

# Comcast's Hollow 'Public Interest' Commitments



At the announcement of the Comcast-NBC Universal merger on Dec. 3, Comcast Executive Vice President David Cohen released a memorandum outlining the company's nine-point "public interest commitments." This plan was presented as a list of concessions the company is making proactively to bolster its case before the transaction is reviewed by the Federal Communications Commission and antitrust authorities.

Free Press, Consumers Union and Consumer Federation of America have reviewed Comcast's plan and found that none of the nine "concessions" are meaningful commitments beyond what Comcast is already doing, is likely to do anyway, or is bound to do by law. There is nothing in these commitments that assuages any of the concerns we have raised about the merger regarding reduced competition in cable television, higher cable and broadband rates, and the prospect of anti-competitive practices that will stifle emerging new media markets. Comcast would like to pretend the merger is consumer friendly. But American consumers deserve more than window dressing.

## Boiling Down Comcast's Nine-Point Plan

- 1. Comcast promises to continue "to provide free over-the-air television through" NBC and Telemundo broadcast stations.** Comcast further commits to a dialogue with network affiliates about business models — which may be an allusion to how retransmission consent revenues will be shared. Neither of these "commitments" is anything more or less than the status quo. It is unclear how the continued operation of profitable, large-market broadcast stations goes above and beyond normal expectations for the company.
- 2. Comcast promises to "strengthen localism."** First, it states an intention to place local news programming on its broadcast stations, Web site, and on-demand service. Most if not all of the broadcast stations already do local news. While more local news is always welcome, there are no specifics as to what this will be or when it will begin. It is not clear how this commitment will amount to more than repurposing the local content already produced by the broadcast stations for the Web and on demand for cable subscribers. Second, Comcast states an intention to maintain PEG channels on the basic, analog cable tier, unless the entire cable system has transitioned to digital. This is nothing more than what current law requires. Moreover, there are complaints pending at the FCC against Comcast for violating this law and moving PEG off the basic tier. Finally, Comcast pledges to place PEG content on demand and on its Web site sometime within three years after the deal closes, long after the anticipated migration to a digital cable system.

Consumers shouldn't have to be Comcast subscribers to gain access to local NBC programming. Moreover, placing local content online and in the on demand service is not really a new initiative or public interest concession. Comcast is simply reiterating existing business goals. The company announced in January 2008 that it intended to put as much content online and on demand as possible. The so-called "Project Infinity" is Comcast's "vision to give consumers the ability to watch any movie, television show, user generated content or other video that a producer wants to make available On Demand."<sup>1</sup> The company, in reference to the so-called "On Demand Online" project, stated, "Ultimately, our goal is to make TV content available to our customers on all platforms."<sup>2</sup>

- 3. Comcast promises to guarantee the independence of NBC news from political interference.** A pledge that the company will not secretly seek to bias the news coverage of NBC seems an odd thing

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<sup>1</sup> "Comcast CEO Brian L. Roberts Announces Project Infinity: Strategy to Deliver Exponentially More Content Choice on TV," Jan. 8, 2008, <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=724>.

<sup>2</sup> "Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online," June 24, 2009, <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=883>.

to need to promise. The company appears to be explicitly acknowledging it would have an incentive to interfere with newsgathering absent such a commitment. Voluntarily committing not to skew the presentation of information from one of the country's largest news outlets shouldn't be a celebrated concession – it should never have been in question in the first place.

4. **Comcast pledges to “an expanded commitment to meeting the viewing needs of children” on all of its outlets.** Under current law, the NBC and Telemundo stations are required to air at least three hours of children's educational programming per week to get accelerated renewal of their licenses. It is not clear to what extent Comcast intends to expand that offering beyond placing existing NBC children's programming on demand and on its Web site. Regardless, it aligns with Comcast's existing business goals as noted above. Comcast also alludes to using some of NBC's digital broadcast spectrum for children's programming, but no details are provided. All of these multicast streams are already subject to the same children's programming requirements. Second, Comcast commits to providing on-screen ratings information that it already displays on its television programming. And finally, Comcast pledges to work with Common Sense Media to develop more family-viewing tools for use on the Internet and on demand platforms. Yet Comcast has been working with Common Sense Media since 2007 to provide exactly these services.<sup>3</sup> It is not clear what is new here.
5. **Comcast promises to be “second to none in providing and promoting diverse programming.”** The company pledges more programming targeted at Spanish-language viewers. Comcast intends to use the digital broadcasting channels of the Telemundo stations “to enhance current programming.” No details are offered to describe the nature of programming or to what extent it will expand the current offerings from Telemundo. Comcast also intends to place this programming on demand and on the Web site. Again, Comcast already planned to do this with any and all content that exists.
6. **Comcast says “at least 75 percent of our On Demand programming library will be available to subscribers at no extra charge for the three-year period” after the merger.** According to Comcast's own promotional material, “more than 90 percent of On Demand programs are available at no additional charge.”<sup>4</sup> This appears to be a fact the company sought to conceal.<sup>5</sup> In addition, Comcast pledges that content owned by NBCU will be available on demand for no extra charge. Yet putting broadcast content on demand for free is nothing new. Comcast made a similar move with the CBS network back in 2006, suggesting this was already a good business proposition. The broadcaster remarked at the time: “Early results show that viewers are responding to programming being made available on emerging platforms for free, supported by advertising.”<sup>6</sup> Consumers are left to wonder if this merger will result in a reduction of free programming in the on demand platform from 90 percent to 75 percent.

