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August 19, 2010

VIA HAND DELIVERY

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

AUG 19 2010

Federal Communications Commission
Office of the Secretary

Re: *In the Matter of 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
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

On behalf of Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively “Applicants”), and in accordance with the First and Second Protective Orders adopted in this proceeding,¹ enclosed please find two copies of the **redacted, public** version of Applicants’ Reply to Responses (“Applicants’ Reply”).

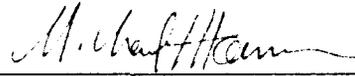
The {{ }} symbols denote where Highly Confidential Information has been redacted pursuant to the Second Protective Order, and the [|] symbols denote where Confidential Information has been redacted pursuant to the First Protective Order.

Highly Confidential and Confidential versions of Applicants’ Reply are being filed simultaneously with the Office of the Secretary and the Media Bureau under separate cover. The Confidential and Highly Confidential versions of these filings will be made available pursuant to the terms of the Protective Orders. A redacted, public version also is being filed on ECFS.

¹ *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Protective Order, 25 FCC Rcd 2133 (MB 2010); *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Second Protective Order, 25 FCC Rcd 2140 (MB 2010).

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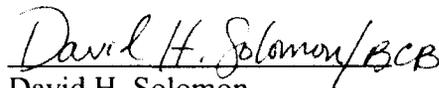
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Enclosures

cc: Jessica Almond
Vanessa Lemmé

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
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General Electric Company)	
and NBC Universal, Inc.)	
)	
For Consent to Assign Licenses or)	
Transfer Control of Licensees)	

REPLY TO RESPONSES

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August 19, 2010

EXECUTIVE SUMMARY

With today's filings, the formal pleading cycle for this transaction is complete, and the Commission has before it an extraordinarily robust evidentiary record to support its review. Applicants' January 28 Public Interest Statement, March 5 and May 4 expert economics reports, and July 21 Opposition and Response (attaching two additional expert economic reports), among other filings, clearly demonstrate that Comcast's acquisition of control of NBCU is in the public interest. The myriad public interest benefits – including concrete, verifiable public interest commitments – outweigh any potential transaction-specific harms. The record overwhelmingly supports the conclusion that the proposed transaction will serve the public interest, convenience, and necessity, and will not harm competition or consumers.

More than seven months after the filing of their Applications and Public Interest Statement, Applicants' case that the transaction will produce genuine public interest benefits remains as compelling as ever, and has been further enhanced by agreements with key stakeholders. Similarly, Applicants' demonstration that the transaction presents no realistic threats of harm to competition or consumers has been met with ineffectual challenges, and Applicants have provided further assurances against any harm through agreements with interested parties. Applicants are confident that the Commission's review of the record will lead to only one conclusion: Authorizing General Electric to sell, and Comcast to buy, a controlling interest in NBC Universal will produce substantial benefits that far outweigh any potential harms.

Applicants have demonstrated that the transaction will, among other things, reinvigorate local broadcasting, expand the distribution of independent networks, lead to more content being available on more distribution platforms, and accelerate the "anytime, anywhere" video future

that consumers are demanding today. Specifically, Applicants have shown that it is difficult for distributors and content owners to reach agreements to accelerate the development of innovative distribution platforms because content owners are understandably concerned that such efforts will undermine the existing business models that provide the financial support necessary to create high-quality programming. This problem, often referred to as “transactional friction,” delayed for years the development of a robust video-on-demand product, and it is today delaying Comcast’s ability to offer consumers programming when they want, where they want, and on the devices they want. By combining NBCU’s programming with Comcast’s multiple distribution platforms, the transaction will increase Comcast’s and NBCU’s flexibility to experiment with new ways to make programming available to consumers; this will, in turn, make it more profitable for the companies to invest in more and higher value programming and new distribution platforms. The success of these efforts will spur participation by other content owners and even competing distributors, thus further enhancing consumer welfare.

Apart from Applicants’ direct showings, the record is replete with third-party letters in support of the proposed transaction – more than 1,000 and counting. Elected officials, community groups, diversity organizations, business representatives, advertisers, labor organizations, programmers, private citizens, and many others have offered concrete and personal accounts of their positive experiences with Applicants and attested to the companies’ character and commitment to the communities they serve. This outpouring of support is unprecedented in a transaction review proceeding.

Opponents and critics of the transaction have not made a convincing case. Despite having had more than six months to formulate plausible theories of harm to competition or consumers and to muster evidence to support such theories, the record evidence demonstrates

that those theories are wholly speculative and unsupported. As Applicants have demonstrated, the competitive characteristics of the marketplace in which the combined entity will compete ensure that these imagined harms will not be realized.

Moreover, in many cases, the claimed harms are nothing more than preexisting or industry-wide grievances that commenters are improperly re-airing in this proceeding. Many businesses and organizations who compete with or aim to extract unwarranted concessions from Comcast or NBCU are attempting to use the Commission's review process to foist unprecedented and onerous burdens on the combined entity. The Commission should not countenance such attempts.

The handful of adverse comments filed on July 21 do nothing to strengthen the arguments advanced by transaction opponents on June 21, and which Applicants' Opposition and Response thoroughly refuted. The proposed transaction will advance the Commission's key public interest goals of diversity, localism, competition, investment, and innovation and will not harm competition or consumers. Saddling the combined entity with restrictions that do not apply to its competitors, as many critics of this proposed transaction demand, would only hinder these goals – especially when sufficient regulatory mechanisms already are in place to prevent any conceivable misconduct. Applicants have more than met their burden of demonstrating that the transaction is in the public interest and therefore respectfully request its expeditious approval.

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REPLY TO RESPONSES

Comcast Corporation (“Comcast”), General Electric Company (“GE”), and NBC Universal, Inc. (“NBCU”) (collectively, “Applicants”) hereby reply to the limited number of comments critical of the transaction that were filed on July 21, 2010 (the “July 21 Responses”). These comments do nothing to weaken Applicants’ compelling case that the proposed transaction is firmly in the public interest.

I. INTRODUCTION AND OVERVIEW.

In Section II, Applicants provide an overview of the state of the record compiled over the past seven months. For ease of reference, Applicants also provide a comprehensive chart (attached as Appendix A) that contains a list of the issues raised in the record, a summary of the affirmative and responsive case presented by Applicants on each topic, and a ready guide to the location of the key analysis and facts Applicants have presented on each issue. In Section III, Applicants explain that the Commission should give little credence to the issues raised in the July 21 Responses because they are redundant, procedurally deficient, and/or focus on industry-wide issues that are not properly raised in a transaction review proceeding. Section IV

demonstrates that Applicants have established that significant public interest benefits will flow from the proposed transaction, and that these showings have not been challenged in any meaningful way. Finally, Section V shows that claims in the July 21 Responses regarding potential harms from the transaction have already been thoroughly disproved.

II. THE RECORD IN THIS PROCEEDING CLEARLY COMPELS APPROVAL.

Today’s filings conclude a pleading cycle that began with the submission of the Applications and Public Interest Statement in January.¹ During the winter and spring, Applicants provided compelling additional evidence substantiating the transaction’s benefits and disproving claimed potential harms. While many of the transaction’s opponents made their views known in various ways and in various fora throughout this period, all petitioners and critics had the opportunity to make their formal, substantive case to the Commission at the beginning of summer, on June 21. Throughout these seasons – including on July 21, when Applicants thoroughly refuted the criticisms leveled on June 21 – the compilation of the record in this proceeding has continued. And now, with autumn’s approach, the record is complete, and the matter is ripe for resolution “in as timely and efficient a manner as possible.”²

This transaction is unparalleled in several respects:

- From the outset, Applicants recognized and embraced the need to provide tangible assurances of benefits to consumers and competition. Applicants announced substantial

¹ *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) (“Public Interest Statement”).*

² *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, Public Notice, MB Docket No 10-56, DA 10-457, at 5 (rel. Mar. 18, 2010) (“Public Notice”).*

public interest commitments on the very day the transaction was announced, and Applicants offered to make them binding conditions of the Commission’s approval.³

- Before comments and petitions were filed, Applicants, at the Commission’s request, provided three economic reports in support of the proposed transaction.⁴ Those reports, prepared by world-class economists, provided extensive analysis confirming that the transaction will generate genuine and substantial public interest benefits and that it will not cause harms to consumers or competition in any relevant market. Notably, the economists reached the conclusion that the transaction is strongly pro-competitive on its own terms, even without factoring Applicants’ substantial voluntary commitments into their analyses.
- Also before comments and petitions were filed, Applicants, again at the Commission’s request, provided written responses to 49 questions submitted by several members of the House of Representatives.⁵ Applicants also responded to 122 interrogatories from Commission staff and produced thousands of pages of the companies’ most sensitive internal documents for review by the Commission and by the scores of attorneys and dozens of economists employed by opponents of the transaction (subject to protective orders).⁶ Independent of the Commission’s review process, Applicants also answered scores of questions from Members of Congress after testifying at four separate Congressional hearings in February and March.
- Meanwhile, an utterly unprecedented array of federal, state, and local officials, community organizations, diversity groups, business leaders, and other stakeholders – more than 1,000 of them, and still counting – have submitted first-hand testimonials describing their longstanding positive experiences with Applicants in their communities and requesting favorable consideration of the Applications.

³ See Memorandum from David L. Cohen, Executive Vice President, Comcast Corporation (Dec. 3, 2009), available at <http://www.comcast.com/nbcutransaction/pdfs/PublicInterestCommitments.pdf>.

⁴ See Mark Israel & Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction, MB Docket No. 10-56 (filed Mar. 5, 2010) (“Israel/Katz Vertical Foreclosure Report” or “Foreclosure Report”); Gregory L. Rosston, An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction, MB Docket No. 10-56 (filed May 4, 2010) (“Rosston Benefits Report” or “Benefits Report”); Mark Israel & Michael L. Katz, The Comcast/NBCU Transaction and Online Video Distribution, MB Docket No. 10-56 (filed May 4, 2010) (“Israel/Katz Online Video Report”).

⁵ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., et al. to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 10-56 (June 2, 2010) (attaching Comcast and NBCU Responses to Questions Submitted by Several Members of the U.S. House of Representatives).

⁶ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (June 30, 2010) (attaching Comcast’s Response to the Commission’s Information and Discovery Request); Letter from David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 6, 2010) (attaching NBCU’s Response to the Commission’s Information and Discovery Request).

- Applicants have also expanded certain of their initial commitments and, through productive dialogue with responsible stakeholders, have reached important agreements with representatives of network-affiliated broadcast stations, independent film and television producers, and diversity communities.

In each of these respects, the Comcast/NBCU transaction is unlike any other. In some other respects, however, the transaction is not unusual at all:

- As in too many prior transactions, various parties have not resisted the temptation to use the opportunity of a transaction review to present their pre-existing agendas regarding industry-wide issues, or to ventilate pre-existing grievances that have nothing whatever to do with the transaction.
- As in too many prior transactions, perennial critics of entertainment, information, and communications companies express anew the apocalyptic predictions they have so often voiced, the credibility of which is thoroughly undercut by today's dynamic and vigorously competitive marketplace (especially in the areas most relevant to the instant transaction – the wholesale and retail provision of video programming).
- As in too many prior transactions, commenters present conclusory demands for conditions but provide no rigorous analytical or evidentiary foundation for their demands. In fact, the gulf between the paucity of the analysis and the burdensomeness of the conditions tendered by opponents is a telling indication that these proposals are not necessary or prudent.
- As in too many prior transactions, competitors request conditions that will confer business advantages on them or layer on additional costs that will hamper the new entity from competing effectively against them. Consumers will not benefit from the increased costs of this imbalanced and inequitable regulatory burden.

While none of these is a proper use of the transaction review process, they are all disappointingly familiar.

Both the exceptional and the routine characteristics of this transaction review have resulted in the compilation of an extremely lengthy and robust record. The June 21 filing deadline for comments and petitions attracted numerous filings – pro and con – and Applicants provided an exhaustive and evidence-based response, backed up by extensive economic analysis,

in their Opposition and Response on July 21.⁷ Now that the time has long since come and gone for critics to formulate plausible theories of harm and muster any evidence to support those theories, it is possible to make a full assessment of where things stand. Applicants are confident that a fair review of the record can lead to only one conclusion: Authorizing General Electric to sell, and Comcast to buy, a controlling interest in NBC Universal will produce substantial benefits that far outweigh any conceivable harms and therefore will serve the public interest.

On the benefits side, the transaction will bring about a reinvigoration of broadcasting, through an infusion of new capital and energy to enable the venerable, accomplished NBC broadcast television network to regain the ratings leadership position it lost six years ago. Applicants have made specific commitments to produce additional local broadcast content on the NBC-affiliated owned and operated broadcast stations (“O&Os”) and make those stations’ content more widely available on additional platforms. These commitments, along with binding agreements Applicants reached with representatives of local broadcast affiliates – both the NBC affiliates association and the ABC, CBS, and FOX affiliates associations – provide further assurances that this transaction will help broadcast networks and stations and their affiliates not only survive in a challenging environment but also affirmatively advance the Commission’s goals of diversity, localism, competition, and innovation. Consumers will also benefit from Comcast’s launch of new independent channels, by the expansion of On Demand options, and by new programming and advertising collaboration with NBCU’s broadcast operations and cable networks. These benefits will extend to online and mobile platforms as well, as the transaction will enable the combined entity to accelerate “anytime, anywhere” access to the widest possible

⁷ Comcast Corporation, General Electric Company, and NBC Universal, Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56 (July 21, 2010) (“Opposition and Response”).

array of high-quality content. These and other benefits have been discussed at length in Applicants' prior submissions.

In terms of potential harms, opponents of this transaction have spared no effort in attempting to persuade the Commission to reject the transaction or to adopt onerous conditions of one sort or another. But the factual, legal, and economic bases of their arguments are demonstrably false; the transaction's opponents had many months to build their cases, yet their efforts were effectively rebutted by Applicant's Opposition and Response. Some commenters raised familiar concerns about program access, retransmission consent, and program carriage, but these concerns (to the extent they are valid) are not specific to the transaction – they can be observed every day in negotiations taking place throughout the industry. Other commenters raised wholly speculative concerns about the transaction's effects on online video services, and some of those commenters seasoned their allegations with predictable, baseless attacks on Comcast's and NBCU's pre-transaction online practices.

These assertions of harm, however, simply cannot be regarded as genuine, transaction-specific problems given the following facts:

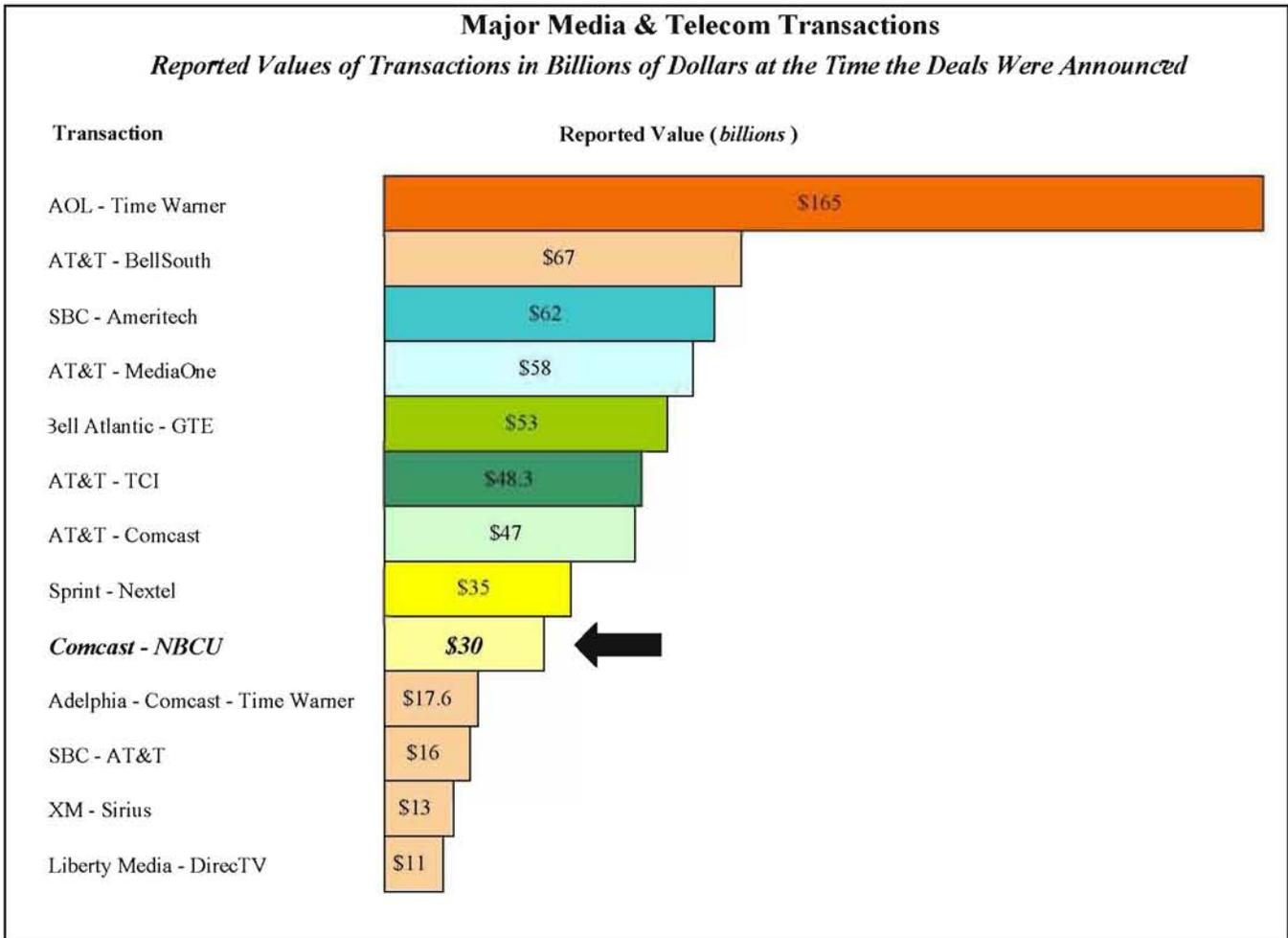
- Video businesses are intensely competitive, and growing more so, both at the program network level and the distributor level.
- Applicants do not possess, and the transaction will not create, market power in wholesale video programming or retail video programming distribution.
- Applicants' economists demonstrated early in the proceeding the absence of credible concerns, and they went on to provide convincing responses to the opponents' economists who purported to show otherwise. (Several of the opponents' economists failed even to engage meaningfully with the evidence presented in the first round of reports submitted by Applicants' economists.) In short, Applicants' economists demonstrated that the transaction will lead to tangible benefits to consumers and competition and will not provide the combined entity with the ability or incentive to foreclose competition from competing programming suppliers or distributors.

