

February 4th, 2010 - "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 Al Franken:

1. **INTERNET VIDEO. The Internet is the future of the media business, and what happens to online programming will help determine the future of show business. Currently, NBC's shows are freely available to Internet viewers on websites such as Hulu.**

- a) **If this merger goes through, will you guarantee that the company won't remove NBC's or Comcast's current shows from the Internet?**

Comcast's goal is to expand the availability of video content on the Internet. But because this a very new business and neither we nor anyone else has figured out how best to deliver video online to consumers, it would be premature to set in stone any plans with respect to putting content online in any particular fashion. Online video is an important part of our distribution strategy going forward, and we are expanding the capacity of our networks to support more and more online content, whether for services like Fancast or for scores of entirely unaffiliated services like YouTube, Netflix, iTunes and so on. The joint venture will accelerate our goal of making more, not less, content available online.

This transaction does not change NBCU's participation in Hulu in any way. Although NBCU was a founding partner in Hulu, Hulu is a joint venture in which NBCU currently holds approximately a 32 percent, non-controlling, non-management interest, with limited governance rights – and none of this will change as a result of the proposed transaction. I can say this: Comcast has no intention of changing NBCU's relationship with Hulu or NBCU's decision to provide certain of its content to Hulu. We think Hulu is great. We've been a partner with Hulu through Fancast's free online service since Hulu launched. Forty percent of video views on Fancast are of Hulu content, and Fancast contributes three percent of Hulu's video viewers. Comcast is a supportive partner to Hulu, and we intend to be a driving force to bring more, not less, content to the Web and across platforms.

That does not mean, however, that all NBCU shows (or all shows of any other programmer) are – or will be – available on the Internet, or that the "new NBCU" programming that appears on the Internet will be available – on an ad-supported basis. A number of programmers, NBCU included, have expressed concerns over whether online advertising revenues alone can support the creative infrastructure needed to produce premium video content. Business models are in an early stage of evolution, and content producers and aggregators are still experimenting to determine the best ways to support the enormous costs of creating high-quality video programming.

- b) **Can you also guarantee that the merged company won't provide them only to the company's cable subscribers?**

In this dynamic marketplace, Comcast (and others) already provide some content to everyone online, while other content is only available online to our video customers. We do not plan to change that, but neither can we make guarantees about how the marketplace will evolve. In order for the production of high-quality programming to remain economically sustainable, content owners are searching for viable online business models and are experimenting with a several different approaches. We want to help find business solutions and models that work for program producers, distributors, and consumers. Comcast's Fancast Xfinity TV alone currently combines several different models: (1) advertising-supported: long-form and short-form videos available to Comcast subscribers and non-subscribers alike for free; (2) authentication: long-form and short-form videos available to Comcast Cable subscribers at no additional charge, with the content available to a particular subscriber being based on the content available to that subscriber as a result of his video subscription; (3) transactional: DVDs and VOD available for purchase at the Fancast store. Content owners may well decide to provide certain programming online only to viewers who have purchased a subscription, or to have "windows" when certain content is available only in certain ways. The decision how to distribute their content is ultimately up to these content owners.

That does not mean, however, that access to programming will generally be available only to the customers of a single MVPD. To the contrary, the general incentive of content owners is to license their products broadly, and Comcast expects to do so. With the possible exception of a single network that Comcast chooses not to license to two competitors (because they withhold exclusives from Comcast and other cable subscribers), when Comcast-owned networks elect to make programming available in an authenticated environment, we also will make it available to all MVPDs that have demonstrated an ability to authenticate subscribers and protect the value of high-quality content. Verizon, Time Warner Cable, and DirecTV all have indicated they are developing similar models, as one would expect in a competitive marketplace.

c) If this merger goes through, will you guarantee that the company will place any future shows it owns on the Internet?

No. That is not a guarantee that any owner of high-cost, high-quality programming has made or could responsibly make.

The competitive realities of the marketplace require Comcast to supply attractive programming that consumers demand, and the future is in making popular content available to consumers when they want, where they want, and on the devices they want. Providing content that consumers want online is essential to that effort. Comcast's goal is to dramatically expand the amount of content available online now and in the future, but it is premature to speculate as to whether any particular show will be made available online or what business models will make it viable to bring it online.

d) Can you also guarantee that the merged company won't provide them only to the company's cable subscribers?

