjoyment.⁶³⁸

242. *Discussion.* We agree the transaction would tend to promote certain synergies and economies of scale and scope in the areas of programming, advertising, and cross-promotion.⁶³⁹ We

⁶³¹ *Id.*

⁶³² *Id.* at 26 (citing Tim Arango, *Cable Firms Join Forces to Attract Focused Ads*, The New York Times, Mar. 10, 2008) (Project Canoe is a joint venture by the nation's six largest cable companies allowing national advertisers to buy customized ads on these six systems which are targeted to an individual's taste and lifestyle and permit the viewer to use a remote control to request information on a product.).

⁶³³ Applicants – Rosston May Report at 27-28.

⁶³⁴ DIRECTV notes that Canoe Ventures recently announced that four major media companies—including NBCU—will begin rolling out interactive advertising applications before the end of this year's second quarter. See DIRECTV Comments at 57 (citing A. Crupi, "Canoe Lands Four Network Partners With 1 TV in Sight," MEDIAWEEK (May 17, 2010) (available at http://www.adweek.com/aw/content_display/news/media/e3i6478fc41cf5464a5760a16a5a089fa69)).

⁶³⁵ Applicants' Opposition at 61 n.165.

⁶³⁶ See Applicants – Rosston May Report at 41.

⁶³⁷ See Application at 66 (citing Pick Decl. at ¶ 20); Applicants – Rosston May Report at 42, ¶ 79.

⁶³⁸ See Application at 66; Applicants – Rosston May Report at 42-43.

⁶³⁹ For example, as part of the commitments the Applicants have made to strengthen the NBCU O&Os and their independence, Comcast has offered, when negotiating for national distribution rights for major sporting events, to negotiate for distribution on NBC in a manner that is available to the NBC broadcast affiliates. See Appendix F, NBC Affiliates Agreement, Section 2(B). Comcast will also work with the NBC affiliates to "seek out and establish new joint venture and other cooperative opportunities as they emerge in the fast changing media environment of the future." See *id.*, Section 8.

nevertheless find that the Applicants have, in some respects, not adequately substantiated the benefits arising from these efficiencies. With respect to programming, we agree with commenters that the Applicants have not shown that efficiencies achieved through combinations of facilities and personnel would result in an increased quantity and diversity of programming rather than a reduction in the number of voices.⁶⁴⁰ The transaction will likely provide more platforms and time (*e.g.*, on Comcast channels) to display the higher quality talent currently controlled by NBCU, and make existing programming more widely available,⁶⁴¹ though some of these benefits may be available practically to the Applicants through more limited contracting short of this transaction. These developments would offer some public benefit. With respect to advertising, we concluded above that the combination of cable and broadcast advertising outlets will not harm competition in the advertising market.⁶⁴² The sharing of resources between cable and broadcasting advertising teams could also lead to more efficient advertising efforts, although Applicants have not substantiated the benefit to the public.⁶⁴³ At the same time, although interactive advertising such as Project Canoe appears to be progressing regardless of the transaction, we agree that the transaction may hasten its adoption. Finally, the cross-promotional opportunities are an example of how the transaction may change incentives so that former competitors may now cooperate, potentially benefitting the public with better information. In sum, we see some identifiable benefits from economies of scale and scope.

5. Children's Programming

243. *Positions of the Parties.* To aid children and their families, the Applicants have committed that Comcast will use its On Demand and On Demand Online platforms and a portion of the NBCU O&Os' digital broadcast spectrum "to speak to kids" and Comcast intends to develop additional opportunities to feature children's content on all available platforms.⁶⁴⁴ In addition, the Applicants agree to provide clear and understandable on-screen TV ratings information for all original entertainment programming across all networks (broadcast and cable) of the combined company, and to apply cable industry best-practice standards for providing on-screen ratings information in terms of size, frequency, and duration.⁶⁴⁵ In an effort to constantly improve the tools and information available for parents, Comcast-NBCU will expand its growing partnership with Common Sense Media ("CSM"), an organization offering enhanced information to help guide family viewing decisions. Comcast will work

⁶⁴⁰ See *supra* ¶ 181.

⁶⁴¹ For example, the Applicants assert Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming. They will also expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms. The Applicants intend to make such programming available online to its subscribers to the extent that it has the legal rights to do so. See Application at 49-50. Furthermore, the Applicants have committed to producing an additional 1,000 hours per year of original, local news and information programming, which they intend to air on multiple platforms, including the primary or multicast channels of NBC and Telemundo O&Os, as well as VOD and online, as appropriate in each market. See *supra* ¶ 200; see also Application at 42 & n.76.

⁶⁴² See *supra* ¶¶ 152-153.

⁶⁴³ The Applicants have agreed that NBCU will offer affiliates branding and advertising availabilities on post-network distribution of NBC network and sports programs on non-MVPD platforms, such as Hulu. See Appendix F, NBC Affiliates Agreement, Section 9.

⁶⁴⁴ Application at 43.

⁶⁴⁵ *Id.* at 45.

to creatively incorporate CSM information in its emerging On Demand and On Demand Online platforms and other advanced platforms, and Comcast-NBCU will look for more opportunities to work with CSM on all Comcast-NBCU platforms.⁶⁴⁶ In addition to these commitments, Applicants have submitted an Agreement to extend and expand the partnership with CSM to provide the resources parents need to make informed media and technology decisions for their families.⁶⁴⁷

244. DIRECTV argues that Comcast's commitment to work with CSM is not a benefit arising from the transaction, but is driven by market forces given that Comcast is already in the process of working with CSM and that DIRECTV has already incorporated CSM's ratings information into its on-screen guide.⁶⁴⁸ Similarly, Free Press encourages Comcast and NBCU's work to make their products and services more consumer friendly, but they argue the Applicants do not need to enter into the present transaction to do this.⁶⁴⁹

245. The Applicants subsequently have made additional commitments. In order to ensure greater access to their promised additional hour per week of children's educational and informational programming, particularly to the often underserved viewing audiences served by the Telemundo stations, the Applicants commit to broadcast this additional hour of children's programming over the primary channel of all Telemundo O&Os, and either the primary or the multicast channel of all NBC O&Os.⁶⁵⁰ The Applicants also voluntarily commit to making several improvements with respect to their parental controls, including an agreement to provide improved parental controls in conjunction with Comcast's program guides and set-top box applications.⁶⁵¹ They pledge to ensure that program ratings information will be included on produced or licensed programming that Comcast-NBCU provide for online distribution, including over Hulu.com.

246. Congress has noted the special need to protect children from over-commercialization—a potentially increasing threat in today's interactive world.⁶⁵² In order to address this concern, the

⁶⁴⁶ *Id.* at 45-46. Specifically, the Applicants note that Comcast is currently in discussions with CSM about a partnership to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband. *Id.* at 46-47. Upon closing and pursuant to a plan to be developed with CSM, Comcast states that it 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.* at 47.

⁶⁴⁷ This Agreement will enable the parties to create and disseminate public service announcements ("PSAs") supporting digital literacy and media education. It also provides the Applicants with CSM content and resources to integrate into its programming. *See* Letter from David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Oct. 27, 2010); Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC (Oct. 27, 2010).

⁶⁴⁸ DIRECTV Reply at 43 (citing Applicants' Opposition at 35).

⁶⁴⁹ Free Press Petition at 62-63.

⁶⁵⁰ If the additional children's programming is carried on a multicast channel of an NBC O&O, that multicast channel must, at the time of the broadcast, achieve actual distribution to at least 50 percent of the television households within the DMA.

⁶⁵¹ The Applicants have agreed to provide improved parental controls for Comcast program guides and set-top box applications, as outlined in Appendix A hereto. *See* Letter from Rick Cotton, Counsel to NBC Universal, Inc., and Kathy Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 10, 2011).

⁶⁵² Children's Television Act of 1990.

Applicants have agreed that they will not air interactive advertising during programs originally produced and transmitted primarily for an audience of children 12 years old and younger, to the extent that they control the advertising.⁶⁵³ Such interactive advertising will be prohibited on any channels affiliated with the joint venture at all times during such programs, including all programming, interstitials, commercial breaks, and promotions.

247. Similarly, for a period of five years after the closing of the transaction, the Applicants commit to provide PSAs with a value of \$15 million per year on topics including digital literacy, parental controls, FDA nutritional guidelines, and childhood obesity, to be run on networks that have a higher concentration than the median cable network of adults 25-54 with children under 18 in the household. In addition, Comcast-NBCU will air at least one PSA on childhood obesity during each hour of its core educational and informational children's programming on its O&Os' primary video channels and two such PSAs per day on PBS KIDS Sprout.

248. *Discussion.* As the Applicants note, serving the special needs of children is a public interest goal long recognized by the Commission.⁶⁵⁴ For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the special needs of children.⁶⁵⁵ We find that the transaction poses no discrete harm to the Commission's goals with respect to children's programming. Rather, the Applicants have voluntarily committed to providing parents and caregivers with the applications and information necessary to monitor children's use of technology and to increase digital literacy. Particularly in light of the unique combination of programming and distribution facilities occasioned by the proposed transaction, the joint venture will be in a unique position to accomplish the Commission's policy goals with respect to children's programming. We acknowledge the Applicants' partnership with CSM and urge Applicants to expand such collaborative efforts to include a broad array of organizations that share the important mission of educating and empowering parents and facilitating digital literacy and media education in our schools, libraries and other community centers. The Applicants have also committed to making a larger quantity of children's educational and informational programming available, while both placing limits on the amount of advertising and increasing the volume of informative PSAs accompanying such programming. In sum, we believe these commitments, which we make conditions of this Order, will help achieve important public interest benefits to children and their families.⁶⁵⁶

6. VOD Programming

249. *Positions of the Parties.* The Applicants commit that they will continue to provide certain VOD programming free or at no additional charge, even as Comcast's VOD capacity expands and

⁶⁵³ See Appendix A.

⁶⁵⁴ See Application at 42; Opposition at 35 (citing *In the Matter of Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996), *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006)).

⁶⁵⁵ *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974).

⁶⁵⁶ The Commission can impose conditions to ensure that the subject transaction leads to beneficial consequences and accordingly will serve the public interest. See *supra* ¶ 26; *AT&T-Cingular Order*, 19 FCC Rcd at 21545, ¶ 43. Precedent exists for considering as a benefit any commitments volunteered by Applicants that do not cure harms and are not directly related to the transaction. See, e.g., *News Corp.-Hughes Order*, 19 FCC Rcd at 473, ¶¶ 329-334.

the number of VOD choices available is increased.⁶⁵⁷ The Applicants also offer a voluntary commitment that any NBCU programming previously provided over VOD at no additional charge will continue to be provided at no additional charge for three years.⁶⁵⁸ Free Press responds that the latter commitment is no more than a promise to maintain the *status quo*—the current rates charged for certain VOD content—not a benefit to consumers generated by the transaction.⁶⁵⁹

250. *Discussion.* Although they do not mitigate distinct harms and are not inherent benefits arising from the proposed transaction, we accept these commitments and find that the proposed price caps will confer an additional public interest benefit.

VII. BALANCING POTENTIAL PUBLIC INTEREST HARMS AND BENEFITS

251. Our task under the Act is to determine whether the “public interest, convenience and necessity will be served” by the grant of the Application.⁶⁶⁰ Once we are satisfied that a proposed transaction will not violate a statutory provision or rule, the public interest standard involves a balancing of potential public interest harms of the proposed transaction and the potential public interest benefits.⁶⁶¹ The Applicants bear the burden of proving, by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.⁶⁶² Our options at this stage are to grant the Application without conditions, grant it with conditions, or designate the Application for hearing if we are unable to make the findings required by the Act for its grant.⁶⁶³

252. The Applicants have chosen to propose this transaction in a time of turmoil and uncertainty in their industry, when some of their peers have chosen to move in the opposite direction.

⁶⁵⁷ Application at 53. Applicants state that Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge. *Id.*

⁶⁵⁸ *Id.* at 53-54. The Applicants commit 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 three-year period after closing. *Id.* at 54. The Applicants clarify that pursuant to a pre-existing agreement, Comcast Cable has the right, but not the obligation, to offer NBC programs on VOD and Comcast initially offered NBC shows on VOD for \$0.99 per episode. *Id.* at 53-54. Because NBC now provides its shows to Comcast for use in VOD at no additional charge, Comcast has committed to providing them at no cost for three years. *Id.* at 54.

⁶⁵⁹ Free Press Petition at 62. Additionally, Avail-TVN asserts that this commitment will negatively impact competition in the niche market for video delivery services. Avail-TVN Comments at 14. It argues this commitment exemplifies how Comcast utilizes low or predatory pricing to foreclose competition from other VOD service providers, and it anticipates that consumers and MVPDs may end up with fewer options as such maneuvers force competitors out of the market. *See id.*

⁶⁶⁰ *See* 47 U.S.C. §§ 310(d), 309(a)&(d).

⁶⁶¹ *See, e.g., Comcast-AT&T Order*, 17 FCC Rcd at 23255, ¶ 26; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 205784, ¶ 25.

⁶⁶² *See id.*

⁶⁶³ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that we designate the Application for hearing. 47 U.S.C. § 309(e).

Traditional business models have been challenged by new technologies, most related to the Internet, which promise remarkable efficiencies but simultaneously threaten to undermine established relationships and structures that have traditionally supported the industry. The Applicants control assets that are at the core of the competitive struggles, not far distant, that may well reshape the communications and entertainment marketplace.

253. Our objective as we evaluate and balance the potential public interest harms and benefits in this case is to protect the values and policies expressed by Congress in the Act, including protecting against anticompetitive actions that could prevent the marketplace from fairly determining what new technologies and business models emerge to best further the public interest—maximizing the variety, quality, and innovation of available programming and minimizing its price, while furthering core values such as localism and diversity.

254. In the previous sections of this Order, we have evaluated various claims of potential harms and have identified those supported by sufficient evidence on the record here to raise substantial material questions of fact. The identified harms generally involve situations in which the transaction would allow the Applicants to obtain or exercise market power or where the combination would adversely affect their incentives to promote the values of localism or diversity. For the harms thus identified, we have examined any voluntary mitigation measures offered by the Applicants, and, where we found them inadequate, have required further measures to avoid the potential harm.

255. Similarly, we have evaluated the alleged benefits of the transaction, including any confirming commitments, according to our applicable standards. The Applicants allege several transaction-specific benefits typical of vertical integration—*e.g.*, elimination of double marginalization, better coordination and easier agreements, particularly on novel joint products, and economies of scale and scope. Opponents challenge these allegations, raising material questions not so much as to their existence as to their magnitude and scope. Some of the alleged benefits are inherently difficult to quantify, yet flow from actual changes in structure and incentives. The Applicants' voluntary commitments are the most easily measurable impacts, though some are mitigation measures to cure potential harms. Others reflect a commitment to use additional resources gained from efficiencies in ways that promote the public interest.

256. We balance the potential public interest harms and benefits with due attention to the context and structure of the current marketplace. The Applicants have chosen vertical integration as their path forward through a marketplace in transition driven by technological change. Joining control over a major distribution channel on one hand and over marquee programming on the other creates potential for public interest harms—most notably to slow down or skew competition and innovation that promises substantial benefits for consumers—but the conditions we impose in this Order are designed to neutralize those possible negative impacts. On the positive side, the transaction will create an entity with a broader range of assets, more potential flexibility for innovation, and some efficiencies of scale and scope. On balance, we conclude that the proposed transaction, as conditioned, should be approved as serving the public interest.

257. Our conclusion is reinforced by several factors. First, the Applicants have made a number of specific voluntary commitments that will promote the public interest goals of the Act—not only expansion of content and protections for children and PEG channels, but enforceable commitments to increase broadband adoption and deployment, promote localism and diversity, and take steps to encourage the availability of more spectrum that will help create competition in broadband delivery. Second, the Applicants are the only major industry participants that have chosen the vertical integration

path at this point. Indeed, Time Warner and News Corp. have both recently separated their programming and distribution assets, and Cablevision is in the process of doing so. Further testing this alternative approach in the marketplace may prove beneficial. In any event, the substantial entities which are not vertically integrated will provide some benchmarks and alternatives free of any adverse incentives created by this transaction. Finally, in addition to the special conditions imposed in this Order, the Act and our rules address the potential harms that may arise from this transaction, and we are able to adjust our regulatory response as necessary to deal with the marketplace as it develops.

VIII. COMPLIANCE WITH COMMUNICATIONS ACT AND COMMISSION RULES AND POLICIES

258. As noted above, for the transaction to be in the public interest, the Applicants and the proposed transaction must be in compliance with the Communications Act, related statutes, and the Commission's rules.⁶⁶⁴ Commission rules that are relevant to this transaction include the vertically integrated cable channel occupancy rule,⁶⁶⁵ the national cable subscriber ownership limit,⁶⁶⁶ and the local television multiple ownership rule.⁶⁶⁷ As we explain below, we find that the proposed transaction would not violate a rule or statutory provision.

A. Cable Ownership Rules and Channel Occupancy Limits

259. Section 613(f) of the Act, adopted as part of the Cable Television Consumer Protection and Competition Act of 1992, requires the establishment of reasonable limits on the number of subscribers a cable operator may serve nationwide (the "cable ownership" or "horizontal" limit) and on the number of channels a cable operator may devote to its affiliated programming networks (the "channel occupancy" or "vertical" limit).⁶⁶⁸ Commission actions to establish specific horizontal and vertical limits did not withstand court challenges.⁶⁶⁹ In response to these actions, the Commission has pending rulemaking proceedings to determine structural ownership limits. Comcast-NBCU will be expected to comply with any revised limits that the Commission adopts in these proceedings.

260. For purposes of the current review, the number of Comcast subscribers would remain unchanged after the transaction and would not exceed the 30 percent ownership limit that the Commission previously has found acceptable.⁶⁷⁰ Comcast represents that it has verified compliance with the channel

⁶⁶⁴ See, e.g., *Sirius-XM Merger Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3276, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43, ¶ 16.

⁶⁶⁵ See 47 C.F.R. § 76.504.

⁶⁶⁶ See 47 C.F.R. § 76.503.

⁶⁶⁷ See 47 C.F.R. § 73.3555(b).

⁶⁶⁸ Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385, 106 Stat. 1460 ("1992 Act"), Communications Act § 613(f), 47 U.S.C. § 533(f).

⁶⁶⁹ *Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009) (finding that the rule capping the market share of any single cable television operator at 30 percent of all subscribers was arbitrary and capricious); *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) *cert. denied*, 534 U.S. 1054 (2001) (holding that the 40 percent limit on vertically integrated cable operators did not satisfy intermediate scrutiny under a First Amendment analysis).

⁶⁷⁰ Application at 12. See also Appendix D *infra*. In addition, neither Comcast nor NBCU owns any attributable interest in a broadband radio service ("BRS") system or satellite master antenna television ("SMATV") system that would implicate the Commission's cable/BRS or cable/SMATV cross-ownership restrictions. Also, NBCU does not

(continued...)

occupancy limits and found that each cable system's individual channel line-up will either include more than 45 unaffiliated channels or exceed the requisite 60 percent of unaffiliated channels post-transaction.⁶⁷¹

B. Broadcast Ownership Rules

261. The local television ownership rule permits common ownership of two full-power television stations in the same Nielsen Designated Market Area ("DMA") if (1) the Grade B contours of the stations do not overlap; or (2) at the time of application, eight independently owned and operating full-power commercial and noncommercial television stations will remain in the DMA post-transaction, and at least one of the two stations to be commonly owned is not ranked among the top four television stations in the DMA based on the most recent all-day (9:00 a.m. – midnight) Nielsen audience share.⁶⁷² We have analyzed the applicable NBCU station ownership and conclude that there will be no violation of the broadcast ownership rules after the transaction. First, Comcast currently holds no attributable interest in a broadcast station licensee. Second, NBCU, through GE's indirect broadcast station licensee subsidiaries, owns and/or holds an attributable interest in permissible duopolies in the following DMAs: Boston, MA-Manchester, NH; Chicago, IL; Dallas-Ft. Worth, TX; Miami-Ft. Lauderdale, FL; and New York, NY. The Applicants have adequately demonstrated compliance with the voice count/numerical ownership restrictions of the local television ownership rule in these DMAs.⁶⁷³ In each DMA at issue, at least eight independently owned and operated broadcast television stations will remain after the transaction, and at least one of the two stations will not rank in the top four in the DMA in terms of audience share. Third, the triopoly NBCU currently has in Los Angeles, California will be eliminated prior to consummation of the transaction.

262. *Los Angeles Triopoly.* In the Los Angeles DMA, NBCU currently controls three television stations: (1) NBC affiliate KNBC(TV), Los Angeles, CA; (2) Telemundo affiliate KVEA(TV), Corona, CA ("KVEA"); and (3) KWHY-TV, Los Angeles, CA ("KWHY"). Stations KVEA and KWHY were acquired as part of the 2002 transaction transferring control of Telemundo Communications Group, Inc. ("Telemundo Communications") to NBC.⁶⁷⁴ We find that NBCU must come into compliance with

(...continued from previous page)

own a financial interest greater than 10 percent or have a management interest in a local exchange carrier ("LEC") providing service within any of Comcast's franchise areas, and therefore the transaction will comply with the buyout restrictions. Application at 75.

⁶⁷¹ *Id.* at 75-77. For example, for its Chicago, IL, system, Comcast shows that after the transaction, 85.18 percent of the channels will be unaffiliated. Of the remaining channels, it states that 7.53 percent of the channels will be NBCU affiliated and 7.29 percent will be Comcast affiliated.

⁶⁷² 47 C.F.R. § 73.3555(b).

⁶⁷³ See Application at 72-75. A wholly owned subsidiary of GE holds an attributable interest in the licensee of three radio stations (KKDV(FM), Walnut Creek, CA; KKIQ(FM), Livermore, CA; and KUIC(FM), Vacaville, CA); as well as two broadcast television stations (KNTV(TV), San Jose, CA; and KSTS(TV), San Jose, CA), implicating the radio/television cross-ownership rule in the San Francisco-Oakland-San Jose, CA, DMA. See 47 C.F.R.

§ 73.3555(c)(2)(i). Ownership of the three radio stations and two television stations will comply with the local radio ownership and local television ownership rules, respectively. Moreover, there will be more than 10 independently owned media voices in the DMA post-merger. See 47 C.F.R. § 73.3555(c)(3). Consequently, we also find that the parties have adequately demonstrated that this existing combination complies with the numerical ownership/voice count restrictions of the radio/television cross-ownership rule.

⁶⁷⁴ *Telemundo Communications Group, Inc. (Transferor) and TN Acquisition Corp. (Transferee) for Consent to Transfer Control*, Memorandum Opinion and Order, 17 FCC Rcd 6958 (2002) ("2002 Telemundo Order").

the ownership rules before we can approve this transaction. As described below, NBCU has taken steps to assign KWHY to a trustee, and we require that this trustee file an application assigning KWHY's license to an independent third party within six months of consummation of the trustee's acquisition of KWHY and consummate that sale within 90 days of the Commission's grant of that application.

263. In the *2002 Telemundo Order* conditionally approving the transfer of Telemundo Communications to NBC, the Commission granted NBC a twelve-month waiver of the local television ownership rule that permitted temporary ownership of the triopoly in the Los Angeles market, but required that progress reports be filed on a quarterly basis demonstrating NBC's efforts to come into compliance with the ownership rules.⁶⁷⁵ Despite the passage of eight years, NBCU has yet to divest the necessary station to bring itself into compliance with the local television ownership rule in the Los Angeles market. Instead, in the Application currently under review, NBCU initially requested an additional "six months after the proposed transaction closes to either (1) divest one of its stations in the Los Angeles, California DMA, or (2) place one of the stations in a divestiture trust that will insulate the station from the Applicants' influence and control."⁶⁷⁶ On May 4, 2010, the parties withdrew this request, and filed an amendment to the Application committing to divest one of NBCU's Los Angeles stations either to a third party or to a divestiture trust prior to consummation of the broader transaction.⁶⁷⁷ On May 17, 2010, NBC Telemundo License, LLC filed an application seeking consent to assign KWHY to Bahia Honda LLC, as trustee.⁶⁷⁸

264. *Positions of the Parties.* On June 21, 2010, Rita Guajardo Lepicier filed a Petition to Deny opposing the assignment of KWHY to the Trust and stating that NBC's move of the KWHY studio may have been improper.⁶⁷⁹ Other commenters also opposed the amended commitment to divest one of NBCU's television stations in the Los Angeles market to a trust prior to consummation of the broader transaction between NBCU and Comcast.⁶⁸⁰ The commenters maintain that the Trust will continue KWHY's alleged eight-year "warehoused" status, and request that the station instead be sold to an independent third party prior to consummation of the broader transaction.⁶⁸¹ Free Press also challenges

⁶⁷⁵ NBCU has regularly filed quarterly reports as required by the *2002 Telemundo Order*. *2002 Telemundo Order*, 17 FCC Rcd at 6979, ¶ 53. On March 14, 2003, NBCU sought an extension of the 12-month temporary waiver. See Letter from F. William LeBeau, Senior Regulatory Counsel and Assistant Secretary, Telemundo of Los Angeles License Corporation, to Marlene H. Dortch, Secretary, FCC (Mar. 14, 2003). That request is pending before the Media Bureau.

⁶⁷⁶ Applications for Transfer of Control, Lead File Nos. BTCCDT-20100128AAG, BTCCDT-20100128ABL and BTCCDT-20100128ABR, Exhibit 19, at 3 (superseded).

⁶⁷⁷ Applications for Transfer of Control, Lead File Nos. BTCCDT-20100128AAG, BTCCDT-20100128ABL and BTCCDT-20100128ABR, Addendum 1 to Exhibit 19.

⁶⁷⁸ Application for Assignment of License, File No. BALCDT-20100517ADJ. As noted above, there will be an internal restructuring of NBCU prior to consummation of the broader transfer of control to Comcast. In connection with such restructuring, NBC Telemundo License Co. has filed an FCC Form 316 application seeking consent to convert from a corporation to a limited liability company. See FCC File No. BALCDT-20100128ABS. Grant of the FCC 316 application, and conversion of NBC Telemundo License Co. to NBC Telemundo, LLC, a limited liability company, is expected to be completed prior to assignment of station KWHY to the proposed Divestiture Trust.

⁶⁷⁹ Petition to Deny FCC Applications of Rita Guajardo Lepicier at 1-2 (filed Jun. 21, 2010) ("Lepicier Petition").

⁶⁸⁰ Reply to Opposition of Free Press, Media Access Project, Consumer Federation of America and Consumers Union at 47-54 (filed Aug. 19, 2010) ("Free Press Reply").

⁶⁸¹ Lepicier Petition at 7; Free Press Reply at 48, 54.

specific provisions of the Divestiture Trust Agreement and maintains that the three NBCU stations in the Los Angeles area have consolidated their operations, making the Trustee's insulation impossible.⁶⁸²

265. The Applicants state that "NBCU has located the sales staffs of KVEA and KWHY in separate buildings and the two sales staffs do not interact with each other. In fact, the sales forces for KVEA and KWHY openly and aggressively compete with one another."⁶⁸³ NBCU acknowledges that KVEA and KWHY may use the same reporters for certain news assignments, but it notes that the composition of all KWHY newscasts is subject to the editorial discretion of KWHY's Executive Producer of News, and its news, sports, and weather anchors, which NBCU states are independent of KVEA.⁶⁸⁴

266. *Discussion.* The Commission has found that trusts can be legitimately used to avoid the applicability of the multiple ownership rules,⁶⁸⁵ so long as the trust is adequately insulated to prevent the beneficiary from exercising control or influence over the trustee. The Commission evaluates trusts as insulation devices on a case-by-case basis, applying the specific standards set forth in the *1984 Attribution Order*.⁶⁸⁶ First, any person or entity holding or sharing the power to vote the assets of the trust, if above the relevant attribution benchmark, will have the interest attributed to it. Second, the beneficiary may not have the unrestricted power to replace a trustee or revoke a trust, unless such power is contingent upon some event beyond the beneficiary's control. Third, the power to sell voting stock may not be retained solely by the beneficiary. Fourth, the trustee must be an independent person with no familial or business relationship with the beneficiary. Finally, "the trust instrument must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities."⁶⁸⁷

267. On November 9 and 29, 2010, NBCU filed amended versions of the Divestiture Trust Agreement to address the concerns raised by Commission staff and commenters. We conclude that the revised Trust is consistent with Commission precedent regarding insulation of trust beneficiaries for purposes of attribution. The sole member of the proposed Trustee, Bahia Honda LLC, is Jose Cancela, who has neither a business nor an ownership or familial relationship with the beneficiary.⁶⁸⁸ Section 1(c)(i) of the Divestiture Trust Agreement states that the Trust will remain irrevocable until KWHY is sold to a third-party buyer or until NBCU divests itself of another television station in the Los Angeles market. The amended Trust prohibits the sharing of employees between KWHY and the other NBCU

⁶⁸² Free Press Reply at 48-53 (citing Comments of CWA, The Newspaper Guild/CWA, and the National Association of Broadcast Employees and Technicians/CWA in 2006 *Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121, at 13-14 (Oct. 23, 2006)).

⁶⁸³ Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 5 (Nov. 9, 2010) ("Applicants' Nov. 9 Letter").

⁶⁸⁴ *Id.* at 5-6.

⁶⁸⁵ *Attribution of Ownership Interests*, Report and Order, 97 FCC 2d 997, 1023-24 (1984) ("*1984 Attribution Order*"); see also *Twentieth Holdings Corporation*, Decision, 4 FCC Rcd 4052 (1989).

⁶⁸⁶ *1984 Attribution Order* at 1024.

⁶⁸⁷ *Id.*

⁶⁸⁸ KWHY Divestiture Trust Agreement Among NBC Universal Media, LLC, Telemundo of Los Angeles, LLC, Telemundo Group, LLC, NBC Telemundo License, LLC and Bahia Honda, LLC ("*Divestiture Trust Agreement*"), at Sections 5(a)(1), 8(d) and 12(h).

stations in the market.⁶⁸⁹ It also eliminates NBCU's ability to establish a minimum price for the station three months after the Trustee's acquisition of the station.

268. However, given NBCU's failure to come into compliance with the multiple ownership rule during the eight years since the *2002 Telemundo Order*, we will not permit an open-ended trust. Thus, we require Bahia Honda LLC to file a complete application for approval of the assignment of KWHY's license to an independent third party qualified to hold the license within six months of consummation of Bahia Honda LLC's acquisition of the station, and require that the parties consummate that sale within 90 days of the Commission's grant of that application.

269. In granting the temporary waiver of the local television ownership rule in Los Angeles, the Commission noted in the *2002 Telemundo Order* that NBCU had committed to maintaining "the stations' separate programming strategies, and will refrain from engaging in joint sales in the Los Angeles market."⁶⁹⁰ Based on the Applicants' Letter filed November 9, 2010, we find that NBCU has complied with this pledge. KWHY's sales office remains in a separate building in Burbank, while the programming department is located on a different floor than those of KVEA's and KNBC(TV)'s local production groups.⁶⁹¹ Finally, we note that with respect to Lepicier's implication that the move of the KWHY studio may have been improper,⁶⁹² KVEA and KWHY were co-located when they were purchased in 2002 and KWHY's sales and administrative offices did not move to Burbank until 2006. We deny Lepicier's Petition with respect to these issues.

C. Pending License Renewal Applications

270. The Commission has stated that, "in multi-station transactions, it will grant the transfer of control application while [a] renewal application is pending as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding."⁶⁹³ In Exhibit 14 to the instant transfer applications, Comcast has agreed "to stand in the stead of the transferor in any pending renewal application proceedings, consistent with the

⁶⁸⁹ The Trustee must have access to all real estate and other assets used in the operation of KWHY so that he can continue to operate the station on a day-to-day basis, as contemplated by the Trust. See Divestiture Trust Agreement at Section 2(a) and 5. To ensure that the Trustee will continue to have access to all real estate and such assets used in the operation of KWHY that are also used by the other NBC stations in the market and accordingly are not conveying to the Trustee, prior to the assignment of KWHY to the Trust, we require that NBCU and the Trustee execute a lease that provides the Trustee such access. With the execution of such a lease, we do not find that the common use of such facilities by the other NBCU stations raises issues as to whether the Trustee is adequately insulated.

⁶⁹⁰ *2002 Telemundo Order*, 17 FCC Rcd at 6975, ¶ 43.

⁶⁹¹ See Applicants' Nov. 9 Letter at 5.

⁶⁹² Lepicier Petition to Deny at 2-3. In their Opposition, NBCU and the Trustee state that such a move was not inconsistent with the *2002 Telemundo Order*. See Joint Opposition to Petition to Deny of NBC Telemundo License, LLC and Bahia Honda LLC (Jul. 21, 2010) at 5, n.19.

⁶⁹³ *Shareholders of CBS Corporation*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 16072, 16072-16073, ¶ 3 (2001). See also *Stockholders of CBS, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3733 (1995), aff'd, *Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841 (1996).

Commission's policy."⁶⁹⁴ As discussed in Section IX of this Order, we find that both the transferor and transferee are basically qualified to hold Commission licenses.⁶⁹⁵ In light of this finding, and the commitments made in the Application, we find that the existence of pending renewal applications does not prohibit us from acting on the broader transaction.

271. There are 11 NBCU television station license renewal applications currently pending.⁶⁹⁶ Commission action on all of these applications has been stayed in part due to pending indecency complaints filed against the stations.⁶⁹⁷ In addition to the 11 pending renewals listed above, there is a pending renewal application for KWHY, which warrants specific consideration because of the proposed assignment of that station to the Trustee.

272. *Positions of the Parties.* Lepicier alleges that KWHY has failed to provide sufficient programming specifically designed to serve the educational and informational needs of children (core programming), as required by the Children's Television Act of 1990 and Section 73.671 of the Commission's Rules, during a portion of the station's most recent license term.⁶⁹⁸ She questions whether certain programs listed on various KWHY's FCC Forms 398, Children's Television Programming Reports, from the second quarter of 2007 through the first quarter of 2009 are actually educational in nature.⁶⁹⁹

273. *Discussion.* Based on the record before us, we find that from April 2002 until April 2003 KWHY failed to properly maintain a public inspection file. It is unclear based on the license renewal application and NBCU's response to the Lepicier Petition exactly how long KWHY's reconstructed file failed to contain the requisite substantiation of compliance with the children's television commercial limits. Also, a review of the Commission's internal database conducted by Commission staff indicates that KWHY's FCC Form 398 for the first quarter of 2007 was not timely filed.

274. With respect to the children's television programming allegations, Commission staff reviewed KWHY's FCC Forms 398 filed during the past renewal cycle. These reports indicate that the station aired the complained-of programming to meet its core programming requirement a total of four

⁶⁹⁴ Applications for Transfer of Control, Lead File Nos. BTCCDT-20100128AAG, BTCCDT-20100128ABL and BTCCDT-20100128ABR, at Exhibit 14, page 2.

⁶⁹⁵ See *infra* ¶¶ 277-284.

⁶⁹⁶ The following are the full-service stations whose license renewals remain pending: WCAU(TV), Philadelphia, PA; WMAQ-TV, Chicago, IL; WNBC(TV), New York, NY; WRC-TV, Washington, D.C.; WVIT(TV), New Britain, CT; KNBC(TV), Los Angeles, CA; KNTV(TV), San Jose, CA; WSNS-TV, Chicago, IL; KNSD(TV), San Diego, CA; KXAS-TV, Ft. Worth, TX; and WKAQ-TV, San Juan, PR.

⁶⁹⁷ In addition to the pending indecency complaints, WRC-TV, Washington, D.C., is the subject of a petition to deny filed by the Parents Television Council ("PTC"). PTC requests that the renewal application not be granted until the Commission adjudicates 16 of its indecency complaints, all of which are attached to PTC's pleading. All 16 of PTC's complaints have been denied. *Complaints By Parents Television Council Against Various Broadcast Licensees Regarding Their Airing of Allegedly Indecent Material*, Memorandum Opinion and Order, 20 FCC Rcd 1920 (2005); *NBC Telemundo License Co.*, Memorandum Opinion and Order, 19 FCC Rcd 23025 (2004); *NBC Telemundo Licensing Co.*, Memorandum Opinion and Order, 20 FCC Rcd 4813 (2005).

⁶⁹⁸ Lepicier Petition at 2-6; Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394; 47 C.F.R. § 73.671.

⁶⁹⁹ Lepicier questions the educational nature of the programs *Zooterapia* and *Angelitos*. Lepicier Petition at 5.

quarters during the last renewal cycle.⁷⁰⁰ Thus, the station potentially failed to fulfill the three-hour core programming guideline during a total of 52 weeks.

275. The Commission and NBCU have negotiated the terms of a Consent Decree attached as Appendix H that resolves the allegations concerning NBCU's potential violation of the Commission's public file and children's television rules at KWHY.⁷⁰¹ As part of the Consent Decree, NBCU has agreed to contribute \$18,000.00 to the United States Treasury. Under these circumstances, and based upon our review of the record, we conclude that NBCU has the basic qualifications to be a Commission licensee. We conclude that there are no remaining substantial and material questions of fact at issue preventing action on the renewal. We grant the pending license renewal application for KWHY and deny in relevant parts the Petition to Deny filed by Ms. Lepicier and the Free Press Reply, subject to the specific representations and commitments contained in the Consent Decree.⁷⁰²

IX. QUALIFICATIONS AND CHARACTER ISSUES

276. *Background.* Section 310(d) of the Act requires that we make a determination as to whether the Applicants have the requisite qualifications to hold Commission licenses.⁷⁰³ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, and financial, technical, and other qualifications."⁷⁰⁴ No issues have been raised in this case that would require us to re-evaluate the basic qualifications of GE, the proposed transferor, and we accordingly find that it is a qualified transferor. As for the qualifications of Comcast, the proposed transferee, Section 310(d) requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under Section 308 of the Act.⁷⁰⁵ Therefore, our review of Comcast includes examination of whether it has the requisite qualifications that we require of all applicants for a Commission license. For the following reasons, we

⁷⁰⁰ The Commission established a license renewal application processing guideline of three hours of core programming per week. *See Policies and Rules Concerning Children's Television Programming: Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, 10718 (1996).

⁷⁰¹ We note that there are a number of outstanding complaints alleging violation of the indecency prohibition, 18 U.S.C. § 1464, by KWHY, which are the subject of separate Tolling Agreements and Assignment Agreements between NBC and the Commission's Enforcement Bureau. These allegations are not being resolved as part of the attached Consent Decree. Our preliminary review of these complaints indicates that they do not raise a substantial and material question of fact concerning NBCU's qualifications to be a Commission licensee. Our determination, however, is without prejudice to whatever further action, if any, the Commission deems appropriate with respect to any pending indecency complaints. *See Stockholders of Infinity Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 5012, 5016 n.1 (1996).

⁷⁰² Because we grant KWHY's renewal application under Section 309(k)(2) of the Act on the grounds that the Consent Decree contains appropriate terms and conditions, we need not determine whether NBCU committed "serious violations" of our rules or violations that constituted "a pattern of abuse" for purposes of Section 309(k)(1). *See Shareholders of Univision Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5859 n.113 (2007).

⁷⁰³ 47 U.S.C. § 310(d).

⁷⁰⁴ *Id.* § 308(b).

⁷⁰⁵ *Id.* § 310(d).

conclude that no issue has been raised that calls into question whether Comcast has the requisite character qualifications as transferee of the subject facilities.⁷⁰⁶

277. *Positions of the Parties and Discussion.* In their Joint Comments, the Parents Television Council, American Family Association, Focus on the Family, Citizens for Community Values, Reclaim Our Culture, Kentuckiana and the Coalition for Marriage and Family (collectively, “PTC”) question whether Comcast holds the requisite character qualifications in light of its offering of “pornographic” material by its adult subscription channels, pay-per-view and on demand networks.⁷⁰⁷ As the Applicants note in their Opposition, PTC fails to identify the programming that it believes violates any statute or rule, much less demonstrate that Comcast’s distribution of it calls to question Comcast’s character.⁷⁰⁸ The Applicants state that “Comcast has every intention of respecting the special legal obligations and the special public interest obligations that attach to television broadcasting,” and “the new NBCU will be fully subject to the Commission’s powers with respect to indecency.”⁷⁰⁹ Under the circumstances, we do not believe that Comcast’s distribution of adult material over its non-broadcast facilities raises a character issue.⁷¹⁰

278. Elan Feldman alleges that a question regarding Comcast’s character is raised in the context of its failure to resolve his private dispute with it in which he is seeking damages for trespass and property damage and injury in its installation of cable wiring on his property, conduct that he characterizes as “stonewalling” and “deceit.”⁷¹¹ He also maintains that Comcast’s conduct violates Section 621 of the Act, which governs the construction of cable systems “over public rights-of-way, and through easements.”⁷¹² In their Opposition, the Applicants state that Mr. Feldman’s grievance “is longstanding and entirely unrelated to the proposed transaction.” Comcast maintains that, notwithstanding its good faith efforts to settle the matter, “Mr. Feldman instead filed a lawsuit in May 2009 that is pending in the Florida courts.”⁷¹³ It indicates that it “strains credulity” to suggest that a single episode of trespass or

⁷⁰⁶ Comcast, through its subsidiaries, already holds a number of Commission licenses. See Appendix C.

⁷⁰⁷ Joint Comments of the Parents Television Council, American Family Association, Focus on the Family, Citizens for Community Values, Reclaim Our Culture, Kentuckiana and the Coalition for Marriage and Family (filed Jun. 21, 2010) at 2.

⁷⁰⁸ Applicants’ Opposition at 275.

⁷⁰⁹ *Id.* at 276.

⁷¹⁰ See *Comcast Corporation and AT&T Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23328, ¶ 213 (2002) (denying petition to deny alleging that AT&T lacks the requisite character due to its distribution of adult materials. The petitioner “does not offer any evidence that a court has adjudged that any programming distributed by AT&T is or was obscene, nor any other evidence to support his allegations.... To the extent that the petition describes programming that might be considered indecent, we note that the services provided by AT&T are not broadcast services, but subscription-based services, which do not call into play the issue of indecency.”).

⁷¹¹ Opposition to Comcast Acquisition of NBC Universal Due to Comcast’s Failure to Serve the Public Interest, Convenience and Necessity of Elan Feldman at 5 (filed Apr. 19, 2010) (“Feldman Opposition”).

⁷¹² Petition to Deny Comcast Acquisition of NBC Universal Due to Comcast’s Failure to Serve the Public Interest, Convenience and Necessity of Elan Feldman at 6 (filed Jun. 14, 2010) (“Feldman Petition”); Reply to Comcast’s Opposition to Feldman’s Petition to Deny Comcast’s Acquisition of NBC Universal of Elan Feldman at 2-6 (filed Aug. 20, 2010).

⁷¹³ Applicants’ Opposition at 317.

property damage could bear on the question of Comcast's fitness to hold a Commission license.⁷¹⁴ Moreover, it notes that, where a dispute is the subject of pending litigation, the Commission will not take cognizance of misconduct unrelated to Commission business unless it is adjudicated.⁷¹⁵

279. Mr. Feldman's dispute with Comcast does not call into question Comcast's character qualifications.⁷¹⁶ Under the Commission's *Character Policy Statement*, the Commission is concerned with misconduct that violates the Communications Act or a Commission rule or policy, and with certain non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies.⁷¹⁷ Moreover, the Commission will not consider in its character determination disputes that are the subject of litigation "absent an ultimate adjudication by an appropriate trier of fact, either by a government agency or court."⁷¹⁸

280. Free Press implicitly raises the question of Comcast's character in connection with its candor in the context of the 2008 complaint that it was engaged in the blocking of lawful Internet content, in violation of the Commission's net neutrality principles. Specifically, Free Press cites the Commission's observation in its Order in the proceeding that Comcast's conduct raised "troubling questions about Comcast's candor during this proceeding."⁷¹⁹ Mr. Feldman also alludes to the matter, maintaining that Comcast Executive Vice President David Cohen "lied" to the U.S. Senate when, in testimony, he stated that "we have never blocked our customers' access to lawful content."⁷²⁰

281. In their Opposition, the Applicants respond that "there is nothing in the Commission's network management proceeding that creates a candor issue relevant to the instant transaction."⁷²¹ Although the Commission concluded in the *Comcast Network Management Order* that there were "troubling questions about Comcast's candor,"⁷²² it made no findings or conclusions in that regard, much less sanctioned Comcast for lack of candor.⁷²³ Moreover, as Comcast notes, the D.C. Circuit vacated that

⁷¹⁴ *Id.* n.1061.

⁷¹⁵ *Id.* at 317.

⁷¹⁶ As noted in the Applicants' Opposition, Mr. Feldman filed a formal complaint concerning the Comcast matter with the Commission in February 2009. *See id.* at 317, n.1059. In response, the Media Bureau informed him that his claims "are not matters that are within the jurisdiction of the Commission." Letter from Steven A. Broecker, Senior Deputy Chief, Policy Division, Media Bureau, to Elan Feldman (Mar. 10, 2009).

⁷¹⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91, ¶ 23 (1986) ("*Character Policy Statement*"), *recons. granted in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom.*, *National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987).

⁷¹⁸ *Character Policy Statement*, 102 FCC 2d at 1205, ¶ 48.

⁷¹⁹ Free Press Petition at 28-29, citing *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation*, Memorandum Opinion & Order, 23 FCC Rcd 13028, 13032 n.31 (2008) ("*Comcast Network Management Order*") ("Comcast's statements in its comments and response to Free Press's complaint raise troubling questions about Comcast's candor during this proceeding.").

⁷²⁰ Feldman Opposition at 3; Feldman Petition at 11-12.

⁷²¹ Applicants' Opposition at 271.

⁷²² *Comcast Network Management Order*, 23 FCC Rcd at 13032, n.31.

⁷²³ *Id.* at 13061, n.248.

decision in *Comcast v. FCC*,⁷²⁴ rendering it void, without precedential effect. With regard to Mr. Feldman's reference to Mr. Cohen's Senate testimony, Comcast notes that, although Mr. Feldman fails to provide the date of the testimony, it appears to be testimony that Mr. Cohen delivered in 2006, years before the FCC proceeding. Accordingly, "it obviously was not an attempt to contradict the facts elicited in an FCC proceeding that had not yet been held."⁷²⁵ We agree that, given the absence of a specific Commission finding or sanction concerning Comcast's candor in its Order, the court's vacating of the Order, and the lack of specificity about Mr. Cohen's testimony by Mr. Feldman, this matter does not call into question Comcast's character.

282. CWA questions Comcast's character "based upon its systematic campaign to undermine its employees' rights under the National Labor Relations Act to union representation and to bargain collectively over wages, benefits and working conditions."⁷²⁶ CWA maintains that Comcast has engaged in "abusive labor practices" by shifting work to non-union contractors earning lower wages.⁷²⁷ It also states that Comcast has been cited by the NLRB for violations of the labor laws and has been ordered by arbitrators to reinstate "illegally fired" employees.⁷²⁸

283. As the Applicants note in their Opposition, the Commission considered and rejected similar character claims by CWA against Comcast in the *Adelphia Order*.⁷²⁹ There, the Commission concluded that CWA's allegations "have not raised issues concerning Commission-related conduct or the types of adjudicated non-Commission misconduct relevant under the *Character Policy Statement*."⁷³⁰ The Commission noted that, as here, "Comcast has stated emphatically that it will abide by labor laws, as well as current and future bargaining unit agreements.... We see no reason not to accept [Comcast's] good faith representations."⁷³¹ For the same reasons, we conclude that these allegations do not raise issues as to Comcast's character in the context of this proceeding.

X. CONCLUSION

284. We have reviewed the proposed transaction, the Application of Comcast, GE and NBCU and related pleadings and other submissions. We conclude that the Applicants are fully qualified and that the public interest benefits promised by the proposed transaction are sufficient to support the grant of the Application, pursuant to the public interest balancing test of Section 310(d) of the Act, subject to the

⁷²⁴ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

⁷²⁵ Applicants' Opposition at 273, n.916.

⁷²⁶ CWA Petition at 9. In support of this contention, CWA also maintains that, when Comcast merged with AT&T Broadband, it reneged on a commitment to engage in fair labor management practices, instead delaying bargaining, denying workers benefits, and otherwise showing "disrespect for employees' rights to collective representation." *Id.* at 9-10.

⁷²⁷ *Id.* at 10.

⁷²⁸ *Id.* at 10-11. As discussed above, in response, Comcast notes its commitment to honor all of NBCU's collective bargaining agreements and otherwise comply with applicable laws. It also argues that the labor and employment issues raised by CWA are not among the categories of misconduct relevant in assessing a transferee's character qualifications under the *Character Policy Statement*. See Applicants' Opposition at 287.

⁷²⁹ *Id.* at 288.

⁷³⁰ See *Adelphia Order*, 21 FCC Rcd 8305-8306, ¶ 238.

⁷³¹ *Id.* at 8360, ¶ 240.

conditions specified in Appendix A. The specific license assignments and transfers granted by this Order are set forth in Appendix C.

XI. ORDERING CLAUSES

285. Accordingly, having reviewed the Application and the record in this matter, IT IS ORDERED, pursuant to Sections 4(i) and (j), 303(r), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 214(a), 214(c), 309, 310(d), that the Consolidated Application for Consent to Transfer Control of various Commission licenses from General Electric Company to Comcast Corporation, as set forth in Appendix C, IS GRANTED subject to the conditions set forth in this Order, including Appendix A and the commitments in the Applicants' letter of January 17, 2011.⁷³²

286. IT IS FURTHER ORDERED, that the conditions and commitments incorporated herein shall continue to apply until the conditions expire by their own terms as expressly stated, or the Commission determines that the conditions or commitments should be modified or removed.

287. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), that the Consent Decree attached as Appendix H of this Order IS ADOPTED.

288. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the Petitions to Deny filed by Bloomberg, L.P., Communications Workers of America, Consumer Federation of America, Consumers Union, Free Press, and Media Access Project, DISH Network L.L.C. and Echostar Corporation, EarthLink, Inc., Elan Feldman, The Greenlining Institute, Rita Guajardo Lepicier, Mabuhay Alliance, National Coalition of African American Owned Media, National Telecommunications Cooperative Association and the Western Telecommunications Alliance, Public Knowledge, and WealthTV, and all similar petitions ARE DENIED except to the extent otherwise indicated in the Order.

