average of the two diversion percentages might be a more relevant indicator of the diversion rate than an estimate based only on those leaving DIRECTV. This would suggest a diversion rate of about {{ }} of that implied by proportionate substitution.

31. The previous estimates are derived from nationwide surveys, which cover DMAs that do and do not have service available from telco providers (U-Verse or FiOS). Since telcos serve all the DMAs where NBCU has O&Os,[31] a potentially better estimate of diversion in NBCU's O&O markets might be obtained by looking only in markets where at least one telco is available. In markets that DIRECTV categorizes as "Telco-TV markets," {{

}}

32. I also obtained additional detail from surveys that DIRECTV conducted between September 2009 and June 2010, which allows me to look only at former subscribers who indicated that they cancelled their DIRECTV subscription because of dissatisfaction over DIRECTV's programming, and to investigate the share of these subscribers that went to various competitors. The identified competitors are ten cable providers, DISH, U-Verse, and FiOS. In addition, the survey identified the share that switched to "Other (specified)" providers. Using

[31] Media Census: All Video By DMA, 4Q2009. The data indicate there are telco subscribers in all NBC O&O markets identified in Israel-Katz Report Table 1.
[32] DIRECTV Marketing Research. "Past & Current TV Service Trends Q2 2009 to Q1 2010."
[33] This is calculated as share of non-DIRECTV subscribers to MVPDs.
[34] DIRECTV Marketing Research. "Past & Current TV Service Trends Q2 2009 to Q1 2010."

supplemental data provided by DIRECTV, I determined that about {{ }} of those who switched to "Other (specified)" providers switched to cable providers.[35]

33. I used these data to estimate diversion rates to cable for customers who indicated that they ended their DIRECTV subscriptions because "DIRECTV didn't offer certain channels you wanted," in particular customers who indicated dissatisfaction with DIRECTV's local and/or sports channels. Among those indicating dissatisfaction with local channels, {{ }} of those who discontinued DIRECTV subscriptions moved to cable, which implies diversion to cable of {{ }} of that implied by proportionate substitution; the corresponding numbers for those dissatisfied with DIRECTV's sports channels are {{ }}, respectively.[36]

34. The estimates of diversion to cable derived from the DIRECTV survey data are summarized in Exhibit 2. The diversion rates range from {{ }} of that implied by proportionate substitution, with {{

}} This survey evidence shows considerable substitution between cable and DIRECTV. All these comparisons indicate that Israel and Katz' {{ }} diversion claim is unsupported, and suggests a diversion rate to cable that exceeds one-third of that implied by proportionate substitution.

B. The "Near Zero" Diversion Rate Claimed by Israel and Katz Would Imply that Comcast and DBS Firms Do Not Compete.

35. Israel and Katz' claim that their estimate of a "near-zero" increase in Comcast penetration when DISH loses access to broadcast stations, coupled with evidence that DISH loses substantial subscribership, would imply that subscribers do not consider services offered by DBS firms and Comcast as good substitutes. Substitution as limited as this, however, is at odds with historical findings that entry of DBS firms increased competition for cable firms like

[35] A sample of the raw survey data from DIRECTV indicated that of those customers who left DIRECTV for a MVPD in the 'Other' category due to dissatisfaction with the local channel offerings {{ }} left for a cable company. The data indicated that the analogous number for those leaving due to dissatisfaction with the sports programming was {{ }} These tabulations are provided in my backup file.

[36] Details of these calculations are provided in my backup file.

Comcast. Analyses of MVPD competition, including Katz' RTC Report,[37] as well as the history of regulatory actions and opinions, acknowledge that DBS and cable providers compete for subscribers.[38] Comcast has acknowledged that the MVPD industry has become increasingly competitive, as first DBS and now telco firms have entered and taken share from cable.[39] The regulatory and market history is consistent with findings from DIRECTV's surveys and from Comcast's own documents[40] that subscribers substitute not only between DBS firms or between cable firms, but between firms offering MVPD service using different technologies.