As I said above, I don't want to set in stone any future plans with respect to putting content online in any particular fashion. The marketplace for online video is dynamic, with lots of competitors experimenting with various business models. While I can make no predictions as

to the future, I can tell you that our goal is to maximize the distribution of content on multiple platforms. I do not see that goal changing.

2. **NET NEUTRALITY. Comcast and NBC Universal have argued that FCC program carriage rules will make sure that the company can't favor its own programming—but no such rules exist for Internet video. To make matters worse, a Comcast case currently in front of the D.C. Circuit Court of Appeals could prevent the FCC from being able to make such Internet regulations in the future.**

- a) **Do you promise not to discriminate against other companies' programming on the Internet, even if the FCC never promulgates net neutrality regulations?**

Yes. 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, and our commitment to operating in this manner is unwavering.

Specifically, Comcast does not treat Fancast content any differently than other video content delivered over the Internet. Fancast content is subject to the same byte cap (the rather massive 250 Gigabytes of usage per month permitted under our Terms of Service), congestion management practices, and other elements traditionally associated with the best-effort Internet, just the same as Netflix's streaming video service or other over-the-top video providers are. That will not change.

- b) **If the merger goes through and there are no net neutrality regulations in place, would you agree to binding merger conditions forbidding you from favoring your own programming on your own Internet video websites for five years?**

We would not agree to such a condition. We do not believe there is any need for regulatory intervention with respect to a website's choice of content or its dealings with content, application, or service providers.

One of the reasons that online video is growing at such fantastic rates is because anyone can make content available online without having to go through a middleman, like a network that aggregates programming, or an MVPD that aggregates networks. A content provider doesn't necessarily need Comcast to make video content available to consumers, and a consumer doesn't necessarily need Comcast to access the content he or she wishes to view. In such a competitive and dynamic environment, large and small content providers alike can reach an ever-widening audience and we don't think the government needs to dictate what online video content Comcast, Netflix, Apple, Hulu or any other aggregator might make available, or regulate how they deal with unaffiliated suppliers of content. That said, I would continue to emphasize that Comcast's goal is to keep expanding the content that is available online, without regard for whether that content is affiliated with Comcast, because we want to be the provider of choice in making the content that consumers want available anytime, anywhere.

Comcast's online websites currently account for less than one-half of one percent of all online video views. NBCU's websites also account for less than one percent of online video views. Even Hulu – which NBCU does not control (see response to Question 1 above) – has only four

percent of online video views. Content providers face few barriers to entry online – anyone can upload content to the Internet and make it available to anyone who wants to go there. In such a marketplace, which is highly fragmented and changing rapidly, there is no need for regulation, and no need for a merger condition, that governs the relationships between content producers and website operators.

c) Would you agree that these merger conditions would also bind any future incarnations of your companies resulting from future mergers, acquisitions or corporate restructuring?

While we perceive no need for the merger conditions you have described, we would agree that any conditions that are attached to approval of this deal will be binding on our successors.

d) If the FCC does not or cannot make net neutrality regulations, would you support legislation that extends program carriage rules to the Internet?

No. We do not think that such legislation is necessary. The program carriage rules were written when DBS companies like DirecTV and Dish Network had zero subscribers (they now have over 30 million, and are the second and third largest multichannel video providers in the United States), when Bell companies were statutorily forbidden to provide cable services (AT&T and Verizon are now doing so with considerable success), when the average cable system carried only 2-3 dozen channels (we now carry hundreds, and the Internet's capacity is almost limitless), and when a significant majority of national cable programming networks were owned in whole or in part by cable operators (that number has now plummeted from 57 percent at the time Congress enacted program carriage rules to below 15 percent today).

We think a bipartisan Congress and President Clinton got it right in the Telecommunications Act of 1996, which established a national policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." That policy has served us well. It led directly to the investment of hundreds of billions of dollars of private risk capital in Internet facilities, content, applications, and services. It enabled companies like Comcast to bring consumers residential broadband that is literally hundreds of times faster than the Internet of 1996 – and to offer that service to 99.5 percent of the homes we pass. We are now deploying next-generation broadband Internet technology that will support the applications and services of tomorrow. Applying monopoly-era regulations to this competitive and dynamic marketplace would be unnecessary and counterproductive, diminishing the entrepreneurship and creativity that are needed to ensure that America's Internet continues to progress.

