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 Herb Kohl:

1. **Is there any way this merger will limit rate increases that consumers see in their cable TV bills, or even lead to rate decreases? If you believe this merger will hold down cable rates, please identify how with specificity. If you do not believe this merger will hold down cable rates, please explain why not.**

This transaction should not affect cable prices for consumers one way or the other, but it should enable us to continue to improve the value of the services we provide.

Competition is – and will remain – intense among both cable programming networks and 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).

Along the way, Comcast – like its rivals – has continued to increase the value proposition for customers. Prices may have increased, but quality and choice have increased far more. Abundance and diversity of programming have never been greater, and cable is a better value proposition than ever.

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 Cable's incentive or ability to increase prices to consumers. There is no increase in Comcast's size as a cable distributor and nothing that would influence how we price services to consumers in the very competitive video distribution marketplace. We have every incentive to remain price-competitive in video distribution. 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.

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. **We've often heard the argument that programming cost increases are mainly responsible for cable rate increases, and that consumers pay less today on a per-channel basis. If this is true, why not offer consumers the option of choosing fewer channels at a lower price, rather than making them buy large packages at higher prices which include channels they don't watch? I understand that the cable industry objects to "a la carte" pricing, but what's wrong with [offering] consumers more choices in programming?**

We offer a wide variety of choices to our customers so that they can choose the right amount of programming at the right price for them. We offer an economical Basic Cable service, a low-price Family Tier, an array of digital programming packages including Digital Economy, Digital Starter, Digital Preferred, and Digital Premier, and an array of specialty tiers as well as premium channels offered individually. In Washington, D.C., for example, Comcast offers 14 different packages, starting at $15 per month. Further savings are available via promotions and two- and three-product bundles. At any given time, about half of our customers are purchasing a package of services from us or are on a promotion. They are not paying the "rate card" price. Claims about cable price increases generally are based on what a consumer *might* pay for cable on a stand-alone basis at the "rate card" price without factoring in the discounts utilized by many consumers. The claims thus overstate cable prices.

A multitude of factors go into our decisions regarding the packaging and pricing of the services we offer, including the competition we face, and we feel that our offerings strike the appropriate balance by offering both high-value and high-quality service.

Like virtually every other supplier of programming, large or small, Comcast believes that retail a la carte would hurt networks and consumers. The programming packages that we and our competitors assemble for our customers have played an enormous role in enabling the number and variety of programming services to grow and providing the abundance, diversity, quality, and value that consumers enjoy today. If operators were required to offer channels on an a la carte basis, distribution of those networks would decrease, forcing programmers to increase rates to offset the smaller number of subscribers taking the channels. Consumers would end up worse off.

One of the most popular writers on economics is James Surowiecki at *The New Yorker.* He looked at the a la carte issue recently, and concluded: "An à-la-carte system would inject huge uncertainty into the cable business,… and many niche and diverse cable networks wouldn't get enough subscribers to survive."

3. **NBC currently owns 32% of the Internet web site Hulu, in partnership with NewsCorporation and Disney. Hulu is a growing site that delivers a great variety of TV content over the Internet for free, including broadcast TV content of NBC, ABC and Fox, and also the content of cable networks. In this sense, Hulu competes with traditional cable systems with respect to this content – consumers need not to subscribe to cable in order to receive this content. Hulu also directly compete[s] with Comcast's "Fancast" website.**

   **What will Comcast's acquisition of NBC mean for Hulu? Will Comcast direct NBC to exclude its broadcast or cable network programming from Hulu? Will Comcast seek to have Hulu charge for its content?**

This transaction does not change NBCU's participation in Hulu in any way. We have no intention of changing NBCU's relationship with Hulu or NBCU's decision to provide certain content to Hulu.

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. News Corporation, Disney, and Providence Equity also own interests in Hulu, which has an independent management team. NBCU's governance rights are limited, and this will not change as a result of the proposed transaction. Hulu's future will be determined by all of its partners, not just NBCU.

We think Hulu is great. We've been a partner with Hulu through Fancast's free online service since Hulu launched. Forty percent of the views on Fancast are of Hulu content, and we contribute three percent of Hulu's video viewers through Fancast. 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.

Comcast will remain a company heavily invested in the distribution side of the business, and we have invested billions in bringing the fastest Internet speeds to our customers. We have every incentive to ensure that our high-speed Internet customers have the best online experience, which includes having access to the best content.

That does not guarantee, however, that all NBCU shows (or anyone else's, for that matter) will be available on the Internet, or that the "new NBCU" programming that appears on the Internet will be available solely on an advertising-supported basis. Economic models for online video are still in an early stage of evolution. All content producers and aggregators are still experimenting to determine the best ways to support the enormous costs of creating high-quality video programming. Viacom's recent decision to no longer distribute *The Daily Show with Jon Stewart*, *The Colbert Report*, and other Comedy Central television shows through Hulu is evidence that programmers are indeed experimenting with different online distribution models and the online video market is rapidly evolving.

Internet video is in its infancy. Everyone is searching for a business model that works. Hulu's ad-supported model represents an initial effort, but reports indicate that the business has not been profitable and the partners are already considering changes. The experience of the newspaper industry strongly suggests that relying on advertising alone as a way to fund the online availability of expensive content may not always prove to be a sustainable business model.