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<sup>3</sup> “Comcast and Common Sense Media Announce Partnership to Provide Cross-Platform Media Education Tools for Parents,” February 5, 2007, <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=13>.

<sup>4</sup> Comcast Promotional Material, “Comcast Video Services,” <http://www.comcast.com/MediaLibrary/1/1/About/PressRoom/Documents/ProductsAndServices/video.pdf>

<sup>5</sup> Up until very recently, Comcast's press kit also stated that “more than 90 percent of On Demand programs are available at no additional charge.” However, this was recently altered to say, “The vast majority of On Demand programs are available at no additional charge.” See Google Cache at [http://74.125.93.132/search?q=cache:16\\_T6lcZwYQJ:www.comcast.com/medialibrary/1/1/about/pressroom/documents/PressKit.pdf](http://74.125.93.132/search?q=cache:16_T6lcZwYQJ:www.comcast.com/medialibrary/1/1/about/pressroom/documents/PressKit.pdf) and

<http://www.comcast.com/MediaLibrary/1/1/About/PressRoom/Documents/ProductsAndServices/video.pdf>.

<sup>6</sup> “Comcast and CBS Introduce Free ON DEMAND Episodes of Primetime CBS Shows for Comcast Digital Cable Customers,” Sept. 14, 2006, <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=41>.

7. **Comcast commits to abiding by the FCC’s program access rules and retransmission consent rules.** This “commitment” to provide programming to competing cable television providers is nothing more than current law.
8. **Comcast commits to adding “two new independently-owned and -operated channels to our digital line-up each year for the next three years” after the merger is completed.** By this point, the cable system will have hundreds of new channel slots. Independently owned appears to simply mean without full or partial ownership by Comcast, but would not preclude channels owned by other cable operators or the large Hollywood studios that currently dominate the cable TV platform. This concession should be seen in the context of the total amount of bandwidth Comcast will have available in an all-digital-cable environment. Comcast has stated it intends to recover at least 300 Mhz bandwidth through this migration. This means the company will free up space for well over 500 new channels, yet apparently only six will be set aside for independent programmers.<sup>7</sup> In this light, this is no concession at all. It is difficult to imagine that an expansion of cable programming of this scope would include fewer than six channels that are not owned by Comcast.
9. **Comcast intends to “honor all of NBCU’s collective bargaining agreements.”** This is important for unions at NBCU, but it probably does not give them great comfort over the long term given Comcast’s history with organized labor.<sup>8</sup>

## Consumers Left Holding the Bag

On the whole, Comcast is offering *almost nothing* for the public with its nine-point plan. Most of these commitments are simply promises to maintain the status quo or abide by current law. Others are promises to do things Comcast is already doing or would likely do in any event. There are vague pledges to expand local programming, but there are no concrete details as to what that might mean beyond placing existing programming on demand. Comcast has dressed up the nine points nicely, but there is nothing beneath the surface.

Much more revealing are the statements made by the company on the investor webcast on the morning the merger was announced. Comcast stated it doesn’t expect any regulatory conditions to “have a material effect on the company.” No doubt Comcast may want to appear to be a good corporate citizen — but the gravitational pull of the bottom line is likely to overwhelm any voluntary commitments. These commitments do nothing to alleviate the consumer concerns raised by this merger.

Consumers have to weigh these empty promises against the prospect of higher cable and broadband bills, less competition, and the concentration of power in one company across multiple media markets. None of the voluntary commitments address the core competition issues raised by this merger. None of the commitments address the effects of this merger on cable companies or news channels competing in local markets where Comcast already dominates the cable market and now will own one or more local channels. With significant market power in three distribution platforms — cable, broadcast and Internet — Comcast can withhold programming from competitors, raise prices with impunity, and squash competition from emerging online video outlets by starving them of content.

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<sup>7</sup> Jeff Baumgartner, “Comcast’s \$1B Bandwidth Plan,” Cable Digital News, April 30, 2009, [http://www.lightreading.com/document.asp?doc\\_id=176164&site=cdn](http://www.lightreading.com/document.asp?doc_id=176164&site=cdn).

<sup>8</sup> See e.g. Communications Workers of America, “Proposed Comcast-NBC Universal Deal Raises Serious Anti-Trust Concerns,” Press Release, Dec. 3, 2009.

There is nothing here to address the consumer harms of forced bundling and tiering that this new company will have every incentive to put in place. By putting content behind an online pay wall, Comcast may force consumers to subscribe to cable first, before having the option of accessing video online.

In short, nothing in Comcast's so-called concessions alleviate any of the concerns about core competition and antitrust issues that the Justice Department, Federal Trade Commission or the FCC should investigate while reviewing this merger.