REDACTED PURSUANT TO REQUEST FOR CONFIDENTIAL TREATMENT.

EXHIBIT H

REDACTED PURSUANT TO REQUEST FOR CONFIDENTIAL TREATMENT.

EXHIBIT I

Bloomberg

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March 10, 2011

Neil Smit
President
Comcast Cable Communications
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Dear Neil:

It was good to talk to you yesterday about implementation of the decision by the FCC approving Comcast's acquisition of control of NBC Universal (the "Merger").

You asked how we view the neighborhooding requirement applicable to independent news channels, such as Bloomberg Television ("BTV"). As you are aware, the Commission conditioned its approval of the Merger on the following requirement: "If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood."[1] The Commission went on to say that it had adopted this requirement in light of the "special importance of news programming to the public interest."[2] BTV is clearly an independent news channel for purposes of this condition because it: (1) is unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries; (2) is unaffiliated with one of the top fifteen programming networks, as measured by annual revenues; and (3) has programming focused on public affairs and business reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.[3]

This condition applies to any news neighborhood that Comcast carries "now or in the future."[4] Accordingly, the FCC Order requires Comcast to move BTV now into any news neighborhood that currently exists on any Comcast system.

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[1] *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56 (rel. Jan. 20, 2011), App. B., at 121, *see also id.*, at 51.

[2] *Id.*, at ¶ 122.

[3] *See id.* at 51, n. 292.

[4] *Id.*, ¶ 122

Bloomberg

I have attached a list of markets where Comcast currently has news neighborhoods into which BTV must be moved under the terms of the FCC's Order. This list is not intended to be exhaustive, but rather illustrative of systems where Comcast currently carries news neighborhoods in order to provide guidance to Comcast in implementing the news neighborhooding condition. On our initial review, most of these channel lineups group at least four of the major news channels in contiguous and adjacent channel positions, clearly constituting "a significant number or percentage of news and/or business news channels" as established by the FCC Order.

Bloomberg recognizes that the FCC regulations require 30 days notice to subscribers of channel changes. In light of that notice period, we believe it reasonable to request that BTV be placed into all news neighborhoods as soon as possible but certainly no later than three months from today.

I look forward to continuing our discussions next week. Congratulations again on your new position. We all look forward to working with you to effectuate the FCC Order.

Regards,

Daniel Doctoroff

Attachment: Examples of Markets with News Neighborhoods of at Least 4 News Channels

1. **Seattle-Tacoma, WA DMA**

Grays County, King County, Lewis County, Pacific County, and Thurston County

(CNN-44, CNN Headline News-45, CNBC-46, MSNBC-47, Fox News-48)

2. **Washington, DC DMA**

Washington, DC

(CNN Headline News-35, CNN-36, Fox News-37, MSNBC-38, CNBC-39)

Arlington, Alexandria, Prince George's County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Reston/Prince William County

(CNN-35, CNN Headline News-36, CNBC-37, MSNBC-38, Fox News-39)

Winchester

(CNN Headline News-38, CNN-39, Fox News-40, CNBC-41, MSNBC-42)

Spotsylvania County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Montgomery County

(CNBC-60, MSNBC-61, CNN-62, CNN Headline News-63)

3. **San Francisco-Oakland-San Jose, CA DMA**

San Francisco, Oakland, Berkeley, San Jose

(CNN-56, CNN Headline News-57, CNBC-58, Fox News-59, MSNBC-60)

Fort Bragg, Willits

(CNN Headline News-40, CNN-41, CNBC-42, MSNBC-43)

Sonoma, Calistoga, Napa Valley

(CNN-56, CNN Headline News-57, CNBC-58, MSNBC-60)

4. **Atlanta, GA DMA**

Atlanta, Cobb County, East Point, Stone Mountain, Walton

(CNN-34, CNN Headline News-35, CNBC-36, Fox News-37)

5. **Chicago, IL DMA**

City of Chicago Areas 1, 4, and 5

(CNN-57, CNBC-58, MSNBC-59, Fox News-60, CNN Headline News-61)

Hammond and East Chicago

(CNN-43, CNN Headline News-44, CLTV-45, Fox News-46, MSNBC-47, CNBC-48)

LaSalle, Mendota

(CNN Headline News-56, CNBC-57, CNN-58, MSNBC-59, Fox News Channel-60)

Carpentersville, Aurora, Naperville, Wheaton

(CLTV-53, Fox News-54, CNN-55, CNN Headline News-56, MSNBC-58, CNBC-59)

Romeoville

(CNN Headline News-35, CNN-36, CLTV-38, CNBC-39)

6. **Philadelphia, PA DMA**

North/West/Northwest Philadelphia

(CNN-26, CNN Headline News-27, MSNBC-28, CNBC-29)

Montgomery County (King of Prussia/Norristown)

(Fox News Channel-40, CNN-41, CNN Headline News-42, CNBC-43, MSNBC-44)

Kent County

(Fox News-25, CNN-26, Headline News-27, MSNBC-28, CNBC-29)

Pleasantville, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, CNBC-58, MSNBC-59)

7. Boston, MA DMA

Cambridge, Weymouth, Lexington, Waltham

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, CNBC-46)

Everett, Malden, Medford, Melrose, Winthrop

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, C-SPAN2-45, CNBC-46)

8. Minneapolis, MN DMA

Minneapolis, MN

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

North Metro Area

(CNN-31, CNN Headline News-32, CNBC-33, Fox News-34)