289. IT IS FURTHER ORDERED, that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application (File No. BRCT-20060810ACB) of NBC Telemundo License, LLC, for renewal of license for station KWHY-TV, Los Angeles, California, IS GRANTED.

290. IT IS FURTHER ORDERED, that the application (File No. BALCDT-20100517ADJ) to assign the license for station KWHY-TV, Los Angeles, California, from NBC Telemundo License, LLC, to Bahia Honda LLC, as Trustee, IS GRANTED, conditioned on Bahia Honda LLC filing a complete application for approval of the assignment of station KWHY-TV's license to an independent third party that is qualified to hold the license within six months of consummation of Bahia Honda LLC's acquisition of the station and the parties' consummation of that sale within 90 days of the Commission's grant of that application.

⁷³² Letter from Kathy A. Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 17, 2011).

291. IT IS FURTHER ORDERED that the above grants shall include authority for NBCU and Comcast consistent with the terms of this *Memorandum Opinion and Order* to acquire control of any license or authorization issued for any station during the Commission's consideration of the Application or the period required for consummation of the transaction.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A Conditions

I. DEFINITIONS

For purposes of the conditions set forth in Sections I-XX below (“Conditions”), capitalized terms shall have the meanings set forth below:

“AAA” means the American Arbitration Association.

“AAA Rules” means the rules of the AAA from time to time in effect.

“Affiliate” of any person means any person directly or indirectly controlling, controlled by, or under common control with, such person at the time at which the determination of affiliation is being made.

“Attributable Interest” means a cognizable interest in an entity as defined pursuant to 47 C.F.R. §76.1000(b).

“Benchmark Condition” means that an OVD has entered into at least one agreement for Video Programming with a Broadcast Network, Cable Programmer, Production Studio or Film Studio that is not an Affiliate of the OVD.

“Broadband Internet Access Service” means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the Conditions.

“Broadcast Network” means The Walt Disney Company (ABC), CBS, Inc. (CBS), News Corporation (FOX), and their managed or controlled subsidiaries, and their successors and assigns, and any other Person that is one of the top three providers (other than a C-NBCU Programmer) of live or recorded Video Programming over a group of local television stations by U.S. broadcast revenue in the latest declared financial year.

“Business Day” means any day that is not a Saturday or Sunday or a federal holiday.

“Cable Programmer” means Time Warner, Inc., The Walt Disney Company, News Corporation, Viacom, Inc., and their managed or controlled subsidiaries, successors and assigns, and any other Person other than a Broadcast Network or local television station that is one of the four top providers (other than a C-NBCU Programmer) of Video Programming for distribution through MVPDs by U.S. cable revenue in the latest declared financial year.

“Carriage Agreement” means any retransmission consent agreement for broadcast programming or any other agreement for carriage of Video Programming by an MVPD or OVD.

“Claimant” means an MVPD, Qualified OVD or Bargaining Agent.

“Closing” or “Closing the Transaction” means the consummation of the transaction by and among General Electric, NBCU, and Comcast more fully described in paragraphs 1-19 of this Order.

“C-NBCU” means the joint venture created as a result of the transaction approved with conditions by this Order together with its subsidiaries, Affiliates, successors, and assigns.

“C-NBCU Programmer” means Comcast, C-NBCU, their Affiliates and any entity for which Comcast or C-NBCU manages or controls the licensing of Video Programming and/or any local broadcast television station on whose behalf Comcast or NBCU negotiates retransmission consent.¹

“Comcast” means Comcast Corporation together with its Affiliates, successors and assigns.

“Comparable Programming” means Video Programming that is reasonably similar in kind and amount. For purposes of determining whether Video Programming constitutes Comparable Programming, the parties or an arbitrator, as applicable, shall consider the following factors, among others:

- (i) the number of channels and/or shows; and
- (ii) the similarity of the value of the Video Programming, as evidenced by ratings, affiliate fees and/or advertising revenues and the time elapsed since the programming was first distributed.²

The following categories of Video Programming are not Comparable Programming (among others):³

- (i) programming made available for presentation a day or more after it is first presented to viewers is not comparable to programming made available for presentation the first day;
- (ii) sports programming is not comparable to non-sports programming;
- (iii) local news programming is not comparable to programming that is not local news programming;
- (iv) prior season programming is not comparable to original, first-run programming;
- (v) broadcast programming is not comparable to cable programming;
- (vi) Children’s Programming is not comparable to programming that is not Children’s Programming (defined, only with regard to Section XIII, as programming originally produced and aired primarily for an audience of children 12 years old or younger);
- (vii) Films are not comparable to non-Film programming; and

¹ Comcast and NBCU are prohibited from acquiring an Attributable Interest in any provider of Video Programming unless that provider is obliged to abide by the conditions set forth in this Appendix.

² If an agreement triggering the Benchmark Condition involves substantially all of a Person’s linear channel(s), then the C-NBC Programmer may require the OVD to license a bundle of substantially all of C-NBCU’s linear channels (plus other rights if included in the triggering agreement) as the Comparable Programming. If the C-NBCU Programmer opts to license less than the bundle described above, then the parties or arbitrator (as applicable) shall take into account any pricing adjustments from the bundled price necessary to reflect fair market value.

³ Programming shall not cease to be comparable solely because packages of programming contain some programming that is not comparable. For example, a channel, a bundle of channels or a bundle of programs may contain both sports and non-sports programming and still be eligible to trigger the Benchmark Condition or serve as Comparable Programming provided by a C-NBCU Programmer. If a bundle contains a mix of programming, some of which is comparable and some of which is not comparable, the C-NBCU Programmer shall satisfy a demand under the Benchmark Condition to the extent possible by providing programming that is similar in amount to the programming triggering the Benchmark Condition to the extent that programming is comparable to programming of C-NBCU Programmers (e.g., if an OVD obtains 10 shows triggering the Benchmark Condition, 5 of which are comparable to C-NBCU programming, C-NBCU Programmers would have to provide 5 shows).

- (viii) Films in the following categories are not comparable to each other: (x) Films less than five years from initial theatrical distribution, and (y) Films over five years from initial theatrical distribution.

“Economic Model” means the primary method by which the Video Programming is monetized (*e.g.*, ad-supported, subscription without ads, subscription with ads, electronic sell through (“EST”) or PPV/TVOD) reflected in the terms of the agreement(s) for the Comparable Programming.

“Experimental Deal” means an agreement between an OVD and another Person for a term of six months or less.⁴

“Film” means a feature-length motion picture that has been theatrically released.

“Film Studio” means Warner Bros. Entertainment, Fox Filmed Entertainment, Paramount Motion Pictures, Sony Pictures Entertainment, Walt Disney Motion Pictures Group, and their managed or controlled subsidiaries, successors and assigns, and any other Person that is one of the top five distributors (other than a C-NBCU Programmer) of Films by U.S. box office gross revenue in the latest declared financial year.

“MVPD” means a multichannel video programming distributor as that term is defined in 47 C.F.R. § 76.1200(b).

“MVPD Price Condition” means that an OVD is willing to pay the economic equivalent of the price, terms and conditions on which C-NBCU Programmers provide Video Programming to MVPDs.

“NBCU” means NBC Universal, Inc. and its Affiliates.

“Online Video Programming” means Video Programming that any C-NBCU Programmer has the right to enable others (including but not limited to other MVPDs and OVDs, but not including solely Comcast or C-NBCU) to display by means of the (i) Internet or (ii) other IP-based transmission path provided by a Person other than the OVD.

“Order Date” or “date of this Order” means the date on which the Commission releases its Order in MB Docket No. 10-56 resolving the Application, as defined therein.

“OVD” means any entity that provides Video Programming by means of the (i) the Internet or other IP-based transmission path provided by a Person other than the OVD. An OVD does not include an MVPD inside its MVPD footprint or an MVPD to the extent it is offering Online Video Programming as a component of an MVPD subscription to customers whose homes are inside its MVPD footprint.

“Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, officer, or other business or legal entity, whether private or governmental.

“Production Studio” means Warner Bros. Television, 20th Century Fox Television, Paramount/CBS Television Studios, Sony Pictures Television, Disney-ABC Studios, and their managed or controlled subsidiaries, successors and assigns, and any other Person that is one of the top five producers (other than a C-NBCU Programmer) of Video Programming for distribution through Broadcast Networks or Cable Programmers by U.S. production revenue in the latest declared financial year.

⁴ The fact that an agreement includes termination provisions, including termination for convenience, shall not be deemed to reduce the term of the agreement for purposes of this definition. Agreements shall also be deemed to have a term of more than six months if they have no termination, renew automatically unless cancelled for an aggregate term of more than six months, are renewed so they last more than six months in the aggregate, or are successive agreements containing substantially similar conditions and cover substantially similar programming.

“Qualified OVD” means any OVD that meets either or both of (i) the MVPD Price Condition and (ii) the Benchmark Condition.

“Regional Sports Network” and “RSN” mean any non-broadcast video programming service that (i) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball and (ii) in any year, carries a minimum of either 100 hours of programming that meets the criteria set forth in (i) above, or 10% of the regular season games of at least one sports team that meets the criteria set forth in (i) above.

“Similarly Situated MVPD” means an MVPD that is comparable to the OVD seeking a license for Online Video Programming.

“Specialized Service” means any service provided over the same last-mile facilities used to deliver Broadband Internet Access Service other than (i) Broadband Internet Access Services, (ii) services regulated either as telecommunications services under Title II of the Communications Act or as MVPD services under Title VI of the Communications Act, or (iii) Comcast’s existing VoIP telephony service.

“Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable network, regardless of the medium or method used for distribution, and includes but is not limited to: programming prescheduled by the programming provider (also known as scheduled programming or a linear feed); programming offered to viewers on an on-demand, point-to-point basis (also known as video on demand (“VOD”), pay per view (“PPV”) or transactional video on demand (“TVOD”)); short programming segments (also known as clips); programming that includes multiple video sources (also known as feeds, including camera angles); programming that includes video in different qualities or formats (including high-definition and 3D); and Films for which a year or more has elapsed since their theatrical release.

“Video Programming Vendor” has the meaning given that term under 47 C.F.R. § 76.1300(e).

II. CONDITION CONCERNING ACCESS TO C-NBCU PROGRAMMING

If negotiations fail to produce a mutually acceptable set of price, terms and conditions for a Carriage Agreement with one or more C-NBCU Programmers, an MVPD or Bargaining Agent may choose to submit a dispute to commercial arbitration in accordance with the procedures in Section VII below.

III. CONDITIONS CONCERNING CARRIAGE OF UNAFFILIATED VIDEO PROGRAMMING

1. Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).

2. If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood.

3. Comcast shall add ten new independently owned-and-operated channels to its digital (D1) tier on customary terms and conditions as follows: (i) one channel within 18 months of the Order Date; (ii) two additional channels within two years of the Order Date; (iii) one additional channel within three years of the Order Date; (iv) two additional channels within six years of the Order Date; and (v) four additional channels within eight years of the Order Date. For purposes of this Condition, independent

entities deemed to be eligible for such channels are those networks that are not carried by Comcast and not an Affiliate of Comcast or a top 15 programming network, as measured by annual revenues.

4. For purposes of enforcing the Conditions of this Section III, any Video Programming Vendor may submit a dispute to the Commission in accordance with the Commission's program carriage complaint procedures, 47 C.F.R. § 76.1302.

IV. ONLINE CONDITIONS

A. ONLINE PROGRAM ACCESS

1. **MVPDs:** For any Online Video Programming that any C-NBCU Programmer licenses to any Affiliated or non-Affiliated MVPD for online display, the C-NBCU Programmer shall provide that Online Video Programming at fair market value and on non-discriminatory prices, terms and conditions to any other MVPD for online display.

2. **Qualified OVDs:**

a. **MVPD Price Condition:**

- (i) For any Qualified OVD that satisfies the MVPD Price Condition, C-NBCU Programmers shall provide Online Video Programming sought by the OVD to the extent that the Video Programming sought is materially the same as Video Programming that C-NBCU Programmers offer to any Similarly Situated MVPD.
- (ii) The price, terms and conditions shall be the economic equivalent of the price, terms and conditions that a Similarly Situated MVPD would pay for the Online Video Programming. If any obligation is imposed on the Similarly Situated MVPD to make the programming available through a linear channel, the economic equivalent shall include a materially similar obligation.⁵ The economic equivalent should take account of (among other things) (w) any difference in advertising revenues caused by OVD distribution compared with MVPD distribution, (x) the impact on fair market value if Comcast or C-NBCU does not have the rights to enable the OVD to provide all programming as a linear stream over the Internet or other IP-based transmission path, (y) any generally applicable, market-based requirements regarding minimum subscriber and penetration requirements, and (z) any other evidence relevant to whether a C-NBCU Programmer will receive substantially equal Video Programming revenues in connection with the provisioning of Video Programming to the OVD as it would earn from the provisioning of the same Video Programming to an MVPD.
- (iii) The failure of a Qualified OVD to identify a specific Similarly Situated MVPD does not relieve Comcast or C-NBCU of the requirement to provide Online Video Programming to the Qualified OVD at fair market

⁵ The economic equivalent shall not, however, include any provisions from an MVPD agreement that would frustrate the objectives of these Conditions, including but not limited to a requirement that the Video Programming be distributed over an MVPD system.

value based on agreements of MVPDs that are most similarly situated to the Qualified OVD.

b. Benchmark Condition:

- (i) For any Qualified OVD that meets the Benchmark Condition,⁶ C-NBCU Programmers shall provide Online Video Programming sought by the OVD that constitutes Comparable Programming.⁷
- (ii) The price, terms and conditions shall be the economic equivalent of the price, terms and conditions the OVD paid for the Comparable Programming. The economic equivalent should take account of (among other things) any difference in the value of the programming being sought relative to the Comparable Programming. In addition, economic equivalent terms and conditions shall consist of the same basic Economic Model(s) for the Comparable Programming.
- (iii) C-NBCU Programmers shall not at any one time be required to be a party to more agreements triggered by Experimental Deals than the greatest number of agreements then effective between a Broadcast Network, Cable Programmer, Production Studio or Film Studio (including multiple Persons if they are Affiliated) and all OVDs.

3. If negotiations fail to produce a mutually acceptable set of price, terms and conditions for Online Video Programming under Sections IV.A.1 or IV.A.2 above, an MVPD or Qualified OVD, as applicable, may choose to submit a dispute to commercial arbitration in accordance with the procedures set forth in Section VII below. A Claimant may bring a single arbitration for related claims under Section IV.A.1 and IV.A.2 and/or demands under different agreements subject to the Benchmark Condition.

4. A C-NBCU Programmer may require, as a condition of any agreement or award under these provisions (other than pursuant to the Benchmark Condition), that the OVD may display the Online Video Programming only when (i) it would constitute no more than 45% of the Qualified OVD's Video Programming (measured by hours available to subscribers), and (ii) at least one Broadcast Network, Cable Programmer, Production Studio or Film Studio has agreed to provide Video Programming to the OVD (including at least one Broadcast Network providing broadcast programming if the C-NBCU Programmer has agreed to license broadcast programming); provided that the OVD shall have at least two years after the agreement or award to meet this condition (which time limit shall be stayed pending any arbitration and/or appeal), at which point it shall be entitled to display the Online Video Programming.

5. For claims to programming made under Section IV, if a reasonable dispute exists or arises regarding whether a C-NBCU Programmer has the right to grant an OVD the right to the Video Programming at issue, the C-NBCU Programmer may require the Qualified OVD to indemnify it and hold it harmless against any breach of contract, tort, copyright violation or other claim arising out of any lack of right of the C-NBCU Programmer to grant the OVD the right to Video Programming.

⁶ As long as the Benchmark Condition is met at the time a request for programming is made under this Order, it shall continue to be satisfied regardless of any breach or termination of the triggering agreement.

⁷ A Qualified OVD that has obtained programming under the Benchmark Condition shall become eligible for additional Comparable Programming only to the extent it enters into more than one agreement (i) with different programmers for programming subject to different Economic Models or in different categories of programming (e.g., broadcast, cable or Film) or (ii) with the same programmer for additional programming.

B. RESTRICTIONS REGARDING EXCLUSIVITY/WINDOWING

1. No C-NBCU Programmer shall enter into any agreement or arrangement, or enforce any agreement or arrangement entered into after December 3, 2009, which forbids, limits, or creates economic incentives to limit the distribution of such Video Programming through OVDs; provided that nothing in this Section IV.B.1 prohibits a C-NBCU Programmer from entering into or enforcing agreements or arrangements consistent with reasonable, common industry practice. Evidence relevant to what constitutes reasonable, common industry practice may include (among other things) the contracting practices of a C-NBCU Programmer prior to December 3, 2009 and/or the contracting practices of peer companies.

2. A C-NBCU Programmer may also enter into agreements or arrangements forbidding, limiting or creating economic incentives to limit distribution of Video Programming through OVDs upon Commission approval after following the procedures provided under 47 C.F.R. § 76.1002(c)(5) and demonstrating that the agreement or arrangement serves the public interest under 47 C.F.R. § 76.1002(c)(4), provided that for purposes of such demonstration (i) the term “multichannel video programming distribution market” in 47 C.F.R. § 76.1002(c)(4)(iv) shall include OVDs; and (ii) the term “satellite cable programming” in 47 C.F.R. § 76.1002(c)(4)(iii) shall be replaced with the term Video Programming.⁸

3. No C-NBCU Programmer shall enter into or enforce any agreement or arrangement for carriage on Comcast’s MVPD system that forbids, limits or create incentives to limit a broadcast network or cable programmer’s provision of its Video Programming to one or more OVDs; provided that nothing in this Section IV.B.3 would prohibit a C-NBCU Programmer from:

- a. entering into and enforcing an agreement or arrangement under which a C-NBCU Programmer discourages or prohibits a broadcast network or cable programmer from making Video Programming, for which a C-NBCU programmer has agreed to pay, available to consumers for free over the Internet within the first 30 days after a C-NBCU Programmer first distributes the Video Programming to consumers;
- b. entering into and enforcing an agreement or arrangement under which the broadcast network or cable programmer provides Video Programming exclusively to a C-NBCU Programmer, and to no other MVPD or OVD, for a period of time of not greater than 14 days; or
- c. entering into and enforcing an agreement or arrangement which requires that a C-NBCU Programmer is treated in material parity with other similarly situated MVPDs with respect to price and non-price terms, except to the extent application of other MVPDs’ non-price terms would frustrate the purpose of this Order.

⁸ If an arbitration triggered by the Benchmark Condition involves an agreement that would require approval under this Section IV.B.2, and the C-NBCU Programmer has applied for but not received Commission approval (including approval of the Media Bureau on delegated authority) under this Section within 30 days after the demand for arbitration, then the arbitration shall proceed on the basis that the agreement to be arbitrated will not contain provisions that would require approval under this Section.

C. CONTINUED ACCESS TO ONLINE CONTENT AND HULU

1. Comcast and C-NBCU shall continue to provide over nbc.com or an equivalent site, on equivalent terms and conditions (including the lack of any payment requirement), Video Programming of equivalent type, quantity and quality as that provided over nbc.com on the date of this Order so long as at least one Broadcast Network maintains an ad-supported web site displaying at least an equivalent of the nbc.com Video Programming.

2. Except as otherwise provided by Section IV.B, C-NBCU Programmers shall honor any agreement or arrangement entered into before the date of this Order under which they provide rights to Online Video Programming and shall not exercise any right of termination under any such agreement or arrangement other than for material breach by the other party or expiration of the current term of the agreement or arrangement.

3. Provided that the other two content provider partners have renewed their agreements with Hulu on terms that are substantially the same for both partners, C-NBCU shall contemporaneously renew its agreements with Hulu on substantially the same terms and conditions (or enter into agreements on substantially the same terms and conditions as those entered into by the other two content partners), notwithstanding Section IV.B for any agreement materially equivalent to the current agreement between C-NBCU and Hulu. Provided that the other two content provider partners continue to provide Hulu with programming of a type, quantity and quality consistent with their practice during the year period prior to the date of this Order, C-NBCU shall provide its programming on an equivalent basis.

4. Neither Comcast nor C-NBCU shall exercise any right to influence the conduct or operation of Hulu, including those arising from agreements, arrangements or operation of its equity interests (*e.g.*, board seats, voting for directors or other shareholder matters, management and veto rights, etc.) and C-NBCU shall as and from the date of this Order hold its interest in Hulu solely as an economic interest. Within 30 days of the release of this Order, C-NBCU shall submit to the Commission documentation evidencing that its interest in Hulu is purely economic. This provision shall not restrict the rights of a non-Affiliated Person that purchases some or all of C-NBCU's interest in Hulu.

D. STANDALONE BROADBAND INTERNET ACCESS SERVICE

1. Comcast shall continue to provide standalone Broadband Internet Access Service to customers with offerings consisting of speed tiers currently offered in each service area at reasonable market-based prices. At a minimum, Comcast shall offer a service of at least 6 Mbps down at a price no greater than \$49.95 for three years (provided that the price can be increased by no more than any increase in the CPI-U for Communications after two years). If Comcast offers additional speeds in conjunction with other bundled service packages, Comcast shall also offer such speeds on a standalone basis at reasonable, market-based prices. In each case, the standalone offering shall be on equivalent terms and conditions (including but not limited to usage caps) to the most comparable Broadband Internet Access Service offered in a bundled offering.

2. Starting no later than 30 days after the date of this Order, Comcast shall visibly offer and actively market standalone retail Broadband Internet Access Service, including but not limited to (i) providing a linkable web page devoted exclusively to describing (*e.g.*, price and speed) and permitting online purchase of all retail Broadband Internet Access Service standalone options; (ii) running at least one major advertising promotion of the standalone retail Broadband Internet Access Service offering annually; and (iii) ensuring that the standalone Broadband Internet Access Service offering appears with prominence equal to that of bundled offerings on any product list or in any window, menu or other similar place on any call center screen.

3. Within 30 days from the date of this Order, annually thereafter and upon any price adjustment of a standalone Broadband Internet Access Service offering, Comcast shall provide to the Commission a report describing (w) its compliance with the condition in Section IV.D.1, including the number of standalone Broadband Internet Access Service lines provisioned; (x) the standalone Broadband Internet Access Service speeds and pricing being offered to customers in its top 30 markets; (y) the Broadband Internet Access Service speeds and pricing being offered as part of each programming or programming and phone package in its top 30 markets as well as the package price; and (z) the prices and speeds at which competitors offer standalone Broadband Internet Access Service (to the extent known by Comcast) in its top 30 markets.

E. BROADBAND INTERNET ACCESS SERVICE

1. Comcast and C-NBCU shall not offer a Specialized Service that is substantially or entirely comprised of Comcast or C-NBCU affiliated content.

2. If Comcast or C-NBCU offers any Specialized Service that makes content from one or more third parties available to (or that otherwise enables the exchange of network traffic between one or more third parties and) Comcast or C-NBCU subscribers, Comcast or C-NBCU shall allow any other comparable third party to be included in a similar Specialized Service on a nondiscriminatory basis.

3. In all DOCSIS 3.0 markets, Comcast shall provide a level of Broadband Internet Access Service that is at least as fast as its current 12 Mbps down speed tier. The 12 Mbps speed tier is subject to modification based on market changes concerning speed availability from other market Broadband Internet Access Service providers. This Condition does not restrict Comcast's ability to impose byte caps or consumption-based billing, subject to the other Conditions in this Order.

F. SET-TOP BOXES

To the extent that a set top box (and/or CPE or software that is functionally equivalent) provided or made available by Comcast or C-NBCU has a capability that enables a customer to access a Specialized Service, the requirements of Sections IV.E.1 & 2 shall apply to that Specialized Service.

G. UNFAIR PRACTICES

1. Neither Comcast nor C-NBCU shall:
 - a. engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any MVPD or OVD from providing Video Programming online to subscribers or consumers;
 - b. unduly or improperly influence the decision of any vendor in which it has an Attributable Interest to sell, or unduly or improperly influence such vendor's prices, terms and conditions for the sale of, Video Programming to any unaffiliated MVPD or OVD for online distribution to subscribers or consumers;
 - c. unduly or improperly influence the decision of any affiliated broadcast station to grant retransmission consent, or unduly or improperly influence such affiliated broadcast station's prices, terms and conditions for the retransmission of, Video Programming to any unaffiliated MPVD or OVD for online distribution to subscribers or consumers; or
 - d. retaliate against any Person for (i) exercising (or attempting to exercise) any rights under this Order (regardless of whether those rights pertain to online

issues), (ii) participating in the proceeding resulting in this Order, or (iii) licensing Video Programming to any Person or entity.

2. For the avoidance of doubt, the conditions in Section IV.G do not by themselves create a right for any Person to access a C-NBCU Programmer's Video Programming.

V. NOTICE OF CONDITIONS

No later than 20 Business Days prior to the expiration of Carriage Agreement with an MVPD or a Video Programming Vendor or an agreement for online display of Video Programming with an OVD, Comcast or C-NBCU, as applicable, must provide the MVPD, Video Programming Vendor, or OVD with a copy of the Conditions imposed in this Order. A C-NBCU Programmer must provide a copy of the Conditions imposed in this Order within 10 Business Days of receiving a first time request for carriage.

VI. REPLACEMENT OF PRIOR CONDITIONS

These Conditions shall supersede the program access conditions and commercial arbitration remedy imposed on Comcast in Applications for Consent to the Assignment and/or Transfer of Control of Licenses, *Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., Assignees, et al.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8336–39, Appendix B (2006) (“*Adelphia Order*”); provided that nothing in this Order supersedes or otherwise affects arbitrations involving Comcast pursuant to the conditions adopted in the *Adelphia Order* in which a formal demand or notice for arbitration has been provided up to and including the date of release of this Order.

VII. COMMERCIAL ARBITRATION REMEDY⁹

A. INITIATION OF ARBITRATION

1. No more than five Business Days following the expiration of a Carriage Agreement or an agreement for online display of Video Programming, or no more than 90 days after a first time request for carriage or online display of Video Programming, a Claimant may notify the C-NBCU Programmer or Programmers that provide the Video Programming at issue that it intends to request arbitration to determine the terms and conditions of a new agreement. The notification must describe with specificity the Video Programming covered by the Claimant's request for arbitration.

2. An MVPD Claimant may demand a standalone offer for (i) broadcast programming, (ii) RSN programming, (iii) the bundle of all cable programming, and/or (iv) any bundle of Video Programming (including any standalone bundle of Films) that a C-NBCU Programmer has made available to a similar MVPD.

3. A Claimant may not bring an arbitration over Video Programming that is substantially equivalent to Video Programming included in a currently effective Carriage Agreement.

4. Promptly upon issuing such a request, the Claimant shall notify the Commission and provide a confidential summary of the dispute. Such notice and confidential summary shall also be served on each C-NBCU Programmer involved in the dispute.

⁹ These provisions shall apply generally to all arbitrations under Section II and Section IV.A unless otherwise stated. A dispute resolution process validly commenced under procedures established by another governmental entity may be transferred to an arbitrator under these Conditions, and shall be deemed validly commenced for purposes of these Conditions.

5. Upon receiving timely notice of the Claimant's intent to arbitrate, each C-NBCU Programmer must immediately allow and each Claimant must immediately continue carriage, under the terms and conditions of the expired agreement, if any, as long as the Claimant continues to meet the obligations set forth in this condition. In addition, no C-NBCU Programmer shall terminate or interfere with the Claimant's customers' online access to otherwise available programming in connection with a program carriage dispute, regardless of whether the programming is carried pursuant to an agreement. Carriage of the disputed programming during the period of arbitration is not required in the case of first time requests for carriage or online display; provided that the Claimant shall have the option of carrying the disputed programming on the terms of the C-NBCU Programmer's final offer, subject to a true up pursuant to Section VII.B.12 and the requirements of Section IV.A.4.

6. "Cooling Off Period." Following the Claimant's notice of intent to submit the dispute to arbitration, but prior to filing a demand for arbitration with AAA, the Claimant and each C-NBCU Programmer shall enter a "cooling-off" period during which negotiations shall continue.

7. Formal Filing with the AAA. The Claimant's formal demand for arbitration, which shall include the Claimant's "final offer," shall be filed with the AAA no earlier than the 10th Business Day after the filing of the Complainant's intent to arbitrate and no later than the end of the 15th Business Day following such filing. If the Claimant makes a timely demand, each C-NBCU Programmer must participate in the arbitration proceeding.

8. Promptly upon demanding arbitration, the Claimant shall notify the Commission and provide a confidential copy of its demand.

9. The AAA shall notify each C-NBCU Programmer and the Claimant upon receiving the Claimant's formal filing.

10. The C-NBCU Programmer or Programmers shall file a single final offer with the AAA within two Business Days of being notified by the AAA that a formal demand for arbitration has been filed by the Claimant. The C-NBCU Programmer or Programmers shall provide a confidential copy of the final offer to the Commission.

11. The Claimant's final offer may not be disclosed to the C-NBCU Programmer or Programmers until the AAA has received the final offer from the C-NBCU Programmer or Programmers. This shall include any final offer made prior to mediation, if the final offer was subsequently revised pursuant to Section VII.A.15.

12. Promptly upon receiving the C-NBCU Programmer or Programmers' final offer, the AAA shall notify all parties to the arbitration that both final offers have been received. At this time, the Claimant and the C-NBCU Programmer or Programmers shall each provide a copy of their final offer to the other party (either directly or through the AAA).

13. The final offers shall be in the form of a contract for carriage of the Video Programming identified in the Claimant's notice of intent to arbitrate for a period of three years. A final offer may not include any provision to carry any other Video Programming.

14. At any time following the exchange of final offers and prior to the conclusion of the arbitration, either party may accept the other party's final offer, at which point the offer shall become a binding contract between the parties.

15. Following the exchange of the final offers and prior to the initiation of an arbitration hearing the parties may, but are not required to, enter mediation to resolve the dispute or narrow the issues in contention. If both parties agree, they may submit revised final offers following such mediation.

B. RULES OF ARBITRATION

1. The arbitration shall be decided by a single arbitrator under the expedited procedures of the AAA Rules, excluding the rules relating to large, complex cases, but including the modifications to the AAA Rules set forth in Section VIII, below.

2. The arbitrator shall issue a decision within 90 days from the date that the arbitrator is appointed. The arbitrator shall consider at the earliest practicable opportunity, however, any motion that is dispositive of the arbitration in whole or that is dispositive of a significant issue in the arbitration and will speed resolution of the arbitration as a whole.

3. The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not modify the requirement that they engage in final-offer arbitration.

4. In the case of an arbitration under Section II of the Conditions, the arbitrator is directed to choose the final offer of the party which most closely approximates the fair market value of the programming carriage rights at issue.

5. To determine fair market value, the arbitrator may consider any relevant evidence and may require the parties to submit such evidence to the extent it is in their possession or control. The arbitrator may not compel production of evidence by third parties.

6. In the case of an arbitration under Section II of these Conditions, there shall be a presumption that the following types of agreements, unredacted and including all exhibits and related agreements, are relevant evidence of fair market value:

- a. for arbitration related to retransmission consent, current or previous contracts between MVPDs and broadcast stations;
- b. for arbitration related to RSNs, current or previous contracts between MVPDs and RSNs;
- c. for arbitration related to national cable networks, current or previous contracts between MVPDs and national networks; and
- d. for arbitration related to non-sports, non-broadcast regional cable networks, current or previous contracts between MVPDs and non-sports, non-broadcast regional cable networks.

The fact that an agreement relates to more than one type of programming shall not be a basis for limiting its production or allowing redaction of its contents. There shall also be a presumption that for each agreement used as evidence of fair market value, the number of subscribers of the MVPD that is party to an agreement, the ratings for the networks covered by the contract, and similar information relating to the value of the contract terms shall be relevant evidence of fair market value. Any party seeking additional evidence from the other party must demonstrate that the likely probative value of such evidence clearly outweighs the burden of searching for and producing it.

7. Each party shall also provide to the other all evidence that it intends to rely on in the arbitration, including any evidence relied on by any expert in the production of an expert report or preparation of testimony.

8. If a C-NBCU Programmer contends that evidence of its costs and related financial information are relevant to the determination of fair market value for the programming at issue, it shall announce that contention in writing not later than ten Business Days after submitting its final offer. The arbitrator shall determine whether such evidence is likely to be unique to the C-NBCU Programmer and

of probative value to his or her determination. If so, discovery of cost and financial information should be commensurate with the limited nature of the evidence and limited solely to the C-NBCU Programmer at issue (unless a showing can be made that costs are spread across affiliates).

9. The arbitrator may not consider offers prior to the arbitration made by the Claimant and the C-NBCU Programmer or Programmers for the programming at issue in determining the fair market value. This shall include any final offer made prior to mediation, if the final offer was subsequently revised pursuant to Section VII.A.15.

10. If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including reasonable attorney fees) against the offending party.

11. Following the decision of the arbitrator, the parties shall be bound by the final offer chosen by the arbitrator, regardless of the pendency of any appeal unless the appeal nullifies or modifies the award.

12. To the extent practicable, the terms of the final offer chosen by the arbitrator, including payment terms, if any, shall also become retroactive to the expiration date of the previous Carriage Agreement or agreement for online display, if any.

- a. If carriage of the relevant programming has continued uninterrupted during the arbitration process, and if the arbitrator's award requires a smaller amount to be paid than was required under the terms of the expired contract, each C-NBCU Programmer shall credit the Claimant with an amount representing the difference between the amount actually paid under the terms of the expired contract since its expiration and the amount that is required to be paid under the arbitrator's award.
- b. If carriage of the relevant programming has continued uninterrupted during the arbitration process, and if the arbitrator's award requires a higher amount to be paid than was required under the terms of the expired contract, the Claimant shall make an additional payment to each C-NBCU Programmer in an amount representing the difference between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract since its expiration.

13. Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the final award with the Commission and does so in a timely manner.

14. Upon the conclusion of an arbitration demanded under these procedures, whether by settlement or award, the Claimant shall notify the Commission of the conclusion of the proceedings and, if applicable, provide the Commission with (i) a confidential, unredacted copy of the arbitrator's award and (ii) a copy of the redacted version of the arbitrator's award, as produced by the arbitrator pursuant to Section VIII.7, which the Commission will make available to any party who so requests.

C. PROVISIONS APPLICABLE TO ARBITRATIONS UNDER SECTION IV (ONLINE)

1. In the case of an arbitration under Section IV of these Conditions, the arbitration shall take place in two phases if there is a reasonable dispute regarding one or more of the following: (i) whether an OVD is a Qualified OVD; (ii) what Comparable Programming a Qualified OVD is entitled to (for claims under the Benchmark Condition only); and (iii) whether any of the defenses in Section VII.C.3 below would defeat a claim (provided that, with respect to Section VII.C.3, the first phase shall concern defenses based on 47 C.F.R. § 76.1002(b)(1) only). In phase 1, the arbitrator shall determine, as

applicable, the disputes raised in sub-paragraphs (i) through (iii). In phase 2, the arbitrator shall choose the final offer of the party which most closely approximates the fair market value of the programming carriage rights at issue, as defined in Section IV.A.2, above.

2. In the case of an arbitration under the Benchmark Condition, if there is a dispute about what Comparable Programming a Qualified OVD is entitled to, the parties shall submit their final offers for the scope of Comparable Programming at the commencement of the arbitration, as provided under Section IV.A. The arbitrator shall decide which of the two offers for the scope of Comparable Programming most closely approximates the appropriate Comparable Programming. At the conclusion of phase 1, the parties shall submit their final offers for agreements based on the Comparable Programming chosen by the arbitrator.

3. In the case of an arbitration under Section IV of these Conditions, it shall be a defense for Comcast or C-NBCU to demonstrate by a preponderance of the evidence that any of the following reasonably justifies denying the Online Video Programming to a particular Qualified OVD: (i) any of the factors listed under 47 C.F.R § 76.1002(b) as of the date of this Order; or (ii) that providing the Online Video Programming to the particular Qualified OVD would constitute a breach of a contract to which Comcast or NBCU is a party (provided that any provision prohibited under Section IV.B shall not be a defense). For claims under the Benchmark Condition, there shall be a presumption against any defense based on the provisions of part (i) of this paragraph.

4. The arbitrator shall determine allowable discovery and permissible evidence.

D. PROVISIONS APPLICABLE TO SMALL MVPDS

1. An MVPD with 1.5 million or fewer subscribers may appoint an independent bargaining agent to bargain collectively on its behalf (“Bargaining Agent”) in negotiating with a C-NBCU Programmer for carriage of Video Programming, and the C-NBCU Programmer shall not refuse to negotiate with such an entity. An MVPD that uses a Bargaining Agent may, notwithstanding any contractual term to the contrary, disclose to such Bargaining Agent the date upon which its then current carriage contract at issue expires.

2. If a Bargaining Agent chooses to submit a dispute to commercial arbitration, it shall state in its notification of intent to arbitrate the MVPDs that it represents for purposes of the arbitration. If the MVPDs that have appointed the Bargaining Agent have contracts with different expiration dates for the Video Programming at issue, or if some MVPDs have expiring contracts and others are making a first time request for carriage, the Bargaining Agent must notify the C-NBCU Programmer or Programmers that provide the Video Programming that it intends to request arbitration no later than five business days after the expiration of the first contract. If all the MVPDs that have appointed the Bargaining Agent are making a first time request for carriage, the Bargaining Agent may submit its notice of intent to arbitrate at any time following 90 days after the Bargaining Agent’s first time request for carriage on behalf of any of the MVPDs.

3. Each C-NBCU Programmer must allow continued carriage under the terms and conditions of any expired agreement for any MVPD that appointed the Bargaining Agent and has an expired agreement or an agreement that expires during the course of arbitration. Carriage of the disputed programming during the period of arbitration is not required in the case of any MVPD making a first time request for carriage; provided that the Claimant shall have the option of carrying the disputed programming on the terms of the C-NBCU Programmer’s final offer, subject to a true up pursuant to Section VII.B.12 and the requirements of Section IV.A.4.

4. The final offers of the parties shall be in the form of a contract for carriage of the Video Programming (including but not limited to terms concerning both price and carriage) identified in the

Bargaining Agent's notice of intent to arbitrate, for a period of three years, by all MVPDs that have appointed the Bargaining Agent.

5. Following the decision of the arbitrator, all MVPDs that have appointed the Bargaining Agent shall be bound by the final offer chosen by the arbitrator. For each MVPD that has an expired carriage agreement at the time of the award, the terms of the final offer shall become retroactive to the expiration date of that agreement, to the extent practicable. For each MVPD that has a contract that has yet to expire at the time of the award, the final offer shall become effective upon expiration of the existing contract if and to the extent that the term of the arbitrated contract remains in effect (*e.g.*, if the MVPD's contract expired one year after the arbitration award, the effective term of the arbitrated contract would be two years).

6. To determine fair market value, the arbitrator may require the Bargaining Agent as well as all MVPDs that have appointed the Bargaining Agent to submit relevant evidence to the extent it is in their possession. The Bargaining Agent may only be required, however, to produce information in its possession that involves at least one of the MVPDs it has been appointed to represent.

7. If an MVPD with 600,000 or fewer subscribers ("Small MVPD") (including a Bargaining Agent to the extent it is representing Small MVPDs) is the prevailing party in an arbitration, it shall be entitled to recover its legal fees and costs of arbitration. If such an MVPD is not the prevailing party, it shall not be required to reimburse Comcast's or C-NBCU's corresponding fees and costs.

E. REVIEW OF FINAL AWARD BY THE COMMISSION

1. A party aggrieved by the arbitrator's final award may file with the Commission a petition seeking *de novo* review of the award. The petition must be filed within 30 days of the date the award is published. The petition, together with both the redacted and unredacted versions of the arbitrator's award, as produced by the arbitrator pursuant to Section VIII.7, the record before the arbitrator, and transcripts of any arbitration hearings shall be filed with the Secretary's office and shall be concurrently served on the Chief, Media Bureau. An opposition to the petition may be filed within 15 days of the filing of the petition, and a reply to the opposition may be filed within 10 days of the filing of the opposition. The Media Bureau shall issue its findings and conclusions not more than 60 days after receipt of the petition, which period may be extended by the Media Bureau by one period of an additional 60 days. A party may file with the Commission an Application for Review of the Media Bureau's decision.¹⁰ The Claimant shall carry the relevant programming pending the FCC decision, subject to the terms and conditions of the arbitrator's award.

2. In reviewing the award, the Media Bureau or Commission, as appropriate, will examine the same evidence that was presented to the Arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.

3. The Media Bureau or Commission, as appropriate, may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if the Media Bureau or Commission, as appropriate, considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorney fees) of the arbitration.

¹⁰ To the extent a party files a Petition for Reconsideration of the Bureau's decision, if the Media Bureau does not act on the Petition for Reconsideration within 60 days, the Petition for Reconsideration will be deemed denied.

VIII. MODIFICATIONS TO AAA RULES FOR ARBITRATION

1. For purposes of these Conditions, the AAA Rules are modified in several respects as they apply to the arbitration remedy set forth above.

2. *Initiation of Arbitration.* Arbitration shall be initiated as provided in Rule R-4 except that, under Rule R-4(a)(ii), the party initiating arbitration shall not be required to submit copies of the arbitration provisions of the contract, but shall instead refer to this Order in the demand for arbitration. Such reference shall be sufficient for the AAA to take jurisdiction.

3. *Appointment of the Arbitrator.* Appointment of an arbitrator shall be in accordance with Rule E-4 of the Rules. Arbitrators included on the list referred to in Rule E-4 (a) of the Rules shall be selected from a panel jointly developed by the AAA and the Commission and shall be based on the following criteria:

- a. The arbitrator shall be a lawyer admitted to the bar of a state of the United States or the District of Columbia;
- b. The arbitrator shall have been practicing law for at least seven years;
- c. The arbitrator shall have prior experience in mediating or arbitrating disputes concerning media programming contracts; and
- d. The arbitrator shall have negotiated or have knowledge of the terms of retransmission contracts.

4. *Exchange of Information.* At the request of any party, or at the discretion of the arbitrator, the arbitrator may direct the production of current and previous contracts between either of the parties and MVPDs or OVDs, broadcast stations and programming networks that is considered relevant in determining the value of the programming to the parties. Parties may request that access to information of a commercially sensitive nature be restricted to the arbitrator and outside counsel and experts of the opposing party pursuant to a Protective Order, the model for which is attached as Appendix E. If a programming contract contains terms that purport to restrict a party from disclosing the entire contract in an unredacted form absent an order from the Commission or a court, an order by the arbitrator directing the parties to produce the contract shall have the same effect as if it were an order adopted and released by the Commission requiring production of the contract.

5. *Administrative Fees and Expenses.* If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other parties costs and expenses (including reasonable attorneys' fees) against the offending party.

6. *Locale.* In the absence of agreement between the parties, the arbitration shall be held in the city that contains the headquarters of the Claimant.

7. *Form of Award.* The arbitrator shall render a written award containing the arbitrator's findings of fact and reasons supporting the award. If the award contains confidential information, the arbitrator shall compile two versions of the award; one containing the confidential information and one with such information redacted. The version of the award containing the confidential information shall only be disclosed to the Commission or persons bound by the Protective Order issued in connection with the arbitration. The parties shall include such confidential version in the record of any review of the arbitrator's decision by the Commission.

IX. BROADCAST CONDITIONS

1. C-NBCU shall comply with the terms of Sections 2, 3 and 7 of the June 3, 2010 Agreement between Comcast Corporation, NBC Universal, Inc. and the NBC Television Affiliates (the “NBC Affiliates Agreement”), and with all of the terms of the June 21, 2010 Agreement between Comcast Corporation and the ABC Television Affiliates Association, the CBS Television Network Affiliates Association and the FBC Television Affiliates Association (the “ABC, CBS and Fox Affiliates Agreement”), both of which are provided in Appendix F of this Order, with the following clarification and revisions:

- a. Section 3 of the NBC Affiliates Agreement and Section 3 of the ABC, CBS and Fox Affiliates Agreement shall each expire on the date on which NBCU and Comcast are no longer commonly owned and/or controlled.
- b. The second sentence of Section 3 of the ABC, CBS and Fox Affiliates Agreement shall provide: “Comcast agrees that NBCU shall remain solely responsible for negotiating retransmission consent of NBCU Stations with non-Comcast MVPDs (*i.e.*, multi-channel video programming distributors), and Comcast and the Comcast Cable Systems shall remain solely responsible for negotiating retransmission consent with non-NBCU Stations.”

X. DIVERSITY CONDITIONS

1. In order to expand the availability of over-the-air programming to the Spanish language speaking community utilizing a portion of the digital broadcast spectrum of Telemundo’s owned-and-operated broadcast television stations (“O&Os”) (as well as offering such programming to Telemundo affiliates), within 12 months of the Closing of the Transaction, C-NBCU shall launch a new multicast channel on its Telemundo O&Os utilizing library programming that has had limited exposure. Telemundo shall make this programming available to all Telemundo-affiliated broadcast stations on reasonable commercial terms.

2. C-NBCU shall use its On Demand and On Demand Online platforms to feature Telemundo programming.

3. C-NBCU shall continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms. Specifically, C-NBCU shall:

- a. within 12 months of the Closing of the Transaction, increase the number of Telemundo and mun2 VOD programming choices available on its Comcast central VOD storage facilities from approximately 35 to 100 choices. By that time, the majority of Comcast’s cable systems shall have the ability to connect to those facilities and provide access to this additional VOD content. In addition, Comcast shall make the programming available online to its subscribers to the extent that it has the legal rights to do so.
- b. within three years of the Closing of the Transaction, add another 200 VOD programming choices from Telemundo and mun2 on its Comcast central VOD storage facilities, for a total of 300 additional programming choices. In addition, Comcast shall make the programming available online to its subscribers to the extent that it has the legal rights to do so.

4. In 2011, working with an independent producer, C-NBCU shall produce a new weekly business news program, which it shall assist to make available through syndication.

5. For five years after the Order Date, C-NBCU shall file quarterly reports in a uniform format with the Commission containing the following information for the previous three months: the total number of hours of independent programming aired by each broadcast O&O and each owned or controlled programming network, the title of each program, the date(s) and time(s) the program was aired, the length of the program, a short description of the program, and for programs aired by the broadcast O&Os, whether the program aired on the O&O's primary channel or a multicast channel. In addition to filing these reports with the Commission, to enable the public to view the information, C-NBCU shall also post the reports on its website and that of each of its O&Os and programming networks. For purposes of this Condition, independent programming is defined as programming that is: (i) not carried by Comcast as of the date of adoption of this Order by the Commission; and (ii) produced by an entity unaffiliated with Comcast and/or NBCU.

XI. LOCALISM CONDITIONS

1. C-NBCU shall preserve and enrich the output of local news, local public affairs, and other public interest programming on its O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&Os' schedules, it shall expand the availability of all types of local and public interest programming. In furtherance of these objectives, C-NBCU shall:

- a. during the five years after the Closing of the Transaction, not reduce the current level of news and information programming at all NBC and Telemundo O&Os.
- b. during the three years after the Closing of the Transaction, expand such newscasts as provided herein.
- c. during the three years after the Closing of the Transaction, expand local content on Telemundo O&O newscasts, increasing its investment in station newscasts that are produced locally.

2. C-NBCU shall, within 12 months of the Closing of the Transaction and for a period of five years after the launch of such service by its O&O stations:

- a. locally produce by the NBC O&Os, collectively, an additional 1,000 hours per year of original, local news and information programming to air on multiple platforms, including the primary or a multicast channel of each such O&O. If the additional news and information programming is carried on a multicast channel of an NBC O&O, that multicast channel shall achieve actual distribution to at least 50 percent of the television households within the station's DMA.
- b. locally produce by at least six Telemundo O&Os, collectively, an additional 1,000 hours per year of original, local news and information programming, all of which shall air on the primary channel of each such O&O.

3. For purposes of this Condition, news and information programming shall include local and regional content, including general interest news and public affairs programming, weather, traffic and other informational programming.

4. C-NBCU shall file with the Commission, commencing on the later of three months after the Closing (or from the launch of such service over the station) and ending upon the expiration of this Condition, on a quarterly basis for each O&O, the following information in a uniform format regarding the news and information programming aired on the station during the preceding three months: the title of the program, the date(s) and time(s) the program was aired, the length of the program, whether the program aired on the O&O's primary channel or a multicast channel, and a short description of the

program. Each year, the fourth quarter report must contain a certification attesting to whether or not the station aired the annual requirement for the stations. In addition to filing this information with the Commission, to enable the public to view the information, C-NBCU must also post the same information on each O&O's website.

5. Within 12 months of the Closing of the Transaction, at least half of the NBC O&Os shall have in place cooperative arrangements with locally focused non-profit news organizations that provide reporting on issues of particular concern to each such station's market and/or region ("Online News Partners").

- a. The selection of appropriate Online News Partners shall be made by C-NBCU, in its discretion, taking into account such factors as the continuing availability of a viable Online News Partner in each such NBC O&O market; adherence by the Online News Partner to standards of journalism compatible with those of C-NBCU, including accuracy, fairness and independence; and the overall level of professionalism exhibited by the Online News Partner.
- b. These cooperative arrangements shall be similar in approach and level of involvement and support to the arrangement, in place as of the date of adoption of this Order, between NBC O&O station KNSD(TV), San Diego, California, and the website Voice of San Diego, including, as appropriate: story development; sharing of news footage and other content resources; financial support; in-kind contributions; shared use of technical facilities and personnel; on-air opportunities; promotional assistance; and cross-linking/embedding of websites.
- c. This Condition shall not obligate C-NBCU or any of its NBC O&O stations to broadcast, publish on any C-NBCU-controlled website or otherwise exhibit or endorse any material produced by an Online News Partner, and the decision to broadcast, publish or exhibit any such material shall remain at the sole editorial discretion of C-NBCU and its NBC O&O stations.
- d. C-NBCU shall be obligated to maintain a minimum of five such arrangements to the extent that such local non-profit news organizations continue to exist in five NBC O&O markets, as described in the preceding paragraph. The minimum of five such cooperative arrangements described in this Condition shall remain in force for at least three years following the date on which C-NBCU has five such arrangements in place.
- e. In the event that C-NBCU terminates any such arrangement, consistent with its obligations under this Condition, it shall use its best efforts to identify and establish a cooperative arrangement with another Online News Partner so that it shall have ongoing relationships with Online News Partners in at least five of its O&O stations' markets.
- f. Commencing six months after the Closing of the Transaction and every six months thereafter, until the expiration of this Condition, C-NBCU shall file with the Commission a written report detailing the efforts that it has made pursuant to this Condition during the previous six months, including the following information: identification of the Online News Partner and NBC O&O, a description of their arrangement, including the support provided by C-NBCU, and information about the news and other programming produced by the arrangement, including the overall quantification by market of local content

segments or items generated, as well as their nature (including but not limited to videos, articles, blog posts and photos) and whether such segments or items were exhibited on the station's primary channel, multicast channel(s), website and/or other platforms. To enable the public to view the information, C-NBCU must post the relevant reports on each participating O&O's website.

6. Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. C-NBCU shall continue to provide at least that number of VOD choices free or at no additional charge to consumers. In addition, within three years of the Closing of the Transaction, it shall make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge to consumers.

7. For the three years after the Closing of the Transaction, C-NBCU shall continue to make available at no additional charge 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.

XII. JOURNALISTIC INDEPENDENCE CONDITION

C-NBCU shall continue NBCU's policy of journalistic independence with respect to the news programming organizations of all NBCU networks and stations, and shall extend these policies to the potential influence of each of C-NBCU's owners. To ensure such independence, C-NBCU shall continue in effect the position and authority of the NBC News ombudsman to address any issues that may arise.

XIII. CHILDREN'S PROGRAMMING CONDITIONS

1. Comcast shall use its On Demand and On Demand Online platforms and a portion of the NBCU O&Os' digital broadcast spectrum to provide children's programming. C-NBCU intends to develop additional opportunities to feature children's content on all available platforms. In this regard, C-NBCU shall:

- a. within 12 months of the Closing of the Transaction, add an additional 500 VOD programming choices appealing to children and families to its central VOD storage facilities, and make the same programming available online to its authenticated subscribers to the extent it has the rights to do so.
- b. within three years of the Closing of the Transaction, add another 1,000 VOD choices of such programming to its central VOD storage facilities, and make the same programming available online to its authenticated subscribers to the extent it has the rights to do so.
- c. within nine months from the Closing of the Transaction, and for three years thereafter, provide one additional hour per week of children's educational and informational ("core") programming, as defined by and aired in the manner called for by 47 C.F.R. § 73.671, over the primary channels of all Telemundo O&Os, and over either the primary or the multicast channels of all NBC O&Os. If this additional children's programming is carried on a multicast channel of an NBC O&O, that multicast channel shall achieve actual distribution to at least 50 percent of the television households within the station's DMA. This hour per week shall be in addition to the current three hours aired weekly by each such station pursuant to the Commission's core license renewal application processing guidelines.

2. C-NBCU shall provide clear and understandable on-screen TV ratings information for all original entertainment programming across all of its networks (broadcast and cable), and apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency, and duration. Specifically, C-NBCU shall:

- a. within 90 days after the Closing of the Transaction, triple the time that program ratings information remains on the screen (from five to 15 seconds) after each commercial break. Such information shall also be presented in a larger format, to make it more visible to viewers.
- b. provide improved parental controls for C-NBCU program guides and set-top box applications, including navigation and blocking upgrades to legacy set-top boxes, by the end of 2011.
- c. provide a parental dashboard, which shall place all parental controls in one place, and white listing capabilities on tru2way boxes, by the end of 2013.
- d. provide, for IP-based set-top boxes, (i) the same capabilities as the tru2way boxes and additional restrictions on interactive applications within 12 months of the launch of IP-based set-top boxes; and (ii) additional blocking capabilities, within 24 months of the launch of IP-based set-top boxes.
- e. within nine months of the Closing of the Transaction, include program ratings information in its produced or licensed programming that NBC networks provides to nbc.com, to other NBCU websites, and to Hulu.com.

3. In an effort to constantly improve the tools and information available for parents, C-NBCU shall expand its partnership with organizations offering enhanced information to help guide family viewing decisions including, but not limited to, Common Sense Media ("CSM"). Comcast shall work to creatively incorporate the information from such organizations in its emerging On Demand and On Demand Online platforms and other advanced platforms, and shall look for more opportunities to work with such organizations on all C-NBCU platforms.

4. For five years from the Closing of the Transaction, in its capacity as a programmer and insofar as it can control advertising accepted, C-NBCU shall not air interactive advertising in: (i) broadcast programming and (ii) the feeds delivered to MVPD linear channels, in programs originally produced and transmitted primarily for an audience of children 12 years old and younger. In its capacity as an MVPD and insofar as it exerts control pursuant to affiliation agreements, Comcast shall not insert interactive advertising into networks comprised of programming originally produced and transmitted primarily for an audience of children 12 years old or younger.

5. For purposes of this Condition, interactive advertising is any marketing for commercial purposes on broadcast or cable television that requires or requests consumer interaction. Interactive advertising includes, but is not limited to:

- a. interactive overlay pop-up advertising, which can consist of:
 - (i) requests for further information to be sent to a consumer;
 - (ii) telescoping, also known as long form advertising, where a consumer can click on a pop-up and view more expanded advertising information that would potentially lead to a commercial transaction, but shall not include enabling a consumer to telescope to particular programs; and
 - (iii) voting or polling requests that promote a product or service, and/or gain information about consumer commercial preferences;

- b. T-Commerce, which enables a consumer to purchase advertised products using a remote control; and
- c. branded interactive gaming, which promotes a product via interactive gaming.

6. C-NBCU shall provide public service announcements (“PSAs”) with a value of \$15 million each year on digital literacy, parental controls, FDA nutritional guidelines and childhood obesity. The PSAs on digital literacy, parental controls and FDA nutritional guidelines shall run on networks or programming that have a higher concentration than the median cable network (viewers-per-viewing-household) of adults 25-54 with children under 18 in the household. For the PSAs on childhood obesity, C-NBCU shall air one PSA during each hour of NBC’s “core” educational and informational programming, as defined by 47 C.F.R. § 73.671, on the broadcast stations’ primary channels, and an average of two PSAs per day shall run on PBS KIDS Sprout. This Condition shall remain in place for five years.

XIV. PEG CONDITIONS

1. Comcast shall not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (*i.e.*, until all analog channels have been eliminated), or until the governmental entity that is responsible for the system’s PEG operations pursuant to the law of the state in question otherwise expressly agrees, whichever comes first. In any event, Comcast shall provide advance written notice to the system’s franchising authority and to its local community of its intent to migrate the PEG channels of the system in question.

2. Comcast shall carry all PEG channels on its digital starter tier (D0), or on an equivalent tier that reaches at least 85 percent of the subscribers of the Comcast system.

3. C-NBCU shall not implement a change in the method of delivery of PEG channels that results in a material degradation of signal quality or impairment of viewer reception of PEG channels, provided that this Condition shall not prohibit Comcast from implementing new technologies also utilized for commercial channels carried on its cable systems (including, but not limited to, digitization and switched digital video). Comcast shall continue to meet FCC signal quality standards when offering PEG channels on its cable systems and shall continue to comply with closed captioning pass-through requirements.

4. To enhance localism and strengthen public access, educational and governmental programming, Comcast shall develop a platform to host PEG content On Demand and On Demand Online within three years of the Closing of the Transaction.

- a. To develop the new platform, within three years of the Closing of the Transaction, Comcast shall select five locations in Comcast’s service area to serve as trial sites. Sites shall be chosen to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities. They shall not include the community of any system that currently has a PEG VOD or online presence.
- b. Comcast shall consult with leaders in the trial communities to determine what programming (public access, educational and/or governmental) would most benefit residents by being placed on VOD and online. It shall not exercise editorial control in determining which PEG programming shall be available on either platform.
- c. Comcast shall meet the following benchmarks in its development of these platforms:

- (i) within 30 days of the Closing of the Transaction, it shall announce the final locations of the five pilot communities.
 - (ii) within nine months of the Closing of the Transaction, it shall initiate On Demand placement of available PEG programming in each PEG pilot community. Additional programming shall continue to be provided throughout the remaining trial period.
 - (iii) within one year of the Closing of the Transaction, it shall initiate On Demand Online placement of available PEG programming in each PEG pilot community through existing or newly created online platforms. Additional programming shall continue to be provided throughout the remaining trial period.
 - (iv) within 18 months of the Closing of the Transaction, it shall initiate marketing support of the On Demand and On Demand Online platforms in each PEG pilot community.
 - (v) within two years of the Closing of the Transaction, it shall complete surveys of the user experience for both the On Demand and On Demand Online platforms in each PEG pilot community, and shall begin to implement recommended changes.
 - (vi) within three years of the Closing of the Transaction, it shall complete the pilot phases and evaluate results of the pilots.
 - (vii) starting six months after the Closing of the Transaction, it shall submit semi-annual reports to the Commission, on the progress of its online and VOD platform development, including the details of its activities in meeting each of the above-noted benchmarks. In addition to filing this information with the Commission, to enable the public to view the information, it must also post the same information on its website.
- d. This Condition is designed to enhance existing PEG channel carriage and shall not affect Comcast's existing franchise requirements for traditional linear PEG channel carriage.

XV. CONDITION REGARDING CARRIAGE OF PROGRAMMING OF NON-COMMERCIAL EDUCATIONAL TELEVISION STATIONS THAT HAVE RELINQUISHED THEIR SPECTRUM

1. For Qualified Noncommercial Educational ("NCE") Stations and Qualified Local Noncommercial Educational ("Local NCE") Stations, as those terms are defined in 47 C.F.R. §§ 76.55(a) and 76.55(b), respectively, that have must-carry rights as of December 31, 2010 and relinquish their broadcast spectrum as part of the Commission's efforts to allocate more spectrum to mobile broadband pursuant to Recommendation 5.8.5 of the National Broadband Plan (collectively, "Stations"), Comcast shall carry the applicable programming stream(s) of such Stations as follows:

- a. For Stations that are carried on Comcast cable systems as of December 31, 2010 pursuant to the signal carriage obligations for such Stations, as set forth in 47 C.F.R. § 76.56(a), Comcast shall continue to carry any such Stations, in digital format, on such cable systems.

- b. For Stations carried on Comcast cable systems as of December 31, 2010 pursuant to digital carriage agreements between the Station and Comcast, including but not limited to for purposes of this Condition, the agreement between the National Cable & Telecommunications Association (“NCTA”) and (i) the Association of Public Television Stations (“APTS”) and (ii) the Public Broadcasting Service (“PBS”) dated January 31, 2005 (the “NCTA/APTS Agreement”), Comcast shall continue to carry such Stations, in accordance with the terms of the relevant agreement, on such cable systems. To the extent that a Station’s digital carriage agreement with Comcast expires prior to the expiration of this Condition, Comcast commits to continue to carry such Station after the expiration of the agreement in accordance with the terms of paragraph (a) for the full term of this Condition.

2. These carriage obligations shall only apply to the extent that: (i) each such Station continues to deliver a good quality (non-broadcast) signal of the covered programming stream(s) to the relevant Comcast headends; (ii) each such Station certifies that it has the necessary copyrights to provide the programming contained in each programming stream delivered to Comcast, and conveys, without charge to Comcast, such copyrights and clearances as Comcast needs to distribute the programming; (iii) each programming stream contains noncommercial programming and other material that would be consistent with a broadcast station’s charter as a Qualified NCE or Qualified Local NCE; and (iv) each programming stream delivered to Comcast does not include programming that substantially duplicates the programming of any then-existing broadcast or cable programming service carried by the relevant Comcast system(s).

3. This Condition shall not be construed to extend the term of any existing agreement, nor to require any Comcast cable system to carry any Station or Station’s programming stream that Comcast is not: (i) already carrying as of December 31, 2010; or (ii) obligated to carry pursuant to the terms of the Station’s digital carriage agreement, including but not limited to the NCTA/APTS Agreement. This Condition shall expire on December 31, 2017, or upon the FCC’s promulgation of rules of general applicability regarding the subject matter of this Condition.

XVI. CONDITIONS TO EXPAND BROADBAND DEPLOYMENT AND ADOPTION

1. Comcast Broadband Footprint Expansion
 - a. Comcast shall expand its existing broadband network by at least 1,500 miles per year during the three years after the Closing of the Transaction (during 2011, 2012 and 2013), extending its broadband plant to approximately 400,000 additional homes.
 - b. Comcast shall also upgrade for Internet service at least six additional rural communities in 2011.
 - c. Comcast shall provide an additional 600 courtesy video and Broadband Internet Access Service account locations (for schools, libraries, and other community institutions, targeted to underserved areas in which broadband penetration is low and there is a high concentration of low income residents) over the three years after the Closing of the Transaction, at a rate of 200 additional locations per year. This continuing Condition shall include Comcast’s bearing 100 percent of the construction costs to bring Internet connections and providing the Broadband Internet Access Service without charge to these locations.

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2. Expanding Broadband Adoption – Comcast Broadband Opportunity Program
- a. Within nine months of the Closing of the Transaction, Comcast shall commence a program, the Comcast Broadband Opportunity Program (“CBOP”), to substantially increase broadband adoption in low income homes throughout Comcast’s service area.
 - b. CBOP shall address the three key barriers to adoption identified in the National Broadband Plan: (i) reducing the cost of broadband access for low income homes; (ii) the lack of a computing device in the home; and (iii) the absence of digital literacy. Its objective is to boost the number of low income homes using broadband within Comcast’s service areas.
 - c. Under CBOP, each eligible participating household shall:
 - (i) receive the Economy version of Comcast’s Broadband Internet Access Service for \$9.95 per month – a rate for which the household shall qualify so long as it meets the “Eligibility Criteria” below.
 - (ii) pay no installation or modem charges or fees (although Comcast may use its self-install program).
 - (iii) be eligible for one piece of pre-configured, quality computer equipment (which may include rebuilt PCs, netbooks, or other devices) for less than \$150 (the equipment shall be sold to the customer by a third-party vendor-partner of Comcast’s, with Comcast providing any subsidy required to bring the equipment cost below \$150).
 - (iv) have access to web-based, print and classroom-based training programs, provided in partnership with One Economy and other current and future Comcast community partners in its digital literacy efforts, including Boys and Girls Clubs, and Urban League and National Council of La Raza (“NCLR”) affiliate organizations. Comcast shall create and fund these programs, although it may seek Foundation and other funds to defray these costs.
 - d. CBOP shall run for a total of 36 months (through three school years) after the program commences (although households that qualify during the three-year program shall remain eligible for the program for the discounted Broadband Internet Access Service rate so long as they have a student in the household who qualifies), but in any event Comcast shall maintain CBOP through three full school years.
 - e. Comcast shall implement CBOP in coordination with state education departments and local school districts, which shall be responsible for certifying household eligibility for participation in the program.
 - f. The “Eligibility Criteria” for CBOP are: (i) there is at least one child in the household eligible for a free lunch under the National School Lunch Program (“NSLP”); (ii) the household is not the subject of a current Comcast collections activity; and (iii) the household has not subscribed to a Comcast Internet service within 90 days prior to installation.

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- g. Comcast shall solicit participation in CBOP through participating school districts' NSLP enrollment processes. It shall rely on this established certification process to qualify participants in CBOP.
 - h. Comcast shall request that school districts include information about CBOP with their first communication to families in advance of the school year and in each NSLP communication, as feasible and appropriate. The goal is to ensure that families that qualify for the free NSLP are aware of the program at the beginning of the school year and have the opportunity to register in conjunction with the NSLP process. Comcast shall provide appropriate collateral materials and request that they be included in all NSLP mailings, as appropriate.
 - i. Comcast shall endeavor to educate school professionals who work closest with NSLP-eligible families about CBOP. This outreach shall include the various education-related associations, including PTAs and associations representing guidance counselors and social workers, in order to reach those who are most likely to work closely with students and families who qualify for the free NSLP.
 - j. Prospective participants shall be directed to a Comcast phone number dedicated to this program to verify eligibility. Qualifying callers shall be transferred to a centralized order-entry center. When service installation is complete, the participating household shall receive a voucher and instructions on how to obtain the subsidized computer equipment noted above.
 - k. Comcast shall engage in efforts, in coordination with community partners, to publicize the availability of the program, targeted to areas with high concentration of low-income residents and especially through vehicles that are targeted to eligible households. Among other things, Comcast shall promote CBOP through public service announcements, as well as through segments of Comcast Newsmakers featuring guests who shall describe CBOP and how to take advantage of it. Comcast shall distribute the CBOP information to its partners who work with low-income communities – on a national and local level (*e.g.*, One Economy, National Urban League, NCLR). Comcast shall also coordinate with state and local education administrative entities to enable notification of certified NSLP families of CBOP.
 - l. Comcast shall offer several computer training and support options to all households participating in CBOP:
 - (i) At the time of installation, each participating household shall receive basic instructional materials and a phone number for a dedicated support desk.
 - (ii) The computer equipment shall be pre-configured with a “wizard” to facilitate e-mail set-ups and the setting of parental controls.
 - (iii) Shortcuts to “getting started” tutorials shall appear on the desktop.
 - (iv) Each piece of equipment shall ship with Norton security pre-installed.
 - (v) Comcast and its partner organizations shall offer “training days” at NSLP-participating schools in Comcast’s service areas, as well as at instruction facilities operated by Comcast’s community partners.

- m. Comcast shall submit an annual report to the Commission beginning on July 31, 2012 and for three years thereafter. That report shall include a description of Comcast's compliance with the adoption conditions listed above. Comcast shall identify the total number of households participating in CBOP, perform an analysis of CBOP's effectiveness, and describe any adjustments Comcast plans to implement to improve its effectiveness. Comcast shall make this annual report available on its website.

XVII. GENERAL

No C-NBCU Programmer shall enter into any agreement or arrangement or take any other action that has the purpose or effect of impairing the effectiveness of these Conditions.

XVIII. VIOLATIONS

Any violation of these Conditions shall be a violation of the Order.

XIX. REPORTING REQUIREMENTS

Except as otherwise expressly provided, Comcast and C-NBCU shall report to the Commission annually regarding compliance with these Conditions and shall post each such report on its website.

XX. TERM

Except as expressly stated, these Conditions shall remain in effect for seven years following the date of this Order.¹¹

¹¹ The Commission will consider a petition from Comcast or C-NBCU for modification of a Condition if they can demonstrate that there has been a material change in circumstances, or that the Condition has proven unduly burdensome, such that the Condition is no longer necessary in the public interest. *See, e.g., News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3345 (2008).

APPENDIX B Technical Appendix

I. EVALUATION OF COMPETITIVE HARMS RESULTING FROM PROPOSED TRANSACTION

1. This Appendix describes several economic analyses relied upon to evaluate the potential harms from the proposed joint venture between Comcast and NBCU (“Comcast-NBCU”). It primarily addresses four strategies that commenters have alleged Comcast or Comcast-NBCU could employ post-transaction to harm MVPD competition: (1) temporary and/or permanent foreclosure of programming from rival MVPDs and other distributors; (2) higher programming fees to rival MVPDs; (3) unilateral price increases resulting from increased concentration in the video programming market; and (4) discrimination against unaffiliated programmers in carriage terms and channel placement on the Comcast cable system.¹ In each case, the analysis below sets forth the technical and empirical underpinnings of the Commission’s conclusion that the proposed transaction would provide the joint venture with an increased incentive and ability to engage in anticompetitive conduct to disadvantage rivals and ultimately harm consumers if remedial conditions are not imposed.

A. Permanent and Temporary Foreclosure of Programming to MVPDs

2. Comcast produces video programming and distributes programming to its MVPD customers. The transaction with GE gives Comcast a controlling ownership stake in NBCU’s programming assets, which are vertically related to Comcast’s MVPD distribution assets and horizontally related to Comcast’s existing programming. Several commenters argue that following the transaction, the Applicants will have an increased incentive and ability to harm rival MVPDs by foreclosing access to Comcast-NBCU controlled programming on either a permanent or temporary basis.² We analyze these concerns by modeling the profitability of Comcast-NBCU foreclosing access to programming following the close of this transaction. Our record focuses on the potential for withholding access to a local NBC owned and operated television broadcast station (“O&O”) from an MVPD service that competes directly with Comcast, so we model the profitability of this particular foreclosure scenario.

3. Both DIRECTV and the ACA argue that the integrated firm is more likely to employ price raising strategies than foreclosure strategies. The potential for post-transaction programming price increases is examined in the next section, while the analysis of foreclosure incentives in this section models only the profitability of withholding access to programming absent changes in bargaining position that would permit Comcast to raise programming prices. The foreclosure analysis provides a conservative test of whether Comcast would find a post-transaction foreclosure strategy profitable because it ignores this possible additional source of profits.

4. Even if Comcast-NBCU calculates that anticompetitive strategies involving permanent foreclosure would be unprofitable, or if such strategies are prevented by operation of the Commission’s program access rules,³ Comcast-NBCU may find it profitable to engage in temporary programming foreclosure. Temporary foreclosure could benefit Comcast-NBCU by inducing some customers of the foreclosed rival to switch to Comcast’s MVPD service in order to obtain access to the withheld programming. The profitability of a temporary foreclosure strategy depends on the length of time

¹ These are the four anticompetitive strategies for which substantial data and economic modeling was submitted into our record. The analysis of other potential harms is contained in the main body of the draft Order.

² See, e.g., DISH Petition at 29-31.

³ See *supra* Section V.A.1.

switching customers would subscribe to Comcast cable before switching to another MVPD. The greater the degree of consumer inertia, perhaps due to long term contracts or other sources of switching costs, the more profitable a temporary foreclosure strategy will be.

5. Based on their own analysis, the Applicants argue that neither temporary nor permanent withholding of the right to retransmit NBCU O&O station signals would be profitable.⁴ The Applicants base this conclusion on the calibration of a foreclosure model similar to that employed by the Commission in the *News Corp.-Hughes* proceeding.⁵ In each DMA where an NBC O&O and Comcast cable system overlap, the Applicants calculate the percentage of each rival firm's subscribers that would need to leave in order for withholding retransmission consent to be profitable.⁶ The Applicants then present empirical estimates which, if accepted, would indicate that these threshold levels were generally not met in the episodes of broadcast programming losses they analyzed.⁷ This leads them to conclude that withholding the NBC broadcast signal is a harm that is unlikely to arise due to the transaction.

6. The model set forth here examines the evidence regarding the post-transaction profitability of anticompetitive strategies involving the permanent or temporary foreclosure of an O&O broadcast station to a rival distribution system. This framework is consistent with those in past Commission decisions analyzing vertical transactions and the economic literature discussing vertical foreclosure incentives. [REDACTED].⁸ The model assumes that an integrated firm will foreclose a rival from access to an input if the increased profits it earns in the downstream market from foreclosure exceed the losses it incurs from the lost sales of the input to the rival firm.⁹ The profitability model does not account for the possibility that foreclosure, or the threat to foreclose, may allow Comcast to negotiate a higher price for programming. That possibility is addressed separately below in section I.B.

7. For the case of permanent foreclosure, if the vertically integrated firm withholds the NBC broadcast signal from a rival MVPD, it stands to lose advertising revenues and retransmission consent fees from those consumers that remain with the rival MVPD but no longer watch the NBC station. We denote the per subscriber net advertising revenues and retransmission fees by the variables *Ad* and *Fee*, respectively. Since the signal remains available over the air, some fraction of the rival MVPD's viewers will continue to watch NBC broadcast programming and advertising, thereby reducing the economic loss suffered by the integrated firm. The model assumes that those customers who switch firms do so immediately and never return to the foreclosed MVPD so that the costs and benefits are the same in each period. These assumptions imply that the cost to the vertically integrated firm of withholding the broadcast signal is given by:

$$Costs = (1-d) \times Subs \times Fee + (1-d-a) \times Subs \times Ad$$

In this expression, *d* is the fraction of the rival MVPD's subscribers that switch to an alternative MVPD that still carries the broadcast signal, *a* is the fraction of viewers who remain with the MVPD but obtain

⁴ Applicants – Israel/Katz March Report at ¶ 132.

⁵ See *News Corp.-Hughes Order*, 19 FCC Rcd at 633, Appendix D.

⁶ Applicants – Israel/Katz March Report at ¶ 77.

⁷ *Id.* at ¶ 119-120.

⁸ [REDACTED]. See 64-COM-0000053.

⁹ Michael H Riordan and Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, ANTITRUST L. J. at 513, 528-531 (1995). For foreclosure (either permanent or temporary) to be profitable, the withdrawal of the input subject to foreclosure must lead to a change in the characteristics of the downstream product offered by rivals, causing some customers to shift to competing downstream products offered by Comcast.

the broadcast signal over the air, and $Subs$ is the number of customers subscribing to the rival MVPD. Accordingly, the product $(1 - d - a) \times Subs$ is an expression for the number of rival firm subscribers that remain with that firm and forego watching the NBC broadcast signal. This quantity is then multiplied by per subscriber advertising revenues to generate the total loss in advertising. Since Comcast-NBCU will not collect retransmission consent fees on the fraction a of subscribers that continue to watch NBC over the air, $(1-d) \times Subs \times Fee$ is the loss in retransmission consent fee revenues due to foreclosure.

8. The integrated firm stands to gain the video distribution profits from customers who switch from the rival MVPD to the Comcast distribution platform. The number of new subscribers is given by the expression $(\alpha \times d \times Subs)$, where d is again the fraction of rival subscribers who depart for another MVPD, and α is the fraction of these subscribers that choose Comcast. The fraction d will be referred to throughout the analysis as the “departure rate,” and the fraction α will be referred to as the “diversion rate.” The profit per new subscriber (π) consists of revenues generated from the additional subscription fees and advertising that accrue to Comcast in its capacity as a video, broadband and telephony distributor, less the variable costs of serving these new subscribers, divided by the number of new subscribers. Assuming that retransmission consent fees do not vary by MVPD and letting s be the share of the incremental profits that accrue to the vertically integrated firm, with the remainder accruing to its joint venture partner (*i.e.* GE), the benefits of foreclosure are given by:

$$Benefits = s \times (\alpha \times d \times Subs) \times \pi$$

This formula defines the benefits of foreclosure as the number of subscribers that choose to switch to Comcast due to the programming loss on the rival distribution platform multiplied by Comcast’s monthly per subscriber profit margin for customers subscribing to video services.

9. From the above cost and benefit expressions, it is possible to generate a threshold for whether or not a foreclosure strategy will be profitable for the integrated firm. This “critical value” is obtained by equating the costs and benefits of foreclosure and solving algebraically for d . This value, denoted by d^* , is the fraction of rival MVPD subscribers that must switch to Comcast in order for the upstream joint venture profit losses to equal the downstream profit gains. If the expected fraction of customers departing the rival firm is greater than this critical value, then foreclosure would be expected to be profitable, otherwise it would not. For the permanent foreclosure case, the critical value is given by:

Error!

10. A temporary foreclosure analysis is more complicated since it must account for the timing of the various costs and benefits. In particular, after temporary foreclosure, some of the consumers that switch to Comcast will return to their previous MVPDs once the programming is restored. A discounted cash flow approach is adopted to compare costs and benefits over time, accounting for the timing of subscriber acquisitions and losses. [REDACTED], the model assumes that customers who switch from a temporarily foreclosed MVPD to Comcast will begin flowing back to the rival MVPD once the programming is restored.¹⁰ To capture this dynamic in the model, let c be the fraction of consumers that switched to Comcast during the foreclosure episode who churn away to an alternative MVPD in each period. This implies that the fraction $(1 - c)$ of the customers that switched remain with Comcast each period. The benefits of temporary foreclosure in period t is then equal to the present discounted value of the MVPD profits on the $(1-c)^t$ fraction of switching consumers that remain with Comcast.¹¹ Assuming a

¹⁰ This analysis is conservative, in the sense that it will estimate a higher value for d^* and therefore make foreclosure to appear less profitable, because it does not account for the possibility that Comcast could use long term contracts in conjunction with a foreclosure strategy. Such contracts could potentially delay the return of subscribers to their original MVPD when the programming is restored and increase the profitability of temporary foreclosure.

¹¹ When we compute the six month temporary foreclosure model we adopt the Applicants’ assumption that

(continued....)

discount rate of r and summing over all periods from $t = 0$ to infinity, the present value of all future benefits is given by:

Error!

The costs of foreclosure for each period are the same as given for the permanent case above. Equating the discounted costs and benefits of foreclosure and solving for d yields a temporary foreclosure critical value of:

$d^* = \text{Error!}$

Transaction-Related Modifications to Foreclosure Model

11. Several features of the proposed transaction differentiate it from the *News Corp.-Hughes* transaction, which the Commission previously analyzed using the above foreclosure model. The Applicants suggested several modifications to account for these differences, which are evaluated below.

Staggered Contracts

12. In the *News Corp.-Hughes* case, the Commission assumed that the integrated firm could temporarily foreclose broadcast network access simultaneously to multiple MVPDs within a Designated Market Area (DMA). The Applicants point out that this type of strategy would generally not be possible in this case since the expiration dates of NBC retransmission consent agreements are staggered across MVPDs. There is no disagreement in the record on this point, so we adopt the Applicants' approach by assuming that Comcast is limited to foreclosing a rival MVPD only after its current NBC retransmission consent contract expires. For permanent withholding, the model assumes that Comcast forecloses each rival as its current NBC retransmission consent contract expires.

Limited Comcast Footprint

13. In the *News Corp.-Hughes* case, the Commission assumed that a vertically integrated DIRECTV could provide MVPD services to nearly every household in every DMA. This assumption cannot be maintained in analyzing the present transaction since Comcast does not operate in many DMAs and may have a limited geographic footprint in others in which it provides service. As a result, some fraction of foreclosed MVPD customers would not be able to switch to Comcast's cable system. One method for accounting for this in calculating the diversion rate α would assume that customers departing from a foreclosed rival switch to each MVPD that serves the DMA in proportion to that firm's share of the non-foreclosed MVPD subscribers within the DMA. Under this "proportional switching" assumption, if 50% of MVPD customers subscribe to Comcast, 35% to DIRECTV and 15% to DISH in a particular DMA, then of the fraction d of customers that leave DISH due to a programming loss, 58.8% ($= .50 / (1 - .15)$) would switch to Comcast and the remaining 42.2% will choose DIRECTV.

14. The Applicants propose modifying this proportional switching assumption. They argue that MVPD subscribers view the two DBS providers as closer substitutes and therefore customers leaving a DBS provider would be more likely to switch to the other satellite service than to Comcast. As a result, the diversion rate to Comcast from a DBS provider would be lower than one based on a rate proportional to non-foreclosed market shares. In their second filing, the Applicants assumed that switching from a foreclosed DBS provider would be at a rate of 1/3 of the rate that would be implied by proportional switching.¹²

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customers do not start churning back to the foreclosed rival until the 7th period. We index the above model by time and set $c_t = 0$ for $t = 0$ through 5. Applicants – Israel/Katz July Report at ¶ 18.

¹² Applicants – Israel/Katz July Report at ¶ 16.

15. Evidence introduced into the record by DIRECTV is consistent with the Applicants' view that consumers view the two DBS providers as closer substitutes for each other than for cable. DIRECTV finds that the diversion rate from a DBS provider to cable to be [REDACTED] implied by proportional switching, [REDACTED] as the Applicants assumed in their second filing. Based on a survey of DIRECTV subscribers who switched MVPD service due to dissatisfaction with programming, DIRECTV estimated a diversion rate to cable of [REDACTED] of that implied by the proportional switching assumption.¹³ We find the data furnished by DIRECTV to be the best available evidence concerning the proportion of departing DBS subscribers that would likely choose Comcast due to a loss of programming and therefore adopt this assumption in our analysis.

16. We also address a related issue: selecting the appropriate diversion rate that would result from post-transaction foreclosure of programming to a telephone company MVPD service (Telco) such as Verizon FiOS or AT&T U-verse. It is plausible that Comcast and these services are closer substitutes than suggested by the proportional switching assumption since they both offer a "triple play" of high speed data, voice and MVPD services as a bundled offering. In addition, a Telco subscriber is more likely than a DBS subscriber to have the option of switching to Comcast, as a greater proportion of Telco customers than DBS customers likely live within the Comcast footprint. This logic is also consistent with evidence in the record showing that of those Comcast MVPD subscribers who switched to another provider in September of 2010, [REDACTED].¹⁴ In light of this evidence, the proportional switching assumption we make when specifying the diversion rate to Comcast from foreclosing Telco rivals is conservative.

Contracts

17. In analyzing the profitability of post-transaction foreclosure of a rival MVPD, the Applicants assume that no customers under contract will break long term contracts in order to switch to an alternate MVPD. To incorporate contracts into the model, the Applicants reinterpret d so that it represents the fraction of subscribers that wish to switch away from the foreclosed rival and that a percentage C of these are under contract.

18. We do not adopt this change when applying the foreclosure model. Under the Applicants' framework, the new critical value has a different interpretation than the critical value derived in the previous formulation of the model. It now measures the fraction of subscribers that would like to switch, rather than the parameter of interest: the fraction of customers that would be required to leave the rival MVPD in order for foreclosure to be profitable for the integrated firm.¹⁵ Furthermore, the fraction of subscribers that would like to switch is not observable from actual episodes of programming foreclosure, and therefore the Applicants' formulation of the model with the additional contracting assumption no longer allows us to compare the critical values to observed departure rates.

Online Video

19. The Applicants suggest that the fraction of the foreclosed viewers who would switch to watching the NBC O&O stations over the air (a) should be modified from the value we used in analyzing the *News Corp.-Hughes* transaction in light of the increased availability of programming over the Internet. In their analysis, they presume that half of this fraction would watch NBC over the air and half would watch NBC online. This matters because, the Applicants claim, NBC earns lower advertising revenues

¹³ DIRECTV – Murphy August Response, ¶ 33 and Exhibit 2.

¹⁴ See 73-COM-00000717 at Exhibits 73.4g-73.4j., 00000981-1156. These estimates are also consistent with customer survey evidence in 64-COM-00002479, 00002547 at 69.

¹⁵ Applicants – Israel/Katz March Report at n.142.

when its shows are viewed online. Despite NBC's higher cost per thousand viewers (CPM) advertising rate for online viewing, the Applicants contend that NBC earns [REDACTED] less in ad revenues from an online viewer compared to a television viewer.¹⁶ We do not adopt this assumption. The Applicants provide no empirical evidence to support the claim that subscribers who lose programming shift to viewing the programming online. Instead, they claim that online viewing is currently a complement rather than a substitute for linear television viewing. Moreover, the recent retransmission consent dispute between Cablevision and Fox demonstrates that a broadcast network can also block access to programming available online to a foreclosed MVPD's subscribers.¹⁷ For these reasons, we assume that under current market conditions the fraction of viewers that would choose to watch online rather than over the air, or would have the ability to do so in the event of foreclosure, is zero.

Nonlinear Advertising Revenues

20. The Applicants argue that reduced network viewership not only reduces advertising revenues through the quantity of viewers reached but also through lowering the CPM rate. Rather than maintaining the linear relationship between ad revenue and viewership adopted in the Commission's analysis of the *News Corp.-Hughes* transaction, the Applicants argue that a reduction in viewership will also induce a reduction in the advertising rate received per viewer. In particular, the Applicants cite an empirical study that finds that a 1% decline in viewership results in a 0.39% reduction in the advertising price per viewer.¹⁸ Our analysis adopts this suggestion when evaluating permanent foreclosure, but does not do so with respect to temporary foreclosure given that per viewer advertising rates are unlikely to change during the short time frame involved. In particular, local advertising rates are generally determined based on the total network viewership during Nielsen "sweeps weeks." Given that the rates are only set periodically and that the joint venture can largely determine the timing of when programming is withheld, a temporary foreclosure episode would be unlikely to affect per viewer ad prices.

Foreclosure Model Values

21. Calibrating the foreclosure model requires specifying a number of parameter values in order to estimate the critical departure rate. The calculations involved in estimating these parameters are now briefly discussed.

Ad Revenue and MVPD Profit Margin

22. In their first filing, the Applicants provided 2009 NBC broadcast network advertising revenues both nationally and by O&O station, as well as the average Comcast profit margin per video subscriber. The Applicants calculated that Comcast earns an average profit margin of [REDACTED] per video subscriber per month, and claimed that this figure reasonably represents the profit margin that Comcast earns on each new subscriber.¹⁹ We accept these calculations based on our own review and the absence of any objections from commenters, and adopt this value in our modeling.

Discount Rate and Over the Air Viewing of NBC

23. In evaluating the *News Corp.-Hughes* transaction, the Commission's foreclosure analysis

¹⁶ Applicants – Israel/Katz March Report at ¶ 62

¹⁷ During the dispute, Fox was able to also withhold online access to Fox programming through Hulu.com and Fox.com from all Cablevision subscribers. Brian Stelter, *Internet Is a Weapon in Cable Fight*, N.Y. TIMES, Oct. 19, 2010, at B3.

¹⁸ Applicants – Israel/Katz March Report at ¶ 70; Keith Brown and Roberto Cavazos *Why is This Show so Dumb Advertising Revenue and Program Content of Network Television*, 27 REV. OF INDUS. ORG. at 27:17-34 (2005).

¹⁹ Applicants – Israel/Katz July Report at ¶ 60.

assumed a 10% discount rate and that 33% of rival MVPDs subscribers would choose to watch the broadcast station over the air during a foreclosure episode. Neither the Applicants nor commenters have presented empirical evidence that challenge these assumptions, so they are maintained in our analysis.

Churn Rate

24. In the *News Corp.-Hughes* analysis, the Commission found that DIRECTV's subscriber disconnect rate was [REDACTED] in the initial month after the YES network was restored to Cablevision in the New York DMA, but then quickly returned to normal levels. This assumption was integrated into the foreclosure model in that proceeding by assuming that the percentage of newly acquired DIRECTV subscribers that would immediately churn back to their original MVPD once they were no longer under contract was [REDACTED]. No party has entered empirical evidence into the record in this proceeding about the speed with which subscribers switch back after programming is restored, so we adopt assumptions similar to those used in the *News Corp.-Hughes* proceeding. In the first month that programming is restored, we adopt the Applicants' upper bound assumption that [REDACTED] of the subscribers that switched to Comcast during the foreclosure will immediately churn back to rival MVPDs.²⁰ After the first month, based on the *News Corp.-Hughes* empirical findings, the remaining customers are assumed to leave Comcast at the average customer churn rate of [REDACTED] observed in the data provided by Comcast.²¹

Share of MVPD Profits

25. The Applicants have suggested two potential values for s , the share of the incremental MVPD profits from withholding of programming that accrue to the vertically integrated firm. First, the Applicants argue that a value of 0 may be appropriate because Comcast has a fiduciary responsibility to GE as long as GE maintains its 49% share of the joint venture.²² Second, the Applicants propose a value of 1 since Comcast has the option of becoming sole owner of the joint venture within seven years of the close date of the transaction.²³ DIRECTV and ACA argue that a value of 1 is appropriate in both circumstances.²⁴ In application of the foreclosure model, a value of 1 has been adopted for s because the Commission has concluded that the transaction should be evaluated as if Comcast will be the exclusive owner of NBCU.²⁵

Critical Value Calculations

26. Using the above assumptions, we calculate the critical departure rates d^* by rival MVPD and DMA required for the integrated firm to profitably withhold the NBC broadcast signal on either a temporary or permanent basis.

²⁰ Applicants – Israel/Katz March Report at ¶ 43. Empirical evidence presented in footnote 31 indicates that the actual churn rate in the first month after programming is restored may be considerably lower than this figure, so our assumption here is conservative.

²¹ Applicants – Israel/Katz March Report at Comcast attachment 4.

²² *Id.* at ¶ 44.

²³ *Id.* at ¶ 46.

²⁴ DIRECTV – Murphy June Report at 31-32; ACA – Rogerson June Report at 19-20.

²⁵ *See supra* at ¶ 38.

Permanent Foreclosure

27. Since the retransmission consent contracts of NBCU with each MVPD expire in different years, the permanent foreclosure model assumes that the joint venture sequentially withholds retransmission consent from each MVPD as its contract expires. After the programming is withheld, it is never restored to the rival MVPD. Given the parameter values discussed above, the model solves for the critical departure rate, above which foreclosure would be profitable and below which it would not. A critical value for foreclosure of the NBC network is calculated for each DMA in which both NBC has an O&O and Comcast operates a cable system, as well as for a strategy of withholding all O&O signals simultaneously. The critical departure rate estimates from the model are given in the first column of Table 1 below. The values range from a low of [REDACTED] to a high of [REDACTED]. As an example, in the Chicago DMA, permanent foreclosure of the O&O signal would be expected to be profitable if at least [REDACTED] of all rival subscribers would leave their MVPDs in order to obtain the foreclosed broadcast signal.[REDACTED]

Temporary Foreclosure

28. Our temporary foreclosure analysis adopts the Applicants' approach of calculating d^* for a six month temporary foreclosure of the DISH Network rather than the one month foreclosure scenario evaluated in the *News Corp.-Hughes* case. This is done to compare the critical departure rates generated by the model to observed subscriber departure rates during a six month retransmission consent dispute between DISH Network and Fisher Communications. This approach allows for a precise comparison of the model threshold values to departure rates that would likely be observed from an actual withholding of broadcast programming for the same length of time. If the observed departure rates exceed the model's threshold values then a post-transaction six month foreclosure strategy would be expected to be profitable.

29. The second column of Table 1 gives the critical departure rate values in each DMA for a six month temporary withholding of the broadcast signal from DISH. The range of departure rates required for temporary foreclosure to be profitable is from [REDACTED]. For the Chicago DMA, temporary foreclosure of the O&O would now be profitable if [REDACTED] of all DISH customers left during the 6 months that the programming was unavailable. In every case, the calculated departure rates for a temporary foreclosure episode are below those required for permanent withholding to be profitable because the costs of temporary foreclosure are limited in time while the benefits from subscriber acquisitions accrue until these subscribers switch to an alternate MVPD service. The estimates for Telco MVPDs are generally lower than those derived for DISH and DIRECTV, primarily due to the assumption that a foreclosed Telco subscriber is more likely than a foreclosed DBS subscriber to switch to Comcast's MVPD service.

Empirical Departure Rate Estimates

30. We now explore the empirical question of whether the threshold critical departure rate values estimated by the foreclosure model are exceeded during actual episodes of broadcast network withholdings. We estimate subscriber departure rates from data on an episode during which an MVPD lost access to a broadcast network signal and then compare this estimate to the critical values calculated from the foreclosure model above to determine the profitability of exclusionary tactics. We find that the observed departure rates from broadcast network programming losses exceed the previous critical value calculations and therefore conclude that post-transaction foreclosure strategies would be observed if appropriate conditions on the transaction are not secured.

31. To estimate customer departure rates from an MVPD following the temporary loss of a broadcast network, we rely on evidence from a retransmission consent dispute between Fisher

Communication and DISH Network.²⁶ On December 17, 2008, Fisher suspended DISH's carriage of their local broadcast network affiliates in seven DMAs in Oregon, Washington, Idaho and California due to a breakdown in negotiations over retransmission consent fees. One "big four" broadcast affiliate was lost in each market except for Bakersfield, which lost two affiliates so is excluded from the analysis. The dispute lasted approximately six months, until the affiliate signals were restored on June 10, 2009.

32. We agree with the Applicants that this episode provides the best available evidence about the impact that a temporary loss in broadcast network programming has on MVPD subscribership levels. To determine the effect of temporary programming withholding during the Fisher dispute, subscriber growth trends in a set of "treatment group" DMAs in which DISH lost the local broadcast affiliate signal are compared to the trends in a set of "control group" DMAs in which DISH continuously carried all four broadcast networks.²⁷ The analysis measures the effect that the loss of the broadcast signal had on DISH subscriber counts on a quarterly basis from December 1, 2008 until December 1, 2009.

33. A standard econometric method known as "difference-in-differences" estimation is employed to control for potentially confounding events during the period under study.²⁸ The model is implemented in a regression model that posits that the natural log of DISH subscribers is a function of DMA-specific fixed effects indicator variables for the quarter of the year and a Fisher event indicator. This last indicator variable is the primary parameter of interest and is equal to one in the treatment group DMA during the six months when the broadcast affiliate signals were not carried by DISH and zero otherwise.²⁹

34. The parameter estimates from the difference-in-differences model are presented in Table 2 below. Since the natural log of DISH subscribers is used as the dependent variable, the coefficient on the Fisher event indicator variable is approximately equal to the percentage change in DISH subscriber levels in the treatment group DMAs relative to the control DMAs when the programming was unavailable on DISH. Due to the loss of a broadcast affiliate signal, DISH lost a statistically significant [REDACTED] of its subscribers in a six month period. Even six months after the programming was restored, DISH subscriber levels in the treatment group DMAs remained below the pre-dispute levels. As of December 2010, DISH subscriber levels were [REDACTED] what would be expected based on the trends in the control group DMAs over the same time period.³⁰

[REDACTED]

35. A comparison of the actual departure rate estimated from the DISH data with the critical

²⁶ The Applicants also analyzed this dispute. See Applicants – Israel/Katz March Report at ¶¶ 97-104; Applicants – Israel/Katz July Report at ¶¶ 243-256; and Applicants – Israel/Katz October Report at 5-9.

²⁷ The treatment group DMAs are: Boise, Idaho Falls, Eugene, Yakima, Seattle and Portland, Oregon. Bakersfield, California is excluded from the treatment group because DISH lost both the CBS and Fox network affiliates in this DMA. The control group DMAs matched by DISH to each of the above DMAs are: (Salt Lake, Madison, Des Moines, Cincinnati); (Twin Falls, Wichita Falls, Burlington, Sioux City); (San Antonio, Austin, San Diego, Kansas City); (Medford, Chico, Missoula, Champaign); (Waco, Chico, Gainesville, Topeka); (Phoenix, Boston, Minneapolis, Atlanta) and (Oklahoma City, Kansas City, Madison, Cincinnati), respectively. See DISH Declaration of Vincent Kunz (filed Jun. 7, 2010) at ¶¶ 7-8.

²⁸ See, e.g., Colin Cameron and Pravin Trivedi, MICROECONOMETRICS, Chapter 25.5 (Cambridge, 2005); and , Jeffrey M. Wooldridge, ECONOMETRIC ANALYSIS OF CROSS-SECTIONAL AND PANEL DATA 129-130 (2002).

²⁹ The Applicants used a similar methodology in specifying the model they employed when estimating subscriber losses due to the unavailability of programming. See Applicants - Israel/Katz March Report at ¶ 100.

³⁰ [REDACTED].

values for the temporary foreclosure model demonstrates that post-transaction Comcast would almost always profit by temporarily withholding coverage of NBC broadcast stations from MVPD rivals. The estimated departure rate of [REDACTED] from the Fisher dispute is above the critical departure rate values for the temporary foreclosure model in [REDACTED]. Moreover, even though the Fisher dispute lasted only six months, the observed subscriber departure rate is above the majority of the critical values calculated for permanent foreclosure profitability. Given that departure rates would likely be significantly higher for an actual permanent foreclosure episode than for this six month foreclosure episode, these results imply that post-transaction Comcast would often profit by engaging in a permanent foreclosure of NBC broadcast stations. Also, since no evidence in the record indicates that the rate by which subscribers leave a foreclosed MVPD differs by firm, these results also suggest that foreclosure would also be profitable against DIRECTV, Verizon and AT&T given the critical departure rates estimated for these firms in Table 1.

B. Vertical Price Increases

36. Broadcast network retransmission consent fees and cable network affiliation fees are bilaterally negotiated between an MVPD and a programmer. Standard economic theories of bargaining predict that each party will consider its best alternative to a negotiated agreement (BATNA) when negotiating.³¹ The MVPD's maximum willingness to pay will depend on the attractiveness of its best alternative to not carrying the programming. This may include carrying one less network on its service or else finding a substitute network from some other programmer to fill out its lineup. Similarly, the minimum a programmer will accept depends on how the programmer values its next best alternative. If the parties reach an agreement, they will split the bargaining surplus – in this case the difference between the minimum the programmer will accept and the maximum the MVPD will pay. The split of the surplus, also termed the relative bargaining skill of the negotiating parties, depends on the bargaining abilities and relative patience (costs of delay) in reaching an agreement for each party, with a greater share of the surplus going to the more skilled or patient party.³²

37. Standard bargaining theory predicts that a firm will obtain a higher price through bargaining if its BATNA improves or the other party's BATNA worsens. In this case, vertical integration of NBCU's programming and Comcast distribution assets would improve the bargaining position of the integrated firm when negotiating the sale of programming to one of Comcast's video distribution rivals because failure to reach an agreement means that some of the rival's subscribers will shift to Comcast, thus improving the integrated firm's best alternative to reach an agreement relative to that of pre-transaction NBCU. As a result, the integrated firm improves its bargaining position, allowing it to extract higher prices from rival MVPDs than pre-transaction NBCU was able to when negotiating with Comcast's distribution rivals.³³ These higher programming prices to rivals would ultimately result in higher consumer prices for MVPD service unless efficiencies resulting from the transaction that lower the cost of the joint venture providing programming lead to offsetting reductions in consumer prices.

38. Furthermore, if programming prices rise to MVPDs that compete directly with Comcast, those price increases could spread to MVPDs that do not directly compete with Comcast through the

³¹ See generally Avinash Dixit and Susan Skeath, *GAMES OF STRATEGY* 524-47 (1999). BATNAs are also referred to with other terms, including threat point, disagreement point, backstop payoff, and fallback payoff.

³² For a discussion of the factors that contribute to asymmetric bargaining weights, see Kenneth Binmore, Ariel Rubinstein & Asher Wolinsky, *The Nash Bargaining Solution in Economic Modeling*, 17:2 *RAND J. OF ECON.*, 176-188 (1986).

