Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

REPLY COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

David J. Young
Executive Director
Writers Guild of America, West, Inc.
7000 West Third Street
Los Angeles, CA 90048
(323) 782-4689

August 19, 2010

Introduction

Writers Guild of America, West, Inc. (WGAW) submits the following reply comments in the matter of applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to assign and transfer control of FCC licenses, MB Docket No. 10-56. These comments respond to comments made by Comcast in its “Opposition to Petitions to Deny and Response to Comments” and “Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition,” both filed on July 21, 2010.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, “WGA”). Many WGA members are employed by companies owned or controlled by applicants.

The WGAW remains extremely concerned with the impact this media consolidation will have on our nation’s ability to access diverse and independent news, information and entertainment content across multiple distribution platforms. Despite the commitments offered by Comcast, unless the FCC imposes additional requirements, this merger will not serve our nation’s public interest.

Media Consolidation Does Not Create More Competition or Serve the Public Interest

The vertical integration of content production, distribution and exhibition created by the combination of NBC Universal’s television and film production, broadcast and cable networks together with Comcast’s cable networks, and cable and Internet services will result in less competition, not more. A merger that consolidates ownership of broadcast networks, cable networks and Internet sites, among other things, does not advance competition, as Comcast asserts.[1] Rather, the proposed merger represents an enhancement of market power for Comcast and NBC Universal (NBCU). Absent strict conditions, the merged enterprise will have the power to raise prices and limit consumer choice. While Comcast has granted concessions to business groups that might otherwise have opposed this merger, such as local station affiliates of NBC and the other broadcast networks, these agreements benefit business interests, not the public interest. The FCC must evaluate the potential for these companies to use their increased market power to control competition in the television and online distribution markets.

In addition, evaluation of media mergers must go beyond the anticompetitive effects on commerce and consider the impact on our society's ability to access diverse content and viewpoints. The control of our news, information and entertainment sources by increasingly fewer and increasingly more powerful companies is a profoundly negative development for our democratic society. Combining control of 30% of cable subscribers, 20% of Internet subscribers, 20% of all TV viewing hours and numerous Internet properties would give Comcast inordinate power to shape democratic political and cultural discourse. The public interest is best served by a media industry that is as vibrant and diverse as our nation. American political discourse, culture, news dissemination and entertainment are rapidly devolving to a point where a handful of companies control all production, distribution and exhibition of ideas. With most television and film production controlled by companies that also own broadcast and cable networks, the addition of cable and Internet distribution represented by the proposed merger further tightens

---

[1] See "Opposition to Petitions to Deny and Response to Comments," Comcast Corporation, General Electric Company and NBC Universal, Inc., In the Matter of Applications for Consent to the Transfer and Control of Licenses from General Electric Company to Comcast Corporation, MB Docket No 10-56, July 21, 2010, p. iii.

control over our media landscape. Given the current uncertainty over regulation protecting an open Internet, the merger would increase the danger of extending this control to that medium as well.

Comcast suggests that this merger will spur innovation from competitors; but the more likely result will be another wave of mergers as the few remaining players combine to more effectively compete with Comcast–NBCU. The FCC should require that this merger create more competition, not less; more diversity, not less. The FCC should use its authority to impose requirements that achieve these goals.

The FCC Should Impose Conditions that Promote Meaningful Competition and Diversity

Comcast may claim that this merger is pro-competitive, but in reality this vertical and horizontal integration will reduce competition. Comcast's acquisition of NBCU's content production businesses and content libraries reduces competition in the content acquisition market. With the combination of production, distribution and exhibition businesses, Comcast can rely on internally produced content, diminishing the need for a competitive content marketplace. NBCU content can also be assured of carriage through Comcast's distribution businesses, diminishing its need for a competitive distribution market. To counteract this effect, the FCC should impose requirements that promote competition and diversity. As the WGAW has suggested in previous filings, the FCC should require that Comcast air programming from diverse sources on the vast array of network and cable properties included in the merged enterprise. The WGAW suggests a requirement of not less than 25% of new primetime series on NBC and Comcast–NBCU entertainment networks must be produced by independent sources. The definition of independent programming, moreover, should be crafted in such a way as to ensure maximum diversity of voices and artists on such programming, not just to provide more programming space for other large media companies.

Comcast pays lip service to the importance of independent content, stating in its reply comments, "Applicants recognize the importance of obtaining and providing outlets for programming from diverse sources."[2] Comcast goes on to claim that 33% of NBC's Fall 2010 primetime schedule will come from independent producers.[3] However, WGAW analysis reveals that only three of the 17 series on NBC Fall 2010 primetime schedule are produced independent of vertically integrated media companies.[4] By this analysis, independently produced content represents less than 18% of NBC's fall schedule. In addition, of the seven new series NBC will debut in Fall 2010, *none* will be independently produced. An FCC requirement that independent programming must be shown on Comcast–NBCU broadcast and cable networks will provide a level of competition in programming and ensure that Comcast goes beyond mere lip service and actually delivers diverse and independent content to consumers.