C. Israel and Katz' Only Empirical Evidence of a "Near Zero" Diversion from DBS to Comcast in the Fisher DMAs May Be Flawed by Confounding Events

36. In their analysis of the Fisher event, Israel and Katz do not take into account, or even acknowledge, the possibility that their regression analysis – which they claim demonstrates that Comcast did not gain subscribers in DMAs where DISH stopped providing Fisher networks – was uninformative because of concurrent operational changes by Comcast in the Pacific Northwest, in particular its movement to eliminate analog channels and move to an "All-

[37] See, Katz 2009 RTC Report ¶30: "Indeed, the DC Circuit Court recently found that cable operators face 'ever increasing competition,' particularly in recent years, from DBS operators and phone companies that 'have entered the market and grown in market share since the Congress passed the 1992 Act'" (citing Comcast v. FCC, No. 08-1114 (D.C. Cir. Aug. 28, 2009), slip op. at 14).

[38] See, e.g., Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* 24 FCC Rcd. 542, ¶¶ 4, 169 (Adopted November, 2007 & Released January, 2009).

[39] *See, e.g., Applications and Public Interest Statement of General Electric Company and Comcast Corporation* at 83 ("The Commission has expressly rejected arguments that DBS and cable are not part of the same product market. There is no reason for the Commission to adopt a narrower product market definition in this case") (footnote omitted); Comments of Comcast Corporation, MB Docket No. 07-269, at 2 (filed May 20, 2009) (discussing how cable operators are "continuing the ongoing battle for subscribers with robust MVPD competition presented by DirecTV and Dish Network"); "We operate our businesses in an intensely competitive environment. Competition for the cable services we offer consists primarily of direct broadcast satellite ("DBS") operators and phone companies. In 2009, our competitors continued to add features and adopt aggressive pricing and packaging for services that are comparable to the services we offer" (Comcast Corporation 2009 Form 10-K p. 2); "Federal regulation and regulatory scrutiny of our Cable and Programming segments have increased in recent years, even as the cable industry has become subject to increasing competition from DBS providers, phone companies and others for video, high-speed Internet and phone services" (Comcast Corporation 2009 Form 10-K pp. 7-8)

[40] See, e.g., Comcast Slide Titled "Five Year Plan Assumes Taking Share From Satellite To Do So We Must… 2. Eliminate satellite industry 'The Most Channels' advantage… Until we have 'infinite channels' . Satellite will be a thorn in our side… Consumers will not easily 'see' satellite is not the future." (Comcast, *Video Roadmap*, December, 2009 63-COM-00000349-84 at 51). Comcast's advertisements during the Fisher dispute indicate that Comcast was attempting to gain customers from DISH. (*See*, 37-COM-00000001-21.

Digital" service in Oregon and Washington.[41] Portland was the first major market in which Comcast implemented the "digital migration."[42] Eugene Oregon had converted as of mid-February 2009,[43] and "over half of the Portland market" had converted as of April 30, 2009, with the remainder of the Portland market planned by Comcast to be completed within another 60 days.[44] Conversions did not take place in Fresno and Sacramento, Israel and Katz' control markets for analyzing the Fisher event, until 2010.[45]

37. While the switch to all digital likely would increase the value of Comcast's network over the long term, the switch also created the possibility of dissatisfaction for some customers, which potentially could hurt Comcast's subscribership in the short-run.[46] If some Comcast subscribers had to obtain new equipment, and had been considering leaving or planned to leave Comcast, they might do so immediately rather than convert.[47] Thus, the transition to the "All-Digital" service could have affected Comcast's subscriber growth rate in some of the Fisher DMAs, while not affecting the control DMAs of Fresno and Sacramento at that time. As a result, comparisons between Comcast's penetration rates in the Fisher DMAs and these control DMAs may not provide reliable estimates of the impact of the elimination of local channels from DISH's lineup on Comcast.