³³ The negotiating parties' BATNAs influence the bargaining outcome even if neither party actually walks away from the table. See *id.*

operation of “most favored nations” (MFN) (or “most favored customer”) provisions in affiliation agreements. Many affiliation agreements for Comcast and NBCU programming contain provisions that guarantee, throughout the term of the contract, that the purchasing MVPD will pay no more than the future price paid by any other MVPD, or than any other MVPD smaller in size.³⁴ These agreements may effectively set floors on the price that Comcast-NBCU can charge MVPDs other than Comcast³⁵, including non-rival MVPDs. This discourages Comcast from offering programming to other MVPDs at a discount (whether those firms are rivals or not), because Comcast would have to provide the same discount to MVPDs with MFN provisions in the event those provisions are triggered.³⁶ In consequence, if Comcast raises prices to an MVPD rival with which it has agreed to an MFN clause, as it will have an incentive to do after this transaction, this could lead Comcast to negotiate a harder bargain with non-rival MVPDs, leading to higher prices in the programming agreements it reaches with those firms.³⁷

Nash Bargaining Model

39. To determine the likely magnitude of any post-transaction price changes, we adopt a Nash bargaining model originally proposed by ACA and DIRECTV and subsequently used by the Applicants in their second filing.³⁸ As discussed above, the post-transaction BATNA for providing

³⁴For example, [REDACTED]. See 63nbcu0002124, 0002135 (referencing, in Section 5, MFN provisions of Appendix I); 63nbcu0002184 (Appendix I). MFN provisions generally include an agreement that if a network awards terms or conditions to an MVPD that are more favorable than those currently in place with another MVPD with an MFN provision in their contract, the network will promptly offer these more favorable terms to the first MVPD. [REDACTED]. See 66-COM-00000141, -00000152 [REDACTED]; 66-COM-00000208, 00000210 [REDACTED]; 65-COM-00000271, -00000274-275 [REDACTED].

³⁵ One of the Applicants’ economists, Professor Katz, recognized this possibility in his analysis of retransmission consent fee negotiations. Michael Katz, Jonathan Orszag, & Theresa Sullivan, *An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime*, Nov. 12, 2009, at ¶ 37 (“Katz, Orszag & Sullivan”).

³⁶ Whether an MFN will be triggered depends upon its terms and on the relative prices that are charged. Their use tends to discourage discounting. See generally, Jonathan B. Baker, *Vertical Restraints with Horizontal Consequences*, 64 ANTITRUST L.J. 517 (1996).

³⁷ For example, suppose hypothetically that Comcast competes with MVPD A and does not compete with MVPD B, and that both pay the JV the same per subscriber fee for the same programming. Suppose further that the JV negotiates a higher price with MVPD A after the transaction and the contract contains an MFN. In negotiating its next contract with MVPD B, the JV will recognize that if it does not obtain at least an equally high price increase from MVPD B, it will be obliged to reduce the price it charges MVPD A because of the MFN. (Although charging MVPD A a different rate than MVPD B might also be discriminatory under our program access rules, it would likely be easier and less costly for MVPD A to rely on private contracting if it wishes to prevent that outcome.) As a consequence, the MFN with the rival firm will influence the JV’s negotiating position in bargaining with the non-rival and likely lead to a higher price than would otherwise occur. In this way, an anticompetitive price increase to an MVPD rival with an MFN could spread to non-rivals. More generally, MFN provisions generate an additional opportunity cost of settling for a price in any negotiation below any price in an existing affiliation agreement with an MFN provision, leading the JV to hold out for higher fees in negotiations. Higher fees are the most likely outcome notwithstanding the possibility that MFNs may discourage the JV from raising prices to rivals to the extent that doing so would lead it to raise the price to non-rivals above the most profitable price it would otherwise charge those firms.

³⁸ ACA – Rogerson June Report at 27-29. DIRECTV – Murphy June Report at ¶¶ 30; Applicants – Israel/Katz July Report at ¶ 65-66. The Applicants particularly questioned the parameter value for bargaining skill. Economist

(continued....)

NBCU programming will change due to the expected gain in subscribers to Comcast cable if programming is withheld from a rival MVPD. As commenters explain, the post-transaction increase in opportunity cost to the integrated firm of providing NBCU programming to one of its MVPD rivals is given by the product $(d \times \alpha \times \pi)$. As before, d is the departure rate from the rival MVPD if Comcast withholds programming, α is the diversion rate of these subscribers to Comcast's cable system and π is the per subscriber MVPD profits of Comcast. In the Nash bargaining framework, the increase in opportunity cost improves the integrated firm's BATNA, leading to an increase in the price that firm negotiates when selling NBCU content to Comcast's video distribution rivals. In particular, under the Nash bargaining solution, the fraction $(1-\mu)$ of the cost increase is transferred through to the negotiated price, where $(1-\mu)$ is the bargaining skill or relative patience of the rival MVPD. This implies that an estimate of the increase in programming prices resulting from vertical integration is given by the following expression:³⁹

$$\Delta P = (1-\mu) \times d \times \alpha \times \pi$$

Bargaining Weights and Parameter Values

40. The bargaining skill of NBCU (μ) is inferred from the results presented in a recent academic study, which empirically estimates the bargaining skill (relative patience) of MVPDs when negotiating with individual national cable networks and regional sports networks (RSNs).⁴⁰ Estimates for six NBCU national cable networks are reported.⁴¹ In order to use these estimates to infer NBCU's bargaining skill parameter in negotiating with various types of MVPDs, we need to account for the fact that national cable networks are almost always sold as a bundle, combining marquee networks and less established networks. To the extent that the content provider obtains carriage of less popular networks rather than a higher price for more popular networks (e.g. USA Network) when negotiating the terms at which an MVPD will accept a bundle of programming, the reported empirical estimates of the bargaining skill of any individual network could be biased. In particular, this dynamic would tend to generate a downward bias for the bargaining skill parameters associated with individual popular networks and an upward bias for the parameters associated with less popular networks. To address this problem, we do not rely on individual bargaining skill parameters, but instead look to the average of the bargaining parameters across all six of the available estimates for NBCU-owned cable networks in making our calculations. Using this approach, NBCU's bargaining power (μ) would be estimated at 0.53 when negotiating with Telco's and 0.56 when negotiating with DBS providers.⁴² Both estimates are close to a common assumption in the economic literature of each party having equal bargaining skill (i.e. $\mu = 0.5$),

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Workshop Transcript at 21-22. See generally John Nash, *The Bargaining Problem*, 18 *ECONOMETRICA*, 155-162 (1950).

³⁹ DIRECTV – Murphy August Report at ¶ 15. Under the assumption of equal bargaining strength, this formula is also derived in DIRECTV – Murphy June Report at ¶ 18-38 and stated in ACA – Rogerson June Report at 29; ACA – Rogerson August Report at 3; Applicants – Israel/Katz July Report at ¶ 42. The bargaining skills of the parties are assumed not to change with the transaction. Note that if the seller has all of the bargaining skill (i.e., $\mu=1$), then prices would not be expected to change since NBCU could make a take-it-or-leave-it offer to extract all of the gains from trade both before and after the transaction.

⁴⁰ Ali Yurukoglu, *Bundling and Vertical Relationships in Multichannel Television*, NYU Stern (2008) at 48, available at http://pages.stern.nyu.edu/~ayurukog/multichannel_vertical.pdf.

⁴¹ The six networks are: Bravo, USA, CNBC, MSNBC, Oxygen and Syfy

⁴² The estimates for “big cable” providers are used to calculate the bargaining parameter for Telcos.

so this convention is adopted here.⁴³ We do not have empirical estimates of the bargaining skill of broadcast stations in retransmission consent negotiations. We therefore make a more conservative assumption (one that is less likely to suggest harm than equal bargaining skill), by assuming that the broadcast station has 2/3 of the bargaining skill when calculating price changes for the seven NBC O&O stations in Comcast's footprint.

Departure and Diversion Rates

41. In order to use this formula to determine the degree to which the transaction improves Comcast's bargaining position, we employ the same values for the diversion rate and Comcast's per subscriber profit as we used in the foreclosure analysis. We also incorporate estimates of the departure rate - the fraction of rival MVPD subscribers that can be predicted to shift to Comcast's cable system if the rival MVPD loses access to joint venture programming. For broadcast programming, we use the [REDACTED] departure rate we estimated from the Fisher dispute.

42. Our record does not include empirical evidence of the subscriber losses that would likely result if an MVPD were to lose a national cable network or a bundle of such networks.⁴⁴ The only evidence in our record on the likely departure rates that would be observed from the loss of the bundle of NBCU national programming comes from applying a method developed by DIRECTV's economist for estimating departure rates for individual networks and bundles of networks based on the bargaining model framework.⁴⁵ By calculating the BATNAs of each negotiating party, the estimated subscriber departure rate from losing access to the programming can be inferred for each MVPD from the negotiated affiliation fee.⁴⁶ The method determines how large the departure rate must be to give NBCU the bargaining position necessary to obtain the observed affiliation fee, given what is known about the other determinants of the bargaining outcome.

43. The Applicants criticize this methodology for calculating estimated departure rates from losses of national cable programming.⁴⁷ In particular, they question a number of specific assumptions adopted in the model and suggest that the pricing predictions from the model are inconsistent with the pricing predictions of the Commission in the *News Corp.-Hughes* transaction, as well as their own empirical estimates of the pricing changes that followed that transaction. They further argue that the

⁴³ This is also the assumption made by the Applicants' economist Professor Katz in his analysis of retransmission consent fee negotiations. Katz, Orszag & Sullivan at ¶ 22.

⁴⁴ The empirical evidence on this question is limited, as there have been only a few instances of a distributor losing access to a national cable network and all of these events were short in duration or involved networks that were much less popular than those involved in the proposed transaction. See Reply Comments of Time Warner Cable, Inc., Attachment: Salop, Chipty, DeStefano, Moresi and Woodbury, *Economic Analysis of Broadcasters' Brinkmanship and Bargaining Advantaged in Retransmission Consent Negotiations*, filed in MB Docket No. 10-71 (Jun. 3, 2010) at Appendix 2.

⁴⁵ See DIRECTV – Murphy August Report at Exhibit 4.

⁴⁶ See DIRECTV – Murphy June Report at ¶¶ 23-34 for the derivation and DIRECTV – Murphy August Report at ¶ 15 for the general formula given by:

Error!

where d is the predicted departure rate, Fee_1 is the negotiated affiliate fee, Fee_C is the affiliate fee Comcast pays, Fee_2 is the average affiliate fee of all other MVPDs, and k is one over the share of the MVPD's decrease in profits that is due to a reduction in subscribers, holding price constant. The other terms are defined as before.

⁴⁷ Applicants – Israel/Katz Response to Murphy at 1-8 (Nov. 10, 2010).

method developed by DIRECTV's economist is not reliable because it does not provide a reasonable explanation for a generally acknowledged recent increase in retransmission consent fees. They state that for the model to be correct, the subscriber departure rate from losing a broadcast network would have to be increasing substantially over time and that this is implausible.

44. We find the arguments proffered by the Applicants on these points unpersuasive, and conclude that the methodology for calculating estimated departure rates from losses of national cable programming based on the bargaining model is informative. First, we conclude that the method does allow for an explanation for variation in retransmission consent fees over time. In fact, in a recent FCC retransmission consent proceeding, one of the Applicants' economists used a similar bargaining model to argue that rising competition in the MVPD market is substantially increasing the departure rate that would be observed from the loss of a broadcast network signal and that as a result of this greater bargaining leverage, retransmission fees are rising.⁴⁸

45. Second, we find no inconsistency between the pricing predictions from the model and the experience with the *News Corp.-Hughes* transaction. We show in a later section that the price increases due to the vertical integration of News Corp. programming predicted by the bargaining model closely track the actual price increases observed in the post-transaction data. Finally, we find that the model's broadcast departure rate predictions correspond closely to empirical estimates. In particular, DIRECTV's economist estimated that foreclosure of a rival from a single broadcast network would result in a departure rate of [REDACTED], which is close to the [REDACTED] departure rate estimate we found in our empirical analysis of the recent Fisher dispute.⁴⁹

46. Applying the bargaining model to predict the departure rate for the bundle of NBCU national cable networks (excluding the NBC broadcast network) produces the estimates shown in the second column of Table 3 below.⁵⁰ Separate departure rates for each MVPD rival are computed from data provided by NBCU on per subscriber network affiliate fees by MVPD and the average net per subscriber advertising revenues by network.⁵¹ The estimates demonstrate the value of the non-broadcast NBC cable network bundle to MVPD offerings. The total expected departure rate for the bundle of networks – which range from [REDACTED]– is greater than the departure rate we predict for any individual NBCU O&O station (see the same rows in the last seven columns). Furthermore, although the disaggregated estimates are not shown here, the highest estimated departure rate for any single network (USA) is less than [REDACTED] of the departure rate for the total bundle. The latter evidence suggests that the overall bundle of NBCU cable networks is critical programming that MVPDs need to offer a

⁴⁸ Katz, Orszag & Sullivan at ¶¶ 30-36. Furthermore, DIRECTV's economist suggests that the recent decline in broadcast advertising revenues also contributes to the observed increase in retransmission consent fees since, under the bargaining framework he proposes, this trend would also result in higher negotiated retransmission fees. DIRECTV – Murphy November Report at ¶ 22-23. We do not mean to suggest that these are the only explanations for observed changes in retransmission fees, or that they are necessarily the most important explanations.

⁴⁹ Using confidential data and the bargaining model, we predict a departure rate of [REDACTED] for DISH in the event it lost the NBCU broadcast signal.

⁵⁰ The NBCU networks analyzed here are: USA, CNBC, Universal, SYFY, Bravo, MSNBC, Oxygen, Chiller, Sleuth, MUN2, CNBC World and the Weather Channel.

⁵¹ Per subscriber net ad revenues and affiliate fees for 2009 are taken from 61NBCU0000001 and 60NBCU0001520, respectively. The model assumes that NBCU advertising revenues are the same for all MVPDs. MVPD profit margins are calculated from 2009 SEC 10-K filings on the basis of reported average revenue per user (ARPU) and per subscriber variable costs. Due to the unavailability of disaggregated data for the operations of Verizon FiOS and AT&T U-verse from the telephony operations of these firms, we assume a per subscriber monthly profit margin of [REDACTED].

competitive service that is attractive to consumers even if no individual network in the bundle were considered “marquee” programming. [REDACTED]

47. The estimated increases in national NBCU programming prices due to vertical integration are also shown in column 2 of Table 3. Prices are predicted to increase for all rivals, but [REDACTED] is predicted to experience the largest increase. Following the transaction, when [REDACTED] renegotiates its current affiliation agreement for the bundle of NBCU national cable networks, we would expect that the price will be [REDACTED] more per subscriber per month for the programming under the assumption of equal bargaining skill.⁵² The expected increase in monthly per subscriber retransmission consent fees for the O&O broadcast signals that overlap with the Comcast footprint, shown in columns 3-9 of Table 3, exhibit similar patterns. Retransmission consent fees are predicted to increase for all rival MVPDs and by the largest amount for Telco distributors in DMAs where Comcast is the dominant cable provider.

Empirical Estimates of Vertical Price Effects

48. The Applicants argue that empirical estimates of increases in programming prices resulting from other instances of vertical integration provide more reliable evidence as to the expected change in program prices than estimates based upon the Nash bargaining model, which the Applicants term speculative. They used fixed effect estimation to empirically estimate actual programming price increases following four vertical transactions and found no evidence of post-integration increases in affiliation fees to rival MVPDs.⁵³

49. We conclude that the study the Applicants performed to support the conclusion that vertical integration would not lead to increased programming fees to rivals is not reliable for two reasons. First, two of the events they studied, the sale of Bravo by Cablevision and the acquisition of the Travel Channel, are not probative because the vertical bargaining model would only predict a slight increase in the average national price for the programming at issue, given that Cablevision and Cox have very limited geographic footprints while Bravo and the Travel Channel are national networks.⁵⁴ The data available for the Applicants’ analysis would be unlikely to have the statistical power to detect the small price increases those mergers would be estimated to generate. Second, the Applicants excluded a large portion of the sample due to missing ratings data, which they used to control for possible changes in programming quality.⁵⁵ Although the Applicants’ study estimated substantial positive price effects, the small sample size resulted in the point estimates being statistically insignificant.⁵⁶

50. We address these issues in the following manner. First, our analysis focuses solely on the vertical integration of the Fox programming bundle with DIRECTV in the *News Corp.-Hughes* transaction. As the first column of Table 3 demonstrates, the bargaining model estimates substantial post-integration price increases for the national networks involved in this transaction. Second, to control for possible changes in programming quality, we use monthly per subscriber programming expenses. Unlike

⁵² If we assume that NBCU has 2/3 of the bargaining skill, the estimated price change would be [REDACTED]. If we assume that NBCU has 1/3 of the bargaining skill we would expect Verizon’s monthly per subscriber programming costs to rise by [REDACTED].

⁵³ Applicants – Israel/Katz July Report at ¶ 86. Applicants’ Response to Economist Workshop by Israel/Katz at 1-2 (Oct. 25, 2010).

⁵⁴ ACA – Rogerson August Report at 19-20.

⁵⁵ Nielsen ratings were used to control for potential post-integration changes in programming quality. However, they were missing for approximately half of the networks for which pricing data was available.

⁵⁶ See Applicants’ Response to Economist Workshop by Israel/Katz at Table 1 (Oct. 25, 2010).

ratings data, this measure of quality is available for nearly every network in our sample.

51. To estimate the effect of the vertical integration of Fox programming with the DIRECTV distribution platform in 2004 and subsequent disintegration in 2008, we use SNL Kagan annual affiliate fee data from 2002 to 2009 and employ a difference-in-differences model similar to the one estimated by the Applicants. The treatment group is composed of the national cable networks in which News Corp. had a controlling interest.⁵⁷ The control group consists of all networks that did not change vertical integration status during the estimation period.⁵⁸ We estimate two models in order to compare our estimates to the predicted changes in affiliate fees paid by MVPDs for the Fox cable networks shown in the first column of Table 3. In the first model, the dependent variable is the monthly per subscriber affiliate fee paid to the network. In the second model, the dependent variable is the percent change in programming fees from the previous year. The independent variable of interest in each model is the percentage of the last five years that the News Corp. programming was integrated with DIRECTV.⁵⁹ This approach, also employed by the Applicants, is used because we are unable to observe the date when the pre-transaction contracts were renegotiated following the merger. Since contracts can span multiple years, we would expect that the change in programming fees would increase with the time since vertical integration occurred. Finally, since national cable networks are typically sold in bundles, network prices under the same ownership control are unlikely to be independent. To account for this we cluster the standard errors by owner to allow for correlation of network prices over time and within the same ownership bundle.⁶⁰

52. The estimated changes in affiliate fees following the *News Corp.-Hughes* transaction presented in Table 4 below generally confirm the price increase predictions for this bundle of programming previously derived from the bargaining model.⁶¹ The results given in the first column imply that five years after the transaction, the average monthly price per network for News Corp. programming is expected to be a statistically significant **[REDACTED]** higher than would be the case absent integration. However, higher programming prices may be due either to increased investment in programming as a result of vertical integration, or to anticompetitive price effects. To distinguish between these two hypotheses, we add a three year moving average of monthly per subscriber programming investments to the model in the second column. The estimated effect is still a statistically significant **[REDACTED]** increase in the per network price of the bundle of News Corp. programming above what would be expected absent vertical integration. Comparing the estimated increase in per network programming prices to the predicted price changes in Table 3 again supports our view that the bargaining model provides reliable predictions. Averaging the predicted per network price increase

⁵⁷ The networks are: Fox Movie Channel, Fox News, Fox Soccer Channel, Fox Sports en Espanol, Fuel TV, FX Network, National Geographic, Speed, Fox Business Network and Fox College Sports.

⁵⁸ This restriction causes us to drop the Travel Channel, Bravo, Versus, as well as the entire bundle of Time Warner networks from our sample.

⁵⁹ The models also include year dummies, network fixed effects and a spline in the age of the network with knot points at the quintiles of the variable.

⁶⁰ This is the approach for accounting for serially correlated errors suggested by Marianne Bertrand, Esther Duflo & Sendhil Mullainathan, *How Much Should We Trust Differences-in-Differences Estimates*, 119 Q.J. OF ECON. 249-75 (2004). We also estimated the errors using a block bootstrap procedure drawing 500 bootstrap replicates with replacement and this yielded nearly identical results.

⁶¹ The Fox networks included in the calculation are: Fox News Channel, Speed, FX, Fox Movie Channel, National Geographic, Fox College Sports, Fox Sports en Espanol, Fox Soccer, Fuel and the TV Guide network. Price increases to only DISH, Comcast and Cox are calculated due to the availability of SEC 10-K filing data (to calculate profit margins) for these firms.

estimated for DISH, Comcast and Cox yields a predicted increase of [REDACTED] per network, which is almost identical to the empirical estimate obtained after adjusting for changes in program quality. Similar results are obtained for the percentage point increase in programming fees shown in columns 3 and 4. Adjusting for programming quality, column 4 indicates vertical integration led to a [REDACTED] percentage point increase in the annual percentage change in programming prices. Accordingly, the evidence from past vertical transactions supports our conclusion that vertically integrating a video distributor and a national cable programmer leads to higher programming prices to rival MVPDs.[REDACTED]

C. Horizontal Price Increases

53. ACA's economist argues that the combination of a RSN and local broadcast station under the same ownership will result in higher programming fees.⁶² This follows from a bilateral bargaining model. If the two networks are at least partial substitutes from the perspective of MVPDs, then the joint venture will be able to obtain a higher price for the two programming assets due to the unavailability of this substitute programming if the two sides fail to reach an agreement.⁶³ The combination of networks effectively decreases the BATNA of any MVPD that is negotiating with the joint venture over the price of the joint venture's programming.

54. We test ACA's claim that the combination of RSNs and local affiliates of major broadcast networks leads to higher programming charges by analyzing the change in affiliate fees following the integration of a Fox O&O broadcast station and a Fox RSN in the same local market under the joint ownership of News Corp relative to a control group of RSNs not under joint ownership with a broadcast station.⁶⁴ The data and model are similar to those employed in the analysis reported in Table 4 and estimated by the Applicants.⁶⁵ However, due to the small number of owner clusters in our RSN network sample and the fact that RSNs are generally not sold in bundles, we cluster the errors in this analysis by network.⁶⁶

55. Our difference-in-differences model estimates are presented in columns 2 through 5 in Table 5 below.⁶⁷ The results generally support the conclusion that joint ownership of these two types of

⁶² ACA – Rogerson June Report at 9-18.

⁶³ ACA – Rogerson August Report at 24-26 and Applicants – Israel/Katz July Report at ¶¶ 97-98. Applicants argue that harm is unlikely because the NBC broadcast network and Comcast's RSNs are not sufficiently close substitutes. Israel/Katz July Report at ¶¶ 101-104 and Figure V.1.

⁶⁴ Affiliate fee and programming expense data were obtained from SNL Kagan (1997- 2009). The treatment group consists of Fox Sports Florida (2005-Present), Fox Sports North (2001-Present), Fox Sports Wisconsin (2001-2008), Fox Sports Midwest (1999-2008), Fox Sports South (1999-2008) and Sun Sports (1999-Present). FSN Northwest, Fox Sports Ohio, FSN Rocky Mountain and SportSouth were also horizontally integrated during the sample period but were excluded from the analysis due to a short integration period or a major change in format or programming carried.

⁶⁵ Applicants – Israel/Katz July Report at ¶¶ 122-125 and Applicants' Response to Economist Workshop by Israel/Katz at 1-2 (Oct. 25, 2010).

⁶⁶ Monte Carlo simulations show that the robust variance estimator has good finite sample properties given the number of clusters employed in our previous empirical analysis of vertical pricing effects. If the RSN analysis were clustered by owner instead of network, these properties may no longer hold due to the small number of clusters. Gabor Kezdi, *Robust Standard Error Estimation in Fixed-Effects Panel Models*, HUNGARIAN STATISTICAL REVIEW, (Special English Volume 2004), at 95-116.

⁶⁷ The models also include year dummies, network fixed effects and a spline in the age of the network with knot points at the quintiles of the variable.

programming assets in the same region allowed the joint venture to charge a higher price for the RSN relative to what would be observed if the RSN and the local broadcast affiliate were separately owned. We find that five years after the horizontal integration of an RSN and O&O broadcast station, and after controlling for programming investment, News Corp. was able to charge affiliate fees for the RSN that were [REDACTED] higher than would be expected under separate ownership, although this estimate is not statistically significant. We do find a statistically significant [REDACTED] percentage point increase in the annual percent change in programming prices. This evidence is consistent with ACA's claim of potential for horizontal harms resulting from the transaction.[REDACTED]

D. Efficiencies

56. Another transaction-specific benefit claimed by the Applicants is the elimination of the double marginalization of programming costs.⁶⁸ According to economic theory, double marginalization occurs when an upstream (supplier) firm charges a wholesale price above marginal cost, which causes the downstream (buyer) firm to charge a higher price to consumers than it would if its price was based on the upstream firm's marginal cost. A vertically integrated firm would base its price to consumers on the upstream firm's marginal cost, so vertical integration would likely lead to a reduction in the price to consumers.

57. The Applicants observe that NBCU currently sells content to Comcast and other MVPDs at a per-subscriber price that is above the marginal cost of that programming.⁶⁹ They argue that a vertically integrated Comcast-NBCU, because it would use the lower marginal cost of programming as the basis for its pricing, will have an incentive to charge a lower price to consumers to attract more customers to Comcast's service. Since Comcast will initially internalize a portion of the payments it makes to NBCU, and will internalize the entire payment in the event it exercises its option to acquire sole ownership of the NBCU programming in the joint venture, Comcast will view the margin it earns per video distribution subscriber as larger and thus have an incentive to lower prices and increase output.⁷⁰

58. Commenters and the Applicants' economists agree that Comcast will have this incentive only to the extent that the subscribers it attracts did not previously have access to NBCU content.⁷¹ As a result, the additional customers that could potentially generate savings from eliminating double marginalization fall into three groups:⁷² (1) those previously without MVPD service; (2) Comcast subscribers previously without access to some NBCU networks; and (3) rival subscribers previously without access to some NBCU networks.⁷³ Commenters and the Applicants agree that attracting new

⁶⁸ See, e.g. Application at 70; Applicants - Rosston May Report at ¶¶ 80-90.

⁶⁹ See Applicants - Rosston May Report at ¶ 80.

⁷⁰ See *id.* at ¶ 83.

⁷¹ This limitation arises because, for every subscriber that switches to Comcast from another MVPD, NBCU's revenues from the other MVPD are reduced by the amount that the other MVPD pays NBCU per subscriber. Thus, the net benefit to adding subscribers must include the "opportunity cost" of foregone revenues that those subscribers were earning for NBCU from their former MVPD. For subscribers that previously had access to NBCU content, this opportunity cost offsets what would otherwise appear to be a cost savings from the elimination of double marginalization. ACA Rogerson August Report at 7-11; Applicants' Response to Rogerson by Israel/Katz at 2-3 (Oct. 25, 2010).

⁷² If Comcast attracts new viewers for the NBCU networks, it would also benefit from increased NBCU advertising revenues.

⁷³ For example, MVPD customers might not have access to many NBCU networks if they subscribe to a "limited basic," "Spanish language" or "family" tier.

Comcast customers from a fourth group, rival subscribers currently with access to NBCU networks, would not generate any double marginalization savings.⁷⁴

59. The Applicants claim that the elimination of double marginalization will lower Comcast's monthly per subscriber marginal costs by between [REDACTED] depending on the assumptions used.⁷⁵ The Applicants also claim, based upon a Bertrand-Nash pricing simulation, that subscriber weighted average consumer prices for MVPD service in the seven O&O DMAs that overlap with Comcast will fall by [REDACTED] and therefore the transaction will increase consumer welfare.⁷⁶

60. Commenters question the reliability of certain evidence submitted in support of Applicants' choice of parameter values in this study.⁷⁷ They also argue that the study does not account for the fact that MVPD customers that currently do not purchase tiers with NBCU networks have demonstrated a lack of interest in this programming, so would be less responsive to a price drop on these tiers than customers of other MVPDs who already get this programming.⁷⁸ Finally, they say that the simulation exercise that the Applicants perform ignores harms to customers outside Comcast's footprint arising from higher programming prices to MVPDs (such as DIRECTV and DISH) that also serve subscribers in other regions.⁷⁹

61. We do not credit the Applicants' claims as to the cost savings they will achieve from the elimination of double marginalization, and the resulting effect on subscriber prices, because they are insufficiently substantiated and because they likely overstate the actual benefits to the firm and consumers. First, as the Applicants acknowledge, their assumption that a price reduction in the expanded basic tier will lead rival subscribers currently with and without the NBCU networks to switch to Comcast's MVPD service at equal rates is arbitrary,⁸⁰ and we find it implausible. Consumers with a revealed preference for NBCU programming, and high end video packages in general, would likely exhibit greater switching rates in response to a price reduction for these networks than consumers that have demonstrated they do not value the NBCU networks as highly.⁸¹

62. Second, the Applicants base their estimate of a key parameter, the rate at which customers currently without access to NBCU networks would switch to a higher tier with these networks in response to a small reduction in that tier's price, on the acceptance rate of a recent Comcast

⁷⁴ Applicants' Response to Rogerson by Israel/Katz at 6 (Oct. 25, 2010).

⁷⁵ Applicants' Response to Rogerson by Israel/Katz at Table 5 (Oct. 25, 2010).

⁷⁶ *Id.* at 19.

⁷⁷ DIRECTV argues that the evidence about consumers responding to triple play promotions and of their historical tendency to switch tiers or MVPD providers is not informative about their likely response to a price drop on tiers with NBCU programming. DIRECTV – Murphy November Report at 7-10. They also argue that the data used by the Applicants substantially undercounts the number of other MVPD subscribers receiving NBCU programming. *Id.* at 12-13.

⁷⁸ *Id.* at 10-11.

⁷⁹ *Id.* at 14-17.

⁸⁰ Applicants' Response to Rogerson by Israel/Katz at 10. Using the Applicants' notation, they assume that $g_3/h_3 = g_4/h_4$ where g_3 is the number of customers in group 3 that switch and h_3 is the population size of group 3; g_4 and h_4 are defined analogously.

⁸¹ The Applicants also submitted a report where they assume no rival customers without NBCU networks switch to Comcast. This approach yielded lower double marginalization estimates, although still positive and substantial. Applicants – Israel/Katz November Report at 8-9.

promotional offer for a “triple play” bundle of digital preferred video, broadband Internet access service and voice service.⁸² We find this evidence inadequate to substantiate the estimated parameter. It is plausible that very few customers without NBCU programming – the customers whose switching rate Applicants seek to estimate – took this offer.⁸³ The vast majority were likely Comcast and rival customers who already subscribed to higher tier video services that included the NBCU networks but wanted to add voice and data services or switch such services from another provider.⁸⁴ Under such circumstances, double marginalization benefits would primarily come from attracting as new subscribers those consumers previously without any MVPD service, which is also likely a small group, so the double marginalization benefits would be much less than Applicants estimate.

63. The Applicants’ model also does not account for the fact that the opportunity cost associated with rival subscribers switching to Comcast [REDACTED]. The Applicants assume that rival MVPDs pay the Comcast rate for NBCU programming, but we find that rival MVPDs [REDACTED].⁸⁵ This implies that every customer from a rival MVPD service that currently subscribes to a tier with NBCU networks and who switches to Comcast creates [REDACTED] than the Applicants assumed. Correcting this omission would also tend to lower any potential double marginalization benefits related to the transaction.

64. Finally, the Applicants’ welfare calculations only measure the change in programming prices within the seven DMAs where Comcast will have joint ownership of an NBCU O&O station and a cable system. This approach does not account for the expected increases in national programming prices to subscribers of a rival distribution service (*e.g.* DBS) that reside outside of Comcast’s footprint. Since affiliation agreements for national programming are negotiated on a nationwide basis, these consumers could potentially be harmed by the transaction and would not benefit from any transaction specific efficiencies since they do not live within Comcast’s franchise area. The Applicants’ analysis also does not account for the possibility of higher programming prices for firms that do not compete with Comcast (*e.g.* Cox) due to MFN clauses and the resulting changes in bargaining outcomes that we identified in the vertical section of this Appendix. All of these factors lead us to conclude that Comcast’s subscribers may

⁸² In particular, the Applicants rely on response rates to an offer sent to Comcast customers and rival MVPD subscribers for [REDACTED]. Applicants’ Response to Rogerson by Israel/Katz at 11. [REDACTED].

⁸³ Given that limited basic service currently costs \$19.10 (www.comcast.com last accessed 12/21/2010), it is unlikely that many consumers with such a low willingness to pay for video services, if any, would take a promotional offer for a high end triple play package costing [REDACTED] DIRECTV also points out that many of their customers that do not receive NBCU programming are customers receiving Spanish language packages with little or no English language content. These customers would also be unlikely to switch due to a small price change for the higher tier.

⁸⁴ In their data analysis, Applicants assume without justification that all Comcast customers responding to the promotional offer are switching from a service tier that does not contain NBCU programming to a service tier that does, ignoring the possibility that these customers may be switching between tiers that both contain NBCU programming. If all customers accepting the promotion had previously obtained NBCU programming – the possibility they assume away – then Comcast would have no post-transaction incentive to lower prices on tiers containing NBCU programming and its double marginalization benefits would be zero even though the promotion attracted many customers. A simple example demonstrates this point. Suppose Comcast and a rival firm each has 100 subscribers. In response to the promotional offer, suppose the acceptance rate for customers of either firm without access to NBCU networks is zero, but that [REDACTED]. For this reason, the data that Applicants rely upon are uninformative as to the rate at which customers without access to NBCU programming would switch tiers in order to obtain that programming in response to a small reduction in the price of tiers that include NBCU programming.

⁸⁵ See 60NBCU0001520 (providing NBCU data for calculations).

benefit from the elimination of double marginalization,⁸⁶ but that those benefits are likely to be substantially smaller than what the Applicants claim.

E. Program Carriage and Placement

65. A number of commenters argue that Comcast will have an increased incentive and ability to reduce competition from rival video programming networks or providers by denying carriage to unaffiliated networks that compete with its own affiliated networks, or only providing carriage under discriminatory terms and conditions.⁸⁷ Comcast could discriminate in price, channel placement or the number of systems that carry the programming. Although the Applicants maintain that they do not currently discriminate against competing unaffiliated networks, and that this will not change as a result of this transaction,⁸⁸ our analysis of Comcast's data on carriage and channel placement shows (1) that Comcast currently favors its affiliated programming in making such decisions and that (2) this behavior stems from anticompetitive motives rather than due to reasons that arise from vertical efficiencies. In consequence, the proposed transaction, which increases the scope of programming affiliated with Comcast's MVPD service, will likely lead to further anticompetitive discrimination unless appropriate conditions are imposed.

66. A vertically integrated MVPD may favor its own programming for either efficiency or anticompetitive reasons. A number of academic articles conclude that vertically integrated MVPDs tend to favor their own networks, but this finding is consistent with both a theory of anticompetitive harm and of welfare enhancing efficiency realizations due to vertical integration.⁸⁹ A finding of higher carriage rates for the affiliated networks is a necessary but insufficient condition for establishing the existence of anticompetitive foreclosure.

67. A method developed by Professor Austan Goolsbee in a recent Commission study, and adopted by the Applicants in this proceeding, provides a way to distinguish between the foreclosure and the efficiency hypotheses.⁹⁰ Goolsbee reasoned that if a vertically integrated MVPD favors its in-house networks for anticompetitive reasons, then increased competition within a geographic market should limit the ability of the vertically integrated MVPD to engage in such behavior. Based on this insight, Goolsbee developed an empirical test using firm-specific program carriage data: If the probability of favoring affiliated networks is found to decline as MVPD competition increases, then the integrated firm favors that programming for anticompetitive rather than efficiency reasons. In applying this test, he found evidence that nearly all vertically integrated firms for which he had carriage data tended to favor their own networks, and that this tendency was frequently motivated by anticompetitive foreclosure incentives.

68. We employ Goolsbee's empirical approach to test whether Comcast currently favors its networks and whether or not this is due to vertical efficiencies or foreclosure incentives. This analysis directly bears on the question of whether Comcast would also be likely to favor NBCU networks in an anticompetitive fashion after the transaction. We focus our study on the carriage decisions of Comcast for the four national networks in which it has a controlling interest that are carried on some but not most

⁸⁶ The evidence in the record is insufficient for us to quantify the magnitude of these benefits, however.

⁸⁷ Bloomberg Petition at 25; Entertainment Studios Comments at 15; NCAAOM Petition at 24; WealthTV Petition at 3; WGAW Comments at 8-9; Bloomberg Response at 17-20.

⁸⁸ Applicants' Response to Economist Workshop by Israel/Katz at 3-4.

⁸⁹ Applicants – Israel/Katz July Report at ¶¶ 142-143.

⁹⁰ Austan Goolsbee, *Vertical Integration and the Market for Broadcast and Cable Television Programming*, FCC Media Ownership Study (2007) (“Goolsbee”).

cable systems (Style, G4, Versus and Golf).⁹¹ As Professor Goolsbee noted, for networks that are carried on nearly every system, there is little room to observe strategic behavior on the part of a vertically integrated firm since every distributor has enough capacity to carry these channels.⁹²

69. The analysis is based on data from the Rovi Corporation, which provides the channel lineup of every MVPD in the country at the cable system headend. Using these data, we estimate a logit model to determine the probability that a headend carries a Comcast network as a function of a set of control variables. One of the controls is an indicator variable for whether the headend belongs to Comcast. A second is this indicator variable interacted with the share of the market that subscribes to DBS and Telco MVPD services.⁹³ The coefficients on these two variables are of primary interest for the carriage discrimination analysis. The Comcast indicator provides an estimate of how much more Comcast carries its own networks relative to the frequency with which other MVPD services carry them. This variable would be positive if Comcast carries its affiliated networks more than other MVPDs, but this result would be consistent with both the anticompetitive foreclosure and the efficiency hypotheses. The Comcast indicator interacted with the DBS and Telco market share variable is used to discriminate between the two explanations. This variable measures how Comcast's tendency to favor its affiliated networks changes with the degree of competition in the DMA. If this coefficient is negative and statistically significant, that would indicate that Comcast favors its own programming for anticompetitive reasons.

Carriage and Placement of Affiliated Networks

70. The empirical analysis supports the conclusion that Comcast discriminates against unaffiliated programming in favor of its own. The positive and statistically significant coefficient on the Comcast indicator variable in column 1 of Table 6 suggests that Comcast currently carries its own networks at a much higher rate relative to other MVPD systems. Furthermore, the negative and significant coefficient on the interaction between the Comcast indicator and the DBS and Telco share variable shows that in markets with relatively high levels of competition, Comcast reduces the carriage of its own networks. The bottom line of the table calculates the minimum share of households in the DMA that must subscribe to all other rival MVPD services in order to eliminate Comcast's incentive to discriminate in favor of its affiliated programming. For the specification in the first column, we find that Comcast's competitors would need to serve at least [REDACTED] of the region's subscribers (i.e. Comcast serves no more than [REDACTED]) to avoid Comcast's discriminating in favor of its affiliated programming.⁹⁴ The results are similar if the analysis is limited to Comcast's two least distributed networks G4 and Style, as reported in columns 3 and 4 of Table 6.

⁹¹ The E! Network is dropped from the analysis since it is carried on nearly all systems.

⁹² Goolsbee at 26-27.

⁹³ The other control variables in the model are: share of the DMA that subscribes to DBS and Telco MVPD service, a spline of the number of channels carried at the headend to control for capacity, the percentage of residents in each zipcode by race category from the Census, percent of residents in each zip code that is female, percent that is under 18 or over 65, the log of median household income, the population per household and the percent of homes within the zipcode that are owner-occupied.

⁹⁴ Column 2 reports the results of estimating the same model while weighting head ends by subscribers. The coefficient estimates are similar, but the interaction variable is no longer significant statistically. Columns 4 and 6 show that weighting does not alter the significance of the corresponding coefficient estimates when the analysis is performed for Comcast's two least distributed networks only or in the analysis of whether Comcast places its networks networks in more desirable channel positions on its system (the lower-numbered "analog tier"). These robustness tests do not lead us to question the interpretation we make of the unweighted models. The marginal effects reported for the two variables of interest near the bottom of each column calculate the change in the probability of carriage for a unit change in each variable at the sample means of all other variables in the model.

These results suggest that Comcast currently favors its affiliated programming and that it does so for anticompetitive reasons. This analysis supports our conclusion that these patterns of anticompetitive discrimination in carriage rates would likely extend to the carriage decisions related to NBCU networks after the proposed transaction unless appropriate conditions are imposed. This evidence regarding Comcast's past tendency to favor affiliated networks in carriage and placement decisions does not address whether Comcast has discriminated against any particular unaffiliated network in any specific case.[REDACTED]

71. Many commenters have argued that Comcast will likely favor its affiliated programming not only in carriage rates, as analyzed above, but also in channel placement. Goolsbee's model also permits an analysis of whether Comcast has also given its networks more favorable channel positions in the past. The model is specified as before, except the dependent variable is whether or not each Comcast network is carried on the more desirable analog tier of each MVPD system (channels 2 through 99).⁹⁵ The results from this channel placement analysis, reported in columns 5 and 6 of Table 6, are similar to those found in the network carriage analysis reported in the previous four columns. This analysis suggests that after the proposed transaction, Comcast would favor newly affiliated networks in channel placement, as well as in making carriage decisions, in order to harm competition.

⁹⁵ The analog indicator variable in the Rovi data roughly approximates those networks carried on channels 2-99 on each headend in the data. Applicants – Israel/Katz July Report at ¶ 159, n.207.

APPENDIX C
Licenses to be Assigned or Transferred

The consolidated Application filed by Comcast, GE, and NBCU includes applications pertaining to the Commission's licenses listed below. They are separated below by type of licenses and, within each category, listed by licensee/registrant name, application file number, call sign, and/or other service-specific information, as appropriate. Interested parties should refer to the consolidated Application for a more detailed listing of the licenses. Each of the Applicants' subsidiaries or affiliates may hold multiple licenses of a particular type.

Part 25 – Satellite Communications Licenses

<u>File No.</u>	<u>Licensee/Registrant</u>	<u>Call Sign(s)</u>
Satellite Earth Stations		
SES-ASG-20100201-00147	TGC, Inc.	E050133
SES-ASG-20100201-00148	E! Entertainment Television, Inc.	E080069 E020009
SES-T/C-20100201-00149	The Comcast Network, LLC	E000423 E000360 E090030 E050129 E020281
SES-ASG-20100202-00150	NBC Telemundo License Co.	E020152 E870542 E980370 E980090 E980067 E960289 E940360 E940216 E060346 E873926 E870840 E870839 E870838 E870837 E860946 E860725 E860347 E860231 E090133 E090033 E070259 E070252 E070167 E070133

		E070047
		E060397
		E990553
		E060347
		E060345
		E060344
		E060330
		E060329
		E060328
		E060327
		E060326
		E060325
		E060324
		E060008
		E060006
		E050280
		E050139
		E4288
		E040464
		E040167
		E040097
		E020194
		E020193
		E020062
		E020061
		E010336
		E010105
		E000668
		E000667
		E000226
		E000129
		E000099
		E060193
		E873608
SES-LIC-20101203-01493	NBC Telemundo License Co.	E100132
SES-LIC-20101203-01494	NBC Telemundo License Co.	E100133
SES-T/C-20100201-00151	New England Cable News	E050107
		E940292
		E970108
SES-T/C-20100201-00152	Station Venture Operations, LP	E890143
		E030334
		E050232

Part 73 – Radio Broadcast Services Licenses

<u>File No(s).</u>	<u>Licensee</u>	<u>Call Sign</u>	
BTCCDT-20100128AAG	NBC Telemundo License Co.	WCAU(TV)	
BTCCDT-20100128AAH		WMAQ-TV	
BTCCDT-20100128AAI		WNBC(TV)	
BTCCDT-20100128AAJ		WRC-TV	
BTCCDT-20100128AAK		WTVJ(TV)	
BTCTT-20100128AAL		W58BU	
BTCCDT-20100128AAM		WVIT(TV)	
BTCCDT-20100128AAN		KNBC(TV)	
BTCCDT-20100128AAO		KNTV(TV)	
BTCCDT-20100128AAP		WNEU(TV)	
BTCCDT-20100128AAQ		WNJU(TV)	
BTCCDT-20100128AAR		WSCV(TV)	
BTCCDT-20100128AAS		WSNS-TV	
BTCCDT-20100128AAT		KDEN-TV	
BTCCDT-20100128AAU		KHRR(TV)	
BTCCDT-20100128AAW		KNSO(TV)	
BTCCDT-20100128AAX		KSTS(TV)	
BTCTT-20100128AAZ		K15CU	
BTCTTL-20100128ABA		K52FF	
BTCTTA-20100128ABB		KEJT-LP	
BTCTVL-20100128ABD		KMAS-LP	
BTCCDT-20100128ABE		KTAZ(TV)	
BTCCDT-20100128ABF		KTMD(TV)	
BTCCDT-20100128ABG		KVDA(TV)	
BTCCDT-20100128ABH		KVEA(TV)	
BTCCDT-20100128ABK		KXTX-TV	
BTCCDT-20100128ABL		Station Venture Operations, LP	KNSD(TV)
BTCCDT-20100128ABM			KXAS-TV
BTCCDT-20100128ABN		Telemundo of Puerto Rico	WKAQ-TV
BTCTTV-20100128ABO			W09AT
BTCTT-20100128ABP			W32AJ
BTCTT-20100128ABQ		W68BU	
BTCCDT-20100128ABR		Telemundo Las Vegas License LLC	KBLR(TV)
BALCDT-20100128ABS	NBC Telemundo License Co.	WCAU(TV)	
BALCDT-20100128ABT		WMAQ-TV	
BALCDT-20100128ABU		WNBC(TV)	
BALCDT-20100128ABV		WRC-TV	
BALCDT-20100128ABW		WTVJ(TV)	
BALTT-20100128ABX		W58BU	
BALCDT-20100128ABY		WVIT(TV)	
BALCDT-20100128ABZ		KNBC(TV)	
BALCDT-20100128ACA		KNTV(TV)	

BALCDT-20100128ACB
BALCDT-20100128ACC
BALCDT-20100128ACD
BALCDT-20100128ACE
BALCDT-20100128ACF
BALCDT-20100128ACG
BALCDT-20100128ACI
BALCDT-20100128ACJ
BALTT-20100128ACK
BALTT-20100128ACL
BALTT-20100128ACM
BALTTA-20100128ACN
BALTVL-20100128ACP
BALCDT-20100128ACQ
BALCDT-20100128ACR
BALCDT-20100128ACS
BALCDT-20100128ACT
BALCDT-20100128ACU
BALTT-20100128ACV
BALCDT-20100128ACW

WNEU(TV)
WNJU(TV)
WSCV(TV)
WSNS-TV
KDEN-TV
KHRR(TV)
KNSO(TV)
KSTS(TV)
K15CU
K46GF
K52FF
KEJT-LP
KMAS-LP
KTAZ(TV)
KTMD(TV)
KVDA(TV)
KVEA(TV)
KWHY-TV
K47GD
KXTX-TV

Parts 90 and 101 - Private Land Mobile and Private Fixed Microwave Licenses

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0004101576	Comcast SportsNet Mid-Atlantic, L.P.	WPWF842
0004101702	Comcast SportsNet Philadelphia, L.P.	WQAW846
0004105041	Versus, L.P.	WPTR291
0004106409	TGC, Inc.	WPWN254
0004106423	E! Entertainment Television, Inc.	WPVJ725
0004101711	Station Venture Operations, LP	WPQY246
0004101741	Telemundo of Puerto Rico	WQES973
0004101787	Telemundo Las Vegas License LLC	WQGR453
0004101864	Universal City Property Management II LLC	KD22853
0004101869	Universal City Development Partners, LTD	WNTH512
0004102148	NBC Telemundo License Co.	KB81618
0004102460	Universal City Studios LLLP	KB85978

APPENDIX D
Ownership and Contribution Tables

NBCU OWNERSHIP INTERESTS¹

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Attributable broadcast television stations	WNEU, Merrimack, NH	Full	Yes
	WWDP, Norwell, MA	Minority	Yes
	WMAQ-TV, Chicago, IL	Full	Yes
	WSNS-TV, Chicago, IL	Full	Yes
	KXAS-TV, Fort Worth, TX	Majority	Yes
	KXTX-TV, Dallas, TX	Full	Yes
	KDEN-TV, Longmont, CO	Full	Yes
	KNSO, Merced, CA	Full	Yes
	WVIT, New Britain, CT	Full	Yes
	KTMD, Galveston, TX	Full	Yes
	KBLR, Paradise, NV	Full	Yes
	KNBC, Los Angeles, CA	Full	Yes
	KVEA, Corona, CA	Full	Yes
	KWHY-TV, Los Angeles, CA	Full	No
	WSCV, Fort Lauderdale, FL	Full	Yes
	WTVJ, Miami, FL	Full	Yes
	WNBC, New York, NY	Full	Yes
	WNJU, Linden, NJ	Full	Yes
	WCAU, Philadelphia, PA	Full	Yes
	KTAZ, Phoenix, AZ	Full	Yes
	WKAQ-TV, San Juan, PR	Full	Yes
	KETJ-LP, Salt Lake City, UT	Full	Yes
	KVDA, San Antonio, TX	Full	Yes
	KNSD, San Diego, CA	Majority	Yes
	KNTV, San Jose, CA	Full	Yes
	KSTS, San Jose, CA	Full	Yes
	KHRR, Tucson, AZ	Full	Yes
WRC-TV, Washington DC	Full	Yes	

¹ See Letter from David H. Solomon, Counsel to NBC Universal, Inc. to Marlene H. Dortch, Secretary, FCC (Nov. 18, 2010).

