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?"

March 15, 2010

Responses to questions for the record submitted by Senator Russell D. Feingold:

1. **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?**

We do not think that such a commitment is necessary or appropriate. This transaction should not affect cable pricing to consumers. Competition is – and will remain – intense among cable programming networks and among multichannel video programming distributors ("MVPDs"). Comcast will have continuing incentives to offer the most compelling, innovative consumer experience possible, increase consumer choice, expand the amount, quality and diversity of programming available, and expand multiplatform options, while competing head-to-head in all of our markets with two nationwide satellite MVPDs (DirecTV and Dish Network), and in a growing number of markets with phone companies offering MVPD services (AT&T, Verizon, and many others) and "overbuilders" (RCN, WOW, SureWest, and many others).

There is little doubt that consumers are getting more for their money than they did in the past. Indeed, at a little over $2 a day, cable is about the price of a morning cup of coffee. On a monthly basis, standard cable is less expensive than taking a family of four to the movies once and a fraction of the price of taking the family to a single sporting event. The average cable household viewing time is 310.5 hours per month; compare that to one three-hour ballgame or a few hours at the movies. When adjusted for inflation, the "price per viewing hour" of cable service has decreased 26 percent over the last 10 years. Plus, the quality of the programs we deliver has increased, as has the versatility of the service (e.g., video-on-demand, which offers thousands of choices at no additional charge).

In addition, many of our customers take advantage of promotional or multi-product discounts. We offer High-Speed Internet and digital voice services in addition to video, and consumers who buy two- or three-product packages enjoy significant savings as compared to the prices for the services when purchased separately. Other customers receive promotional price discounts, e.g., when they first sign up for service or when they agree to a service-level upgrade. The growing use of such discounts is often omitted from cable price surveys, which skews the results.

Nothing about the transaction will increase Comcast's Cable's incentive or ability to increase prices to consumers. We will face no fewer MVPD competitors post-transaction than we do pretransaction – and that typically means anywhere from two to four MVPD competitors (in addition to Comcast) in any given market. In just the past two years, cable companies have lost 1.6 million customers while our competitors have gained over 7.6 million new subscribers. That gives us every incentive to remain competitive in our consumer prices for video distribution.

Times are tough, and we are highly focused on controlling costs and improving value for the benefit of our customers. Like all of our competitors, however, we must adjust prices to account for our increased costs of doing business. Separate and apart from the proposed transaction, it is unfortunate that programming costs have risen. It is important to note that other leading MVPD competitors have increased their prices by as much or more than Comcast, though this competition has worked to constrain the relative size of the price increases and to improve consumer value.

2. **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?**

As an initial matter, Comcast is not privy to the terms of NBC's deals with other MVPDs, so I don't know whether, and to what extent, different distributors pay different prices for NBC. Regardless, we think it would be inappropriate to commit to charging the same rates for content to all MVPDs when we sell programming, or to paying the same rates as other MVPDs when we buy programming. Volume discounts are a well-accepted fact in virtually every sector of the American economy, and the video programming business is no different. Even in deciding to introduce certain rules to regulate program access disputes nearly 20 years ago, Congress recognized that volume discounts are appropriate.

The rates that different operators pay for content are not publicly available and are closely guarded in the industry, as they are in almost every business. Pricing is but one of many factors, including tiering, duration of carriage, online and VOD rights, and long-term price protection that programmers and operators bargain for during carriage negotiations. Programmers naturally are willing to license their content on more favorable terms to a large operator for a variety of legitimate economic reasons, including the cost savings that result from securing distribution to large numbers of consumers through a single contract and the direct economic benefits that accrue to a network that contractually secures exposure to more consumers.

Nonetheless, small cable operators can and do aggregate their buying power through buying consortia, most notably through the National Cable Television Cooperative (NCTC) – a not-for-profit corporation that operates as a programming and hardware purchasing organization for many hundreds of small cable operators who serve somewhere between 12 and 20 million subscribers nationwide (public reports on the exact numbers vary widely). NCTC negotiates master agreements with programming networks on behalf of member companies. NCTC member companies get the benefit of volume-based discounts based on the aggregate number of subscribers of all members that have opted-in to a particular NCTC agreement. NCTC is a marketplace mechanism that delivers the benefits of volume purchasing to smaller operators far more efficiently than government rules could do.

It is important to note that NBCU has existing contractual carriage relationships that are ongoing, separate and apart from this transaction. Those contracts will be unaffected by the proposed transaction. Significantly, as a result of the transaction, NBCU's cable networks will become subject to the program access rules, which guard against improper discrimination in the sale of programming. Moreover, Comcast has agreed voluntarily to extend the FCC's program access rules to the signals of NBC and Telemundo O&O stations for as long as the program access rules remain in place. We think that, in combination, existing rules and the voluntary commitments that we made in writing to the FCC on January 28, 2010, are more than adequate to meet the interests of competing MVPDs.

3. **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?**

At least with respect to Comcast, I don't think the premise of this question is correct. Comcast's networks are sold on an individual basis, and no MVPD is required to carry one channel to obtain another. My understanding is that NBCU currently is willing to license its networks individually but also, consistent with common practices in this industry and many others, offers discounts to distributors who agree to carry multiple networks (or to expand distribution of the networks they carry). Rather than causing any consumer harms, this practice makes programming more affordable and helps programmers launch and distribute new programming services, including niche services.