- In any event, sufficient regulatory safeguards currently exist to address any legitimate concerns regarding program access, retransmission consent, and program carriage, and to the extent that parties are unhappy with those regimes there are open industry-wide proceedings in which those concerns should be ventilated and addressed.
- Online video is a nascent, competitive, fragmented, and incredibly dynamic marketplace in which the dangers of anticompetitive conduct are very low, and there are far more risks than benefits to saddling one marketplace participant with restrictive conditions that do not apply to its competitors, including several larger competitors.⁸

Opponents to this transaction utterly fail to refute these basic facts regarding the relevant markets and Applicants' substantial legal and economic analyses, relying instead on the simplistic and misplaced view that this transaction is unprecedented in size and scope and therefore must, by definition, be contrary to the public interest. This assertion is readily refuted by the following chart, which shows that the proposed transaction is not particularly large, and the Commission has approved far larger transactions.⁹

⁸ Any transaction condition in this area has great potential to prove as foolhardy (but perhaps not as benign) as the instant messaging condition adopted in the AOL-Time Warner transaction a decade ago at the urging of some of the same parties that now criticize this transaction. *See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547 ¶¶ 223-232 (2001). The Commission subsequently abandoned that hard-fought condition not long after imposing it. *See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 18 FCC Rcd 16835 ¶ 14 (2003).

⁹ The sources for the information presented in this chart may be found in Appendix B.



Reasoned analysis, not overheated rhetoric, should govern the Commission’s review here.

From the outset, the Commission has stressed its interest in conducting its review “in as timely and efficient a manner as possible.”¹⁰ The processes prescribed by the Commission have created an extremely comprehensive record. That record must now be assessed, and a decision made. Applicants respectfully tender Appendix A as a ready aid to sorting through that record. In sum, the facts and arguments presented by the Applicants, confirmed by searching analysis submitted by highly-respected economists, supported by dozens of interested stakeholders and

¹⁰ Public Notice at 5.

more than 1,000 personalized letters, combined with the wide-ranging and concrete public interest commitments bolstered by several agreements with credible third parties, altogether present an overwhelming case for approval.

III. THE JULY 21 RESPONSES LARGELY RAISE ARGUMENTS PREVIOUSLY REBUTTED BY APPLICANTS, AND THE COMMISSION SHOULD ACCORD THEM NO WEIGHT.

Because many of the July 21 Responses raise few, if any, new issues and fail to respond meaningfully to the arguments of other commenters, the Commission need not concern itself with them. The purpose of the response stage of the pleading cycle is evident from its name: parties and commenters are *to respond* to comments made in the initial round of the pleading cycle.¹¹ Several of the commenters who filed responses, however, do little more than repeat and repackage their prior arguments. For example, Greenlining Institute merely re-hashes much of its earlier filing.¹² Bloomberg likewise repeats many of its arguments about wholesale bundling of networks,¹³ channel location,¹⁴ and online video.¹⁵ Applicants have already fully addressed and refuted these and other claims of competitive harm in their previous filings.¹⁶ Although

¹¹ Stressing its desire “to consider fully all substantive issues regarding the Application in as timely and efficient a manner as possible,” the Commission directed in bold typeface that “**petitioners and commenters should raise all issues in their initial filings**” and emphasized that “[n]ew issues may not be raised in responses or replies.” *Public Notice* at 5 (emphasis in original).

¹² Compare, e.g., Greenlining Institute (“Greenlining”) Response at 7 with Greenlining Petition at 32 (repeating its prior arguments about wholesale bundling) and Greenlining Response at 8-9 with Greenlining Petition at 38-40 (repeating its prior arguments about online video). Unless otherwise noted, all citations to responses herein are to those filed in MB Docket No. 10-56 on or about July 21, 2010, and all citations to comments or petitions herein are to those filed in MB Docket No. 10-56 on or about June 21, 2010.

¹³ Compare Bloomberg Response at 23 with Bloomberg Petition at 46.

¹⁴ Compare Bloomberg Response at 2-8 with Bloomberg Petition at 59-66.

¹⁵ Compare Bloomberg Response at 12-22 with Bloomberg Petition at 41-44.

¹⁶ See Opposition and Response at 173-175, 180-204, 211-218; Mark Israel & Michael L. Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction, MB Docket No. 10-56, at 139-142, 145-175 (filed July

Bloomberg cites to other comments in support of its positions, that is nothing more than self-amplification, as Bloomberg largely cites to the filings of a group of parties with which Bloomberg is collaborating in this proceeding.¹⁷ The Commission should discount these “hall of mirrors” tactics.

The July 21 Responses also continue to raise industry-wide issues beyond the scope of this proceeding that should not and cannot be resolved in the context of this transaction. The Commission’s precedent establishes that its review should be limited to transaction-specific issues; industry-wide issues subject to general rulemakings or other proceedings should not be considered.¹⁸ For example, commenters raise concerns about general practices relating to net neutrality,¹⁹ retransmission consent and program access,²⁰ program carriage,²¹ and cable rates.²² The Commission should decline to address such industry-wide issues in the context of this

21, 2010) (“Israel/Katz Reply Report”); Public Interest Statement at 122-126; *see generally* Israel/Katz Online Video Report.

¹⁷ Bloomberg is a member of the Coalition for Competition in the Media. Other members include CWA; Free Press; Greenlining Institute; Media Access Project; OPASTCO; WealthTV; and Writers Guild of America, West. *See* <http://www.competitioninmedia.org>. Not surprisingly, these groups account for the vast majority of comments in which Bloomberg purports to find corroborating evidence in support of its position.

¹⁸ *See* Public Interest Statement at 35; Opposition and Response at 9-16.

¹⁹ *See, e.g.*, Bloomberg Response at 12, 15-16; New Jersey Division of Rate Counsel (“NJ Rate Counsel”) Response at 11-14. Significantly, Rep. Rick Boucher, Chairman of the House Energy and Commerce Subcommittee on Communications, Technology, and the Internet, has “urge[d] that the Commission not impose any conditions in its order approving the Comcast-NBC Universal combination regarding network openness.” He noted that any such regulation “is best left to the multiparty negotiations, legislation and Commission proceedings of general applicability” because any such principles “should have universal application to all broadband providers and that it would be highly inappropriate to impose network openness requirements on a single broadband provider prior to the time that rules are applicable across the industry.” Letter from Rick Boucher, U.S. House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56, at 2-3 (Aug. 2, 2010).

²⁰ *See, e.g.*, ACA Response at 5-10; Bloomberg Response at 23-29; Greenlining Response at 7; Illinois Attorney General Response at 4; NJ Rate Counsel Response at 33.

²¹ *See, e.g.*, Bloomberg Response at 3-14; Greenlining Response at 7-8.

²² *See, e.g.*, Illinois Attorney General Response at 4; NJ Rate Counsel Response at 13-16, 23-24.

transaction review and instead properly consider such concerns, if at all, in industry-wide proceedings.

Other commenters used the second stage of the pleading cycle – reserved for “responses to comments and oppositions to petitions [to deny]”²³ – to file opening comments.²⁴ To the extent these filings attempt to raise new issues, propose a raft of new conditions,²⁵ or seek denial of the transaction,²⁶ their comments contravene the Commission’s ruling that “[n]ew issues may not be raised in responses or replies”²⁷ and its instructions to “raise all issues in their initial filings.”²⁸ These efforts to introduce new arguments and new conditions are untimely and should be accorded no weight.

²³ See *Public Notice*; see also *Commission Announces Revised Pleading Schedule For Its Review of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign and Transfer Control of FCC Licenses*, MB Docket No 10-56, Public Notice, DA 10-636 (rel. May 5, 2010).

²⁴ Commenters in this category include: American Community Television (“ACT”); the Illinois Attorney General; the National Association of Black Owned Broadcasters (“NABOB”), and NJ Rate Counsel.

²⁵ See ACT Response at 5-10; NABOB Response at 5-7; NJ Rate Counsel Response at 39-43. While all of the newly proposed conditions are ill-timed and unwarranted, NABOB’s are the most puzzling, seeking (among other things) that Comcast be required to sell four percent of its cable systems to companies owned and controlled by African Americans, notwithstanding that the proposed transaction involves no acquisition of additional cable systems, and notwithstanding Applicants’ strong record of diversity and substantial undertakings to increase the diversity of programming owned by and targeting African Americans. See generally *Opposition and Response* at 35-49 and 228-247.

²⁶ See Illinois Attorney General Response at 2, 6.

²⁷ *Public Notice* at 5 (citing 47 C.F.R. §1.45(c)).

²⁸ See *id.*; see also *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Order, MB Docket No 10-6, DA 10-1087 (MB rel. June 17, 2010) (explaining that “the Commission’s admonition to petitioners and commenters to raise all issues in their initial filings was not ‘atypical.’ it reflects the longstanding requirement in Section 1.45(c) of the Commission’s Rules that, to allow the target of a petition to deny the opportunity to respond to all allegations against it, a ‘reply shall be limited to matters raised in the opposition. . . .’”).

IV. APPLICANTS HAVE DEMONSTRATED THAT THE PROPOSED TRANSACTION FURTHERS THE PUBLIC INTEREST, AND NONE OF THE JULY 21 RESPONSES CHALLENGES THE JOINT VENTURE’S BENEFITS IN ANY MEANINGFUL WAY.

Notwithstanding that the vast majority of issues raised by commenters should be discounted for the reasons stated above, Applicants will briefly respond to certain key assertions and arguments about the transaction’s benefits to reinforce the point that the issues raised have already been answered in Applicants’ prior filings and to correct factual errors and misleading statements.

Applicants’ Public Interest Statement, their Opposition and Response, Dr. Rosston’s Benefits Report, and Drs. Rosston and Topper’s Reply Report²⁹ provide full substantiation of the transaction’s benefits. In these filings, Applicants detailed the kinds of benefits that will flow from the proposed marriage of content and distribution, such as increased investment, accelerated innovation, and stimulated competition.³⁰ As Dr. Rosston explained, by vertically integrating with NBCU, Comcast will be able to overcome some of the transactional friction that has delayed and continues to delay the deployment of innovative services that consumers demand. Dr. Rosston presented substantial evidence that the initial deployment of VOD, earlier release of movies for VOD, Fancast Xfinity, and advanced advertising was neither as quick nor as extensive as it could have been.³¹ Post-transaction, Comcast’s access to content – on arm’s-length terms, but with less contractual friction – will lead to increased investment in

²⁹ Gregory L. Rosston & Michael D. Topper, *The Proposed Comcast–NBCU Transaction: Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition*, MB Docket No. 10-56 (July 21, 2010) (“Rosston/Topper Reply Report”).

³⁰ Opposition and Response at 25-33, 56-79; Rosston Benefits Report ¶¶ 10-14, 48-50, 56-70; Rosston/Topper Reply Report ¶¶ 6-13, 14-25.

³¹ See Rosston Benefits Report ¶¶ 24-48.

programming, accelerated deployment of new services, and more efficient and effective experimentation with new services.³² The combined entity's acceleration of investment in and deployment of innovative products and services should stimulate competitive programmers and multichannel video programming distributors ("MVPDs") to follow suit.³³ These and related showings have not been rebutted.

Applicants also showed that benefits will flow from the tangible and verifiable commitments that Applicants have made to localism, diversity, and programming availability. Applicants have made concrete their commitments to preserve and enrich free over-the-air broadcasting and to enhance local news and public affairs programming by reaching agreements with both the NBC Television Affiliates and the Affiliates Associations for ABC, CBS, and Fox.³⁴ Applicants have also undertaken substantial commitments to invest in and increase the availability of diverse and independent programming, enhancing and expanding their initial commitments in this area.³⁵

Given the weight of the evidence supporting the substantial consumer benefits of the proposed transaction, it is no surprise that very few of the July 21 Responses attack the transaction's benefits. Those that do criticize the benefits offer only conclusory statements that

³² See Rosston Benefits Report ¶ 50; see also Rosston/Topper Reply Report ¶ 12.

³³ See Rosston Benefits Report ¶ 8; Opposition and Response at 76-79.

³⁴ Opposition and Response at 18-25.

³⁵ Opposition and Response at 33-55. NABOB criticizes Applicants for spending \$6.3 million on advertising with African American targeted media last year. NABOB, however, ignores Applicants' commitment to *increase spending* on advertising with minority-owned media by at least \$7 million. See *id.* at 262. Other criticisms of Applicants' commitments to enhance diverse programming similarly fall short and have been refuted. See, e.g., Opposition and Response at 35-40, 45-49; see also Letter from William Griffin, Chairman and CEO, Hip Hop On Demand, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Aug. 17, 2010) (rejecting calls from certain commenters to impose mandatory channel set-asides on Comcast cable systems and praising Applicants' commitments to add diverse programming, attempt to sell a Los Angeles station to minority bidders, and create a \$20 million fund to support minority-owned "new media" ventures).

merely echo their prior assertions and offer no new evidence or credible rationale to support their claims. For instance, Greenlining Institute alleges that Applicants have made an “unsubstantiated claim of public benefit,” and have not demonstrated that the public interest, including diversity, localism, and competition, will be promoted through this transaction.³⁶ Yet Greenlining Institute does not even purport to support this allegation with evidence; it merely summarizes what other parties stated in their initial comments. By contrast, in their Opposition and Response, filed on the same day, Applicants made an affirmative showing – with specific additional evidence, including expert economic analysis – of the benefits to diversity, localism, competition, investment, and innovation, rebutting Greenlining Institute and all of the comments to which it cites.³⁷ In fact, since July 21, the Commission has posted even more letters in support to the docket in this proceeding, including letters from diversity groups,³⁸ Members of Congress,³⁹ programmers,⁴⁰ elected officials,⁴¹ community groups,⁴² business organizations,⁴³

³⁶ Greenlining Institute Response at 4-6, 10.

³⁷ Opposition and Response at 16-79.

³⁸ Many of the letters in support are dated before the July 21 filing deadline, but they were not publicly available on the Commission’s Electronic Comment Filing System until the week of July 21. *See, e.g.*, Letter from Moises Perez, Executive Director, Alianza Dominicana, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Peter Wong, Chairman, Asian Pacific American Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Scott Gray, President and CEO, Minneapolis Urban League, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 7, 2010); Letter from Dawud Walid, Executive Direction, Council on American-Islamic Relations, Michigan Chapter, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 22, 2010); Letter from James Kelly, President & CEO, Urban League of Metropolitan Seattle, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 18, 2010); Letter from Margarita Chaidez, President, Unidos por el Pueblo, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 19, 2010).

³⁹ *See, e.g.*, Letter from Thirteen Hispanic Members of Congress, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 22, 2010); Letter from Eleven Members of Congress, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 28, 2010) (supporting Applicants’ commitment to diversity).

⁴⁰ *See, e.g.*, Letter from Sean P. McGrail, President and CEO, New England Sports Networks, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 7, 2010); Letter from Bill Trevarthen, Executive Director, Michigan Government Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 10, 2010); Letter from William V. Jennings, Jr., Station Manager, Bedford Community Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010); Letter from Julienne Turner, Executive

and advertisers.⁴⁴ These letters further support Applicants’ demonstration of public interest benefits and attest to Applicants’ positive track records in the communities they serve.

Some commenters attempt to argue, contrary to the record in this proceeding, that the benefits of the transaction are not real and substantial. For example, with respect to independent programming, Writers Guild of America, West (“WGAW”) denigrates Comcast’s agreement with the Independent Film & Television Alliance (“IFTA”) as insufficient because “the agreement does not provide a guarantee that any amount of independently-produced

Director, Concord Community Television, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Mar. 16, 2010).

⁴¹ See, e.g., Letter from Bruce Patterson, Michigan State Senate, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Curry Todd, Tennessee House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 2, 2010); Letter from John DeStefano, Jr. Mayor, New Haven, CT, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 3, 2010); Letter from Roy Schmidt, Michigan House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 10, 2010); Letter from James H. Merrill, South Carolina House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Denny Doyle, Mayor, Beaverton, OR, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Glenn F. McConnell, President Pro Tempore, South Carolina Senate, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010).

⁴² See, e.g., Letter from Brian A. Gallagher, President and CEO, United Way Worldwide, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from David Bukowski, Executive Director, Disability Advocates of Kent County, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Joy C. Newton, Executive Director, Chairman’s Leadership Forum, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Katherine Cabaniss, Executive Director, Crime Stoppers, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Jennifer O’Flannery Anderson, President and CEO, United Way of Broward County, FL, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Kathryn S. Rossow, Executive Director, Big Brothers Big Sisters of Berrien & Cass, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010).