Southwest Suburbs, Shakoppe

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

9. New York DMA

Somerset County, NJ

(CNBC-36, FOX News Channel-37, CNN-38, CNN Headline News-39, MSNBC-40)

Monmouth County, NJ

(FOX News Channel-29, CNN Headline News-30, CNN-31, CNBC-33, MSNBC-34)

Mercer County, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, MSNBC-59)

EXHIBIT J

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

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

MEMORANDUM OPINION AND ORDER

Adopted: January 18, 2011 **Released: January 20, 2011**

By the Commission: Chairman Genachowski and Commissioner Clyburn issuing separate statements, Commissioners McDowell and Baker concurring and issuing a joint statement, Commissioner Copps dissenting and issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION

1. In this proceeding, Comcast Corporation ("Comcast"), General Electric Company ("GE"), and NBC Universal, Inc. ("NBCU")—collectively referred to as "the Applicants"—seek authorization to assign and transfer control of broadcast, satellite, and other radio licenses from GE to

Comcast.[1] The proposed transaction would combine, in a single joint venture ("Comcast-NBCU" or "the JV"), the broadcast, cable programming, online content, movie studio, and other businesses of NBCU with some of Comcast's cable programming and online content businesses. The JV's assets would include two broadcast television networks (NBC and Telemundo), 26 broadcast television stations, and NBCU's cable programming (such as CNBC, MSNBC, Bravo, and USA Network), all of which would be under the control of Comcast, the nation's largest cable operator and Internet service provider.

2. Under federal law, the Commission reviews such transactions to ensure that they are in the public interest, convenience, and necessity.[2] This review entails a thorough examination of the potential harms and benefits of the proposed transaction, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose remedial conditions to address potential harms likely to result from the transaction. If, on balance, the benefits associated with the proposed transaction outweigh the remaining harms, the Commission must approve the transfer if it serves the public interest.

3. This transaction would effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers offline and, increasingly, online as well. The harms that could result are substantial. For example, Comcast-NBCU would have both greater incentive and greater ability to raise prices for its popular video programming to disadvantage Comcast's rival multichannel distributors (such as telephone companies and direct broadcast satellite ("DBS") providers). It would also have the incentive and ability to hinder the development of rival online video offerings and inhibit potential competition from emerging online video distributors that could challenge Comcast's cable television business. Moreover, the transaction presents concerns with respect to our statutory mandate to promote diversity and localism in broadcast television and video programming distribution.

4. Because of these and other threats posed by the proposed transaction to competition, innovation, and consumer welfare, the Commission has developed a number of targeted, transaction-related conditions and Comcast has offered a number of voluntary commitments to mitigate the potential harms the proposed combination might otherwise cause. These conditions and voluntary commitments, as discussed in further detail below, fall into three main categories as they relate to competition issues:

- *Ensuring Reasonable Access to Comcast-NBCU Programming for Multichannel Distribution.* Building on successful requirements adopted in prior, similar transactions,[3] we make

[1] Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast Corporation, Transferee (Jan. 28, 2010), as amended on May 4, and November 3, 9, 17, 18 and 29, 2010 (together, the "Application"). The Media Bureau placed the Application on public notice on March 18, 2010, establishing a comment cycle for this proceeding. *See Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, 25 FCC Rcd 2651 (MB 2010) ("Public Notice").

[2] 47 U.S.C. § 310(d).

[3] *See, e.g., General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473 (2004) ("*News Corp.-Hughes Order*"); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006) ("*Adelphia Order*").

available to rival multichannel video programming distributors ("MVPDs") an improved commercial arbitration process for resolving disputes about prices, terms, and conditions for licensing Comcast-NBCU's video programming. We believe that this remedy, designed to prevent harms from integrating content and distribution market power, will be even more effective and less costly than previous procedures. We apply the arbitration and standstill remedies to *all* Comcast-NBCU affiliated programming.

- *Protecting the Development of Online Competition.* Recognizing the danger this transaction could present to the development of innovative online video distribution, we adopt conditions designed to guarantee *bona fide* online distributors the ability to obtain Comcast-NBCU programming in appropriate circumstances. These conditions respond directly to the concerns voiced by commenters—including consumer advocates, online video distributors ("OVDs") and MVPDs—while respecting the legitimate business interests of the Applicants. Among other things, the Commission:
    - Requires Comcast-NBCU to provide to all MVPDs, at fair market value and non-discriminatory prices, terms, and conditions, any affiliated content that Comcast makes available online to its own subscribers or to other MVPD subscribers.
    - Requires Comcast-NBCU to offer its video programming to any requesting OVD on the same terms and conditions that would be available to an MVPD.
    - Obligates Comcast-NBCU to make comparable programming available on economically comparable prices, terms, and conditions to an OVD that has entered into an arrangement to distribute programming from one or more of Comcast-NBCU's peers.
    - Restricts Comcast-NBCU's ability to enter into agreements to hamper online distribution of its own video programming or programming of other providers.
    - Requires the continued offering of standalone broadband Internet access services at reasonable prices and of sufficient bandwidth so that customers can access online video services without the need to purchase a cable television subscription from Comcast.
    - Prevents Comcast from disadvantaging rival online video distribution through its broadband Internet access services and/or set-top boxes.
    - Addresses threats to Hulu, an emerging OVD to which NBCU provides programming, that arise from the transaction.
- *Access to Comcast's Distribution Systems.* In light of the significant additional programming Comcast will control—programming that may compete with third-party programming Comcast carries on its MVPD service—we require that Comcast not discriminate in video programming distribution on the basis of affiliation or non-affiliation with Comcast-NBCU. Moreover, we require that, if Comcast "neighborhoods" its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood. We also adopt as a condition of the transaction Comcast's voluntary commitment to provide 10 new independent channels within eight years on its digital tier.