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[41] Comcast's "All-Digital" conversions were intended to "recapture approximately 250 megahertz to 300 megahertz of spectrum by moving 40 to 50 channels from analog to digital." Comcast Corporation Earnings Conference Call – Q1 2009, p. 5

[42] Comcast Corporation Earnings Conference Call – Q1 2009, p. 6.

[43] Andrea Damewood, *Comcast makes switch from analog to digital programming*, February 11, 2009. Available: (http://special.registerguard.com/csp/cms/sites/web/news/cityregion/7427524-41/story.csp).

[44] Comcast Corporation Earnings Conference Call – Q1 2009, p. 6. "Portland became the first large system to go All-Digital in June." Comcast Corporation Earnings Conference Call – Q2 2009 (August 6, 2009), p. 6.

[45] *Just the Facts about Comcast's Digital Migration*. Available: (http://comcastcalifornia.mediaroom.com/index.php?s=110) from the link "The FAQs" (last downloaded August 18, 2010); "News about Digital switch in Sacramento, CA. Available: (http://outside.in/sacramento-ca/tags/Digital%20switch). *See also*, Smith, Darrell. "Comcast makes room for more digital by dropping some analog channels." February 6, 2010. Available: (http://www.definitivesynergy.com/billiards-industry-news/comcast-makes-room-for-more-digital-by-dropping-some-analog-channels.html).

[46] Pegoraro, Rob. "Can You Make Comcast's Digital Transition Without a Cable Box?" The Washington Post Online. Available: (http://voices.washingtonpost.com/fasterforward/2009/09/cables_digital_transition.html).

[47] Customers had to either pick up new equipment at Comcast outlets or pay a fee to have it delivered or installed. Dudley, Brier. "More on Comcast digital: TiVos, Media Centers, HD and "free" " April 6, 2009. The Seattle Times Blog. Available: (http://blog.seattletimes.nwsource.com/brierdudley/2009/04/06/more_on_comcast_digital_tivos.html)

D. My Model Predicts Substantial Increases in Retransmission Fees

38. As summarized in Exhibit 2, the survey evidence of switching from DIRECTV provides a range of estimates of switching to cable from a DBS operator {{ }} of that implied by proportionate substitution. A reasonable point estimate of the diversion rate from a DBS operator to Comcast is {{

}}

39. As shown in Exhibit 3, after adjusting the diversion rate parameter in my Initial Report to values that correspond to {{ }} percent of proportionate substitution, predicted increases in retransmission rates (for an MVPD with a 10 percent share in the DMA) resulting from the proposed transaction remain substantial, ranging from {{

}}[48] An estimate of {{

}}

40. As I noted in my Initial Report, the methodology used to predict increases in retransmission consent fees also can be applied to NBCU's national programming networks. Exhibit 4 summarizes the application of my model to forecast what market forces would imply for the change in license fees for NBCU's national programming if other forces (such as potential regulatory restraints) did not intervene. The model predicts increases in license fees of {{ }} using the same model and assumptions that I used to estimate the impact of the proposed transaction on retransmission fees.

[48] If I assume that NBCU has twice the bargaining skill as the MVPD (as Israel and Katz appear to claim, but which I explained is unsupported and contrary to Katz' assumption in his RTC Report and the sharing assumption commonly adopted), then the range is {{ }} These calculations are provided in my backup file.

IV. Israel and Katz' Analysis of the Welfare Implications of the Integration Is Flawed and Unreliable

41. Israel and Katz criticize my implementation of the bargaining model, because they claim that I failed to "account for transaction-specific efficiencies including the mitigation or elimination of double marginalization."[49] I have not reviewed the parties' claims regarding transaction-specific efficiencies, and I offer no opinion whether the integration of additional programming into Comcast's cable operations represents such an efficiency. However, even if it did, Israel and Katz' approach to evaluating the overall impact of the transaction on consumer welfare is improper.