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Broadcast Programming Networks	NBC	Full	Yes
	Telemundo	Full	Yes
Controlled International Entities	CFN Class Financial Network Spa	Majority	Yes
	Estudios Mexicanos Telemundo, SA de CV	Full	Yes
	Film Distribution and Service SCRL	Full	Yes
	The History Channel GmbH	Half	Yes
	Geneon Universal Entertainment Japan LLC	Majority	Yes
	NGC Network (Singapore) Pte. Ltd.	Half	Yes
	UIP-Danube International Pictures LTD	Half	Yes
	United International Pictures	Half	Yes
	Universal Studiocanal Video	Half	Yes
	USA Brazil Programadora Ltda.	Half	Yes
Non-Broadcast Programming Networks	A&E Television Networks	Minority	Yes
	Bravo	Full	Yes
	Chiller	Majority	Yes
	CNBC	Full	Yes
	CNBC World	Full	Yes
	MSNBC	Full	Yes
	MUN2	Full	Yes
	Oxygen	Full	Yes
	ShopNBC	Minority	Yes
	Sleuth	Full	Yes
	SyFy	Full	Yes
	The Weather Channel	Minority	Yes
	Universal HD	Full	Yes
	Universal Sports	Minority	Yes
USA	Full	Yes	
Movie Producers	Universal Studios	Full	Yes
	Focus Features	Full	Yes
	Working Title	Full	Yes
	Arenas Entertainment	Minority	Yes
	CR Films	Half	Yes

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Wholesale Movie Distributors	Universal Studios	Full	Yes
	Focus Features	Full	Yes
	Working Title	Full	Yes
	Arenas Entertainment	Minority	Yes
Video Programming Producers	Universal Cable Productions	Full	Yes
Wholesale Video Programming Distributors	Universal Media Studios	Full	Yes
	News	Full	Yes
	MSNBC	Full	Yes
	CNBC	Full	Yes
	CNBC World	Full	Yes
	Telemundo (Telemundo Studios, Mun2, Telemundo O&Os)	Full	Yes
	NBC O&Os	Full	Yes
	Digital Studios	Full	Yes
	Sports, Olympics & NFL	Full	Yes
	driverTV	Minority	Yes
	Miss Universe	Half	Yes
	QUBO	Minority	Yes
	Universal Sports	Minority	Yes
Online Video Programming Distributors	bravotv.com	Full	Yes
	chillertv.com	Majority	Yes
	CNBC.com	Full	Yes
	holamun2.com	Full	Yes
	hulu.com	Minority	Yes
	MSNBC.com	Half	Yes
	NBC.com	Full	Yes
	nbcolympics.com	Full	Yes
	nbcsports.com	Full	Yes
	oxygen.com	Full	Yes
	sleuthchannel.com	Full	Yes
	syfy.com	Full	Yes
	telemundo.com	Full	Yes
	universalhd.com	Full	Yes
	usanetwork.com	Full	Yes

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
	weather.com	Minority	Yes
	driverTV.com	Minority	Yes
	universalsports.com	Minority	Yes
Other	Universal Studios Hollywood	Full	Yes
	Universal Orlando Resort	Half	Yes

COMCAST OWNERSHIP INTERESTS²

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
Cable systems in the following states:	CA; GA; UT; FL; AZ; CO; NM; WA;	Full	No
	MN; WI; MA; CT; NH; VT; ME; NY;	Full	No
	TX; OR; IL; IN; MI; PA; MD; WV; OH;	Full	No
	KY; TN; VA; NJ; NC; LA; DE; SC;	Full	No
	MO; KS; AL; MS; DC; AR; ID	Full	No
	MidContinent Communications ³	Half	No
	US Cable of Coastal Texas, LP	Minority	No
Non-broadcast properties:	E!	Full	Yes
	Golf Channel	Full	Yes
	Versus	Full	Yes
	Style	Full	Yes
	G4	Full	Yes
	PBS Kids Sprout	Minority	Yes
	TV One	Minority	Yes
	ExerciseTV	Majority	Yes
	FEARnet	Minority	Yes
	The Comcast Network	Full	Yes
	Comcast SportsNet California (formerly "Comcast SportsNet West")	Full	Yes
	Comcast SportsNet Mid-Atlantic (formerly "Home Team Sports")	Full	Yes
	Comcast SportsNet New England (formerly "Fox Sports Net New England")	Full	Yes
	Comcast SportsNet Northwest	Full	Yes
Comcast SportsNet Philadelphia	Full	Yes	

² See Letter from Michael H. Hammer, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 19, 2010).

³ According to a press release, Midcontinent Communications launched a local sports network, Midco Sports Network, on August 18, 2010. Midco Sports Network is a division of Midcontinent Communications and, according to its website, covers teams from NCAA Division I and II, the Northern Sun Intercollegiate Conference, and the Summit League, as well as high school and youth sports events. Midcontinent Communications, *Midcontinent Launches New Sports Network* (press release), Aug. 18, 2010, available at <http://www.midcocomm.com/pressroom/NewsDetail772.cfm?ID=0,115>; MidCo SN, About Us, at <http://www.midcosportsnet.com/aboutus/> (last visited Nov. 5, 2010).

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Comcast Sports Southwest	Full	Yes
	Comcast Sports Southeast	Majority	Yes
	Comcast SportsNet Bay Area (formerly "Fox Sports Net Bay Area")	Majority	Yes
	Comcast SportsNet Chicago	Minority	Yes
	SportsNet New York	Minority	Yes
	The Mtn. MountainWest Sports Network	Half	Yes
	New England Cable News	Full	Yes
	Comcast Hometown Network	Full	No
	C2	Full	No
	CN100	Full	No
	Comcast Entertainment Television	Full	No
	Comcast Television Network	Full	No
	Pittsburgh Cable News	Minority	No
	Current Media	Minority	No
	MLB Network	Minority	No
	NHL Network	Minority	No
	Retirement Living Television	Minority	Yes
	Saigon Broadcasting Television Network	Half	Yes
	Television Korea 24 ⁴	Minority	Yes
Online Video Properties	Fandango	Full	Yes
	Daily Candy	Full	Yes
	Fancast	Full	No
	Comcast.net	Full	No
	Movies.com	Full	Yes
	E!	Full	Yes
	Golf Channel	Full	Yes
	Versus	Full	Yes
	Style	Full	Yes
	G4	Full	Yes
	PBS Kids Sprout	Minority	Yes
	MGM	Minority	No

⁴ Comcast previously indicated that it has an attributable interest in tvK24. It has now determined that tvK24 is comprised of two network feeds, tvK24 1 and tvK24 2.

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Music Choice	Minority	No
	TV One	Minority	Yes
	ExerciseTV	Majority	Yes
	FEARnet	Minority	Yes
	The Comcast Network	Full	Yes
	Comcast SportsNet California (formerly "Comcast SportsNet West")	Full	Yes
	Comcast SportsNet Mid-Atlantic (formerly "Home Team Sports")	Full	Yes
	Comcast SportsNet New England (formerly "Fox Sports Net New England")	Full	Yes
	Comcast SportsNet Northwest	Full	Yes
	Comcast SportsNet Philadelphia	Full	Yes
	Comcast Sports Southwest	Full	Yes
	Comcast Sports Southeast	Majority	Yes
	Comcast SportsNet Bay Area (formerly "Fox Sports Net Bay Area")	Majority	Yes
	Comcast SportsNet Chicago	Minority	Yes
	SportsNet New York	Minority	Yes
	The Mtn. MountainWest Sports Network	Half	Yes
	New England Cable News	Full	Yes
	Comcast Hometown Networks	Full	No
	C2	Full	No
	CN100	Full	No
	Pittsburgh Cable News	Minority	No
	Current Media	Minority	No
	MLB Network	Minority	No
	NHL Network	Minority	No
	Retirement Living Television	Minority	Yes
	Saigon Broadcasting Television Networks	Half	Yes
	Television Korea 24	Minority	Yes
Other:⁵	[REDACTED]	[REDACTED]	No

⁵ [REDACTED].

Comcast Ownership Interests	Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
[REDACTED]	[REDACTED]	No
[REDACTED]	[REDACTED]	No
[REDACTED]	[REDACTED]	No
[REDACTED]	[REDACTED]	No
[REDACTED]	[REDACTED]	No
Security Broadband Corp.	Minority	No
Beaumaris Network, Inc.	Minority	No
BelAir Networks, Inc.	Minority	No
Broadlogic Network Technologies Inc.	Minority	No
Bubble Motion, Inc.	Minority	No
Canoe Ventures, LLC	Minority	No
CarWoo, Inc.	Minority	No
Cedar Point Communications	Minority	No
Clearwire Communications LLC	Minority	No
Combined Conditional Access Development and Support, LLC	Half	No
Darby Technology Ventures Group, LLC	Minority	No
DemDex, Inc.	Minority	No
Disson Skating, LLC	Half	No
DoubleVerify, Inc.	Minority	No
DriverTV LLC	Minority	No
E! Distribution, LLC	Half	Yes
E! Entertainment Television Latin America Partners	Half	Yes
EdgeConnex, Inc.	Minority	No
First Round Capital 2007 Annex Fund, LLC	Minority	No
Genacast Ventures, LLC	Majority	No
Global Spectrum (NEC)	Half	No
Global Spectrum Asia Ltd.	Minority	No
Global Spectrum Pico Pte. Ltd.	Majority	No
iControl Networks, Inc.	Minority	No
[REDACTED]	[REDACTED]	No
Jingle Networks, Inc.	Minority	No
JiWire, Inc.	Minority	No
[REDACTED]	[REDACTED]	No

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Erdos LLC	Half	No
	MGM Holdings, Inc. ⁶	Minority	No
	Music Holdings Corp.	Minority	No
	National Cable Communications LLC	Majority	No
	OACAP Development LLC	Half	No
	PackLate.com	Minority	No
	Plaxo	Full	No
	RGB Networks, Inc.	Minority	No
	Sedna Patent Services, LLC	Minority	No
	SKC Hangar Partners	Minority	No
	Skyview T.V. Inc.	Minority	No
	The New York Interconnect LLC	Minority	No
	Visible World Inc.	Minority	No
	Vitruve, Inc.	Minority	No
	Vyatta, Inc.	Minority	No
	thePlatform	Majority	No
	iN Demand	Majority	No

⁶ Comcast presently holds a minority, non-controlling ownership interest of approximately 21 percent in MGM Holdings, Inc. (“MGM Holdings”), the ultimate parent of Metro-Goldwyn-Mayer, Inc. (“MGM”). Comcast has no role in the management or operation of MGM or MGM Holdings. Comcast’s representative on the boards of MGM and MGM Holdings resigned in March of 2009, and Comcast does not currently have a representative on either company’s board. On November 3, 2010, MGM, MGM Holdings and certain of their affiliates filed for bankruptcy in New York, proposing a pre-packaged restructuring plan that would eliminate Comcast’s ownership interest. *See* Joint Prepackaged Plan of Reorganization of Metro-Goldwyn-Mayer Studios Inc. and Certain of its Affiliates dated October 7, 2010, *In re Metro-Goldwyn-Mayer Studios Inc., et al.*, Case No. 10-15774 (SMB) [Docket No. 28] (Bankr. S.D.N.Y. Nov. 3, 2010). At such time as the bankruptcy plan is approved, Comcast will no longer have an ownership interest in MGM or MGM Holdings. Comcast’s interest in MGM and MGM Holdings is not being contributed to NBCU in the transaction.

APPENDIX E
Model Protective Order

Before the
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between
Claimant,
-and-
Respondent.
Case No.
Arbitrator

CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

1. This Confidentiality Agreement and Protective Order (the "Agreement") is intended to protect trade secrets and other commercially and competitively sensitive confidential information contained in (i) documents that are produced, given or exchanged by and among the Parties, or produced by non-parties, and deposition testimony provided, as part of discovery in the Proceeding, and (ii) documents and testimony submitted as part of the record in the course of the Proceeding or any review of the Proceeding by the Commission or a court of competent jurisdiction.

2. Definitions.

(a) Arbitrator. "Arbitrator" means, or any successor arbitrator assigned to this proceeding.

(b) Authorized Representative. "Authorized Representative" means an individual who has signed and filed a Declaration in the form of Attachment A to this Agreement and is one of the following:

- (i) Outside Counsel of Record for a Reviewing Party to this Proceeding, or any associated attorney, paralegal, clerical staff member or other employee of Outside Counsel of Record's law firm reasonably necessary to render professional services in this Proceeding;
(ii) Outside Experts engaged by a Reviewing Party to this Proceeding, or any associated clerical or support staff member or other employee of the Outside Expert's firm reasonably necessary to render professional services in this Proceeding; and
(iii) the Arbitrator, or any associated clerical or support staff member or other employee reasonably necessary to render professional services in this Proceeding.

(c) Commission. "Commission" means the Federal Communications Commission or any bureau or subdivision of the Commission acting pursuant to delegated authority.

(d) Confidential Information. "Confidential Information" means information, whether in oral or written form, so designated by a Designating Party (hereinafter defined) upon a determination in good faith that such information constitutes trade secrets or commercial or financial information privileged or

confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or any other *bona fide* claim of right or privilege. Confidential Information includes additional copies of, notes regarding, and information derived from Confidential Information. Confidential Information also includes transcripts of hearing sessions to the extent described in Paragraphs 5 and 6. Terms of this Agreement referring to Confidential Information apply equally as to Highly Confidential Information (defined below).

(e) Declaration. “Declaration” means a sworn declaration in the form of Attachment A to this Agreement.

(f) Designating Party. “Designating Party” means a person or entity that seeks confidential treatment pursuant to this Agreement for Confidential Information submitted in this Proceeding.

(g) Highly Confidential Information. “Highly Confidential Information” means Confidential Information so designated by a Designating Party upon a determination in good faith that such information would, if disclosed to a current or potential counterparty or competitor of the Designating Party, significantly disadvantage the current or future negotiating or competitive position of the Designating Party or any other party to this Agreement. Highly Confidential Information includes additional copies of, notes regarding, and information derived from, Highly Confidential Information. Highly Confidential Information includes, without limitation, the Protected Third Party Agreements (as defined below).

(h) Outside Counsel of Record. “Outside Counsel of Record” means the firms of attorneys, or sole practitioners, as the case may be, representing the Parties in this Proceeding, including their attorneys, paralegals, clerical staff and other employees of outside counsel, and vendors reasonably necessary to render professional services in this Proceeding, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel of Record’s activities, association, and relationship with a Party do not involve advice about or participation in the business decisions of the Party or any competitor of a Designating Party nor the analysis underlying the business decisions. For the avoidance of doubt, Outside Counsel of Record shall exclude any employee of any of the Parties and includes the following law firms only:

[Insert Firm Name]

[Insert Firm Name]

(i) Outside Expert. “Outside Expert” means a person who, in addition to any other work for the Reviewing Party or others, is retained or employed as a *bona fide* expert to furnish testimony and/or technical or other expert advice or service, or who is otherwise engaged to prepare material for the express purpose of participating in this Proceeding, whether full or part time, by or at the direction of the Reviewing Party’s Outside Counsel of Record, as well as personnel associated with such person who provide support or clerical services or other employees of such expert’s firm reasonably necessary to render professional services in this Proceeding, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Expert’s activities, association, and relationship with a Party do not involve advice about or participation in the business decisions of the Party or any competitor of a Designating Party nor the analysis underlying the business decisions. For the avoidance of doubt, Outside Expert shall exclude any employee of any of the Parties.

(j) Parties. The “Parties” to this Proceeding are _____. No other entity or natural person may become a Reviewing Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of each signatory hereto. No entity or natural person other than one of the Parties or a non-party who produces documents or gives testimony in this Proceeding may become a Designating Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of each signatory hereto.

(k) Reviewing Party. “Reviewing Party” means a Party whose Authorized Representative has signed a Declaration.

(l) Proceeding. “Proceeding” means only the proceeding to arbitrate the dispute between the Parties, known as Case No. _____, currently pending before the American Arbitration Association together with any appeal thereof, and does not include the arbitration or adjudication of any other complaint or matter.

(m) Protected Third Party. “Protected Third Party” shall mean any entity other than the Parties that agrees in writing with the Parties to produce information for this Proceeding as a Designating Party subject to the terms of this Agreement.

(n) Protected Third Party Agreements. “Protected Third Party Agreements” shall mean agreements, together with any term sheets, amendments, extensions, modifications, addenda, and other agreements related thereto, between any Party and any Protected Third Party (or any subsidiaries or affiliates thereof).

3. Claim of Confidentiality. A Designating Party shall, prior to disclosing to any other party any Confidential Information, designate such information (excluding Highly Confidential Information) by placing the legend “CONFIDENTIAL” in a conspicuous place on the front page (or other appropriate place) of each document, record, or other material containing such information. The inadvertent failure to designate a document or data as Confidential Information does not constitute a waiver of such claim and may be corrected by supplemental written notice at any time, accompanied by a copy of the document or data bearing the appropriate legend, with the effect that such document or data shall be subject to the protections of this Agreement from the time it is designated as Confidential Information.

4. Procedures for Claiming Documents and Data Are Highly Confidential.

(a) Documents or data comprising Protected Third Party Agreements (or any material contained therein or any copies or derivative works thereof) or other Highly Confidential Information shall be designated as Highly Confidential Information for purposes of this Agreement by affixing the legend “HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NO. _____” to the front page of the document or, for data, to the outside of the container or medium in which the data is produced. A Designating Party shall, prior to disclosing to any other party any Highly Confidential Information, ensure that any Reviewing Party (and any representative thereof) is authorized under this Agreement to receive such Highly Confidential Information (including, without limitation, that such Receiving Party has executed the Declaration and that any applicable waiting period has expired). The inadvertent failure to designate a document or data as Highly Confidential Information does not constitute a waiver of such claim and may be corrected by supplemental written notice at any time, accompanied by a copy of the document or data bearing the appropriate legend, with the effect that such document or data shall be subject to the protections of this Agreement from the time it is designated as Highly Confidential Information.

(b) Highly Confidential Information submitted in writing to the Arbitrator shall be filed under seal and shall bear on the front page in bold print, “HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NO. _____.” Such filings shall also comply with Paragraph 13 of this Agreement.

5. Highly Confidential Information in Deposition Testimony, Oral Hearing Testimony and Oral Argument. If any Reviewing Party desires to include, utilize, or refer to any Highly Confidential Information in testimony or exhibits during the Proceeding or during a deposition in such a manner that might require disclosure of such material, it shall serve such Highly Confidential Information in a manner reasonably calculated to ensure that its confidentiality is maintained. Examination of a witness, or other oral presentation, concerning Highly Confidential Information shall be conducted in camera and closed to

all persons except Authorized Representatives of Reviewing Parties and the Arbitrator, a witness then testifying, and any reporter engaged to transcribe the Proceeding. Persons present at the Proceeding may not disclose any Highly Confidential Information to any person that is not an Authorized Representative of a Reviewing Party, except that Highly Confidential Information may be used with a witness that has prior knowledge of such information obtained through lawful means.6. Designation of Highly Confidential Information in Transcripts.

(a) Deposition testimony relating to Protected Third Party Agreements or other Highly Confidential Information shall be designated as Highly Confidential Information by (i) a statement on the record, by counsel, at or before the conclusion of the deposition, or (ii) by written notice, sent by counsel to all parties within five (5) business days after the receipt of the preliminary transcript of the deposition. All deposition testimony shall be considered Highly Confidential Information until five (5) business days from the receipt by counsel of the preliminary transcript, so as to allow for possible designation under subparagraph (a)(ii).

(b) Any portion of the transcripts of oral testimony and oral argument during the Proceeding shall be considered Highly Confidential Information, unless otherwise expressly agreed to by all of the parties to this Agreement whose Highly Confidential Information is contained in any such transcript. The reporter of the Proceeding shall not provide transcripts to anyone other than Outside Counsel of Record for the Parties in this Proceeding and the Arbitrator.

7. Storage of Highly Confidential Information. The Arbitrator and any other person to whom Highly Confidential Information is provided shall place the Highly Confidential Information in a non-public file. Highly Confidential Information shall be segregated in the files of the Arbitrator, and shall be withheld from inspection by any person not bound by the terms of this Agreement, unless such Highly Confidential Information is released to the Commission or a court of competent jurisdiction pursuant to paragraphs 11 and 18 hereto.

8. Access to Confidential Information and Highly Confidential Information.

(a) Other than in accordance with Paragraphs 5, 11, and 18 of this Agreement, Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to Authorized Representatives. Before an Authorized Representative may obtain any access to Highly Confidential Information, such person must execute a Declaration.

(b) Notwithstanding anything herein to the contrary, Protected Third Party Agreements or summaries, descriptions, or characterizations of the substance thereof shall not be disclosed to any in-house personnel of a Party, including, but not limited to, any in-house counsel.

(c) Except as otherwise provided in this paragraph, Confidential Information shall not be disclosed to any other person. All persons who obtain Confidential Information in this Proceeding shall ensure that access to that Confidential Information is strictly limited as prescribed in this Agreement and is used only as provided in this Agreement. For the avoidance of doubt, all persons who obtain any Highly Confidential Information in this Proceeding shall comply with the procedures prescribed in paragraphs 4-13 of this Agreement concerning the ongoing designation and use of Highly Confidential Information as such, including, without limitation, any testimony, transcripts, pleadings, or documents containing or derived from Highly Confidential Information.

(d) Highly Confidential Information shall only be disclosed to an Outside Expert according to the terms of this subparagraph. If Highly Confidential Information is disclosed to an Outside Expert, for the period extending from the date of the disclosure until [date one year from today], such Outside Expert will not work for any [regional sports network, broadcaster, national programmer, etc.], in connection with securing distribution on any of the Parties' systems; nor, for such period, shall such Outside Expert work for any party (i) in connection with any agreement for the distribution by a multichannel video

programming distributor (“MVPD”) of programming owned by a Protected Third Party; or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where a Protected Third Party also is interested in acquiring or selling the relevant programming (regardless of whether the Protected Third Party previously had any rights to carry or license such programming). Before any Highly Confidential Information is disclosed to any such Outside Expert, each Outside Expert so retained or employed shall sign and file a Declaration to confirm that he or she has read this subparagraph, meets the requirements of this subparagraph, and is bound by the obligations set forth herein. Such Declaration shall be provided to the Parties and the Protected Third Party. Nothing in this paragraph shall preclude an Outside Expert from advising, assisting, or otherwise participating on behalf of a Reviewing Party or a Protected Third Party in future arbitrations or program access proceedings (and any following proceedings at the FCC or in federal court) relating to arbitrations pursuant to the Commission’s principal order in MB Docket No. 10-56 and similar arbitrations thereto, subject to any and all restrictions on the use of confidential information applicable in this, as well as any such future, arbitration or proceeding.

(e) If Highly Confidential Information is disclosed to a person who is Outside Counsel of Record, and such person subsequently becomes an employee of any Party or Protected Third Party, such person shall not be allowed to work for such Party or Protected Third Party (i) in connection with any agreement for the distribution of the programming of a Protected Third Party by an MVPD; or (ii) in connection with a negotiation for acquisition of programming or distribution rights in situations where a Protected Third Party also is interested in acquiring or selling the relevant programming (regardless of whether Protected Third Party previously had any rights to carry or license such programming) until [date one year from today]. Nothing in this paragraph shall preclude such counsel from advising, assisting, or otherwise participating on behalf of a Reviewing Party in future arbitrations or program access proceedings (and any following proceedings at the FCC or in federal court) relating to arbitrations pursuant to the Commission’s principal order in MB Docket No. 10-56 and similar arbitrations thereto, subject to any and all restrictions on the use of confidential information applicable in this, as well as any such future, arbitration or proceeding.

9. Procedures for Obtaining Access to Confidential Information or Highly Confidential Information. In all cases where access to Confidential Information or Highly Confidential Information by Authorized Representatives is permitted pursuant to Paragraph 8, before reviewing or having access to any Confidential Information or Highly Confidential Information, each person seeking such access shall execute a Declaration, file it with the Arbitrator, and serve it upon the parties hereto by email through their counsel (as identified in the signature block hereto).

10. Disclosure of Confidential Information or Highly Confidential Information. An Authorized Representative may disclose Confidential Information or Highly Confidential Information only to other Authorized Representatives to whom disclosure is permitted under this Agreement.

11. Additional Disclosure.

(a) If any Party to this Proceeding seeks review of any decision or order issued by the Arbitrator before the Commission or a court of competent jurisdiction, such Party shall notify the Commission or such court of the existence and terms of this Agreement. Prior to filing an unredacted version of any decision or order or pleading containing Highly Confidential Information, the Parties shall (i) cooperate to have the Highly Confidential Information sealed and any proceedings on review closed; and (ii) seek confidential treatment of such Highly Confidential Information to the maximum extent possible, including, without limitation, treatment in accordance with Sections 0.442 and 0.461 of the Commission’s rules, 47 C.F.R. §§ 0.442, 0.461. In addition, a Party submitting Highly Confidential Information to the Commission or a court shall mark and identify such Highly Confidential Information in a manner consistent with Paragraph 13 hereof so as to alert the Commission or court that it is receiving

Highly Confidential Information subject to this Agreement.

(b) The Arbitrator shall file under seal an unredacted copy of his award with the Commission promptly upon its release to the Parties.

12. Use of Confidential Information and Highly Confidential Information. Confidential Information and Highly Confidential Information shall be used solely for the preparation and conduct of this Proceeding; shall not be used for any other purpose (including but not limited to competitive business purposes); and shall not be disclosed except in accordance with this Agreement. This Agreement shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to Confidential Information or Highly Confidential Information nor otherwise learned of its contents through this Proceeding. Should the Arbitrator rely upon or otherwise make reference to the contents of any of the Highly Confidential Information in his decision in this Proceeding, he will do so by redacting any Highly Confidential Information from the version of his decision made available to the Parties (other than Outside Counsel of Record) and by making the unredacted version of the decision available only to the Commission or a court of competent jurisdiction in accordance with paragraph 11 hereof, and to those persons entitled to access to Highly Confidential Information under this Agreement.

13. Pleadings or Filings Using Highly Confidential Information. Parties may, in any pleadings or other documents that they file in this Proceeding, reference Highly Confidential Information, but only if they comply with the following procedures:

(a) Any portions of the filings that contain or disclose Highly Confidential Information must be physically segregated from the remainder of the filings and filed under seal in accord with the remainder of this paragraph. This requirement is satisfied when a Party files (1) a redacted version of the document; and (2) a non-public version of the document (of which only one copy should be filed) that contains the Highly Confidential Information and bears the legend set forth in Paragraph 13(c);

(b) The portions or versions of pleadings containing or disclosing Highly Confidential Information must designate the specific portions of the pleading containing such Highly Confidential Information;

(c) The cover page and each page of any Party's filing that contains or discloses Highly Confidential Information subject to this Agreement must be clearly marked: "HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NO. _____"; and

(d) The Highly Confidential version of the pleading, to the extent it is required to be served, shall be served upon the Arbitrator and Outside Counsel of Record that have signed the Declaration. Such Highly Confidential versions shall be filed under seal, and shall not be placed in any public file or shared with any other party or person, except as expressly provided by this Agreement. Except as provided above, Parties may not provide courtesy copies of pleadings containing Highly Confidential Information to any other person.

14. Client Consultation. Nothing in this Agreement shall prevent or otherwise restrict Outside Counsel of Record from rendering advice to their clients relating to the conduct of this Proceeding or any subsequent administrative or judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Outside Counsel of Record shall not disclose Confidential Information or Highly Confidential Information except as consistent with this Agreement.

15. Violations of Agreement.

(a) Should a Party that has obtained access to Highly Confidential Information under this Agreement violate any of its terms, it shall immediately convey that fact to the Designating Party and to

any Protected Third Party whose Highly Confidential Information has been utilized in violation of this Agreement, any of whom may choose to bring it to the attention of the Arbitrator or the Commission as appropriate. Further, should such violation consist of improper disclosure or use of Highly Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Designating Party and any Protected Third Party whose Highly Confidential Information has been utilized in violation of this Agreement, in writing, of the identity of each party known or reasonably suspected to have obtained the Highly Confidential Information through any such disclosure. The Arbitrator shall have full authority to fashion appropriate sanctions for violations of this Agreement, including but not limited to denial of further access to Highly Confidential Information in this Proceeding.

(b) The parties hereto agree that Highly Confidential Information is of special, unique and extraordinary character, and that a Protected Third Party's ability to pursue damages alone would be an inadequate remedy for a breach of this Agreement. In the event that any Protected Third Party believes that use of its Highly Confidential Information in violation of this Agreement has occurred or is about to occur, or that any other party hereto has breached or is about to breach this Agreement, such Protected Third Party shall be entitled to seek an injunction restraining any such violation or breach or threatened violation or breach and enforcement of this Agreement by a decree of specific performance requiring each party hereto to fulfill its obligations under this Agreement, in any such case without the necessity of showing economic loss or other actual damage and without any bond or other security being required. Protected Third Parties also shall have the right to seek appropriate relief from the Commission and, to the extent that the Commission's authority is so delegated, the staff of the Commission. Nothing in this Agreement shall limit any other rights and remedies available to a Protected Third Party at law or equity against any person using Highly Confidential Information in a manner not authorized by this Agreement.

(c) Each Protected Third Party shall have all of the rights and remedies identified herein only individually with respect to its own Highly Confidential Information; no Protected Third Party shall be required to act in concert or coordination with any other Protected Third Party to exercise its rights and remedies hereunder.

16. Termination of Proceeding. Within fifteen (15) days after final resolution of this Proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall make their best efforts to destroy all Highly Confidential Information as well as all copies and derivative materials made therefrom, and shall certify in a writing served on the parties hereto that such best efforts have been conducted to ensure that no Highly Confidential Information has been retained by any person having access thereto, except that the Arbitrator and each Outside Counsel of Record representing a Reviewing Party may retain two paper copies and one electronic copy of all pleadings filed in this Proceeding and all transcripts created in connection with this Proceeding, regardless of whether such pleadings or transcripts contain Highly Confidential Information. Any Highly Confidential Information contained in any copies of pleadings or transcripts retained or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Agreement unless such Highly Confidential Information is released from the restrictions of this Agreement either through agreement of the parties or as otherwise expressly set forth herein.

Authorized Representatives shall have a continuing obligation to destroy any previously undestroyed documents if and when they are discovered.

17. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein shall not be deemed a waiver by the Designating Party or any Protected Third Party of any entitlement to confidential treatment of such information. Reviewing Parties, by viewing these materials:

- (a) agree not to assert any such waiver;
- (b) agree not to use Confidential Information or Highly Confidential Information in any proceeding other than such as permitted herein unless obtained independently of this Proceeding; and
- (c) agree that accidental disclosure of Confidential Information or Highly Confidential Information shall not be deemed a waiver of entitlement to confidential treatment of such information.

18. Subpoena by Courts, Departments, or Agencies. If a court or a federal or state department or agency issues a subpoena or orders production of Highly Confidential Information that a party has obtained under terms of this Agreement, such party shall promptly notify in writing each Designating Party, and any Protected Third Party whose Highly Confidential Information is affected, of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, the party to whom the subpoena or order is directed shall not provide or otherwise disclose Highly Confidential Information prior to providing the Designating Party and Protected Third Party notice and waiting fifteen (15) business days so that the Designating Party and Protected Third Party shall have an opportunity to contest the validity of the subpoena or order of production through appeal or seek a confidentiality order or other protection against disclosure of any Highly Confidential Information.

19. Additional Rights Preserved. The execution of this Agreement is without prejudice to the rights of the Designating Party or any Protected Third Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information or Highly Confidential Information.

20. Effect of Agreement. This Agreement, which has been entered for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties hereto, constitutes an agreement among the parties hereto and the persons executing the attached Declaration. This Agreement and its protections will continue in force indefinitely. This Agreement, together with all attachments, constitutes the full and entire understanding and agreement among the parties with regard to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof. This Agreement has been prepared by all of the parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any party hereto.

21. Severability. In the event that one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall automatically be replaced with one that incorporates the original intent of the parties to the maximum extent permitted by law and the balance of the Agreement shall be enforced in accordance with its terms.

22. No Third Party Beneficiaries. No provision of this Agreement shall confer upon any person other than the parties hereto any rights or remedies hereunder.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

Dated: _____

[SIGNATURE BLOCKS FOR COUNSEL]

SO ORDERED AND ENTERED,

Dated: _____

Arbitrator

Before the
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between
Claimant,
-and-
Respondent.
Case No.
, Arbitrator

DECLARATION

I, hereby declare under penalty of perjury that I have read the Confidentiality Agreement and Protective Order that has been executed by the parties and entered by the Arbitrator with respect to the above-captioned Proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information and Highly Confidential Information submitted by parties to this Proceeding. I understand that the Confidential Information and Highly Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Confidentiality Agreement and Protective Order and shall be used only for purposes of the above-captioned Proceeding (except as otherwise provided in the Confidentiality Agreement and Protective Order). In particular, I will not use the Highly Confidential Information for competitive commercial or business purposes, including competitive decision-making. I acknowledge that a violation of the Confidentially Agreement and Protective Order may be referred to the Arbitrator or the Federal Communications Commission. I acknowledge that this Declaration is also a binding agreement with the parties to the Confidentiality Agreement and Protective Order.

To the extent that I am an Outside Expert as described in paragraph 8(e) of the Confidentiality Agreement and Protective Order, I acknowledge that I have read subparagraph 8(e) of the Confidentiality Agreement and Protective Order and agree, in addition to the restrictions set forth above, to be bound by the obligations described in subparagraph 8(e). I understand and agree to comply with the procedures described in paragraph 16 of the Confidentiality Agreement and Protective Order regarding the destruction or return of all Confidential Information and Highly Confidential Information to which I have access as well as any copies and derivative materials made, including the continuing obligation to destroy any previously undestroyed documents if and when they are discovered.

(signed)
(printed name)
(representing)
(title)

(employer) _____

(address) _____

(phone) _____

(date) _____

APPENDIX F
Agreements Between Applicants and Network Affiliate Organizations

June 3, 2010

Mr. Stephen B. Burke
Chief Operating Officer
Comcast Corporation
Philadelphia, Pennsylvania

Mr. Jeffrey A. Zucker
President and Chief Executive Officer
NBC Universal
New York, New York

Dear Steve and Jeff:

As we have discussed, the NBC Television Affiliates (the “Association”) has sought assurances that the mutually beneficial relationship between the NBC Television Network (“NBC” or the “Network”) and NBC Local Affiliates (as defined below) will continue to be robust under the proposed transaction under which Comcast Corporation (“Comcast”) will acquire control of NBC Universal, Inc. (“NBCU”) (such transaction, the “Transaction”). We know that you also recognize the value of that relationship, as well as the value of the Association’s support for the Transaction. The binding commitments in this agreement (the “Agreement”), which except as otherwise expressly provided herein will be in effect until the date that is seven (7) years after the closing of the Transaction (such date, the “Sunset Date”), provide the Association with the assurances it needs to represent to its members that it believes that the network-affiliate relationship that we all value so highly will remain strong after the Transaction is consummated.

Accordingly, Comcast and NBCU hereby agree as follows:

1. Commitment to Free Over-the-Air Broadcasting. Comcast and NBCU have made the following commitment in their joint public interest filing at the FCC: “The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As NBC negotiates and renews agreements with its broadcast affiliates, NBC will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.” In furtherance of this commitment, Comcast will, for a period of ten (10) years after consummation of the Transaction:
 - A. Maintain the Network—as made available for broadcast over the air by the Network’s broadcast television affiliates—as a premier general entertainment programming service, including a mix of high-quality programming that is generally consistent with the mix, quality, and schedule that is maintained by the ABC, CBS, and FOX Television Networks.

- B. Devote sufficient resources to program development intended and designed to ensure that the Network's program schedule remains competitive with the schedules of the ABC, CBS, and FOX Television Networks.
2. Major Sporting Events. To maintain the public's free, over-the-air access to Major Sporting Events: For purposes of this Section 2, "Major Sporting Events" shall be defined as major professional sports, Olympic events, and any college or amateur sporting events with ratings generally consistent with major professional sports and shall not include any sporting events that currently are distributed exclusively on a non-broadcast cable channel.
- A. Major Sporting Events for which the Network holds broadcast rights as of the date of this Agreement ("Current Major Sporting Events"), shall continue to be broadcast on the Network, and Comcast shall not migrate such Events to any linear programming channel in which Comcast has an ownership interest (a "Comcast Channel"), until the earlier of (i) the date Comcast ceases to control the Network, (ii) with respect to each Comcast Channel, the date Comcast ceases to have an ownership interest in such Comcast Channel, (iii) the expiration or termination of the contracts under which the Network has acquired the rights to broadcast such Current Major Sporting Events, or (iv) the Sunset Date. Notwithstanding the foregoing, this Subsection A of this Section 2 shall not prohibit Comcast from distributing Major Sporting Events on Comcast Channels or from migrating Current Major Sporting Events to Comcast Channels, provided that the Network maintains a substantially comparable quantity and quality of Current Major Sporting Events programming on the Network and available for broadcast by NBC Local Affiliates calculated on a Major-Sporting-Event by Major-Sporting-Event basis (for example, maintaining comparable quantity and quality of NFL games after such additional distribution compared to before, major Olympic events before and after such distribution, and the like).
- B. Until the earlier of (i) the date Comcast ceases to control the Network, (ii) with respect to each Comcast Channel, the date Comcast ceases to have an ownership interest in such Comcast Channel, (iii) the Sunset Date, or (iv) the date on which Major Sporting Events cease to be distributed on the ABC, CBS, and Fox television networks, Comcast, in negotiations to acquire licenses for the national distribution of Major Sporting Events on Comcast Channels, shall use commercially reasonable efforts to negotiate a provision for a reasonable portion of distribution on the Network in a manner that is available to the NBC Local Affiliates under the terms of their affiliation agreements. Notwithstanding the foregoing, this Subsection B of this Section 2 shall not impose any obligations on Comcast with respect to (x) renewals, amendments, or extensions of existing agreements for the distribution of Major Sporting Events on any Comcast Channel, (y) agreements for the distribution of Major Sporting Events on regional sports networks (i.e., linear programming channels with limited territorial licenses to exhibit Major Sporting Events), or (z) agreements for the distribution on any Comcast Channel of Major Sporting Events packages that were previously exclusively exhibited on non-broadcast cable channel(s).

- C. Subsection B of this Section 2 shall not apply to any contract for distribution of a Major Sporting Event if the NBC Local Affiliates, after reasonable notice and good faith negotiations with the Network, have declined to provide commercially reasonable financial support to the Network. For purposes of this Subsection C, whether terms are commercially reasonable shall be determined by reference to the value of support that is provided by affiliates of the ABC, CBS, and Fox Television Networks to their respective network(s) to support the rights fees for Major Sporting Events, taking into account the relative value of such sports programming and the value of any benefits received by such affiliates in exchange for such support.
3. Separate Negotiation of Agreements. The Network will remain solely responsible for negotiating network affiliation agreements with individual NBC Local Affiliates. Comcast Cable Communications, LLC, any of its direct or indirect subsidiaries owning, operating, or managing cable systems, and any of its affiliates that do not have an interest in NBCU (collectively, "Comcast Cable") will remain solely responsible for negotiating retransmission consent agreements with individual NBC Local Affiliates. Such retransmission consent negotiations, on the one hand, and affiliation agreement negotiations, on the other hand, will be conducted separate from, and without influence on, one another. This Section 3 shall not be subject to expiration on the Sunset Date, provided, however, that it shall expire on the date upon which the Network is no longer jointly owned with Comcast Cable. In furtherance of the foregoing:
- A. Comcast shall not use its control of NBC to engage in conduct that discriminates against any NBC Local Affiliate in the terms and conditions for affiliation or other business arrangements (including news gathering arrangements) with the Network as a result of negotiations or relationships between an NBC Local Affiliate and Comcast Cable. Network affiliation shall not be withheld from an affiliate, nor shall the terms and conditions of affiliation offered or provided to any affiliate be based upon the terms and conditions of retransmission consent between such affiliate and Comcast Cable, including as a result of (i) the positions or approaches taken by the affiliate in retransmission consent negotiations with Comcast Cable or (ii) the failure of such affiliate and Comcast Cable to agree upon terms and conditions of retransmission consent.
- B. Comcast shall not engage in conduct that discriminates against any NBC Local Affiliate in the terms and conditions for retransmission consent between Comcast Cable and any NBC Local Affiliate as a result of negotiations or relationships between such NBC Local Affiliate and the Network regarding station affiliation agreements. Comcast Cable shall not refuse to negotiate in good faith with any NBC Local Affiliate, nor shall the terms and conditions of retransmission offered or provided to such NBC Local Affiliate be based upon (i) the positions or approaches taken by the Affiliate in affiliation negotiations with the Network, (ii) the terms and conditions of network affiliation agreement(s) between such affiliate and the Network, or (iii) the failure of such affiliate and the Network to agree upon terms and conditions of network affiliation.

- C. Nothing in this Section 3 shall be construed to limit actions by the Network or by Comcast that are in the ordinary course of their independent negotiations and/or relationships and that do not tie together Network affiliation and retransmission consent negotiations.
4. Policy Debates on Retransmission Consent. Comcast agrees that it will not seek the repeal of the retransmission consent regime in existence as of the date of this Agreement.
5. Standard Terms of Affiliation. Under current paragraph 2 of the NBC model affiliation agreement, NBC commits (a) to “supply programming for free over-the-air television broadcasting by each Station during the hours set forth on Schedule II hereto (the ‘Programmed Time Periods’)” and to “offer each Station a variety of sports programming (“NBC Sports Programming”) and special events programming for television broadcast at times other than Programmed Time Periods” and (b) that “[f]or a period of seventy-two (72) hours following [an NBC offer of NBC Sports Programming or special events programming for television broadcast at times other than Programmed Time Periods, NBC affiliated stations] shall have the right of first refusal with respect to such programming as against any other television station located in Station’s community of license or any television program transmission service furnishing a television signal to Station’s community of license.” Comcast pledges that each of these provisions (subject to changes in the language that do not undermine the benefit of the provision to NBC Local Affiliates) will remain part of the standard terms and conditions of affiliation offered to NBC Local Affiliates. Nothing in this paragraph is intended to change the existing meaning of these or similar provisions in existing agreements.
6. Competitive Nature of Programming. In furtherance of the commitment to free over-the-air broadcasting and the goal of making NBC the strongest television network possible, Comcast commits to provide to NBC Local Affiliates primarily first-run programming on a primarily first-window basis (as to each affiliate in its respective television market), that is intended and designed to be competitive with the ABC, CBS, and FOX Television Networks, for a period of ten (10) years after the consummation of the Transaction.
7. Affiliate Market Integrity. As stated in the commitment made in the public interest filing at the FCC, Comcast remains committed to provide ad-supported broadcast television through its O&O broadcast stations and through NBC Local Affiliates across the nation. In recognition of the role that NBC Local Affiliates serve in the provision of free, local over-the-air television:
- A. Comcast agrees to honor NBC’s agreements and side letters that preserve existing non-duplication protections against importation of another affiliate broadcast station signal into an NBC Local Affiliate’s market. The Network will continue to provide these protections and execute any necessary agreements after expiration of current agreements and side letters to maintain these network non-duplication protections for NBC Local Affiliates for so long as the FCC maintains network non-duplication rules, and thus shall not be subject to expiration on the Sunset Date.

- B. Decisions involving exclusivity issues, as well as the decision by the Network whether to exercise any of its rights with respect to the distribution of Network programming consistent with the affiliation agreement, shall continue to be left to the Network and shall continue to be made solely on the basis of Network considerations and without regard to Comcast Cable considerations.
- C. Comcast will not use its control of the Network to transmit a same-day linear feed of Network programming on a Comcast, Comcast-managed, or Comcast-affiliated cable system in the television market of an NBC Local Affiliate in the event that such NBC Local Affiliate withdraws its consent in the course of a retransmission dispute with such Comcast, Comcast-managed, or Comcast-affiliated cable system. The obligations of this Subsection C of this Section 7 will be in effect until the later of ten (10) years after consummation of the Transaction or the date on which any one (1) of the ABC, CBS, and Fox networks offer or authorize one (1) or more major cable system operators to carry direct, same-day linear feeds of the programming such networks provide to their affiliates on cable television systems located in the television markets of their affiliates.
8. Cooperative Arrangements. The affiliate-network partnership is a key foundation of localism. Beyond the core program distribution relationship, NBC and its affiliates have partnered in a number of ventures to strengthen the relationship and benefit both parties. The NBC NewsChannel is one such example. The management of the NBC Affiliate Support Fund in accordance with the NBC Affiliate Support Fund Policy is a similarly important arrangement for affiliates. Comcast commits to maintaining existing, joint venture, and other cooperative relationships (*e.g.*, the NBC NewsChannel, compliance with the NBC Affiliate Support Fund Policy) with NBC Local Affiliates and to working with the NBC Local Affiliates to seek out and establish new joint venture and other cooperative opportunities as they emerge in the fast-changing media environment of the future.
9. Local Affiliate Branding and Advertising Availabilities. NBC agrees to offer local affiliate branding and advertising availabilities on post-Network distribution of NBC Network Programs and NBC Sports Programming to other non-linear video program distribution on non-MVPD platforms, such as Hulu, where technically possible and commercially reasonable, as part of any “proxy” offer made to NBC Local Affiliates. NBC will use commercially reasonable efforts to include in such proxy offer the feature that Hulu ad-supported distribution of NBC Network Programs and NBC Sports Programming will include affiliate branding and advertising availabilities, with exact parameters of such branding commitments and availabilities to be negotiated as part of the proxy offer.

Throughout this Agreement, all references to “Comcast” include all Comcast Corporation operations and entities owned in whole or in part or managed by Comcast Corporation and their successor and assigns unless otherwise specified. Comcast Corporation shall cause any controlled subsidiaries or controlled affiliates whose performance of the provisions of this Agreement is necessary for Comcast Corporation to satisfy the Agreement to so perform. All references to a “cable system” or “cable systems” shall include any form of multichannel video

programming distributor system (“MVPD”), as defined under Section 602 of the Communications Act of 1934, as amended.

For purposes of this Agreement, an “NBC Local Affiliate” is any entity, other than NBCU, that at any point while this Agreement is in effect owns or operates one or more local television stations affiliated with the Network.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision of this Agreement and, in the event that any provision is determined to be invalid or otherwise illegal, this Agreement shall remain in effect and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

No term or condition of this Agreement shall be deemed waived, and no breach shall be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which any party would otherwise have at law, in equity, by statute or otherwise.

In the event that Sections 2, 3, and 7 above are not incorporated into a Federal Communications Commission order as binding conditions to the approval of the Transaction, each of Comcast, NBCU and the Association hereby acknowledges and agrees to the following: (i) that the rights and benefits granted to the Association hereunder are special and unique, and that the Association would suffer irreparable harm in the event that any of the agreements and provisions hereof were not performed fully by Comcast and/or NBCU (as applicable) in accordance with their specific terms or conditions or were otherwise breached, and that money damages are an inadequate remedy for breach thereof because of (among other matters) the difficulty of ascertaining and quantifying the amount of damage that will be suffered by the Association in the event that this Agreement is not performed in accordance with its terms or conditions or is otherwise breached; (ii) that the Association shall be entitled to seek an injunction or injunctions, preliminary and permanent, to restrain, enjoin and prevent breaches of this Agreement by Comcast and/or NBCU (as applicable) and to enforce specifically such terms and provisions of this Agreement; and (iii) neither Comcast nor NBCU will raise any defense that an adequate remedy at law is available. Each of Comcast, NBCU, and the Association expressly acknowledges and agrees that each of the NBC Local Affiliates is a third party beneficiary to Sections 3, 7(A) and 7(C) of this Agreement and may enforce any of the obligations of Comcast and NBCU thereunder. The parties further acknowledge and agree that this Agreement does not confer any rights upon any individual NBC Local Affiliate, other than the rights with respect to Sections 3, 7(A) and 7(C) set forth in the preceding sentence.

Upon execution and delivery by Comcast, NBCU, and the Association, this Agreement will become a legal and binding agreement among the parties. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, except to the extent that the parties’ respective rights and obligations are subject to local, state and federal laws and regulations. This Agreement may be executed in counterparts and by facsimile, each of which when so executed, will be deemed an original, and all of which together shall constitute one and the same instrument.

Please signify your agreement to this Agreement by signing below.

Sincerely,



Brian G. Lawlor
President-Chairman
NBC Television Affiliates

Michael J. Fiorile
Past President-Chairman
NBC Television Affiliates

Accepted and agreed:

COMCAST CORPORATION

By: _____
Name: Stephen B. Burke
Title: Chief Operating Officer
Date: June 3, 2010

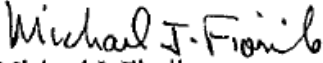
NBC UNIVERSAL, INC.

By: _____
Name: Jeffrey A. Zucker
Title: President and Chief Operating Officer
Date: June 3, 2010

Please signify your agreement to this Agreement by signing below.

Sincerely,

Brian G. Lawlor
President-Chairman
NBC Television Affiliates


Michael J. Fiorile
Past President-Chairman
NBC Television Affiliates

Accepted and agreed:

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By: _____
Name: Stephen B. Burke
Title: Chief Operating Officer
Date: June 3, 2010

NBC UNIVERSAL, INC.

By: _____
Name: Jeffrey A. Zucker
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NBC Television Affiliates

Accepted and agreed:

COMCAST CORPORATION

By: 

Name: Stephen B. Burke

Title: Chief Operating Officer

Date: June 3, 2010

NBC UNIVERSAL, INC.

By: _____

Name: Jeffrey A. Zucker

Title: President and Chief Operating Officer

Date: June 3, 2010

Please signify your agreement to this Agreement by signing below.

Sincerely,

Brian G. Lawlor
President-Chairman
NBC Television Affiliates


Michael J. Fiorile
Past President-Chairman
NBC Television Affiliates

Accepted and agreed:

COMCAST CORPORATION

By: _____
Name: Stephen B. Burke
Title: Chief Operating Officer
Date: June 3, 2010

NBC UNIVERSAL, INC.