4. **Last year, Comcast and Time Warner Inc. announced their "TV Everywhere" initiative. Under TV Everywhere, cable subscribers will be able to access video content for free wherever they have access to the Internet – on their computers, on their smart phones, while travelling, or anywhere else. While this obviously has the prospects for considerable benefits to consumers, it also raises serious concerns.**

    (a) **One concern is whether this will become the <u>exclusive</u> way programmers will be required to distribute their content over the Internet. This could stifle the Internet as an independent competitor to cable, and require consumers have a cable subscription in order to access TV programming on the Internet. Some have raised concerns that Comcast wields tremendous leverage over programmers who rely significantly on subscriber fees. Using this leverage, they argue, Comcast could obtain exclusivity. Will Comcast insist on such exclusivity from programmers?**

Content owners are experimenting with a wide variety of online video distribution models, including ad-supported, authentication, pay-per-view, and subscription. This experimentation and innovation are key. Comcast, as an online video distributor, does not require programmers to distribute their content over the Internet in an "exclusive" way. Content owners choose for themselves the various ways that they want to distribute their content online. 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.

Our idea when we signed on to the TV Everywhere principles developed by Jeff Bewkes at Time Warner, Inc. was to create innovative services that expand choice, giving customers online access to movies and TV shows that have never been available online before. It is important to note that one of the core principles of TV Everywhere is that it is not limited to any one MVPD or programmer – cable, satellite, or telco video distributors are free to enter into similar agreements with any programmers. We do not think that the TV Everywhere authentication model will be the only way to distribute cable programming online. And we believe that the experimentation will certainly continue.

**(b) In Comcast's FCC filing for this merger you state a programming vendor will be free "to license its content to the online platforms of other MVPDs." But you say nothing about programming vendors being free to license their content to Internet distributors. Was this omission intentional? Will you commit to expanding this to mean programming vendors are free to license their content to Internet companies, whether or not they are also MVPDs?**

In negotiating agreements with programming vendors, Comcast does not seek to prevent them from licensing their content to Internet companies that are not MVPDs. Consistent with timing "windows" commonly used by the industry, Comcast does seek terms limiting the extent to which certain full episodes of cable shows are distributed on the Internet *free of charge* at the same time, or shortly after, the shows are telecast on the cable networks for which we and our customers pay substantial license fees. These terms are premised on Comcast's belief that it is neither fair nor reasonable to expect a cable customer to pay to watch a network's shows via cable, when the network also makes those shows available to everyone without such a charge at the same time online. This approach helps to maintain the economics that enable the production of high-quality programming – and provide gainful employment for thousands of actors, writers, stage-hands, set and costume designers, etc.

**(c) Another concern with TV Everywhere is that Comcast will require a Comcast Internet subscription, as well as a cable TV subscription, in order for a consumer to access TV Everywhere. Will Comcast allow its video customers who do not buy internet service from Comcast to access TV Everywhere?**

Yes. One of the TV Everywhere principles that Comcast and Time Warner Inc. announced last June is that "[v]ideo subscribers can access this content using any broadband connection." Following the national beta launch of Fancast Xfinity TV in December 2009, Comcast is working this year to provide its cable customers with the ability to access Fancast Xfinity TV content using the network of any Internet service provider. We are also working to facilitate authenticated access to a particular content owner's content from that owner's website (such as HBO's online service: HBOgo.com).

**(d) Would you support expanding the program access rules to ensure fair and non-discriminatory rates to MVPD providers who wish to put Comcast or NBC content on their Internet platforms?**

We do not think it is necessary – or advisable – to apply program access rules to the content available on the Internet. Competition in the online video marketplace is fierce as content providers fight for online viewers. Content owners have a strong incentive to distribute their content as widely as possible. Competition requires that content owners and distributors alike act in a pro-competitive manner to provide the best services possible to consumers. We do not believe that a regulatory backstop is needed in this instance.

The history and circumstances of the program access rules indicate that extending them as the question suggests would not be appropriate. The program access rules were written for a different time and for different circumstances. These rules were enacted in 1992, when cable faced very little competition, DBS had not yet launched, telephone companies were statutorily prohibited from providing cable services, and a significant majority of national cable programming networks were owned in whole or in part by cable operators. DBS has now achieved enormous marketplace success, and telephone companies are strong competitors in the video marketplace. And the percentage of national cable networks that are vertically integrated with cable operators has plummeted from 57 percent at the time Congress enacted the rules to below 15 percent today. As you may be aware, Congress even scheduled the exclusivity prohibition in the program access rules to sunset in 2002, envisioning – correctly – that competition would obviate the need for these rules.

There is no reason to expand the scope of rules created in an era where cable companies held a monopoly with highly vertically-integrated content into today's marketplace. This is the most competitive, fragmented, and dynamic video marketplace ever, and its success is due in significant part to the wise decision by Congress and President Clinton to establish 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." 47 U.S.C. § 230(b)(2).

**(e) Will Comcast offer an internet-only subscription to TV Everywhere so that consumers do not have to subscribe to cable service in order to gain access to this programming? If not, why not?**

Comcast has no present intention to offer an Internet-only subscription to Fancast Xfinity TV. Our business objective is to provide our cable subscribers with greater value by obtaining for them the rights to watch programming from their favorite cable networks online for no additional charge. One reason we are excited about Fancast Xfinity TV is that we think it strikes the right balance between giving consumers what they want – anytime, anywhere access to compelling video content – and supporting the economic viability of high-quality programming, which relies heavily on the tens of billions of dollars that cable networks currently receive from cable and satellite distributors. Content owners are justifiably interested in ensuring that whatever business model they adopt for online distribution of video assures them that there will be a sufficient revenue stream to continue producing the content that consumers what to see. The marketplace is evolving rapidly, of course, and it is unclear at this time which business models will be successful, so it is impossible to say what kinds of services will be available in the future.