42. Israel and Katz claim to provide a bargaining model that improves on my parameter estimates and also incorporates transaction-specific efficiencies, and which then implies that "the transaction will lead to lower average MVPD marginal costs for NBCU programming…[which] would very likely benefit consumers."[50] They use their revised version of the bargaining model to predict increases in retransmission rates to Comcast's competitors. They then calculate a discounted weighted average of the predicted increased rates paid by competitors and the reduced rate (to zero) now paid by the integrated firm for NBCU programming. They conclude that this weighted average reduction in average MVPD marginal costs would result in a "reduction in the average per-subscriber, per-month cost of NBCU programming."[51] However, as I now explain, this overly simplistic approach is not informative about the likely impact on consumer welfare.

A. Changes in the Weighted Average of MVPDs' Costs Do Not Indicate Changes In Consumer Welfare

43. The Israel and Katz weighted-average approach to evaluating the impact of the transaction on consumer welfare assumes that the impact of cost changes is proportional to firms' market shares. But, in general, economic models of competition do not imply that the impact of cost changes will be proportional to market shares. Individual firms' costs can be

[49] Israel and Katz Opposition Report ¶35.
[50] Israel and Katz Opposition Report ¶64.
[51] Israel and Katz Opposition Report ¶79.

more or less important for market prices than their shares indicate. One cannot assume that a decline in Comcast's marginal cost together with a smaller increase in its competitors' marginal costs necessarily would reduce market prices. Israel and Katz' claim that an effect that lowers one firm's costs but raises all of its rivals' costs would "very likely benefit consumers" has no basis as a theoretical statement and they provide no empirical evidence that it is true in this context.

44. A proper analysis of the net impact on consumer welfare of eliminating double marginalization while raising the costs of rivals would require exactly the type of analysis that Israel and Katz claim is complex and "speculative." In particular, it would require consideration of how competition works in the marketplace, and thus how changes in firms' costs affect their prices, "the shape of the demand curve for MVPD services, and other factors,"[52] as the Commission has recognized.[53] Assuming away the real-world factors that determine whether consumers benefit from elimination of double marginalization and are harmed by increased marginal costs of Comcast's MVPD competitors does not make the Israel and Katz weighted average approach meaningful.

B. Katz and Israel's Own Empirical Analysis Provides no Support for their Conclusion that Vertical Integration and Elimination of Double Marginalization Benefits Consumers

45. In Table IV.5 of their Opposition Report, Israel and Katz provide an analysis that they claim shows that "integration events" have no impact on price or "output" (proxied by ratings). However, their reported regression results do not support the conclusion that they claim follows from this analysis. {{

[52] Israel and Katz Opposition Report ¶75.
[53] *See News/Hughes*, ¶¶155-6.

}} Furthermore, their data on programming prices likely would not capture much of the impact of vertical integration on programming fees, because changes in average license fees occur slowly as long-term contracts expire and new ones are renegotiated by the now-vertically integrated network. The short time window for estimating the impact of these events, combined with the delay between the integration and renegotiation of new contracts, would make it difficult to discern the true effect of integration.

46. Moreover, if Israel and Katz' finding were correct, and "integration events" did not affect price or output, it is hard to understand how "consumer welfare" could be enhanced by Comcast's acquisition of NBCU. While I do not endorse their empirical findings, their own failure to find any impact of vertical integration on "output" is inconsistent with their claim that the changes in marginal costs would increase consumer welfare.

V. Other Critiques of the Israel and Katz' Analysis

A. Economic Evidence Reveals that NBC and MVPDs Do Not Act as if Bargaining Breakdowns Between NBC and MVPDs Would Do Major Harm to NBC's Network

47. Israel and Katz claim that "a strategy of foreclosure based on withholding access to NBC would risk seriously damaging the very asset in which Comcast is acquiring an interest" by "'breaking the system' of ubiquitous distribution…that distinguishes the NBC broadcast network from a highly rated cable network."[54] But the fact that all NBC stations elect retransmission consent, rather than electing must carry, and are able to negotiate positive retransmission fees, is inconsistent with claims that bargaining breakdowns would do major harm to NBC's network. Instead, this fact is consistent with the idea that the threat of withholding allows NBCU and its affiliates to negotiate positive retransmission rates with MVPDs.

