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PROPOSED COMBINATION OF COMCAST AND NBC-UNIVERSAL

FIELD HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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PROPOSED COMBINATION OF COMCAST AND NBC-UNIVERSAL

MONDAY, JUNE 7, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9 a.m., in the California Science Center, The Donald P. Loker Conference Center, 700 Exposition Park Drive, Los Angeles, CA 90037, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Waters, Cohen, Chu and Gohmert.

Staff Present: (Majority) Elisabeth Stein, Counsel; Travis Chapman, Counsel; Benjamin Staub, Professional Staff Member; and Stewart Jeffries, Minority Counsel.

Mr. CONYERS. Good morning. The Judiciary Committee will come to order. We welcome all of our witnesses and guests that are present. In many ways, this is a historic hearing, because the nature of this merger is unusual, in many respects, and I wanted to allow our distinguished Members of the Committee to get in a few comments before we start our discussion about this historic merger.

There are several levels of inquiry. The first is the huge amount of combinations, take-overs, mergers, that have become a pattern over the last 30 years. There have been very little follow-up, the secondary response keeps going down, and there is an institutional crisis. And it didn't just start with this proposal that is before us. And it didn't just start, frankly, in the last Administration before this one.

And so we are here to examine that phenomenon.

Now the nature and the complexity of the proposal between NBC and Comcast now is so great, that FCC is hiring outside counsel to help them untangle this situation. And so I start off, my colleagues, and I am so happy that Judy Chu and Judge Gohmert, our senior Member of the Committee, Maxine Waters, Steven Cohen, are all here with us today.

I start off with putting in the record a law review article on recent trends in U.S. merger enforcement by Debra Forenstein. The first sentence might give you a clue of the direction we are going in.

"The Federal Government has nearly dropped out of the antitrust enforcement business, leaving companies to mate as they wish." And it goes on for some 20-some odd pages.

The other comment that I would like to put before you is the idea that this merger is "in the bag."

Chairmen and Members of the Committee, you know that everybody is for this merger. Just read the press releases and understand the great amount of support that is generated, and my friend, Magic Johnson—I am going to put his letter in the record—we were together with Mrs. Obama in Detroit, only the week before last. Many of my friends, in both sides of the corporate picture, are involved.

So naturally, Judiciary has to hold some hearings. But for goodness sake, let's get this over with and get on down to the business of forming a corporate instrument of such magnitude, that I'm not sure if anybody accurately knows where it is going.

And so it is with that appropriate skepticism, that I call this hearing to order, and I want to thank all of the witnesses, some one, two, three, four, five, six, seven, eight, nine, ten, eleven of you, for the preparation that you have done to be here.

And we want to have a discussion. This is not a formal situation where we toss off statements prepared by you or someone else, and we have this exchange, and then we all fly back to our destinations.

I think this is a historic moment in the economic life of this country, and to me—and I have talked with Waters and Cohen and Gohmert and Chu—there will be other hearings necessary, that this is not going to be solved in one giant hearing in Los Angeles and we go from there.

Judge Louie Gohmert is a friend of the Committee, an expert, and one well-respected on both sides of the aisle, and I recognize him now.

Mr. GOHMERT. Thank you, Chairman, and I do appreciate the hearing. It gives us the opportunity to examine, for a second time, the proposed combination to create one of the world's largest entertainment companies.

Mr. Chairman, you mentioned skepticism. The old saying I heard when I got to Washington, was that no matter how cynical you get, it is never enough to catch up.

So anyway, I am finding there is some truth in that. But the combined company would own significant assets in video distribution, video production, movie production, and the emerging world of Internet video programming.

And of course the combined company will control one of the largest news-gathering organizations in the world, NBC News. An important question that the Department of Justice must answer in reviewing mergers is whether the proposed transaction will lessen competition, raise prices and harm consumers. However, the merger is not completely typical of the mergers that we normally examine in this Committee, and that the Department of Justice usually reviews.

Normally, we look at mergers between head-to-head competitors, such as Delta, Northwest, or XM and Sirius.

Both Comcast and NBC Universal own some video production assets; however, a more compelling and harder question is whether a vertically-integrated company that has a significant hand in

video production and distribution can use its leverage in one area to raise prices in another.

In other words, can the combined company use Comcast's significant presence in cable distribution to limit its rivals access to NBC's programming.

Comcast argues that the FCC's carriage rules prevent it from discriminating against its rivals in such a way.

However, some have concerns that the FCC's rules may not be as robust in that regard as Comcast suggests.

It would seem that if the Department of Justice determines that competition remains robust for both video distribution and production after the merger, then the Department might approve the deal. Of course the Department is not the only entity that must review the proposed purchase. The FCC will review it to ensure that the merger is in the public interest. That catch-all phrase, in the public interest, includes such issues as localism and diversity, which I understand is the main purpose of the hearing today.

And it is my understanding that a number of the witnesses were added it at the last minute, and so hopefully we will be able to have more notice in the future, so we can make them more diverse in their structure. But as always, Chairman, appreciate you and appreciate your effort to be fair in all things. So I yield back.

Mr. CONYERS. Maxine Waters and I have known each other before she was in the Congress. Of course my presence goes back to a presidential dispute in the 19th Century which I was—— [Laughter.]

I think it was called the Hayes-Tilden controversy. So I am so pleased. She has worked in the civil rights movement, she has been a state legislator, an activist in every respect. We are honored to have her on the Committee.

Ms. WATERS. Thank you very much, Mr. Chairman.

I appreciate your comments about how long we've known each other. I am 100 years old and you are 125, so—— [Laughter.]

Mr. Chairman, I want to thank you for agreeing to organize this field hearing on Comcast-NBC merger. I am very pleased to welcome you and my colleagues to Los Angeles as we do our due diligence to further investigate and understand the implications of this massive merger, and what it could have on our already heavily-consolidated media market.