5. **The FCC's program access rules contain what is known as the "terrestrial loophole." This means that programming a cable company owns that is delivered via wires on the ground does <u>not</u> have to be made available to its competitors. Comcast has made use of this loophole to deny its regional sports network in Philadelphia to its satellite TV competitors.**

   **In addition to your commitment to voluntarily accept the application of the program access rules to the high-definition feeds of any network whose standard definition feed is subject to the program access rules, would you commit to a condition to approval of**

**this merger that Comcast will not use the terrestrial loophole in the future to deny programming it owns to competitors? If not, why not?**

We do not think that additional regulations or conditions concerning terrestrial delivery are needed. As an initial matter, all of NBCU's cable programming is satellite-delivered and, therefore, will become subject to the program access rules upon acquisition by Comcast. Independent of those rules, of course, there are powerful business incentives to license NBCU's content broadly. Comcast serves fewer than 25 percent of MVPD households, and NBCU's networks would be hurt much more than would competing MVPDs by withholding this content from the MVPDs who serve more than 75 percent of MVPD households. Disney/ABC, Time Warner, Viacom, and many other network owners license their programming broadly, with no government compulsion to do so, and NBCU will continue to do the same.

When Congress decided that it needed to regulate program access, it consciously applied the rules only to certain *satellite-delivered* programming. Terrestrially-delivered programming was not covered because Congress wanted to retain incentives for the development of new local and regional programming, which is precisely what has occurred.

There have been predictions for many years that cable-affiliated networks would migrate to terrestrial delivery to avoid being subject to program access rules, but this never occurred, and the vast majority of cable-affiliated networks are available to all MVPDs. Across Comcast's 39-state footprint, there is only one Comcast-affiliated network, in a single market, that Comcast chooses not to license to all competing MVPDs, and that is our RSN in our hometown of Philadelphia. We chose long ago not to license it to two distributors, and the FCC and the D.C. Circuit both previously have ruled that our decision to do so was entirely lawful – and specifically that it was not an "unfair practice." It is also notable that competing MVPDs have exclusive programming agreements that prevent us from distributing content that that we would otherwise like to distribute; DirecTV's exclusive contract for the *national* NFL Sunday Ticket is a prime example.

The FCC recently adopted an order that purports to allow program access complaints to be brought against terrestrially-delivered networks. We do not plan to appeal that order but reserve the right to defend ourselves fully if any complaints are filed against us.

The most important thing to remember about our decision to not license CSN-Philadelphia to the DBS providers is that we made that decision over a decade ago, and it had absolutely nothing to do with the current proposed transaction.

6. **Will this merger make it more difficult for independent programmers [to] get carried on Comcast because now Comcast will acquire 30 new cable channels from NBC?**

This merger will not affect the ability of independent programmers to gain carriage on Comcast's cable systems. Comcast faces the competitive imperative to provide its customers with attractive and desirable programming, and Comcast does so irrespective of affiliation. We have been pleased to see the supportive letters sent to the Senate Commerce Committee by several independent programmers: Outdoor Channel, Ovation TV, and Reelzchannel. As Roger

Werner, CEO of Outdoor Channel, wrote, "With our long history working with Comcast, we have no doubts about its commitment to serving the public interest and working with independent programmers." A copy of each letter is attached.

Comcast is not acquiring control of 30 new cable channels from NBC. NBCU owns 11 cable networks: Bravo, Chiller, CNBC, CNBC World, MSNBC, mun2, Oxygen Media, Sleuth, Syfy, Universal HD, and USA Network. NBCU also owns minority, non-controlling interests in another dozen or so channels that are deemed "attributable" under the FCC's aggressive attribution rules (under which even a five percent interest is generally deemed attributable). Comcast already accords most of these networks broad distribution, and whether these networks are deemed "attributable" under the FCC's attribution rules will not affect opportunities for other networks to occupy slots on Comcast's channel line-ups. Importantly, even after the NBCU acquisition, and even when one treats all "attributable" networks as affiliated, six out of seven channels carried by Comcast will still be unaffiliated. This includes an enormous array of channels, some of which are owned by large (but unaffiliated) content companies and some of which are relatively new channels owned by entities with no other programming interests.

Comcast has voluntarily committed that it will add at least two independent channels to its systems every year for three years in an effort to reaffirm its commitment to giving attractive independently-owned and -operated cable channels an opportunity to thrive. This is an unprecedented commitment that will further promote diversity and competition.

7. **Comcast has committed to add two independent programmers a year for three years. With respect to this commitment –**

   (a) **Does a programmer from a large media company not affiliated with a cable company (for example, Viacom or Disney) qualify as "independent"?**

No. For purposes of our commitment, we have defined "independent" to mean networks that are both (a) not currently carried by Comcast, and (b) unaffiliated with Comcast, NBCU, or any of the top 15 owners of networks (as measured by revenues). To use your examples, any networks owned by Viacom and Disney, along with News Corp., Time Warner Inc., Hearst, Discovery, Liberty, and CBS, among others, will not be considered independent for purposes of fulfilling this commitment. Our goal is to provide assurances of opportunities to truly independent network providers with good programming and business models.