By: 
Name: Jeffrey A. Zucker
Title: President and Chief Executive Officer
Date: June 3, 2010

Execution Version

Agreement

This Agreement ("Agreement") is made this 21st day of June, 2010, between Comcast Corporation ("Comcast") and the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, and the FBC Television Affiliates Association (collectively "the Associations"). In consideration of good and valuable consideration, the receipt of which is hereby acknowledged, Comcast, on its behalf and on behalf of Comcast Cable Communications, LLC, agrees as follows:

1. This Agreement will be effective as of the date Comcast acquires control of NBC Universal, Inc. ("NBCU") (such acquisition, the "Transaction") and shall expire on the earlier of the seventh (7th) anniversary of the closing of the Transaction or such time as the NBC Television Network is no longer jointly owned with Comcast Cable Communications, LLC or controlled by Comcast.
2. Neither Comcast nor any cable system wholly-owned by, controlled by, or under common control with Comcast (the latter, "Comcast Cable Systems") will discriminate with respect to its retransmission consent negotiations with any television broadcast station that is affiliated with the ABC, CBS, or FOX Television Network (such stations, the "non-NBCU Stations") because such television broadcast station is not owned by, controlled by, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks. (Television stations wholly-owned by, controlled by, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks are referred to herein as "NBCU Stations.") Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of retransmission consent negotiations will not be deemed to constitute discrimination for purposes of this Section 2. Not by way of limitation, the parties acknowledge that differences in retransmission consent fees or other economic consideration are not discrimination if such differences are based on competitive marketplace considerations.
3. Comcast Cable Systems will not link or engage in decision-making with NBCU with respect to retransmission consent negotiations with non-NBCU Stations. Comcast agrees that NBCU will remain solely responsible for negotiating retransmission consent of NBCU-owned broadcast stations with non-Comcast MVPDs (i.e., multi-channel video programming distributors), and Comcast and the Comcast Cable Systems will remain solely responsible for negotiating retransmission consent with non-NBCU Stations. Retransmission consent negotiations with non-NBCU Stations will be conducted by Comcast and Comcast Cable Systems separate from, and without influence by, NBCU and NBCU Stations.
4. In advocating its position as to whether rates, terms, and other carriage and retransmission conditions are consistent with "competitive marketplace conditions" in any retransmission consent complaint or any other retransmission consent-related legal proceeding involving a non-NBCU Station, Comcast and the Comcast Cable Systems waive their right to, and will not rely on or cite, the terms of any retransmission consent agreement between Comcast or a Comcast Cable System and any NBCU Station that is entered into following announcement of the Transaction.
5. Comcast and/or any Comcast Cable System will negotiate retransmission consent and carriage at arm's length and in good faith with respect to non-NBCU Stations.
6. Comcast will not, nor will any Comcast Cable System, attempt to create a competitive advantage for an NBCU Station by discriminating against any local, in-market non-NBCU Station in favor of such NBCU Station licensed to the same market with respect to the following technical signal carriage matters: changes in channel positions of non-NBCU Stations; downconversion of a non-NBCU Station's signal from digital to analog or from high definition to standard definition; retransmission of a non-NBCU Station's digital

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broadcast signal in a lesser format, lower quality, or lower resolution than that of an NBCU Station; forced or automatic tuning of set top boxes to a local, in-market NBCU Station; or interruption of a non-NBCU Station's broadcast with a Comcast Cable System or NBCU Station EAS message, unless otherwise agreed to in writing by such Station; provided, however, that when making any comparisons between such non-NBCU Station and any NBCU Station for purposes of this Section 6 the following shall be taken into account: (i) relevant ATSC formats, data rates and other relevant technical factors, as applicable, (ii) the quality of signal delivered to a Comcast Cable System's reception point by such non-NBCU Station and by the applicable NBCU Station, (iii) a lower channel number is not necessarily more favorable than a higher channel number in the same channel neighborhood, and (iv) over-the-air frequency, PSIP, and historical channel positioning. Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of business will not be deemed to constitute discrimination for purposes of this Section 6.

7. In the event that Sections 1-6 are not incorporated into a Federal Communications Commission order or a Department of Justice consent decree as binding conditions to the approval of the Transaction, Comcast acknowledges and agrees that the Associations and/or their member non-NBCU Stations would suffer irreparable harm upon breach by Comcast and that money damages would not be adequate, and the Agreement shall therefore be enforceable by a decree of specific performance, preliminary and/or permanent injunction(s), and all other remedies available in law or equity. Comcast acknowledges and agrees that each of the non-NBCU Stations is a third party beneficiary of this Agreement with respect to Sections 1-6 only and may enforce any of Comcast's obligations therein. This Agreement shall be binding upon the parties hereto, their successors, and assigns.
8. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision of this Agreement and, in the event that any provision is determined to be invalid or otherwise illegal, this Agreement shall remain in effect and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.
9. No term or condition of this Agreement shall be deemed waived, and no breach shall be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which any party would otherwise have at law, in equity, by statute, or otherwise.
10. This Agreement may be executed in counterparts and by facsimile or email, each of which, when so executed, will be deemed an original, and all of which together shall constitute one and the same instrument.
11. Notices sent pursuant to this Agreement shall be forwarded by email and overnight courier as follows:

If to Comcast:

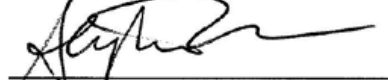
David L. Cohen
Executive Vice President
Comcast Corporation
One Comcast Center
Philadelphia, PA 19103
David_Cohen@Comcast.com

Execution Version

If to one or more of the Associations:

Wade H. Hargrove
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
150 Fayetteville Street, Suite 1600
Raleigh, NC 27601
whargrove@brookspierce.com

COMCAST CORPORATION



Stephen B. Burke
Chief Operating Officer

ABC TELEVISION AFFILIATES ASSOCIATION

William Hoffman
Chair

CBS TELEVISION NETWORK
AFFILIATES ASSOCIATION

Wayne Daugherty
Chair

FBC TELEVISION AFFILIATES ASSOCIATION

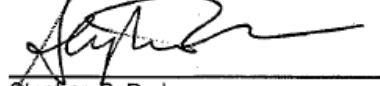
Brian Brady
Chair

Execution Version

If to one or more of the Associations:

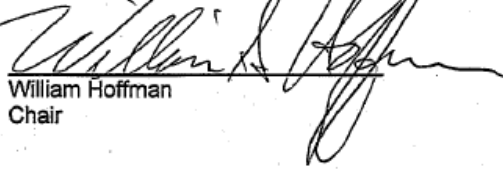
Wade H. Hargrove
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150 Fayetteville Street, Suite 1600
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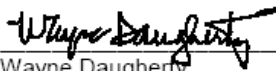
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Brian Brady
Chair

APPENDIX G
Agreements Between Applicants and Various Parties

AGREEMENT
between
COMCAST CORPORATION, NBC UNIVERSAL, INC.
and
THE INDEPENDENT FILM & TELEVISION ALLIANCE

THIS Agreement ("Agreement"), entered into on this 29th day of June, 2010, and made effective (consistent with Paragraph 2. below) upon execution by all parties hereto (the "Parties") and the closing of the joint venture between Comcast Corporation ("Comcast"), and NBC Universal, Inc. ("NBCU"), is made by and among Comcast, NBCU and the Independent Film & Television Alliance ("IFTA"). Notwithstanding the foregoing, the obligations of Comcast set forth in Paragraph 8. of this Agreement shall become effective upon execution of this Agreement by all Parties.

WHEREAS, Comcast and NBCU are committed to providing opportunities for independent producers;

WHEREAS, IFTA is concerned that such opportunities are not easily available to independent producers seeking to retain ownership of their productions; and

WHEREAS, IFTA recognizes that NBCU can provide industry leadership in providing such opportunities and NBCU recognizes that independent producers have been able to effectively and cost-efficiently produce high quality programs; and

WHEREAS, IFTA is the trade association representing the independent film and television industry and enters into this Agreement for the benefit of the industry, including IFTA Members and nonmembers; and

WHEREAS, the Parties desire to work together to ensure that opportunities for such programming to be considered for NBCU and Comcast platforms are enhanced.

NOW THEREFORE, Comcast, NBCU and IFTA have created this Agreement to establish an action plan for their cooperative efforts after the closing of the transaction between Comcast and NBCU (the "Transaction").

1. **Scope:** This Agreement is intended to cover scripted and unscripted ("reality") entertainment on the NBC network during primetime, on the NBCU cable entertainment networks (presently USA, Syfy, Bravo, Oxygen, Chiller and Sleuth, as well as any cable entertainment networks that become part of NBCU in connection with the Transaction or in which NBCU acquires a controlling interest following the Transaction), and on Comcast's "New Media" (i.e., Video on Demand and Online) platforms.
2. **Term and Effective Date:** Except as provided in Paragraph 8. below, four (4) years. The Term shall commence on the June 1 following the closing of the Transaction.
3. **Development Meetings:** In July or August of each year of the Term (anticipated to be 6/1/11 – 5/31/12, 6/1/12 – 5/31/13, 6/1/13 – 5/31/14 and 6/1/14 – 5/31/15), NBCU will schedule a presentation outlining NBCU's upcoming scripted and reality development needs for Independent Producers (the "Development Meeting"). For purposes of this Agreement, an

"Independent Producer" is defined as a producer/production company that: i) is not part of a vertically-integrated company; ii) is either an IFTA member, or is among those non-IFTA member companies that would not be considered a "major" independent supplier (e.g., SONY); iii) is financially able to deficit finance network-quality scripted series or longform programming or appropriately finance reality programming; and iv) has had at least three projects in development at (or has produced at least one (1) project that has been exhibited by) a broadcast network or a basic or pay cable entertainment network (or some combination thereof with respect to the development of three projects) within the five (5) years preceding the date of the applicable Development Meeting. Independent Producers include both IFTA and non-IFTA producers/production companies that satisfy the criteria of the definition contained in this paragraph. Both NBC and NBCU's cable entertainment networks will participate in the Development Meeting, including participation by executives at a level comparable to those executives who provide similar information regarding development needs to talent agencies. NBCU intends to hold the meeting in a theater on the Universal lot. NBCU will look to IFTA to provide an invitation list of up to 200 Independent Producers satisfying the criteria above, working with its membership as well as other independent producers and organizations.

4. **Pitch Meetings:** Subsequent to each year's Development Meeting, NBCU will set up meetings with appropriate creative executives from NBCU's entertainment networks to take series pitches from independent Producers. (For the sake of clarity, the creative executives will be at levels comparable to the levels that take pitches from the "major" studios.) The Independent Producers will be referred by IFTA based on NBCU's stated development needs for the relevant season with the goal of having presentations by a diverse group of producers. NBCU may also submit Independent Producers to IFTA for inclusion in this process. Independent Producers who are not IFTA members (whether submitted by NBCU or otherwise considered by IFTA) will not be unreasonably excluded from the process by IFTA. Independent Producers may be selected for pitches even if they did not attend the Development Meeting. NBCU commits that in the six-month period following each Development Meeting, its cable group as a whole will take at least 15 pitches and its broadcast group as a whole will take at least 20 pitches from Independent Producers as part of the process outlined in this Agreement (the "Process"). In the event IFTA proposes fewer than 15 cable pitches or 20 broadcast pitches as part of the Process, NBCU will satisfy this provision by taking all of the pitches proposed by IFTA for that category. Development executives from NBCU's Digital Studio may also participate in the pitch meetings in order to evaluate the presentations for potential digital platform opportunities. For the sake of clarity, this provision does not in any way limit NBCU's ability to take pitches from Independent Producers in addition to those pitches taken as part of the Process.
5. **Allocated Development Funds:** NBC will agree to allocate \$1 million in development funds each Year of the Term (the "NBC Fund") and, separately, the NBCU cable entertainment networks will agree to allocate \$500,000 in development funds each year of the Term (the "NBCU Cable Fund"). (The NBC Fund and the NBCU Cable Fund are referred to collectively as the "Allocated Development Funds"). The Allocated Development Funds are specifically and exclusively dedicated to supporting early development of new projects from Independent Producers as part of the Process. The Allocated Development Funds will be disbursed by NBCU directly to such Independent Producers in such amounts and allocations as NBCU determines is appropriate, but seeking to provide funds insofar as reasonably possible to multiple projects/Independent Producers. The NBC Fund and the NBCU Cable Fund will not be cross-collateralized. No Allocated Development Funds shall be allocated for overhead. Within ninety (90) days after



each year of the Term, NBCU will provide to IFTA a report setting forth the projects and Independent Producers to which the Allocated Development Funds were allocated. For the sake of clarity, the Allocated Development Funds are in no way intended as a cap on the amount of development funds that NBC and the NBCU cable entertainment networks may use for projects from Independent Producers; projects from Independent Producers may also be developed by NBC and the NBCU cable entertainment networks out of their ordinary course development funds. If NBCU elects to develop any project under this Process, the terms of such deals will be commercially reasonable.

6. **Advertiser-Sponsored Movies of the Week ("MOWs"):** NBC will agree to facilitate formal (e.g., in person) introductions of Independent Producers of MOWs to advertisers looking to produce fully-sponsored MOWs (the kinds of sponsored projects of which "The Secrets of the Mountain" is representative) that will be supplied to NBC on a time-buy basis as the company's sales and programming needs dictate.
7. **Acquisition of Feature Films and other Programming:** The NBCU cable networks agree that, to the extent they license MOWs or mini-series (as Syfy does currently) or seek to acquire feature films (as USA does currently), their executives or employees, as consistent with current practices, will take submissions of professionally produced, completed MOWs, miniseries or films ("Submissions") from Independent Producers either in connection with the executives' attendance at the annual American Film Market in Santa Monica, at NATPE if appropriate, or at a mutually convenient time and location (in person or by telephone) in a good faith effort to consider independent programming for such slots. Further, in the event that during the Term, NBC changes the nature of its programming such that it regularly schedules MOWs or feature movies, NBC's executives will take a reasonable number of such Submissions (in light of its overall needs) from Independent Producers at a mutually convenient time and location (in person or by telephone). For the purposes of this paragraph, "Independent Producer" means a producer/production company that is not part of a vertically-integrated company, and is either an IFTA member, or is among those non-IFTA member companies that would not be considered a "major" independent supplier, (e.g. SONY).
8. **New Media Distribution:** Comcast Cable is prepared to work with IFTA on a structure that would enable Independent Producers to more easily enter into a direct business relationship with Comcast for distribution on its New Media platforms. Our mutual goal is to have a workable guideline to facilitate the process of content evaluation, negotiation and delivery from potentially scores of Independent Producers. Comcast commits to meet with IFTA to develop a mutually agreeable plan to simplify the method by which Independent Producers license their content to Comcast, which plan may include a master content agreement available for use by Independent Producers, a possible "subscription VOD" series of independent content, or another mutually agreeable alternative. The goal of the parties is, within three (3) months of this Agreement, to have developed a process for Comcast Cable to evaluate content for its New Media platforms from Independent Producers. For the purposes of this paragraph, "Independent Producer" means a producer/production company that is not part of a vertically-integrated company, and is either an IFTA member or is among those non-IFTA member companies that would not be considered a "major" independent supplier, (e.g. SONY).



9. Other Provisions:

A. Notwithstanding any other provision hereunder, this Agreement does not impose on any Party hereto any obligation to subsidize the direct business costs of any company or individual seeking to participate in the processes set forth in this Agreement, other than by NBCU in connection with the Allocated Development Funds described in paragraph 5 above.

B. Comcast and NBCU have various other initiatives in place to promote diversity in connection with its entertainment divisions, which initiatives are not subject to or impacted by this Agreement.

C. This Agreement in no way disqualifies IFTA or its members from availing (or seeking to avail) themselves in other programs set up by Comcast and NBCU in which IFTA or its members are otherwise qualified to participate.

D. This Agreement constitutes a binding and enforceable agreement among the Parties and is subject to the laws of the State of California with the Forum designated as Los Angeles County, California.

E. This Agreement may only be amended in a writing signed by each Party to this Agreement.

COMCAST CORPORATION



Stephen Burke
Chief Operating Officer

Date: 6/30/10

NBC UNIVERSAL, INC.



Jeffrey Zucker
President and Chief Executive Officer

Date: 6-29-10

INDEPENDENT FILM & TELEVISION ALLIANCE



Jean M. Prewitt
President and Chief Executive Officer

Date: 6-29-10

MEMORANDUM OF UNDERSTANDING
between
COMCAST CORPORATION, NBC UNIVERSAL
and
THE HISPANIC LEADERSHIP ORGANIZATIONS

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), entered into on this 25th day of June, 2010, and made effective upon the closing of the joint venture between Comcast Corporation (“Comcast”) and NBC Universal (“NBCU”), is made by and among Comcast, NBCU, and the Hispanic Association on Corporate Responsibility (“HACR”), the National Hispanic Leadership Agenda (“NHLA”), and the National Hispanic Media Coalition (“NHMC”), collectively called for the purposes of this Agreement the “Hispanic Leadership Organizations.”

WHEREAS, while diversity is a core principle of the way in which Comcast and NBCU conduct their respective businesses, the Hispanic Leadership Organizations urge that Comcast and NBCU improve upon their current diversity efforts in the areas of workforce recruitment and retention, procurement, philanthropy and community investment, corporate governance, and programming;

WHEREAS, Comcast is dedicated to continuing and enhancing its commitment to diversity in connection with the proposed joint venture with General Electric (“GE”) with respect to NBCU and to incorporating and building upon Comcast’s and NBCU’s existing diversity programs;

WHEREAS, Comcast and NBCU wish to grow and strengthen their working relationships with national organizations representing Latino communities with the goal of maintaining and improving their diversity efforts;

WHEREAS, Comcast and NBCU strive to be industry leaders in the diversity arena and desire to have their business practices reflect their customer base in the communities where they operate; and

WHEREAS, Comcast remains committed to providing competitive and affordable video services to its customers, including its Spanish-speaking customers;

NOW THEREFORE, Comcast, NBCU, and the Hispanic Leadership Organizations have created this MOU to establish an action plan for their cooperative efforts after the closing of the transaction between Comcast and NBCU, on the diversity initiatives enumerated herein, with the stated objectives of maintaining and growing productive community partnerships with a wide variety of diverse organizations.

CONFIDENTIAL**1. Purpose**

Comcast, NBCU, and the Hispanic Leadership Organizations share a belief that increased participation and involvement of all communities in which Comcast and NBCU do business across its enterprise, including the Latino community, will benefit those communities, Comcast, and NBCU.

Comcast, NBCU, and the Hispanic Leadership Organizations acknowledge that a reciprocal relationship is appropriate to achieve the goals, objectives, and overall spirit of this MOU.

This MOU is set forth primarily (1) to enhance the policies and programs by which Latinos may realize greater participation in the five focus areas listed in the MOU; and (2) to identify and pursue actions by which the Hispanic Leadership Organizations can support the growth of Comcast and NBCU's business within the Latino consumer market.

Nothing in this MOU is intended either to disadvantage or to provide favoritism to any community. While this MOU highlights efforts that Comcast and NBCU are currently undertaking to support the Latino community, there are and will continue to be many other ongoing efforts by the companies now, and by the combined company in the future that support myriad diverse communities and interest groups.

2. Scope

(a) Comcast Structure. This MOU is intended to cover all of Comcast's major operating subsidiaries, including Comcast Cable and Comcast Entertainment Group (which, upon closing of the transaction with GE, will include NBCU and NBCU's major operating subsidiaries including Universal Studios and Universal Theme Parks). References herein to "Comcast" are intended to encompass Comcast Corporation and the aforementioned operating subsidiaries. The parties recognize that the corporate structure of Comcast is specifically designed to respect the independence of each operating subsidiary and the decentralized nature of Comcast's management of its business. While Comcast is committed to these general diversity initiatives, it is understood that each operating subsidiary retains independent discretion to determine the best method to implement the initiatives within the parameters stated.

(b) Comcast Entertainment Group. It is understood that the new corporate shell, known as the Comcast Entertainment Group, will not be a publicly-traded company and, therefore, will not have an independent board of directors. Upon closing, Comcast will own 51 percent of Comcast Entertainment Group and manage these combined NBCU/Comcast programming assets. NBCU will essentially become a Comcast operating subsidiary which will be separately managed and will enjoy a significant degree of independence.

(c) NBC Memorandum of Understanding. NBC currently is a party to a 2000 memorandum of understanding (the "NBC Memorandum") with a coalition representing the interests of various minority organizations. Comcast is prepared to honor the commitments in the NBC Memorandum, to the extent they remain relevant, including with respect to the

C O N F I D E N T I A L

programming assets that Comcast will contribute to the newly formed Comcast Entertainment Group.

3. Five Focus Areas

Comcast, NBCU, and the Hispanic Leadership Organizations have agreed to make commitments in the following areas that will be referred to as “Focus Areas” for the purposes of this MOU:

1. Corporate Governance
2. Employment/Workforce Recruitment & Retention
3. Procurement
4. Programming
5. Philanthropy & Community Investments

Within sixty (60) days of the closing of the joint venture, Comcast will develop a strategic plan, with advice from the Hispanic Leadership Organizations and others provided through the National Hispanic Advisory Council described below, that will address the five Focus Areas outlined above and that will detail goals and objectives for each of the Focus Areas. Immediately following execution of this MOU, Comcast will commence laying the groundwork and planning for the strategic plan (taking into account applicable legal requirements that Comcast Corporation and NBCU continue to be separate entities until closing of the joint venture).

4. Focus Area One -- Corporate Governance

(a) **Comcast Board of Directors.** Comcast has a relatively small Board of Directors (“Board”) with limited opportunity to add directors. Nominees to Comcast’s Board are determined by the Board’s Governance and Directors Nominating Committee, which consists entirely of independent directors. In assessing candidates, the Committee takes into account diversity, as well as a variety of other qualifications, including professional knowledge; business, financial, and management expertise; industry knowledge; and entrepreneurial background and experience.

Comcast will appoint and/or elect to its Board of Directors a U.S.-based Hispanic with a demonstrated track record of commitment to the Hispanic community within twenty-four (24) months of the date of execution of the MOU regardless of whether there is a vacancy within that time period.

(b) External Diversity Advisory Councils

(i) **Structure and Purpose.** Comcast will establish external Diversity Advisory Councils (the “Councils,” which collectively shall be known as the “Joint Council”) to facilitate open communication over the development, monitoring, and evaluation of diversity initiatives, including those discussed herein. One of the Councils shall be the National Hispanic Advisory Council (“Hispanic Advisory Council”), which shall provide advice to the senior executive teams at Comcast and NBCU regarding the companies’ development and implementation of a strategic plan to improve diversity practices at Comcast, including the five

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Focus Areas. In addition, Comcast intends to create other advisory councils, including the National African American Advisory Council; the National Asian American Advisory Council; and an advisory council composed of representatives of other diverse communities, including Native Americans, veterans, disabled, and lesbian/gay/bisexual/transgender.

(ii) Members of Hispanic Advisory Council. Within sixty (60) days of the execution of this MOU, Comcast will appoint nine (9) members to the Hispanic Advisory Council. The Hispanic Advisory Council will include at least one (1) senior executive or board member from each of the three Hispanic Leadership Organizations (HACR, NHLA, and NHMC), and at least two (2) additional persons who are senior executives or board members of one of those three organizations and/or, in the case of HACR and NHLA, of their member organizations. The Hispanic Leadership Organizations may propose to Comcast individuals for appointment to the Hispanic Advisory Council, and Comcast will retain complete discretion in making all appointments.

(iii) Meetings. The Joint Council will meet not less than two times per year. Comcast's Chairman and Chief Executive Officer will attend one of those meetings, including an individual meeting with the Hispanic Advisory Council. Comcast's internal Diversity Council ("Comcast Diversity Council"), including Comcast's Executive Vice President/Chief Diversity Officer and Chief Operating Officer, and NBCU's internal Diversity Council ("NBCU Diversity Council"), including NBCU's Executive Vice President, Diversity, as well as other senior executives of Comcast and its operating subsidiaries as appropriate, will participate in the twice-yearly meetings of the Joint Council and the Hispanic Advisory Council. Each Diversity Advisory Council, including the Hispanic Advisory Council, also will have the opportunity to interact with the Comcast and NBCU Diversity Councils in between formal meetings of the Joint Council, including additional meetings on an as-needed basis to offer advice on the strategic plan and to discuss progress under the plan.

The purpose of the two annual meetings will be to provide the Joint Council, and where appropriate each individual Diversity Advisory Council, with briefings on relevant, non-confidential company business plans and operations as to the operating subsidiaries within the scope of this MOU; to review progress on diversity initiatives, including under the Monitoring and Evaluation provisions herein; and to solicit advice on how Comcast and each Council can work collaboratively to improve performance on diversity initiatives.

Comcast will directly fund and/or reimburse all reasonable travel and hotel expenses for the members of the Hispanic Advisory Council associated with attending meetings of the Council and of the Joint Council.

(iv) Liaisons. The chief diversity officers of Comcast and NBCU will designate appropriate staff members to serve as liaisons to the Hispanic Advisory Council to, among other things, facilitate communication between the Hispanic Advisory Council, Comcast, and NBCU concerning the Focus Areas, as well as to address administrative issues such as scheduling meetings, coordinating logistics and travel, preparing meeting agendas, recording and distribution of minutes, and facilitating post-meeting action items.

CONFIDENTIAL**5. Focus Area Two -- Employment/Workforce Recruitment and Retention**

Comcast and NBCU will increase Latino representation at all levels of their respective organizations. This Focus Area will focus on four key areas: senior management, mid-level management, entry-level employment opportunities, and current employment levels at Comcast and NBCU. As it relates to all four key areas, Comcast and NBCU will continue to build and/or leverage development programs that focus on building leadership talent.

(a) Current Initiatives. Comcast and NBCU each has established corporate-wide diversity programs, affirmative action plans, and a variety of other measures related to recruitment, development, and retention to enhance diversity, including Latino representation, in their workforces.

Each organization has an internal Diversity Council consisting of senior leaders from their respective organizations. The diversity programs at each organization are active and reflect the organizations' commitments to a diverse workforce through training, recruitment, leadership development, and retention programs. Both organizations also have established partnerships with key multicultural professional associations designed to attract talent for their respective workforces.

Comcast Cable and NBCU are two of the largest industry supporters of The Emma Bowen Foundation for Minority Interests in Media ("Emma Bowen"), a unique five-year internship program that provides minority students with the opportunity to work for partner companies, like Comcast and NBCU, during summers and school breaks from the summer following their junior year in high school until they graduate from college. Upon program completion, Emma Bowen students are integrated into Comcast's and NBCU's recruitment pipelines. Today, Comcast employs six Emma Bowen students as regular employees, and NBCU employs nine Emma Bowen students as regular employees.

(b) Enhancing Workforce Diversity. Looking forward, Comcast and NBCU are committed to be industry leaders in the arena of workforce diversity and, therefore, will recruit and retain more Latinos so that their workforces more accurately reflect the communities they serve.

Comcast will continue its commitment to increase diversity in its leadership ranks, including at the vice president and director levels and above. Consistent with its affirmative action goals, Comcast actively will take steps to recruit Latinos in its workforce. The following initiatives will be implemented:

(i) Development of a Latino forum and action plan to increase director-level representation of Latinos.

(ii) Creation of focus groups with minority groups, including Latinos, with the objectives of gaining insight, creating opportunities, and identifying high potential employees.

(iii) Implementation of a boot camp program for mid-level vice president candidates, including no less than 80 percent diverse candidates.

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(iv) With cooperation from the Hispanic Advisory Council, identification of search firms with track records of successfully recruiting diverse pools of talent, including Latino talent, to partner with the company in identifying diverse leaders.

Further, Comcast will continue its commitment to enhancing minority representation in the leadership ranks of the organization by requiring a diverse pool of candidates for all hires at the vice president level and above. Comcast is committed to having at least one person of color on every slate for all positions at the vice president level or above, including its executive leadership and business leaders.

NBCU will make more announcements in the coming year of additional hires of high-level Latino executives in other key positions. In addition, NBCU will roll out an annual online diversity training module to cover all regular NBCU employees.

Comcast and NBCU will support and partner with organizations training Latinos in all facets of the entertainment industry. In addition, Comcast and NBCU will continue to develop career-path programs, including mentoring programs designed to enhance the promotion potential of identified talent, moving individuals from entry-level, to mid-level, to senior management.

NBCU is committed to maintaining its unique Diversity Council and structure and to identifying additional forms of outreach and recognition. Spending on diversity initiatives and the overall NBCU Diversity budget has increased substantially over the past three years to ensure current programs and new initiatives are supported and expanded, and NBCU will continue to provide full support to its ambitious diversity program.

The Hispanic Advisory Council may be asked to assist Comcast and NBCU in reviewing and selecting executive leadership development programs, recommendations for Latino-owned executive search firms that may be helpful in finding and retaining Latino talent, and assistance in the development of internship programs aimed at exposing college and university-level students.

Comcast will continue to provide annual workforce-related data in a format consistent with its ongoing commitment to participate in reporting to HACR. This data will be provided to the Hispanic Advisory Council, as well as to the Hispanic Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council. For purposes of the benchmarking study and annual assessments described in Section 9 of this MOU, Comcast will provide the 2009 workforce-related data and annual updates thereafter.

6. Focus Area Three -- Procurement

(a) **Current Initiatives.** Comcast Cable and NBCU currently spend significant amounts on minority-owned and minority-led suppliers and vendors. Both organizations partner with Latino organizations to enhance utilization of minority-owned enterprises. Comcast Cable also has a "second tier" procurement program designed to encourage its top suppliers to purchase goods and services from minority-owned vendors, including Latino-owned vendors.

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Comcast Cable and NBCU will continue to partner with the Latino business community and participate in procurement-related events, as they have in recent years. Comcast and NBCU will seek advice from the Hispanic Advisory Council to identify opportunities for spending with Latino-owned suppliers who can meet the companies' needs in agreed-upon categories.

(b) Enhancing Procurement Diversity. Comcast and NBCU will enhance diversity in its procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including Latino-owned enterprises. On a nationwide basis, Comcast and NBCU will strive to increase the percentage of business conducted with Latino-owned vendors to be on par with the percentage of Latino-owned businesses in the communities they serve.

As part of the Inclusion Initiative for law firms, Comcast will use its best efforts to include Latino-owned law firms that participate in the Initiative and will work with the Hispanic Advisory Council to identify qualified firms as Initiative participants.

Comcast will grow the diversity of its investment banking and banking partners through its minority banking program and through the development and expansion of relationships with minority investment firms, including Latino-owned firms. In addition, Comcast will continue to evaluate its second tier procurement program and work to find ways to expand it to create additional opportunities and an even greater impact, including expansion of second tier reporting to encompass more suppliers and automation of the reporting process.

Additionally, Comcast and NBCU will continue to partner with Hispanic organizations to enhance the utilization of minority-owned enterprises, specifically Hispanic-led chambers of commerce and/or other Hispanic-led business organizations at the national, regional, and local levels.

Going forward, NBCU will continue its robust procurement plan that will include a collaborative effort with the Hispanic Leadership Organizations to identify Latino vendors.

Comcast and NBCU will work together with the Hispanic Leadership Organizations, other leaders in Hispanic procurement, and/or the external Hispanic Advisory Council to identify opportunities for spending with Hispanic-owned suppliers in agreed-upon categories such as advertising, construction, information technology, legal services, financial services, office furniture and supplies, promotional marketing products, etc. In addition, Comcast and NBCU will identify opportunities that increase the number and qualification of suppliers in certain spending categories. Comcast and NBCU will continue to train its procurement category buyers to be aware of opportunities for inclusion, including opportunities for existing Hispanic suppliers to expand their portfolio of business with Comcast and NBCU.

Additionally, Comcast will continue to provide annual procurement-related data in a format consistent with its ongoing commitment to report to HACR. This data will be provided to the Hispanic Advisory Council, as well as to the Hispanic Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

CONFIDENTIAL**7. Focus Area Four -- Programming**

(a) **Current Initiatives.** Comcast Cable is committed to maintain and improve its track record in bringing diverse programming to its subscribers. Comcast already offers the largest number of Spanish-language channels available from any multichannel video competitor in the U.S. Comcast also offers its subscribers a robust, diverse video-on-demand (“VOD”) experience, including over 600 hours of Latino VOD content, the most of any multi-channel program distributor. Also, NBCU’s minority programming efforts are enhanced by its ownership of Telemundo and mun2.

(b) **Enhancing Programming Diversity.** Comcast Cable will continue to bring new minority and independently owned networks to the market.

In their joint Public Interest Statement, filed with the Federal Communications Commission, on January 28, 2010, Comcast, GE, and NBCU pledged to expand the availability of over-the-air programming to the Latino community utilizing a portion of the digital broadcast spectrum of Telemundo’s owned and operated stations. In furtherance of that commitment, within 12 months of closing the transaction, NBCU will launch a new Spanish-language multicast channel on Telemundo’s digital broadcast spectrum, utilizing library programming that has had limited exposure. In addition, Comcast Cable committed to use its On Demand and On Demand Online platforms to feature Telemundo programming and to continue the expansion of mun2 availability.

Comcast also commits to adding at least ten new independently-owned and -operated programming services over the next eight years following closing of the transaction. This represents a modification of the commitment appearing in the FCC Public Interest Statement of January 28, 2010.

To that end, at least two of the new programming services to be added within three years of closing of the transaction will be American Latino-operated, English-language channels, and will be to the “D1” digital tier in added systems. Of the two new programming services, one will be added within 18 months and the other within 36 months of closing of the transaction. Two additional programming services in which American Latinos have a majority and/or substantial ownership interest will be added within the six-year period following closing of the transaction. Comcast will work closely with the Hispanic Advisory Council to help identify programming services in which American Latinos have a majority and/or substantial ownership interest.

Comcast also currently distributes programming services produced by independent entities that are American Latino owned or controlled or target the Latino community with English or Spanish language programming. Comcast will extend the D1 (or better) distribution of at least three (3) of such programming services (at least two (2) of the three (3) will be American Latino owned or controlled) within six (6) months of closing of the transaction by an aggregate of at least ten million (10,000,000) subscribers collectively, subject to negotiating on customary terms for extended distribution. The selection of such new or currently distributed programming services will be in Comcast’s discretion.

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As noted in the Public Interest Statement with the FCC, there is no prospect that the proposed transaction will diminish Comcast's reliance on unaffiliated content. Following consummation of the proposed transaction, Comcast will continue to rely on other content providers to provide the vast majority of its video content. Comcast will not rely exclusively or even primarily on NBCU content.

In the joint Public Interest Statement, Comcast, GE and NBCU further committed to maintain or expand free content over the air and on the Internet for the duration of the joint venture.

In addition, Comcast Cable is committed to launching a package of 40-60 Spanish-language channels in all of its major Latino markets, with a balanced mix of programming serving all demographics and strongly promoting a diversity of Latino voices. Comcast Cable also will more than double its 600 hours of Latino VOD content, continue to add SAP-enabled offerings, and offer thousands of choices within a few years. As systems are converted to switched digital video architecture, and as its VOD server capacity grows, Comcast Cable will continue its commitment to expanding linear and VOD Spanish-language programming. Comcast Cable also will continue to work with content providers to deliver Latino content on its online Fancast Xfinity platform. At the request of the Hispanic Advisory Council, Comcast will be prepared to discuss the pricing and packaging of its Spanish-language and Hispanic-oriented programming for their information.

NBCU will build on previous and current efforts to increase and improve the presence of Latinos throughout all its programming, including entertainment, news, sports, and public affairs programming. NBCU will expand opportunities for Latinos both in front of and behind the camera. Examples of measurable outcomes will include increasing the number of Latino-themed or focused shows on primetime television (e.g., dramas, situation comedies, reality television, and entertainment/award specials); increasing the number of Latino show runners, producers, writers, and directors; and increasing the number of Latinos who appear on news and public affairs programs.

In addition, Telemundo just introduced a comprehensive news strategy to enhance and expand its news content across multiple platforms, including an increased investment in local newscasts at the Telemundo stations. This will include the launch of a weekly public affairs show in the first half of 2010. Comcast Cable and NBCU are committed to the production of local newscasts in the communities where stations are located. Further, as a result of the joint venture, NBCU will not reduce the number of current local Telemundo newscasts and will consider expanding local Telemundo newscasts. NBCU will continue to expand local content in Telemundo station newscasts.

NBCU will increase news and information choices for Hispanic viewers, including a plan to produce with an independent producer a weekly business news program. In addition, NBCU will increase Latino-themed entertainment programming, including a plan to co-produce and air a primetime network Latino-themed awards entertainment special, subject to NBCU's right to approve the producer.

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Comcast Cable will annually report their programming statistics and other information detailed in this section. This data will be provided to the Hispanic Advisory Council, as well as to the Hispanic Leadership Organizations upon request, for internal discussions with the Hispanic Advisory Council and for preparation of external progress reports by Advisory Council members and/or Hispanic Leadership Organizations. In addition, Comcast Cable will participate in an effort to benchmark its performance. Comcast will also work to persuade other multi-channel video programming distributors (“MVPDs”) to join these benchmarking efforts so that it is an industry-wide practice.

8. Focus Area Five -- Philanthropy and Community Investment

(a) Current Initiatives. Comcast and NBCU recognize the importance of investing in minority-led organizations, including Latino organizations, and the programs and services provided by minority organizations to their respective communities. Further, Comcast and NBCU understand that corporate and foundation contributions are important to the communities where they do business and are consistent with responsible business practices.

Comcast has three community investment priorities – Building Tomorrow’s Leaders, Expanding Digital Literacy, and Promoting Community Service – with diversity as an underpinning in each of these areas. In general, with a large percentage of the Latino population residing in urban areas, Comcast’s support of organizations with a broad national footprint ensures that a significant portion of its cash and in-kind contributions are making a difference in the lives of communities of U.S. Latinos.

NBCU also is committed to a wide range of community investment initiatives in the Latino community. For more than ten years, NBCU has made education a priority in its philanthropic and corporate giving programs. The NBCU Foundation supports many organizations, including organizations dedicated to advancing the interests of Latino communities.

(b) Enhancing Diversity in Community Investment. While more specific benchmarks may be established in consultation with the Hispanic Advisory Council, Comcast and NBCU will commit to increase their philanthropic efforts to support Hispanic-led and Hispanic-serving institutions.

In addition, Comcast makes the following commitments to enhance its investment in the Latino community specifically and the minority community generally:

(i) In the past two years, the percentage of awards made to Latinos in The Comcast Leaders and Achievers Scholarship Program increased by 34%, representing more than 10% of the total awards. Comcast and the Hispanic Advisory Council will work cooperatively to increase outreach to Hispanic students and schools in predominantly Hispanic communities for this program.

(ii) Comcast and NBCU will increase support for internship and scholarship programs of Hispanic-led and Hispanic-serving organizations with proven track records in working with the Latino community. In addition, Comcast and NBCU will work with

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their respective Human Resources Departments to ensure that graduates of these programs are being considered for entry level positions.

(iii) Comcast will expand its Comcast Cares Day focus to add organizations being served in Latino communities and to increase the number of organizations that are serving Latino beneficiaries.

(iv) Comcast will ensure the locations of its programs through the Comcast Digital Connectors program are in diverse communities, including specifically Latino communities.

(v) Comcast will further promote and communicate about the positive work and impact of its Latino partners, by increasing the provision of public service announcements, social media communications, advertising, and media placement (both locally and nationally).

Comcast and NBCU agree to continue and expand their outreach to Latino students and schools by collaborating with leading Latino national and local organizations to identify and consider funding of education-focused programs that will have an impact in the communities served by NBCU businesses.

Comcast will continue to provide annual philanthropic and community investment-related data in a format consistent with its ongoing commitment to report to HACR. This data will be provided to the Hispanic Advisory Council, as well as to the Hispanic Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

9. Monitoring and Evaluation of Progress

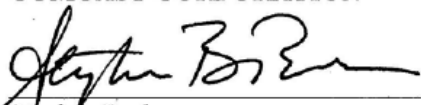
Within sixty (60) days of the execution of this MOU, Comcast will lay the groundwork for and begin planning to conduct a benchmark study of the initiatives set forth herein, against which future progress will be measured and monitored, with the goal of completing the study within ninety (90) days of closing of the joint venture. The benchmark study will include both Comcast Cable and Comcast Entertainment Group. On an annual basis thereafter, Comcast will conduct an assessment of progress on the initiatives. The annual assessment will be scheduled for review by the Hispanic Advisory Council at one of the meetings with the Comcast and NBCU Diversity Councils for the purposes of seeking input and recommendations for strategies to improve performance on the enumerated diversity initiatives.

Comcast will continue to provide to the Hispanic Advisory Council annual corporate governance, workforce, procurement, and philanthropic and community investment-related data in a format consistent with its ongoing commitment to report to HACR. This data will be provided to the Hispanic Advisory Council, as well as to the Hispanic Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions with the Joint Council. Comcast Cable will annually report their programming statistics and engage in benchmarking practices as described in the Programming Section of this document.

CONFIDENTIAL**10. Effective Date**

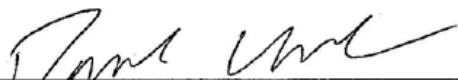
This MOU will take effect upon the closing of the joint venture between Comcast and NBCU. The parties agree that, in anticipation of closing, they will continue their discussions over matters contained in this MOU and will begin to work cooperatively to lay the groundwork for initiatives herein, including the formation of the Councils.

COMCAST CORPORATION



 Stephen Burke
 Chief Operating Officer


Date: June 26, 2010



 David L. Cohen
 Executive Vice President and
 Chief Diversity Officer

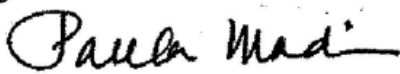
Date: June 25, 2010

NBC UNIVERSAL



 Jeffrey Zucker
 President and Chief Executive Officer

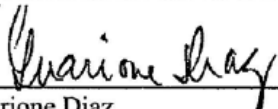
Date: June 25, 2010



 Paula Madison
 Executive Vice President, Diversity

Date: June 25, 2010

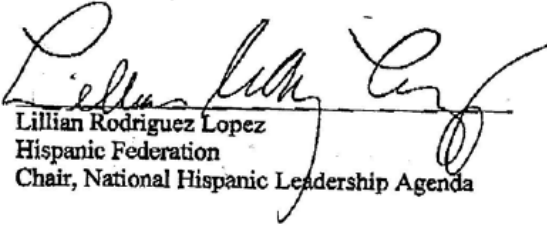
FOR HISPANIC LEADERSHIP ORGANIZATIONS:



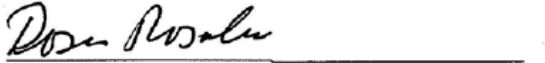
 Guarione Diaz
 Cuban American National Council
 Vice Chair, HACR Board of Directors

Date: June 25, 2010

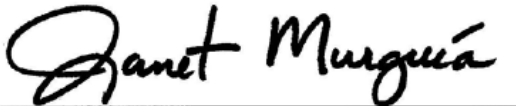
CONFIDENTIAL




Lillian Rodriguez Lopez
Hispanic Federation
Chair, National Hispanic Leadership Agenda

Date: 6-28-10

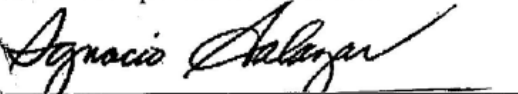
Rosa Rosales
League of United Latin American Citizens
Vice Chair, National Hispanic Leadership Agenda

Date: June 25, 2010

Janet Murguía
National Council of La Raza
Board Member, HACR and NHLA

Date: 6/25/2010

Alex Nogales
President & CEO
National Hispanic Media Coalition

Date: June 25, 2010

Ignacio Salazar
SER-Jobs For Progress National, Inc.
Chair, HACR Board of Directors

Date: June 25, 2010



David L. Cohen
Executive Vice President

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Philadelphia, PA 19103-2838
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Fax: 215-286-7546
david_cohen@comcast.com

July 2, 2010

Honorable Bobby Rush
2416 Rayburn House Office Building
Washington, DC 20515-1301

Re: Comcast/NBCU

Dear Congressman Rush:

It has been a pleasure to discuss with you a variety of diversity-related issues in connection with the proposed joint venture between Comcast Corporation (Comcast) and General Electric (GE) relating to NBC Universal (NBCU). I am writing this letter on behalf of Comcast, GE, and NBCU, and would ask that it be placed on the record in the hearing of the Subcommittee on Communications, Technology, and the Internet of the House Energy and Commerce Committee, scheduled to be held on July 8, 2010.

As an initial matter, we are pleased to attach a comprehensive list of diversity commitments that we have made through our dialogue with you and other national diversity leaders. These commitments reflect the joint focus of Comcast and NBCU on the critically important issues of diversity in the operation of our companies.

In addition, to elaborate and expand upon this list, and based on our discussions with you and other representatives of the African American community, we are pleased to put forward the following expanded commitments, which will take effect upon the closing of the transaction:

I. Training, Internship, and Mentoring Programs for Minority Students, including Africans Americans

Comcast and NBCU will increase support for training, internship, and scholarship programs for minority students, including African Americans. In addition, Comcast and NBCU will work with their respective Human Resources Departments to ensure that graduates of these programs are given appropriate consideration for entry level positions at our companies.

Comcast and NBCU are among the largest supporters of various national programs focusing on the growth and development of minorities in the media field, such as the Emma L. Bowen Foundation for Minority Interests in Media (Emma Bowen Foundation) and similar internship and scholarship programs focusing on diverse communities. Comcast and NBCU will increase support for these programs and commit to continuing as industry leaders in such programs.

As part of this commitment, Comcast will design and establish programs in partnership with local institutions that include a curriculum for secondary education students that will equip them with advertising, sales and advertising, and technical skills and experience to help facilitate their entry into the cable industry in positions such as technicians, engineers, and advertising/marketing.

II. Independently-Owned and -Operated Cable Networks

Comcast is expanding its commitment that appears in the FCC Public Interest Statement of January 28, 2010, regarding the addition of independently-owned and -operated networks to its cable service. Specifically, Comcast commits to add at least ten (10) new independently-owned and -operated programming services to the digital (D1) tier over the next eight (8) years following closing of the transaction.

To that end, a minimum of four (4) of the new linear programming services to be added will be services in which African American investors own a majority of the equity, with at least two (2) of those services to be added in the first two (2) years following closing of the transaction. Such services will be added on commercially comparable, reasonable, and competitive terms.

III. Expanded Distribution of African American-Oriented Networks

Comcast currently carries African American-controlled and -operated programming and also non-African American-owned entities that target the African American community with programming services. Working with programmers, Comcast will extend carriage of this type of programming in key market systems, including key African American market systems, within six months of closing of the transaction.

IV. African American Ownership of On Demand Programming

On Demand and On Demand Online are dynamic and innovative platforms, and Comcast intends to help opportunities for owners of diverse content to utilize them. On Demand affords independent and minority owners of content with an unparalleled opportunity to reach niche audiences in a direct way and with scheduling directed by the viewers' time preference. As Comcast expands On Demand and On Demand Online, it will focus on ways to ensure that independent and minority owners of content, including African Americans, can take advantage of these next-generation platforms.

Comcast Cable further is committed to the expansion of Video On Demand (VOD) services featuring African American content, such as Hip Hop On Demand (H2O), co-created by Russell Simmons, Will Griffin, and their partners. In addition, Comcast Cable recently launched Black Cinema On Demand, a VOD service.

As Comcast Cable systems are converted to switched digital video architecture, and as its VOD server capacity grows, Comcast Cable will continue its commitment to expanding linear and VOD minority-oriented programming. Comcast Cable also will continue to work with content providers to deliver minority-oriented content on its online Fancast Xfinity platform.

V. Enhancing Diversity (including African Americans) in Programming

Comcast and NBCU are committed to expanding the presence of minorities both in front of and behind the cameras, including African Americans. In furtherance of this commitment, Comcast and NBCU commit to build on previous and current efforts to increase and improve the presence of minorities throughout all its programming, including entertainment, news, sports, and public affairs programming.

VI. Venture Capital Fund

Comcast will establish a venture capital fund intended to expand opportunities for minority entrepreneurs (including African American entrepreneurs) to develop new media content and applications. Comcast is prepared to commit at least \$20 million in funding to this new venture upon closing of the transaction. The fund will be housed within Comcast Interactive Capital, the company's venture capital arm, and will facilitate early stage financing of minority businesses (including African American businesses). Investment discretion will rest with the manager of the Fund. Further details on the Fund will be released this Fall.

VII. Divestiture of Assets to Minority Interests

As we have discussed, NBCU has agreed to divest its ownership interest in KWHY-TV, an independent Spanish-language broadcast station in Los Angeles. This process presents a key opportunity for minority ownership in one of the nation's top two largest media markets. NBCU has committed to use its best efforts to ensure that this station is sold to a minority-controlled ownership group. To facilitate this opportunity, NBCU has established a process to identify potential buyers and has selected the Minority Media and Telecommunications Council (MMTC) as co-advisor for this transaction. MMTC has had demonstrable success in identifying qualified minority buyers in similar divestitures.

In the event these efforts do not result in the sale of KWHY-TV, the station license and assets will be placed in a divestiture trust at the closing of the proposed transaction. If this becomes necessary, MMTC will work with the trustee to effectuate the sale to a qualified third party. On May 17, 2010, an application was filed seeking FCC consent for the assignment of KWHY-TV to a divestiture trust. NBCU and MMTC will remain actively engaged in efforts to sell KWHY-TV while the application for assignment to the divestiture trust is pending.

Although no additional divestiture of media assets is contemplated in connection with the NBCU transaction, Comcast is committed to having an appropriate sensitivity to minority ownership issues in the event media assets are divested in the future, including involvement of specialists to identify minority buyers for any future asset sales. In the event of future divestitures of broadcast stations, cable systems, or cable channels, Comcast is committed to aggressively facilitate and pursue opportunities for minority ownership groups to purchase those assets and will use commercially reasonable efforts to provide first priority to minority ownership groups.

Thank you again for your willingness to participate in this important dialogue on diversity issues. We look forward to continuing our productive discussions and relationship. As always, please do not hesitate to contact me if you have any questions or feedback.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Cohen".