5. We also impose conditions and accept voluntary commitments concerning a number of other public interest issues, including diversity, localism, and broadcasting, among others. For example, to protect the integrity of over-the-air broadcasting, network-affiliate relations, and fair and equitable retransmission consent negotiations with the JV, we adopt a series of conditions that were independently negotiated between the Applicants and various network affiliates.

6. In addition to these and other conditions, which are designed to remedy potential harms, we also look to the affirmative benefits of the proposed transaction, both those inherent in the combination as well as additional voluntary commitments made by the Applicants, in order to ensure that this transaction serves the public interest. These commitments, which we make enforceable through this Order, include but are not limited to:

- *Broadband Adoption and Deployment.* Comcast will make available to approximately 2.5 million low income households: (i) high-speed Internet access service for less than $10 per month, (ii) personal computers, netbooks, or other computer equipment at a purchase price below $150, and (iii) an array of digital-literacy education opportunities. Comcast will also expand its existing broadband networks to reach approximately 400,000 additional homes, provide broadband Internet access service in six additional rural communities, and provide free video and high-speed Internet service to 600 new anchor institutions, such as schools and libraries, in underserved, low income areas.
- *Localism.* To further broadcast localism, Comcast-NBCU will maintain at least the current level of news and information programming on NBCU's owned-and-operated ("O&O") broadcast stations, and in some cases expand news and other local content. Comcast-NBCU's O&O NBC and Telemundo stations also will provide thousands of additional hours of local news and information programming to their viewers, and some of its NBC stations will enter into cooperative arrangements with locally focused nonprofit news organizations. Additional free, on-demand local programming will be made available as well.
- *Children's Programming.* Comcast-NBCU will increase the availability of children's programming on its NBC and Telemundo broadcast stations, and add at least 1,500 more choices to Comcast's on-demand offerings for children. It will provide additional on-screen ratings information for original entertainment programming on the Comcast-NBCU broadcast and cable television channels and improved parental controls. Comcast-NBCU also will restrict interactive advertising aimed at children 12 years old and younger and provide public service announcements addressing children's issues.
- *Programming Diversity.* Building on Comcast's voluntary commitments in this area, we require Comcast-NBCU to increase programming diversity by expanding its over-the-air programming to the Spanish language-speaking community, and by making NBCU's Spanish-language broadcast programming available via Comcast's on demand and online platforms. As noted above, Comcast also will add at least 10 new independent channels to its cable offerings.
- *Public, Educational, and Governmental ("PEG") Programming.* Comcast will safeguard the continued accessibility and signal quality of PEG channels on its cable television systems and introduce new on demand and online platforms for PEG content.[4]

7. The combination of Comcast and NBCU has important implications for consumers, competitors, and the future development of online video distribution. As reflected in the extensive discussion that follows, the Commission has given the transaction the careful consideration it deserves, and approached with an open mind the arguments of the Applicants, their supporters, and those opposed to the transaction. Through the voluntary commitments and other conditions we impose on the

[4] Appendix A contains the conditions we place on our grant of the requested assignments and transfers of control.

combination of Comcast and NBCU, we address the risks associated with it, while ensuring that the American public will realize significant benefits from it.

8. We therefore find that the grant of the proposed assignments and transfers of control of broadcast, satellite, and other radio licenses by the Commission will serve the public interest and, accordingly, the proposed transaction should be approved, as conditioned, pursuant to Section 310(d) of the Communications Act of 1934, as amended ("Act").[5]

II. DESCRIPTION OF THE PARTIES

A. Comcast Corporation

9. Comcast owns and operates cable systems serving nearly 24 million subscribers in 39 states and the District of Columbia.[6] Comcast's cable systems offer both traditional and advanced video services, including broadcast programming, national, regional and local cable channels, premium movie channels, programming for minority audiences, pay-per-view, and high definition programming.[7] Comcast offers broadband Internet access service over its cable plant and currently has nearly 16 million customers.[8] In addition, Comcast provides facilities-based voice services to over seven million customers.[9]

10. Comcast owns interests in 11 national programming networks, five of which are wholly-owned: E!, Golf Channel, Versus, Style, and G4. Comcast holds an attributable interest in PBS KIDS Sprout, TV One, NHL Network, Current Media, MLB Network, and Retirement Living Television.[10] Comcast also has interests in a variety of regional and local programming networks and in several regional sports networks ("RSNs").[11] Comcast owns a minority stake in Metro-Goldwyn-Mayer Studios Inc. ("MGM"), which allows it to obtain licenses for MGM and Sony movies and television series.[12]

11. Additionally, Comcast holds online and wireless interests, including a 9.4 percent interest in Clearwire Communications LLC.[13] Comcast is developing and operating online and cross-platform entertainment and media businesses, including Fancast Xfinity. Xfinity is an online portal to broadcast and cable programming that Comcast carries on its MVPD service, as well as other programming.[14]

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[5] 47 U.S.C. § 310(d).

[6] Application at 17.

[7] *Id.* at 18.

[8] *Id.* at 19.

[9] *Id.*

[10] *Id.* at 19-20.

[11] *Id.* at 20-21.

[12] *Id.* at 21-22. MGM is currently undergoing restructuring under the supervision of the United States Bankruptcy Court. *See In re Metro-Goldwyn-Mayer Studios Inc.*, Case No. 10-15774 (SMB) (S.D.N.Y. filed Nov. 3, 2010).

