U.S. Senate Committee on the Judiciary,
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

Hearing on "The Comcast/NBC Universal Merger: What Does the Future Hold for Competition and Consumers?"
February 4, 2010

Questions for the record submitted by Senator Russell D. Feingold:

1 A. Mr. Zucker and Mr. Roberts, I see that nowhere in your statements do you mention lower cable rates as a consumer benefit of your merger, so at least you are not trying to sell us that bill of goods. But I'd like to know what you think the merger's impact will be on cable rates. Specifically, will you add a commitment #18 to your public interest commitments that would tie the increase in cable rates to inflation and will you also lock in the rates you charge for content either for cable network carriage or through retransmission consent?

B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: From your written statements you clearly have concerns about the merger. What harm do you foresee for consumers and especially the impact on subscription television rates?

<u>WOW Response:</u>

Assuming the merger is approved, Comcast-NBCU will be able to secure higher programming fees and expanded carriage commitments for its affiliated programming than either entity could secure today. For cable operators who are purchasers of this programming, our costs will increase. If our costs increase, then we will pass a portion of those expenses along to our customers. This will be the case throughout the country, but particularly in areas of the country served by a Comcast regional sports network and/or an NBC O&O television station.

2. A. Mr. Zucker and Mr. Roberts, I'm interested in how your two firms currently negotiate with other television providers to gain carriage of either cable networks or through retransmission consent for the NBC local stations. Specifically I wanted to know whether the price was the same for a larger cable operator like Time Warner or Charter and for a very small cable company that may cover just a single town or part of a couple of rural counties as is common in parts of Wisconsin. Are the rates currently different? Would you be willing to commit to charging the same rate for the same content as part of the merger?

   B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: Typically how much disparity between the prices paid by small and large cable systems for similar content from a cable network or through retransmission consent? Would the increased market power of a combined NBC/Comcast make this situation worse or otherwise encourage consolidation among the smaller cable systems?

   <u>WOW Response:</u>

   Although it is difficult to know definitely due to non disclosure agreements (which Comcast and NBC insist upon in all of their current programming agreements), we estimate that we pay programming rates that are between 20 and 30% greater than those paid by Comcast's cable affiliate, the country's largest pay television operator. With the added market power Comcast will have as a result of the proposed combination, you definitely can expect this gap to grow. It would also trigger some smaller cable systems to sell to other operators, or simply close down their business.

3. A. Mr. Zucker and Mr. Roberts, it is common practice now to require a television distributor like a rival cable company to carry several less popular cable channels in order to get a cable channel that they and consumers really want. Would you be willing to stop this practice and agree to offer fair rates for individual channels?

   B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: There have been proposals in the past to allow television subscribers to choose which channels they wish to receive "a la carte" instead of the typical bundles. Would this option for both subscription television systems from content providers and for consumers from the systems be a benefit for competition and/or help keep cable rates from increasing at as high a rate? What potential negative effects could providing a la carte options have?

   <u>WOW Response:</u>

   If cable operators were not forced to accept the programming bundles of media conglomerates like Comcast and NBC, operators would be able to save money at the wholesale level, and pass those savings along to their customers either by giving them greater choice or lower priced tiers. While selling programming to consumers on an a la carte basis may drive down the cost of some channels, it's likely to drive up the costs of certain channels in other cases. A la carte retail pricing would also threaten smaller, independent networks very existence, reducing the diversity of voices available to consumers.

A. Mr. Zucker and Mr. Roberts, I noticed that in some of your public interest commitments you only agree to protections for a limited number of years or tied to FCC rules being in force. If these provisions are in the public interest and help prevent competitive harm, why aren't these indefinite commitments or permanent firewalls instead?

B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: Are there any combination of public interest commitments that NBC/Comcast could agree to that would eliminate your concerns about the merger such that you would no suggest that the DOJ block the merger? If so, should these commitments be indefinite? Do you have any concern if such commitments are for only a short time frame?

<u>WOW Response:</u>

Yes, we're optimistic that the harms of the Comcast/NBCU deal can be addressed through structural and behavioral remedies. While the conditions may not have to be indefinite, they should last for whatever time is required to remedy the harms caused by the proposed combination.

4. A. Mr. Zucker and Mr. Roberts: I have seen some concern expressed that the stake of the new company in Hulu could somehow be leveraged to Hulu's advantage or against other competitors in this emerging market. Would you consider divesting your internet television interests and staying out of this segment of the industry to alleviate these concerns? If not, what protections will you put in place to make sure the relationship doesn't stifle innovation?

   B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: If the merger were approved, what divestment should be required? Can divestment alleviate your concerns about competition?

   <u>WOW Response:</u>

   We believe that the DOJ and FCC should consider any and all options to alleviate the harms of this deal, including divestitures. In order to address the horizontal harms that would occur as a result of this deal, the agencies should consider, in addition to behavioral remedies such as assuring continued access to programming on non-discriminatory terms and conditions during periods of dispute, requiring Comcast to divest itself of existing programming assets, including all of its regional sports networks and its national cable networks (i.e. E!, Style, Versus, Golf Channel, and G4). It also may be necessary to require Comcast to divest itself of NBCU's most popular networks (i.e. USA Network, SyFy, Bravo, MSNBC, CNBC, etc.) and its NBC and Telemundo O&O stations.

5. Mr. Roberts: Comcast has been widely criticized for what many see as violations of net neutrality. Many have suggested that Comcast leveraged its control of the broadband infrastructure to limit another company that competed with your video entertainment offerings. This seems to suggest a willingness to leverage vertical relationships and makes me doubly concerned about the proposed merger. Can you explain this situation?

   B. Ms. Abdoulah, Mr. Cooper and Mr. Schwartzman: Please provide any thoughts you have on this issue.

   WOW Response:

   The deal will significantly increase Comcast's vertical integration, creating all sorts of perverse incentives for the company to engage in anticompetitive conduct within the cable and broadband markets and which we have already seen adversely impact access to Comcast's online programming content.