David L. Cohen
Executive Vice President

Attachment



COMCAST AND NBCU'S SUMMARY OF DIVERSITY COMMITMENTS

Comcast Corporation ("Comcast") and NBC Universal ("NBCU") have made a series of commitments to diverse communities in connection with the joint venture between Comcast and General Electric ("GE") relating to NBCU. Except as otherwise indicated, all of these commitments are new or expand upon current commitments by the companies. These commitments span the organizations' business practices with respect to governance, workforce recruitment and career development, supplier diversity, media ownership, programming, and community and partnership investment.

1. Existing Initiatives and Commitments

Comcast and NBCU will honor their respective existing diversity commitments, including those contained in the diversity memorandum of understanding between NBC and a coalition representing the interests of various minority organizations reached in the year 2000, to the extent the commitments remain relevant. Those commitments will be extended to the programming assets that Comcast will contribute to the newly formed Comcast Entertainment Group upon closing of the joint venture.

2. Governance

Comcast and NBCU: New External Diversity Advisory Councils. Comcast and NBCU will establish four external Diversity Advisory Councils (collectively called the "Joint Council") representative of African American, Latino, Asian Pacific Islander, and other diverse communities, to facilitate open communication on the development, monitoring, and evaluation of the companies' diversity initiatives. Comcast will appoint up to nine (9) members to each Diversity Advisory Council with input from national minority leadership organizations. The Joint Council and each Advisory Council will meet at least two times per year with Comcast's and NBCU's internal Diversity Councils, including an annual meeting with Comcast's Chairman and Chief Executive Officer. In addition, the Diversity Councils will interact throughout the year on diversity issues with representatives of Comcast and NBCU.

The Advisory Councils will provide advice to the senior executive teams at Comcast and NBCU regarding the companies' development and implementation of a strategic plan to improve diversity practices. Comcast will develop a strategic plan, with advice from the Joint Council, to address five critical "Focus Areas" related to diversity – governance, workforce recruitment and career development, supplier diversity, programming, and community investment and partnerships.

Comcast: Benchmarking and Ongoing Reporting. Comcast will conduct a benchmark study of the diversity initiatives in these Focus Areas which it will update annually to facilitate input and recommendations from the Joint Council for strategies to improve performance in the five Focus Areas. Annually, Comcast will provide diversity data to the Advisory Councils related to the five



Focus Areas, subject to a non-disclosure agreement and the understanding that the data will be used only for internal discussions and development of progress reports by the Joint Council.

NBCU: Coalition Reporting. NBCU will continue to report annually on its corporate diversity efforts, with particular emphasis on programming/content, procurement, and pipeline programs, to a Coalition consisting of the following four organizations (“NBCU Coalition”):

National Association for the Advancement of Colored People, Inc. (“NAACP”);
American Indians in Film and Television;
National Asian-Pacific American Media Coalition; and
National Latino Media Council.

NBCU’s Chief Diversity Officer will consult quarterly with each of these NBCU Coalition members on diversity issues.

Comcast and NBCU: Diversity Oversight. Comcast and NBCU each will continue to support their respective internal Diversity Councils. Each organization also will provide annual reports to the Joint Council analyzing success in achieving diversity objectives and offering recommendations for improvement.

3. Workforce Recruitment & Career Development

Comcast and NBCU: Increased Minority Representation: Comcast and NBCU are committed to be industry leaders in the arena of workforce diversity. Both organizations commit that they will increase minority representation at all levels of their respective organizations and will recruit and retain more minorities so that their workforces more accurately reflect the communities they serve.

Comcast and NBCU: Joint Council Input on Recruitment and Leadership Development. Comcast and NBCU will seek the advice of the Joint Council in reviewing and selecting executive leadership development programs, recommendations for minority-owned executive search firms that may be helpful in finding and retaining diverse talent, and assistance in the development of internship programs aimed at exposing college and university-level students to career opportunities.

Comcast and NBCU: Career Path Programs. Comcast and NBCU will continue to develop career-path programs, including mentoring programs, designed to enhance the promotion potential of identified diverse talent, moving individuals from entry-level, to mid-level, to senior management.

Comcast and NBCU: Minority Internship and Scholarship Programs. Comcast and NBCU will increase support for programs focusing on the growth and development of minorities, such as the Emma L. Bowen Foundation for Minority Interests in Media (“Emma Bowen Foundation”) and similar internship and scholarship programs focusing on diverse communities (see further discussion of Emma Bowen Foundation under Programming and Community Investment and Partnerships below). As part of these initiatives, Comcast will design and establish programs in partnership with local institutions for minority secondary education students a curriculum that will equip them with advertising, sales and marketing, and technical skills and experience to help facilitate their entry into the cable industry in positions such as technicians, engineers, and advertising/marketing.



Comcast: Workforce Diversity Initiatives. In addition, Comcast will implement the following workforce diversity initiatives:

- **Diversity Forum.** Develop a diversity forum and action plan to increase director-level representation of minorities;
- **Focus Groups.** Create minority focus groups with the objectives of gaining insight, creating opportunities, and identifying high potential employees;
- **Boot Camp.** Implement a boot camp program for mid-level vice president candidates which will include not less than 80% diverse candidates; and
- **Search Firms.** With the cooperation of the Advisory Councils, identify search firms with track records of successfully recruiting diverse pools of talent to partner with the company in identifying diverse leaders.

Comcast: Senior Position Candidate Pools. Comcast will enhance minority representation in the leadership ranks of the organization by requiring a diverse pool of candidates for all hires at the vice president level and above, including the commitment to have at least one person of color on every slate for all such hires.

NBCU: Diverse Senior Level Executives. NBCU will focus on hiring opportunities for diverse senior level executives in development, production, casting, marketing, legal/business affairs, and distribution.

Comcast and NBCU: Workplace Diversity Training Programs. Both Comcast and NBCU have active workplace diversity programs that include training on diversity issues. Both organizations are committed to exploring ways in which to expand their respective programs, including, for example, in the case of NBCU, by offering a new online diversity training module for its regular employee base.

4. Supplier Diversity

Comcast and NBCU: Increased Spend on Diverse Suppliers. Comcast and NBCU will enhance diversity in their procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including minority-owned enterprises. On a nationwide basis, Comcast and NBCU will strive to increase the percentage of business conducted with minority-owned vendors to be on par with the percentage of minority-owned businesses in the communities they serve.

Comcast and NBCU: Increased Partnerships with Diverse Organizations. Comcast and NBCU will partner with diverse organizations to enhance the utilization of minority-owned enterprises, specifically minority-led chambers of commerce and/or other minority-led business organizations, at the national, regional, and local levels.



Comcast and NBCU: Joint Council Input on Minority Suppliers. Comcast and NBCU will seek advice from the Joint Council to identify opportunities for spending with minority-owned suppliers in agreed-upon categories.

Comcast and NBCU: Second Tier Procurement Programs. Comcast and NBCU have “second tier” procurement programs designed to encourage their top suppliers to purchase goods and services from minority-owned vendors. As part of these programs, Comcast and NBCU encourage their largest vendors to report quarterly on their spending with minority-owned vendors. Comcast and NBCU will expand their programs to create additional opportunities and an even greater impact, including expanding of second tier reporting to encompass more suppliers as well as automation of the reporting process.

Comcast and NBCU: Banking. Comcast will grow the diversity of its investment banking and banking partners through its minority banking program and through the development and expansion of relationships with minority investment firms. After the closing, NBCU will participate in Comcast’s minority banking initiative. Comcast has established banking relationships with numerous minority-owned financial institutions and has included them in the creation and syndication of numerous credit facilities. Where practicable, NBCU will be a depositor in these institutions.

Comcast and NBCU: Advertising Spend. In 2011, following the close of the transaction, Comcast and NBCU jointly will commit at least an additional \$7 million in spending on advertising with minority-owned media.

Comcast and NBCU: Law Firms. In 2010, Comcast became a founding partner in the Inclusion Initiative, a collaborative effort among several publicly held corporations designed to increase significantly business opportunities for law firms owned by diverse individuals. The overall goal for this initiative is \$30 million, of which Comcast has committed \$1 million. As part of the Inclusion Initiative, Comcast will use its best efforts to retain minority-owned law firms that participate in the Initiative. Further, NBCU commits post-close to expand its business with minority-owned law firms. NBCU will establish a working relationship with one or more minority firms in at least three cities where it has headquarters operations – New York City, Los Angeles, and Washington, D.C. In addition, NBCU will commit to have its General Counsel meet annually with the executive director of the National Association of Minority and Women Owned Law Firms (“NAMWOLF”) and the senior executive of the National Bar Association to review NBCU’s outreach efforts to minority-owned law firms and review its efforts to expand the amount of business that NBCU does with minority-owned firms.

5. Media Ownership

Comcast: New Independently-Owned and -Operated Cable Networks. It is Comcast’s intention to ensure that there are substantial opportunities for diverse programmers to benefit from its commitment to add ten new independently-owned and -operated cable networks to its systems over the next eight years after the close of the transaction with NBCU. This represents an expansion of the commitment appearing in the Federal Communication Commission (“FCC”) Public Interest Statement of January 28, 2010. To that end, Comcast commits that at least eight of the ten networks



to be added to its systems pursuant to this eight-year pledge will be networks in which minorities have a majority ownership interest. Comcast commits that at least four of these networks will be networks in which African Americans have a majority ownership interest and at least four of these networks will be networks in which Hispanics have a majority ownership interest.

Comcast: Venture Capital Fund. Comcast will establish a venture capital fund intended to expand opportunities for minority entrepreneurs to develop new media content and applications. Comcast is prepared to commit at least \$20 million in funding to this new venture upon closing of the transaction with NBCU. The fund will be housed within Comcast Interactive Capital, the company's venture capital arm, and will facilitate early stage financing of minority businesses (including African American businesses). Investment discretion will rest with the manager of the Fund. Further details on the Fund will be released this Fall.

NBCU: L.A. Station Divestiture. NBCU has agreed to divest its ownership interest in KWHY-TV, an independent Spanish-language broadcast station in Los Angeles. This process presents a key opportunity for minority ownership in one of the nation's top two largest media markets. NBCU has committed to use its best efforts to ensure that this station is sold to a minority-controlled ownership group. To facilitate this opportunity, NBCU has established a process to identify potential buyers and has selected the Minority Media and Telecommunications Council ("MMTC") as co-advisor for this transaction. MMTC has had demonstrable success in identifying qualified minority buyers in similar divestitures.

In the event these efforts do not result in the sale of KWHY-TV, the station license and assets will be placed in a divestiture trust at the closing of the proposed transaction. If this becomes necessary, MMTC will work with the trustee to effectuate the sale to a qualified third party. On May 17, 2010, an application was filed seeking FCC consent for the assignment of KWHY-TV to a divestiture trust. NBCU and MMTC will remain actively engaged in efforts to sell KWHY-TV while the application for assignment to the divestiture trust is pending.

Comcast and NBCU: Minority Buyers for Media Assets. Although no additional divestiture of media assets is contemplated in connection with the NBCU transaction, Comcast is committed to having an appropriate sensitivity to minority ownership issues in the event media assets are divested in the future, including involvement of specialists to identify minority buyers for any future asset sales. In the event of future divestitures of broadcast stations, cable systems, or cable channels, Comcast is committed to aggressively facilitate and pursue opportunities for minority ownership groups to purchase those assets and will use commercially reasonable efforts to provide first priority to minority ownership groups.

6. Programming

Comcast and NBCU: Expansion of Minority Programming. Comcast Cable and NBCU are committed to expanding minority-focused programming and will have discussions with the external Diversity Advisory Councils representing each minority community about measures that can be taken to achieve this objective for their respective communities.



Comcast and NBCU: Enhancing Diversity in Programming. Comcast and NBCU are committed to expanding the presence of minorities both in front of and behind the cameras. In furtherance of this commitment, Comcast and NBCU commit to build on previous and current efforts to increase and improve the presence of minorities throughout all its programming, including entertainment, news, sports, and public affairs programming.

Comcast: Expanded Services and Competitive Pricing. Comcast Cable is committed to maintain and improve its track record in bringing diverse programming to its subscribers. Moreover, Comcast Cable remains committed to providing competitive and affordable video services to its customers, including its minority customers. As part of its regular meetings with the external Advisory Councils, Comcast will review the pricing and packaging of its minority-oriented programming.

For example, Comcast currently carries African American-controlled and -operated programming and also non-African American-owned entities that target the African American community with programming services. Working with programmers, Comcast will extend carriage of this type of programming in key market systems, including key African American market systems, within six months of closing of the transaction.

Comcast: Expansion of Diverse Video On Demand (“VOD”) Content. On Demand and On Demand Online are dynamic and innovative platforms, and Comcast intends to help opportunities for owners of diverse content to utilize them. On Demand affords independent and minority owners of content with an unparalleled opportunity to reach niche audiences in a direct way and with scheduling directed by the viewers’ time preference. As Comcast expands On Demand and On Demand Online, it will focus on ways to ensure that independent and minority owners of content can take advantage of these next-generation platforms. Comcast Cable also will continue to work with content providers to deliver minority-oriented content on its online Fancast Xfinity platform.

- **African American Content.** Comcast Cable recently launched Black Cinema On Demand, a VOD channel that celebrates black films, filmmakers, and actors past, present and future, focusing on the wide range of experiences, accomplishments, and points-of-view of black people as expressed through the artistic medium of film. In addition, Comcast Cable features On Demand programming that delivers a variety of television, entertainment, and music choices from various networks and programs that target African American audiences, including Black Entertainment Television (BET), H2O (Hip Hop On Demand), and recently acquired Soul Train content.
- **Asian Content.** This fall, Comcast Cable will launch Asian Cinema On Demand that will feature films from across the Asian Pacific Islander diaspora that highlight the experiences, accomplishments, and points-of-view of this community as expressed through the artistic medium of film. This permanent platform will allow Comcast Cable to work with Asian Pacific Islander English-language content developers and will be programmed by experts in the Asian Pacific Islander film space. This channel will be available 24 hours a day, 365 days a year; contain 20 hours of content; be refreshed up to 100% a month but no less than 50%; and will include a specific marketing plan developed to promote the offering.



- Latino Content.** Within twelve months of the transaction closing, Comcast Cable plans to launch Hispanic Cinema On Demand featuring Latino-themed movies. In addition, Comcast Cable will use its On Demand and On Demand Online platforms to feature Telemundo programming and to continue expanding the availability of NBCU's mun2 (MunDos). Comcast Cable will use these platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast Cable has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its On Demand platform.

Comcast: Continued Reliance on Unaffiliated Content. There is no prospect that the proposed transaction with GE and NBCU will diminish Comcast's reliance on unaffiliated content. Following consummation of the proposed transaction, Comcast will continue to rely on other content providers to provide the vast majority of its video content. Comcast will not rely exclusively or even primarily on NBCU content.

NBCU: Entertainment Programming. With respect to entertainment programming, NBCU makes the following commitments:

- Building Diverse Relationships.** NBCU commits to double (from two to four) the number of formal networking events hosted each year to provide information on employment opportunities for diverse directors, writers, and directors of photography with its senior executives (at the president, executive vice president, senior vice president, and vice president levels) in the feature, broadcast, cable, and digital divisions of NBCU.
- Diverse Writers Program.** To promote diversity among its writers, NBCU commits to continue to fund diversity writer positions for three years, selected by the show-runner/producer, for each of its scripted series on the NBC broadcast network and for each of NBC's three late night programs. In addition, NBCU commits to expand this program to fund a diverse writer position on each scripted series on NBCU's cable networks.
- Directors Fellowship Program.** NBCU will continue to sponsor this important shadowing program, which offers diverse participants a developmental opportunity with a DGA director, as well as exposure to other aspects of NBCU Television Studios production.
- Casting (TV and Film).** NBCU will commit to use its influence to encourage diversity among the freelance casting directors hired in connection with the production of NBCU programming. In addition, NBCU will create a casting associates program for TV and film with an emphasis on diversity in what would be a model for the industry.
- Professional Development Programs.** NBCU will continue to support the following four pipeline development programs offering hands-on experience in programming development and management, and other areas of NBCU's business: Entertainment Associates, NBCU/Canada Fellowships, the Universal Pictures Leadership Program, and multiple NBCU Internship Programs.



- **Benchmarking and Reporting.** NBCU commits to report annually to the Joint Council on the diversity of: (i) on-camera talent in regular, recurring, and guest roles in both scripted and reality TV programming, as well as to continue annual reporting in those areas to the members of the NBCU Coalition; and (ii) production executives (directors, writers) in primetime TV programming. NBCU will expand this annual report by including the diversity of the producers and executive producers of primetime TV series. NBC also commits to continue quarterly meetings with each NBCU Coalition member to seek input on ways for NBC to increase diverse participation in each category.

NBCU: News Programming. With respect to news programming, NBCU makes the following commitments:

- **News Associate Program:** NBC's News Associate Program is a highly competitive program that identifies outstanding aspiring journalists who bring diverse backgrounds to news production and news coverage. NBCU will expand this program beyond NBC News to also include the NBC-owned and -operated stations' news departments. This means an expansion annually from six to twelve News Associates.
- **Diversity Leadership Program.** NBCU will explore ways to expand its Diversity Leadership Program, through which NBC News operates a mid-career program designed to train diverse producers and associate producers for executive producer roles. The program lasts for 18 months and involves monthly workshops, business, and finance seminars, "shadowing" days with key senior executives, individual mentoring, and presentation skills training. The program enrolls eight to ten high potential journalists every 18 months.
- **Recruitment Outreach to Minority Journalists.** NBC recruits every year at the annual conventions of the National Association of Black Journalists ("NABJ"), National Association of Hispanic Journalists ("NAHJ"), Asian-American Journalists Association ("AAJA"), National Lesbian & Gay Journalists Association, Native American Journalists Association ("NAJA"), and South Asian Journalists Association. Representatives of NBC News, NBC Sports, Local Media, and Telemundo contribute on all levels to seminars, career fairs, and student networking events, resulting in the tracking and hiring of diverse candidates. NBCU will explore ways in which this recruitment outreach can be expanded.
- **Meetings with Congressional Caucuses.** NBCU commits to annual meetings between the President of NBC News and the NBC News D.C. Bureau Chief with the Congressional Black Caucus, the Congressional Hispanic Caucus, and the Asian-American Caucus, to discuss diversity practices as they affect the News Division.
- **NBC News Summer Fellowship Program.** NBCU will explore ways to expand its News Summer Fellowship Program, under which NBC sponsors two (2) paid internships every summer for nominees from each of three organizations: NABJ, NAHJ, and AAJA. These six (6) paid interns are selected jointly every year by the individual organizations and NBC News. NBCU will expand its news internships and increase to a minimum of nine paid internships annually with NABJ, NAHJ, and AAJA (three each year per organization), while



also seeking to extend the program to NAJA, to foster the careers of aspiring diverse journalists.

NBCU: Programming Leadership Diversity. NBCU commits that it will continue to take steps to increase the diversity of its executives in each of the following areas: development (television and film); production (television and film); and marketing (television and film). NBCU will work diligently to ensure that key slates for executive openings include diverse candidates identified either through leveraging internal succession plans or using external sources, such as recruiting firms that have strong expertise and track records in identifying diverse candidates within these fields, as needed or appropriate.

NBCU: Telemundo Newscasts. Telemundo just introduced a comprehensive news strategy to enhance and expand its news content across multiple platforms, including an increased investment in local newscasts at the Telemundo stations. This will include the launch of a weekly public affairs show in the first half of 2010. Comcast Cable and NBCU are committed to the production of local newscasts in the communities where stations are located. Further, as a result of the joint venture, NBCU will not reduce the number of current local Telemundo newscasts and will consider expanding local Telemundo newscasts. NBCU will continue to expand local content in Telemundo station newscasts.

NBCU: Emma Bowen Foundation. NBCU is one of the largest supporters of the Emma Bowen Foundation, a preeminent organization dedicated to preparing minority youth for careers in the media industry. NBCU has sponsored more than 100 students, a significant number of whom have taken positions at NBCU and elsewhere in the industry. NBCU commits to continuing as an industry leader in this program and will expand its participation in and support of the program by sponsoring at least 50 students annually for the next five years, as well as continuing to house the Foundation in its Washington, D.C. offices and providing administrative support to the organization on a *pro bono* basis.

7. Community Investment & Partnerships

Comcast and NBCU: Ten Percent Increase in Community Investment. Comcast and NBCU commit to increase their philanthropic efforts to support minority-led and minority-serving institutions and to establish more specific benchmarks for their investment activities in minority communities in consultation with the Joint Council. Upon closing of the transaction, Comcast is prepared to increase its community investment spend on minority-led and minority-serving institutions by 10% per year for each of the next three years. Similarly, NBCU will increase its funding by 10% per year for each of the next three years in the areas of community-based philanthropic focused organizations that serve youth and family in under-served communities and community engagement organizations with broad missions of serving diverse communities.

Comcast: Community Investment and Partnership Programs. Comcast will enhance its investment in diverse communities and its partnerships with diverse organizations by taking the following steps.



- **Comcast Leaders and Achievers Scholarship Program.** Comcast will increase outreach to diverse students and schools for The Comcast Leaders and Achievers Scholarship program.
- **Internship and Scholarship Programs.** Comcast remains the largest supporter of the Emma Bowen Foundation internships. Comcast will increase its support for this program and similar internship and scholarship programs and will seek to enhance participation of minority students in these programs. In addition, Comcast will work with its Human Resources Department to ensure that graduates of these programs are being considered for entry level positions.
- **Beyond School Walls Program.** Through the Big Brothers Big Sisters Beyond School Walls program, Comcast will ensure that school assignments are in diverse communities.
- **Comcast Cares Day.** Comcast will expand its Comcast Cares Day focus to add organizations being served in diverse communities and to increase the number of organizations that are serving diverse beneficiaries.
- **Comcast Digital Connectors Program.** Comcast will ensure that locations of its programs through the Comcast Digital Connectors program (in partnership with One Economy) are in diverse communities.
- **Promotion of Diverse Partnerships.** Comcast will promote and communicate the positive work and impact of its diverse partners, including increases in public service announcements, social media communications, advertising, and media placement, both locally and nationally.

MEMORANDUM OF UNDERSTANDING
between
COMCAST CORPORATION, NBC UNIVERSAL
and
THE ASIAN AMERICAN LEADERSHIP ORGANIZATIONS

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), entered into on this 14th day of December, 2010, and made effective upon the closing of the joint venture between Comcast Corporation (“Comcast”) and NBC Universal (“NBCU”), is made by and among Comcast, NBCU, and certain Asian American groups, including the Asian American Justice Center, East West Players, Japanese American Citizens League, Organization of Chinese Americans, and Media Action Network for Asian Americans, collectively called for the purposes of this Agreement the “Asian American Leadership Organizations.”

WHEREAS, while diversity is a core principle of the way in which Comcast and NBCU conduct their respective businesses, the Asian American Leadership Organizations urge that Comcast and NBCU improve upon their current diversity efforts in the areas of corporate governance, employment/workforce recruitment and retention, procurement, programming, and philanthropy and community investments;

WHEREAS, Comcast is dedicated to continuing and enhancing its commitment to diversity in connection with the proposed joint venture with General Electric (“GE”) with respect to NBCU and to incorporating and building upon Comcast’s and NBCU’s existing diversity programs;

WHEREAS, Comcast and NBCU wish to grow and strengthen their working relationships with national organizations representing Asian American communities with the goal of maintaining and improving their diversity efforts;

WHEREAS, Comcast and NBCU strive to be industry leaders in the diversity arena and desire to have their business practices reflect their customer base in the communities where they operate; and

WHEREAS, Comcast remains committed to providing competitive and affordable video services to its customers, including its customers in the Asian American community;

NOW THEREFORE, Comcast, NBCU, and the Asian American Leadership Organizations have created this MOU to establish an action plan for their cooperative efforts after the closing of the transaction between Comcast and NBCU, on the diversity initiatives enumerated herein, with the stated objectives of maintaining and growing productive community partnerships with a wide variety of diverse organizations.

1. **Purpose**

Comcast, NBCU, and the Asian American Leadership Organizations share a belief that increased participation and involvement of all communities in which Comcast and NBCU do business across their enterprise, including the Asian American community, will benefit those communities, Comcast, and NBCU.

Comcast, NBCU, and the Asian American Leadership Organizations acknowledge that a reciprocal relationship is appropriate to achieve the goals, objectives, and overall spirit of this MOU.

This MOU is set forth primarily (1) to enhance the policies and programs by which members of the Asian American community may realize greater participation in the focus areas listed in this MOU; and (2) to identify and pursue actions by which the Asian American Leadership Organizations can support the growth of Comcast and NBCU's business within the Asian American consumer market.

Nothing in this MOU is intended either to disadvantage or to provide favoritism to any community. While this MOU highlights efforts that Comcast and NBCU are currently undertaking to support the Asian American community, there are and will continue to be many other ongoing efforts by the companies now, and by the combined company in the future, that support myriad diverse communities and interest groups.

Consistent with the understanding in connection with the agreement entered into among Comcast, NBCU, and various Hispanic Leadership Organizations, dated June 25, 2010, the parties agree that the intent of this MOU is to create a free-standing agreement on diversity commitments and that the commitments made herein are binding upon the parties, but shall not be conditions on approval of the transaction by the Federal Communications Commission ("FCC").

2. **Scope**

(a) Comcast Structure. This MOU is intended to cover all of Comcast's major operating subsidiaries, including Comcast Cable and Comcast Entertainment Group (which, upon closing of the transaction with GE, will include NBCU and NBCU's major operating subsidiaries including Universal Studios and Universal Theme Parks). References herein to "Comcast" are intended to encompass Comcast Corporation and the aforementioned operating subsidiaries. The parties recognize that the corporate structure of Comcast is specifically designed to respect the independence of each operating subsidiary and the decentralized nature of Comcast's management of its business. While Comcast is committed to these general diversity initiatives, it is understood that each operating subsidiary retains independent discretion to determine the best method to implement the initiatives within the parameters stated.

(b) Comcast Entertainment Group. It is understood that the new corporate entity, known as the Comcast Entertainment Group, will not be a publicly-traded company and, therefore, will not have an independent board of directors. Upon closing, Comcast will own 51

percent of Comcast Entertainment Group and manage these combined NBCU/Comcast programming assets. NBCU will essentially become a Comcast operating subsidiary which will be separately managed and will enjoy a significant degree of independence.

(c) **NBC Memorandum of Understanding.** NBC currently is a party to a 2000 memorandum of understanding (the “NBC Memorandum”) with a coalition representing the interests of various minority organizations. Comcast is prepared to honor the commitments in the NBC Memorandum, to the extent they remain relevant, including with respect to the programming assets that Comcast will contribute to the newly formed Comcast Entertainment Group.

3. **Five Focus Areas**

Comcast, NBCU, and the Asian American Leadership Organizations have agreed to make commitments in the following areas that will be referred to as “Focus Areas” for the purposes of this MOU:

1. Corporate Governance
2. Employment/Workforce Recruitment & Retention
3. Procurement
4. Programming
5. Philanthropy & Community Investments

Within ninety (90) days of the closing of the joint venture, Comcast will develop a master strategic plan, with advice from the external diversity advisory councils described below, that will address the five Focus Areas outlined above and that will detail goals and objectives for each of the Focus Areas. Immediately following execution of this MOU, Comcast will commence laying the groundwork and planning for the master strategic plan (taking into account applicable legal requirements that Comcast Corporation and NBCU continue to be separate entities until closing of the joint venture).

4. **Focus Area One -- Corporate Governance**

(a) **Comcast Board of Directors.** Comcast has a relatively small Board of Directors (“Board”) with limited opportunity to add directors. Nominees to Comcast’s Board are determined by the Board’s Governance and Directors Nominating Committee, which consists entirely of independent directors. In assessing candidates, the Committee takes into account diversity, as well as a variety of other qualifications, including professional knowledge; business, financial, and management expertise; industry knowledge; and entrepreneurial background and experience.

Comcast recognizes that adding an Asian American director is a priority for the Asian American Leadership Organizations. The Governance and Directors Nominating Committee will continue to make diversity a critical consideration in future board nominations. Diversity is a priority for Comcast, and the Asian American community is an important part of that priority. Moreover, as set forth throughout this MOU, Comcast has taken steps to ensure that the views, perspectives, and concerns of all diverse communities are considered in its

business planning and decision-making processes, including the views of the Asian American community. Comcast will make it a priority to identify Asian American candidates for future board openings. To that end, Comcast will make best efforts to fill a future board opening with an Asian American candidate. Comcast will look to the Asian American Advisory Council (discussed below) as a resource to assist in the identification of potential candidates for consideration by the Governance and Directors Nominating Committee of the Board.

(b) Liaison with Asian American Community. Comcast will have a designated senior-level individual on its External Affairs and Public Policy Staff which will be part of the organizational staff reporting to Comcast's Executive Vice President/Chief Diversity Officer. The individual, who will be well-acquainted with the Asian Pacific Islander community, will have responsibility for external affairs, governmental affairs, and community affairs with respect to this community, as well as oversight of the company's diversity initiatives under the Asian American MOU. In addition, this individual will support Comcast's Legislative Affairs group in working the Congressional Asian Pacific American Caucus.

(c) External Diversity Advisory Councils

(i) Structure and Purpose. Comcast has committed to establish external Diversity Advisory Councils (the "Councils," which collectively shall be known as the "Joint Council") to facilitate open communication over the development, monitoring, and evaluation of diversity initiatives, including those discussed herein. One of the Councils shall be the National Asian American Advisory Council ("Asian American Advisory Council"), which shall provide advice to the senior executive teams at Comcast and NBCU regarding the companies' development and implementation of the master strategic plan to improve diversity practices at Comcast, including the five Focus Areas. In addition, Comcast intends to create other advisory councils, including the National African American Advisory Council and the National Hispanic Advisory Council. Comcast also may invite representatives of other diverse groups to serve on the Joint Council, including Native Americans, veterans, disabled, and lesbian/gay/bisexual/transgender.

(ii) Members of Asian American Advisory Council. Within thirty (30) days of the closing of the joint venture, Comcast will appoint nine (9) members to the Asian American Advisory Council, including at least one senior executive or board member from four of the five Asian American Leadership Organizations, with the specific four organizations to be identified by the Asian American Leadership Organizations. In addition, the Asian American Leadership Organizations may propose to Comcast individuals for appointment to the Asian American Advisory Council, and Comcast will retain complete discretion in making all appointments.

(iii) Meetings. The Joint Council will meet not less than two times per year. Comcast's Chairman and Chief Executive Officer will attend one of those meetings. Comcast's internal Diversity Council ("Comcast Diversity Council"), including Comcast's Executive Vice President/Chief Diversity Officer and Chief Operating Officer, and NBCU's internal Diversity Council ("NBCU Diversity Council"), including NBCU's Executive Vice President/Chief Diversity Officer, as well as other senior executives of Comcast and its operating

subsidiaries as appropriate, will participate in the twice-yearly meetings of the Joint Council and the Asian American Advisory Council. Each Diversity Advisory Council, including the Asian American Advisory Council, also will have the opportunity to interact with the Comcast and NBCU Diversity Councils in between formal meetings of the Joint Council, including additional meetings on an as-needed basis to offer advice on the master strategic plan and to discuss progress under the plan.

The purpose of the two annual meetings will be to provide the Joint Council, and where appropriate each individual Diversity Advisory Council, with briefings on relevant, non-confidential company business plans and operations as to the operating subsidiaries within the scope of this MOU; to review progress on diversity initiatives, including under the Monitoring and Evaluation provisions herein; and to solicit advice on how the companies and each Council can work collaboratively to improve performance on diversity initiatives.

Comcast is willing to reimburse all reasonable travel and hotel expenses for the members of the Asian American Advisory Council associated with attending meetings of the Council and of the Joint Council.

(iv) **Liaisons.** The chief diversity officers of Comcast and NBCU will designate appropriate staff members to serve as liaisons to the Asian American Advisory Council to, among other things, facilitate communication between the Asian American Advisory Council, Comcast, and NBCU concerning the Focus Areas, as well as to address administrative issues such as scheduling meetings, coordinating logistics and travel, preparing meeting agendas, recording and distribution of minutes, and facilitating post-meeting action items.

5. **Focus Area Two -- Employment/Workforce Recruitment and Retention**

Comcast and NBCU will increase Asian American representation at all levels of their respective organizations. This Focus Area will focus on four key areas: senior management, mid-level management, entry-level employment opportunities, and current employment levels at Comcast and NBCU. As it relates to all four key areas, Comcast and NBCU will continue to build and/or leverage development programs that focus on building leadership talent.

(a) **Current Initiatives.** Comcast and NBCU each has established corporate-wide diversity programs, affirmative action plans, and a variety of other measures related to recruitment, development, and retention to enhance diversity, including Asian American representation, in their workforces.

Each organization has an internal Diversity Council consisting of senior leaders from their respective organizations. The diversity programs at each organization are active and reflect the organizations' commitments to a diverse workforce through training, recruitment, leadership development, and retention programs. Both organizations also have established partnerships with key multicultural professional associations designed to attract talent for their respective workforces.

Comcast Cable and NBCU are the two primary supporters of The Emma Bowen Foundation for Minority Interests in Media ("Emma Bowen"), a unique five-year internship program that provides minority students with the opportunity to work for partner companies, like Comcast and NBCU, during summers and school breaks from the summer following their junior year in high school until they graduate from college. This program has opened doors for many minority candidates, and 15 percent of Comcast's Emma Bowen Foundation interns in 2010 are from the Asian American community. Upon program completion, Emma Bowen students are integrated into Comcast's and NBCU's recruitment pipelines. Today, Comcast employs six former Emma Bowen Foundation interns, NBCU employs 10, and many others work in the media industry.

(b) Enhancing Workforce Diversity. Looking forward, Comcast and NBCU are committed to be industry leaders in the arena of workforce diversity and, therefore, will recruit and retain more members of the Asian American community so that their workforces more accurately reflect the communities they serve.

Comcast will continue its commitment to increase diversity in its leadership ranks, including at the vice president and director levels and above. Consistent with its affirmative action goals, Comcast actively will take steps to recruit Asian Americans in its workforce. The following initiatives will be implemented:

(i) Comcast's Human Resources Department will launch focus group discussions as a resource for employees from all demographic groups, backgrounds, and experiences. These focus group discussions will play an integral role in enhancing the diversity climate at Comcast.

(ii) Comcast will implement a boot camp program for mid-level vice president candidates, including no less than 80 percent diverse candidates.

(iii) With cooperation from the Asian American Advisory Council, Comcast will identify search firms with track records of successfully recruiting diverse pools of talent, including Asian American talent, to explore partnering with the company in identifying diverse leaders.

Further, Comcast will continue its commitment to enhancing minority representation in the leadership ranks of the organization by requiring a diverse pool of candidates for all hires at the vice president level and above. Comcast is committed to having at least one person of color on every slate for all positions at the vice president level or above, including its executive leadership and business leaders.

A percentage of Comcast Corporate senior management's bonus will be tied to the achievement of diversity initiatives.

NBCU will roll out an annual online diversity training module to cover all regular NBCU employees.

Comcast and NBCU will support and partner with organizations training Asian Americans in all facets of the entertainment industry. In addition, Comcast and NBCU will continue to develop career-path programs, including mentoring programs designed to enhance the promotion potential of identified talent, moving individuals from entry-level, to mid-level, to senior management.

NBCU is committed to maintaining its unique Diversity Council and structure and to identifying additional forms of outreach and recognition. Spending on diversity initiatives and the overall NBCU Diversity budget has increased substantially over the past three years to ensure current programs and new initiatives are supported and expanded, and NBCU will continue to provide full support to its ambitious diversity program.

The Asian American Advisory Council may be asked to assist Comcast and NBCU in reviewing and selecting executive leadership development programs and assistance in the development of internship programs aimed at exposing college and university-level students.

Comcast will provide annual workforce-related data in a format that is substantially in conformity with the data currently reported to the Hispanic Association on Corporate Responsibility (“HACR”), which is intended to serve as the common reporting format for diversity data to the Joint Council. This data will be provided to the Asian American Advisory Council, as well as to the Asian American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council. For purposes of the benchmarking study and annual assessments described in Section 9 of this MOU, Comcast will provide the 2009 workforce-related data and annual updates thereafter.

6. Focus Area Three – Procurement

(a) **Current Initiatives.** Comcast Cable and NBCU currently spend significant amounts on minority-owned and minority-led suppliers and vendors. Comcast spent more than \$1.3 billion with minority-owned vendors between 2006 and 2009, including vendors in the Asian American community. Since its formal supplier diversity program began in 2003, the percentage of company-wide spend attributed to diverse suppliers has grown from 7.4 percent to 11.9 percent in 2009. In dollar terms, Comcast increased its overall annual spending with diverse suppliers during this period from \$322 million to \$627 million, representing a 95 percent increase. In 2009 alone, Comcast increased its spending with Asian American-owned businesses by almost 60 percent compared to 2008, spending \$84 million with 100 Asian American vendors.

Since 2006, NBCU increased its diverse spending by 78%. From 2006 to 2009, NBCU spent over \$650 million with diverse suppliers. In 2009, NBCU spent almost \$60 million with businesses owned and operated by Asian Americans. NBCU selected IGATE Global Solutions, an Asian American-owned and/or operated consulting company, to consolidate its third party services and now spends approximately \$20 million per year with IGATE.

In addition, both Comcast and NBCU partner with Asian American-based organizations to enhance utilization of minority-owned enterprises. Comcast Cable and NBCU also have “second tier” procurement programs designed to encourage their top suppliers to purchase goods and services from minority-owned vendors, including Asian American-owned vendors.

Comcast Cable and NBCU will continue to partner with the Asian American business community and participate in procurement-related events, as they have in recent years. Comcast and NBCU will seek advice from the Asian American Advisory Council to identify opportunities for spending with Asian American-owned suppliers who can meet the companies’ needs in agreed-upon categories.

(b) Enhancing Procurement Diversity. Comcast and NBCU will enhance diversity in its procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including Asian American-owned enterprises. On a nationwide basis, Comcast and NBCU will strive to increase the percentage of business conducted with Asian American-owned vendors to be on par with the percentage of Asian American-owned businesses in the communities they serve.

As part of the Inclusion Initiative for law firms, Comcast will use its best efforts to include diverse law firms with Asian American lawyers that participate in the Initiative and will work with the Asian American Advisory Council to identify qualified firms as Initiative participants.

Comcast will grow the diversity of its investment banking and banking partners through its minority banking program and through the development and expansion of relationships with minority investment firms, including Asian American-owned firms. In addition, Comcast will continue to evaluate its second tier procurement program and work to find ways to expand it to create additional opportunities and an even greater impact, including expansion of second tier reporting to encompass more suppliers and automation of the reporting process.

Additionally, Comcast and NBCU will continue to partner with Asian American organizations to enhance the utilization of minority-owned enterprises, specifically Asian American-led chambers of commerce and/or other Asian American-led business organizations at the national, regional, and local levels.

Going forward, NBCU will continue its robust procurement plan that will include a collaborative effort with the Asian American Leadership Organizations to identify Asian American vendors.

Comcast and NBCU will work together with the Asian American Advisory Council to identify opportunities for spending with Asian American suppliers in agreed-upon categories, which may include advertising, construction, information technology, legal services, financial services, office furniture and supplies, promotional marketing products, etc. In addition, Comcast and NBCU will identify opportunities that increase the number and qualification of suppliers in certain spending categories. Comcast and NBCU will continue to

train its procurement category buyers to be aware of opportunities for inclusion, including opportunities for existing Asian American suppliers to expand their portfolio of business with Comcast and NBCU.

Comcast will provide annual procurement-related data in a format that is substantially in conformity with the data currently reported to the Hispanic Association on Corporate Responsibility (“HACR”), which is intended to serve as the common reporting format for diversity data to the Joint Council. This data will be provided to the Asian American Advisory Council, as well as to the Asian American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

7. Focus Area Four -- Programming

(a) Current Initiatives. Comcast Cable is committed to maintain and improve its track record in bringing diverse programming to its subscribers. Comcast Cable continues to offer a robust variety of programming featuring the Asian American community or aimed at Asian American viewership. Comcast Cable carries more 30 cable networks geared toward this community, including content from Asian American providers, such as KOAM TV, TV Asia, Washington Korean TV, World Today TV, STAR India PLUS, Zee TV, STAR One, VIJAY, GMA Pinoy TV, Phoenix North America, CTI-Zhong Tian, and Saigon Broadcasting Television Network (“SBTN”). As part of its subscription Video On Demand (“VOD”) services, Comcast Cable offers Filipino On Demand, which has up to 40 choices of movies and celebrity concerts from the Philippines, and Bollywood Hits On Demand, which features 100 choices of content from India.

Comcast also carries Asian American broadcast channels where they are available in markets with significant Asian American populations. For example, in the San Francisco Bay Area, it carries KTSF and KCNS on Comcast’s basic level of service. Also, based on the needs of that market, Comcast carries three (and soon to be four) multicast channels (KBS, NHK, and KEMS) with Asian American programming. Each of these channels reaches well over a million Comcast subscribers in the Bay Area. Similarly, in Seattle, Comcast carries a multicast channel (KPST) that has programming geared to the Asian American audience.

In addition, Comcast Cable launched MYX, an Asian-owned English-language network carried broadly in California, which delivers programming targeted at the younger Asian American audience. Comcast Cable also is a significant investor in SBTN and tvK24, two channels focused on Vietnamese Americans and Korean Americans, respectively. Additionally, Comcast Cable has partnered with the Center for Asian American Media (“CAAM”) for the creation of new programming, with the goal of expanding its On Demand offerings for Asian American audiences.

(b) Enhancing Programming Diversity. Comcast Cable will continue to bring new minority and independently owned networks to the market.

As set forth in Summary of Diversity Commitments, filed by Comcast and NBCU with the FCC on July 8, 2010, Comcast Cable plans to bring new minority and independently

owned networks to the market. To enhance distribution of Asian American programming (including programming that is targeted to, owned by, and/or operated by Asian Americans), within twelve (12) months of closing of the joint venture, Comcast Cable will expand an existing linear channel (for example, Mnet) in substantially all of the existing systems serving at least four of the Nielsen Designated Market Areas with a substantial number of Asian American households (i.e., Nielsen Designated Market Areas with 100,000 or more Asian American households), and within eighteen (18) months of closing of the joint venture, Comcast Cable will so expand in two additional Nielsen Designated Market Areas with a substantial number of Asian American households. This expansion will be on the "D1" digital tier.

As an alternative to the foregoing, at Comcast Cable's option, it may launch a linear channel not currently carried by Comcast Cable within eighteen (18) months of the closing of the joint venture consistent with the requirements set forth for expansion of an existing linear channel in the above paragraph. This expanded programming will target Asian American audiences and be dedicated to Asian American interests, including original programming, and/or be owned and/or operated by Asian Americans. Further, it will be programmed 24 hours per day, seven days per week, and will feature English-language programming. The selection of such currently distributed or newly launched linear programming service and such systems will be in Comcast's discretion.

As described above, Comcast Cable's carriage of Asian American-targeted networks and programming, the overwhelming majority of which are owned and operated by members of the Asian American community, is significant. In order to continue making strides in this area, Comcast will launch Cinema Asian America this fall in several major Asian American markets, with more markets to follow. Cinema Asian America will be part of Comcast's standard digital package, and it is anticipated that ultimately it will be available to over 18 million subscribers. It will be a permanent service through which Comcast can work with Asian American English-language content developers, and it will be programmed by an Asian American curator who has expertise in Asian American arts and culture. Cinema Asian America will be available 24 hours a day, 365 days a year.

At the outset, Cinema Asian America will contain 20 hours of content, and 50 to 100 percent of its content will be refreshed monthly. In addition, with the launch of Cinema Asian America, Comcast will provide 85 hours of content for the Asian American community on its VOD platform. Comcast will expand this content over the next three years to create an even more robust offering by working with organizations, such as Asian Media Rights, to obtain additional content.

For the first two years following this offering, Comcast will work to create a marketing and communications plan to draw awareness to Cinema Asian America. For example, to ensure that this offering is successful, Comcast is in the process of developing a multiplatform marketing campaign, which includes an On Demand "barker" (a 20-minute E! Network-produced looped promotional reel which highlights select On Demand content offerings), a placement in "Top Picks," e-mails to over nine million Comcast customers, and promotions on Comcast's ground-breaking online site, XFINITY TV. Further, to maximize the likelihood of

Cinema Asian America's success, Comcast will work with marketing firms familiar with the Asian American community.

In connection with Comcast's existing commitment to develop a platform to host public, educational and governmental ("PEG") content On Demand and On Demand Online within three years of closing, Comcast will consult with the Asian American Advisory Council to identify local Asian American leaders, organizations, and institutions to participate in maximizing involvement and viewership of PEG content by the local Asian American community.

In addition, Comcast and NBCU will seek opportunities to support the development of new programming, such as through CAAM and Visual Communications, among others. In support of projects to develop new talent pipelines for Asian American-themed content for VOD, on-line, television, and other media, and to help increase the availability of high quality content to enhance programming diversity, Comcast will commit to funding for Visual Communications and CAAM, totaling in the aggregate at least \$1 million over three years between the two organizations, with renewals being contingent upon achievement of demonstrated outcomes and benchmarks by each organization, as shall be agreed to by Comcast and each individual organization.

To assist in improving the representation of minorities in executive positions in Hollywood's creative community, Comcast is committed to work with NBCU/Universal Studios to expand opportunities for diverse business executives, creative executives, and diverse talent in film production in a variety of ways.

NBCU is proud to feature Asian American community members both in front of and behind the camera and is committed to continuing this approach to diverse programming. In particular, Asian American actors and actresses appear in strong, positive roles in popular NBCU cable shows such as Bravo's *Top Chef*, *Top Chef Masters*, *Work of Art*, and *Double Exposure*, USA Network's *Covert Affairs* and *Royal Pains*, and Syfy Network's *Ghost Hunters International*, *Beast Legends*, *Ghost Hunters Academy*, *Sanctuary*, and *Stargate: Universe*. Members of the Asian American community also can be seen in NBC's 2010-2011 primetime season in several returning series, including *The Office*, *Chuck*, *Parks and Recreation*, *Community*, and *Law and Order: SVU*, as well as in new series debuting this season, including *Perfect Couples*, *Love Bites*, *The Event*, and *Outsourced*, which features five East Indian actors. In addition, MSNBC has recently announced that two highly regarded Asian American journalists, Martin Bashir and Richard Lui, will join its news team. Mr. Bashir will anchor a 4:00 pm news show beginning in the fall, and Mr. Lui will become a key anchor on MSNBC *Dayside* beginning on August 30, 2010.

To promote diversity among its writers, NBCU has committed to continue funding a diversity writer position (selected by the showrunner/producer) for each of its scripted series on the NBC broadcast network and for each of NBC's three late-night programs. In addition, NBCU has committed to expand this program to fund a diverse writer position on each scripted series on NBCU's cable networks. NBCU will continue to sponsor programs that give minorities, including members of the Asian American community, the opportunity to work with

NBCU professionals, including its Director's Fellowship program, casting initiatives, and other professional development programs.

Beyond NBCU's strong record on the small screen, NBCU's film subsidiaries, Universal Studios and Focus Features, also share a history of working with diverse talent on the big screen. For example, Focus Features has worked with one of today's leading directors – Ang Lee – and is proud that Focus produced and distributed Mr. Lee's award-winning film, "Brokeback Mountain." After this transaction, NBCU will continue to seek opportunities to work with Asian American directors, such as Mr. Lee and others. This is an important part of NBCU's past, and Comcast is committed to supporting its continuation.

NBCU will build on previous and current efforts to increase and improve the presence of Asian Americans throughout all its programming, including entertainment, news, sports, and public affairs programming. NBCU will expand opportunities for Asian Americans both in front of and behind the camera. Examples of measurable outcomes will include increasing the number of Asian American show runners, producers, writers, and directors; and increasing the number of Asian Americans who appear on news and public affairs programs.

Comcast and NBCU are committed to increasing the news and information choices for Asian American viewers. NBCU will strive to ensure the presentation of diverse viewpoints by seeking the expanded participation of minorities on its news and public affairs programming. To advance this goal, NBCU will consider suggestions from the Asian American Advisory Council of individuals who could be considered for such participation.

Comcast will provide annual programming-related data in a format that is substantially in conformity with the data provided to all Diversity Advisory Councils. This data will be provided to the Asian American Advisory Council, as well as to the Asian American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

8. Focus Area Five -- Philanthropy and Community Investment

(a) **Current Initiatives.** Comcast and NBCU recognize the importance of investing in minority-led organizations, including Asian American organizations, and the programs and services provided by minority organizations to their respective communities. Further, Comcast and NBCU understand that corporate and foundation contributions are important to the communities where they do business and are consistent with responsible business practices.

Comcast has three community investment priorities – Building Tomorrow's Leaders, Expanding Digital Literacy, and Promoting Community Service – with diversity as an underpinning in each of these areas. In general, with a large percentage of the Asian American population residing in urban areas, Comcast's support of organizations with a broad national footprint ensures that a significant portion of its cash and in-kind contributions are making a difference in the lives of those in Asian American communities.

NBCU also is committed to a wide range of community investment initiatives in diverse communities. For more than ten years, NBCU has made education a priority in its philanthropic and corporate-giving programs. The NBCU Foundation supports many organizations, including organizations dedicated to advancing the interests of racially diverse communities.

(b) Enhancing Diversity in Community Investment. While more specific benchmarks may be established in consultation with the Asian American Advisory Council, Comcast and NBCU will commit to increase their philanthropic efforts to support minority-led and minority-serving institutions.

In addition, Comcast makes the following commitments to enhance its investment in the Asian American community specifically and the minority community generally:

(i) In the past two years, Comcast has increased the percentage of awards made to Asian Americans in The Comcast Leaders and Achievers Scholarship Program. Comcast and the Asian American Advisory Council will work cooperatively to increase outreach to Asian American students and schools in predominantly Asian American communities for The Comcast Leaders and Achievers Scholarship Program.

(ii) Comcast and NBCU will increase support for internship and scholarship programs of Asian American-led and Asian American-serving organizations with proven track records in working with the Asian American community. In addition, Comcast and NBCU will work with their respective Human Resources Departments to ensure that graduates of these programs are being considered for entry level positions.