[13] Application at 22-24.

[14] *Id.* at 23. A complete list of Comcast's ownership interests is set forth in Appendix D hereto.

B. General Electric Company

12. GE is a diversified conglomerate with interests in technology, financial services and media employing over 285,000 people in more than 100 countries. As relevant to this transaction, GE holds an 80 percent interest in NBCU with the remaining 20 percent owned by Vivendi S.A. By the time the proposed transaction closes, GE expects to have acquired Vivendi's interest.[15]

C. NBC Universal, Inc.

13. NBCU is a large media, entertainment, and communications company. It owns and operates two broadcast networks (NBC and Telemundo), 26 broadcast television stations, a number of cable programming networks, a motion picture studio, a television production studio and an international theme park business.[16] NBCU distributes NBC network programming nationally through ten of its O&O television stations and more than 200 independently owned affiliated stations. Telemundo, the second largest United States Spanish language broadcast network, is distributed over 15 of NBCU's other O&O broadcast stations, 45 affiliates and over nearly 800 cable systems.[17] NBCU is also the licensee of a television station that is not affiliated with a network.[18]

14. NBCU owns a number of cable programming channels, including CNBC, MSNBC, Bravo, Oxygen, and USA Network.[19] Its studio assets include Universal Pictures, which creates and distributes both theatrical and non-theatrical filmed entertainment; and Focus Features and Focus Features International, which produce and distribute original films throughout the world.[20]

15. In association with its television and national cable networks and its O&O broadcast stations, NBCU owns and operates a number of online sites. For example, nbc.com is the website for the NBC television network. Hulu.com, in which NBCU owns a 32 percent interest, is an online video service offering TV shows and movies in the United States.[21] Finally, NBCU owns Universal Studios Hollywood and has significant interests in Universal Studios Florida and Universal Studios Japan.[22]

III. THE PROPOSED TRANSACTION

A. Description

16. On December 3, 2009, Comcast, GE, NBCU, and Navy LLC (the Applicants' joint venture vehicle) entered into a Master Agreement, which sets forth the steps necessary to create a joint venture between Comcast and GE.[23] After receipt of necessary government approvals and the satisfaction

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[15] *Id.* at 24-25.

[16] *Id.* at 26. A complete list of NBCU's ownership interests is set forth in Appendix D hereto.

[17] The 26 NBCU O&O television stations are set forth in Appendix D.

[18] NBC owns an independent Spanish-language station KWHY-TV, Los Angeles, California. *See* Application at 30.

[19] *Id.* at 30-31. NBCU also owns a minority interest in the Weather Channel and A&E Television Networks.

[20] Application at 31.

[21] *Id.* at 31-33. Other NBCU-owned online sites are CNBC.com and iVillage.

[22] *Id.* at 33.

[23] Master Agreement dated as of December 3, 2009 among General Electric Company, NBC Universal, Inc., Comcast Corporation and Navy, LLC, Application, Appendix 3.

or waiver of all other conditions precedent specified in the Master Agreement, and immediately prior to the closing, Comcast and GE will cause certain internal restructurings of entities to be contributed to the joint venture. After these restructurings, GE will acquire the 20 percent interest in NBCU currently held by Vivendi S.A. to give it complete ownership of NBCU.[24]

17. NBCU will then borrow $9.1 billion from third-party lenders which it will issue as a dividend to its parent, GE. Following payment of the dividend, GE will contribute NBCU and certain other assets primarily used in NBCU's business to the JV.[25] Comcast will then contribute certain assets to the JV comprising its content business, including RSNs, other programming networks, and certain Internet businesses. Comcast will not contribute its cable systems to the joint venture.[26] In addition to the contribution of assets, Comcast will make a cash payment to GE in the amount of approximately $6.5 billion. It then will own 51 percent of the JV.

18. Following completion of all the transactions contemplated by the Master Agreement, GE and Comcast will enter into an Operating Agreement for the joint venture ("LLC Agreement").[27] The JV will be governed by a board of five directors (three nominated by Comcast and two selected by GE). The board will make its decisions by majority vote although GE will have special approval rights for matters outside the ordinary course of business.[28] Comcast's current Chief Operating Officer, Steve Burke, will be the joint venture's initial CEO.[29] The LLC Agreement prohibits Comcast and GE from transferring their respective interests in the JV to third parties for four years and three and a half years, respectively, after the closing. After these periods of time each party will be allowed to sell its interest in the JV publicly or privately, subject, in the case of a sale by GE, to a fair market value purchase right in favor of Comcast. If Comcast decides to sell its entire ownership interest in the JV, GE may require Comcast to include GE's entire ownership interest in the sale on the same terms.[30]

19. The parties have certain put and call options exercisable at various times during the eight years following the closing of the transaction. Through these rights, GE can require that the JV acquire its entire interest or Comcast can acquire GE's entire interest.[31]

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[24] *See* Detailed Description of the Transaction, Application, Appendix 2 at 1. Appendix 2 contains a detailed description of the various *pro forma* changes in control and assignments resulting from the restructurings for which Commission approval is required.

[25] Application, Appendix 2 at 1; Appendix 3 at 16.

[26] Application at 12; Appendix 2 at 9-14; Appendix 3 at 8-14. Similarly, Comcast's wireless holdings and certain of its online assets will not be contributed to the joint venture and will be retained by Comcast.

[27] Amended and Restated Limited Liability Company Agreement of Navy, LLC, Application, Appendix 4; Application at 13.