Over the past couple of months, I have been active in advocating for transparency and an open process in the Federal Communications Commission's review of this merger.

I have been very pleased with the FCC's leadership in response to our calls for an extension of the initial comment period and public hearings.

Similarly, I hope the Department of Justice is conducting a labor-intensive review, considering the impact this merger stands to have on competition and consumers.

While I am not opposed to this merger, necessarily, I have long maintained that the Comcast-NBC merger raises serious questions and should not be rushed through an expedited review process.

I also want to thank our witnesses for agreeing to testify today. As some will note, there are a few people who are missing from the panel, who were previously scheduled to attend. It is somewhat

troublesome, that many independent and minority programmers, producers, writers, and directors, have been afraid to voice their concerns for fear of blacklisting, or other forms of retaliation within their industries.

Indeed, due to the deregulation, and Federal agencies rubberstamped approval of media mergers today, only five companies own the major broadcast networks. Ninety percent of the top 50 cable networks produce three-quarters of all primetime programming, and control 70 percent of the primetime television market share.

In 2007, minorities owned just 3.2 percent of the U.S. television stations, and 7 percent of the Nation's full-powered radio stations, despite comprising more than 34 percent of the population. Today, Comcast Corporation has acquired massive reach and influence on its path to becoming the Nation's largest cable company, whose first quarter profits this year reached $9.2 billion.

In 2008, the company collected over $40.3 billion in revenue. Comcast owns cable franchises in 39 states. It has 23.9 million customers, 15.3 million high-speed Internet customers, and 7 million voice customers.

Under the merger agreement, Comcast Corporation stands to gain majority ownership and control of NBC Universal's two broadcast television networks, NBC and Telemundo, its 26 local owned-and-operated broadcast television stations, several national cable programming networks, a motion picture studio, an international theme park business, and NBC's online content business.

While both the FCC and DOJ have the statutory authority to review media mergers under our Federal antitrust laws, the FCC's process allows for a more comprehensive public interest analysis.

Factors considered to be in the public interest may include a deeply rooted preference for preserving and enhancing competition, accelerating private deployment of advanced services, promoting diversity of license holdings. Let me say that again. Diversity of license holdings, and generally managing the spectrum in the public interest.

The FCC's process incorporates the antitrust concerns that the DOJ must follow. Under the Clayton Act, the DOJ will evaluate whether the merger will substantially lessen competition or create a monopoly. Accordingly, Comcast has advanced various public interest commitment, pledging its dedication to preserve competition and improve minorities, and underserved populations, in all aspects of media programming, production and distribution.

As I understand today, both Comcast and NBC have released a joint statement outlining their plans for corporate diversity and inclusion. While this may be a positive first step, I am anxious to learn more about the proposed plan and how it proposes to meaningfully involve and create opportunities for women and minorities in executive leadership, management, advertising and programming.

Therefore, Mr. Chairman, I look forward to hearing from our panel of witnesses, so that they can help this Committee understand the scope of this merger. Their diverse views and perspectives will shed light on the type of considerations the DOJ must take into account while reviewing this merger.

It is my hope that the parties to this merger can find ways to mitigate the potential harm this deal could have on customers, competition, and minority communities' access to quality and affordable broadband service.

Mr. Chairman, let me just close by saying this has been an interesting experience. In opening up and expanding the comment period, and calling for public hearings, we have been deluged with nonprofit organizations, churches, civil rights organizations, all talking about their donations from Comcast.

And while we take this opportunity to say to Comcast, we appreciate the donations to the nonprofit organizations, that has nothing to do with this competition and ownership that we are talking about today. So they should continue to give the 50 cents to the Boy Scouts. But we are talking about competition and ownership.

So if there is anybody here today who wants to talk about how much money you have given to the NAACP, the Urban League, to Al Sharpton, to anybody else, this is not the place to do it. Thank you very much.

Mr. CONYERS. Thank you so much, because it was your efforts that persuaded the FCC to hold their own inquiries, and that they have announced that they will be starting in Chicago, and that there will be other hearings throughout the country.

I turn now to Steven Cohen from Memphis, Tennessee, a wonderful person. We were working together with members of the Harry Belafonte family, before we even met, and he has been a wonderful and important addition to this Committee, and we recognize him now.

Mr. COHEN. Thank you, Mr. Chairman. It is always an honor to be in your presence and that of Congressman Waters, who I learn so much from, and the other Members of the Committee as well.

I am from Memphis, Tennessee, although I did go to high school in Pasadena, at the polytechnical school, in the era of Mike Garrett, but I am a Memphian, and there are a lot of connections between Memphis and Los Angeles. We gave you Pau Gasol. We loaned you Elvis, Cybil and Isaac. But you did us the great favor in Danny Thomas, and bringing the world's greatest clinic and research facility for childhood cancers and childhood catastrophic illnesses to Memphis, St. Jude's Children's Hospital, and we thank you for that.

This is a very important issue and while most mergers are not, in reality, in the public interest, they are in the interest of the business and the executives, as we have seen in so many places in our society.

Where we have had mergers of airlines and mergers of large scale, the consumer loses, and that is almost inevitable, the consumer loses, the idea of being in the public interest is a fact of Mr. Gohmert's cynical perspective. And by the way, Congressman Gohmert, it was nice to hear you say robust. I just was waiting for public option. [Laughter.]

There has been a lot written, and I have read a lot in the testimonies about what Comcast has done, or not done, in the way of minority programming and employment.

One thing I am interested in hearing from the panelists is not simply what Comcast has done, and that is indeed important, but

what other cable companies have done, and how Comcast compares to others in the industry, how NBC compares to others in the industry, and if this is an industry-wide and a national problem, of if it is a Comcast problem, and if Comcast is doing better than the others, maybe we need to encourage the others to do better.