48. Moreover, if the loss of MVPD carriage would impose a significant cost on NBCU, then my calculated diversion rates are too small. It would take an even higher diversion rate to produce the observed level of retransmission fees when NBCU's loss from a lack of carriage is greater (this would mean that the loss of advertising revenue to NBCU would be greater than the

[54] Israel and Katz Opposition Report ¶¶24-5. Israel and Katz made similar claims in their initial report (see, e.g., Israel and Katz Report ¶10).

average currently observed in the DMA, meaning NBCU incurs a higher penalty from loss of retransmission). This in turn would imply that the predicted increase in retransmission fees from the proposed transaction would be larger than I have estimated. If Israel and Katz are correct that the loss of ubiquity for the NBC network would be costly, then my estimates of how market forces would increase retransmission fees after the merger would have to be revised upward.

B. If Networks Are "Substitutes In Usage," But Complements At the Time of Purchase, Then the Marginal Effect of Adding a Broadcast Network to an MVPDs' Lineup Need Not Be Declining With the Number of Networks

49. Israel and Katz criticize my assumption that the effect of adding a single network to an MVPD's lineup is reasonably approximated by 25 percent of the effect of adding all four networks. They claim that this assumption is "unreasonable unless the major broadcast networks are not substitutes for one another."[55] They claim that "as a *matter of economics*, the fourth network surely has less effect than the first,"[56] because individuals consider networks to be good substitutes. Thus, they claim that my 25 percent assumption is an estimate of the upper bound, likely too high, of the effect of adding one network.

50. However, Israel and Katz are wrong that "as a matter of economics" a fourth network must have a smaller marginal value to the MVPD than do the first three networks (assuming that they mean by this that it follows as a matter of fundamental economic principles). If customers are heterogeneous in their tastes for local channels – some value them a lot while others value them less – then the marginal effect of the fourth network on an MVPD's subscriber levels can exceed the marginal effect of the first. All else equal, households that value local affiliates highly will switch from an MVPD providing all four local stations to a competing MVPD only if the competing MVPD also offers all four network affiliates, even though subscribers that place little value on local stations may be willing to switch to an MVPD that offers only one. If there are more of the former group than the latter, then the incremental impact from the fourth network on an MVPD's subscribership could exceed the impact of the first. This could be true in spite of the fact that the marginal value of adding a fourth network is smaller than the marginal value of

[55] Israel and Katz Opposition Report ¶260.
[56] Israel and Katz Opposition Report ¶261 (emphasis added).

the first for each individual subscriber. The key is that the marginal customers for an MVPD with no local stations have a weaker preference for local stations (that is why they chose an MVPD with no local stations) than the marginal customers of an MVPD with four local stations. This difference in customer composition generates a relationship that is the reverse of that obtained for any given individual.

51. Thus, heterogeneity in customers' tastes can lead goods that are substitutes from the perspective of each individual to be complements in the aggregate. Katz and Israel cannot conclude that, as a matter of economic principles, the fourth network is worth less than the first.

52. Furthermore, if the marginal impact of the fourth network on an MVPD's attractiveness were substantially less than the marginal impact of the first, I would expect it to be reflected in retransmission rates, so that MVPDs would be willing to pay less for the fourth network in retransmission fees (or perhaps the fourth network would have to select "must carry" in order to obtain carriage). I know of no evidence that supports these predictions.

53. Finally, it is possible that local stations may not be substitutes at the time of purchase for some individual customers given technology by which local stations can be obtained. A MVPD subscriber may consider two alternatives: obtain all over-the-air stations through the MVPD, or obtain them all using an antenna. For individuals that have a strong preference for getting all four local stations, local stations would be complements. The marginal effect of the fourth local affiliate on a subscriber's choice of MVPD would exceed that of each of the first three, since only by getting all four is the individual willing to stop obtaining broadcast stations over-the-air using an antenna.