⁴³ See, e.g., Letter from Frederic Kurkjian, Senior Vice President, Technicolor USA, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 8, 2010); Letter from Matthew Aden, Vice President, Harmonic, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Terry Hartwick, President & CEO, North Little Rock Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Vail P. Garvin, Executive Director, Central Bucks County Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 30, 2010); Letter from Ed Lazarus, President, Branford Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010).

⁴⁴ See, e.g., Letter from Phil Cowdell, CEO, MindShare N.A., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Nigel Morris, CEO, Aegis Media, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010).

programming will be aired on [Comcast-owned] channels” and proposes that the Commission require a set-aside for independent programming on NBCU broadcast and television networks.⁴⁵

WGAW, however, identifies no legitimate transaction-specific harm that would justify the imposition of such a condition on one company – nor can it. Applicants have agreed to devote substantial resources to enhancing the opportunities for independently-produced programming to be considered for NBCU and Comcast platforms, including providing \$1.5 million per year in development funds and providing opportunities to pitch programming ideas directly to NBCU creative executives.⁴⁶ These efforts are designed to facilitate the development of compelling programming from independent producers who might otherwise not have such opportunities. In the highly competitive video programming environment in which NBCU operates, NBCU executives will have every incentive to ensure that promising programming concepts from independent producers have the opportunity to be developed and tested in the marketplace. Further, Applicants note that the Commission explicitly repealed any requirements on the source of programming almost twenty years ago, and the reasoning for that decision still stands today.⁴⁷

⁴⁵ WGAW Response at 4, 6.

⁴⁶ Opposition and Response at 41-42.

⁴⁷ *See In the Matter of Evaluation of the Syndication and Financial Interest Rules*, Second Report and Order, 8 FCC Rcd 3282 (1993); *see also* Opposition & Response at 239 n.803 (quoting Commissioner McDowell as explaining in a 2008 speech regarding Fin/Syn, “[p]rofound changes have occurred since 1992. Today, the average consumer has a choice of at least three subscription video providers, and sometimes five. Cable companies pass over 92 percent and serve approximately 60 percent of households. DirecTV and Echostar . . . serve over 30 million consumers and have grown to a 30 percent market share among MVPDs. Now phone companies are in the video business too The reach of the broadcast networks has fallen far below the 62 percent of the prime-time audience cited by the court in 1992. During the current season, the combination of 77 ad-supported cable networks posted higher ratings among the key 18 to 49 demographic than the broadcast networks In 1992, there was no public Internet, let alone Internet video.”).

WGAW also claims that the reduction in transactional friction will result in the new NBCU paying an unfair price for content and shifting economic benefits to the joint venture at the expense of content producers. WGAW’s counter-intuitive contention is that negotiation friction, which slows the development and deployment of innovative platforms, determines fair market value.⁴⁸ As Drs. Rosston and Topper showed in their Reply Report, WGAW is incorrect.

At the outset, Drs. Rosston and Topper note that “WGAW provides no economic analysis or evidence to support its claim, and in fact there is no theoretical or factual basis for th[is] claim.”⁴⁹ Moreover, WGAW’s claim “does not make economic sense because negotiation frictions *prevent* firms from agreeing upon a fair market price.”⁵⁰ Further, “WGAW’s claim ignores the fact that the video marketplace is highly competitive; . . . [n]either party to the transaction has market power nor will the transaction give them market power or result in the exclusion of any buyer or seller from the marketplace.”⁵¹ Finally, WGAW’s claim is contrary to the terms of the executed transaction documents. The joint venture agreement requires that the prices that Comcast pays for NBCU content cannot be less favorable to the joint venture than those the joint venture would obtain from comparable transactions with unaffiliated third parties. Thus, “NBCU is protected against the risk that the price of any transaction with Comcast will be at ‘below market rates.’”⁵² WGAW’s calls for imposing a “fair market value” condition are

⁴⁸ WGAW Response at 7.

⁴⁹ Rosston/Topper Reply Report ¶ 26.

⁵⁰ *Id.* ¶ 11 n.13 (emphasis added).

⁵¹ *Id.* ¶ 27.

⁵² *Id.* ¶ 28.

unnecessary and would draw the Commission into dynamic content negotiations that are best conducted by private parties.

With respect to public, educational, and government (“PEG”) programming, American Community Television (“ACT”) claim that the Applicants’ commitments would actually disadvantage PEG programming, rather than promote and enhance it.⁵³ ACT’s criticism largely duplicates the criticisms of other commenters in the initial comment round, and has been refuted by Applicants in their July 21 Opposition and Response.⁵⁴ ACT first urges the Commission to place a condition on the transaction to require carriage of PEG channels on the basic tier.⁵⁵ As Applicants explained in their Opposition and Response, ACT’s suggestion is unnecessary and contrary to local and federal law: the national commitment ACT seeks for carriage on a basic tier (digital or analog) would conflict with existing franchise agreements, and such a commitment is inappropriate given that the Communications Act does not impose PEG channel placement obligations for the large and growing number of cable systems that are rate-deregulated.⁵⁶

ACT also raises concerns that Comcast will provide access to PEG channels on its VOD platform in lieu of linear carriage or will develop a separate On Demand and On Demand Online platform just for PEG channels.⁵⁷ Neither of those concerns is legitimate. First, as Applicants confirmed in their Opposition and Response, Applicants’ intention in tendering its commitment

⁵³ ACT Response at ii, 2.

⁵⁴ See Opposition and Response at 307-311.

⁵⁵ ACT Response at 5-6.

⁵⁶ Opposition and Response at 307-09.

⁵⁷ ACT Response at 8-9.

was to provide a platform that is *in addition to* its traditional carriage of PEG channels on cable systems.⁵⁸ Second, while Comcast is not currently able to provide PEG VOD programming on a community-by-community basis, as a result of Commitment # 12, Comcast will test potential solutions that might allow for the cost-effective delivery of PEG programming on a more targeted basis.⁵⁹ In short, Applicants intend to work with local communities to develop VOD solutions that work for all concerned. Rollout of PEG services both On Demand and On Demand Online will enhance customers' access to PEG programming, and calls for regulations or conditions regarding how these yet-to-be-developed platforms are configured are both premature and unnecessary.

With regard to the Gay & Lesbian Alliance Against Defamation's ("GLAAD") suggestion that the merger should be viewed with a "critical eye" in light of NBCU's programming history on issues of importance to the LGBT community,⁶⁰ it is worth noting that broadcast licensees have broad discretion concerning their selection of programming responsive to their communities. They are required to contribute to the overall discussion of community issues but are not required or expected to respond to the issues of every individual community group.⁶¹ In any event, GLAAD also commends NBCU for "show[ing] some improvement" and

⁵⁸ Opposition and Response at 54. ACT also noted that Applicants technically omitted "public access" from its description in Commitment # 12. Applicants said: "To enhance localism and strengthen educational and governmental access programming, Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing." *Id.* Applicants clarify that, in their language, their intention was to include public access.

⁵⁹ *Id.* at 55.

⁶⁰ See Letter from Jarrett T. Barrios, President, GLAAD, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 20, 2010) ("GLAAD Response").

⁶¹ See *In Re License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 3847, 3848 (1990), *aff'd on recon.*, 6 FCC Rcd 4191 (1991) (rejecting petition to deny license renewal for alleged failure to provide issue responsive programming to lesbian and gay communities, among others); see also *In Re License Renewal Applications of Certain Commercial*

for engaging the organization with respect to the concerns of the LGBT community.⁶² GLAAD also states that it is “encouraged” by Comcast’s involvement in the NBCU transaction given Comcast’s long history of involvement with the LGBT community.⁶³

V. APPLICANTS HAVE DEMONSTRATED THAT THE TRANSACTION WILL NOT HARM COMPETITION OR THE PUBLIC INTEREST AND NONE OF THE JULY 21 RESPONSES PROVIDES PERSUASIVE EVIDENCE TO THE CONTRARY.

A. The July 21 Responses Provide No Evidence That the Transaction Will Facilitate Anti-Competitive Foreclosure of Competing MVPDs.

Largely reiterating their initial comments and summarizing other party’s filings, Greenlining Institute and the American Cable Association (“ACA”) again allege that the transaction will cause harm with regard to retransmission consent and the wholesale provision of programming.⁶⁴ For example, Greenlining Institute makes the same claims regarding harms on July 21 as it did on June 21.⁶⁵

Applicants have already fully addressed and refuted these arguments in their Opposition and Response. As Applicants detailed in that filing, the combined entity will have no increased ability or incentive to pursue anticompetitive foreclosure strategies against competitive MVPDs because it will not have market power to do so, and foreclosure would not cause a sufficiently

Radio Stations Serving Philadelphia Pennsylvania, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MB 1993) (same).

⁶² GLAAD Response at 4. Indeed, as GLAAD notes, NBCU’s network Bravo “is credited by many with building its identity on programming successes like *Queer Eye for the Straight Guy* which launched a new wave of reality programming that reflected how LGBT culture influences mainstream culture.” *Id.* at 5.

⁶³ *Id.* at 5.

⁶⁴ NJ Rate Counsel and the Illinois Attorney General, who, as noted above, commented for the first time on July 21, also recite alleged harms that were already raised by other commenters, and to which Applicants have already responded. *See* NJ Rate Counsel at 18-20, 24-26; Illinois Attorney General at 4-5.

⁶⁵ *Compare, e.g.,* Greenlining Response at 7 *with* Greenlining Petition at 32 (repeating its prior arguments about wholesale bundling).

high rate of diversion from the competing MVPD to Comcast's cable service to offset the revenues that the combined entity would lose.⁶⁶

With respect to retransmission consent, Applicants have demonstrated that any attempt by the joint venture to withhold retransmission consent for NBCU O&O stations from competing MVPDs as part of a foreclosure strategy would be unprofitable.⁶⁷ To provide further assurances, Applicants have also offered to extend key aspects of the program access rules to the rules governing retransmission consent.⁶⁸ As to program access, Applicants have established that the transaction will not enhance Comcast's incentive or ability to engage in foreclosure strategies with respect to licensing national cable networks to rival MVPDs.⁶⁹ Of course, the program access rules provide an additional safeguard against any competitive harm, and post-transaction, the NBCU cable networks will be subject to these rules for the first time. With respect to ACA's concerns about bundling of networks, Applicants have shown that criticism of wholesale transactions between network owners and MVPDs is neither new nor specific to the proposed transaction.⁷⁰

Although ACA attempts to argue that these issues are transaction-specific, the reality is that these are industry-wide issues that ACA itself has repeatedly raised in pending Commission

⁶⁶ See Opposition and Response at Section IV.C; see generally Israel/Katz Vertical Foreclosure Report.

⁶⁷ Opposition and Response at 133-153; Israel/Katz Vertical Foreclosure Report ¶¶ 4, 80, 85, 131-132.

⁶⁸ See Public Interest Statement at 121.

⁶⁹ Opposition and Response at 153-163; Israel/Katz Reply Report ¶¶ 77-79.

⁷⁰ Opposition and Response at 211-218.

proceedings.⁷¹ In fact, ACA’s complaints in its advocacy before the Commission on wholesale bundling of networks concern numerous entities unrelated to the transaction.⁷²

B. The July 21 Responses Provide No Evidence That the Transaction Will Facilitate Anti-Competitive Foreclosure of Competing Video Programming.

Certain commenters repeat their assertions that the transaction will facilitate anti-competitive foreclosure of competing video programming.⁷³ As noted above, however, these commenters offer no new evidence or analysis to support their concerns, which Applicants have convincingly refuted.

Applicants have already demonstrated that neither the facts nor economic theory support claims that the combined entity will pursue anti-competitive foreclosure strategies by withholding distribution opportunities from competing unaffiliated content providers.⁷⁴ Especially in light of the intensely competitive market for MVPD services (as the U.S. Court of Appeals for the D.C. Circuit recently recognized⁷⁵), the combined entity will not have the ability or the incentive to pursue such strategies, which would not only be unprofitable but detrimental

⁷¹ See, e.g., ACA Comments, MB Docket No. 10-71 (May 18, 2010) (advocating for industry-wide changes to the retransmission consent rules); ACA Comments, MB Docket No. 07-198 (Jan. 3, 2008) (advocating for industry-wide changes to the program access and retransmission consent rules) (“ACA 07-198 Comments”). A survey of ACA’s website demonstrates its longstanding industry-wide concern about each of the issues it raises in the instant proceeding. See, e.g., ACA, Wholesale Unbundling, at http://www.americancable.org/issues/page/Wholesale_Unbundling (“What is ACA Doing About Wholesale Bundling? Currently, the FCC is reviewing whether revisions to the wholesale cable programming and retransmission consent rules would provide consumers with more choice and value. ACA has presented the FCC with multiple filings to demonstrate how the current marketplace harms both independent cable operators as well as consumers.”)

⁷² See, e.g., ACA 07-198 Comments at 7 (criticizing the alleged bundling practices of seven other cable network owners *besides* NBCU).

⁷³ See, e.g., Bloomberg Response at 3-14; Greenlining Response at 8.

⁷⁴ See generally Opposition and Response at Section IV.D.

⁷⁵ *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).

to Comcast’s MVPD business.⁷⁶ Furthermore, the record evidence shows that the opposite of what critical commenters assert is true – Comcast is *more* likely than other MVPDs to carry non-Comcast networks that operate in the same programming categories as Comcast networks.⁷⁷

With respect to Bloomberg’s claims in particular, Applicants have thoroughly debunked Bloomberg’s theory of foreclosure of competing video programming.⁷⁸ Applicants demonstrated that Bloomberg’s assertions represent an attempt to extract superior and unjustified terms of carriage from Comcast (as compared to the market-based terms that Bloomberg has negotiated with Comcast and other MVPDs), not only with regard to channel location but also tier placement and subscription fees.⁷⁹ In its July 21 filing, Bloomberg simply rehashes the unsupported assertions of a few other parties to support its bid to have the Commission intercede in the minutiae of Comcast’s future carriage negotiations (and ignoring the safeguards provided by the existing program carriage rules).⁸⁰ Bloomberg’s citation to WealthTV as its primary example of a network that has “already been the subject of discrimination from Comcast due to lack of affiliation”⁸¹ – notwithstanding that the Commission’s Chief ALJ found, after a full evidentiary hearing, that WealthTV “failed completely” to prove its claims of unlawful discrimination – is a telling indication that Bloomberg’s most recent comments do nothing to

⁷⁶ Opposition and Response at 164-73.

⁷⁷ Israel/Katz Reply Report ¶¶ 149-53.

⁷⁸ See Opposition and Response at 164-73.

⁷⁹ See *id.* at 173-75.

⁸⁰ Bloomberg Response at 2-12.

⁸¹ *Id.* at 8 & n.22.

advance the Commission’s consideration of the record.⁸² In no transaction that Applicants have identified – indeed, in no Commission proceeding – has the Commission applied an evidentiary standard that assigned weight to multiple parties simply citing each other’s unsupported and factually erroneous arguments. As Applicants and others have noted, to the extent Bloomberg or other commenters have concerns about the effectiveness and operation of the program carriage rules, those concerns are best addressed, if at all, in the Commission’s relevant pending rulemaking proceeding.⁸³

C. The July 21 Responses Provide No Evidence That the Transaction Will Facilitate Anti-Competitive Effects in the Nascent Online Video Distribution Business.

Certain parties again raise arguments that Applicants will have the ability and incentive to disadvantage or foreclose unaffiliated online video distributors by refusing to provide content or by providing it on discriminatory terms. These parties, however, do not raise any new issues or provide any new evidence that Applicants have not fully addressed. For instance, Bloomberg largely restates its previous arguments and those lodged in other parties’ petitions and comments,

⁸² Bloomberg commits a similar error in repeating MASN’s complaints about its channel placement on Comcast systems in Washington, DC. *See id.* at 9-10. Applicants have refuted MASN’s claims. *See Opposition & Response* at 176-78; *see also* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Aug. 13, 2010) (describing the practical basis of existing channel locations and the operational difficulties and disruption to customers involved in changing channel locations).

⁸³ *See Opposition and Response* at 13 & n.17; *see also* Letter from Doron Gorshein, CEO, America Channel to Marlene Dortch, Secretary, FCC, MB Docket No. 10-56, at 2-3 (July 21, 2010) (noting that “Comcast has taken a leadership role among MVPDs in providing opportunities for independent programmers in a challenging economic environment” and stating that “we agree with HDNet and NFL that program carriage issues are best addressed on an industry-wide basis”). Of course, Comcast’s recent experiences with the program carriage complaint process could well suggest that the program carriage reforms that are most needed are ones that facilitate the more rapid dismissal of complaints that demonstrably fail to prove unlawful discrimination, or that are barred for other reasons, such as a longstanding carriage agreement that governs the carriage at issue.

urging the Commission to “consider carefully these issues that echo Bloomberg’s concerns.”⁸⁴

These arguments, however, fail as a matter of economic theory and marketplace reality, and are inconsistent with the ways consumers use online video today and the manner in which the nascent marketplace for online video distribution is developing.⁸⁵

Applicants have demonstrated that the transaction would not harm online video distribution in Drs. Israel and Katz’s May 4 Online Video Report, and further refuted commenters’ concerns in their July 21 Opposition and Response (including the accompanying Israel/Katz Reply Report).⁸⁶ Specifically, Applicants have provided comprehensive and detailed information regarding the nascent online marketplace and fully described how the combined entity will lack the market power to implement an online foreclosure strategy because it will have a quite modest share of linear cable networks and because the “withholding of even very popular programming is not sufficient to make an online distributor lose its viability.”⁸⁷ Further, Applicants will lack the incentive to foreclose because online video is demonstrably complementary to, rather than a substitute for, traditional linear MVPD service and because foreclosure of competing online video distributors would not be profitable.⁸⁸ Those commenters

⁸⁴ See Bloomberg Response at 12-22 (discussing the arguments set forth by CFA (Cooper); MAP; Public Knowledge; EarthLink; the Alliance for Communications; DISH/EchoStar; Caucus for Producers, Writers, & Directors; AOL; Greenlining; and FACT).