And I think what Congressman Waters was getting to, something—and it is more her book than my book—about teaching am an to fish rather than giving him a fish. And that is so important, that if you give people opportunity then they can have a lot of benefits and pass them on, generationally. And that needs to happen.

So I am here to listen, and see how Comcast and the cable industry, and the broadcast industry, overall, is doing in helping minorities, women, African Americans, Hispanics, etcetera, in getting an opportunity to participate in the great American Dream. I thank you, Mr. Chairman, for having the hearing and for allowing me to attend.

Mr. CONYERS. Thank you. Congresswoman Judy Chu is a replacement, in her own right, for Hilda Solis. She represents part of Los Angeles and environs. We were very pleased that she was assigned to this Committee.

Dr. Judy Chu.

Ms. CHU. Thank you, Mr. Chairman, and thank you for bringing this very, very important hearing to our area. There are many issues in the Comcast-NBC Universal merger. But for me, the primary issue is diversity.

I noted with interest, facts that leapt out at me from Mr. Kang's testimony, and that is the recent study by Children Now, which found that in the 8 to 9 p.m. television viewing family hour, it is the least ethnically diverse, with only one in eight programs having a mixed cast, and that this sends a highly-skewed message about diversity in America to viewers, especially children.

And the UCLA Chicano Studies Research Center, which found that television programming was not representative of the Nation's ethnic and racial diversity. They found that 40 percent of all primetime series had all-White characters, and 80 percent of all primetime series were White-themed, and that the lack of minorities on television is both disproportionate and unsettling, and does not reflect our Nation's changing demographics.

This is particularly at issue in California which is a majority/minority state, where 53 percent of the population here, and the issue about diversity is not just about programming, but it's also about diversity in management and in contracting opportunities.

I was shocked to read that today, five companies own the broadcast networks. Ninety percent of the top 50 cable networks produce three-quarters of all primetime programming and control 70 percent of the primetime television market share, and that these same companies own the Nation's most popular newspapers, and over 85 percent of the top twenty Internet news sites.

This merger will consolidate the market even further, and so we are at a very critical juncture. Today, I would like to hear how the issues of diversity will be addressed and I look forward to the testimony.

Mr. CONYERS. Thank you, and we are so pleased to have Suzanne de Passe here with us, Frank Washington, Dr. Hunt, Darnell

Hunt of UCLA, Kathryn Galan, executive director of the National Association of Latino Independent Producers. The president of the National Hispanic Media Coalition, Alex Nogales. Professor Allen Hammond of the University of Santa Clara Law School. Mr. Will Griffin, the chief operating officer of Hip Hop On Demand, even though he went to Dartmouth. The vice president of the Communications Workers, Jim Weitkamp, is here. Stanley Washington, CEO of the National Coalition of African American Owned Media.

Alfred Liggins, III, president and CEO of Radio One, and president of TV One. Attorney Samuel King, whose presentation and work I found very interesting, who is from the San Francisco Bay Area.

And we will begin our testimony with Mrs. Paula Madison, the executive vice president for diversity at NBC Universal. She has been at GE for 18 years, and has been working at developing the programs and company culture that enable NBC to better reflect the makeup of its globally diverse customers.

She was president and general manager of KNBC, NBC's owned and operated station in Los Angeles, the first African American woman to become general manager at a network-owned station in a top five market, and we are delighted she came all the way from New York to do that, and we welcome you here to begin the testimony.

TESTIMONY OF PAULA MADISON, EXECUTIVE VICE PRESIDENT, DIVERSITY, NBC UNIVERSAL

Ms. MADISON. Thank you very much, Mr. Chairman. Chairman Conyers, Representative Waters, and distinguished Members of the Committee, it is truly an honor to appear at this field hearing in a city that I love and call home.

As the backyard to the media and entertainment industry, the core driver of jobs in Los Angeles area economy, it is an ideal setting for today's discussion of the Comcast-NBCU joint venture.

I also want to give special thanks to the Committee for choosing the California Science Center as the site for the field hearing. It is my home away from home and a place where I am proud to serve as chair of the board of directors.

Whether through my family's majority investments in the LA Sparks, our city's beloved WNBA team, our Broadway Federal Bank, founded by the iconic Black architect, Paul Williams, or my board involvement with USC's Annenberg School, the United Way of Greater Los Angeles, and the California African American Museum, which is located right next door, I am an engaged and committed member of our community.

That same ethos has governed my more than two decades as an executive at GE and NBC Universal. My career at NBC began at WNBC, the New York City owned and operated station. I rose to the rank of vice president and news director, where I was honored to win a Peabody award for investigative journalism, before joining KNBC in Los Angeles, the number two market, as the Nation's first African American female president and general manager.

In that role, I experienced, firsthand, the challenges and opportunities that come with being a person of color in the media and entertainment business, and through the years, I learned, sometimes

the hard way, about the importance of identifying and grooming talent, meeting numbers, both budget- and ratings-wise, and navigating the precarious path up the corporate ladder.

So when Jeff Zucker approached me, in 2007, to become the executive vice president for diversity at NBCU, I had a tough choice to make. I could stay as the president and general manager of what had become one of the company's top-performing stations. Or I could take on a new challenge and help the next generation of diverse executives, entry-level, and otherwise, succeed in pursuing their dreams of making it in this business.

Although I didn't need to, I took that new challenge and sit here today, proud of my company and the leadership we have, and continue to show, in opening the doors of opportunity for those who want to pursue career paths, both in front of and behind the camera.

It is also why I sit here today, excited about Comcast's commitment to investing in NBCU for the future.

