Testimony of

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on behalf of

Consumer Federation of America
Free Press
Consumers Union

before the

Senate Judiciary Committee
Subcommittee on Antitrust, Competition Policy and Consumer Rights

Regarding

"The Comcast/NBC Universal Merger: What Does the Future Hold for Competition and Consumers?"

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Mr. Chairman and Members of the Committee,

My name is Dr. Mark Cooper. I am the Director of Research at the Consumer Federation of America. I appear before you today on behalf of the Consumer Federation of America, Free Press and Consumers Union. We appreciate the opportunity to share our views of a merger that is unique in the history of the video market and will go a long way toward determining whether or not the future of video viewing in America is more competitive and consumer-friendly than the past.

The merger of Comcast and the National Broadcasting Company (NBC) is a hugely complex undertaking, unlike any other in the history of the video marketplace. Allowing the largest cable operator in history to acquire one of the nation's premier video content producers will radically alter the structure of the video marketplace and result in higher prices and fewer choices for consumers. The merging parties are already among the dominant players in the current video market. This merger will give them the incentive and ability to not only preserve and exploit the worst aspects of the current market, but to extend them to the future market.

Comcast has sought to downplay the impact of the merger by claiming that it is a small player in comparison to the vast video universe in which it exists. It has also glossed-over the fact that this merger involves the elimination of actual head-to-head competition. Finally, it has argued that existing protections and public interest promises will prevent any harms that might result from the merger. All three claims are wrong.

Neither Comcast's regurgitation of market shares and counts of outlets and products, nor its public interest commitments begin to address the fundamental public policy questions and competitive issues at stake in this merger. Nor can the merger of these companies be viewed separately from the products they sell. NBC and Comcast do not sell widgets. They sell news and information and access to the primary platforms American use to receive this news and information. Control over production and distribution of information has critical implications for society and democracy. As a consequence, the merger of these two media giants reaches far beyond the economic size of the merging parties to the very content consumers receive, and how they are permitted to access it.

Finally, if the size and scope of this merger is not sufficient to give you pause, the past actions of the acquiring party should. Comcast has raised cable rates for consumers every year, and is among the lowest ranked companies in terms of customer service. Comcast is the frequent subject of program access complaints of competing video providers, as well as of discriminatory carriage complaints by independent programmers. Finally, Comcast is on record lying to a federal agency regarding whether they blocked Internet users' access to a competing a video application for anti-competitive purposes. These past practices do not bode well for future competition if Comcast is allowed to acquire NBC. Further, Comcast's lack of candor in past proceedings cast doubt on the prudence of relying on Comcast's voluntary public interest commitments as a means of addressing the anti-consumer impacts of this merger.

The goal of mega-mergers such as this is to cut costs and increase revenues. The most direct path to those outcomes are firing workers and raising prices. Cutting jobs is hardly a laudable goal in the current environment, but the primary "synergy" that mergers produce is the ability to reduce employment by sharing resources between the commonly-held companies. To expect the opposite to happen here based on the evidence-free assertions of Comcast would be foolhardy. Simply put, this merger is about higher prices, fewer choices, and lost jobs.

The Biggest Gets Bigger (and Stronger)

Comcast is the nation's largest cable operator, largest broadband service provider and one of the leading providers of regional cable sports and news networks. NBC is one of only four major national broadcast networks, the third largest major owner of local TV stations in terms of audience reach, an icon of local and national news production and the owner of one of a handful of major movies studios.

As large as Comcast is nationally, it is even more important as a local provider of video services. Comcast is a huge entity in specific product markets. It is the dominant multi-channel video programming distributor (MVPD) in those areas where it holds a cable franchise, accounting, on average for over half of the MVPD market. It is the dominant broadband access provider in the areas where it has a cable franchise, accounting for over half of that market. This dominance of local market distribution platforms is the source of its market power. The merger will eliminate competing distribution platforms in some of its markets and will give Comcast control over strategic assets to preserve and expand its market power in all of its markets.

Broadcasters and cable operators are producers of goods and services that compete head-to-head, including local news, sports, and advertising. In addition, NBC and Comcast are also suppliers of content and distribution platforms, which are goods and services that complement one another. In both roles there is a clear competitive rivalry between them. For example, in providing complementary services, broadcasters and cable operators argue about the price, channel location and carriage of content. The merger will eliminate this natural rivalry between two of the most important players in the multi-channel video space, a space in which there are only a handful of large players.

These anticompetitive effects of the merger are primarily what antitrust practice refers to as horizontal effects. They are likely to reduce competition in specific local markets – head-to-head competition in local video markets, head-to-head competition for programming viewers, head-to-head competition for distributions platforms. The merger will raise barriers to entry even higher through denial and manipulation of access to programming and the need to engage in two-stage entry. The merger will increase the likelihood of the exercise of existing market power within specific markets, and will increase the incentive and ability to raise prices or profits.

