

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

COMMITTEE ON ENERGY AND COMMERCE
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December 7, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

When the proposed combination of Comcast and NBC Universal (NBCU) was announced last year, I said that this transaction had the potential to reshape the media marketplace and raised fundamental questions regarding diversity, competition, and the future of the production and distribution of video content. To probe these issues and the impacts of the merger, our Committee held multiple hearings and heard from a wide variety of experts.

I am pleased that the Federal Communications Commission and the Department of Justice have also been closely examining the transaction. I hope that you will be able to conclude your review expeditiously, ideally by the end of the year, if possible.

After careful consideration, I have concluded that if the merger is approved, it could trigger significant changes in the way consumers access video programming, in the way independent programmers distribute their works, and in the way all video distributors compete for customers. To protect consumers and promote competition, I believe the FCC should impose conditions on the merger in four key areas.

Program Access. To ensure a vibrant and competitive market for cable and satellite TV, the FCC should impose requirements to ensure that competing program distributors have access to programming or channels in which Comcast-NBCU has a financial interest. Such access should be available on reasonable and nondiscriminatory terms and this requirement should apply independent of the FCC's program access rules. In establishing this requirement, the Commission should recognize the difficulties small cable and satellite companies encounter while negotiating with larger companies like Comcast. Smaller companies should not be forced to accept unreasonable fees, terms, or conditions simply because they do not have market power. Moreover, the FCC should ensure that it puts in place a process to resolve negotiating impasses concerning program access without harming consumers.

Online Video Markets and an Open Internet. The combination of Comcast and NBCU will give the nation's largest cable TV company and broadband provider control of a massive

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catalogue of content, channels, and household Internet connections. Video programming and Internet distribution will be inextricably intertwined to an unprecedented degree.

To safeguard against potential harm to the emerging online video market and to promote an open Internet, the Commission should impose conditions that (a) prevent Comcast-NBCU from degrading or blocking online distribution of programming that competes with Comcast and its offerings, (b) ensure that Comcast-NBCU does not prioritize or guarantee a higher quality-of-service for its own video-on-demand and other online offerings over competitive video services that are delivered over Comcast's broadband network, and (c) protect third-party programmers' ability to make their content available online via competitive Internet websites and other competitive platforms.

The Commission should retain flexibility to adjust and harmonize any such requirements with respect to Comcast-NBCU in the event open Internet rules are adopted and promulgated for all broadband Internet access providers.

Unaffiliated Cable Programmers. Competing programmers in news, sports, and entertainment – especially cable programmers not affiliated with Comcast-NBCU – should be protected against discrimination in channel placement and tiering. For example, the new entity will control news channels such as NBC News, MSNBC, and CNBC as well as regional news channels. Comcast should not be permitted to isolate competitive offerings to these channels by placing them outside of the “neighborhood” for such content.

Independent Programmers. The creation of the nation's largest media and entertainment franchise should benefit, and not be at the expense of, independent program producers. The Commission should impose conditions that measurably strengthen the creative and economic opportunities of independent writers, producers, and directors.

These conditions will prevent the proposed combination of Comcast and NBCU from transforming the media landscape in a way that raises costs, degrades service, and reduces consumer choice. I urge you to act expeditiously, but in a manner that assures that the broad public interest is served.

Thank you for your consideration of this matter.

Sincerely,



Henry A. Waxman
Chairman

cc: The Honorable Christine Varney
Assistant Attorney General
US Department of Justice