The Commission Should Require an "Arm's Length Transaction" Standard for Content Valuation

In previous filings on this proceeding the WGAW commented extensively on the importance of protecting the value of content within the merged company. This protection is vital to writers who depend on fair compensation derived from the value of content and consumers who benefit from the creative output of writers whose careers are sustained by this

[2] Comcast et al, *Ibid,* p. 40.
[3] Comcast et al, *Ibid,* p. 237.
[4] These series are; *The Biggest Loser, Community* and *Who Do You Think You Are.* All other Fall 2010 series are produced by NBC Universal product entities or licensed from Warner Bros. production entities. Warner Bros. is a part of Time Warner, a vertically integrated media company that is part owner of The CW.

compensation. With the growth of media consolidation, related party transactions have become increasingly common within the entertainment industry. The WGAW has experienced firsthand the reluctance of media companies to apply fair market valuation or arm's length standards to internal transactions. A key issue in the WGA's 100-day strike in 2007-08 was our insistence on an arm's length transaction standard for the valuation of licenses when content is distributed via new media platforms such as the Internet. The WGA ultimately prevailed in that demand, and identical language guaranteeing fair market valuation has been included in collective bargaining agreements negotiated by entertainment industry unions representing directors and performers. Nonetheless, the media companies represented by the Association of Motion Picture and Television Producers (AMPTP), including NBC Universal, continue to resist application of an arm's length transaction standard to content distributed in traditional media markets, where the majority of these transactions still take place.

Despite Comcast's claims to the contrary, we fear that the merged entity will undervalue internally-produced content distributed through related entities. This is not a new or theoretical concern for writers, as outlined in our reply comments.[5] Collective bargaining agreements as well as individual agreements with profit participants require payment of residuals or royalties to participants on the value of licensed content. A vertically integrated company has the incentive to maximize profits by undervaluing internally-produced content. While Comcast asserts that GE's presence as minority owner of the joint venture will prevent this result, Comcast also

[5] See Reply Comments of the Writers Guild of America, West, Inc, MB Docket No. 10-56, July 21, 2010, p. 7-8 for discussion of related party transaction lawsuits.

admits that it will eventually become the sole owner of the merged company.[6] Fair market valuation should not depend on transitory relationships or interests.

Related party transactions that do not apply a fair value standard to internally produced content can create significant transaction costs after the fact, as content creators must take legal action to seek redress. Recently, a federal jury awarded $269.2 million to Celador International, the creator of the TV show *Who Wants to be a Millionaire,* after finding that Disney did not obtain a fair market value for content that was licensed between related parties. This legal action has been underway for 6 years and illustrates the potential for transactions costs and market inefficiencies to arise when arm's length transaction standards are not explicitly required.

As a condition of the merger, Comcast should be required by the FCC to apply a "fair market value" or "arm's length transaction" standard to content it purchases or licenses from a related or affiliated entity. Under such a standard, revenues received by the internal content producer should be measured by (1) Comcast's payments to unrelated and unaffiliated entities in arms' length transactions for comparable content or (2), if none, the amounts received by the content producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions for comparable content, or (3), if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable content.[7] Such a standard would mitigate the potential for anticompetitive behavior resulting from this merger, further protecting content creators and consumers.

[6] Comcast et al, *Ibid,* p. 67.
[7] This three-part test paraphrases the contractual fair market value standard negotiated between the WGA and AMPTP in 2008.

Conclusion

Comcast claims this merger will result in more competition, more diverse programming, more choice and lower prices for consumers. Careful analysis suggests otherwise. The FCC must act within its authority to protect the public interest by imposing conditions that promote competition, diversity and choice. The WGAW continues to call on the FCC to adopt requirements that address these important values.

- *Program Source Diversity Requirement*: Require Comcast–NBCU networks to devote not less than 25% of broadcast and cable networks' primetime schedule to programming that is owned and produced by independent producers. Independent producers should be defined as studios or production companies that are not owned or affiliated with a major broadcast or cable network or an MVPD provider. The requirement should apply to each programming category, including scripted programming.
- *Fair Market Valuation Requirement:* Require distribution of content produced by related entities be subject to an arm's length transaction standard, as described more fully above.
- *Channel Positioning Requirement:* Restrict Comcast from bumping unaffiliated cable networks out of its basic cable tier to make room for affiliated networks.
- *Content Access Requirement:* Ensure availability of Comcast–NBCU content on an unbundled basis to unaffiliated multichannel video programming distributors on fair and reasonable rates, terms and conditions.
- *Internet Access to Content Requirement*: Preserve Internet availability of NBC video content on non-Comcast–NBC websites at fair and reasonable rates, terms and conditions.

- *Nondiscrimination:* Require that Comcast remain neutral in the distribution of Internet content over its network.