My president and CEO, Jeff Zucker, and Brian Roberts, Comcast chairman and CEO, spent nearly 5 hours discussing the transaction with the full Judiciary Committee at a hearing in Washington, D.C., in February.

Today, Comcast and NBCU have announced some new important, exciting and formal diversity commitments, that expand upon earlier commitments. Thee substantive joint commitments, attached in full to my written testimony, span a multitude of areas, ranging from workforce recruitment/career development, supplier diversity, media ownership, programming, and community investment partnerships.

Among some of the more noteworthy commitments are Comcast adding two new independently-owned and operated cable networks to its system for each of the next 3 years, starting in 2011, with a pledge that at least half of the six new networks will have a substantial minority ownership interest.

Establishing four new external diversity advisory councils to facilitate open communication on the development, monitoring and evaluation of the company's diversity initiatives, and expanded video-on-demand offerings, with African American, Hispanic and Asian Pacific programming content.

In closing, I would like to say that all of us who work in the media and entertainment sector understand, particularly in these difficult economic times, how very important investment is to the continued success and survival of our industry.

Whether it's local or national news programming, a blockbuster hit on broadcast television, or the big screen, quality content is expensive to produce. Comcast's investment in NBC Universal will ensure that we continue creating compelling programming and bringing new jobs to Southern California.

I understand that some Members of the Committee, and a number of my fellow witnesses, many of whom are long-time friends, have questions and concerns about the Comcast-NBC Universal joint venture. But as a 20-plus year veteran of NBCU, who continues to work in the industry because I believe in my company, I am confident that the commitments Comcast and NBC Universal have made will provide consumers with what they demand—more

engaging, compelling and diverse content, delivered to them in new and innovative ways, any time and anywhere they want.

Thank you for the opportunity to be a part of today's hearing, and with me, I have over 230 letters from organizations in support of the Comcast-NBC Universal joint venture, that I would like to submit to the record.

I look forward to answering the Committee's questions. Thank you.

[The prepared statement of Ms. Madison follows:]

PREPARED STATEMENT OF PAULA MADISON

HOUSE JUDICIARY COMMITTEE FIELD HEARING

LOS ANGELES, CA

WRITTEN TESTIMONY OF

PAULA MADISON
EXECUTIVE VICE PRESIDENT, DIVERSITY, NBCU
VICE PRESIDENT, GE

JUNE 7, 2010

Chairman Conyers, Representative Waters, Members of the Committee, and Members of Congress: Thank you for the opportunity to appear at this hearing on the proposed sale of NBCU to a joint venture between Comcast and GE.

I began my career as a reporter, and worked as a professional journalist and news executive for more than 30 years. In 1989, I joined WNBC – NBC's flagship station in New York – as the assistant news director. I then became Vice President and News Director in 1996. In that year, WNBC was ranked number one in every newscast in every day part for the first time in 16 years. In 2000, I became the President and General Manager of KNBC here in Los Angeles as well as the regional GM for both of Telemundo's LA stations. At that time, I also took on the role of NBC's Senior Vice President, Diversity. For my last two years as the GM of KNBC (2006-2007), KNBC led NBC's owned and operated stations in profitability for the first time in the Division's history. In May 2007, NBC Universal President and CEO Jeff Zucker announced that diversity would be one of his five strategic priorities for NBCU and asked me to work on diversity full time and to serve as the company's Chief Diversity Officer reporting directly to the CEO. I appear before you today as a 21-year NBC veteran who now serves as Executive Vice President, Diversity, for NBCU and as a GE Vice President.

Since moving to LA in 2000, I have made this city my home. As a community-focused person, I have served on the boards of many community organizations, and I presently serve on the boards of the United Way of Greater Los Angeles, the California African-American Museum (right next door to the Science Center where today's hearing is being held), and on the USC Annenberg Board of Councilors. I also serve as Chairman of the Board of the California Science

Center, where today's hearing is being held, and on behalf of my colleagues and the organization, we welcome you here today.

My roots in this community run deep – from my connection to the Los Angeles Marathon which, as KNBC president, I televised for seven years and personally ran twice, to my support of the Jenesse Center for victims of domestic abuse. My family has a significant investment in Broadway Federal Bank, founded by the iconic Black architect Paul Williams. We have a majority ownership in our beloved WNBA team – the LA Sparks – and we also have a majority ownership of The Africa Channel airing in LA on Time Warner Cable.

Today I would like to address two subjects – first, the overall benefits of this transaction, and second, the impact and benefits this transaction will have on diversity, a subject that many members of this Committee asked about on February 25 and have continued to address since then.

The heart of this deal is about joining Comcast's world-class technological distribution capabilities with NBCU's world-class content production. Comcast is committed to investing in NBCU to support and enhance both the quality and the quantity of our content and to exploring ways to generate more options for consumers to enjoy that content. That new investment by Comcast is critical. It will benefit the content production community generally – a community which is so heavily concentrated here in Los Angeles – as well as the audiences who love NBCU programming and films. And as Comcast has explained, it will use its advanced platform to deliver the benefits of the "anytime, anywhere" delivery options that today's consumers demand – not only terrific NBCU content, but content from producers large and small, black and white and brown. In such a competitive and dynamic industry, this deal will make both partners better and more vibrant competitors. Together, the whole of our combined entities will be greater than the sum of its parts, benefitting consumers, viewers, communities, our companies and the entertainment industry community as a whole.

I. Benefits of the Comcast-NBCU Joint Venture

On February 25, this Committee heard from our President and CEO, Jeff Zucker, and Comcast's CEO, Brian Roberts, on the many benefits of the proposed transaction. I have attached their joint testimony from that hearing. Let me briefly outline the benefits this transaction will bring.

