

**Statement of  
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**FCC Media Bureau's Public Forum to Discuss  
the Proposed Comcast/NBCU/GE Joint Venture**

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Thank you for inviting me here today. I should note at the outset that I have written a paper for the American Cable Association which provides an economic analysis of the competitive harms of this proposed transaction, which the ACA has submitted to the FCC as part of the public record, and my comments here today are based on the analysis and conclusions presented in that paper.

The proposed combination of Comcast and NBCU will affect competition in two vertically related industries – the (downstream) multichannel video programming distribution (MVPD) industry, which provides subscription TV services to consumers, and the (upstream) video programming industry, which provides MVPDs with the networks that they distribute to their subscribers. NBCU operates only in the upstream programming industry. Most notably, it owns the NBC network, including 10 NBC owned and operated (O&O) affiliates and a large number of the most popular national cable networks, including the #1 ranked USA. As the nation's largest cable system operator, Comcast is of course a significant participant in the downstream MVPD industry. However, Comcast is also a significant participant in the upstream programming industry. The crown jewels of Comcast's programming assets are its 9 regional sports networks (RSNs).

From an economic perspective, this means that the proposed combination has both horizontal and vertical aspects and that a complete economic analysis of the potential competitive

harms must consider both aspects. In a sense, we can think of this merger as “really” consisting of two somewhat distinct mergers – a horizontal merger and a vertical merger. The horizontal merger consists of the combination of NBCU’s programming assets with Comcast’s programming assets. The vertical merger consists of the combination of NBCU’s programming assets with Comcast’s MVPD assets.

I believe that both aspects of this merger will cause significant competitive harms, and I will devote my initial prepared remarks today to explaining why this is so. Most of the public discussion of this proposed merger has focused on the potential for vertical competitive harm, perhaps because we normally think of Comcast as being primarily a cable operator. While I believe that this merger likely will generate significant vertical competitive harms, I want to particularly stress in my remarks today that this is only part of the story. In particular, the merger is also likely to create significant horizontal harms.

I will begin with the horizontal harm. We investigate the issue of horizontal harm by asking the question: “Would a merger between NBCU and a hypothetical firm that only owned Comcast’s programming assets create any competitive harms?” I believe that the answer to this is yes. The horizontal harm is that combined ownership of NBCU and Comcast programming will increase the joint venture’s market power over programming and allow it to charge higher programming fees. These fee increases will be substantially passed through to subscribers in the form of higher subscription prices. Comcast and NBCU each currently possess significant amounts of market power because of the programming assets that each firm owns. The Commission itself has concluded that the signals of local NBC affiliates and RSNs are “must have” programming in the sense that if this programming were withheld from an MVPD, it would

have a competitively significant effect on the MVPD through a material loss of customers. Similar considerations suggest that the block of popular cable networks owned by NBCU likely confers a comparable amount of market power. The best available evidence on the effect of combined ownership or control of multiple blocks of “must have” programming comes from markets for retransmission consent for signals of the Big 4 networks. This evidence suggests that joint ownership or control of multiple Big 4 stations in the same local television market increases retransmission consent fees by at least 20%.

The greatest threat of horizontal harm from this transaction exists in regions of the country served by an NBC O&O and a Comcast RSN. Six major metropolitan areas containing approximately 12.1% of all TV households have these characteristics and are thus at greatest risk of suffering competitive harm. Chicago is one of these areas. The other five are Philadelphia, San Francisco-Oakland-San Jose, Miami Ft. Lauderdale, Washington DC, and Hartford-New Haven. The transaction also threatens horizontal harm in regions of the country served by a Comcast RSN but not served by an NBC O&O. Approximately 27.9% of all TV households are located in regions with these characteristics. Combining both types of regions, this means that 40% of TV households are located in regions of the country that are threatened by horizontal competitive harm because of this merger.

Now I will turn to the issue of vertical harm. We investigate the issue of vertical harm by asking the question: “Would a merger between NBCU and a hypothetical firm that only owned Comcast’s cable systems produce competitive harm?” Once again, I believe that the answer to this question is yes. When NBC sells programming to MVPDs that compete with Comcast, this reduces Comcast’s profit. The merged entity will take this effect into account when it negotiates

programming fees and, as a result, will be able to negotiate higher programming fees. These fee increases will be substantially passed through to subscribers in the form of higher subscription fees.

The impact of the transaction will be most significant in local television markets served by an NBC O&O where Comcast has a significant presence as the incumbent cable provider. It turns out that the same six regions of the country that are at greatest risk of horizontal harm from this merger are also the regions at greatest risk of vertical harm from this merger. This is because Comcast has followed a clustering strategy of creating RSNs in regions of the country where it already has a substantial cable presence. Under plausible parameter assumptions, the retransmission consent fees charged by NBC O&O's to rivals of Comcast will approximately double in these local television markets. These rivals include the two DBS providers, DirecTV and DISH, telco providers of cable services such as AT&T and Verizon, as well as cable overbuilders that compete with Comcast, such as WOW! The transaction will have a smaller but still significant impact on the fees that the merged entity charges for NBCU's national cable networks.

In summary, NBCU is solely in the programming business but Comcast is in both the programming business and the MVPD business. From an economic perspective, this means that the proposed combination has both horizontal and vertical aspects and that a complete economic analysis of the potential competitive harms must consider the possibility of competitive harm arising from either of its two aspects. For the reasons that I have described, I believe that the transaction will likely cause significant competitive harm of both types.