Taking Media Mergers to the Next Level

Comcast/NBC would be unprecedented powerhouse

Over the last decade, dozens of media mergers and purchases have resulted in a media industry controlled by a handful of companies—and the cable giant **Comcast** wants to be one of them.

After a failed attempt to purchase **Disney** in 2004 for $66 billion (**Inter Press Service**, 3/20/04), **Comcast** offered to take over **NBC Universal** for the bargain price of $30 billion—which would buy a 51 percent controlling interest from **General Electric**, with the expectation of acquiring the remaining stake over the next seven years (**Globe and Mail**, **12/3/09**).

While **Comcast** has so far been mainly a cable and Internet provider, with limited involvement in programming, the purchase of **NBC Universal** would make it a major media conglomerate. In addition to the **NBC** broadcast TV network, **Comcast** would get **MSNBC**, **CNBC**, **Universal Studios**, 26 local television stations and several other small holdings. **NBC** also holds a 30 percent stake in the online TV website Hulu, a point of much discussion in the coverage (**New York Times**, **11/9/09**). If the FCC allows the merger to take place, the company will control nearly a quarter of cable subscribers in the country and 12 percent of all television content (**New York Observer**, 2/9/10).

On October 4, the FCC asked **Comcast** and **NBC** to provide more information before proceeding. Specifically, it wanted the proposed corporation to submit copies of its agreements to distribute **Comcast**'s cable channels, such as Regional Sports Network, **E**! and the Golf Channel, to its competitors, including **Time Warner** and DirecTV (**WashingtonPost.com**, **10/5/10**). The FCC also wanted to know about how pay-per-view and video-on-demand services would be operated and managed, as well as information on advertising revenue from TV and online content.

Big media, consumers unite

Conflict of interest problems have been an issue in media mergers before, but Com-cast/**NBC** would have unprecedented influence in both media content and distribution—controlling not just what we watch, but how we watch it, potentially keeping content behind a cable subscription pay wall. The **Washington Post** (**1/29/10**) outlined these concerns:

If the combined company chooses to charge too much for its shows and movies, prioritize the delivery of its own content, or flat out block its shows from getting to competitors such as Vuze, Sling Media, Boxee, YouTube or Netflix, it would forestall competition in the nascent online video market.

Unlike most other media mergers, the Comcast/**NBC** deal is not just a case of the public interest versus big business. The proposed merger is "causing sworn enemies and marketplace rivals to stand together to oppose the mega-deal" (Roll Call, **9/22/10**), as progressive groups like Free Press and Common Cause join with the right-wing Concerned Women for America and corporations like Bloomberg to try and stop it.

The disputes between cable providers and networks have been escalating, as evidenced by **Fox**'s recent decision to temporarily pull its signal from **Cablevision** (**FAIR Blog**, **10/20/10**). But when a stand-alone programmer like **Fox** withholds its programming from a provider, both sides have an incentive to reach an agreement, since at the same time that the provider is losing content, the programmer is losing viewers and therefore advertising revenue.

Comcast/**NBC**, by contrast, could drive up its asking price for other networks to carry **NBC** content, and other cable providers would have to absorb the cost or pass it onto consumers—or risk having Comcast/**NBC** pull its stations and content. Rather than viewing this as a profit loss, **Comcast** would be able to advertise that it carries exclusive **NBC** content, turning its intransigence into a competitive advantage.

The American Cable Association, a trade organization which represents small and medium-sized cable service providers, reported that the merger "could result in $2.4 billion in extra costs to consumers over nearly a decade" (**WashingtonPost.com**, 11/8/10). **Comcast** argued that the report "used flawed data and contradicted available data." But it's undeniable that this merger would give Comcast/**NBC** unmatched pricing power and market advantage.

A few senators have also openly declared their opposition to Comcast/**NBC**, including Sen. Al Franken (D-Minn.)—formerly an **NBC** employee on **Saturday Night Live**—and Sen. Bernie Sanders (I-Vt.), who declared (Democratic Daily, **11/8/10**):

There already is far too much media concentration in this country. We need more diversity. We need more local ownership. We need more viewpoints. We do not need another media giant run by a Republican supporter of George W. Bush.*

Hulu and Netflix

NBC's stake in Hulu adds another twist to the deal. Hulu claims it has 30 million users watching 260 million content streams (i.e., TV shows) every month. It also projects that it will more than double its revenue from $108 million to $240 million next year. Whether or not it reaches these figures, its viewership has been steadily increasing. The speculation is that more and more people are canceling their cable service and exclusively using their computers for accessing content (Venturebeat, 11/10/10).