   (b) **Where on your channel lineup will the independent channel be shown – on the widely viewed expanded basic tier, or on a digital tier which the consumer must pay extra money to receive?**

No decision yet has been made about where in the channel lineup the not-yet-chosen networks will be carried. We have said that they will be carried on customary terms and conditions, and new networks are not usually launched on the most highly-penetrated tiers. It should be noted that even the expanded basic tier will soon be digital-only; indeed, it is our migration of channels from analog to digital-only delivery that is enabling us to expand the number of HD channels we carry, to increase VOD choices, to increase Internet speeds, and to launch new channels. We also need to be mindful of the effect of adding new channels to the most widely penetrated tiers on the cost of those tiers to consumers.

**(c) Why is this commitment limited to three years? Do you expect the problem of independent programmers gaining carriage on cable systems to be resolved after 3 years?**

Independent programmers currently are widely carried. At last count, out of 565 national programming networks, 481 are unaffiliated with any cable operator. We think independent programmers have been very successful at gaining carriage, and we see neither a present nor future problem there. As we said earlier, six out of every seven channels carried by Comcast post transaction will be unaffiliated with Comcast. Our commitment to add two independent programmers every year for three years is unprecedented. We proposed a condition of that duration 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 limit our ability in the future to use of cable bandwidth to satisfy our customers' demands. In the rapidly changing video marketplace, three years is a long time; we think it is an appropriate length of time for this commitment.

**8. In Comcast's FCC filing, you say that Comcast has "no ability or incentive to deny carriage to independent programmers." Yet, recently, you have been in several carriage disputes with independent programmers from the NFL to the Tennis Channel. Aren't these evidence that Comcast does have the incentive and ability to deny carriage?**

Comcast has a strong record of launching independent channels, including, in recent years, VeneMovies, The Africa Channel, WAPA America, HDNet, Gospel Music Channel, TeleFormula, qubo, ION Life, Ovation, RFD-TV, WFN, Reelzchannel, The Outdoor Channel, SiTV, Bloomberg, Sportsman, Hallmark, Hallmark Movie Channel, Altitude, YES, NESN, and Jewelry TV, among others.

The existence of a dispute does not provide a reasonable basis for making any assumptions about which party was in the right. We carry hundreds of networks. Only four networks have ever brought program carriage complaints against us in nearly 20 years, and none of those complaints has been determined to have been meritorious. No court or agency has ever found that Comcast engaged in unlawful or anticompetitive discrimination against independent programmers. If these cases are indicative of anything, it is of the dangers of creating a climate that is hospitable to regulatory gamesmanship.

In the case brought by WealthTV, an administrative law judge found that the complainant had "failed completely" to prove its allegations, that its evidence was "unreliable," and that its witnesses were "not credible." He also specifically found that Comcast's decision not to carry the network was based on "nondiscriminatory business reasons." In the MASN case, the parties settled their dispute privately after the FCC's Enforcement Bureau recommended that the complaint against Comcast be denied. In the NFL case, the parties settled their dispute before the Enforcement Bureau opined or the administrative law judge ruled. In the Tennis Channel case, Comcast has only recently filed its Answer, pointing out (among other things) that it carries the Tennis Channel in accordance with a contract that the Tennis Channel voluntarily entered into and proudly promoted; that Comcast carries the Tennis Channel in the same manner that multiple other MVPDs do; that the Tennis Channel itself has recognized that placing its network on a sports tier is a "cost/business" decision, not a function of affiliation; and that carrying the Tennis Channel on a more broadly penetrated tier would have caused a sharp increase in Comcast's costs of carrying the network.

**9. In its filing with the FCC, Comcast argues that there is "an existing, comprehensive regulatory scheme to deter and constrain unreasonable, affiliation-based discrimination" against independent programmers. This is a reference to the FCC's program carriage rules. Given the history of problems with enforcement of the program carriage rules, how much can we really rely on these rules to protect independent programmers?**

We are unaware of any basis for the suggestion that there have been problems with the enforcement of the program carriage rules, and, if there are problems with the rules, that should only be addressed in an industry-wide proceeding. That a small handful of independent programmers have filed complaints and been unable to prove their cases is evidence not of enforcement problems but of cases that lacked substantive merit. The fact that Comcast has launched so many independent channels over the years (see our response to Question 8 for a sampling) demonstrates why there have been so few complaints.

It has been Comcast's experience that competition in the video marketplace requires us to supply the attractive, compelling programming that our customers demand. Competition, not the FCC's rules, is the principal driver of our carriage decisions; we need to provide the programming our customers want, or we will risk losing customers to competing MVPDs that do so. As we have said many times, after the transaction, six out of every seven channels will remain independent of and unaffiliated with Comcast. With or without the program carriage rules, Comcast does not and will not discriminate on the basis of affiliation.

**10. Last April Comcast Cable's President, Steve Burke, testified before the FCC that Comcast treats its own programming services like "siblings." Your critics claim this testimony implies that Comcast provides preferential treatment to your own programming services in deciding whether to carry them on Comcast. After the costly acquisition of NBC with its wealth of programming, shouldn't we expect that Comcast will afford these new programming "siblings" preferential treatment in deciding whether to carry them?**

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.