⁸⁵ Opposition and Response at 181-82.

⁸⁶ See generally Israel/Katz Online Video Report; Opposition and Response at Section IV.E (discussing why the transaction will not cause anti-competitive effects in the nascent online video distribution business). It is telling that neither Bloomberg nor any other commenter seriously challenges the conclusions of Drs. Israel and Katz’s analysis, which was submitted on May 4, 2010.

⁸⁷ *Id.* at 183-84.

⁸⁸ *Id.* at 184-88; Israel/Katz Reply Report at ¶¶ 191-204.

who repeated their concerns about online video on July 21 did nothing to refute Applicants' well-supported conclusions.

D. The Issues Raised by the Public Utilities Bureau of the Illinois Attorney General's Office Have Already Been Dealt With by Applicants, and the Transaction Is Supported by Numerous Supportive Letters Filed by Elected Officials, Community Organizations, and Residents from the State of Illinois.

The Public Utilities Bureau in the office of the Attorney General of Illinois filed comments expressing concerns about the transaction's alleged negative effects on competition and consumers in Illinois.⁸⁹ The concerns raised here have already been refuted by Applicants.⁹⁰ In addition, more than 130 letters from Illinois businesses,⁹¹ community groups,⁹² elected

⁸⁹ Illinois Attorney General Response at 3.

⁹⁰ The Illinois Attorney General's comment recites the following allegations: (1) increased cable prices; (2) foreclosure of competing MVPDs; (3) harm to NBC over-the-air broadcast stations; (4) foreclosure of online video competition; (5) increased media concentration; and (6) job losses. *See id.* at 4-6. These issues have been rebutted, respectively, in Applicants' (1) Responses to Questions from Several Members of Congress at 25-26; (2) Public Interest Statement at 113-122; Israel/Katz Vertical Foreclosure Report; Opposition and Response at 128-163; and Israel/Katz Reply Report ¶¶ 11-32; (3) Public Interest Statement at 39-42; NBC Affiliates Agreement; and Opposition and Response at 18-25, 50-52; (4) Public Interest Statement at 122-126; Israel/Katz Online Video Report; Opposition and Response at 180-204; and Israel/Katz Reply Report ¶¶ 189-237; (5) Public Interest Statement at 7-10, 79-80; Responses to Questions from Several Members of Congress at 30-31; and Opposition and Response at 104-107; and (6) Responses to Questions from Several Members of Congress at 28.

⁹¹ *See, e.g.*, Letter from Thomas W. Brannam, Manager, Future Cable Electronics, LLC, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 28, 2010); Letter from Christine Lee, President, North Star Cable Construction, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 16, 2010); Letter from Maureen Kelly, Chairman, Chicago Southland Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 19, 2010); Letter from Michael A. Evans, Executive Director, Bolingbrook Area Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010); Letter from Gina Urso, Owner, Frontline Communications, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 18, 2010); Letter from Gerald J. Roper, President & CEO, Chicagoland Chamber of Commerce, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 14, 2010); Letter from Rita Unzner, Director, Home Builders Association of Greater Chicago, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Jordan Cutler, Director, Program Development, Illinois Science & Technology Coalition, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Aug. 16, 2010).

⁹² *See, e.g.*, Letter from James Keane, President and CEO, Boys & Girls Clubs of Chicago, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Christine Kenny, Executive Director, Literacy Works, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Shelley Lewis, Executive Director, Little Angels, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 11, 2010); Letter from Laura S. Thrall, President and CEO, United Way of Metropolitan Chicago, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 15, 2010); Letter from Jennifer Smith, Northern Illinois Division Director, March of Dimes, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 7, 2010);

officials (including the Mayor of Chicago),⁹³ and diversity organizations⁹⁴ that have been posted to the docket are supportive of Applicants and the proposed joint venture. This broad base of support in Illinois was also evidenced by the fact that, at the Commission’s July 13, 2010 workshop in Chicago, dozens of individuals offered specific, first-hand statements in support of Applicants and the proposed transaction. The proposed transaction will only enhance Applicants’ ability to serve consumers across Illinois and the rest of the country.

E. The Concerns Raised by the Leased Access Producers Association Are Untimely, Not Transaction-Specific, and Without Merit.

The comments recently submitted by the Leased Access Producers Association (“LAPA”) regarding the carriage of leased access programming on Comcast’s cable system in Wilmington, Delaware⁹⁵ are untimely, not transaction-specific, and not factually grounded.

Letter from Bruce Weiss, Executive Director, Test Positive Aware Network, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 20, 2010).

⁹³ See, e.g., Letter from Richard M. Daley, Mayor, City of Chicago, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Brandon W. Phelps, Illinois House of Representatives, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Edward W. Paesel, Executive Director, South Suburban Mayors & Managers Association of Illinois, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 16, 2010); Letter from Christopher J. Lauzen, Illinois State Senate, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 18, 2010); Letter from Thomas J. Durkin, Village Administrator, Village of Crete, IL, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (July 26, 2010); Letter from Timothy J. Davlin, Mayor, City of Springfield, IL, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010).

⁹⁴ See, e.g., Letter from Iris Y. Martinez, Illinois State Senator and President, National Hispanic Caucus of State Legislators, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010); Letter from Steve Brunton, Executive Director, Chinese Mutual Aid Association, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Apr. 23, 2010); Letter from Lou Rago, President, Italian American Human Relations Foundation, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (May 3, 2010); Letter from Andy Mihelich, Executive Director, Spanish Community Center of Joliet, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (Mar. 23, 2010); Letter from Sol Flores, Executive Director, La Casa Norte, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 10, 2010); Letter from Ellen Rozelle Turner, Corporate Advisor, National Forum for Black Public Administrators, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 15, 2010); Letter from Nina M. Harris, Springfield Urban League, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 21, 2010); Letter from Frank J. Aguilar, Chief Director Officer & President, Cicero Mexican Culture Committee, to Julius Genachowski, Chairman, FCC, MB Docket No. 10-56 (June 17, 2010).

⁹⁵ Comments of Leased Access Producers Association, MB Docket No. 10-56 (filed Aug. 10, 2010).

Nonetheless, in the interest of a complete record, Comcast will briefly respond to the concerns raised by LAPA.

The vast majority of LAPA’s allegations pertain to Comcast’s alleged failure to comply with its Wilmington franchise agreement. As the Commission is aware, responsibility for these matters lies squarely with the franchising authority. Contrary to LAPA’s wide-ranging and unsubstantiated contentions, Comcast is in full compliance with its franchise agreement. The franchising authority has confirmed, in writing, that “there are no outstanding items of non-compliance pending nor disputes in negotiation, between the City of Wilmington and Comcast” relating to the franchise agreement.⁹⁶ Comcast has worked closely and diligently with the City of Wilmington to ensure compliance with its franchise agreement and will continue to do so. LAPA’s claims, therefore, are baseless.

LAPA’s other concern pertains to Comcast’s requirement that LAPA’s members obtain insurance in connection with their provision of leased access programming. There is nothing about this requirement, and it is certainly not in any way targeted towards LAPA members; virtually every cable operator across the national requires some form of insurance from commercial leased access programmers. The Commission’s rules expressly permit such a requirement,⁹⁷ and the Commission has provided considerable guidance over the years about the parameters of “reasonable” insurance requirements.⁹⁸ Comcast follows the Commission’s rules

⁹⁶ Letter from Norman D. Griffiths, President, Wilmington City Council, to David Breidinger, Senior Vice President, Government and Regulatory Affairs, Comcast Cable Eastern Division (Aug. 19, 2010) (attached hereto as Appendix C).

⁹⁷ “Cable operators may impose reasonable insurance requirements on leased access programmers.” 47 C.F.R. § 76.971(d).

⁹⁸ See, e.g., *John P. Ruditis v. Time Warner Cable – St. Augustine, FL*, Memorandum Opinion and Order, 13 FCC Rcd 13882 (1998), *aff’d on recon.*, 13 FCC Rcd 22252 ¶¶ 2, 6 (1998) (general liability insurance requirement

and precedent, and its request for leased access insurance coverage from LAPA members is both lawful and reasonable.

Comcast recognizes that members of LAPA have provided leased access programming on the Wilmington cable system for over 20 years,⁹⁹ and Comcast – which has worked cooperatively with LAPA members in the past – will make every reasonable effort to work with LAPA and its members to continue their relationship. As LAPA’s concerns are neither transaction-specific nor timely raised, the Commission should not consider them in connection with its review of the NBCU transaction.

F. ACA’s Claims Concerning the Contents of Confidential and Highly Confidential Materials Are Misleading and Provide No Basis To Condition the Proposed Transaction.

As noted above, ACA reiterates points it made in its June 21 comments without offering new arguments or analysis. Unlike its fellow June 21 repeat commenters, however, ACA claims that information gleaned from Applicants’ document productions to the Commission demonstrates that the harms posed by the transaction are “even more significant and widespread” than ACA initially described. Even assuming *arguendo* that ACA’s initial showing of harm had

not unreasonable; media perils liability insurance with coverage of \$1 million not unreasonable); *Id.* ¶ 3 (noting that programming that was unrehearsed, original and included people unaware of being photographed imposed various risks on cable operator including copyright infringement and privacy violations); *Fal-Comm Productions v. TCI Cablevision of Woodhaven, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10293 ¶ 10 (1997) (“Being named as an additional insured affords TCI-W significant additional protection.”); *Frank J. Vitale v. TCI Cablevision of Woodhaven, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 2531 ¶¶ 6-7, 9 (1998), *aff’d on recon.*, 13 FCC Rcd 13441 (1998) (insurance can be required for part-time lessees; viewer may be offended, obscenity may be aired, and third party’s rights may be violated as easily in ½ hour as in 24 hours); *Lorilei Communications, Inc. v. Heritage Cablevision of California, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12073 (1999) (upholding right of cable operator to deny access for failure to produce insurance certificate that complied with operator’s notice of policy cancellation requirements), *aff’d on recon.*, 15 FCC Rcd 2917 (2000); *Fred Campbell v. Time Warner Cable*, Memorandum Opinion and Order, 13 FCC Rcd 16702 (1998), *recon. dismissed*, 13 FCC Rcd 22252 (1998) (reasonable concern that the unrehearsed and ad hoc nature of Campbell’s programming would pose liability risk that programmer did not have financial resources to back.).

⁹⁹ Comcast acquired ownership control of the Wilmington cable system in 1999.

not been fully refuted by Applicants’ Opposition & Response, ACA’s claims concerning the documents it cites are by turns hyperbolic, inaccurate, and misleading.

ACA claims that several statements contained in Applicants’ respective document productions supply evidence that NBCU’s programming assets “provide NBCU . . . with substantial market power” and constitute “‘must have’ programming that all MVPDs, including the ACA’s members, effectively must carry to be competitive.”¹⁰⁰ The statements that ACA cites, however, do not support its claims. Even considered in isolation, these statements at most suggest that the Applicants believe that NBCU’s programming assets have economic value and offer quality content.¹⁰¹ Needless to say, such statements are not evidence of market power, much less of any potential for anticompetitive foreclosure.¹⁰²

When considered in context,¹⁰³ the documents that ACA cites demonstrate that developments since 2006 have made it especially unlikely that a foreclosure strategy involving NBCU content would be profitable. Over the past four years, the documents note, {{

¹⁰⁰ ACA Response at 4-5.

¹⁰¹ *Id.* at 6-8. {{

}} *Id.* at 6.

¹⁰² In a similar vein, ACA cites statements that highlight {{

}} *Id.* at 8 & n.19; 53-COM-00000058. Neither of these statements supplies any support for ACA’s contention that the proposed transaction is designed to enhance “market power and the potential to execute anticompetitive strategies.” *Id.* at 8 (internal quotation marks omitted).

¹⁰³ Of the thousands of documents that Applicants have produced, ACA cites only seven documents prepared by GE/NBCU and two prepared by Comcast. (Three documents cited by ACA bear Comcast document control numbers, but the information contained in one of these (31-COM-00000569) was prepared by GE/NBCU.

}}¹⁰⁴ Other documents produced by NBCU to the Commission similarly {{

}}¹⁰⁵ ACA does not undertake to address these facts that undermine its foreclosure theory.

Other documents featured in ACA’s pleading likewise fail to support the propositions for which ACA cites them. For example, ACA suggests that an NBCU document dated July 30, 2009 “confirms th[e] conclusion” that programming carried by NBCU’s O&Os and network affiliates constitutes “must have” programming *for MVPDs*.¹⁰⁶ The document says nothing of the kind. Instead, it states that {{

}}¹⁰⁷ Nor does ACA provide any basis for the Commission to find that the NBCU cable networks should be considered “must have” for the purposes of fashioning a far-reaching program access condition, as ACA urges.¹⁰⁸

¹⁰⁴ See 39nbcu0000003; 39nbcu0005863.

¹⁰⁵ For example, in an NBCU document that ACA cites to show NBCU’s supposed market power, NBCU states that, {{

}} 39nbcu0005852. Indeed NBCU’s concern about the viability of the broadcast network is conspicuous throughout its regularly-prepared business plans. See, e.g. 39nbcu0008685 {{

}}); 29nbcu0013781 ({{
}}); 29nbcu0013784 ({{
}}); 28nbcu0000429 ({{

}}); 28nbcu0000434 ({{
}}).

¹⁰⁶ ACA Response at 5.

¹⁰⁷ See 39nbcu0000059. {{

}}

¹⁰⁸ ACA cites to a single Comcast document {{
}} See ACA Response at 7 (citing 31-COM-00000332). As discussed more fully below, it would be inappropriate to regard this document as reflecting the plans of Comcast management with respect to the proposed transaction.

In fact, any definition that treats as “must-have” the six NBCU cable networks identified as such by ACA¹⁰⁹ – USA, Syfy, MSNBC, CNBC, Bravo, and Oxygen (along with the NBC national broadcast network and the Comcast regional sports networks (“RSNs”)) – would logically require *scores* of other cable networks to be considered “must have” as well.¹¹⁰ Moreover, ACA’s contention in this proceeding is contrary to its own assertion to the Commission only two years ago that all but four of those NBCU networks are not “must have” at all but rather “less desired (or *undesired*) channels.”¹¹¹

ACA also cites a 2008 NBCU document stating that {{

}} as evidence that “NBCU possess[es] significant market power by virtue of its O&Os . . . [and] wields that power against MVPDs to solidify and extend the power and reach of its cable programming networks.”¹¹² Again, the facts belie this claim.

{{

}} As

¹⁰⁹ ACA Response at 7.

¹¹⁰ See Mark Israel & Michael L. Katz, “Competitive Effects of the Comcast-NBCU-GE Transaction,” at 3 (July 28, 2010) (attached to Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 29, 2010)) ({{
}}). {{
}}

¹¹¹ ACA 07-198 Comments at 5-6 (listing MSNBC, CNBC, Syfy, and Bravo in the “less desired (or *undesired*)” category, along with Chiller, Sleuth, and NBCU’s additional Olympics programming) (emphasis in original).

¹¹² ACA Response at 5-6 & nn.11–12.

Applicants previously explained, NBCU does not force any MVPDs to select any particular combination or bundle of channels, and NBCU generally will offer any of its non-broadcast networks on a standalone basis and negotiate a rate that reflects the standalone value of any such networks.¹¹³

ACA also argues that NBCU’s proposal to {{

}}¹¹⁴ As a

threshold matter, this proposal, which predates the transaction, does not present transaction-specific issues. Furthermore, there is no evidence that NBCU’s proposal {{

}}. {{

}}

ACA’s pleading is also replete with efforts to mischaracterize evidence of pro-competitive benefits as evidence of anti-competitive harms. ACA argues, for instance, that a document discussing “[l]ocal clusters of Comcast and NBCU programming” is evidence that the combination of Comcast RSNs and NBC O&O stations will create horizontal competitive harms.¹¹⁵ The sole document on which ACA relies for this argument is {{

¹¹³ See Opposition and Response at 213.

¹¹⁴ *Id.* at 16-17 & nn.43-44.

¹¹⁵ *Id.* at 13-15. To support its clustering arguments, ACA purports to cite to “numerous Comcast internal documents,” but all citations are to a single document with multiple pages (31-COM-00000298 – 31-COM-00000343).

}} in mid-2008.¹¹⁶ It would be inappropriate to regard this document – created at least {{
}} – as reflecting the plans of Comcast management with respect to the proposed transaction. More fundamentally, the benefits to combining Comcast RSNs and NBCU O&O stations that the document identifies stem from transaction-specific synergies, not from any reduction in competition. ACA cites a statement that {{

}} as evidence of anticompetitive harm.¹¹⁷ The very page that ACA cites, however, describes the *pro*-competitive ways in which a combined Comcast-NBCU might improve its profitability: namely, {{

}}¹¹⁸

Other pages of the same document elaborate on the pro-competitive benefits of operating NBC O&O broadcast stations and Comcast RSNs within the same designated market area (“DMA”). {{

}}¹¹⁹ Far from indicating any potential for anticompetitive harm, the document reinforces the conclusions of Dr.

¹¹⁶ See *id.* at 7, 14, 17, 21 (citing and quoting 31-COM-00000298 – 31-COM-00000343).

¹¹⁷ *Id.* at 15 (citing 31-COM-00000299).

¹¹⁸ 31-COM-00000299.

¹¹⁹ 31-COM-00000326. {{

}} 31-COM-00000327.