As we said in our Comment in the FCC's "open Internet" proceeding, "Comcast shares the Commission's goal of preserving and encouraging the vibrant, dynamic nature of the open Internet, and applauds the Commission for its stated commitment to a fair, fact-based, data-driven process to explore how that openness can best be preserved." Comcast was one of the very first companies to deliver the promise of broadband to American homes. Ever since we first started offering our High-Speed Internet service in 1996, we have operated it in a manner consistent with the openness embodied by the four principles of the *Internet Policy Statement*,

and the express exception for reasonable network management. Our commitment to doing so in the future is unwavering.

- e) **If the FCC does not or cannot make net neutrality regulations, would you urge any trade group to which you belong to support legislation that extends program carriage rules to the Internet?**

No. See answers above.

3. **PREFERENTIAL TREATMENT FOR CHANNELS. In 2009, Steve Burke, the Chief Operating Officer of Comcast Corporation and the President of Comcast Cable, acknowledged under oath that Comcast treats channels it owns as “siblings,” giving them less scrutiny and more time to pitch themselves to the cable distributor.**

If a Comcast-NBCU merger is successful, the resulting company will own many more channels than Comcast does today. If Comcast already gives preferential treatment to its own channels, what would prevent a Comcast-NBCU joint venture from giving preferential treatment to the many additional channels it will own? (Please exclude FCC program carriage rules from your answer)

The testimony by Comcast’s COO Steve Burke in a program carriage dispute with NFL Network has been taken out of context and mischaracterized. As Mr. Burke recently explained under oath, the quoted comment was simply an observation that Comcast’s cable group and Comcast’s programming group currently share physical proximity: they work in the same office building, they share common company facilities, they know each other, and they can readily arrange to meet with one another. But Mr. Burke’s testimony went on to explain that Comcast’s cable and programming groups operate as distinct businesses and that Comcast Cable makes program carriage decisions based on the merits of each network and its potential value to Comcast Cable and its subscribers, *regardless of affiliation*.

Importantly, as the FCC’s Enforcement Bureau has recognized, nothing in the program carriage rules require that “the relationship between a vertically integrated MVPD and its programming affiliate must necessarily be ‘at arms length.’” Nonetheless, for sound business reasons, Comcast does not discriminate against unaffiliated networks when making carriage decisions. Those decisions are guided entirely by legitimate business considerations, and Comcast has every business incentive to carry unaffiliated services that are valued by its subscribers and to ensure that carriage decisions regarding affiliated programmers are good for Comcast Cable. That’s why Comcast already provides broad distribution to NBCU’s channels, even though they are currently unaffiliated with Comcast.

Comcast does not give preferential treatment to its affiliated channels. Allegations to the contrary were rejected by the FCC’s Enforcement Bureau in two cases. In the one case that progressed to the point of a decision by the FCC’s Chief Administrative Law Judge, the judge ruled that Comcast’s accuser had “failed completely” to prove its charges of discrimination. Comcast carries vast numbers of unaffiliated channels, and even post-transaction six out of seven channels that Comcast carries will be unaffiliated. Incidentally, affiliation is no guarantee of continued carriage; two national Comcast-affiliated networks have been shuttered

in recent years because they did not offer what Comcast, other MVPDs, and their customers wanted.

- 4. WORKERS' RIGHTS.** While NBC has been a fairly union-friendly employer, Comcast has aggressively tried to keep unions out of the workplace. In St. Paul, Minnesota, for example, workers with AT&T Broadband organized a union under the Communication Workers of America. But when Comcast purchased AT&T Broadband in 2002, Comcast spent two years delaying contract negotiations. Eventually, the frustrated workers agreed to decertify the union.

I want to make sure that a merger wouldn't put the collective bargaining rights of both Comcast and NBC workers in danger. What will Comcast pledge to do to protect the rights of its workers, as well as those currently employed by NBC?

Comcast is a pro-employee company and has been for over 45 years. We respect the right of employees to choose whether to be represented by a union. Comcast does not delay bargaining to encourage decertification of unions. When our employees choose to be represented by a union, we negotiate in good faith.

It is true that the overwhelming majority of our employees have generally chosen to work in a union-free environment, as is their right. But in our locations that are represented by a union, Comcast bargains in good faith to reach a fair labor contract and enjoys solid relationships. While union represented employees represent a small percentage of the workforce in Comcast's cable operations, union representation is higher within our programming units (13.1%) – almost double the U.S. average percentage of private sector union workers (7.2%).