A. Investment in NBC and Content Production

Comcast's support for investment in the new NBCU's content creation will benefit consumers by assuring and expanding the supply of high quality content. In turn, this support also benefits the broadcast, cable and film production communities centered here in LA. And this support also importantly extends to local and diverse programming. This much-needed investment will preserve and create sustainable media and technology jobs, benefiting the content production community generally.

i. Broadcast

The NBC broadcast network has been an iconic brand for more than 75 years. Over that entire time span, NBC has been committed to produce high quality, desirable and popular programming for the NBC network.

The broadcast side of our business has faced significant challenges in recent years, as stations come under increasing financial pressure and have searched for additional revenue streams to remain viable. As part of this transaction, Comcast has committed to maintaining NBC's free, over-the-air broadcast through our stations and local affiliates across the U.S.

This commitment is an enormous benefit of the transaction, in our view, and it has also been greatly underappreciated. Because a significant proportion of diverse communities rely heavily on broadcast for their television signals, Comcast's commitment to free over-the-air television will be particularly important to these communities. And it will also give NBCU the resources it needs to keep free over-the-air service, including local news, available and of high quality.

Comcast's commitment to NBC's broadcast business has critical importance for our broadcast production. In this upcoming season, NBC has commissioned 20 new pilots, more than either CBS or FOX. As we strive to offer quality programming that will attract large

audiences, we welcome Comcast's commitment to invest in and sustain production of our programming. This is particularly important in LA, where it means many thousands of production jobs.

Comcast has also committed to work to find a sustainable business model for broadcasting. In particular, Comcast has expressed a willingness to play a constructive role in the retransmission consent negotiations between broadcast stations and MVPDs. As everyone on this panel knows, broadcast stations have struggled to survive on advertising revenue alone. These retransmission consent negotiations have the potential to provide broadcast stations with a second stream of revenue to reinvigorate that business. Comcast's support for this evolution – embodied in this transaction – gives us optimism that the struggling broadcast business can develop a new and sustainable business model for the future.

ii. Cable Production

NBCU's cable networks have increasingly commissioned original programming, which will result in expanded production of cable television content. In today's struggling economy, this represents an opportunity for much needed growth in a signature American industry, with obvious benefits for the many people in the production business. No other region in the U.S. stands to benefit more from this investment than the LA area. With Comcast's partnership, NBCU will be able to further expand and enhance our content production and development. It is often said that a rising tide lifts all boats, and that saying rings true here.

iii. Film Production

Another important aspect of our content development and production is Universal Studios, which is a significant player in the production community here in Los Angeles. Comcast has been a leader in developing On Demand distribution of films and has stated its ambition to accelerate the ease with which consumers can access film content. Comcast's support for continued investment in top quality film content, as well as its interest in expanded distribution of that content, will provide opportunities to the entire content production community while at the same time benefiting consumers in the new "anywhere, anytime" world.

iv. News and Local Programming

Comcast's commitment to preserve NBC News' journalistic independence is vital. NBC News has an unmatched reputation for integrity and excellence. On the local level, Comcast's commitment to the vitality of the broadcast side of the business will foster local newsgathering and news programming. NBCU and Comcast have voluntarily made significant commitments to strengthen local and public interest programming. (See attached Comcast/NBCU Transaction Public Interest Commitments.) Indeed, as part of this deal, we have committed that NBC's owned-and-operated stations alone will collectively produce an additional 1,000 hours a year of local news and information for local market distribution. In short, the joint venture with Comcast will preserve and enrich the output of local news, local public affairs and other public interest programming.

v. Telemundo

Particularly close to my heart, NBCU and Comcast are also committed to investing in and expanding their diverse programming. NBCU owns Telemundo, which is not only a major Spanish language broadcast network, but has also become – through NBCU's leadership – the second largest Spanish-language content provider in the world. As a leader in producing original content made by Hispanics for Hispanics, Telemundo is a proud member of the U.S. Hispanic community.

GE/NBCU acquired Telemundo for $2.7 billion in 2002, followed by an additional $900 million to acquire stations and create Telemundo Studios and Telemundo International to develop and produce original programming. NBCU created Telemundo's hugely vibrant Spanish-language production facilities in the United States. Today, Telemundo produces more than 3,000 hours of original content a year. Telemundo Studios provides hundreds of creative and production jobs to talented Hispanics, developing diverse talent in front of and behind the camera. We are also proud that Telemundo today has more Hispanic executives in its senior executive leadership than at any other time in the history of the company. In 2002, when NBCU bought Telemundo, 33% of Telemundo's leadership team was Hispanic; today, Hispanics constitute more than 80% of Telemundo's senior executive leadership. This team leads approximately 1,400 full-time employees, 85% of whom are Hispanic.

Furthering its commitment to the Hispanic community, Telemundo owns and operates mun2, the bilingual lifestyle cable network for today's culture connectors (C2s) – bicultural Hispanics 18-34. mun2 is headquartered here in Los Angeles in Universal CityWalk. As the fastest growing cable network for young Hispanic Americans, mun2 is culturally grounded and reflects the best of both worlds. mun2 reaches more than 34 million U.S. households and is the only national bilingual cable network measured by Nielsen NTI. Mun2 is proof positive that NBCU and Telemundo recognize the importance of the bicultural Hispanic audience and want to serve them with quality content.

The proposed joint venture will enhance Telemundo's service to the Spanish-language audience in various ways. For example, within twelve months of closing the transaction, Telemundo will launch an entirely new Spanish-language multicast channel on the digital spectrum of Telemundo's owned and operated local stations and offer that channel to all Telemundo affiliates.

