

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of Comcast Corporation, General Electric Company, and NBC-Universal, Inc.)	MB DOCKET 10-56
)	
For Consent to Assign Licenses or Transfer Control of Licensees)	

REPLY COMMENTS OF

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**The Digital Liberty Project and the American Shareholders Association are projects of
Americans for Tax Reform.*

We respectfully submit these comments to the Commission in response to the Public Notice listed above on the proposed merger between Comcast and NBC-Universal, in which General Electric owns a majority stake. We urge the Commission to rely on reasoned economic analysis and established antitrust formulas when making their determination, and not to unrelated, politicized, or hypothetical statements. We also urge the Commission to consider the potential net benefits to the economy that will result from the merger.

I. Merger Should Be Based on Reasoned Economic Analysis, Not Unrealistic and Hypothetical Situations

Like all license transfer proceedings, the Commission should rely on established formulas in antitrust law and reasoned economic analysis to determine any impact on competition in the marketplace by this merger. Unfortunately, this approval process has been politicized with unrelated rhetoric by special interest organizations with a distinct anti-free market philosophy. Existing formulas and tests are designed for objectivity to ensure that such rhetoric does not cloud the facts pertaining to the merger.

We argue the proposed merger is vertical, not horizontal. Both Comcast and NBC-Universal operate in separate distribution and programming markets. Comcast only retains a 25 percent market share and faces increasing competition, particularly from satellite and fiber-based companies. Additionally, NBC-Universal ranks fourth among video content providers. This vertical integration is unlikely to have a negative impact on competition.

In their petition to deny, Public Knowledge makes multiple assertions that do not accurately reflect how consumers make choices in a free market:

“Comcast has incentives to degrade traffic in non-NBCU content on the Internet.”¹

And:

“Comcast has the incentive to discriminate against new, non-Comcast controlled methods of delivering content over the Internet.”²

We urge the Commission to ignore such speculative comments that are merely hypothetical and do not reflect how businesses interact with consumers in the marketplace. Today, 95 percent of consumers have access to at least 4 Mbps broadband and 80 percent of these consumers have a choice of *at least* two providers.³ Due to increasing competition, Comcast (or any other provider) has no incentive to diminish speeds or access to content.

Businesses strive to retain and grow their subscriber base, not hand consumers a reason to switch to companies by offering a less desirable service. Consumers – not government –

are the best regulators of businesses. Consumers ultimately determine which business models fail and succeed in the marketplace, and consumer choice makes it highly unlikely that such forms of throttling or degrading of services will ever occur.

Public Knowledge goes so far to assert that not only will the merged company block others' content, but they will block their own:

“However the merged entity, with an interest in both the video production of NBCU and the distribution network of Comcast, will have an incentive to restrict the distribution of NBCU programming.”⁴

This falsely assumes that the merged company will value one type of service (distribution) above another (content). In fact, major networks (of which NBC-U ranks fourth) compete directly for viewers, something the assertion from Public Knowledge fails to take into account. If the merged company were to limit distribution of their video service, the company's overall value in the marketplace would diminish. It is absurd to claim that the merged company would reduce such distribution down to Comcast's 25% market share. The merged company will have as much incentive to increase distribution of content as before any merger.

II. Merger Should Not Be Bound by Extraneous and Unrelated Conditions

The Commission has established longstanding precedent that proceedings to transfer control of licenses should not invite unrelated conditions, especially involving issues being addressed in other proceedings. Nevertheless, multiple parties have called for Net Neutrality and other rules to be imposed as a condition of the merger's approval. Public Knowledge states:

“First, the Commission must impose strict non-discrimination rules that prevent the entity from interfering with the distribution of non-affiliated content through filtering, blocking, or degrading distribution.”⁵

And:

“The newly merged entity should be required to offer wholesale broadband access services to unaffiliated ISPs.”

Similarly, an ex parte filing by Free Press, Media Access Project, and Consumer Federation reveals that such groups have lobbied the Commission for similar conditions to be imposed. They write:

“Accordingly, to fully understand the potential impact of the merger on the marketplace, the Commission should take account of its rules and enforcement mechanisms (or lack thereof), including those related to program access, carriage, and net neutrality.”⁶

We urge the Commission to reject these and any other conditions, which are onerous and would run counter to precedent. Regulatory strong-arm tactics to win “voluntary” concessions further politicize the merger and have little to do with ensuring competition remains in the market.

In particular, any effort to impose Net Neutrality regulations would be highly inappropriate. This would be a backdoor attempt to enforce Net Neutrality on a single company after the first attempt resulted in a unanimous U.S. Court of Appeals decision that found the Commission was attempting to “shatter” the bounds of its authority. Even worse, the issue of Net Neutrality is already being addressed by other Commission proceedings.

III. Merger Review Should Account for Net Economic Benefits and Shareholders’ Interests

In the midst of an economic downturn, it would be imprudent to deny a merger that will increase investment. The merger is expected to generate \$8 billion for General Electric up front, allowing the company to create more jobs and invest in new products. It will also allow the newly merged company to better allocate resources (including expanding communications infrastructure) and experiment with new and innovative business models that can bring economic and consumer benefits.

Additionally, over half of American adults own stock or mutual funds, and millions have invested in Comcast and General Electric, which owns NBC-Universal. Such shareholders have risked capital to earn dividends and save for retirement. Not only will this merger bring economic benefit to these Americans, but it brings with it \$9.1 billion from new investors as well.

For the reasons above, we urge the Commission to rely on well-established methods of determining how the merger will impact competition, and to weigh the potential economic benefits from the merger. The Commission should also reject any unrelated and politicized conditions or objections.

Respectfully submitted,

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¹ Public Knowledge Petition to Deny, on Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees (MB Docket No. 10-56), June 21, 2010, pg. 6.

² Public Knowledge Petition to Deny, pg. 8.

³ Federal Communications Commission, “Connecting America: A National Broadband Plan,” pg. 20. <<http://www.broadband.gov/download-plan>>

⁴ Public Knowledge Petition to Deny, pg. 10-11.

⁵ Public Knowledge Petition to Deny, pg. 14.

⁶ Free Press, “Notice of Ex Parte Presentation in MB Docket 10-56, Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees”, July 29, 2010. <<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020651707>>