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 Comcast-affiliated networks have been shuttered in recent years because they did not offer what Comcast, other MVPDs, and their customers wanted.

**11. Since you believe this deal makes so much sense for you at Comcast and for NBC, should we expect other cable and satellite companies to seek content partners like NBC, and shouldn't we expect therefore that this deal will set off a wave of media mergers?**

That seems unlikely. It should be noted that this transaction runs in the opposite direction of industry trends, with the recent separations of Time Warner, Inc. and Time Warner Cable and News Corp and DirecTV. Comcast and NBCU are trying to put together a successful vertical partnership of compelling content and state-of-the-art distribution platforms. We are excited about the potential for the new NBCU to create and deliver more content to consumers in a greater variety of ways, and we are working very hard to make this potential a reality. Our transaction should be reviewed on its own merits. We simply are not in a position to anticipate what other companies will do. And the key question presented here is does *this* transaction, on its own merit, warrant government approval? Any future transaction by other parties should also be evaluated on its own merit, based on the state of the market at the time. It is worth noting, though, that this transaction is *not* the sort of horizontal combination that has been at the core of concerns about localism and diversity. Moreover, the parties have made specific commitments to create more local and diverse content, in keeping with the FCC's primary policy goals.

**12. We have recently heard concerns from cable operators about retransmission consent negotiations for local broadcast stations. Now that Comcast will own a broadcast station, we again have the problem of Comcast paying itself and having the ability to effectively deny other MVPDs retransmission consent of its owned and operated affiliates. Would Comcast be willing to commit at a minimum to a condition included in the NewsCorp DirecTV Order which required an arbitration process, including an obligation to continue airing the station while negotiations are taking place?**

Congress already has enacted legislation to require that broadcasters and MVPDs negotiate in good faith over retransmission consent, and the FCC has amplified that requirement in longstanding rules. Nonetheless, in connection with the transaction, Comcast has committed to "voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O stations." Under this commitment, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo O&O stations' decisions about the price or other terms and conditions on which the stations make their programming available to unaffiliated MVPDs. In addition, the "burden shifting" approach to proof of discriminatory pricing in the program access rules will be applied to complaints regarding retransmission consent negotiations involving the NBC and Telemundo O&O stations. And the "shot clock" applied to program access adjudications would apply to retransmission consent disputes involving the NBC and Telemundo O&O stations. We think this voluntary and unprecedented commitment is more than sufficient to address any transaction-specific concerns.

The retransmission consent process can be contentious at times, but neither Comcast nor NBCU has had any retransmission consent negotiation escalate to the point where MVPD customers were deprived of the primary signal of any local broadcast station for any period of time. There will continue to be pressure to change the way retransmission consent works, especially as the model is changing, but we think that is an industry-wide issue and should be addressed, if at all, in industry-wide proceedings.

**13. In your FCC filing, you made a commitment to provide NBC video-on-demand (VOD) to customers at "no additional charge." It also says that "NBC now provides the shows to Comcast for no additional charge, and Comcast now provides them to its customers at no additional charge." As the owner of NBC content, will you offer these same NBC VOD rights for free to competing MVPDs after the merger? If not, would this give Comcast an undue competitive advantage?**

Comcast received VOD rights for certain NBC shows as part of a larger transaction for NBCU content that predates this transaction. We understand that NBCU has also granted similar VOD rights to other MVPDs like Cox and Charter. NBCU will remain free to enter into similar deals with other MVPDs. While we cannot say specifically how these rights will be licensed in the future, in a competitive and rapidly changing marketplace, the new NBCU will have strong competitive incentives to make its content widely available to MVPDs and their customers, including on VOD platforms.

**14. We've heard concerns from small cable companies that large programmers that also own broadcast TV stations use the retransmission consent process to insist that small cable companies take large bundles of cable channels in order to obtain needed broadcast stations. They complain that this practice takes away bandwidth that small cable companies could otherwise use for broadband services and denies consumers' programming choices.**

**What is your response? Will this merger make this problem even worse, as now NBC owned stations can insist on bundles of NBC cable networks and also Comcast owned cable networks?**

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 are ones that certain cable operators have expressed for many years with regard to many program network owners, not just NBCU or Comcast. These concerns clearly are not transaction-specific. The FCC is currently considering them in a pending industry-wide rulemaking proceeding, and we believe that is the appropriate place to address them in order to ensure fairness and consistency in policy.

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OUTDOOR CHANNEL

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March 10, 2010

Jay D. Rockefeller, IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Dirksen Senate Office Building 508
Washington, DC 20510

Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Dirksen Senate Office Building 508
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison:

I am writing as the President and Chief Executive Officer of Outdoor Channel, an independent cable network focused on hunting, fishing, and outdoor adventure. We appreciate the opportunity to share our perspective on the pending merger between Comcast and NBC Universal – and to tell you why we believe that Comcast has been a good partner – and why the dynamics of the video business, in our opinion, will encourage Comcast to continue to be a good partner following its merger.

First, to give you some perspective on what it means to be an independent content provider in today's cable landscape, and some perspective on the audience we uniquely serve, let me provide you with some background on Outdoor Channel. Our network is the quintessential independent programmer. We were originally founded in 1994 by a family of outdoor enthusiasts as a programming service for other enthusiasts. In the last 16 years, we have grown into a profitable, financially stable publicly traded company (NASDAQ: OUTD) with annual revenue in excess of $75 million.