C. Israel and Katz' New Comparison of Comcast's Subscribership During the Last Month of the Fisher Dispute and the Following Three Months Sheds No Additional Light On How Changes in DISH's Channel Lineup Affected Comcast Subscribership Levels

54. {{

}}

55. In response, Israel and Katz offer a new version of their regression analysis in which they add to their original specification a separate dummy variable that equals one for the last month of the Fisher event. They find that the coefficient on this dummy variable is not statistically different from the coefficient on the "three months after" dummy. They claim that this is evidence that "the negative effect…actually commences *before* the end of the Fisher event period"[57] and that "[t]he evidence, taken as a whole, makes it clear that Comcast did not gain a significant number of subscribers due to the Fisher event."[58] {{

}} – which they do not disavow and cannot explain – began before the Fisher dispute ended.

56. However, Israel and Katz' interpretation of their findings is flawed. First, they offer no theory or evidence why there would be a change in Comcast's subscribership trend in the month before the Fisher dispute ended. If there is no economic logic to explain this effect, then there is no reason to accept their analytical framework for determining whether there was a positive impact on Comcast during the period of the dispute. In other words, if Comcast's subscribership changed in ways that cannot be explained in the month before and three months following the end of the dispute, and they claim that their measured effects are unrelated to the end of the dispute, then Israel and Katz cannot be confident that the absence of any measurable impact during the Fisher dispute is valid evidence that Comcast did not gain during the dispute.

57. Second, even with this dummy variable in the regression, Israel and Katz continue to find that Comcast's subscribership was lower after than during the event. While their data are not sufficient to allow them to ascertain precisely when, relative to the end of the Fisher event, the

[57] Israel and Katz Opposition Report ¶255.
[58] Israel and Katz Opposition Report ¶255.

decrease in Comcast's subscribership began, the evidence they present is consistent with the hypothesis that Comcast's penetration rate was lower after than during the Fisher event, and thus that adding a broadcast station to DISH's lineup affects Comcast's subscribership.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 19th day of August, 2010.

Kevin M. Murphy

Keviu M. Murphy

EXHIBIT 1 TO MURPHY REPORT

(REDACTED)

EXHIBIT 2 TO MURPHY REPORT

(REDACTED)

EXHIBIT 3 TO MURPHY REPORT

(REDACTED)

EXHIBIT 4 TO MURPHY REPORT

(REDACTED)

EXHIBIT B

DECLARATION OF DANIEL HARTMAN

1. My name is Daniel Hartman. My title is Senior Vice President, Programming Acquisition at DIRECTV, Inc. ("DIRECTV.") In this role, I am responsible for agreements DIRECTV negotiates for the carriage of programming.

2. I have personal knowledge of the negotiations between DIRECTV and Comcast Corp. ("Comcast") relating to DIRECTV's request to carry Comcast Sportsnet Philadelphia (CSN-Philly).

3. Earlier this year, the Commission closed the "terrestrial loophole" by putting in place a mechanism through which MVPDs could gain access to cable-affiliated programming that had previously escaped regulation under the program-access rules because it was delivered by terrestrial means.

4. As soon as these new rules became effective, DIRECTV requested that Comcast offer CSN-Philly for carriage on non-discriminatory terms and conditions.

5. By letter dated August 2, 2010, Comcast refused to offer CSN-Philly to DIRECTV.

6. By letter dated August 12, 2010, Comcast indicated that it would be willing to discuss carriage of CSN-Philly with DIRECTV. Yet Comcast has not made an offer for such carriage. It has indicated on several occasions that no such offer will be forthcoming unless DIRECTV voluntarily gives up its legal, exclusive arrangement for out-of-market NFL football games (presumably with no compensation from Comcast). If this is Comcast's position, I do not believe it constitutes a genuine basis for negotiation, much less an offer on non-discriminatory terms and conditions, as the law requires.

7. We are also involved in a separate negotiation with Comcast regarding four of its networks. Comcast has refused DIRECTV's repeated requests for individual offers on each of the four networks, insisting that they be negotiated as a package.

I declare under penalty of perjury that the above is true and correct.