Rosston, who has explained that the combination of NBCU O&Os and Comcast RSNs can create efficiencies through consolidation of local advertising sales, by enabling RSNs and O&Os to share resources such as on-air talent and studio capabilities, and by allowing Comcast and NBCU to “provide more attractive advertising services to advertisers and consumers.”¹²⁰

None of these documents provides any support for ACA’s contention that combining NBCU O&O stations and Comcast RSNs (which are not close substitutes for one another) will somehow enhance the parties’ market power. Instead, as Drs. Israel and Katz have explained, that contention runs counter to economic logic and is devoid of empirical support.¹²¹

VI. CONCLUSION.

For the reasons discussed above, nothing in the July 21 Responses alters the weight of the record in this proceeding, and the continuing flow of supportive letters from leaders across America only serves to reinforce the affirmative case. An exhaustive record has been compiled that shows that the benefits of this transaction are real and substantial and that opponents’ claims of harm are based on speculation and flawed analysis. With the pleading cycle having now reached its conclusion, Applicants respectfully request that the Commission expeditiously approve the Applications.

¹²⁰ Rosston Benefits Report ¶¶ 72-74, 76.

¹²¹ Israel/Katz Reply Report ¶¶ 94-128.

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August 19, 2010

APPENDIX A

ISSUES RAISED BY COMMENTERS ARE WITHOUT MERIT AND ARE OUTWEIGHED BY THE BENEFITS OF THE TRANSACTION

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
I. BENEFITS OF THE TRANSACTION		
<p>The transaction will not create incentives for investment. (DirecTV)</p>	<ul style="list-style-type: none"> • The transaction, by combining NBCU's programming with Comcast's multiple distribution platforms, will increase Comcast's and NBCU's flexibility to experiment with and develop new ways to make programming available to consumers. This, in turn, will make it more profitable for the companies to invest in more and higher value programming. The powerful incentive to invest in programming is one of the central public interest benefits of the transaction. • Comcast has a strong track record of investing in programming and will bring that approach to the new NBCU. Comcast management has reiterated numerous times since the transaction was announced that it intends to increase investment in NBCU's content post-closing. • The Commission has recognized that greater investment in programming benefits both consumers and the economy. • GE, NBCU's current owner, has a diverse portfolio of assets and has decided to focus its resources in other areas. Comcast has an exclusive focus on media and communications assets. The NBC Television 	<ul style="list-style-type: none"> • Public Interest Statement at 36-54, Appendix 8. • Opposition & Response at 25-49. • Rosston/Topper Reply Report ¶¶ 14-19. • Rosston Benefits Report ¶¶ 8, 10-14.

¹ The full names of commenters/petitioners that are abbreviated or identified by acronyms in this column are provided in Table A.

² The citations in this column are to Applicants' filings in MB Docket No. 10-56. The full citations are provided in Table B.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>Network and NBCU's cable networks will benefit from Comcast's increased focus and investment in content.</p> <ul style="list-style-type: none"> The transaction will give the combined entity incentives to invest in increased distribution of programming for children and families, a key Commission goal. Applicants have backed this up with commitments to: (1) increase the amount of children's content on Comcast's VOD and online platforms and on the NBC O&Os' digital spectrum (Commitment #3); (2) improve the on-screen ratings information across all NBCU's broadcast and cable networks (Commitment #4); and (3) expand their partnership with Common Sense Media, an organization dedicated to providing parents with information to make informed media and technology decisions (Commitment #5). Similarly, the combined entity will expand the number of programs available to consumers on VOD for free or no additional charge (Commitment #9) and Applicants have committed that Comcast will continue to make the NBCU broadcast content available to its customers on VOD at no additional for at least three years after closing the transaction (Commitment #10). 	
<p>The transaction will not create incentives for innovation. (DirecTV, AAI, WGAW)</p>	<ul style="list-style-type: none"> It is difficult for distributors to negotiate contracts with unaffiliated content owners to promote new and innovative distribution platforms. Content owners are understandably concerned that new distribution platforms will undermine existing business models that provide the financial support necessary to create high quality programming. Contract negotiations are further complicated because technology, cost, and demand for programming are changing rapidly and because licensing and distribution of video are inherently complex. 	<ul style="list-style-type: none"> Public Interest Statement at 54-66. Rosston Benefits Report ¶¶ 15-70. Opposition & Response at 56-67. Rosston/Topper Reply Report ¶¶ 6-13.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> • When distributors' and content owners' interests are not aligned, the parties often cannot reach agreements about new services and platforms or the agreements take much longer to reach than necessary. In either case, consumers are worse off. • These problems, often referred to as "transactional friction," have significantly delayed Comcast's ability to provide innovative new programming and platforms to consumers. For example, transactional friction made it difficult for Comcast to obtain the rights to a sufficient number of movies to create a compelling VOD offering, and this delayed for years the development of a robust VOD product. Applicants also showed how Comcast was able to break through that friction when it acquired an ownership interest in MGM, and how VOD has gone on to become immensely popular with consumers. • Today, transactional friction is delaying Comcast's ability to provide consumers with earlier in-home access to movies, a compelling online video offering, and other innovations that could provide the "anytime/anywhere" video future consumers are demanding. • When the transaction closes, the combined entity will have a variety of high-quality content. This will give Comcast the ability to experiment with new business models and the flexibility to make necessary adjustments to those models so that it can demonstrate to content owners the value of innovative platforms. • Once other content owners observe that these innovative platforms are viable and profitable, they will have a strong incentive to participate, thus accelerating the provision of new and exciting programming and increasing consumers' ability to view that programming when they want, where they want, and on the devices they want. 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> As a result of the transaction, consumers will get more choice and more control over their viewing experience, and they will get it sooner rather than later. 	
<p>The transaction will not stimulate competition. (ACA, DirecTV, Dish Network, CFA <i>et al.</i>)</p>	<ul style="list-style-type: none"> The new NBCU's increased investment in programming will stimulate other programmers to increase their own investments to remain competitive, enhancing competition and further increasing benefits to consumers. Likewise, Comcast's investment and innovation in new distribution platforms will spur other MVPDs to invest to maintain their competitiveness, and this will increase competition and consumer welfare. 	<ul style="list-style-type: none"> Public Interest Statement at 5, 37-38, 55-61. Opposition & Response at 76-79. Rosston Benefits Report ¶¶ 8, 69.
<p>The transaction will not benefit localism. (DirecTV, CFA <i>et al.</i>, Greenlining Institute, NATOA, GMTC, ACD)</p>	<ul style="list-style-type: none"> The transaction will promote the Commission's longstanding localism goals by facilitating the creation of new local programming and making it more widely available to consumers, at more times, and on more platforms. Applicants have undertaken specific obligations to increase and enrich the output of local news, public affairs, and other public interest programming on the NBC O&O stations, including the production and distribution of an additional 1,000 hours per year of local news and information programming (Commitment # 2). In addition, Comcast has made commitments to enhance public, educational and governmental programming ("PEG") in the local communities it serves. For example, Comcast will develop a VOD platform for PEG programming (Commitment # 12). And, Comcast will not migrate PEG channels to digital on any system until the system has been converted to digital or the community agrees to 	<ul style="list-style-type: none"> Public Interest Statement at 39-42, 67-70, Appendix 8. Opposition & Response at 50-56, 262-264. NBCU Affiliates Association Agreement. Non-NBCU Affiliates Associations Agreement. Comcast Response to Information Request Nos. 61-62.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	migration (Commitment # 11). These PEG commitments will further advance the Commission's localism goals.	
<p>Voluntary commitments are inadequate to protect over-the-air ("OTA") TV; the transaction will create incentives for Comcast to migrate sports and other popular programming from OTA TV to pay services.</p> <p>(CFA <i>et al.</i>, FACT Coalition, DirecTV, Illinois Attorney General)</p>	<ul style="list-style-type: none"> • The transaction will place the ownership of NBCU's OTA TV business into a joint venture that will have greater incentives to expand and strengthen this business, to the benefit of the joint venture, its broadcast affiliates, and consumers. • Comcast has economic incentives to invest in NBCU programming and a strong track record of investing in programming. • In addition, Applicants have committed to continue to: (1) provide free OTA television through the combined entities' broadcast stations and through local broadcast affiliates; and (2) work with the local broadcast affiliates toward a business model to sustain OTA TV that can be workable in the evolving economic and technological environment (Commitment #1). • Comcast has engaged in constructive dialogue and reached agreements with the associations representing more than 750 local television stations affiliated not only with the NBC Television Network, but also with the three other major commercial television networks. • Comcast, NBCU, and the NBC Television Affiliates have entered into a binding agreement that will support and maintain the partnership between the NBC Television Network and its many valued local affiliates. Specifically, Comcast and NBCU have agreed to: <ul style="list-style-type: none"> ○ Maintain the NBC Television Network for a period of 10 years – as made available for OTA broadcast by the NBC Television Network's broadcast station affiliates – as a premier general entertainment programming service and devote sufficient 	<ul style="list-style-type: none"> • Public Interest Statement at 39-42, App. 8. • Opposition & Response at 18-25. • Rosston Benefits Report ¶¶ 10-14. • Rosston/Topper Reply Report ¶¶ 14-20. • NBC Affiliates Agreement. • Non-NBC Affiliates Associations Agreement.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>resources to program development to ensure that the NBC Television Network's program schedule remains competitive;</p> <ul style="list-style-type: none"> ○ Continue to broadcast on the NBC Television Network, subject to certain conditions, major sporting events for which NBC holds broadcast rights as of the date of the agreement, and, with certain qualifications, refrain from migrating such events to any linear programming channel in which Comcast has an ownership interest; ○ In negotiating to acquire rights for national distribution of major sporting events on Comcast's networks, use commercially reasonable efforts to negotiate for reasonable distribution of such events on the NBC Television Network in a manner that is available to the NBC local affiliates; ○ Ensure that Comcast's cable systems remain solely responsible for negotiating retransmission consent agreements with individual NBC local affiliates. Such retransmission consent negotiations will be conducted separate from the NBC Television Network's affiliation negotiations with the NBC local affiliates; ○ Ensure that certain provisions relating to programming (<i>e.g.</i>, the amount and type of programming to be supplied to local network affiliates by the NBC Television Network) will remain part of the standard terms and conditions of affiliation offered to local network affiliates; ○ Ensure that the NBC Television Network will provide to local network affiliates primarily first-run programming on a primarily first-window basis; 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> ○ Honor NBC's agreements and side letters that preserve existing non-duplication protections against importation of another affiliate broadcast station signal into an NBC local affiliate's market; ○ Ensure that decisions involving exclusivity issues will continue to be made by the NBC Television Network and solely on the basis of Network considerations; and ○ Refrain from using control of the NBC Television Network to transmit a same-day linear feed of Network programming on a Comcast cable system in the television market of an NBC local affiliate in the event that the NBC local affiliate withdraws its consent in the course of a retransmission dispute with the Comcast cable system. • Comcast has entered into a binding agreement with the ABC, CBS, and Fox Affiliates Associations ("Non-NBCU Affiliates") that will also strengthen OTA TV. Specifically, Comcast has agreed to: <ul style="list-style-type: none"> ○ Engage in arm's-length, good-faith negotiations of retransmission consent agreements with the Non-NBCU Affiliates; ○ Not discriminate in its retransmission consent negotiations with the Non-NBCU Affiliates on the basis of affiliation (or lack thereof) with Comcast or the NBC or Telemundo Television Networks; ○ Maintain Comcast's cable system affiliates' sole responsibility for negotiating retransmission consent agreements with the Non-NBCU Affiliates. Such negotiations will be separate from and not influenced by NBCU. NBCU will remain solely responsible 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>for retransmission consent negotiations for NBCU-owned stations with non-Comcast MVPDs;</p> <ul style="list-style-type: none"> ○ In any retransmission consent complaint proceeding involving a Non-NBCU Affiliate, not rely on the terms of any retransmission consent agreement between Comcast and any television station wholly-owned, controlled, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks that is entered into following announcement of the Comcast-NBCU transaction in order to establish whether rates, terms, and other carriage and retransmission conditions are consistent with competitive marketplace conditions; and ○ Refrain from attempting to gain a competitive advantage by discriminating against any local, in-market Non-NBCU Affiliate in favor of any NBCU Station licensed in the same market with respect to certain technical signal carriage matters. 	
<p>The transaction will not do enough to promote diverse programming. (Bloomberg, WGAW, Entertainment Studios, CFA <i>et al.</i>, NCAAOM)</p>	<ul style="list-style-type: none"> • Comcast's cable systems carry a large number of unaffiliated networks that offer programming aimed at diverse groups, including ethnic and foreign language networks. • The transaction will enhance the combined entity's incentive and ability to provide even more diverse programming. By increasing the number of platforms on which diverse programming can be delivered – in effect, expanding the potential audience – the transaction will give the combined entity greater incentive and ability to explore innovative business models that support the production and distribution of more and higher quality diverse programming. • In addition, Applicants have made several specific and meaningful commitments to increase the amount of diverse programming they 	<ul style="list-style-type: none"> • Public Interest Statement at 47-50, 112-113, 130-131, Appendix 8. • Rosston Benefits Report ¶¶ 10-14, 65. • Hispanic MOU at 8-10. • Opposition & Response at 33-49, 261-262. • Summary of Diversity