Outdoor Channel features quality programming designed to educate and entertain outdoor enthusiasts of all skill levels. We promote the traditional outdoor activities that are a vital part of our national heritage including fishing, hunting, shooting sports and other outdoor adventures. Our programs are designed to appeal to enthusiasts of all ages with a focus on activities that the entire family can enjoy in the great outdoors. Outdoor Channel promotes the spirit of conservation in all of our programs, emphasizing responsible hunting, fishing and habitat maintenance. We also broadcast programs that highlight conservation and preservation initiatives, helping outdoor enthusiasts understand the importance of maintaining and improving our lands. According to Nielsen Media Research, we serve approximately 36 million cable, satellite and telco subscribers in both rural and urban communities around the country.

It is important to emphasize that the key to our success as an independent network is that we have continued to invest heavily in our business. Our ongoing investments in compelling programming that includes the best and brightest celebrity talent, innovative formats like High Definition (HD) and Video on Demand (VOD) and building a robust digital presence has made our growth possible and enabled us to maintain our leadership position. We have also heavily invested in branding, marketing and research to support our sales and marketing efforts.

Against that background, let me turn to Outdoor Channel's relationship with Comcast. Comcast has been an important partner for us, and our relationship has been mutually beneficial. Given my experience in the cable television industry, I can attest that with Comcast, our carriage negotiations, back office functions and day to day dealings have always been reasonable and forthright.

Outdoor Channel relies on cable distributors like Comcast to provide household delivery in two ways. First, we look for Comcast to carry our network in the greatest number of cable systems possible. Comcast evaluates the fit for each network on a market specific basis and is under no obligation to carry Outdoor Channel in every market it serves. With that carriage flexibility in mind, we are pleased to be carried in most of Comcast's markets around the country. In the markets where Outdoor Channel is available on Comcast's channel line-up, Outdoor Channel reaches approximately 30% of the total potential subscribers.

Second, Outdoor Channel provides Comcast the latitude to package Outdoor Channel in ways that best serve their markets and business objectives. Over the past two years, in recognition of Outdoor Channel's broad appeal and program quality improvements, Comcast has repackaged our network to more highly penetrated packages that reach substantially greater numbers of potential viewers.

Comcast, like other distributors, has seen the value of Outdoor Channel increase over time. They have recognized that our network is more than a concept – it's a proven, sustainable entity. As we've grown our business, we've proven that we are filling a critical content void in the market, and we have staying power. Considering Outdoor Channel's growing base of viewers, high-quality programming and innovative formats like HD, Comcast has continued to give us additional opportunities to bring our network to new markets.

We were particularly pleased to see the interest we were receiving for upgraded packaging at the local system level supported at Comcast's corporate office where these decisions are ultimately approved. We have invested in staffing a professional field sales force and we were gratified to see the benefit of this investment, coupled with our commitment to best in class programming, paying dividends in the form of increased subscriber growth. We are encouraged that continued investment in first-rate content, advanced technology such as HD, and innovative marketing partnerships will continue to be recognized with additional growth opportunities for our networks throughout Comcast's systems.

Additionally, Outdoor Channel looks toward distributors like Comcast to be strong marketing partners. Each year, we run two network consumer promotions: *Spring Fever* and *Gear Up & Go*. The purpose of these sweepstakes-based promotions is to enhance our brand's awareness and increase viewership and consumer engagement. During these promotions, we partner with cable affiliates, asking them to run promotional television spots on their systems to increase sweepstakes enrollment and programming tune-in. Historically, Comcast systems have participated heavily in these promotions. For the 2009 *Gear Up & Go* promotion, Comcast systems representing over 4 million subscriber households participated. These Comcast systems ran promotional television spots valued in excess of $1.5 million which in turn helps us to increase viewing which drives our advertising sales business.

In line with our belief in the compelling logic of thoughtful, sustainable independent programming, we have taken note of the "Commitments" Comcast and NBCU have made in their testimony to legislators as guarantees of their post merger intentions. We are especially encouraged by Commitment #13 – "Carriage for Independent Programmers." We applaud the concept behind that commitment of adding new independently owned and operated channels to Comcast's digital lineup. At the same time, as one of the few true independents operating today, we frankly would like to see that commitment modified to include granting broader distribution to proven independents whose programming capabilities and financial stability are already established.

In closing, I would like to draw the Chairman's attention to another aspect of our relationship with Comcast that we believe speaks to a larger sense of that company's progressive attitude toward programmers and to its role as a supporter of the social responsibility initiatives that are dear to us and our viewers. Outdoor Channel participates in dozens of community initiatives each year. Together with our local distribution partners in markets across the country, we organize events to highlight and benefit conservation-related causes and mobilize outdoor enthusiasts to make a positive impact on their communities.

Comcast has become a major partner for us in local markets as we develop, organize and participate in community campaigns in their systems' territories. One recent example was in Chattanooga, Tennessee where Outdoor Channel, Comcast Chattanooga and the Chattanooga Chapter of Safari Club International (SCI), teamed up with the Chattanooga Community Kitchen for the area's first annual "Sportsmen Against Hunger" event. This event was held this past October when local outdoor enthusiasts joined together to serve meals to the hungry. Together, we fed more than 300 people with donated food from local area residents. We can cite dozens of other similar local community examples, including our sponsorship with Comcast for the Eastern Sports & Outdoor Show, which attracted more than 800,000 outdoor enthusiasts and provided a significant economic boost for the host city of Harrisburg, Pennsylvania as well as the thousands of retailers associated with the event.

