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October 20, 2010

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

Dear Chairman Genachowski:

The recent breakdown in negotiations between Cablevision and News Corp. for retransmission of Fox broadcast stations in New York, New Jersey, and Philadelphia presages the intensification of retransmission consent disputes that will continue to put consumers in the crosshairs of industry in-fighting.[1] However, the harms resulting from disputes between stand-alone broadcasters and cable companies will pale in contrast to those that are likely to occur if the Federal Communications Commission approves the proposed Comcast acquisition of NBC Universal.

In acquiring NBCU's 26 broadcast stations, Comcast will gain a double incentive to drive-up its rivals' costs for NBC broadcast signals: first, not only does the conglomerate benefit from securing increased fees, but higher rates will force Comcast's cable competitors to absorb these costs, or to pass them onto consumers. This will result in higher bills for consumers who subscribe to rival services, and will give Comcast an anticompetitive advantage over small cable operators, satellite television providers such as Dish Network and DirecTV, or telco TV services such as Verizon FiOS or AT&T U-Verse.

In the event that competing pay-TV providers will not or cannot meet these increased demands, Comcast can simply pull NBC broadcast content from a competitor's pay-TV platform and can also block subscribers' access to Hulu or NBC.com.[2] The decision to pull NBC broadcast signals also highlights an important difference in incentives between a merged Comcast/NBCU and a stand-alone broadcaster – to wit, Comcast/NBCU actually stands to profit from withholding programming if retransmission consent negotiations fall apart. In a typical retransmission consent dispute, a broadcaster pulls its

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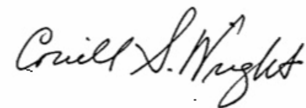
[1] *See Free Press Letter to Chairman Julius Genachowski Regarding the Cablevision-Fox Retransmission Consent Dispute*, October 14, 2010.

[2] Free Press also notes our concerns generally with how Comcast's acquisition of NBCU will adversely impact the emerging market for online video. By virtue of combined the corporation's control over broadband access, cable platforms, and a critical mass of content, Comcast/NBCU would be uniquely situated to withhold NBC content from platforms that compete with Comcast cable television services, such as emerging online video competitors. Moreover, as the nation's largest broadband internet service provider, Comcast can also control access to, and the quality of, unaffiliated programming and online distributors.

signal only as a last resort because it risks losing viewers who would otherwise view broadcast programming via a cable subscription. However, in the case of a Comcast-controlled NBC, pulling programming is not a last resort – *it is a business opportunity*. If a Comcast-controlled NBC station pulls its broadcast signal from a rival operator's system, it can simply direct disappointed customers to switch to Comcast if they want to access NBC programming. In so doing, it can compensate for lost viewers by adding new Comcast cable subscribers. Thus, Comcast/NBCU has a powerful motive to withhold programming with the intent to gain subscribers from its competitors.

In conclusion, the proposed merger is likely to further inflame an already broken retransmission consent system. The incentives of a merged Comcast/NBCU to engage in anticompetitive gamesmanship that push negotiations to the brink will make current retransmission disputes between stand-alone broadcasters and cable operators seem tame by comparison. In going forward with its ongoing review of Comcast and NBCU's merger applications, Free Press urges the Commission to add this concern to the ever-growing list of harms to consumers and competition that will likely result in the event that this deal is approved.

Respectfully
submitted,



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