The fact that some of the leverage is brought to bear because of the link to complementary products (i.e. is vertical in antitrust terms), should not obscure the reality that the ultimate effects are on horizontal competition in both the distribution and programming markets. The merger would dramatically increase the incentive and ability of Comcast to raise prices, discriminate in carriage, foreclose and block competitive entry and force bundles on other cable systems. The merger enhances the ability of Comcast to preserve its position as the dominant local MVPD, reinforce its ability to exercise market power in specific cable or programming markets and extend its business model to the Internet.

We raise these concerns about the merger based on eight specific anti-competitive effects that the merger will have on the video market. The attached exhibit presents the list of distribution and content assets owned in whole or in part by these two companies. The exhibit makes it crystal clear that they do compete head-to-head across a number of product and geographic markets and the assets represent an arsenal of complements that would be powerful ammunition to use as leverage against existing competitors and new entrants.

Higher Prices, Fewer Choices, Less Competition

(1) This Merger will reduce choice and competition in local markets. The merging parties currently compete head-to-head as distributors of video content, in local markets. Because broadcasters own TV stations, they compete with cable in local markets for audiences and advertisers -- especially in the production and distribution of local news, and local and political advertising. This merger eliminates this head-to-head competition in 11 major markets where NBC owns broadcast stations and Comcast operates a cable franchise. These 11 markets account for nearly a quarter of U.S. TV households.

This merger also eliminates a competitor for local and political advertising. In fact, in 2006 NBC told the Federal Communications Commission that local cable operators present the single biggest threat to broadcasters in terms of securing local and political advertising.[1] Now that NBC is looking to merge with Comcast, the potential elimination of this local competition has been conveniently ignored. But federal authorities cannot and should not ignore the fact that a merger between Comcast and NBC is likely to cause a significant decline in competition in local advertising markets and excessive domination by the merged company. Not only will advertisers lose an important option, but the merger will be to the detriment of other local broadcasters - particularly smaller, independent ones - who are already facing ad revenue declines in an economic downturn. A stand-alone broadcaster will not be able to offer package deals and volume discounts for advertising across multiple channels the way that Comcast/NBC will be able to do post-merger. That means other local broadcasters will have less money to produce local news and hire staff. To compete, rival broadcasters will have two options: fire staff and reduce production of local news and information; or consolidate in order to compensate for market share lost to the new media mammoth.

(2) This merger removes an independent outlet and an independent source of news and information. These two companies compete in the video programming market, where Comcast's regional sports and news production compete with NBC's local news and sports production. By acquiring NBC, Comcast's incentive to develop new programming would be reduced. Instead of continuing to compete to win audience, it just buys NBC's viewers. Where two important entities were producing programming, there will now be one.

[1] NBC Media Ownership Comments, FCC Docket 06-121 (filed Oct. 2006).

(3) The merger will eliminate competition between Comcast and NBC in cyberspace. NBC content is available online in a variety of forms and on different websites and services. Most prominently, of course, NBC is a stakeholder in Hulu -- an online video distribution portal that draws millions of viewers. Comcast has put resources into developing its own online video site - "Fancast" - where consumers can find content owned by the cable operator. The merger eliminates this nascent, head-to-head competition.

Moreover, Comcast is the driving force behind the new "TV Everywhere" initiative. This collusive venture -- which we believe merits its own antitrust investigation—would tie online video distribution of cable content to a cable subscription and pressure content providers to restrict or refrain from online distribution outside of the portal. This is a disaster for video competition. The proposed merger strengthens Comcast's hand in this scheme by increasing their market power in both traditional and online video distribution. Comcast is clearly attempting to control the distribution of the video content it makes available on the web by restricting sales exclusively to Comcast cable customers. It does not sell that content to non-Comcast customers. By contrast, NBC has exactly the opposite philosophy -- or at least it did. Through Hulu, NBC is competing for both Comcast and non-Comcast customers by selling video online that is not tied to cable. NBC also has incentives to make its programming available in as many points of sale as possible. Merger with Comcast will put an end that pro-competitive practice.

(4) The merger will provide Comcast with greater means to deny rivals access to Comcast controlled programming. Comcast already has incentive to undermine competing cable and satellite TV distributors by denying them access to critical, non-substitutable programming, or by extracting higher prices from competitors to induce subscribers to switch to Comcast. Post-merger it will have a great deal more content to use as an anticompetitive tool. Comcast has engaged in these anticompetitive acts in the past and by becoming a major programmer it will have a much larger tool to wield against potential competitors. Moreover, Comcast has opposed, and is currently challenging in court, the few rules in place that would prevent it from withholding its programming from competing services.