With our long history working with Comcast, we have no doubts about its commitment to serving the public interest and working with independent programmers like Outdoor Channel. We've negotiated with Comcast for carriage in the past and expect that under this combined company, our carriage relationship will remain intact and unobstructed, and in no way impact any potential future negotiations. We expect the same as it relates to our community service initiatives and only hope that under a merged entity there will be additional new opportunities to develop and distribute Outdoor Channel content on Comcast Systems.

Sincerely,

Roger L. Werner
President & Chief Executive Officer
Outdoor Channel

cc: Senator John F. Kerry, Chairman, Subcommittee on Communications and Technology
Senator John Ensign, Ranking Member, Subcommittee on Communications and Technology

ovation

March 9, 2010

The Honorable John D. Rockefeller IV
531 Hart Senate Office Building
Washington, DC 20510

The Honorable Kay Bailey Hutchison
284 Russell Senate Office Building
Washington, DC 20410

Dear Senators Rockefeller and Hutchison,

At the heart of American democracy is our commitment to free speech and expression. Therefore it is vital to our freedom that Americans enjoy unrestricted access to that same free speech and expression.

Since 1996, Ovation TV, a privately funded, independent cable television network, has dedicated itself to providing viewers the best in creative expression through arts and culture programming. Ovation is one of a kind. No other national network offers viewers this type of content day after day. And having provided over $5 million in cash and in-kind support over the past three years, Ovation is also a key partner of America's cultural institutions and arts education initiatives in cities and towns nationwide.

Since acquiring and re-launching Ovation in 2007, the network has grown from 5 million to 38 million homes. Much of this success is in part due to our outstanding business relationship with Comcast Cable. Comcast has become an outstanding distributor of our unique programming, adding over 3 million homes to our distribution base. Most importantly, they have become a key partner in numerous local arts education initiatives; including assistance in providing access to free museum visits and building awareness of cultural events.

While critics are fast to point out that these 3 million homes represent a small portion of the Comcast foot print, the relationship with the "new" Ovation is a young one. As we continue to deliver on our promise of providing a unique Arts service to their customers, we believe Comcast will continue to roll us out and make us available in all of their digital homes. We also believe that a NBCU/Comcast merger will not affect that rollout.

It is has been our experience that Comcast pays competitive rates to independent programmers. Those rates enable us and other programmers to invest in even greater programming for their viewers and more marketing to reach them, all the while creating lasting jobs in a variety of communities. We are hopeful that an NBCU/Comcast merger will not affect the rates that Comcast pays to us nor to any other independent programmers.

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ovation

Comcast has a strong record of launching viable, independent channels. Viable is the key term here. Not everyone with an idea for a channel deserves carriage nor can Comcast be expected to accept every idea that comes through their door. As in the case of Ovation, Comcast has been responsive to those channels with solid plans to meet the interests of viewers not currently being served in the marketplace, the right team with proven expertise, solid financial backing and a compelling value proposition that includes fair and competitive rates.

Comcast has also stated they will continue to create more opportunities for viable, independent programmers. They have committed, upon completing their digital migration companywide in 2011, to add two new independently owned and operated channels to their line up each year for the next three years under customary terms and conditions.

Comcast has recognized Ovation's many attributes, including its service in the community, and has provided us with growing distribution on their platform at competitive rates. We enjoy a relationship that has required good faith negotiations and we are confident that relationship will continue to grow stronger after the merger.

The issues facing independent programmers like Ovation relative to large distributors can be summarized in two words, carriage and rates. In our experience, Comcast has been a fair partner in both of these areas. Thank you for your commitment to supporting independent programmers and ensuring that our voices be heard.

Sincerely,

Charles Segars
Chief Executive Officer
Ovation

CC: The Honorable John Kerry
The Honorable John Ensign

REELZ CHANNEL

March 10, 2010

Honorable Jay D. Rockefeller, IV
Chairman
Committee on Commerce,
Science & Transportation
United States Senate
Dirksen Senate Office Building 508
Washington, D. C. 20510

Honorable Kay Bailey Hutchison
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Re: TESTIMONY OF STANLEY E. HUBBARD BEFORE THE COMMERCE COMMITTEE OF THE UNITED STATES SENATE

Dear Chairman Rockefeller and Ranking Member Hutchison:

I appreciate this opportunity to share my perspective on the impact Comcast has had on independent cable and satellite networks attempting to gain acceptance and distribution in an increasingly crowded and competitive environment. Quite simply, without Comcast's support, REELZCHANNEL would probably never have been launched and would certainly not be approaching its fourth anniversary and the critical 50 million subscriber mark.

REELZCHANNEL is an independent cable and satellite network that is all about movies, the way Food Network, for example, is all about food. In fact, our tagline is TV ABOUT MOVIES® Hubbard Broadcasting, REELZCHANNEL's parent company, developed the channel's concept starting in 2000, refining the underlying idea, business premise and focus for more than a year before introducing the channel concept to the distribution marketplace, which includes cable and satellite.

By way of background, Hubbard pioneered the Direct Broadcasting Satellite (DBS) industry in 1994, when it introduced the Digital Satellite System, in cooperation with DIRECTV, through its subsidiary U.S. Satellite Broadcasting (USSB). With USSB, we were a distributor of movie-driven services such as HBO and Showtime, and experienced first hand our subscribers' love affair with movies and the need for a service that would help viewers learn about and find more movies (in all windows of release) that would match their interests.