B. Expanded Content Distribution and Delivery Innovation

As discussed above, Comcast's support for investment in content creation promises to enhance both the quality and the quantity of our programming, which will expand our audience and improve our ability to compete within the industry. In turn, by offering NBCU's enhanced and expanded programming on Comcast's cutting edge "anytime, anywhere" delivery alternatives for viewers, Comcast and NBCU can better meet consumer demand while at the same time exploring new and innovative ways to deliver entertainment value to current and new consumers. Broader distribution of our content will benefit NBCU and expand our audience, and the ability to offer more and better content on more platforms will enhance Comcast's ability to serve its consumers and its incentive to continue to innovate to meet ever-changing consumer demands in this vibrant and competitive industry.

The combined entity will be best positioned to provide the delivery innovation that today's consumers demand. As Brian Roberts observed in separate appearances before four different Congressional committees in explaining this transaction, Comcast operates in an intensely competitive and dynamic environment. We are moving into a world in which consumers are enjoying unprecedented options for how they get the content they want from legitimate sources. No one can predict or dictate the business model that will succeed in the

future of such a fast changing and technology-dependent industry. With this joint venture, Comcast will have a solid footing in both the content production and distribution worlds – as the company's leaders have stated, content and distribution work well together, and create more opportunities to innovate. As distribution models evolve, Comcast and NBCU together will be better prepared to find new models to better serve all audiences.

Comcast has affirmed its goal to accelerate the "anytime, anywhere" future of video programming that Americans – particularly young consumers – want and demand. By way of example, it may be instructive to look to Comcast's pioneering development of On Demand service to its customers. It offers consumers greater viewing flexibility and access to more content from more diverse sources – and it offers content producers new and expanded ways to reach potential viewers without requiring the massive investment and risk of creating new linear channels.

The public interest benefits of the new technologies in which Comcast is a leader are numerous and compelling. Comcast's On Demand and On Demand Online platforms will be used to offer more local and public interest programming and more programming for young audiences and families, as well as multicultural programming from many sources, of which Telemundo and mun2 are only a part.

Comcast has also made another unprecedented commitment, something no other media company has ever done: Upon completion of its changeover to all-digital cable, it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years. It has further committed that at least half of these new channels will be networks in which minorities have a substantial ownership interest. This is an open invitation to African-American, Hispanic, Asian Pacific Islander, and other communities to come up with their best programming ideas, step forward, and serve diverse audiences, just as Mr. Alfred Liggins, Mr. Will Griffin, and Mr. Frank Washington have done.

II. Diversity Initiatives

At the first hearing that this Committee held on the proposed transaction back in February in Washington, D.C., many Members of this Committee expressed great interest in how the proposed joint venture would affect diversity. Motivated in large part by your interest and that of the diverse communities with whom we work daily, we have declared our goal of building on

our current diversity records through a series of concrete commitments and initiatives on diversity that the two companies are prepared to undertake following the close of the transaction. I am pleased to attach "Comcast and NBCU's Summary of Diversity Commitments." I will note that these commitments have evolved over many months based on extensive conversations with leaders of some of this nation's most influential diversity organizations.

Let me start with NBCU. We have a strong track record of being committed to the principles of diversity throughout the company, and we have made significant progress. But we also recognize that there are many areas where we can and must do more. We are focused on diversity issues on multiple fronts, including programming, procurement, philanthropy and community investment, and the development of our workforce. Following the proposed transaction, Comcast and NBCU will retain and strengthen their commitment to diversity.

A. NBCU Diversity Initiatives

As the Chief Diversity Officer of NBCU – and as an African American woman – I want to express my appreciation to our CEO Jeff Zucker who has made diversity one of his top five key strategic goals for the company and has supported me in our very substantial diversity efforts. As the Committee well knows, the effort to bring diversity to corporate America must be a continuous one. I believe we have shown strong leadership in this regard. Let me tell you some of what we do today and some of our plans for after this transaction closes.

i. Diversity In The Organization

NBCU is committed organizationally to diversity. I am proud to serve as the Corporate Diversity Officer for a media company with a wide range of initiatives designed to increase diversity in our workforce. In addition to my role as the Corporate Diversity Officer, NBCU has established an NBCU-wide corporate Diversity Council, which I chair. This Diversity Council consists of the heads of each division within NBCU, and reports directly to the CEO. Each division also has an individual business Diversity Council that sets goals at the division level and reports directly to each division head.

Under Jeff Zucker's leadership, the diversity of our U.S. full-time employee population has increased from 24% to nearly 30%. Including Telemundo, our diverse full-time employees constitute more than 35% of our staff population. Women and minorities combined represent

over 60% of our full-time workforce. Minority and women executives constitute roughly 40% of our executive ranks.

ii. Benchmarking

In order to make progress toward our diversity goals, NBCU is committed to benchmarking. We set annual diversity goals at both the corporate level and at each business unit level. We report annually to a coalition of four organizations (the National Association for the Advancement of Colored People (NAACP), American Indians in Film and Television, the National Asian-Pacific American Media Coalition, and the National Latino Media Council) on our corporate diversity efforts, with particular emphasis on programming/content, procurement, and our pipeline programs. I also consult with each of the four groups individually on diversity issues on a quarterly basis. These efforts to benchmark our progress are important drivers of our company behavior.

iii. Procurement

NBCU commits significant resources to supporting supplier diversity. This support is reflected in NBCU's procurement track record. In 2009, NBCU spent $100 million with women-owned businesses and $140 million with minority-owned suppliers. This $240 million total represents more than a ten-fold increase in our spending with women and minority-owned business since 2000. And with the investments and resources that Comcast will bring to the joint venture, we are committed to maintaining and expanding our strong network of diverse suppliers.

iv. Philanthropic Investment

NBCU also supports diversity initiatives through its philanthropic and community investment. In 2009, NBCU committed approximately $3.5 million to philanthropic efforts, including its support of NBCU Foundation programs. Approximately half of these donations and grants benefited community-based youth and family organizations, most of which have a strong presence in diverse communities. We support initiatives geared toward improving middle and secondary school achievement, and the majority of the groups we support serve racially diverse,

underserved communities. We plan to expand this commitment by at least 10% annually for the next three years.