I do not foresee that the proposed transaction will cause any change in NBCU's current practices. The transaction will not increase NBCU's incentive or ability to force MVPDs to carry networks they do not want.

The concerns to which you allude have been expressed for years with regard to many program network owners, not just NBCU or Comcast. Consequently, we do not believe that these concerns are transaction-specific. There is nothing in the combination of these two companies' programming that will make these practices more prevalent. In addition, the FCC is currently considering these very issues in an industry-wide rulemaking proceeding, and we believe that is the appropriate place to address them in order to ensure fairness and consistency in policy.

4. **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?**

The vast majority of our public interest commitments do not carry a time limit. But it is important to recognize that it is standard practice for the FCC to attach a finite time period for which conditions to a merger approval are effective, so those commitments that do include a time limit are in line with past FCC decisions. We have proposed a specific duration for our commitment to add two new independently-owned and -operated channels each year for three years because we see a window of opportunity for new channel launches as we complete our company-wide digital migration, and because we do not wish to unnecessarily bind ourselves as to future uses of cable bandwidth given ever-changing demand for services. We also have proposed that the two commitments that adopt certain aspects of the program access rules would apply "for as long as the Commission's current program access rules remain in place." We added this durational limit so that in the future, if the program access rules are found to be no longer necessary, we are not unnecessarily bound to rules that do not apply to our competitors. Nonetheless, as I said at the hearing, we are willing to discuss with the FCC making the program access rules binding in connection with approval of the transaction, no matter what happened in the pending appeal regarding the FCC's extension of the exclusivity prohibition. On March 12, the D.C. Circuit affirmed the FCC order extending the exclusivity prohibition.

5. **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?**

We do not plan to divest our online interests – and we do not think there is any need to do so. The Internet has been the single most transformative communications technology in our lifetimes. In only a matter of years, the Internet has gone from its infancy as a government technology to a ubiquitous set of networks and applications that has brought about the information age. Comcast has played as large a role as any company in helping to bring about this revolution. After 14 years and tens of billions of dollars of investment with no guaranteed rate of return, Comcast has developed a state-of-the-art high-speed Internet service that covers 99.5% of its 39-state footprint. Comcast has also been a pioneer in making more content available online then ever before. One of the primary reasons that Comcast and NBCU have entered into this joint venture is because we believe that by marrying NBCU's content with Comcast's multiple distribution platforms, we can accelerate this "new media" entertainment. It would be unthinkable to forego full participation, and the opportunities to innovate to meet consumer demand, in the new Internet-empowered environment that we have helped to create.

I want to emphasize, however, that neither Comcast nor NBCU has any prospect of dominating online video. Comcast's websites account for less than one half of one percent of online video views. NBCU's websites account for less than one percent of online video views. Even Hulu, in which NBCU owns a 32-percent, non-controlling interest, accounts for only four percent of online video views. By contrast, websites controlled by Google account for over 50 percent of all video views online (excluding adult content).

In sum, the transaction will not in any way diminish competition or innovation in the highly competitive and dynamic online video marketplace. It would be unwise and unwarranted for Comcast to consider divesting these assets, and we are confident that our participation in that marketplace will drive, not "stifle," innovation.

6. 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?

On our High-Speed Internet services, we treat all content equally whether that content is affiliated with Comcast or not. We always have operated our High-Speed Internet service in conformance with the FCC's Internet Policy Statement, taking the user anywhere she wants to go on the Internet. Our commitment to operating in this manner is unwavering.

If the "situation" to which you refer is the Free Press et al. complaint to the FCC in 2008, I'm happy to provide clarification. In response to a very small number of Comcast's users using a very bandwidth-intensive protocol known as peer-to-peer ("P2P"), Comcast managed, in limited circumstances and in a limited manner, those P2P protocols that had an objectively demonstrated history of generating excessive burdens on its network. Comcast took these measures in order to avoid massive-volume P2P usage that would degrade the Internet experience of all of Comcast's customers. We did not apply this management technique in an anticompetitive manner – we were simply trying to ease network congestion for all of our users.

It's worth noting that, in contrast to some wireless carriers and universities, which flatly prohibit P2P traffic, we have always provided a hospitable environment for P2P, carrying literally *billions* of P2P flows every day. Under our old network management practices, a small percentage of P2P traffic was *delayed*, usually for extremely brief periods in order to ensure that P2P users did not significantly degrade our other customers' Internet service. Our prior network management practices had nothing to do with limiting another company that competed with our video entertainment offerings, as you have suggested. In fact, after the FCC ruled and after he reviewed the detailed network management disclosures we filed with the FCC, a representative of Public Knowledge, one of the complainants, wrote, "it appears to me that Comcast did not block P2P for anticompetitive reasons." And more recently, a Google representative describing the history of the "net neutrality" debate confirmed Google's view that "[o]ur engineering level discussions led us to conclude that Comcast was engaging in inelegant network management, not anticompetitive blocking." We believe these observations are honest and hit the mark, and we are hopeful that the federal court will overturn the FCC's findings to the contrary.

In any event, our prior network management approach has been replaced for more than a year now with a network management regime that has been almost universally applauded.