Our business strategy with REELZCHANNEL was simple: we knew it was a difficult environment for new channels – especially independent channels not associated with large programming companies that have the ability to leverage their existing channels and business relationships into new channel launches of their own. We felt that, unlike other independents that had launched and failed over the years, it was important to get as many distribution agreements completed

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as possible PRIOR to committing to the massive expenditures required to launch and operate a national television network.

To that end, in the summer of 2001, we first reached out to Comcast, then a recent and former competitor to our USSB, for an initial meeting with their top programming executives who welcomed us to their Philadelphia headquarters within weeks of our request. At that initial meeting, to a person, they were respectful of us as individuals and, in fact, enthusiastic about our ideas for REELZCHANNEL. They were also clear that since this was a first meeting it would take some time for us to prove our viability and to get to the point of entering into an actual distribution agreement, especially since we weren't launched yet and didn't yet have a target date for launch. But they did make specific suggestions on how to keep the process in forward motion: First, they encouraged us to present our ideas to some of their key people at systems and divisions in the field so that those folks could feed back their thoughts and ideas to the corporate programming department; and second, they asked us to keep them informed as we got closer to establishing an actual launch date, as well as our status in getting agreements done with other distributors around the country.

We followed their advice, kept them informed of our progress toward launch, and did our diligence in the field. Over a period of 24 months we visited all of their key systems and divisions, and without exception we were met with helpful, interested people who encouraged us to press for a distribution agreement at the corporate level. Further, the Comcast people in the field provided detailed feedback to their corporate programming department about REELZCHANNEL.

In 2004, Comcast programming executives orally agreed to enter into a distribution agreement with REELZCHANNEL and, over the following months, both sides negotiated in good faith, and executed a final agreement in September of 2005. Our agreement with Comcast was completed more than a year in advance of our actual launch, and proved to be a critical milestone for REELZCHANNEL because it demonstrated to the rest of the industry that Comcast was behind us and had vetted us as being viable. It is important to note that, as is the usual case, no specific commitments were made by Comcast in terms of distribution of our channel. Instead, we were granted what is known as a "hunting license," essentially a "right" for us to approach their systems one by one, and, if those systems were truly interested, they could go ahead and launch us pending the approval of the division and corporate office that oversaw them.

The Comcast agreement was also very important to the Hubbard Broadcasting board of directors in deciding whether to authorize the new business investment needed to launch REELZCHANNEL. Our financial model required distribution from both cable and satellite in order to be successful and an early distribution agreement with Comcast added significantly to our board's confidence in our ability to secure mass cable distribution as an important part of our business imperatives.

Comcast has continued to play an important and straightforward role in REELZCHANNEL's development. The Comcast system in Minneapolis/Saint Paul became the first major metropolitan cable system to launch REELZCHANNEL coincidental with our launch in September, 2006. Today almost five million Comcast subscribers receive REELZCHANNEL as part of their subscription, including those located in large cities such as Chicago, Detroit, Boston, Atlanta, Houston and Miami, to name a few. We continue to work with Comcast's division and system management and are hopeful that in the next 12 to 24 months we will launch our service in systems in Seattle, Portland, Denver, Washington, D. C., and the San Francisco Bay area, among others. To date, in every instance of a local system wanting to launch REELZCHANNEL, Comcast corporate programming executives have approved the launch request.

Comcast continues to support the independent REELZCHANNEL by adding us to more and more of their systems, even though the demands on bandwidth for both cable and satellite have continued to increase substantially since our initial meeting in 2001. The increasing demands on bandwidth are due to the rapid evolution of HDTV, high speed internet services, telephony, expanded business services, the broadcast digital transition and more channels being introduced by large programming companies with the ability to leverage even the largest operators into launch commitments for their new channels. Comcast officials have always been clear on the realities of the changing environment and also clear on how we need to sharpen and shape our vision for our network so that REELZCHANNEL could become an even more compelling proposition. Accordingly, today, we are engaged in discussions with Comcast on a number of fronts. At their urging we have developed video-on-demand content for Comcast, and other distributors, that ties into and promotes our brand. They are also working with us on a 2010 roll-out of a high definition version of REELZCHANNEL and Comcast systems are enthusiastic participants in our big summer consumer promotion: The Guaranteed Movie Recommendation.

In summary, we could not be more appreciative of the advice and support we have received from Comcast for the launch and development of our independent cable network, REELZCHANNEL. We have found the people at Comcast to be universally supportive of REELZCHANNEL ever since our initial conversations almost 9 years ago. Comcast personnel at the corporate headquarters and in the field across the nation are consistently accessible, openly communicative to us and organized in a way that provides guidance, creative suggestions and committed follow-up to help our business grow with them. We truly feel there is a commitment to our growth and economic well-being that is built on a sense of overall fairness and continuing mutual respect.

The strength of our relationship is demonstrated by the steady stream of Comcast systems which continue to launch REELZCHANNEL. We believe that this relationship will remain strong in the future and we do not believe that the

NBCU/Comcast merger will in any way affect that relationship or commitment to success of our independent network, REELZCHANNEL.

Thank you for the opportunity to provide these insights. If you have any other questions, please contact me directly.

Yours most respectfully,

Stanley E. Hubbard
President & CEO