We are also proud to be one of the largest supporters of the Emma L. Bowen Foundation for Minority Interests in Media. The Emma Bowen Foundation is dedicated to preparing minority youths for careers in the media industry. NBCU has welcomed the Emma Bowen Foundation into our DC offices, where we provide *pro bono* administrative support to the program. A significant number of the students supported by the Emma Bowen Foundation have taken positions at NBCU and elsewhere in the industry.

v. Entertainment Programming

Perhaps some of the best evidence of NBCU's commitment to diversity in programming can be found in the shows we have selected for NBC's fall lineup and our summer reality shows. Three of the most widely anticipated pilots scheduled to air in the fall feature diverse actors in significant roles: *Undercovers* has two diverse leading roles, the lead character in *Outlaw* is diverse, and *The Event* will feature a diverse actor playing the President of the United States – I'm proud to say, emulating real life. And, of our seven summer reality shows, three have diverse hosts. All seven have diverse contestants.

More generally, NBCU continues to increase diversity in front of and behind the camera. Over just the past year, NBC increased its use of minority actors (31 to 33%), writer/producers (12 to 14%) and directors (9 to 11%); USA increased minority actors (19 to 23%) and writer/producers (14 to 18%); Syfy increased minority writer/producers (4 to 10%). Minority talent already represents 37% of the talent in front of the camera at the Oxygen network. Our efforts to identify diverse talent are aided on the television side of the business by fact that the casting department is headed by a diverse executive.

NBCU believes that attracting and retaining the best, most diverse talent provides a significant advantage in the media and entertainment industry. NBCU develops diverse talent through its Diverse Writers Program, Directors Fellowship Program, and other Professional Development Programs. Through the Directors Fellowship Program, NBCU offers diverse participants opportunities to shadow a Directors Guild of America (DGA) director, as well as gain exposure to other aspects of NBCU Television Studios production. Through the Diverse Writers Program, NBCU has funded a writer from a minority group for three years for each

scripted series on the NBC broadcast network and for NBC's three late night programs. This program has added at least 100 diverse writers to the creative community. Following the joint venture, NBCU will not just continue this program but will expand it to cover scripted series on our cable networks.

Additionally, NBCU's Professional Development Programs offer hands-on experience in programming development and management, and other areas of our business through our other pipeline programs, including the Entertainment Associates program, the Universal Pictures Leadership Program, and our Internship Programs. NBCU also builds diverse relationships by hosting two formal networking events each year to create employment opportunities for diverse directors, writers, and directors of photography. Through these networking events, NBCU brings diverse talent together with our senior executives in the feature, broadcast, cable and digital divisions of NBCU (at the president, executive vice president, senior vice president and vice president levels). NBCU will double the number of these events to one per quarter as part of the new joint venture.

vi. News

NBC News, Telemundo and both NBC's and Telemundo's owned-and-operated stations have made diversity in newsgathering a priority. NBC supports diversity in news programming through recruitment outreach to minority journalists, as well as through its Professional Development Programs. Specifically, the Diversity Leadership Program for mid-career diverse producers and associate producers is an 18-month program designed to train and develop them for executive producer roles. The NBC News Summer Fellowship Program sponsors paid internships every summer for diverse candidates selected jointly with trade associations representing diverse journalists, and the News Associate Program identifies aspiring journalists who bring diverse backgrounds to news production and news coverage. Finally, NBC recruits every year at the annual conventions of trade associations representing diverse journalists, and we participate in career fairs, networking events, and other outreach to minority journalists.

vii. Diversity in Ownership

Earlier I mentioned a number of ways that the transaction will help to diversify media ownership and production opportunities, including the creation of new linear and On Demand

distribution. There is another important way in which we believe this transaction will add media ownership diversity, and it affects this city.

NBCU has agreed to divest its ownership interest in KWHY-TV, an independent Spanish-language broadcast station in Los Angeles. This presents a key opportunity for minority ownership in one of the nation's top two largest media markets. To facilitate this opportunity, NBCU has established a process to identify potential buyers and has selected the Minority Media and Telecommunications Council ("MMTC") as co-advisor for this transaction. MMTC has had demonstrable success in identifying qualified minority buyers in similar divestitures.

In the event these efforts do not result in the sale of KWHY-TV, the station licenses and assets will be placed in a divestiture trust at the closing of the proposed transaction. On May 17, 2010, an application was filed seeking FCC consent for the assignment of KWHY-TV to a divestiture trust. The proposed trustee, Bahia Honda LLC, has as its sole member Jose Cancela, the principal of media consulting firm, Hispanic USA. NBCU and MMTC remain actively engaged in efforts to sell KWHY-TV while the application for assignment to the divestiture trust is pending.

B. Comcast's Diversity Initiatives Post-Transaction

The combined entity will build upon and strengthen both NBCU's and Comcast's commitment to diversity as a corporate value and to promoting diversity throughout all levels of the organization. In addition to creating an integrated organizational structure to promote the values and goals of diversity in the combined entity, Comcast and NBCU have both witnessed the benefits of successful diversity programs to the business. In light of our shared commitment to diversity as an integral corporate value, we have voluntarily set forth new, shared commitments to diversity initiatives. These new and enhanced initiatives are discussed in detail in the attached Summary of Diversity Commitments, but I would like to highlight several of them to demonstrate how Comcast and NBCU will work together to promote diversity.

Comcast is creating an important set of external Diversity Advisory Councils for the first time, which will have an annual meeting directly with Comcast's Chairman and CEO. NBCU will participate fully in that superstructure. Comcast will conduct a benchmark study of diversity initiatives to facilitate improved performance in critical Focus Areas – governance, workforce recruitment and career development, supplier diversity, programming, and community

investment and partnerships – and the Diversity Advisory Councils will help Comcast in making the improvements to which it has committed itself.