Daniel Hartman

Dated: August 19, 2010

EXHIBIT C

APPENDIX __

REMEDIES AND CONDITIONS

A. D EFINITIONS

For purposes of the conditions set forth below, the following definitions apply:

"Comcast" means Comcast Corporation and its subsidiaries, affiliates, parents, successors, and assigns.

"NBCU" means NBC Universal, Inc. and its subsidiaries, affiliates, parents, successors, and assigns.

"Affiliated Program Rights Holder" includes (i) a program rights holder in which Comcast or NBCU holds a non-controlling "Attributable Interest" (as determined by the Commission's program access attribution rules); and (ii) a program rights holder in which an entity holding a non-controlling Attributable Interest in Comcast or NBCU holds an Attributable Interest, provided that Comcast or NBCU has actual knowledge of such entity's Attributable Interest in such program rights holder.

"Attributable interest" means a cognizable interest in an entity as defined pursuant to Section 76.1000(b) of the Commission's rules.

"Regional Sports Network" and "RSN" mean any non-broadcast video programming service that (1) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball and (2) in any year, carries a minimum of either 100 hours of programming that meets the criteria of subheading 1, or 10% of the regular season games of at least one sports team that meets the criteria of subheading 1.

A "Covered RSN" is an RSN (i) that Comcast or NBCU currently manages or controls, or (ii) in which Comcast or NBCU, on or after the date of adoption of this Order, acquires either an attributable interest, an option to purchase an attributable interest, or an interest or other arrangement that would permit management or control of the RSN.

"Programmer" means a broadcast television station (or group of broadcast television stations if covered by a single retransmission consent agreement), an RSN, or a national network (i) that Comcast or NBCU currently manages or controls, or (ii) in which Comcast or NBCU, on or after the date of adoption of this Order, acquires either an attributable interest, an option to purchase an attributable interest, or an interest or other arrangement that would permit management or control of the relevant entity.

B. CONDITIONS

1. Program Access Conditions Applicable to All Modes of Delivery

a. Neither Comcast nor NBCU will offer any of its existing or future programming or programming-related services on an exclusive basis to any MVPD, including Comcast's own cable systems, regardless of the mode of medium or method used for delivery of such programming.

b. Comcast and NBCU will make such existing or future programming and programming-related services available to all MVPDs and/or their subscribers on a non-exclusive basis and on non-discriminatory terms and conditions within each medium or method used for delivery of such programming, consistent with the Commission's program access rules (as modified by this condition). Accordingly, the same content shall be made available at the same speed, quality, and time to all MVPDs as it is made available to Comcast.

c. For purposes of the preceding paragraph, and without limiting the general applicability of the term, the following shall be considered prohibited "discrimination."

i. Discrimination with Respect to Access to Comcast Content:

A. Failure to make any content that Comcast makes available for distribution over Comcast's broadband networks, which shall include distribution via wireless networks, mobile and other delivery technologies (collectively, "Distribution Networks") including live streaming of content and video-on-demand ("VOD") content) available to MVPDs for distribution on nondiscriminatory terms and conditions, including but not limited to, number of hours, length of content, availability windows, format (e.g., HD, 3D), features (e.g.,, multiple camera angles) and advertising opportunities.

B. Offering any Comcast-affiliated exclusive content, early premieres or other exclusive features on discriminatory terms with respect to MVPDs over the Distribution Networks or on Comcast sites or devices.

C. Failure to give access to all content offered by Comcast-controlled entities on an "authenticated" basis (e.g., TV Everywhere) on nondiscriminatory terms (including, but not limited to, Comcast Cable and third party content sites with which Comcast is affiliated).

D. Favoring any content aggregation site in which Comcast has an interest with respect to any content and the terms thereof (e.g., premiere dates, windows, format (e.g., HD)).

