

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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July 2, 2010

MEMORANDUM

To: Members of the Subcommittee on Communications, Technology, and the Internet

Fr: Committee on Energy and Commerce Democratic Staff

Re: Field Hearing on “Comcast and NBC Universal: Who Benefits?”

On Thursday, July 8, 2010, at 9:00 a.m., in room 2525 of the Everett Dirksen Federal Building in Chicago, Illinois, the Subcommittee on Communications, Technology, and the Internet will hold a field hearing entitled “Comcast and NBC Universal: Who Benefits?” This is the second subcommittee hearing focused on the proposed Comcast/NBC Universal joint venture and its potential impact on the video programming and broadband marketplace.

This memorandum provides an update of the ongoing review of the proposed transaction by the Federal Communications Commission (FCC) and the Department of Justice (DOJ). The memorandum associated with the February 4, 2010, hearing on this topic is attached.

I. Background

On December 3, 2009, Comcast and General Electric (GE), the parent company of NBC Universal (NBCU), announced their intention to create a new joint venture consisting of Comcast’s and NBCU’s diverse content, programming, and entertainment assets. Comcast is the nation’s largest video programming distributor, the largest residential broadband provider, and the third-largest home telephone service provider. As measured by annual revenue, NBC is the nation’s fourth-largest media and entertainment company. NBC owns and operates the NBC and Telemundo television networks, 26 broadcast television stations, 13 cable channels, a movie studio, and several amusement parks.¹ The new entity will initially be owned 51% by Comcast and 49% by GE. The parties contemplate that Comcast will eventually purchase the remaining 49% interest in the joint venture for no more than \$5.75 billion.

¹ Attached to this memorandum is a one-page listing of the combined entity’s holdings (*available online at www.nbcutransaction.com/pdfs/JointVentureFactSheet.pdf*).

On January 25, 2010, Comcast and NBCU submitted their Hart-Scott-Rodino filing to DOJ. On January 28, 2010, the companies filed a Public Interest Statement at the FCC in association with their application for approval of the proposed joint venture.²

II. Update on FCC Process

On March 18, 2010, the FCC released a public notice announcing acceptance of the Comcast-NBCU application.³ The public notice also established deadlines for comment cycles in the proceeding and triggered an informal 180-day FCC timeline for making decisions about mergers.⁴

On March 26, 2010, the FCC released an order rejecting the Media Access Project's request for extension of time, which asked the Commission to extend the filing cycle for comments by 45 days.⁵ On April 15, 2010, Rep. Maxine Waters introduced H.R. 5020 with 49 original co-sponsors to require the FCC to "extend the time period for filing petitions to deny, opposition, and comments in the proceeding relating to the proposed merger of Comcast and NBCU."⁶ On April 16, 2010, the FCC released an order requesting Comcast and NBCU to submit two additional economic reports – one on the claimed benefits from the transaction and one addressing the transaction's impact on online video distribution.⁷ Given the time needed to prepare these reports, the pleading cycle was suspended until the reports were submitted to the FCC.

On May 5, 2010, the FCC released a public notice announcing that it had received the additional economic reports and establishing new comment cycle deadlines.⁸ The informal 180-day clock was restarted on June 3, 2010, based on the new pleading cycle.⁹ The FCC suspended

² Federal Communications Commission, *Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Applications and Public Interest Statement*, (Jan. 28, 2010) (online at [www.nbcutransaction.com/pdfs/Public Interest Statement - FINAL.pdf](http://www.nbcutransaction.com/pdfs/Public%20Interest%20Statement%20-%20FINAL.pdf)).

³ Federal Communications Commission, *Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, MB Docket No. 10-56, Public Notice, (March 18, 2010) (available at hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-457A1.pdf).

⁴ Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers (available online at www.fcc.gov/transaction/timeline.html).

⁵ Federal Communications Commission, *Order In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses*, MB Docket No. 10-56 (March 26, 2010) (online at hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-536A1.pdf).

⁶ H.R. 5020.

⁷ Federal Communications Commission, *Order In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses*, MB Docket No. 10-56 (April 16, 2010) (online at hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-662A1.pdf).

⁸ Federal Communications Commission, *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*, MB Docket No. 10-56, Public Notice (May 5, 2010) (online at hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-636A1.pdf) (establishing June 21, 2010 as the revised deadline for filing comments and petitions to deny; July 21, 2010 as the revised deadline for filing replies to responses or oppositions to petitions; and August 5, 2010 as the revised deadline for filing replies to responses or oppositions).