There are a lot of concerns that Comcast/**NBC**'s power in this emerging field of online viewing would stifle new competition. After all, Internet television has long been a major threat to the business models of companies like **Comcast** (**New York Times**, 11/8/09). The current regulations for cable companies demand that media producers share their content with distributors, but as the **Washington Post** pointed out (**1/29/10**), "there are no rules in place to ensure that a merged Comcast/ **NBC** would share an expanded library of movies and shows with online companies that want to also deliver that content."

Apparently, **Comcast** does not see any problem with this arrangement, and it has so far not offered to guarantee that it will share **NBC**'s media library online. "Availability of professional video content for online distribution likewise does not constitute a barrier that places new entrants at a disadvantage relative to incumbent online video distributors," the company stated in its merger filing to the FCC (**Washington Post** 1/29/10). As anyone who watches Hulu, online television, or even old-fashioned television can figure out, the unavailability of popular shows like the American Office and Law & Order would certainly decrease any online television company's userbase.

Hulu is not the only online content issue troubling the Comcast/**NBC** deal. A "scuffle" between **Comcast** and Level 3, the company that just signed a deal with Netflix to deliver its movies online, broke out when **Comcast** demanded a recurring fee for transmitting the streaming video; Level 3 agreed "under protest." **Comcast** is accused of putting up an extra "toll booth" for the online movie provider (**New York Times**, **11/29/10**).

Comcast maintained the issue was "a simple commercial dispute" having nothing to do with net neutrality. But this dispute demonstrates exactly the kind of problems that the proposed merger will create. Comcast/**NBC** will have a vested interest in ensuring its own content-distribution websites receive priority. Without any regulation, **Comcast** can simply shut off or slow down its competitors' Internet access.

Public interest?

But **Comcast** would prefer to avoid public airing of such concerns. In a speech given at the Brookings Institution on November 15, company vice president David Cohen suggested we should just "move on" from the issue of net neutrality. "The courts, the FCC and the Congress" do not really have the "background necessary to work out consensus on what are essentially complicated technical issues," Cohen said.

While the opinions of engineers are certainly valid in addressing Internet infrastructure issues, it is hard to say why they would override the protection of free speech and consumers' rights to open access online, which are at the heart of the net neutrality debate. As Free Press points out (**11/16/10**), **Comcast** hasn't proven itself a reliable company on these issues in the past:

The fact is that **Comcast** was caught interfering with lawful Internet traffic, lied about what it was doing, and tried every trick in the book to evade public scrutiny. Then when the FCC forced the company to stop discriminating against its customers, without even levying a fine, **Comcast** sued on a technicality to avoid any accountability.

That sort of record may make it hard to credit the "compromises" Comcast/**NBC** includes in its proposal to the FCC, like **NBC**'s promise to "maintain local over-the-air broadcasting services and to beef up programming for children and minority viewers" (**Washington Post**, **1/29/10**). **Comcast** has also cited its charitable donations as evidence of its serving the public interest.

Merger express

Despite the increasingly negative attention directed at the merger, neither the Justice Department nor the FCC are expected to block it, in part because, according the **Wall Street Journal** (**11/15/10**), as **NBC** and **Comcast** "aren't direct competitors, it's harder to mount an antitrust challenge." The **Journal** noted that "**Comcast** executives have said they expect to close the deal by the end of [2010]."

One reason that **Comcast** might be feeling confident in its success is the many political donations it has made over the past year. Corie Wright, attorney for Free Press, told **Extra!** that **Comcast** has given nearly $1 million dollars to approximately three quarters of Congress over the past year. What **Comcast** received in ostensible exchange for this large sum of money were letters of support from members of Congress urging the FCC to support the proposed merger.

Susan Crawford, a law professor who is writing a book about the proposed merger, suggested that **Comcast**'s spending "tens of millions of dollars on lobbyists, donations, ads and investments" was "about as subtle as a wet fish in the face" (**New York Times**, **9/26/10**).

As Frederick J. Ryan Jr., president of **ABC**-affiliated station owner

Allbritton Communications, pointed out, “If it’s such a good deal, and it’s so wonderful for everyone who watches television and is interested in news, why do so many lobbyists have to be hired and why does so much money have to be spent to push this merger through?’’

*Stephen Burke, president of **Comcast** Cable, raised at least $200,000 for Bush’s 2004 campaign (**Think Progress**, 11/5/10).