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>provide. For example, they have committed to expand the availability of Hispanic OTA programming (Commitment # 6). Applicants have committed to feature Telemundo programming on On Demand and On Demand Online platforms (Commitment # 7). And Applicants have committed to expand the availability of mun2 on all Comcast's platforms (Commitment # 8).</p> <ul style="list-style-type: none"> • Comcast has expanded its independent programming commitment to provide that it will add 10 new independently-owned and -operated channels to its digital line-up within eight years of closing the transaction, including four African American channels and four Latino American channels (Commitment # 13, as amended by the Rush Letter, the Summary of Diversity Commitments, and the Hispanic MOU). • Comcast and NBCU have also agreed to increase opportunities for minority media ownership via: (1) Comcast's creation of a venture capital fund for minority entrepreneurs to develop new media and content applications; (2) NBCU's attempt to sell its interest in KWHY-TV to a minority-controlled ownership group; and (3) Comcast's efforts to facilitate opportunities for minority ownership groups to purchase assets in the event of future divestitures. 	<p>Commitments at 4-9.</p> <ul style="list-style-type: none"> • Rush Letter at 2-3.
<p>The transaction will not result in efficiencies. (DirecTV)</p>	<ul style="list-style-type: none"> • The transaction will result in a reduction of double marginalization. Applicants' economists have demonstrated (and many economists have recognized) that a reduction in double marginalization can result in greater investments in service, expanded program offerings, and other consumer benefits. 	<ul style="list-style-type: none"> • Rosston Benefits Report ¶¶ 80-90. • Opposition & Response at 67-73. • Rosston/Topper Reply Report ¶¶ 30-40.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
The transaction will threaten journalistic independence. (Greenlining Institute)	<ul style="list-style-type: none"> The combined entity will continue GE's policy of maintaining the journalistic integrity and independence of NBCU's news operations. To ensure such independence, the combined entity has committed to continue the position and authority of the NBC News ombudsman to address any issues that arise (Commitment # 16). 	<ul style="list-style-type: none"> Public Interest Statement at 131-133, Appendix 8.
The transaction will not increase competition in purchasing sports rights. (DirecTV)	<ul style="list-style-type: none"> The combined entity will have more ways to distribute sports programming than either Comcast or NBCU alone. Thus, the transaction will enable the joint venture to make competitive bids to distribute sports content on a greater number and variety of platforms. This will increase its ability to compete more effectively for sports rights with other networks, such as ESPN/ABC, and to expand the availability of sports programming for consumers. 	<ul style="list-style-type: none"> Public Interest Statement at 50-52. Rosston Benefits Report ¶ 12. Opposition & Response at 31-33. Rosston/Topper Reply Report ¶¶ 20-25.
II. HORIZONTAL COMPETITION		
The transaction will reduce competition among cable networks. (ACA)	<ul style="list-style-type: none"> To pose horizontal competition concerns, a combination of multiple networks must lead to a significant increase in concentration in a relevant market and eliminate substantial pre-transaction competition among the combining networks. The transaction does neither. The transaction will not significantly increase cable network concentration. NBCU's cable networks account for 10.6 percent of basic cable television viewing while Comcast's national cable networks account for only 2.2 percent. These shares fall well beneath levels that traditionally have caused competitive concerns. Under the DOJ and FTC's Draft Revised Horizontal Merger Guidelines, the 	<ul style="list-style-type: none"> Public Interest Statement at 90-91. Israel/Katz Reply Report ¶¶ 101-109, 119-136. Opposition & Response at 101-13.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>transaction will result in an unconcentrated market and therefore is “unlikely to have adverse competitive effects.”</p> <ul style="list-style-type: none"> The transaction will not eliminate substantial pre-transaction competition among NBCU and Comcast cable networks because those networks are not close substitutes in terms of audience reach, audience demographics, or programming content. Moreover, as Drs. Israel and Katz have demonstrated through empirical studies of prior integration events, neither joint ownership of a broadcast station and an RSN within a DMA nor joint ownership of a broadcast station and a national cable network is likely to cause horizontal price effects. 	
<p>The transaction will reduce competition among online properties. (CFA <i>et al.</i>, Dish Network, Greenlining Institute)</p>	<ul style="list-style-type: none"> The combination of NBCU and Comcast online properties will not cause horizontal competitive concerns under any plausible market definition. Applicants' Internet properties together account for only 0.3 percent of total daily unique page views and 1.6 percent of total Internet advertising revenue. Measured by videos viewed, Comcast's online video properties make up only 0.3 percent of videos viewed online, and NBCU video properties make up 0.7 percent. If only professional video content is considered, the properties of Comcast and NBCU account for approximately 1.0 percent and 2.0 percent of the market, respectively, for a combined share of approximately 3 percent. In addition, online video is a highly competitive and dynamic marketplace, with new competitors frequently emerging and existing competitors expanding and improving their online offerings. No meaningful impediments prevent other entrants from developing and offering online video distribution services that, like the online distribution services offered by Comcast and NBCU, are complementary to traditional MVPD service. 	<ul style="list-style-type: none"> Public Interest Statement at 93-98. Israel/Katz Online Video Report ¶¶ 16-17. Opposition & Response at 113-19.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> Concerns that the transaction will eliminate Hulu as a free, advertising-supported service are misplaced. NBCU has long-term contractual commitments to provide content to Hulu on an ad-supported basis, and these commitments will not be affected by the transaction. Moreover, NBCU does not control Hulu and the combined entity will not control Hulu post-transaction. Post-transaction, Comcast will also have no incentive to eliminate Hulu as a free, ad-supported service because Hulu is complementary to, and often beneficial to, Comcast's MVPD and HSI services. Comcast will continue to be a supportive partner to Hulu, and Comcast intends to be a driving force to bring more, not less, content to online video viewers. 	
III. VERTICAL COMPETITION		
<p>The transaction will lead to foreclosure of local broadcast stations/retransmission consent. (CWA, Dish Network)</p>	<ul style="list-style-type: none"> As Drs. Israel and Katz demonstrated using the Commission's own foreclosure model, any attempt by the joint venture to withhold retransmission consent to NBC O&O stations' signals as part of a foreclosure strategy would be unprofitable. Dr. Singer's criticisms of the vertical foreclosure analysis performed by Drs. Israel and Katz are without merit. Indeed, if the vertical foreclosure analysis were adjusted to accommodate some of Dr. Singer's complaints, those adjustments would <i>strengthen</i> the conclusion that the joint venture would find foreclosure unprofitable. The risk of damage to NBC and the structure of the joint venture further reduce the likelihood of retransmission consent foreclosure. Engaging in permanent or repeated temporary foreclosure would substantially and irreversibly damage the NBC broadcast network. 	<ul style="list-style-type: none"> Israel/Katz Vertical Foreclosure Report ¶¶ 1-147. Israel/Katz Reply Report ¶¶ 14-29, 239-271. Opposition & Response at 128-142.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>And so long as GE retains a stake in NBCU, it has strong incentives to protect its ownership interest by ensuring that the joint venture does not engage in costly foreclosure strategies, regardless of the benefits to Comcast.</p>	
<p>The transaction will lead to an increase in retransmission consent fees. (ACA, DirecTV)</p>	<ul style="list-style-type: none"> • The transaction will not result in an anti-competitive price increase for retransmission consent for NBC O&O stations. • A bargaining model presented by DirecTV economist Dr. Murphy and ACA economist Dr. Rogerson supplies no evidence to the contrary. First, that model predicts that prices will increase materially only <i>if</i> a significant number of subscribers would switch away from a foreclosed MVPD to Comcast. No evidence presented in this proceeding indicates that such switching would occur. Instead, the evidence demonstrates that few subscribers would switch to Comcast. • Second, Dr. Murphy's and Dr. Rogerson's reliance on assumptions that lack a factual or empirical basis prevents their model from supplying meaningful predictions of post-transaction price changes. Among other limitations, the bargaining model on which Dr. Murphy and Dr. Rogerson rely cannot rule out the possibility that the transaction will result in <i>no</i> price increase. • Third, as applied by Dr. Murphy and Dr. Rogerson, the bargaining model fails to consider that rival MVPDs would respond to threats of foreclosure by, for example, offering promotions, lowering subscription fees, or implementing other strategies to reduce their subscriber losses. The model thereby overstates the extent to which loss of an NBC broadcast station signal would result in switching. • Fourth, the simplified bargaining model cannot account for the complexity of actual content-owner MVPD negotiations, including the 	<ul style="list-style-type: none"> • Public Interest Statement at 118-122. • Israel/Katz Reply Report ¶¶ 33-39, 239-271. • Rosston Benefits Report ¶¶ 80-90. • Rosston/Topper Reply Report ¶¶ 29, 39-40. • Opposition & Response at 143-53.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>effects of numerous non-price terms that are jointly negotiated with price or the dynamic nature of negotiations.</p> <ul style="list-style-type: none"> • As Drs. Israel and Katz have shown, there is no evidence that previous vertical integration events have caused the systematic pattern of price increases that Dr. Murphy's and Dr. Rogerson's model would suggest. On average, the integration between cable networks and MVPDs did not have a significant effect on the affiliate fees paid by MVPDs for those networks. Moreover, no individual network exhibited significantly higher fees while integrated with an MVPD. • It would be inappropriate to consider the potential programming-cost increases that may arise without also accounting for programming-cost decreases flowing from efficiencies – notably the reduction of double marginalization – that will arise because Comcast, while paying the same price to NBCU for programming as determined in arm's-length negotiations, will internalize NBCU profits (as it is free to do under the joint venture agreement). Once these efficiencies are incorporated, the net effect of the transaction on average MVPD programming costs is negative. • The combined company's economic incentive to ensure widespread distribution of the broadcast networks' programming is also backstopped by an existing regulatory regime. The retransmission consent rules require parties to negotiate in good faith and prohibit exclusive retransmission consent arrangements. In addition, Applicants have voluntarily committed to import key components of the program access rules to retransmission consent negotiations (Commitment # 15). 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>The transaction will lead to foreclosure of national cable networks (program access issues). (ACA, DirecTV, CWA, Dish Network)</p>	<ul style="list-style-type: none"> • The transaction will not enhance Comcast's incentive or ability to engage in foreclosure strategies with respect to licensing of national cable networks to rival MVPDs. The combined entity will lack the market power needed to implement a successful temporary or permanent foreclosure strategy with respect to NBCU's cable networks. The record does not support a conclusion that foreclosure of NBCU's national cable networks would cause a substantial number of subscribers to switch MVPDs. • The transaction will not result in an anti-competitive price increase for NBCU's cable networks. Dr. Rogerson's contrary conclusion rests on an analysis that shares all of the flaws of his analysis of NBC broadcast station retransmission consent. It also erroneously assumes – contrary to basic economic principles – that the loss of NBCU's cable networks would cause the same proportion of subscribers to switch MVPDs as a loss of a broadcast network. • Dr. Rogerson's conclusion is also at odds with the empirical evidence. Drs. Israel and Katz performed a regression of past vertical integration events and showed that those events caused no systematic pricing effects for either broadcast or national cable networks. • A national sports foreclosure strategy – which would entail Comcast inducing NBCU to move NBC's national sports content to Comcast's Versus network and thereafter withholding Versus from other MVPDs – is also infeasible. First, Comcast has reached an agreement with NBC's affiliate stations under which Comcast has committed not to move major sporting events off NBC in general, or onto Comcast-owned linear networks in particular. Second, the terms of NBCU's agreements with the ultimate sports rights owners generally require NBCU to air a substantial portion of the relevant content on the NBC 	<ul style="list-style-type: none"> • Public Interest Statement at 114-117. • Israel/Katz Reply Report ¶¶ 30-32, 64-87. • Israel/Katz Vertical Foreclosure Report ¶ 2. • Opposition & Response at 153-159. • NBC Affiliates Association Agreement.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>Television Network. Third, for much of the sports content currently aired on NBC, NBCU either has no rights to place content on cable networks or faces substantial restrictions on the content that can be aired on cable networks.</p> <ul style="list-style-type: none"> • The program access rules further mitigate any risks of competitive harm. Comcast has always followed these rules and has never been found in violation of them. • Comcast has committed to voluntarily accept the application of the program access rules to the HD feeds of any network whose SD feed is subject to the program access rules for as long as the Commission's current program access rules remain in place (Commitment # 14). 	
<p>The transaction will lead to foreclosure of online video to rival MVPDs.</p> <p>(AAI, ACA, AOL, Bloomberg, CFA <i>et al.</i>, CWA, DirecTV, Dish Network, FACT Coalition, Senator Franken, Greenlining Institute, WealthTV)</p>	<ul style="list-style-type: none"> • Certain parties have attempted to characterize Applicants' efforts to provide content online on an "authenticated" basis as a form of foreclosure, and claimed that post-transaction, Applicants will use authentication to discriminate against rival MVPDs. These claims are inaccurate. • Post-transaction, the combined entity will lack the market power required to pursue a foreclosure strategy by withholding online content from other MVPDs. The joint venture would account for only 13.7 percent of national broadcast and basic cable television viewing, and only 12.8 percent of basic cable television viewing. In fact, these figures overstate Applicants' shares of authenticated online content, as NBCU and Comcast do not have online rights for many of the programs shown on their linear networks. • The combined entity would have no incentive to withhold online content from other MVPDs. Any effort by the combined entity to withhold online content would harm NBCU's content business by 	<ul style="list-style-type: none"> • Israel/Katz Online Video Report ¶¶ 49-63, 126-135. • Opposition & Response at 159-163, 204-208. • Israel/Katz Reply Report ¶¶ 221-237.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>causing it to forego profitable online distribution deals; as discussed, GE would have a strong incentive to oppose such a strategy.</p> <ul style="list-style-type: none"> • Other parties have asserted more general complaints regarding authentication arrangements. These non-transaction-specific complaints likewise lack merit. <ul style="list-style-type: none"> ○ Authentication arrangements such as Fancast Xfinity TV make content available to viewers anytime, anywhere and are an online benefit offered to cable subscribers at no additional cost to them. As such, these arrangements are pro-consumer, pro-competitive, and nonexclusive, and will help achieve a proper balance between (a) providing consumers access to video content “where and when they want it” and (b) providing content producers with an economically sustainable business model that supports the significant costs associated with production of high-quality video content. ○ Authentication is not a Comcast-specific initiative, but rather a concept being pursued by an array of content owners and distributors looking for a sustainable business model to make content available to consumers anytime, anywhere, and Comcast is an early adopter of the concept. ○ Contrary to assertions that authentication restricts the online availability of content to consumers, it actually enables the availability of <i>more</i> content than would otherwise be economically feasible. (The 2010 Vancouver Olympics furnish a notable example.) 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>The transaction will lead to foreclosure of competing video programming (program carriage issues).</p> <p>(Bloomberg, CFA <i>et al.</i>, DirecTV, MASN, Tennis Channel, WealthTV)</p>	<ul style="list-style-type: none"> • There is no economic basis for concluding that Comcast would have the ability to pursue anti-competitive foreclosure strategies against unaffiliated content providers. Comcast accounts for fewer than 24 percent of MVPD subscribers in the United States; both the D.C. Circuit and the Commission have found that this share is below the threshold required to pose a threat to competition or diversity in programming. No party has offered any empirical evidence to the contrary. • Because a network only confronts a true threat to its viability when it loses carriage on <i>multiple</i> MVPDs, any decision by Comcast to deny carriage to a network would incentivize the network to obtain carriage on other MVPDs – an outcome that could generally be achieved only by reducing the price that the network would charge those MVPDs. This outcome could prove problematic for Comcast on at least two levels: First, it would make Comcast's MVPD service relatively more expensive and less attractive to consumers (by lowering other MVPDs' programming costs). Second, it would disadvantage the joint venture by making its programming networks relatively more expensive and less attractive to MVPDs (by lowering the price that the unaffiliated network would charge those MVPDs). • The combined entity would also lack any incentive to pursue an anticompetitive foreclosure strategy against unaffiliated cable networks. Given the number of available substitutes to NBCU's national cable television networks, Comcast would need to deny carriage to a substantial number of unaffiliated cable networks before NBCU's networks could theoretically realize any appreciable benefit. • Bloomberg's claim to the contrary rests critically on its contention that the Commission should recognize a narrow market for "TV business 	<ul style="list-style-type: none"> • Public Interest Statement at 107-113. • Israel/Katz Reply Report ¶¶ 129-188. • Opposition & Response at 163-180.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>news programming.” Neither Bloomberg nor its economist, Dr. Marx, has presented any meaningful evidence that such a narrow market exists. The methods that Dr. Marx uses to demonstrate the existence of such a market are analytically flawed and generate absurd conclusions. Dr. Marx’s methods show, for instance, that CNBC and Teen Nickelodeon are substitutes and belong in the same relevant market, but that Disney and Nickelodeon do not.</p> <ul style="list-style-type: none"> • It is also clear that pursuing a vertical foreclosure strategy against Bloomberg or any other unaffiliated content provider would be unprofitable for Comcast. Dr. Marx’s conclusion that it would be profitable for Comcast to drop Bloomberg is driven by her use of incorrect values in her vertical foreclosure model. Once correct values are used, Dr. Marx’s own model implies that it would not be profitable for Comcast to drop Bloomberg. • The evidence does not support Bloomberg’s assertion that Comcast and other integrated MVPDs have historically tended to disadvantage unaffiliated networks through carriage, tier, or channel-neighborhood decisions. Instead, as Drs. Israel and Katz have shown, Comcast is <i>more</i> likely than other MVPDs to carry networks competing in the same categories as its own networks (specifically, non-Comcast-affiliated women’s and sports networks). • Bloomberg’s proposed remedies bear only a tenuous relationship to its asserted harms, and represent an attempt to extract superior and unjustified terms of carriage from Comcast. Bloomberg speculates that, post-transaction, it will be placed in a different “programming neighborhood” than CNBC, but it is <i>already</i> in a different “programming neighborhood,” a circumstance that arose long before Comcast contemplated any ownership interest in CNBC. Bloomberg 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>is essentially demanding unjustified equality with CNBC, which is a more successful and established network.</p> <ul style="list-style-type: none"> • No court or agency has ever found that Comcast engaged in unlawful or anticompetitive discrimination against unaffiliated programmers. • Despite an unambiguous ruling against WealthTV by the FCC's Chief Administrative Law Judge in a program carriage case, WealthTV has repeated claims about its network and Comcast's conduct that have been thoroughly disproved and discredited in an adversarial hearing. • MASN's professed concerns about Comcast's alleged "discriminatory channel placement" are similarly baseless: First, MASN's channel placement was determined when Comcast and MASN reached a carriage agreement in August 2006, and reflected Comcast's accommodation of MASN's desire to be launched immediately. Second, since 2006, in several systems where it has been operationally appropriate to do so, Comcast has initiated channel changes to position MASN adjacent to ESPN, CSN Mid-Atlantic, and other sports networks. Third, on Comcast systems throughout MASN's territory, the HD feeds of MASN and MASN 2 occupy the channel positions adjacent to the HD feeds of CSN and other sports networks. Finally, while MASN is on channel 42 in Comcast's Washington, D.C. lineup, MASN 2 is on channel 5, which is in close proximity to ESPN, CSN Mid-Atlantic, and other sports networks. • Tennis Channel's comments simply restate its claims in its pending carriage dispute with Comcast. It further asks that it no longer be required to prove unlawful discrimination and proposes that, if a complainant is merely in the same, very broad "category" (<i>e.g.</i>, "sports") as a Comcast-affiliated network, it should automatically be 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>deemed to compete with that affiliated network, and Comcast should be required to carry the complainant's network at "at least" the same distribution level as the affiliated network. This proposal is ill-advised and contrary to established precedent.</p>	
<p>The transaction will lead to foreclosure of content to online video distributors.</p> <p>(AOL, Bloomberg, CFA <i>et al.</i>, CWA, Dish Network, FACT Coalition, Public Knowledge, WealthTV)</p>	<ul style="list-style-type: none"> • The combined entity will lack the market power in online video programming content required to implement an online foreclosure strategy. The joint venture would account for only 13.7 percent of national broadcast and basic cable television viewing, and only 12.8 percent of basic cable television viewing. As discussed above, even these modest shares overstate the amount of online video content that the parties will control. • There is no evidence that content created by any single cable programmer is necessary for the viability of an online video distributor; notably, the loss of Comedy Central programs (including <i>The Daily Show</i> and <i>The Colbert Report</i>, which were among Hulu's most-viewed shows) does not appear to have had a meaningful impact on Hulu's size or growth. • The combined firm would also lack the incentive to attempt to carry out an online content foreclosure strategy for at least two reasons. First, online video is not a substitute for traditional linear MVPD service. Both programmers and consumers view online video as a complement to, rather than as a substitute for, traditional linear MVPD service. In addition, several impediments – technological, pricing-related, and rights-related – make it highly unlikely that online video will become a substitute for MVPD service in the foreseeable future. Second, even assuming that an online video distributor designed to replace traditional linear MVPD service were to emerge, any attempt 	<ul style="list-style-type: none"> • Public Interest Statement at 90-91, 105, 122-123. • Israel/Katz Reply Report ¶¶ 189-220. • Israel/Katz Online Video Report ¶¶ 13, 33, 49-134. • Opposition & Response at 180-189.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>to foreclose that distributor would be unprofitable for the joint venture</p> <ul style="list-style-type: none"> • The parties' joint venture agreement prohibits NBCU from sacrificing its own profits in order to benefit Comcast, and so long as GE retains a stake in the joint venture, it has the incentive and ability to enforce this prohibition. • Moreover, even if NBCU were wholly owned by Comcast, Comcast would still not find foreclosure of online video distributors to be profitable. To create a service that is substitutable for MVPD service, an online video distributor would have to offer content owners revenues on par with the revenue streams content owners currently enjoy from traditional MVPDs today. A foreclosure strategy would require the combined firm to forego these substantial revenues. Because Comcast's share of all MVPD subscriptions nationwide is less than 24 percent, a foreclosure strategy would mean that the combined entity would forego 100 percent of the revenue from selling NBCU content to a national online distributor but capture only a quarter of the purported benefits of the strategy. • Given the substantial bandwidth requirements of online video distribution, any online distributor competitive with Comcast's MVPD service would be complementary to Comcast's HSI operations. If a foreclosure strategy were to cause an online distributor to lose subscribers, those losses could reduce demand for Comcast's HSI service, further diminishing any incentives Comcast might have to impair the development of online video. 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>The transaction will lead to foreclosure of online video distribution platforms. (WealthTV)</p>	<ul style="list-style-type: none"> Given the highly competitive and open nature of the Internet, it would be impossible for the combined entity to “foreclose” the distribution of independent content. The combined entity lacks the market power in online video distribution necessary for a successful foreclosure strategy. Following the transaction, other online distributors would continue to account for nearly 90 percent or more of professional video content viewed online. The combined entity would also lack any economic incentive to pursue a distribution platform foreclosure strategy. As in the MVPD business, it would be bad for business to exclude desirable content from an online video distribution site; indeed, the negative impact would likely be even greater and more immediate, since the “switching costs” of going to an alternative website are virtually nonexistent and the number of alternative sites almost limitless. 	<ul style="list-style-type: none"> Opposition & Response at 189-191.
<p>The transaction will lead to foreclosure of or discrimination against ISPs. (Bloomberg, CFA <i>et al.</i>, Dish Network, EarthLink, WealthTV)</p>	<ul style="list-style-type: none"> Comcast accounts for only 20 percent of broadband ISP customers nationwide and, accordingly, lacks the market power necessary to implement an ISP foreclosure strategy. As noted, the D.C. Circuit and Commission have recognized in the MVPD context that this is an insufficient presence to implement an effective foreclosure strategy. Moreover, the competition that Comcast and other cable operators face from telco broadband Internet services has continued to intensify. Comcast has never blocked HSI subscribers’ access to lawful content, and nothing about the transaction will alter that practice. With respect to BitTorrent, Comcast’s sole objective in managing the use of bandwidth-intensive P2P traffic was to prevent degradation of the Internet experience for everyone on the network. Comcast did not 	<ul style="list-style-type: none"> Israel/Katz Reply Report ¶¶ 88-92. Opposition & Response at 191-200.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>prohibit the use of P2P, nor did it block P2P downloads, and the vast majority of P2P flows on Comcast's network were entirely unaffected.</p> <ul style="list-style-type: none"> • Fancast Xfinity TV is subject to the same Comcast usage cap and congestion management practices as, for example, Netflix's streaming video service or online content delivered from any other source. • Comcast supports, and has consistently supported, an open Internet. Comcast's 2009 petition for review of the FCC order concerning Comcast's management of P2P protocols does not contradict its abiding commitment to the four principles of the FCC's Internet Policy Statement. This appellate litigation focused on whether the FCC had acted within its statutory authority when it found that Comcast had violated the federal Internet "policy," and the court unanimously agreed with Comcast that the FCC had not done so. • Comcast is and will remain committed to the principles of the Internet Policy Statement, regardless of whether the FCC adopts any of the rules or reclassifications it is currently considering in its other proceedings, or reclassifies broadband Internet services. Indeed, the pendency of those proceedings underscores that issues involving ISP network management practices are not transaction specific and should be addressed on an industry-wide basis. • EarthLink's proposed conditions (<i>e.g.</i>, that Comcast sell its HSI service at a 40 percent discount to four national unaffiliated ISPs) should be rejected. To support these conditions, EarthLink relies on flawed economic reasoning and inaccurate anecdotal evidence. 	