⁹ *Id.* Because the clock was stopped at Day 29 of the original pleading cycle, it was restarted when the 29th day was reached in the new pleading cycle, June 3, 2010.

the informal time clock again on June 24, 2010, because the two companies did not fully comply with the FCC's requests for further information.¹⁰

In addition to ongoing information requests and receipt of comments from the public, the FCC has taken additional steps to augment its review of the proposed transaction. Most recently, the FCC announced a July 13, 2010, public forum in Chicago regarding the transaction.¹¹

III. Additional Commitments

Although there are many policy issues implicated by the proposed transaction (described in the attached memorandum), recent attention has focused on diversity and NBC affiliate relations.

A. Diversity

On June 7, 2010, the House Committee on the Judiciary held a field hearing on the Comcast-NBCU transaction in Los Angeles, California. Just prior to the hearing, Comcast and NBCU released expanded diversity commitments "with respect to governance, workforce recruitment and career development, supplier diversity, media ownership, programming, and community and partnership investment."¹²

These additional voluntary commitments include, among other things:

- An enhanced governance structure to advise the new joint venture on diversity issues; increased spending and partnerships with diverse suppliers and organizations;
- Expanded commitments to workforce recruitment and career development to increase minority representation;
- A commitment to partner with diverse programmers by reserving at least half of the six independently owned and operated networks to be added to its systems for cable networks in which minorities have a substantial ownership interest;
- An expansion of diverse Video on Demand content; an ongoing review of pricing and packaging for minority-oriented programming; and investment in minority-led and minority-serving institutions.

¹⁰ Federal Communications Commission, *Letter to Michael H. Hammer re: Application of Comcast Corporation, General Electric Company and NBC Universal, Inc., for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56 (June 24, 2010) (online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299031A1.pdf).

¹¹ Federal Communications Commission, *Commission Announces Public Forum to Discuss Proposed Comcast/NBCU/GE Joint Venture* (June 3, 2010) (online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298586A1.pdf).

¹² Comcast and NBC Universal, *Comcast and NBCU's Summary of Diversity Commitments* (June 3, 2010).

B. Affiliate Relations

Broadcast stations independently owned and affiliated with NBC recently agreed to support the transaction if certain conditions are met.¹³ On June 21, 2010, the NBC Television Affiliates submitted a filing with the FCC outlining these conditions.¹⁴ Specifically:

- Major sporting events shall continue to be broadcast on the network and prohibited from migrating to any programming channels in which Comcast has a programming interest before a set deadline.
- The NBC Network shall remain the sole entity negotiating network affiliation agreements with individual NBC local affiliates, while Comcast's cable operations will remain solely responsible for negotiating retransmission consent agreements with individual NBC local affiliates. The two negotiations would be conducted separate from, and without influence on, one another.
- Comcast shall honor NBC's agreements that preserve current non-duplication rules concerning the importation of out-of-market signals into an NBC local affiliate's market, and decisions by the NBC Network regarding any programming distribution consistent with the affiliation agreement shall continue to be left to the NBC Network without regard to Comcast Cable considerations.

IV. Witnesses

The following witnesses have been invited to testify:

Mr. Samuel R. DeSimone, Jr.

General Counsel
EARTHLINK

Ms. Shirley Franklin

Senior Adviser
Alliance for Digital Equality

Mr. Will Griffin

President and Chief Executive Officer
Hip Hop On Demand

Rev. Jesse L. Jackson, Sr.

Founder and President
Rainbow PUSH Coalition, Inc.

¹³ Michael Malone, *NBC Affils Bless Comcast-NBCU Union*, Broadcasting & Cable (June 18, 2010) (online at http://www.broadcastingcable.com/article/453908-NBC_Affils_Bless_Comcast_NBCU_Union.php).

¹⁴ NBC Television Affiliates, *Comments of the NBC Television Affiliates in the Matter of Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee*, MB Docket No. 10-56 (June 21, 2010).

Ms. Paula Madison

Executive Vice President, Chief Diversity Officer
NBC Universal

Mr. Joseph W. Waz, Jr.

Senior Vice President, External Affairs and Public Policy Counsel
Comcast Corporation