All of Comcast's employees enjoy the protection of U.S. labor laws. Employees have freely voted whether to be organized as a union, using secret ballots, and some employees chose not to unionize. Comcast honors their decision, as it respects the decisions made by other employees in other locations, whether they have chosen organized representation through a union or not.

With respect to the employees of NBCU, Comcast has committed to honor all of NBCU's collective bargaining agreements, and Comcast does not anticipate that any fundamental changes will be made to the manner in which NBCU conducts labor relations. In fact, senior representatives of the companies have begun to correspond and meet with representatives of guilds and unions in the businesses that would be directly affected by the transaction.

Comcast understands from decades of experience that healthy communications, information, and entertainment businesses rely on trained, talented, and motivated employees. Our cable, Internet, and digital voice businesses employ and depend on tens of thousands of workers who install advanced services in customers' homes, answer trouble calls, split fiber nodes, improve Internet safety, and on and on. Comcast also understands that successful broadcast and cable programming and successful movies are built from the labors of reporters, actors, writers, camera operators, stagehands and workers of many other skills and guilds. We value our present, and our future, employees.

No one can deny that Americans enjoy a greater abundance and diversity of quality programming than ever before. In many ways, news and entertainment have never been better. Yet newspapers are closing by the hundreds, and many other businesses have lost revenues and jobs as online developments outrun sustainable business models. Comcast embraces – and empowers – the new online world, and as discussed above intends by this transaction to further accelerate the anytime, anywhere future. But Comcast is also working hard to sustain and improve the models that provide gainful employment for the workers who bring us the news, information, and entertainment we love.

5. TERRESTRIAL LOOPHOLE. In January, the FCC tightened the “terrestrial loophole,” which allowed cable companies to withhold certain programming, especially regional sports programming, from its competitors. Comcast has opposed closing this loophole.

a) Will you promise not to appeal the FCC’s order through litigation in court?

Yes. We have decided not to appeal that order. We reserve the right to defend ourselves if any complaints should be filed.

It is important to put this in context. First, the terrestrial exemption in the program access rules reflects a conscious decision by Congress in 1992 to apply the program access rules only to satellite-delivered programming. Congress believed, and it turns out to have been correct, that not applying program access rules to terrestrially delivered programming would promote the development of local and regional programming. Second, across Comcast’s 39-state footprint, there is only a single Comcast-affiliated network, Comcast SportsNet Philadelphia (“CSN-Philadelphia”) in a single market, that Comcast chooses not to license to all competing MVPDs. (Even CSN-Philadelphia is licensed to Verizon and other competitors to which we are not required to license it, and I have testified publicly that we would license this *regional* network to the two others if DirecTV were to relinquish its *exclusive* access to the *national* NFL Sunday Ticket.) Both the FCC and the D.C. Circuit have examined this situation and definitively ruled that Comcast’s decisions as to this network were not unfair and were entirely lawful.

b) Will you promise not to appeal the FCC’s order within the FCC?

Yes.

c) Will you urge any trade group to which you belong not to appeal the order, either through litigation in court or within the FCC?

We will not advocate that any such trade group appeal the order, but we will not seek to prevent a trade group or other members thereof from doing so.

6. PROGRAM ACCESS RULES. In the Senate Judiciary Committee’s subcommittee hearing on the Comcast/NBC Universal merger on February 4, 2010, you suggested that, given this potential merger, you would be comfortable with an extension of the program access rules, and noted that you “do not find those rules a burden because our behavior has never been inconsistent with that.”

Given those statements, do you agree to withdraw Comcast from the litigation in Cablevision Systems v. FCC, a case currently in front of the D.C. Circuit Court of Appeals in which Comcast and Cablevision are appealing the extension of program access rules?

The court has now ruled in this case, we lost, and we will not appeal that decision. Consequently, we believe that this issue has been put to rest..

We continue to believe that the FCC's decision in 2007 to perpetuate a rule that Congress had scheduled to sunset in 2002 was arbitrary and capricious, and unsupported by the record. We continue to believe that it is unfair to prohibit cable companies from entering into exclusive contracts that better enable them to compete with satellite companies who have exclusive content like NFL Sunday Ticket. Nonetheless, as we have repeatedly said, whatever the court decided on these rules, we remain prepared to discuss with the FCC having them continue to apply to Comcast as part of the NBCU transaction if appropriate.