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>General need for government regulation of online video distribution.</p> <p>(AAI, Dish Network, DirecTV)</p>	<ul style="list-style-type: none"> • As the Commission has recognized on numerous occasions, any proposal to regulate a nascent industry should be approached with considerable restraint and caution. • DirecTV and Dish Network have recognized this in other regulatory proceedings. Dish Network has urged that the Commission “avoid over-regulating” and allow consumer demand to drive the marketplace, and DirecTV has cautioned that “unwise regulatory intervention could have seriously negative consequences – interfering with market-based initiatives already in place and harming consumers.” • While ongoing experimentation is occurring at all levels of the online business, no clear business model has emerged. Given the current uncertainty, it would be premature to place restrictions on Applicants at this point in time, as doing so would have significant and long-lasting ramifications on the entire online video distribution industry. 	<ul style="list-style-type: none"> • Israel/Katz Online Video Report ¶ 17. • Opposition & Response at 200-204.
IV. ADVERTISING		
<p>The transaction will reduce competition in advertising.</p> <p>(AOL, Bloomberg, CFA <i>et al.</i>, Dish Network, Greenlining Institute, Senator Kohl)</p>	<ul style="list-style-type: none"> • The transaction will not diminish competition in local advertising. Cable and broadcast advertising are not close substitutes. The Justice Department has recognized that, at least for a significant number of advertisers, cable television advertising is not a meaningful substitute for broadcast television advertising. This is generally true of Comcast Spotlight (Comcast’s local advertising unit) and NBC O&O broadcast stations: each focuses to a large degree on advertisers whose needs would not be met by the other. Thus, because Comcast’s cable systems (through Spotlight) and NBC’s broadcast stations serve different advertisers, the transaction will not reduce competition in any relevant advertising market. 	<ul style="list-style-type: none"> • Public Interest Statement at 8. • Rosston Benefits Report ¶¶ 44-47. • Responses to Several Members of Congress at 23-24. • Opposition & Response at 73-76; 120-128.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> • Even if certain advertisers regard local cable and local broadcast advertising as reasonable substitutes, advertising competition is and will remain vibrant in every market with both a Comcast cable system and an NBC O&O station. In each overlapping city, there will be at least seven non-NBCU broadcast stations, as well as a variety of other local advertising media, including Internet, radio, newspapers, billboards and other “out-of-home” advertising, and direct mail. • No commenter has demonstrated that either Comcast or NBCU has market power in any relevant advertising market. To the contrary, Applicants' experts Drs. Rosston and Topper have observed that “neither NBCU nor Comcast currently has a large share in the broad, dynamic marketplace for advertising, and the transaction will result in only a very small increase in concentration in that broad marketplace.” • In fact, the transaction will provide benefits in the area of advertising. For example, it will allow the companies to offer complementary advertising opportunities and/or volume discounts, which are pro-competitive. The transaction will also accelerate the deployment of advanced advertising services. • No advertisers or marketing agencies have filed comments objecting to the transaction. Several, however, have filed comments expressing their support for the transaction and agreeing that the innovations that will result present a significant benefit. 	<ul style="list-style-type: none"> • Rosston/Topper Reply Report ¶¶ 41-86.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
V. COMPLIANCE WITH TELEVISION DUOPOLY RULE		
<p>NBCU's Los Angeles triopoly violates Commission rules. (Rita Guajardo Lepicier)</p>	<ul style="list-style-type: none"> • NBCU currently owns and operates Station KWHY-TV pursuant to a waiver of the Commission's broadcast ownership rules. NBCU is actively attempting to sell Station KWHY-TV to a third party, and is particularly focused on minority or women buyers. The sale of Station KWHY-TV will bring the combined entity into compliance with the Commission's television duopoly rule (even without the need for the waiver). • In the event NBCU's efforts do not result in the sale of Station KWHY-TV prior to the closing of the transaction, NBCU will put Station KWHY-TV into a Commission-approved divestiture trust at closing. To this end, NBCU has filed an application seeking Commission consent for the assignment of Station KWHY-TV to a divestiture trust, with Bahia Honda LLC serving as trustee. 	<ul style="list-style-type: none"> • Public Interest Statement at 73-74. • Applicants' May 17, 2010 Ex Parte Letter. • NBCU Response to Information Request No. 58.
VI. OTHER ISSUES		
<p>Prices/volume discounts (ACA)</p>	<ul style="list-style-type: none"> • Volume discounts with regard to the sale of cable programming have a long history in MVPD distribution. • Any concerns regarding Comcast's ability to provide volume discounts are not specific to the transaction. Volume discounts exist in virtually every sector of the U.S. economy and make simple economic and business sense; video programming distribution is not unique in this regard. • Legitimate economic benefits underlying volume discounts and other pricing differentials include: (1) the existence of major economies of scale in video programming and (2) the fact that additional subscribers 	<ul style="list-style-type: none"> • Opposition & Response at 208-211.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>yield disproportionate benefits to programmers in terms of additional advertising revenues.</p> <ul style="list-style-type: none"> The benefits of volume discounts are available to small cable operators and other distributors. 	
<p>Bundling/tying of programming networks (CWA, Entertainment Studios, FACT Coalition, Senator Franken, Greenlining Institute, ITTA, WealthTV, WGAW)</p>	<ul style="list-style-type: none"> Commenters' criticism of wholesale transactions between network owners and MVPDs is neither new nor specific to the transaction. The Commission is considering the bundling issue in an ongoing rulemaking proceeding and NBCU has already responded to such critics at length in its filings in the rulemaking on wholesale bundling of video programming. NBCU does not engage in unlawful tying: It does not possess market power in any relevant programming market, and does not "coerce" or "force" MVPDs to select any particular combination or bundle of channels. Moreover, commenters have never attempted to establish which are the tying products and which are the tied ones, or to show that these products are in separate and distinct markets; nor have they demonstrated that NBCU's alleged conduct has foreclosed competition in any tied product market. NBCU does, however, offer MVPDs discounted prices if they purchase a larger package of NBCU programming networks. Programming is no different from other aspects of telecommunications, where bundling has proved beneficial to consumers. Wholesale packaging of programming networks allows programmers to realize economies of scale and scope that reduce the costs of producing, marketing, and distributing their programming. 	<ul style="list-style-type: none"> Opposition & Response at 211-218.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>Withholding of programming from Boxee, Sling, and Kyo (Dish Network, Greenlining Institute, Public Knowledge, WGAW)</p>	<ul style="list-style-type: none"> • NBCU could not legally provide to Boxee the distribution rights to the type of content Boxee sought – ad supported, free-on-demand video – as Hulu had the exclusive contractual rights to this content. Boxee decided to circumvent Hulu's terms-of-use restrictions by streaming through Boxee's interface without an agreement with Hulu, and Hulu ended Boxee's unauthorized access to that content. • Similarly, Kyo took Hulu's content in an unauthorized fashion to make it available through the television without payment. Such "withholding" was entirely appropriate and a unilateral decision made by Hulu, and therefore is not a basis of concern in this transaction. • NBCU licenses its programming networks for in-home residential viewing in particular geographic areas. Sling circumvents those licensing terms and has declined to negotiate for a license to exhibit NBCU content worldwide over the Internet. Dish Network has not yet attempted to negotiate for these rights. • Universal negotiated with Netflix to license its movies on a basis that provides for a 28-day delay between the time that a movie is made available for sale to the public on DVD and the time Netflix can make the DVD of that movie available by mail to its subscribers. This is consistent with a well-recognized industry practice of "windowing" content. The production of content is expensive and windowing has been widely accepted in the industry for decades as a means of providing distributors with attractive distribution rights while creating opportunities for content creators to profitably create and sell their programming. 	<ul style="list-style-type: none"> • Opposition & Response at 219-222.
<p>Applicants lack character to hold</p>	<ul style="list-style-type: none"> • Applicants have fully demonstrated the character qualifications necessary for approval of the transaction. No commenter has raised 	<ul style="list-style-type: none"> • Public Interest Statement at 16-35.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>Commission licenses. (CFA <i>et al.</i>, PTC, Morality in Media Senator Franken)</p>	<p>any legitimate character issue concerning the Applicants.</p> <ul style="list-style-type: none"> • There is nothing in the Commission's network management proceeding that creates a candor issue relevant to the instant transaction, and, in any event, the Commission's decision in that proceeding has been vacated by the D.C. Circuit. • While some parties have sought to raise issues regarding Comcast's carriage of adult programming, Comcast follows the Commission's rules in its programming policies and empowers parents to decide the programming that is appropriate for their families; these arguments do not raise any character issues. • Various other allegations, including claims concerning the amount of independent programming carried on NBC following the repeal of the "fin/syn" rules, similarly fail to raise any issue relevant to Applicants' qualifications. 	<ul style="list-style-type: none"> • Opposition & Response at 270-276.
<p>The transaction will reduce competition in video on demand (VOD) transport. (Avail-TVN, NTCA, FACT Coalition, WealthTV)</p>	<ul style="list-style-type: none"> • Applicants will face strong competition in the marketplace for video transport, VOD, and pay per view ("PPV") services. • The Comcast Media Center ("CMC"), through its HITS service, serves only about 10 percent of all MVPD subscribers and faces competition from Avail-TVN and other video transport services. • The marketplace for VOD and PPV services also is intensely competitive; indeed, Avail-TVN, not iN DEMAND, is the largest aggregator of VOD services. • There is no basis for the Commission to require Comcast to divest its ownership interest in iN DEMAND or CMC or otherwise impose conditions regarding these services, as requested by Avail-TVN and a 	<ul style="list-style-type: none"> • Opposition & Response at 277-284.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<p>few other parties.</p> <ul style="list-style-type: none"> • Avail-TVN's claims are not transaction-specific and seek to misuse this proceeding to enhance its competitive position in providing video transport services. 	
<p>The transaction will create incentives to engage in unfair labor practices. (CWA, Illinois Attorney General)</p>	<ul style="list-style-type: none"> • Applicants have a consistent track record of creating jobs in America, and the transaction will stimulate investment and innovation, which in turn will promote job preservation and creation. • Applicants respect their employees' right to choose whether to be represented by a union, and do not attempt to interfere with this right. • Comcast will 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. • Labor-related claims raised by the Communications Workers of America concerning Comcast's labor policies are meritless, unrelated to the transaction, and outside of the Commission's jurisdiction. Such claims involve the same sort of allegations that the Commission has dismissed in at least six prior license transfer proceedings. 	<ul style="list-style-type: none"> • Public Interest Statement at 38. • Opposition & Response at 285-292. • Responses to Several Members of Congress at 26-29.
<p>Comcast's HD technology fee and other fees violate Commission rules. (City of Seattle <i>et al.</i>)</p>	<ul style="list-style-type: none"> • Comcast's HD technology fee, DVR service fee, and other fees are consistent with Commission regulations, closely match the offerings of Comcast's competitors, will not have a negative effect on the retail equipment marketplace, and ultimately benefit consumers. • Attempts to impose rate regulation on non-basic fees, such as the HD technology fee, are misguided because Congress placed non-basic fees outside the scope of rate regulation. 	<ul style="list-style-type: none"> • Opposition & Response at 297-303.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	<ul style="list-style-type: none"> • Claims regarding fees and rates are not transaction specific and should not be addressed in this proceeding. 	
<p>The transaction will increase cable prices. (CFA <i>et al.</i>, Senator Franken)</p>	<ul style="list-style-type: none"> • The transaction will not affect cable pricing to consumers. • Generalized attacks on cable prices are not transaction-specific, and the Commission should not consider them in its review. • Pricing decisions are affected by a number of factors, including the fierce competition that Comcast faces in the video distribution marketplace. • As prices have increased, quality and choice have increased far more, and consumers are getting more for their money than they have in the past. 	<ul style="list-style-type: none"> • Public Interest Statement at 8. • Opposition & Response at 295-297. • Responses to Several Members of Congress at 25-26.
<p>Conditions are necessary to protect individuals with disabilities. (COAT)</p>	<ul style="list-style-type: none"> • Applicants are committed to serving individuals with disabilities. • COAT's proposed conditions on disabilities-related matters are not transaction-specific and should not be addressed in this proceeding. • Congress is currently considering legislation that would address most of the issues discussed by COAT; Applicants welcome the opportunity to work with COAT and others in that context, rather than in the current proceeding. • Applicants have committed to establish a Diversity Advisory Council, which will include a representative of the disabilities community. 	<ul style="list-style-type: none"> • Opposition & Response at 292-294. • Hispanic MOU at 3-6.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>Michigan's statewide franchising statute is unlawful. (City of Detroit, Michigan)</p>	<ul style="list-style-type: none"> The City of Detroit's claims concerning a statewide franchising statute in Michigan and other cable franchising matters, some of which are the subject of pending litigation in federal court, are without merit and outside the scope of this proceeding. The City of Detroit's unsupported rhetoric regarding Comcast's character qualifications provides no basis for denying the transaction and is contradicted by prior statements by the City. 	<ul style="list-style-type: none"> Opposition & Response at 303-306.
<p>The transaction will create incentives for the combined entity to violate the Digital Millennium Copyright Act. (CFA <i>et al.</i>)</p>	<ul style="list-style-type: none"> Comcast has a well-established policy and history of compliance with the Digital Millennium Copyright Act (DMCA) that fairly balances the interests of consumers and content owners, and the transaction will not change that. Comcast is clear and transparent regarding its copyright enforcement policy and compliance with the DMCA. The transaction does nothing to change the current need for Comcast to apply fair and workable solutions for customers, ISPs, and content owners alike with respect to online copyright infringement. 	<ul style="list-style-type: none"> Opposition & Response at 311-313.
<p>Comcast should be required to make Trail Blazers games available to MVPDs. (Trail Blazers, FACT Coalition)</p>	<ul style="list-style-type: none"> Comcast SportsNet-Northwest (CSN-NW) has the business incentive to seek more, not less, distribution for its network. The Trail Blazers' request that the Commission require Comcast to authorize distribution of Trail Blazers' games by competing MVPDs is unnecessary. Since its launch, CSN-NW has made the network, including Trail Blazers' games, available for distribution to every MVPD in the Trail Blazers' market, including all of Comcast Cable's direct competitors. Eleven MVPDs in addition to Comcast Cable currently distribute CSN-NW, demonstrating that the network is made available on fair 	<ul style="list-style-type: none"> Opposition & Response at 14, 313-316.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
	and commercially reasonable terms.	
Comcast has caused property damage. (Elan Feldman)	<ul style="list-style-type: none"> Feldman's 2005 claims regarding alleged trespass and property damage are the subject of pending litigation in Florida and are entirely irrelevant to this proceeding. 	<ul style="list-style-type: none"> Opposition & Response at 316-317.
Conditions are necessary to ensure procurement diversity. (Greenlining Institute, Mabuhay Alliance, Rep. Maxine Waters <i>et al.</i> , Latino Business Chamber of Greater Los Angeles, Black Economic Council, Economic Business Development, Korean Churches for Community Development)	<ul style="list-style-type: none"> No Commission rule requires a particular level of procurement diversity or spending on female and minority-owned businesses, and a license transfer proceeding is not the appropriate forum for determining whether licensees should be required to allocate a certain portion of contracts to small and minority businesses. No procurement diversity requirements are necessary, as Comcast and NBCU are and will continue to be committed to doing business with a diverse group of suppliers. For example, in 2003, Comcast began a formal supplier diversity program; in 2009, NBCU spent \$100 million with female-owned businesses and \$140 million with minority-owned suppliers. Comcast and NBCU have voluntarily agreed in this proceeding to further increase supplier diversity. 	<ul style="list-style-type: none"> Opposition & Response at 259-262. Rush Letter at 3. Summary of Diversity Commitments at 3-4. Hispanic MOU at 6-7. Responses to Several Members of Congress at 16-17.

