



Testimony of Josh Silver
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Federal Communications Commission
Public Forum on the Proposed Comcast/NBC Universal Merger in Chicago
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(As prepared for delivery)

My name is Josh Silver. I am president and CEO of Free Press, a national, nonpartisan, nonprofit organization working for media and technology policy in the public interest. Free Press has been an outspoken critic of consolidated media ownership and of the proposed Comcast/NBC Universal merger.

Free Press opposes the merger for several reasons. But beyond the technical factors, there is a broader historical context that we ignore at our peril. Policymaking at the behest of the largest companies – across industries – is threatening our economy, our oceans, our security and the very viability of our democracy. Just look at the ongoing recession or the Gulf of Mexico for the most recent examples.

Allowing the Comcast/NBC merger would be yet another giveaway to industry titans at the public's expense. Insufficient government oversight has already allowed companies like Comcast to overcharge customers who have no alternative providers when bills are too high or service quality is too low. Failure of regulators to ensure competition and reasonable prices has left our nation with broadband service that is far slower and far costlier than in other nations. We've slipped from fourth to 22nd place in broadband adoption in just the past decade.

With the proposed merger, the facts speak for themselves. Comcast is the nation's largest cable operator, largest high-speed Internet service provider, and a leading provider of regional cable sports and news. NBC Universal owns one of only four major national broadcast networks and one of just two national Spanish-language networks. It is an important producer of local and national news and has a major motion picture studio. The proposed merger represents the first time that such a vast range of large media properties would be housed under one corporate roof.

The merger would allow a single company to own a huge array of popular content, and to exert excessive control over how it is distributed over the airwaves, cable and Internet. Such dominance over any one of these provides sufficient reason for the FCC to block the transaction. The merged giant's power over all three platforms requires that regulators stop the deal.

By combining vast programming assets with distribution dominance, the merger would dramatically increase Comcast's incentive and ability to raise prices, block competitive entry, force bundles on other cable systems, and discriminate in carriage of competing programming. For consumers, this would spell even higher prices and fewer

programming and provider choices – in a market that is already uncompetitive. It would diminish media diversity, and hurt innovation in promising emerging markets, such as online video.

Indeed, this would be the first major media merger since the deployment of Internet technology capable of distributing high-quality video content. While the anticompetitive effects would be felt across multiple sectors of content and distribution, it is the threat to the nascent online video market that distinguishes this merger from previous deals.

Comcast ownership of NBC Universal films and content, as well as an equity stake in the online site Hulu, provides the company with a powerful weapon to kill off emerging Internet-based competitors before they even get off the ground. It would also increase Comcast's incentive to degrade or block consumers' access to competing online video providers. Furthermore, if Comcast decides to "enhance" access to its own content or to degrade access to competing content or providers, the FCC does not currently have Net Neutrality rules in place to protect consumers from this anticompetitive conduct. Even more alarming, a court recently ruled that the agency lacks authority to even enforce Net Neutrality and other key consumer protections.

The bottom line is this: With increasing broadband speeds, any website could have the reach of a television or radio network, breaking open access and distribution of media content, and allowing anyone with Internet access to have a voice in the public square. This merger is a direct threat to that historic opportunity.

Locally, the implications of the deal are equally alarming. In Chicago, a merged Comcast/NBC would own the dominant cable system, the dominant broadband system, and not one, but two broadcast stations -- the local NBC affiliate, NBC-5, and the local Telemundo affiliate, channel 44 – as well as all of NBC's cable networks, like CNBC.

That means Comcast would control cable access, Internet access and nearly a quarter of all the commercial channels offered in the most popular "expanded basic" cable package. These numbers give you a rough idea of how this merger will adversely impact the people of Chicago. But it is even more essential to hear from the people themselves. To that end, I commend the FCC for providing the public time during this forum to voice their own concerns about how this merger will affect them and their communities.

I don't need to tell you that the FCC has a special role in reviewing this merger. The agency is required by law to ensure that mergers will *affirmatively* promote the public interest, convenience and necessity. What's more, Comcast and NBC bear the burden of proving to the Commission that this transaction not only will not harm consumers and competition, but that it will actually advance public interest goals. Comcast and NBC have not made and cannot make this showing. Anyone who thinks they can is likely among those who cheered the gutting of regulatory oversight of Big Banks and Big Oil.

Some have suggested that if we place conditions on the deal, everything will be OK. But requiring conditions to neutralize the harms of a bad merger is not the same as ensuring

that the merger affirmatively produces real public interest outcomes. Importantly, such conditions would expire in a few years. With this deal, the anticompetitive incentives would be part of the DNA of the merged company, making conditions with a shelf life about as helpful as putting a Band-Aid on a broken leg.

The realities simply don't support the agency's blessing of the merger, and neither do the American people. Once people understand the size and scope of the deal, they overwhelmingly oppose it. Yet there exists a conventional "wisdom" in Washington, D.C. that Comcast/NBC is a "done deal" that can be patched up with a few conditions. Such conventional wisdom, however, is anything but wise. It is the result of tens of millions of dollars spent by Comcast on PR firms, lawyers and lobbyists – many of them former members of Congress – to cajole and arm-twist regulators, and manipulate public opinion.

To embrace their rhetoric requires that we ignore the real threats, as was done with financial and oil industry oversight. If the FCC follows suit, and puts Comcast's interests ahead of the interests of the American people, it will cause irrevocable harm to our nation's 21st century communications system. The stakes are that high.

Finally, I want to thank Commissioner Capps and the FCC staff for coming to Chicago. However, I must express my disappointment that Chairman Genachowski chose to stay in Washington instead of coming here. Washington is a bubble, and policymakers must escape that bubble from time to time to hear from real people.

Consider that while the public interest community opposed many policies by former FCC Chairman Kevin Martin, in one year alone, he held six full-fledged media ownership *hearings*, bringing the *full* Commission to listen to hours of public testimony. The last time the FCC was in Chicago, it was for the fifth of those hearings. All five Commissioners stayed until 2 a.m. to listen to local people speak about why media consolidation is bad for Chicago.

Chairman Genachowski found time last week to rub elbows with the most powerful media and technology leaders at an elite conference in Idaho. It is a shame that he was not able to be in Chicago to hear the voices of the people his agency is charged with protecting. We call on Chairman Genachowski to follow the lead of his predecessors and to hold more public hearings, with ample time for public input and full participation by all FCC Commissioners.

I thank the Commission for this opportunity to speak, and look forward to hearing from my fellow panelists as well as from members of the public. Thank you.