(5) The merger will provide greater incentive for Comcast to discriminate against competing independent programmers. Comcast already has a strong incentive to, and significant track record of, favoring its own programming over the content produced by others with preferential carriage deals. Post-merger it will have a lot more content to favor. The current regulatory structure does not appear sufficient to remedy the existing problem and cannot be expected to address the resulting post-merger threat to independent programmers. The econometric analysis of program carriage indicates there is a great deal of discrimination occurring already. The fact that the FCC is continually trying to catch up with complaints of program carriage discrimination is testimony to the existence of the problem and the inability of the existing rules to correct it.

(6) The merger will stimulate a domino effect of concentration between distributors and programmers. The new combination will create a major asymmetry in the current cartel model in the cable industry. It brings together a large cable provider with a huge stable of must-have programming *and* the largest wireline broadband platform in America. Very likely, this will trigger more mergers and acquisitions because it changes the dynamics of the market. But there w~~ill be no positive competitive~~ outcomes resulting from this change.

This merger signals that the old, anticompetitive game is still on—but with a twist. Like all other cable operators, Comcast has never entered the service territory of a competing multi-channel video program provider, allowing everyone to preserve market power and relentlessly raise prices. But Comcast's expanded assets and especially its new leverage over the online video market will give it a substantial edge against its direct competitors in its service territory. The likely effect of the merger will be for other cable distribution and broadband companies to muscle up with their own content holdings to try and offset Comcast's huge advantage. In other words, there is only one way to deal with a vertically integrated giant that has must-have content and control over two distribution platforms -- you have to vertically integrate yourself. This merger would send a signal to the industry that the decades old game of mutual forbearance from competition will be repeated but at the next level of vertical integration that spills over into the online market. Watch for AT&T and Verizon to be next in line for major content acquisitions. When that happens, it will be extremely difficult for any company that is merely a programmer or merely a distributor to get into the market. Barriers to entry to challenge vertically integrated incumbents will be nearly unassailable. The only option may be a two-stage entry into both markets at the same time -- which is an errand reserved only for the brave and the foolish.

(7) By undermining competition this merger will result in higher prices for consumers. Comcast already raises its rates every year for its cable subscribers, and prices are likely to rise further after the merger. By weakening competition, Comcast's market power over price is strengthened, but there are also direct ways the merger will push the price to consumers up. Comcast will have the opportunity and incentive to charge its competitors more for NBC programs and force competitors to pay for less desirable Comcast cable channels in order to get NBC programming -- those added costs will mean bigger bills for cable subscribers. Furthermore, the lack of competitive pressure that has failed to produce any appreciable downward pressure on cable rates since 1983, will not discipline Comcast from raising its own rates.

(8) This merger will result in higher prices for consumers through the leveraging of "retransmission rights." Through its takeover of local NBC broadcast stations, Comcast will also gain special "retransmission consent rights," which allow stations to negotiate fees for cable carriage of broadcast signals. These rights will enable Comcast to leverage control over must-have local programming and larger bundles of cable channels to charge competing cable, telco and satellite TV providers more money for content. Additionally, once Comcast acquires a broadcaster, it will have the means and incentive to raise retransmission rights payments for NBC-owned stations. This will be reinforced by two factors. First, as the owner of NBC, Comcast profits from the retransmission payments it receives and does not lose from the retransmission payments it makes, which are passed through to consumers. Second, Comcast can charge competitors more for local NBC programming, and will be able to exploit asymmetric information. Cable operators do not publish what they pay for retransmission; broadcasters do not publish what they get. Because of Comcast's superior bargaining power, it will ask for more and pay less.

A Comcast/NBC Merger Should Not Be Allowed To Proceed

The merger has so many anti-competitive, anti-consumer, and anti-social effects that it cannot be fixed. Comcast's claim that FCC oversight will protect the public is absurd. The challenges that this merger poses to the future of video competition cannot be ignored, or brushed aside by reliance on FCC rules that have yet to remedy current problems and, thus, are ill-equipped to attend to the increased anticompetitive means and incentives that will result from Comcast's acquisition of NBC. The FCC rules have failed to break the stranglehold of cable to-date; there is no reason to believe they will be better able to tame the video giant that will result from this merger.