[28] *Id.* at 13-14. GE's approval rights terminate if its interest in the JV falls below 20 percent.

[29] *See* Comcast Corp., *Comcast and GE Name Steve Burke Chief Executive Officer of NBC Universal* (press release), Sept. 26, 2010, *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1009

[30] Application at 14-15. Comcast and GE will be granted demand and piggyback registration rights exercisable, in the case of Comcast, after approximately four years and, in the case of GE, after approximately three-and-a-half years. The parties' registration rights will be subject to various restrictions on timing, frequency (including "blackout" periods in various circumstances) and, in the case of GE, amount. Also, if Comcast sells its entire ownership interest in the JV it can require GE to sell its entire interest to the same buyer on the same terms.

[31] *Id.* at 15. There are also restrictions on related-party transactions.

B. Application and Review Process

20. On January 28, 2010, GE, NBCU and Comcast filed the Application.[32] On March 18, 2010, the Commission released the Public Notice accepting the Application for filing and establishing a pleading cycle which was subsequently revised by the issuance of the Second Public Notice.[33] Public notice of the Application was initially delayed because the filing was incomplete. Further, due to the requirement that the Applicants submit additional economic reports, the Media Bureau released an order suspending the pleading cycle to enable commenters to have sufficient time to respond to the Application and those economic reports.[34] Thirteen petitions to deny and over 29,000 public comments and filings were received in this proceeding.[35] In addition to building its record through public comment, the Commission requested additional information from the Applicants on May 21, 2010 and again on October 4, 2010.[36] The Applicants' responses to those requests are included in the record, subject to the protections of the Protective Orders issued in this proceeding.[37] The Commission augmented the record

[32] *See supra* note 1.

[33] *Id.* The Public Notice established May 3, 2010 as the deadline for filing comments or petitions to deny. A second public notice issued on May 5, 2010 established June 21, 2010 as the new deadline for filing comments or petitions to deny, July 21, 2010 as the deadline for responses to comments or oppositions to petitions to deny, and August 5, 2010 for replies to responses or oppositions. *See Commission Announces Revised Pleading Schedule for its Review of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, 25 FCC Rcd 4407 (MB 2010) ("Second Public Notice"). The reply deadline was subsequently extended to August 19, 2010. *See Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign Licenses or Transfer Control of Licensees*, Order, 25 FCC Rcd 10201 (MB 2010).

[34] *See Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Order, 25 FCC Rcd 3802 (MB 2010).

[35] Petitions to Deny were filed by: Bloomberg L.P., Communications Workers of America ("CWA"), jointly by Consumer Federation of America, Consumers Union, Free Press, and Media Access Project ("Free Press"), DISH Network L.L.C. and Echostar Corporation ("DISH"), Earthlink, Inc., Elan Feldman, The Greenlining Institute, Rita Guajardo Lepicier, Mabuhay Alliance, National Coalition of African American Owned Media ("NCAAOM"), National Telecommunications Cooperative Association and the Western Telecommunications Alliance ("NTCA"), Public Knowledge, and WealthTV L.P.

[36] *See* Letter to Bryan N. Tramont, Kenneth E. Satten, David H. Solomon and Natalie G. Roisman, Wilkinson Barker Knauer, LLP, Counsel for NBCU, from William T. Lake, Chief, Media Bureau (May 21, 2010) and Letter to Michael H. Hammer, James H. Casserly, Michael D. Hurwitz and Brien C. Bell, Willkie Farr & Gallagher LLP, Counsel for Comcast, from William T. Lake, Chief, Media Bureau (May 21, 2010). *See also* Letter to David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel for NBCU, from William T. Lake, Chief, Media Bureau (Oct. 4, 2010) and Letter to Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, from William T. Lake, Chief, Media Bureau (Oct. 4, 2010).

[37] On March 4, 2010, the Media Bureau adopted two protective orders. The first allows third parties to review confidential or proprietary materials submitted by the Applicants. *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Protective Order, 25 FCC Rcd 2133 (MB 2010) ("*First Protective Order*"). The second allows certain persons to review highly confidential or proprietary materials submitted by the Applicants. *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Second Protective Order, 25 FCC Rcd 2140 (MB 2010) ("*Second Protective Order*"). In this Order, "[REDACTED]" indicates confidential or proprietary information, or analysis based on such information, submitted pursuant to the *First Protective Order* or the *Second Protective Order*. The unredacted (continued....)

in this proceeding by holding a public forum to discuss the proposed transaction in Chicago on July 13, 2010,[38] and a workshop for economists representing the Applicants and a number of the commenters on August 27, 2010.[39]

21. In addition to Commission review, the proposed transaction is subject to review by the United States Department of Justice ("DOJ") pursuant to its concurrent authority in Section 7 of the Clayton Act.[40]

IV. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

22. Pursuant to Section 310(d) of the Act, we must determine whether the proposed assignment and transfer of control of certain licenses and authorizations held and controlled by Comcast and NBCU will serve "the public interest, convenience, and necessity."[41] In making this determination, we must assess whether the proposed transaction complies with the specific provisions of the Act,[42] other applicable statutes, and the Commission's Rules.[43] If the transaction would not violate a statute or rule, the Commission considers whether a grant could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[44] The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[45] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[46] If

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version of this Order will be available upon request to qualified persons who execute and file with the Commission the signed acknowledgements required by the protective orders in this proceeding.