Areas of Concern (primary parties raising concern) ¹	Applicants' Response	Record Cites To Applicants' Response ²
<p>Conditions are necessary to ensure employment diversity.</p> <p>(Greenlining Institute, Mabuhay Alliance, Rep. Maxine Waters <i>et al.</i>, Latino Business Chamber of Greater Los Angeles, Black Economic Council, Economic Business Development, Korean Churches for Community Development)</p>	<ul style="list-style-type: none"> • Applicants have demonstrated a strong commitment to employment diversity and have a history of compliance with the FCC's Equal Employment Opportunity rules. • Both Comcast and NBCU currently have strong programs in place to promote diversity in hiring and professional development. • The high priority Applicants place on employment diversity will continue under their joint venture; Comcast and NBCU have made voluntary commitments to increase the minority representation at all levels of their respective organizations and to recruit and retain more minorities. 	<ul style="list-style-type: none"> • Opposition & Response at 247-259, 261-262. • Rush Letter at 1-2. • Summary of Diversity Commitments at 2-3. • Hispanic MOU at 5-6. • Responses to Several Members of Congress at 15-22.

TABLE A

Acronym/Abbreviated Cite	Party
ACD	Alliance for Communications Democracy
AAI	American Antitrust Institute
ACA	American Cable Association
City of Seattle <i>et al.</i>	Cities of Seattle, Tacoma, Renton, Maple Valley, Des Moines, University Place, Longview, Issaquah, Spokane, Kirkland, and Milton, Washington, Cities of Minneapolis, Bloomington, and Coon Rapids, Minnesota, City of Springfield, Oregon, the Metropolitan Area Communications Commission, the Rainier Communications Commission, the Ramsey/Washington Counties Suburban Cable Communications Commission II, the North Metro Telecommunications Commission, and the South Washington County Telecommunications Commission.
COAT	Coalition of Organizations for Accessible Technology
CWA	Communications Workers of America
CFA <i>et al.</i>	Free Press, Media Access Project, Consumer Federation of America and Consumers Union
GMTC	Greater Metro Telecommunications Consortium
ITTA	Independent Telephone & Telecommunications Alliance
NATOA	National Association of Telecommunications Officers and Advisors
NTCA	National Telecommunications Cooperative Association and the Western Telecommunications Alliance
PTC	Parents Television Council, American Family Association, Focus on the Family, Citizens for Community Values, Reclaim our Culture Kentuckiana & Coalition for Marriage and Family
WGAW	Writers Guild of America, West

TABLE B

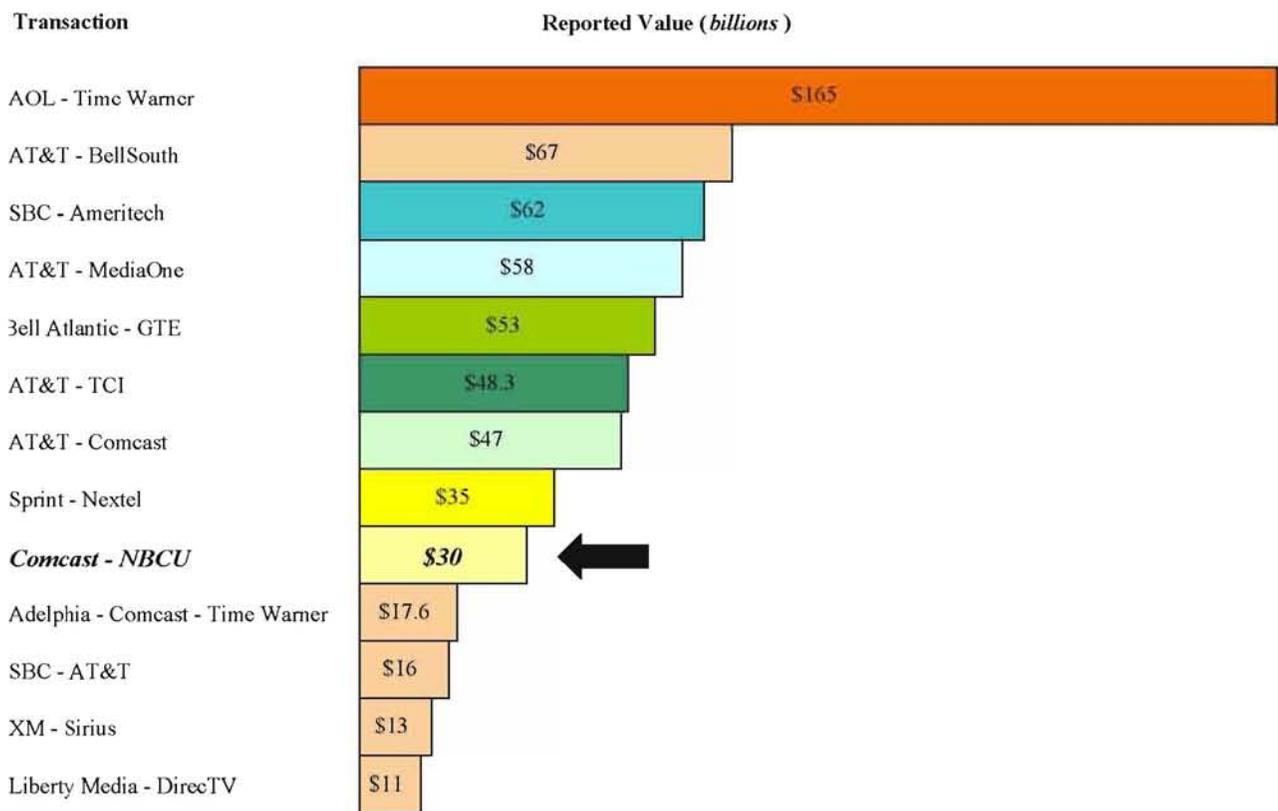
1. Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) (“Public Interest Statement”).
2. Mark Israel & Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction, (Mar. 5, 2010) (“Israel/Katz Vertical Foreclosure Report”).
3. Mark Israel & Michael L. Katz, The Comcast/NBCU Transaction and Online Video Distribution (May 4, 2010) (“Israel/Katz Online Video Report”).
4. Gregory L. Rosston, An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction (May 4, 2010) (“Rosston Benefits Report”).
5. Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, Counsel for General Electric Company, and Kenneth E. Satten, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC (May 17, 2010) (“May 17, 2010 Ex Parte”).
6. Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, Counsel for General Electric Company, and David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to William T. Lake, Chief, Media Bureau, FCC (June 2, 2010) (“Responses to Several Members of Congress”).
7. Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC (June 29, 2010) (“Comcast Information Request Response”).
8. Letter from David H. Solomon, Wilkinson Barker Knauer, LLP Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC (July 6, 2010) (“NBCU Information Request Response”).
9. Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, Counsel for Comcast Corp., and David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, FCC Secretary, MB Docket No. 10-56 (July 6, 2010) (attaching the Memorandum of Understanding Between Comcast Corporation, NBC Universal and The Hispanic Leadership Organizations) (“Hispanic MOU”).
10. Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 12, 2010) (attaching letter from David L. Cohen, Executive Vice President, Comcast, to Hon. Bobby Rush, Congressman (D-IL) (“Rush Letter”) and Comcast’s and NBCU’s Summary of Diversity Commitments (“Summary of Diversity Commitments”).

11. Mark Israel and Michael L. Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction (July 20, 2010) (“Israel/Katz Reply Report”).
12. Opposition to Petitions to Deny and Response to Comments (July 21, 2010) (“Opposition & Response”).
13. Gregory L. Rosston & Michael D. Topper, The Proposed Comcast–NBCU Transaction: Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition (July 21, 2010) (“Rosston/Topper Reply Report”).
14. Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., and David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBC Universal, Inc., to Marlene H. Dortch, Secretary, FCC (Aug. 6, 2010) (attaching the “NBC Affiliates Association Agreement” and the “Non-NBC Affiliates Associations Agreement”).

APPENDIX B

Major Media & Telecom Transactions

Reported Values of Transactions in Billions of Dollars at the Time the Deals Were Announced



Sources for Reported Values of Transactions¹²²

AT&T - TCI (1999)

- “AT&T, the nation’s biggest phone company, announced a deal to acquire the nation’s No. 2 cable television company, Tele-Communications Inc., for \$31.8 billion....Under the terms of the acquisition, AT&T will also assume TCI’s debt of about \$11 billion. The \$31.8 billion purchase price also does not include \$5.5 billion in cash AT&T will pay to repurchase shares that AT&T issued to TCI in a previous transaction and to acquire its interest in a cable-modem venture....[I]n announcing the deal, the companies added these amounts to their calculation of the value, for a total of \$48.3 billion.”

Seth Schiesel, *AT&T Chief Says He Can Defend Deal*, N.Y. Times, June 29, 1998; Geraldine Fabrikant, *Drop in AT&T Stock Price Raises Concern on TCI Deal*, N.Y. Times, July 6, 1998.

SBC - Ameritech (1999)

- “SBC Communications formally announced plans to acquire Ameritech for about \$62 billion, creating a telecommunications giant controlling a third of the nation’s local phone lines.” “The announcement that SBC

¹²² The year in parentheses indicates the year the transaction was approved by the Commission.

Communications Inc. would acquire the Ameritech Corporation for about \$62 billion significantly shifts the balance of power in the United States telecommunications industry.”

Seth Schiesel, *Telephone Giant: The Deal; \$62 Billion Deal To Shift Balance in Phone Industry*, N.Y. Times, May 12, 1998, available at <http://www.nytimes.com/1998/05/12/business/telephone-giant-the-deal-62-billion-deal-to-shift-balance-in-phone-industry.html?pagewanted=1>; *SBC Communications Says It Will Acquire Ameritech*, Bus. Digest, N.Y. Times, May 12, 1998, available at <http://www.nytimes.com/1998/05/12/business/business-digest-907499.html>.

Bell Atlantic - GTE (1999)

- “The Bell Atlantic Corporation, which dominates the local telephone business from Maine to Virginia, has agreed to acquire the GTE Corporation, the nation’s largest independent local and long-distance company, for \$52.8 billion in stock.”

Seth Schiesel & Laura M. Holson, *Reshaping the Phone Business: The Deal; Two Phone Giants Reported Merging in \$52 Billion Deal*, N.Y. Times, July 28, 1998, available at <http://www.nytimes.com/1998/07/28/business/reshaping-phone-business-deal-two-phone-giants-reported-merging-52-billion-deal.html?scp=339&sq=lee+sachs&st=nyt&pagewanted=print?pagewanted=all>.

AT&T - MediaOne (2000)

- “AT&T’s transformation from telecommunications dinosaur to technology-stock dynamo may have been clinched [on May 5, 1999] with the company’s \$58 billion deal to buy Media One Group, one of the nations’ biggest cable television operators.”

Gretchen Morgenson, *Market Watch; An Internet Play for Widows and Orphans*, N.Y. Times, May 9, 1999, available at <http://www.nytimes.com/1999/05/09/business/market-watch-an-internet-play-for-widows-and-orphans.html?pagewanted=1?pagewanted=1>.

AOL - Time Warner (2001)

- The “\$165 billion merger deal...between America Online, the No. 1 Internet provider, and Time Warner, the media and cable television titan, is reverberating throughout the communications and media industries.” “The deal, announced [January 10, 2000]..., would create a colossus.”

Seth Schiesel, *Media Mega-Deal: The Impact; A Rush To Provide High-Speed Internet Access*, N.Y. Times, Jan. 12, 2000, available at <http://www.nytimes.com/2000/01/12/business/media-megadeal-the-impact-a-rush-to-provide-high-speed-internet-access.html?pagewanted=all>; Alex Berenson & Bill Carter, *Media Mega-Deal; The Bets; When Everything New Becomes Dizzingly Newer*, N.Y. Times, Jan. 11, 2000, available at <http://www.nytimes.com/2000/01/11/business/media-megadeal-the-bets-when-everything-new-becomes-dizzingly-newer.html?pagewanted=1>.

AT&T - Comcast (2002)

- “AT&T agreed [on December 19, 2001] to sell its cable television business, the nation’s largest, to the Comcast Corporation for about \$47 billion in stock.”

Seth Schiesel & Andrew Ross Sorkin, *AT&T’s Cable Deal: The Overview; Comcast Wins Bid for AT&T’s Cable*, N.Y. Times, Dec. 20, 2001, available at <http://www.nytimes.com/2001/12/20/business/at-t-s-cable-deal-the-overview-comcast-wins-bid-for-at-t-s-cable.html?pagewanted=1>.

Sprint - Nextel (2005)

- “Sprint and Nextel formally announced a \$35 billion merger deal that would create a formidable No. 3 competitor in the cellphone market.”

Ken Belson, *Sprint and Nextel To Merge, Creating Cellphone Powerhouse*, N.Y. Times, Dec. 15, 2004, available at <http://www.nytimes.com/2004/12/15/business/16phonecnd.html>.

SBC - AT&T (2005)

- “SBC Communications concluded a \$16 billion deal on [January 31, 2005] for its former parent, AT&T.”

Ken Belson, *SBC To Acquire AT&T in \$16 billion Merger*, N.Y. Times, Feb. 1, 2005, available at <http://www.nytimes.com/2005/01/31/technology/31iht-att.html>.

Adelphia - Comcast - Time Warner (2006)

- “Time Warner and Comcast, the two largest U.S. cable television companies, said [on April 21, 2005] that they had reached an agreement to acquire Adelphia Communications in a cash and stock deal valued at \$17.6 billion.”

Terence Neilan, *Time [Warner] and Comcast Join To Acquire Adelphia*, N.Y. Times, Apr. 22, 2005, available at <http://www.nytimes.com/2005/04/21/technology/21iht-cable.html>.

AT&T - BellSouth (2007)

- “The AT&T Corporation said...that it would acquire the BellSouth Corporation for stock it valued at \$67 billion, in a merger that would create a telecommunications behemoth.”

Ken Belson, *AT&T To Buy BellSouth, Creating Telecom Giant*, N.Y. Times, Mar. 5, 2006, available at <http://www.nytimes.com/2006/03/05/business/05cnd-phone.html>.

XM - Sirius (2008)

- “XM and Sirius Satellite Radio have announced a planned all-stock merger that they say will create a satellite radio company valued at \$13 billion.”

John Eggerton, *XM, Sirius Announce \$13B Merger*, Broad. & Cable, Feb. 19, 2007, available at http://www.broadcastingcable.com/article/107825-XM_Sirius_Announce_13B_Merger.php.

Liberty Media - DirecTV (2008)

- “Shareholders of News. Corporation have approved an \$11 billion asset swap that increases Rupert Murdoch’s control over the company and transfers the DirecTV Group to Liberty Media.”

News Corp. Shareholders Accept Liberty Deal, N.Y. Times, Apr. 4, 2007, available at <http://www.nytimes.com/2007/04/04/business/media/04liberty.html>.

Comcast - NBCU (Pending)

- “After nearly nine months of negotiations, Comcast, the nation’s largest cable operator, announced an agreement on Thursday to acquire NBC Universal from the General Electric Company. The deal valued NBC Universal at about \$30 billion.”

G.E. Makes It Official: NBC Will Go to Comcast, N.Y. Times, Dec. 3, 2009, available at <http://www.nytimes.com/2009/12/04/business/media/04nbc.html>.

APPENDIX C

NORMAN D. GRIFFITHS
President – City Council

City of Wilmington
Delaware

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WILMINGTON, DE 19801-3537
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August 19, 2010

Mr. David Breidinger
Senior Vice President
Government and Regulatory Affairs
Eastern Division – Comcast Cable
One Summit Square - Suite 302
1717 Langhorne-Newtown Road
Langhorne, PA 19047

Re: City of Wilmington / COMCAST Cable Franchise Agreement

Dear Mr. Breidinger:

This letter is to confirm that currently there are no outstanding items of non-compliance pending nor disputes in negotiation, between the City of Wilmington and COMCAST arising from a breach by COMCAST of the terms and conditions contained in the above-referenced Cable Franchise Agreement.

Please let me know if you need anything else.

Very truly yours,

A handwritten signature in black ink that reads "Norman D. Griffiths".

Norman D. Griffiths
President, Wilmington City Council

CERTIFICATE OF SERVICE

I, Mary M. Underwood, hereby certify that on this 19th day of August, 2010, I caused true and correct copies of Applicants' Reply to Responses to be served by Federal Express to:

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/s/ Mary M. Underwood

Mary M. Underwood