E. Failure to make available to MVPDs streaming rights (including streamed delivery via mobile devices) to content owned or controlled by Comcast, including live sports content (e.g., MLB games), to which Comcast or an affiliated entity has streaming rights.

ii. Discrimination with Respect to MVPD Content:

A. Discrimination against MVPDs and their subscribers with respect to quality-of-service factors such as speed, quality, usage conditions or requirements in delivery of content over the Distribution Networks.

B. With respect to content delivered over the Distribution Networks, failure to treat content from MVPD-affiliated sites in the same manner as content received from Comcast-affiliated sites with respect to factors such as bandwidth caps or other limitations on downloading/uploading content.

C. Prioritizing or guaranteeing a higher quality-of-service for Comcast's own video-on-demand ("VOD") services and/or online content offerings over those services provided by other MVPDs that utilize the Distribution Networks.

d. Neither Comcast nor NBCU will enter into an exclusive distribution arrangement with any Affiliated Program Rights Holder.

e. Neither Comcast nor NBCU (including any entity over which either exercises control) shall unduly or improperly influence: (i) the decision of any Affiliated Program Rights Holder to sell programming to an unaffiliated MVPD; or (ii) the prices, terms and conditions of sale of programming by any Affiliated Program Rights Holder to an unaffiliated MVPD.

f. For purposes of enforcing these conditions, an aggrieved MVPD may bring a program access complaint against Comcast and/or NBCU using the procedures found at Section 76.1003, 47 C.F.R. § 76.1003, of the Commission's rules, except that the Commission shall be required to issue a final decision within 90 days of filing of said complaint.

2. Program Access Conditions Applicable to Programmers

a. Comcast, NBCU, and their existing or future Programmers, regardless of the means used for content delivery, shall not offer any programming or programming-related services on an exclusive basis to any MVPD, and Comcast, NBCU, and their affiliated Programmers, regardless of the means used for content delivery, are required to make such programming and programming-related services available to all MVPDs on a non-exclusive basis and on nondiscriminatory terms and conditions. This provision prohibits all exclusive arrangements, including those that may not be effectuated by a formal agreement.

b. Neither Comcast nor NBCU shall acquire an attributable interest in a Programmer or enter into any other arrangement that would permit management or control of a Programmer unless the Programmer is obligated to abide by the conditions set forth herein.

b. Comcast and NBCU will not enter into an exclusive distribution arrangement with any such Programmer, regardless of the means of delivery.

c. Neither Comcast nor NBCU (including any entity with which it is affiliated) shall unduly or improperly influence (i) the decision of any Programmer, regardless of the means of delivery, to sell programming or programming-related services to an unaffiliated MVPD; or (ii) the prices, terms, and conditions of sale of programming or programming-related services by a Programmer, regardless of the means of delivery, to an unaffiliated MVPD.

d. For enforcement purposes, an aggrieved MVPD may bring a program access complaint against Comcast, NBCU, or the relevant Programmer using the procedures found at Section 76.1003, 47 C.F.R. § 76.1003, of the Commission's rules.

C. Additional Remedies

1. When negotiations fail to produce a mutually acceptable set of price, terms and conditions for (1) a retransmission consent agreement with a local broadcast television station that Comcast or NBCU owns and operates or on whose behalf it negotiates retransmission consent, (2) carriage of RSN programming, or (3) carriage of national cable network programming, an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

   a. An aggrieved MVPD may submit a dispute over the terms and conditions of carriage of content subject to these conditions (i) that Comcast or NBCU currently manages or controls or (ii) in which Comcast or NBCU, on or after the date of adoption of this Order, acquires either an attributable interest, an option to purchase an attributable interest, or one that would permit management or control of the relevant programmer.

   b. Following the expiration of any existing contract, or 90 days after a first time request for carriage, an MVPD may notify the relevant programmer and either NBCU or Comcast, as appropriate, within five business days that it intends to request commercial arbitration to determine the terms of the new affiliation agreement.

   c. Upon receiving timely notice of the MVPD's intent to arbitrate, either NBCU or Comcast, as applicable, shall ensure that the Programmer allows continued carriage under the same terms and conditions of the expired affiliation agreement as long as