[38] *See Media Bureau Announces Agenda for its Public Forum to Discuss Proposed Comcast/NBCU/GE Joint Venture* (press release), Jul. 7, 2010. A transcript of the event is available at http://webapp01.fcc.gov/ecfs/document/view?id=7020917953.

[39] The transcript of the Economist Workshop is subject to the protections of the *First Protective Order* and *Second Protective Order*.

[40] 15 U.S.C. § 18.

[41] 47 U.S.C. § 310(d).

[42] Section 310(d) requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). *See Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12363, ¶ 30 (2008) ("*Sirius-XM Order*"); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276, ¶ 22 (2008) ("*Liberty Media-DIRECTV Order*"); *SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶ 16 (2005) ("*SBC-AT&T Order*").

[43] *See Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3276, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16.

[44] *Id.*

[45] *Id.*; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 15.

[46] *See Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30, *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Application for Consent to Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23255, ¶ 26 (2002) ("*Comcast-AT&T Order*").

we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the Application for hearing.[47]

23. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[48] which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public,[49] and generally managing spectrum in the public interest. Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.[50] In conducting this analysis, the Commission may consider technological and market changes as well as trends within the communications industry, including the nature and rate of change.[51]

24. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by but not limited to traditional antitrust principles.[52] The DOJ reviews communications transactions pursuant to Section 7 of the Clayton Act, and if it wishes to block a transaction, it must demonstrate to a court that the transaction may substantially lessen competition or tend to create a monopoly.[53] The Commission's competitive analysis under the public interest standard is somewhat broader. For example, the Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.[54]

[47] 47 U.S.C. § 309(e); *see also Sirius-XM Order,* 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3277, ¶ 22; *News Corp.-Hughes Order,* 19 FCC Rcd at 483 n.49; *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee),* Hearing Designation Order, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) ("*EchoStar-DIRECTV HDO*").

[48] *Sirius-XM Order,* 23 FCC Rcd at 12364, ¶ 31; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3277-78, ¶ 23; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 19 FCC Rcd 21522, 21544, ¶ 41 (2004) ("*Cingular-AT&T Wireless Order*"); *News Corp.-Hughes Order,* 19 FCC Rcd at 483-84, ¶ 16; *Comcast-AT&T Order,* 17 FCC Rcd at 23255, ¶ 27; *EchoStar-DIRECTV HDO,* 17 FCC Rcd at 20575, ¶ 26.

[49] 47 U.S.C. § 521(4); *see also* 47 U.S.C. § 532(a).

[50] *See Sirius-XM Order,* 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3277-78, ¶ 23; *Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21544, ¶ 41; *Comcast-AT&T Order,* 17 FCC Rcd at 23255, ¶ 27.

[51] *See Sirius-XM Order,* 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3278, ¶ 23; *Comcast-AT&T Order,* 17 FCC Rcd at 23255, ¶ 27.

[52] *See Sirius-XM Order,* 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3278, ¶ 24; *Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21544-45, ¶ 42; *News Corp.-Hughes Order,* 19 FCC Rcd at 484, ¶ 17; *EchoStar-DIRECTV HDO,* 17 FCC Rcd at 20575, ¶ 27; *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Authorizations and Application to Transfer Control of a Submarine Landing License,* Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, ¶ 23 (2000) ("*Bell Atlantic-GTE Order*").

[53] 15 U.S.C. § 18.

[54] *See Sirius-XM Order,* 23 FCC Rcd at 12366, ¶ 32; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3278-79, ¶ 25; *Bell Atlantic-GTE Order,* 15 FCC Rcd at 14047, ¶ 23; *AT&T Corp., British Telecommunications, plc, VLT Co.*

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25. Our analysis recognizes that a proposed transaction may have both beneficial and harmful consequences. Our public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions targeted to ensure that the public interest is served by the transaction.[55] Section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with the law, which may be necessary to carry out the provisions of the Act.[56] Indeed, unlike the role of antitrust enforcement authorities, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that a transaction will yield overall public interest benefits.[57] In exercising this broad authority, the Commission generally has imposed conditions to confirm specific benefits or remedy specific harms likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes.[58]

26. This Order examines the proposed transaction as follows. First, we assess the potential competitive harms from the vertical and horizontal aspects of the transaction, as well as the potential impact on a number of other public interest considerations, including the impact on diversity and localism. Second, we evaluate the public interest benefits that the Applicants claim will result from the transaction. At each stage, we consider and, where appropriate, impose conditions to ameliorate the harms or confirm the benefits. Third, we balance the public interest harms posed by, and the benefits to be gained from, the transaction. Finally, we examine whether the transaction complies with the Act, other applicable statutes and the Commission's Rules and policies.

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L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connections with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19147-48, ¶ 15 (1999) ("*AT&T Corp.-British Telecom Order*"); *Comcast-AT&T Order*, 17 FCC Rcd at 23256, ¶ 28.

[55] *See Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46, ¶ 43; *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, ¶ 10 (1998) ("*WorldCom-MCI Order*") (stating that the Commission may attach conditions to the transfers).

[56] 47 U.S.C. § 303(r). *See Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 43; *WorldCom-MCI Order*, 13 FCC Rcd at 18032, ¶ 10 (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to Section 303(r))); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (holding that Section 303(r) permits the Commission to order a cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to Section 303(r) authority).

[57] *See, e.g., Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 43; *News Corp.-Hughes Order*, 19 FCC Rcd at 477, ¶ 5.

[58] *See, e.g., Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33.