(iii) Comcast will expand its Comcast Cares Day focus to add organizations in Asian American communities and to increase the number of organizations that are serving Asian American beneficiaries.

(iv) Comcast will ensure the locations of its programs through the Comcast Digital Connectors program are in diverse communities, including specifically Asian American communities.

(v) Comcast will further promote and communicate about the positive work and impact of its Asian American partners, by increasing the provision of public service announcements, social media communications, advertising, and media placement (both locally and nationally).

Comcast will continue and expand its outreach to Asian American students through expansion of its Digital Connectors Program, in partnership with One Economy.

Comcast will provide annual community investment-related data in a format that is substantially in conformity with the data currently reported to the Hispanic Association on Corporate Responsibility ("HACR"), which is intended to serve as the common reporting format for diversity data to the Joint Council. This data will be provided to the Asian American Advisory Council, as well as to the Asian American Leadership Organizations upon request,

subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

9. Monitoring and Evaluation of Progress

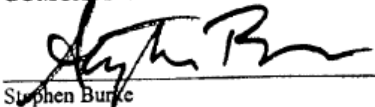
Within sixty (60) days of the execution of this MOU, Comcast will lay the groundwork for and begin planning to conduct a benchmark study of the initiatives set forth herein, against which future progress will be measured and monitored, with the goal of completing the study within ninety (90) days of closing of the joint venture. The benchmark study will include both Comcast Cable and Comcast Entertainment Group. On an annual basis thereafter, Comcast will conduct an assessment of progress on the initiatives. The annual assessment will be scheduled for review by the Asian American Advisory Council at one of the meetings with the Comcast and NBCU Diversity Councils for the purposes of seeking input and recommendations for strategies to improve performance on the enumerated diversity initiatives.

Comcast affirms its commitments stated herein to provide annual workforce, procurement, and philanthropic and community investment-related data in a format that is substantially in conformity with the data currently reported to the Hispanic Association on Corporate Responsibility ("HACR"), which is intended to serve as the common reporting format for diversity data to the Joint Council. This data will be provided to the Asian American Advisory Council, as well as to the Asian American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

10. Effective Date

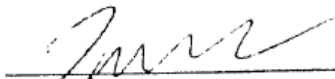
This MOU will take effect upon the closing of the joint venture between Comcast and NBCU. The parties agree that, in anticipation of closing, they will continue their discussions over matters contained in this MOU and will begin to work cooperatively to lay the groundwork for initiatives herein, including the formation of the Councils.

COMCAST CORPORATION



Stephen Burke
Chief Operating Officer

Date: Dec 15, 2010



David L. Cohen
Executive Vice President and
Chief Diversity Officer

Date: 12/15/10

NBC UNIVERSAL

Jeffrey Zucker
Jeffrey Zucker
President and Chief Executive Officer

Date: 12/11/10

Paula Madison
Paula Madison
Executive Vice President and
Chief Diversity Officer

Date: 12/15/10

ASIAN AMERICAN LEADERSHIP ORGANIZATIONS:

Karen Narasaki
Karen Narasaki
President, Asian American Justice Center

Date: 12/14/10

Jim Dwyer
East West Players

Date: 12/14/10

Joseph Han
Japanese American Citizens League

Date: 12/14/10

OCAC
Organization of Chinese Americans

Date: 12/14/10

Media Action Network for Asian Americans
Media Action Network for Asian Americans

Date: 12/14/10

MEMORANDUM OF UNDERSTANDING
between
COMCAST CORPORATION, NBC UNIVERSAL
and
THE AFRICAN AMERICAN LEADERSHIP ORGANIZATIONS

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), entered into on this 13th day of December, 2010, and made effective upon the closing of the joint venture between Comcast Corporation (“Comcast”) and NBC Universal (“NBCU”), is made by and among Comcast, NBCU, and certain African American leadership organizations, including the National Association for the Advancement of Colored People (“NAACP”), the National Urban League (“NUL”), and National Action Network (“NAN”), collectively called for the purposes of this Agreement the “National African American Leadership Organizations.”

WHEREAS, diversity is a core principle of the way in which Comcast and NBCU conduct their respective businesses, the National African American Leadership Organizations urge that Comcast and NBCU improve upon their current diversity efforts in the areas of corporate governance, employment/workforce recruitment and retention, procurement, programming, and philanthropy and community investments;

WHEREAS, Comcast is dedicated to continuing and enhancing its commitment to diversity in connection with the proposed joint venture with General Electric (“GE”) with respect to NBCU and to incorporating and expanding upon Comcast’s and NBCU’s existing diversity programs;

WHEREAS, Comcast and NBCU wish to grow and strengthen their working relationships with national organizations representing African American communities with the goal of maintaining and improving their diversity efforts;

WHEREAS, Comcast and NBCU strive to be industry leaders in the diversity arena and desire to have their business practices reflect their customer base in the communities where they operate; and

WHEREAS, Comcast remains committed to providing competitive and affordable video services to its customers, including its customers in the African American community;

NOW THEREFORE, Comcast, NBCU, and the National African American Leadership Organizations have created this MOU to establish an action plan for their cooperative efforts after the closing of the transaction between Comcast and NBCU, on the diversity initiatives enumerated herein, with the stated objectives of maintaining and growing productive community partnerships with a wide variety of diverse organizations.

1. Purpose

Comcast, NBCU, and the National African American Leadership Organizations share a belief that increased participation and involvement in all communities in which Comcast and NBCU do business across their enterprise, including the African American community, will benefit those communities, Comcast, and NBCU.

Comcast, NBCU, and the National African American Leadership Organizations acknowledge that working together is appropriate to achieve the goals, objectives, and overall spirit of this MOU.

This MOU is set forth primarily (1) to enhance the policies and programs by which African Americans may realize greater participation in the five focus areas listed in this MOU; and (2) to identify and pursue actions by which the National African American Leadership Organizations can support the growth of Comcast and NBCU's business within the African American consumer market.

Nothing in this MOU is intended either to disadvantage or to provide favoritism to any community. While this MOU highlights efforts that Comcast and NBCU are currently undertaking to support the African American community, there are and will continue to be many other ongoing efforts by the companies now, and by the combined company in the future, that support myriad diverse communities and interest groups.

Consistent with the understanding in connection with the agreement entered into among Comcast, NBCU, and various Hispanic Leadership Organizations, dated June 25, 2010, the parties agree that the intent of this MOU is to create a free-standing agreement on diversity commitments and that the commitments made herein are binding upon the parties, but shall not be conditioned on approval of the transaction by the Federal Communications Commission ("FCC").

2. Scope

(a) **Comcast Structure.** This MOU is intended to cover all of Comcast's major operating subsidiaries, including Comcast Cable and Comcast Entertainment Group (which, upon closing of the transaction with GE, will include NBCU and NBCU's major operating subsidiaries including Universal Studios and Universal Theme Parks). References herein to "Comcast" are intended to encompass Comcast Corporation and the aforementioned operating subsidiaries. The parties recognize that the corporate structure of Comcast is specifically designed to respect the independence of each operating subsidiary and the decentralized nature of Comcast's management of its business.

While Comcast is committed to these general diversity initiatives, it is understood that each operating subsidiary retains independent discretion to determine the best method to implement the initiatives in accordance with the parameters set forth within the MOU.

(b) **Comcast Entertainment Group.** It is understood that the new corporate entity, known as the Comcast Entertainment Group, will not be a publicly-traded company and,

therefore, will not have an independent board of directors. Upon closing, Comcast will own 51 percent of Comcast Entertainment Group and manage these combined NBCU/Comcast programming assets. NBCU will essentially become a Comcast operating subsidiary which will be separately managed and will enjoy a significant degree of independence.

(c) **NBC Memorandum of Understanding.** NBC currently is a party to a 2000 memorandum of understanding (the “NBC Memorandum”) with a coalition representing the interests of various minority organizations. Comcast is prepared to honor the commitments in the NBC Memorandum, to the extent they remain relevant, including with respect to the programming assets that Comcast will contribute to the newly formed Comcast Entertainment Group.

3. **Five Focus Areas**

Comcast, NBCU, and the National African American Leadership Organizations have agreed to make commitments in the following areas that will be referred to as “Focus Areas” for the purposes of this MOU:

1. Corporate Governance
2. Employment/Workforce Recruitment & Retention
3. Procurement
4. Programming
5. Philanthropy & Community Investments

Within ninety (90) days of the closing of the joint venture, Comcast will develop a master strategic plan, with advice from external diversity councils described below, that will address the five Focus Areas outlined above and that will detail goals and objectives for each of the Focus Areas. Immediately following execution of this MOU, Comcast will commence laying the groundwork and planning for the master strategic plan (taking into account applicable legal requirements that Comcast Corporation and NBCU continue to be separate entities until closing of the joint venture).

4. **Focus Area One – Corporate Governance: External Diversity Advisory Councils**

(a) **Structure and Purpose.** Comcast has committed to establish external Diversity Advisory Councils (the “Councils,” which collectively shall be known as the “Joint Council”) to facilitate open communication over the development, monitoring, and evaluation of diversity initiatives, including those discussed herein. One of the Councils shall be the National African American Advisory Council (“African American Advisory Council”), which shall provide advice to the senior executive teams at Comcast and NBCU regarding the companies’ development and implementation of the master strategic plan to improve diversity practices at Comcast, including the five Focus Areas. In addition, Comcast intends to create other advisory councils, including the National Hispanic Advisory Council and the National Asian American Advisory Council. Comcast also may invite representatives of other diverse groups to serve on the Joint Council, including Native Americans, veterans, disabled, and lesbian/gay/bisexual/transgender.

(b) **Members of African American Advisory Council.** Within thirty (30) days of the closing of the joint venture, Comcast will appoint nine (9) members to the African American Advisory Council, including at least one senior executive or board member from each of the three National African American Leadership Organizations (NUL, NAACP, and NAN). In addition, the National African American Leadership Organizations may propose to Comcast individuals for appointment to the African American Advisory Council; however, Comcast will retain complete discretion in making all appointments.

(c) **Meetings.** The Joint Council will meet not less than two times per year. Comcast's Chairman and Chief Executive Officer will attend one of those meetings, as well as an individual meeting with the African American Advisory Council. Comcast's internal Diversity Council ("Comcast Diversity Council"), including Comcast's Executive Vice President/Chief Diversity Officer and Chief Operating Officer, and NBCU's internal Diversity Council ("NBCU Diversity Council"), including NBCU's Executive Vice President/Chief Diversity Officer, as well as other senior executives of Comcast and its operating subsidiaries as appropriate, will participate in the twice-yearly meetings of the Joint Council and the African American Advisory Council. Each Diversity Advisory Council, including the African American Advisory Council, also will have the opportunity to interact with the Comcast and NBCU Diversity Councils in between formal meetings of the Joint Council, including additional meetings on an as-needed basis to offer advice on the master strategic plan and to discuss progress under the plan.

The purpose of the two annual meetings will be to provide the Joint Council, and where appropriate each individual Diversity Advisory Council, with briefings on relevant, non-confidential company business plans and operations as to the operating subsidiaries within the scope of this MOU; to review progress on diversity initiatives, including under the Monitoring and Evaluation provisions herein; and to solicit advice on how the companies and each Council can work collaboratively to improve performance on diversity initiatives.

(d) **Travel Expenses.** Comcast will reimburse all reasonable travel and hotel expenses for the members of the African American Advisory Council associated with attending meetings of the African American Advisory Council and of the Joint Council.

(e) **Liaisons.** The chief diversity officers of Comcast and NBCU will designate appropriate staff members to serve as liaisons to the African American Advisory Council to, among other things, facilitate communication between the African American Advisory Council, Comcast, and NBCU concerning the Focus Areas, as well as to address administrative issues such as scheduling meetings, coordinating logistics and travel, preparing meeting agendas, recording and distribution of minutes, and facilitating post-meeting action items.

5. **Focus Area Two -- Employment/Workforce Recruitment and Retention**

Comcast and NBCU will strive to increase African American representation and retention among its employees and executives at all levels of their respective organizations. This Focus Area will focus on four key areas: senior management, mid-level management, entry-level employment opportunities, and current employment levels at Comcast and NBCU. As it

relates to all four key areas, Comcast and NBCU will continue to build and/or leverage development and training programs that focus on building leadership talent among African Americans employed within the organizations and enhancing opportunities for further advancement within the organizations.

(a) Current Initiatives. Comcast and NBCU each has established corporate-wide diversity programs, affirmative action plans, and a variety of other measures related to recruitment, development, and retention to enhance diversity, including African American representation, in their workforces.

Each organization has an internal Diversity Council consisting of senior leaders from their respective organizations. The diversity programs at each organization are active and reflect the organizations' commitments to a diverse workforce through training, recruitment, leadership development, and retention programs. Both organizations also have established partnerships with key multicultural professional associations designed to attract talent for their respective workforces.

Comcast Cable and NBCU are the two primary supporters of The Emma Bowen Foundation for Minority Interests in Media ("Emma Bowen"), a unique five-year internship program that provides minority students with the opportunity to work for partner companies, like Comcast and NBCU, during summers and school breaks from the summer following their junior year in high school until they graduate from college. This program has opened doors for many minority candidates, and 61 percent of Comcast's Emma Bowen Foundation interns in 2010 are African American. Upon program completion, Emma Bowen students are integrated into Comcast's and NBCU's recruitment pipelines. Today, Comcast employs six former Emma Bowen Foundation interns, and NBCU employs 10, and many others work in the media industry.

(b) Enhancing Workforce Diversity. Looking forward, Comcast and NBCU are committed to be industry leaders in the arena of workforce diversity and, therefore, will recruit and retain more African Americans so that their workforces more accurately reflect the communities they serve.

(i) Comcast will continue its commitment to increase diversity in its leadership ranks, including at the vice president and director levels and above. Consistent with its affirmative action goals, Comcast will actively take steps to recruit African Americans in its workforce. The following pipeline initiatives will be implemented:

(1) Comcast's Human Resources Department will launch focus group discussions as a resource for employees from all demographic groups, backgrounds, and experiences. These focus group discussions will play an integral role in enhancing the diversity climate at Comcast.

(2) Comcast will implement a boot camp program for mid-level vice president candidates, including no less than 80 percent diverse candidates.

(3) With cooperation from the African American Advisory Council, Comcast and NBCU will identify and utilize search firms with track records of

successfully recruiting diverse pools of talent, including African American talent, and work with these firms to identify diverse leaders.

(4) Comcast will continue its commitment to enhancing minority representation in the leadership ranks of the organization by requiring a diverse pool of candidates for all hires at the vice president level and above. Comcast is committed to having at least one person of color on the slate for all positions at the vice president level or above, including its corporate executive and division leadership.

(ii) A percentage of Comcast Corporate senior management's bonus will be tied to the achievement of diversity initiatives.

(iii) NBCU will roll out an annual online diversity training module to cover all regular NBCU employees.

(iv) NBCU will support and partner with organizations training African Americans in all facets of the entertainment industry, and Comcast is willing to consider providing financial support to such organizations. In addition, Comcast and NBCU will continue to develop career-path programs, including mentoring programs designed to enhance the promotion potential of identified talent, moving individuals from entry-level, to mid-level, to senior management. The African American Advisory Council may suggest organizations for Comcast to consider for such training.

(v) NBCU is committed to maintaining its unique Diversity Council and structure and to identifying additional forms of outreach and recognition. Spending on diversity initiatives and the overall NBCU Diversity budget has increased substantially over the past three years to ensure current programs and new initiatives are supported and expanded, and NBCU will continue to provide full support to its ambitious diversity program.

(vi) The African American Advisory Council may make recommendations to Comcast and NBCU regarding the selection of executive leadership development programs, including recommendations for search firms with expertise in identifying African American executive candidates and for development of internship programs aimed at exposing college and university-level students.

(vii) Comcast will provide annual workforce-related data in a format to be discussed with the African American Advisory Council. This data will be provided to the African American Advisory Council, as well as to the National African American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

6. Focus Area Three -- Procurement

(a) **Current Initiatives.** Comcast Cable and NBCU currently spend significant amounts with minority-owned and minority-led suppliers and vendors. Comcast spent more than \$1.3 billion with minority-owned vendors between 2006 and 2009, including

vendors in the African American community. Since its formal supplier diversity program began in 2003, the percentage of company-wide spend attributed to diverse suppliers has grown from 7.4 percent to 11.9 percent in 2009. In dollar terms, Comcast increased its overall annual spending with diverse suppliers during this period from \$322 million to \$627 million, representing a 95 percent increase. In 2009, Comcast spent \$84 million with over 130 African American-owned businesses.

Since 2006, NBCU increased its diverse spending by 78%. From 2006 to 2009, NBCU spent over \$650 million with diverse suppliers. In 2009, NBCU spent almost \$34 million with businesses owned and operated by African Americans.

In addition, both Comcast and NBCU partner with African American-based organizations to enhance utilization of minority-owned enterprises. Comcast Cable and NBCU also have "second tier" procurement programs designed to encourage their top suppliers to purchase goods and services from minority-owned vendors, including African American-owned vendors.

Comcast Cable and NBCU will continue to partner with the African American business community and participate in procurement-related events, as they have in recent years. Comcast and NBCU will seek advice from the African American Advisory Council to identify opportunities for spending with African American-owned suppliers who can meet the companies' needs in agreed-upon categories.

(b) Enhancing Procurement Diversity. Comcast and NBCU will enhance diversity in its procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including African American-owned enterprises. On a nationwide basis, and in furtherance of its above stated commitments, Comcast and NBCU will continue, consistent with past efforts, to strive to increase the percentage of business conducted with African American-owned vendors to be on par with the percentage of African American-owned businesses in the communities they serve.

(i) In 2010, Comcast became a founding partner in the Inclusion Initiative, a collaborative effort among several publicly held corporations designed to increase significantly business opportunities for law firms owned by diverse individuals. The overall goal for this initiative is \$30 million, of which Comcast has committed \$1 million. As part of the Inclusion Initiative, Comcast will use its best efforts to retain minority-owned law firms that participate in the Initiative. Further, NBCU commits post-close to expand its business with minority-owned law firms. NBCU will establish a working relationship with one or more minority firms in at least three cities where it has headquarters operations – New York City, Los Angeles, and Washington, D.C. In addition, NBCU will commit to have its General Counsel meet annually with the executive director of the National Association of Minority and Women Owned Law Firms ("NAMWOLF") and the senior executive of the National Bar Association to review NBCU's outreach efforts to minority-owned law firms and review its efforts to expand the amount of business that NBCU does with minority-owned firms.

(ii) Comcast also commits to engage an African American owned advertising agency (or agencies) to develop national and/or local advertising and marketing

materials. Further, in 2011, following the close of the transaction, Comcast and NBCU jointly will commit at least an additional \$7 million in spending on advertising with minority-owned media.

(iii) Comcast will grow the diversity of its investment banking and banking partners through its minority banking program and through the development and expansion of relationships with minority investment firms, including African American-owned firms. In addition, Comcast will continue to evaluate its second tier procurement program and work to find ways to expand it to create additional opportunities and an even greater impact, including expansion of second tier reporting to encompass more suppliers and automation of the reporting process.

(iv) Additionally, Comcast and NBCU will continue to partner with African American organizations to enhance the utilization of African American owned enterprises, specifically African American-led chambers of commerce and/or other African American-led business organizations, including African American owned banks at the national, regional, and local levels.

(v) Going forward, NBCU will continue its robust procurement plan that will include a collaborative effort with the National African American Leadership Organizations to identify African American vendors.

(vi) Comcast and NBCU will work together with the African American Advisory Council to identify opportunities for spending with African American suppliers in agreed-upon categories, which may include advertising, construction, information technology, legal services, financial services, office furniture and supplies, promotional and marketing products, etc. In addition, Comcast and NBCU will identify opportunities that increase the number and qualification of suppliers in certain spending categories. Comcast and NBCU will continue to train its procurement category buyers to be aware of opportunities for inclusion, including opportunities for existing African American suppliers to expand their portfolio of business with Comcast and NBCU.

(vii) Comcast will provide annual procurement-related data in a format to be discussed with the African American Advisory Council. This data will be provided to the African American Advisory Council, as well as to the National African American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

7. Focus Area Four -- Programming

(a) **Current Initiatives.** Comcast Cable is committed to maintaining and improving its track record in bringing diverse programming to its subscribers. Comcast continues to offer a robust variety of programming featuring African Americans or aimed at African American viewership.

Comcast currently carries twelve (12) cable networks which are owned by African American interests and/or air programming primarily focused on the African American community. Among these networks are well known channels, such as Black Entertainment Television (“BET”), Centric, the Gospel Music Channel, and TV One. Comcast was instrumental in the creation of TV One – one of the most meaningful advancements of minority ownership in cable television history. In 2003, Comcast recognized there was a need for another entertainment channel targeting the African American community, so it partnered with an experienced African American radio programmer, Radio One (the largest radio broadcaster primarily targeting African American and urban listeners), to create TV One, an alternative to BET. Today, the network is available to over 50 million homes.

Comcast features On Demand programming that delivers a variety of television entertainment and music choices from various African American-oriented content providers, including BET and H2O Hip Hop On Demand, to recently acquired Soul Train content.

Comcast also recently launched Black Cinema On Demand. This Video On Demand (“VOD”) channel is a celebration of African American films, filmmakers, and actors from the past, present, and future, focusing on the wide range of experiences, accomplishments, and points-of-view of African Americans as expressed through the artistic medium of film. Black Cinema on Demand provides a forum for diverse independent programmers and frequently showcases the works of both famous and relatively unknown African American actors, directors, and producers. Black Cinema on Demand provides 20 hours per month of content and has enjoyed initial success.

(b) Enhancing Programming Diversity. Comcast is expanding its joint commitment with GE and NBCU regarding the addition of independently-owned and -operated channels to its digital line-up, which appears in the FCC Public Interest Statement of January 28, 2010, as follows.

(i) Comcast has committed to add at least ten (10) new independently-owned and-operated programming services over the next eight (8) years following closing of the transaction. Comcast has enhanced this pledge by committing that at least eight (8) of these networks will be networks in which minorities have substantial participation, either through ownership or operational control. Four (4) of the new networks will be linear video programming services in which African Americans have a majority or substantial ownership interest, with at least two (2) of those services to be added in the first two (2) years following closing of the transaction. The two (2) remaining linear video programming services in which African Americans have a majority or substantial ownership interest will be added within the eight (8) year period following closing of the transaction. In each system that adds one or more of the four (4) programming services, such service(s) will be added to the “D1” digital tier. Such services will be added on commercially comparable and competitive terms to the carriage of the services by other distributors. Comcast will work closely with the African American Advisory Council to help identify programming services in which African Americans have a majority or substantial ownership interest or African American entrepreneurs with the financial means to make the significant investment required in starting a network; provided, however, that the selection of such newly distributed programming services will be in Comcast’s discretion.

(ii) Comcast currently carries (a) African American-controlled and -operated networks and also (b) non-African American-owned networks that target the African American community. In addition to its commitment in the preceding paragraph, Comcast will work with programmers to extend at least two programming services comprising either or both of these types of programming in systems serving at least one key market for each such service from the following list of markets within six months of closing of the transaction: Atlanta, Chicago, Washington, D.C., Philadelphia, and Detroit. The selection of such currently distributed programming services and such markets will be in Comcast's discretion.

(iii) In addition, Comcast will establish a venture capital fund intended to expand opportunities for minority entrepreneurs in the development of new digital media applications. Comcast will commit at least \$20 million in funding to this new fund within six months of closing of the transaction.

(iv) To assist in improving the representation of minorities in executive positions in Hollywood's creative community, Comcast is committed to work with NBCU/Universal Studios to expand opportunities for diverse business executives, creative executives, and diverse talent in film production in a variety of ways.

(v) NBCU is proud that across all of its content of news, sports, feature films, digital, cable and broadcast, diverse talent is prominent. In particular, African American actors and actresses are in strong, positive roles, including in NBCU's popular cable shows, such as Bravo's *Bad Girls* and *Real Housewives of Atlanta*, Syfy's *Eureka*, *Stargate Universe*, *Beast Legends*, and *Warehouse 13*, USA Network's *Psych*, *White Collar*, and *Facing Kate*. African Americans also can be seen in 2010-2011 primetime season on NBC with returning series, including *America's Got Talent*, *30 Rock*, *Saturday Night Live*, *Community*, *Parenthood*, *Law & Order: SVU*, *Friday Night Lights*, *Parks and Recreation*, *Last Comic Standing*, and *The Office*. New series on the 2010-2011 schedule included *Undercovers*, which features a married African American couple, as well as other new series that debuted this season with African American leads, including *The Paul Reiser Show*, *Love Bites*, *Friends with Benefits*, *Chase*, *Outlaw*, *The Cape*, and *The Event*, starring Blair Underwood as the President of the United States.

(vi) To promote diversity among its writers, NBCU has committed to continue funding a diversity staff writer position (selected by the showrunner/producer) for each of its scripted series on the NBC broadcast network and for each of NBC's three late-night programs. In addition, NBCU will expand this program to fund a diverse staff writer position on each scripted series on NBCU's cable networks. Further, NBCU will continue to sponsor programs that give minorities, including African Americans, the opportunity to work with NBCU professionals, including its Director's Fellowship program, casting initiatives, and other professional development programs.

(vii) NBCU will strive to ensure the presentation of diverse viewpoints by seeking the expanded participation of minorities on its news and public affairs programming. To advance this goal, NBCU will consider suggestions from the African American Advisory Council of individuals who could be considered for such participation.

(viii) Comcast will provide annual programming-related data in a format to be discussed with the African American Advisory Council. This data will be provided to the African American Advisory Council, as well as to the National African American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council. In addition, Comcast will participate in an effort to benchmark its performance. Comcast will also work to persuade other multi-channel video programming distributors to join these benchmarking efforts so that it is an industry-wide practice.

8. **Focus Area Five -- Philanthropy and Community Investment**

(a) **Current Initiatives.** Comcast and NBCU recognize the importance of investing in minority-led organizations, including African American organizations, and the programs and services provided by minority organizations to their respective communities. Further, Comcast and NBCU understand that corporate and foundation contributions are important to the communities where they do business and are consistent with responsible business practices.

Comcast has three community investment priorities – Building Tomorrow’s Leaders, Expanding Digital Literacy, and Promoting Community Service – with diversity as an underpinning in each of these areas. In general, with a large percentage of the African American population residing in urban areas, Comcast’s support of organizations with a broad national footprint ensures that a significant portion of its cash and in-kind contributions are making a difference in the lives of those in African American communities.

NBCU also is committed to a wide range of community investment initiatives in diverse communities. For more than ten years, NBCU has made education a priority in its philanthropic and corporate giving programs. The NBCU Foundation supports many organizations, including organizations dedicated to advancing the interests of racially diverse communities.

(b) **Enhancing Diversity in Community Investment.** While more specific benchmarks may be established in consultation with the African American Advisory Council, Comcast and NBCU will commit to increase their philanthropic efforts to support African American-led and African American-serving institutions.

(i) In addition, Comcast makes the following commitments to enhance its investment in the African American community specifically and the minority community generally:

(1) Comcast and the African American Advisory Council will work cooperatively to increase outreach to African American students by reaching out to high school principals and guidance counselors in predominantly African American communities to nominate students for participation in its Leaders and Achievers program.

(2) Comcast and NBCU will increase support for internship and scholarship programs of African American-led and African American-serving organizations

with proven track records in working with the African American community. In addition, Comcast and NBCU will work with their respective Human Resources Departments to ensure that graduates of these programs are being considered for entry-level positions.

(3) Comcast will expand its Comcast Cares Day focus to add organizations serving African American communities and to increase the number of organizations that are serving African American beneficiaries.

(4) Comcast will ensure the locations of its programs through the Comcast Digital Connectors program are in diverse communities, including specifically African American communities.

(5) Comcast will further promote and communicate about the positive work and impact of its African American partners, including the NAACP, NUL, and NAN, by increasing the provision of public service announcements, social media communications, advertising, and media placement (both locally and nationally).

(ii) Comcast will provide annual community investment-related data in a format to be discussed with the African American Advisory Council. This data will be provided to the African American Advisory Council, as well as to the National African American Leadership Organizations upon request, subject to a non-disclosure agreement and with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

9. **Monitoring and Evaluation of Progress**

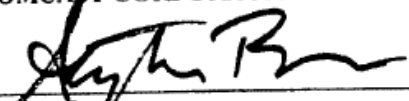
(a) Within sixty (60) days of the execution of this MOU, Comcast will lay the groundwork for and begin planning to conduct a benchmark study of the initiatives set forth herein, against which future progress will be measured and monitored, with the goal of completing the study within ninety (90) days of closing of the joint venture. The benchmark study will include both Comcast Cable and Comcast Entertainment Group. On an annual basis thereafter, Comcast will conduct an assessment of progress on the initiatives. The annual assessment will be scheduled for review by the African American Advisory Council at one of the meetings with the Comcast and NBCU Diversity Councils for the purposes of seeking input and recommendations for strategies to improve performance on the enumerated diversity initiatives.

(b) Comcast affirms its commitments stated herein to provide annual workforce, procurement, programming and philanthropic and community investment-related data in a format to be discussed with the African American Advisory Council. The benchmark study also will be provided to the African American Advisory Council. This data will be provided to the African American Advisory Council, as well as to the National African American Leadership Organizations upon request, subject to a non-disclosure agreement, with the understanding that the data is to be used only for internal discussions and progress report development with the Joint Council.

10. Effective Date

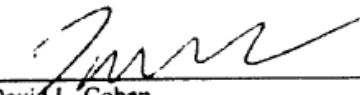
This MOU will take effect upon the closing of the joint venture between Comcast and NBCU. The parties agree that, in anticipation of closing, they will continue their discussion over matters contained in this MOU and will begin to work cooperatively to lay the groundwork for initiatives herein, including the formation of the Councils.

COMCAST CORPORATION



Stephen Burke
Chief Operating Officer


Date: Dec 16, 2010



David L. Cohen
Executive Vice President and
Chief Diversity Officer

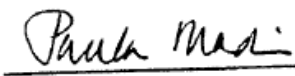
Date: 12/14/10

NBC UNIVERSAL



Jeffrey Zucker
President and Chief Executive Officer

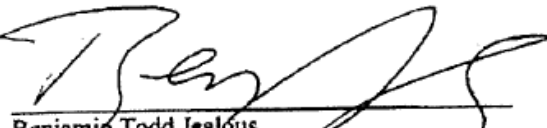
Date: 12/15/10



Paula Madison
Executive Vice President and
Chief Diversity Officer

Date: 12/13/10

FOR NATIONAL AFRICAN AMERICAN LEADERSHIP ORGANIZATIONS:



Benjamin Todd Jealous
President and Chief Executive Officer
NAACP

Date: 12/14/10

 Date: 12/13/10

Marc H. Morial
President and Chief Executive Officer
National Urban League

 Date: 12/13/10

Rev. Al Sharpton
Founder
National Action Network

APPENDIX H
CONSENT DECREE

1. The Federal Communications Commission and NBC Telemundo License Co. (the “Licensee”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Commission’s investigation into whether the Licensee violated the Commission’s Public File Rule and Children’s Programming Rule, as defined below.

I. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - b. “Assignment Application” means the application to assign the license of the Station from the Licensee to Bahia Honda LLC, as Trustee (File No. BALCDT-20100517ADJ).
 - c. “Children’s Programming Rule” means the requirements contained in Section 303b of the Act (47 U.S.C. § 303b) and Section 73.671 of the Rules (47 C.F.R § 73.671).
 - d. “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - e. “Effective Date” means the date on which the Commission releases the Order.
 - f. “Final Order” means the Order adopting this Consent Decree after the period for administrative and judicial review has lapsed.
 - g. “Investigation” means the Commission’s investigation of the allegations in the Petition to Deny of violations of the Children’s Programming Rule and the Public File Rule by the Licensee.
 - h. The “Order” means the Order by the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification and granting the Assignment Application and the Transfer Applications.
 - i. “Parties” means the Commission and the Licensee collectively, and “Party” refers to the Commission and the Licensee individually.
 - j. “Petition to Deny” means the “Petition to Deny FCC Applications” filed in opposition to the Transfer Applications and the Assignment Application by Rita Guajardo Lepicier on June 21, 2010.
 - k. “Public File Rule” means the requirements contained in Section 73.3526 of the Rules.
 - l. “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
 - m. “Station” means station KWHY-TV, Los Angeles, California (Facility ID No. 26231).
 - n. “Transfer Applications” means the applications seeking approval of the transfer of control of certain licensee subsidiaries of General Electric Company to Comcast Corporation (Lead Application File No. BTCCDT-20100128AAG).

II. BACKGROUND

3. On June 21, 2010, Rita Guajardo Lepicier filed the Petition to Deny, opposing the grant of both the Assignment Application and the Transfer Applications. The Petition alleges that the Licensee violated the Commission’s Public File Rule and its Children’s Programming Rule, as defined herein, with

regard to the Station. On July 21, 2010, the Licensee and Bahia Honda LLC filed a Joint Opposition to the Petition to Deny.

4. Both the Commission and the Licensee acknowledge that any proceedings that might result from the Investigation will be time consuming and will require substantial expenditure of public and private resources. In order to conserve such resources, and to promote compliance with the Public File and the Children's Programming Rule, the Commission and the Licensee are entering into this Consent Decree, in consideration of the mutual commitments made herein.

III. TERMS OF AGREEMENT

5. **Order.** The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Commission, by incorporation of such provisions by reference in the Order. The Licensee and the Commission agree to be legally bound by the terms and conditions of this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Commission releases the Order. Upon release of the Order, the Order and this Consent Decree shall have the same force and effect as any other order of the Commission, and any violation of the Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Jurisdiction.** The Licensee acknowledges that the Commission has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of said Investigation, the Licensee agrees to the terms, conditions and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date of the Consent Decree, or the existence of the Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Commission also agrees that it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Licensee with respect to the Licensee's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

9. **Voluntary Contribution.** The Licensee agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$18,000.00. The payment will be made within five (5) business days after the Order becomes a Final Order, and must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payment must reference NAL/Acct. No. 1041420009 and FRN No. 0009825456. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). The Licensee will also send electronic notification on the date said payment is made to david.brown@fcc.gov.

10. **Waivers.** The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and that portion of the Order adopting this Consent Decree, provided that the Commission issues the Order without change, addition, modification or deletion to this Consent Decree. The Licensee shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of that portion of the Order adopting this Consent Decree, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or that portion of the Order adopting this Consent Decree, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Authorized Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent), that provision will be superseded by such Commission Rule or order.

13. **Successors and Assigns.** The Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, the Licensee does not admit or deny noncompliance, violation or liability for violating the Act, the Commission's Rules or orders in connection with the matters that are the subject of this Consent Decree.

15. **Modification.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

FEDERAL COMMUNICATIONS COMMISSION

By: Marlene H. Dortch
Name: Marlene H. Dortch
Its: Secretary

NBC TELEMUNDO LICENSE CO.

By: Margaret L. Tobey
Name: Margaret L. Tobey
Its: Assistant Secretary

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56

After a thorough review, we have adopted strong and fair merger conditions to ensure this transaction serves the public interest.

The conditions include carefully considered steps to ensure that competition drives innovation in the emerging online video marketplace.

Our approval is also structured to spur broadband adoption among underserved communities; to increase broadband access to schools and libraries; and to increase news coverage, children's television, and Spanish-language programming.

I commend the excellent work of the FCC staff; this was an endeavor that involved almost every Bureau and Office. I also want to thank Assistant Attorney General Varney and her staff for their close collaboration throughout this review.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket 10-56

Comcast's acquisition of NBC Universal is a transaction like no other that has come before this Commission—ever. It reaches into virtually every corner of our media and digital landscapes and will affect every citizen in the land. It is new media as well as old; it is news and information as well as sports and entertainment; it is distribution as well as content. And it confers too much power in one company's hands.

For any transaction that comes before this Commission, our statutory obligation is to weigh the promised benefits against the potential harms so as to determine whether the public interest is being served. There are many potential harms attending this transaction—even the majority recognizes them. But all the majority's efforts—diligent though they were—to ameliorate these harms cannot mask the truth that this Comcast-NBCU joint venture grievously fails the public interest. I searched in vain for the benefits. I could find little more than such touted gains as “the elimination of double marginalization.” Pardon me, but a deal of this size should be expected to yield more than the limited benefits cited. I understand that economies and efficiencies could accrue to the combined Comcast-NBCU venture, but look a little further into the decision and you will find that any such savings will not necessarily be passed on to consumers. When they tell you that at the outset, don't look for lower cable or Internet access bills. As companies combine and consolidate, consumers have seen their cable bills out-strip the Consumer Price Index by orders of magnitude.

Many of the new commitments that have been added aim no higher than maintaining the status quo. The status quo is not serving the public interest.

It is also claimed that the duration of the commitments made by Comcast-NBCU are longer than any that have been attached to previously-approved mergers. That may be true—but it is also true that power is patient and that big businesses can bide their time when they have to in order to reap the fullest harvest.

While approval of this transaction was from its announcement the steepest of climbs for me, given my long-standing opposition to the outrageous media consolidation this country has experienced over the past few decades, I did meet with stakeholders on all sides to make sure I understood their perspectives on the matter. And I worked to develop ideas to minimize the harms and to advance at least some positive public interest benefits. I know my colleagues worked assiduously on this proceeding, too. Commissioner Clyburn, for example, worked successfully to achieve commitments from Comcast-NBCU to improve diversity, expand broadband deployment in unserved areas and increase broadband adoption by low-income households. The Chairman and his team, led by John Flynn, and many, many other members of the FCC team put more effort into this transaction than I have seen put into any transaction during my nearly ten years here at the Commission. I also salute the unprecedented cooperation between the agency and the Department of Justice.

But at the end of the day, the public interest requires more—much more—than it is receiving. The Comcast-NBCU joint venture opens the door to the cable-ization of the open Internet. The potential for walled gardens, toll booths, content prioritization, access fees to reach end users, and a stake in the heart of independent content production is now very real.

As for the future of America's news and journalism, I see nothing in this deal to address the fundamental damage that has been inflicted by years of outrageous consolidation and newsroom cuts. Investigative journalism is not even a shell of its former self. All of this means it's more difficult for citizens to hold the powerful accountable. It means thousands of stories go unwritten. It means we never hear about untold instances of business corruption, political graft and other chicanery; it also means we don't hear enough about all the good things taking place in our country every day. The slight tip of the hat that the applicants have made toward some very limited support of local media projects does not even begin to address the core of the problem. Given that this merger will make the joint venture a steward of the public's airwaves as a broadcast licensee, I asked for a major commitment of its resources to beef up the news operation at NBC. That request was not taken seriously. Increasing the quantity of news by adding hours of programming is no substitute for improving the quality of news by devoting the necessary resources. Make no mistake: what is at stake here is the infrastructure for our national conversation—the very lifeblood of American democracy. We should be moving in precisely the opposite direction of what this Commission approves today.

There are many other facets of the joint venture that trouble me. I worry, for example, about the future of our public broadcast stations. Comcast-NBCU has committed to carry the signals of any of those stations that agree to relinquish the spectrum they are presently using. Will public television no longer be available to over-the-air viewers? And, what happens when the duration of this commitment has run its course? Might the public station be dropped to make room for yet more infotainment programming? In too many communities, the public television station is the last locally owned and operated media outlet left. Public television is miles ahead of everyone else in making productive, public interest use of the digital multi-cast spectrum licensed to it. Why in the world would we gamble with its future?

While the item before the Commission improves measurably on the program access, program carriage and online video provisions originally offered by the applicants, I believe loopholes remain that will allow Comcast-NBCU to unduly pressure both distributors, especially small cable companies, and content producers who sit across the table from the newly-consolidated company during high-stakes business negotiations for programming and carriage. Even when negotiations are successful between the companies, consumers can still expect to see high prices get passed along to them, as Comcast-NBCU remains free to bundle less popular programming with must-have marquee programming. Given the market power that Comcast-NBCU will have at the close of this deal over both programming content and the means of distribution, consumers should be rightfully worried.

In sum, this is simply too much, too big, too powerful, too lacking in benefits for American consumers and citizens. I have respect for the business acumen of the applicants, and have no doubts that they will strive to make Comcast-NBCU a financial success. But simply blessing business deals is not the FCC's statutorily-mandated job. Our job is to determine whether the record here demonstrates that this new media giant will serve the public interest. While I welcome the improvements made to the original terms, at the end of the day this transaction is a huge boost for media industry (and digital industry) consolidation. It puts new media on a road traditional media should never have taken. It further erodes diversity, localism and competition—the three essential pillars of the public interest standard mandated by law. I would be true to neither the statute nor to everything I have fought for here at the Commission over the past decade if I did not dissent from what I consider to be a damaging and potentially dangerous deal.

**JOINT CONCURRING STATEMENT OF
COMMISSIONERS ROBERT M. MCDOWELL AND MEREDITH ATTWELL BAKER**

Re: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56

Combining assets of Comcast Corporation (Comcast) and NBC-Universal, Inc. (NBCU) is a complex and significant transaction that has the potential to bring exciting benefits to consumers that outweigh potential harms.

However interesting and intricate the issues raised by the combination of Comcast and NBCU may be, as a matter of law, our role at the Commission is limited to ensuring that the transaction complies with all applicable statutory provisions, such as ensuring that the license transfers are in the public interest. Our analysis should only include a thorough examination of the potential benefits and harms of the transaction. Any proposed remedies should be narrow and transaction specific, tailored to address particular anti-competitive harms. License transfer approvals should not serve as vehicles to extract from petitioners far-reaching and non-merger specific policy concessions that are best left to broader rulemaking or legislative processes.

The Commission's approach to merger reviews has become excessively coercive and lengthy. This transaction is only the most recent example of several problematic FCC merger proceedings that have set a trend toward more lengthy and highly regulatory review processes that may discourage future transactions and job-creating investment.

In this instance, our review exceeded its limited statutory bounds. Many of the conditions in the Memorandum Opinion and Order (Order) and commitments outlined in separate letter agreements were agreed to by the parties. The resulting Order is a wide-ranging regulatory exercise notable for its "voluntary" conditions that are not merger specific. The same is true for the separate "voluntary" commitments outlined in Comcast's letter of agreement dated January 17, 2011. While many of these commitments may serve as laudable examples of good corporate citizenship, most are not even arguably related to the underlying transaction. In short, the Order goes too far.

More significantly, the Order has the potential to shape the future of entire industries, including the nascent online video market, on the basis of a record that is by necessity limited to facts pertaining only to the two parties. At a time of innovation and experimentation that is both dynamic and disruptive, the Order fails to recognize that the contours of our collective video future are best shaped outside the Beltway.

To secure approval of the underlying transaction, we therefore concur.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

*Re: Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.,
For Consent to Assign Licenses and Transfer Control of Licenses, MB Docket 10-56.*

Since the news first broke about the proposed Comcast/NBCU transaction, I have had no shortage of people warning me about the potential downsides of media consolidation on this scale. Hearing the concerns of many whom I trust and respect, I decided to go head-to-head with the Applicants on the aspects of the Joint Venture about which I feel strongly.

Although I recognize that the companies have made an unprecedented number of commitments which have since been amplified through agreements with numerous third parties, my office's inquiry did not end there. We met with many of the interested parties, some of them multiple times, and listened closely to ensure that their concerns were fully taken into account as the Commission drafted this decision.

The process shifted back and forth between collaboration and debate, but in the end, we managed to agree on many crucial aspects. I was pleased to see that the Order approving this transaction imposes additional conditions on the Applicants in a number of areas, including: increasing the number of years that the Joint Venture is required to expand the amount of local programming at NBCU and Telemundo Owned and Operated Stations; promoting the availability of the Joint Venture's programming to small cable operators; and preventing retaliation against any entities who seek to exercise rights in this Order or participated in this proceeding. For these reasons and others, I am willing to find that this transaction serves the public interest.

This Commission has conducted one of the most rigorous reviews of a transaction ever. There have been opportunities for public participation through an extensive pleading cycle, in an open forum outside Washington, and through numerous meetings. I am pleased that extraordinary numbers of interested people and organizations have made their voices heard on a wide variety of topics. As a result of our analysis as the expert agency, the Commission has adopted an array of conditions to promote localism, competition, and diversity that are based on the record and ensure that this transaction not only prevents anticompetitive conduct, but delivers public interest benefits.

I pressed Comcast and NBC on myriad concerns, and the Order includes a number of strong conditions to address the potential harms that the Joint Venture could cause. In addition to those mentioned above, there is robust and thoroughly vetted language that will safeguard journalistic independence, competition in the MVPD and OVD markets, availability of video programming to small MVPDs, children's programming and public access, educational and/or governmental programming, and discrimination against unaffiliated video programming.

The breadth of the applicants' voluntary commitments is not insignificant. The parties will be taking steps to improve diversity of viewpoint and programming, preserving an open Internet through conditions and an enforceable agreement, and other unprecedented initiatives that will benefit consumers. Additionally, the numerous Memoranda of Understanding agreed to by the Applicants and interested parties will serve to keep the new entity honest in promoting diversity at every level of its businesses, and I will be watching closely with my large megaphone in hand should these agreements be ignored.

The adoption commitment in the Order is groundbreaking and will hopefully serve to chip away at the barriers that keep low-income and minority citizens from accessing the Internet. Having spoken to

many students and parents during my time as a Commissioner, I have come to the conclusion that basic word processing skills, computer literacy, and general Internet know-how are all best realized and attained via early broadband adoption. Children with access to competent hardware and up-to-date software are far less likely to fall into the steep and perilous crevasse we know as the digital divide, a lonely place in which too many lower-income and minority children are currently stuck.

With that in mind, I urged Comcast and NBCU to break new ground, to really and truly reach out and touch America's children through an adoption program that is bold, proactive, and realistic with regard to affordability. I sought and obtained assurances that the companies would not embark on a child-directed program just for the sake of doing so, and not to simply check the adoption box in launching a weakly-targeted and poorly-constructed outreach effort that is doomed to produce poor results even before it begins.

The adoption initiative that is detailed in the Order is well-crafted, ambitious, and has enormous potential. By offering the possibility of affordable, high-speed broadband to families included in the Department of Education's School Lunch Program, not only will school-age children be able to explore the infinite worlds of the web, but the others in their homes will be able to join them. Many of these individuals think of a home computer with Internet access as an unattainable luxury, and the broadband adoption program will bring these students and their families as close to household Internet access as they have ever been.

I am also optimistic about the anti-retaliation language that the Order solidifies, as for the first time this Commission has addressed the nascent online video marketplace in a way that allows innovation and investment to flourish while preventing anti-competitive conduct. Up until now, online video distributors have lived in fear of having Comcast refuse to carry their programming if they offered it online. But now, if a content provider licenses its programming to an online video distributor, like Netflix, it will be protected from retaliatory discrimination. The language in the Order will also protect companies if they flag any possible discriminatory actions to the FCC, enabling OVDs to be silent no more should they feel the heavy hand of an Internet giant pushing them aside for no other reason than to avoid basic competition.

It was of vital importance to me that our anti-retaliation provisions protect the numerous actors, writers, and companies that were willing to come forward and describe the difficulties they have faced in the film and television industries, and this Order ensures their freedom to speak openly.

I also focused on the availability of the Joint Venture's programming to small cable operators. I wanted to be sure that the small businesses serving consumers in rural areas would be able to obtain the Joint Venture's programming at reasonable prices. By allowing those small cable operators who serve 1.5 million subscribers or fewer to use a bargaining agent and baseball-style arbitration, I believe we have provided a means for them to obtain programming at reasonable rates. Likewise, for those operators with 600,000 or fewer subscribers, we addressed their ability to go to arbitration on an individual basis by providing that the arbitration costs of the Joint Venture are indeed borne by the Joint Venture whether it wins or loses.

There were a number of parties who urged me to vote to deny this license transfer application because the Applicants did not voluntarily commit to making sufficient and measurable, improvements in the areas of diversity of viewpoint and diversity of programming. Some also argued that without sufficient measurable improvements, the Applicants were simply making empty promises to promote diversity of viewpoint and programming. I carefully considered these arguments.

On the other hand, I also weighed the number of voluntary commitments the Applicants initially made to substantially improve the amount of local programming. For example, the Applicants agreed, for three years from the closing of this transaction, the NBC Owned and Operated Stations will collectively produce an additional 1,000 hours per year of local news and information programming. In addition, after further discussions, the Applicants agreed to commit to increased opportunities for participation by journalists and programming creators from the local communities. The Applicants also agreed that, when soliciting cooperative arrangements with Online News Partners, to provide information stating that it is committed to enhancing diversity of viewpoint and programming and that the diversity of backgrounds in the individuals that comprise these non-profit news organizations is a relevant factor in determining if its Online News Partners can promote a diversity of voices. I was pleased to see that, at my request, this Order requires the Applicants to extend to five years their commitments to increased local programming.

After considering these additional voluntary commitments from the Applicants, I determined that their resolve to improve diversity of view point and programming is credible and they deserve discretion in taking steps they feel are necessary to make additional tangible improvements in those areas.

I encourage people to speak out should they see the slightest bit of programming discrimination or any other type of questionable behavior from the soon-to-be-formed entity. My door will remain open and I will be perpetually available to field any and all future concerns in this regard.

Thus, it is with far more comfortable optimism than fearful skepticism that I vote to affirm the joint venture between Comcast and NBC Universal. My staff and I collectively spent hundreds of hours dissecting the order and debating new language, envisioning how the potential harms could quickly become sad realities, and ways in which we could safely prevent them. At all times, at the front of my mind, was whether or not this transaction is in the best interest of the public, and if it would end up doing more damage than good. I stressed over the thought of looking back at this, many years from now, and wishing that I could rescind my vote due to all of the negative effects that resulted from the merger of these two companies. But after all of my hesitation, soul-searching, and long hours of review, I am confident that, if the parties live up to the terms of the voluntary commitments from the applicants and the conditions that we have imposed on them, this transaction will result in more benefits to consumers than harms.

I expect the parties to live up to the letter and spirit of their commitments. I, and the American people, will be watching.