Further, any suggestion that the public interest commitments Comcast has made will solve these problems is misguided. Temporary band-aids cannot cure long-term structural injuries. Comcast's promises lack substance and accountability. More importantly, the commitments do not begin to address the anticompetitive effects of the merger. Many of Comcast's commitments amount to little more that a promise to obey the law. Where they go beyond current law, they largely fall within the company's existing business plans. Anything beyond that is meager at best, and in no way substitutes for the localism and diversity that a vigorously competitive industry would produce.

Over the past quarter century there have been a few moments when a technology comes along that holds the possibility of breaking the chokehold that cable has on the multi-channel video programming market, but on each occasion policy mistakes were made that allowed the cable industry to strangle competition. This is the first big policy moment for determining whether the Internet will function as an alternative platform to compete with cable. If policymakers allow this merger to go forward, the prospects for a more competition-friendly, consumer-friendly multi-channel video marketplace will be dealt a severe setback.

I urge policymakers to think long and hard before they allow a merger that gives the parties incentives to harm competition and consumers, while increasing their ability to act on those incentives. This hearing should be the opening round in what must be a long and rigorous inquiry into a huge complex merger of immense importance to the American people. It should be the first step in a review process that concludes the merger is not in the public interest and should not be allowed to close.

CITIES WHERE THE MERGING MEDIA GIANTS HAVE HEAD TO HEAD COMPETITION AND COMPLEMENTARY ASSETS

NBCU

DISTRIBUTION

- **National Footprint**

27 Stations in 24 cities in 19 states

- **Local Footprint**

COMCAST

DISTRIBUTION

- **National Footprint**

39 Cable Systems reaching 39 states

- **Local Footprint**

NBCU Station	NBCU City	Comcast
NBC Station:		
WNBC	New York	New York
KNBC	Los Angeles	
WMAQ	Chicago	Chicago
WCAU	Philadelphia	Philadelphia
KNTV	San Jose/San Francisco	San Francisco
KXAS	Dallas/Fort Worth	
WRC	Washington	Washington
WTVJ	Miami	Miami
KNSD	San Diego	
WVIT	Hartford	Hartford
WNCN	Raleigh	
WCMH	Columbus	
WVTM	Birmingham	
WJAR	Providence	Providence
Telemundo Stations:		
KVEA/KWHY	Los Angeles	
WNJU	New York	New York
WSCV	Miami	
KTMD	Houston	Houston
WSNS	Chicago	Chicago
KXTX	Dallas/Fort Worth	
KVDA	San Antonio	
KSTS	San Jose/San Francisco	San Francisco
KDRX	Phoenix	
KNSO	Fresno	Fresno
KMAS	Denver	Denver
WNEU	Boston/Merrimack	Boston
KHRR	Tucson	
WKAQ	Puerto Rico	

Other Comcast cities:

New Bedford
Springfield
Pittsburgh
Wilkes Barre
Baltimore
Richmond
Jacksonville
Orlando
West Palm Beach
Fort Myers
Tampa
Atlanta
Knoxville
Nashville
Chattanooga
Memphis
Peoria
Detroit
Grand Rapids
Indianapolis
Peoria
Champaign
Minneapolis/St. Paul
Albuquerque
Colorado Springs
Salt Lake City
Portland
Seattle
Sacramento

NBCU

INTERNET
NBC.com
MSNBC.com
CNBC.com
IVilalge.com
Scifi.com
Telemundo.com
Bravotv.com
Triotv.com
Nbcolympics.com
Shopnbc.com
Partial
Hulu (a joint venture with News Corp.)
Aetv.com
Biorgraphy.com
History channel.com
Military.history.com
Thehiostorychannelclub.com
Historytravel.com
Newsvine.com

PROGRAMMING
- **Cable Network Properties**

Bravo
CNBC
MSNBC
NBC Sports
Oxygen
SyFy Channel
USA Network
Weather Channel
Chiller
Sleuth
Universal HD

- **Broadcasting**

NBC Television Network
NBC Sports & Olympics

OTHER CONTENT PROPERTIES
Universal Media Studios
Universal Cable Productions
Universal Pictures
Focus Features
Universal Studios Home Video

COMCAST

INTERNET
Comcast.com
Fancast
Fandango
thePLATFORM
Plaxo
(TV Everywhere)

PROGRAMMING
- **Cable Network Properties**

Golf Channel
Style Network
Versus
E! Entertainment Television, Inc.
G4 Media, Inc.
FearNet

- **Local Sports Media Properties**

Comcast SportsNet Bay Area
Comcast SportsNet California
Comcast SportsNet Chicago
Comcast SportsNet Mid-Atlantic
Comcast SportsNet New England
Comcast SportsNet Northwest
Comcast SportsNet Philadelphia
Mountain West Sports Network

OTHER CONTENT PROPERTIES
MGM Pictures (partial ownership)
United Artists Corporation (partial ownership)