V. ANALYSIS OF POTENTIAL HARMS

27. Commenters have alleged that the proposed transaction will generate numerous potential harms to core public interest values including competition, diversity, and localism. With respect to competition, corporate mergers and acquisitions may give rise to concerns regarding increases in vertical integration and/or horizontal concentration, depending on the lines of business in which the firms are engaged, as well as other public interest-related concerns. A vertical transaction involves firms and their suppliers, customers, or other sellers of complements.[59] A horizontal transaction involves firms that sell products or services that are substitutes to buyers.[60] The same transaction can have both vertical and horizontal elements. Both types of transactions can reduce competition among the firms participating in a relevant market, potentially leading to higher prices to buyers, a reduction in product quality, or a reduced likelihood of developing new, better, or cheaper products and services.[61] Below, we analyze the potential harms to competition arising from both the vertical and horizontal aspects of the proposed transaction. After analyzing the alleged competitive harms, we examine other alleged harms, including harms to over-the-air broadcasting, diversity, localism, journalistic independence, public interest programming, and employment. Where we find substantial evidence supporting an alleged potential harm, we consider remedial measures—both those suggested by the Applicants and alternative or additional ones.

A. Potential Competitive Harms Arising From Vertical Elements of the Transaction

28. We begin by considering whether the Applicants, as a result of the transaction, would have an increased incentive and/or ability to engage in the anticompetitive exclusionary strategies identified in economic theory, practical experience, and regulatory precedent as potential results of the vertical integration of content and distribution. We have found that the vertical integration from the proposed transaction raises three potential areas of anticompetitive concern that require further analysis. First, we consider program access issues as they relate to existing MVPD markets. That is, we consider whether the Applicants could use their control over video programming to harm competing MVPDs by withholding content or raising programming prices. Second, we address the emerging market in online video programming distribution, evaluating whether the Applicants could use their control over video programming, broadband, or set-top boxes to harm current and emerging online rivals. Finally, we address program carriage issues, which involve the Applicants' potential anticompetitive use of their control over video distribution to deny unaffiliated video programmers access to Comcast subscribers or impose unreasonable terms for distribution on Comcast's systems.

1. MVPD Access to Comcast-NBCU Programming

a. Potential for Exclusionary Conduct

29. The proposed transaction creates the possibility that Comcast-NBCU, either temporarily or permanently, will block Comcast's video distribution rivals from access to the video programming content the JV would come to control or raise programming costs to its video distribution rivals. These exclusionary strategies could raise distribution competitors' costs or diminish the quality of the content available to them. As a result, Comcast could obtain or (to the extent it may already possess it) maintain

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[59] *See Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; KIP VISCUSI, JOHN M. VERNON AND JOSEPH E. HARRINGTON, JR., ECON. OF REG. AND ANTITRUST 192, 233 (3d ed. 2000) ("VISCUSI *et al.*").

[60] *See Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; *News Corp.-Hughes Order*, 19 FCC Rcd at 507, ¶ 69.

[61] *See Sirius-XM Order*, 23 FCC Rcd at 12367, ¶ 36; ABA Sec. of Antitrust Law, *Antitrust Law Developments* 327 (5th ed. 2002); *see generally* VISCUSI *et al.*

market power in video distribution,[62] and charge higher prices to its video distribution subscribers than those consumers would have paid absent the transaction. To address this potential harm, we impose an arbitration remedy, with a number of procedural improvements from arbitration remedies in previous transactions, that applies to all Comcast-NBCU programming.

30. *Positions of the Parties.* Some commenters express concern that Comcast-NBCU would foreclose video programming distributors that compete with Comcast from access to joint venture programming, or that Comcast-NBCU would use the threat of foreclosure to obtain a higher price in negotiations over the terms of arrangements for such programming.[63] Commenters also point out that Comcast has engaged in foreclosure strategies in the past when it had even less ability and incentive to do so.[64] Some commenters express special concern about foreclosure involving specific programming genres, notably broadcast networks and sports programming.[65]

31. These commenters assert that foreclosure strategies will harm the ability of Comcast's video distribution rivals to compete in the video distribution market.[66] Commenters disagree, however, about how we should define this market for purposes of our analysis. Some commenters argue that our traditional definition of the "video programming distribution" product market as constituting all MVPD

[62] Under antitrust jurisprudence, market power generally is defined as the ability to withhold supply or output or otherwise restrict competition in order to raise price above a competitive level. *See* Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission, August 19, 2010, at Section 1 ("*Horizontal Merger Guidelines*") *available at* http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf (last visited Dec. 9, 2010).

[63] Comments of American Cable Association at iv, vi-viii, 16, 19, 25-27 (filed Jun. 21, 2010) ("ACA Comments"); Comments of Avail-TVN at 6 (filed Jun. 21, 2010) ("Avail-TVN Comments"); Comments of DIRECTV, Inc. at 6, 12-13, 15-17, 30, 36, 38-40 (filed Jun. 21, 2010) ("DIRECTV Comments"); Comments of Entertainment Studios, Inc. at 7 (Jun. 21, 2010) ("Entertainment Studios Comments"); Comments of the Fair Access to Content & Telecommunications Coalition at iii (filed Jun. 21, 2010) ("FACT Comments"); Letter from Senator Al Franken to Marlene Dortch, Secretary, FCC, at 1-2 (filed Jun. 21, 2010) ("Franken Letter"); Comments of the United States Telecom Association at 4 (filed Jun. 21, 2010) ("U.S. Telecom Comments"); Comments of the Writers Guild of America, West at 16 (filed Jun. 21, 2010) ("WGAW Comments"); Joint Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, and Media Access Project at 32-33 (filed Jun. 21, 2010) ("Free Press Petition"); Petition to Deny of Greenlining Institute at 30-33 (filed Jun. 21, 2010) ("Greenlining Petition"); Petition to Deny of WealthTV L.P. at 37 (filed Jun. 21, 2010) ("WealthTV Petition"); Free Press Reply at 14.

[64] ACA Comments at 26; Comments of AOL Inc. at 7 (filed Jun. 21, 2010) ("AOL Comments"); Avail-TVN Comments at 10; Declaration of Dr. Mark Cooper, Fellow, Donald McGannon Center for Communications Research, Fordham University, at 102 (filed Jun. 21, 2010) ("Cooper Declaration"); DIRECTV Comments at 8-10, 37; Petition to Deny of DISH Network L.L.C. and Echostar Corporation at 14-15 (filed Jun. 21, 2010) ("DISH Petition"); Free Press Petition at 36-40; Greenlining Petition at 33; Reply of DISH Network L.L.C. to Comcast and NBCU'S Opposition to Petitions to Deny and Response to Comments at 25 (filed Aug. 19, 2010) ("DISH Reply"); Reply to Opposition to Petitions to Deny and Response to Comments of the Fair Access to Content & Telecommunications Coalition, The National Telecommunications Cooperative Association, and the Western Telecommunications Alliance at 18-23 (filed Aug. 19, 2010) ("FACT Reply").

[65] Avail-TVN Comments at 10-11; DIRECTV Comments at ii-iii, 13, 36-37; Comments of TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network at 5 (filed Jun. 21, 2010) ("MASN Comments"); Free Press Petition at 32; WealthTV Petition at i-ii, 9; Reply Comments of the New Jersey Division of Rate Counsel at 18-19 (filed Jul. 21, 2010) ("NJRC Reply"); Comments of Trail Blazers, Inc. at 2-3 (filed Jun. 21, 2010).

[66] ACA Comments at 26-27; FACT Comments at 6-7; Petition to Deny or in the Alternative Impose Conditions of Communications Workers of America at 29 (filed Jun. 21, 2010) ("CWA Petition"); Free Press Petition at 18-19, 30-31.

services [67] is too narrow, and that it should be broadened to include broadcast television distribution[68] and online video distribution.[69] Other commenters recommend that we not modify our traditional product market, and instead recognize that online video distributors are potential rivals and therefore should be treated as future market participants.[70]

32. The Applicants respond by observing that Comcast-NBCU will control programming for only 12.8 percent of MVPD program network revenues.[71] They suggest that foreclosure of access to this limited fraction of upstream inputs would be insufficient to harm rival distributors.[72] The Applicants further contend that Comcast-NBCU's fiduciary obligation to GE will eliminate its ability to engage in exclusionary strategies that benefit Comcast's video distribution business at the expense of its programming business, and that this restriction would preclude the type of exclusionary strategies at issue here.[73]

33. The Applicants contend that broadcast television should not be included in the MVPD product market definition because it is not a sufficiently close substitute,[74] and that online video distribution should be excluded because it is currently a complementary product and is likely to remain so in the future.[75] They further argue that Comcast-NBCU would not find it profitable to exclude Comcast's video distribution rivals from access to video programming, given that it would lose program access fees and advertising revenues were it to do so.[76]

34. *Discussion.* Congress and the Commission have long been concerned about the possibility that an integrated video firm may exploit its ability to exclude its distribution rivals from access to its programming, or raise programming prices to harm competition in video distribution.[77] The

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[67] *See, e.g., Comcast-AT&T Order*, 17 FCC Rcd at 23281-82, ¶ 89.

[68] *See, e.g.*, Free Press Petition at 13 n.16 (citing Appendix A, Declaration of Dr. Mark Cooper, Consumer Federation of America, and Adam Lynn, Free Press, at 6-7) ("Cooper/Lynn Declaration"); *see also* Greenlining Petition at 2, Appendix II; Comments of Christopher S. Yoo at 16-17 (filed May 20, 2010) ("Yoo Comments").

[69] *See, e.g.*, CWA Petition, Attachment B, Declaration of Hal J. Singer at 28 ("Singer Declaration").

[70] AOL Comments at 5; Letter from Senator Herb Kohl to Christine Varney, Assistant Attorney General, Antitrust Division, DOJ, and Julius Genachowski, Chairman, FCC, at 3 (filed May 26, 2010) ("Sen. Kohl Letter"); DISH Petition at 2; *see also* ACA Comments at 36-37; NJRC Reply at 9.

[71] Applicants' Opposition at 160.

[72] *Id.* at 128-29.

[73] *Id.* at 134, 140-41; *see also* Applicants – Israel/Katz March Report at ¶¶ 16, 45.

[74] Application at 83-84; Applicants' Opposition at 91-92. Specifically, the Applicants note that the Commission has stated that, "[a]lthough broadcast stations offer some degree of the specialized programming provided by the specialized basic cable network services," local broadcast television services do not offer sufficient "specialized programming" to be deemed "close substitute[s]" to MVPD services. Applicants' Opposition at 91-92.

[75] *Id.* at 85-86, 88.

[76] Application at 103-105, 113-116; Applicants' Opposition at 127, 130-33, 137.

[77] This "input foreclosure" concern is consistent with economic theory. *See* Michael H. Riordan and Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L. J. 513, 527-38 (1995) ("*Riordan and Salop*"); *see also* Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 YALE L. J. 209, 234-38 (1986) ("*Krattenmaker and Salop*"). Moreover, as we will

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