And as I noted earlier, Comcast has also made another unprecedented commitment, something no other media company has ever done: Upon completion of its changeover to all-digital cable, it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years. It has further committed that at least half of these new channels will be networks in which minorities have a substantial ownership interest. This is an open invitation to African-American, Hispanic, Asian Pacific Islander, and other communities to come up with their best programming ideas, step forward, and serve diverse audiences.

Comcast and NBCU will enhance diversity in their procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including minority-owned enterprises. Like NBCU, Comcast will increase its community investment spending on minority-led and minority-serving institutions by 10% per year for each of the next three years.

Both Comcast and NBCU commit that they will increase minority representation at all levels of their respective organizations and will recruit and retain minorities so that their workforces better reflect the communities they serve. Post-transaction, Comcast will implement the following workforce diversity initiatives: (1) develop a diversity forum and action plan to increase director-level representation of minorities; (2) create minority focus groups with the objectives of gaining insight, creating opportunities, and identifying high potential employees; (3) implement a boot camp program for mid-level vice president candidates which will include not less than 80% diverse candidates; and, (4) with the cooperation of the Diversity Advisory Councils, identify search firms with track records of successfully recruiting diverse pools of talent to partner with the company in identifying diverse leaders.

Comcast Cable is similarly committed to expanding its diverse programming offerings to its subscribers, which means enhanced distribution opportunities for diverse producers.

- Comcast Cable recently launched Black Cinema On Demand, which celebrates black films, filmmakers, and actors past, present and future, focusing on the wide range of experiences, accomplishments, and points-of-view of black people as expressed through the artistic medium of film.

- As discussed earlier, Comcast Cable will launch Asian Cinema On Demand that will feature films from across the Asian Pacific Islander diaspora that highlight the experiences, accomplishments, and points-of-view of this community as expressed through the artistic medium of film this coming fall.
- Within twelve months of the transaction closing, Comcast Cable plans to launch Hispanic Cinema On Demand featuring Hispanic-themed movies. In addition, Comcast Cable will use its On Demand and On Demand Online platforms to feature Telemundo programming and to continue expanding the availability of mun2.

Comcast Cable and NBCU are committed to expanding minority-focused programming and will look to the Diversity Advisory Councils for guidance and counsel on how to achieve this objective.

Although Comcast and NBCU's records on diversity are solid, and in many key respects are among the best in the industry, we are always looking for ways to improve. That is why we are committed to developing and refining best practices for diversity, and we will always welcome your input on our progress.

Conclusion

NBCU's support of diversity initiatives has been well recognized. As the Emma Bowen Foundation noted in a recent letter, "NBC executives have continuously served on the Foundation's Board of Directors to help guide the growth and development of the Foundation's program." Through its sponsorship of the Foundation, NBC has helped to launch the media careers of diverse young professionals.

Additionally, the National Association of Black Journalists recently recognized NBCU's diversity efforts with respect to newsgathering by awarding NBC News and NBC Local Media its highest honor for a news organization: the Best Practices award. As stated by NABJ's Vice President-Broadcast Bob Butler, "According to NABJ's annual survey of broadcast news management, NBC Universal contains the most African-American Vice Presidents, General Managers, News Directors, Senior and Executive Produces in its Network News Division and in its owned-and-operated stations than any broadcast or cable network in the country."

And last year, NBCU was proud to receive the Congress of Diversity Executives Leadership in Diversity Award (CODY) for Leadership From The Top, in recognition of our innovation, creativity, courage and leadership in addressing diversity and inclusion.

Since this proposed joint venture was first announced, many other groups and individuals have written to the FCC to express their support. I am submitting with my testimony a list of well over 200 letters and statements from public officials, grassroots organizations, stakeholder groups and prominent citizens who have already expressed their support for this merger to the FCC. Many more are arriving at the FCC every day – not just from prominent people, but from community people with whom our companies work every day -- and I think they confirm our view that this transaction is good for competition, good for consumers, and good for diversity.

I am proud to lead NBCU's strong diversity efforts, and I am excited by the possibilities of the proposed joint venture. I look forward to answering your questions.

JOINT WRITTEN TESTIMONY OF

BRIAN L. ROBERTS
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
COMCAST CORPORATION

AND

JEFF ZUCKER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
NBC UNIVERSAL

TO THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

February 25, 2010

Mr. Chairman, and Members of the Committee, we are pleased to appear before you today to discuss Comcast Corporation's ("Comcast") planned joint venture with General Electric Company ("GE"), under which Comcast will acquire a majority interest in and management of NBC Universal ("NBCU"). As you know, the proposed transaction will combine in a new joint venture the broadcast, cable programming, movie studio, theme park, and online content businesses of NBCU with the cable programming and certain online content businesses of Comcast. This content-focused joint venture will retain the NBCU name.

The new NBCU will benefit consumers and will encourage much-needed investment and innovation in the important media sector.

How will it benefit consumers?

First, the new venture will lead to increased investment in NBCU by putting these important content assets under the control of a company that is focused exclusively on the communication and entertainment industry. This will foster enhanced investment in both content development and delivery, enabling the new NBCU to become a more competitive and innovative player in the turbulent and ever-changing media world. Investment and innovation will also preserve and create sustainable media and technology jobs in the U.S.

Second, the transaction will promote the innovation, content, and delivery that consumers want and demand. The parties have made significant commitments in the areas of local news and information programming, enhanced programming for diverse audiences, and more quality educational and other content for children and families.

And finally, Comcast's commitment to preserve NBCU's journalistic independence and to sustain and invest in the NBC broadcast network will promote the quality news, sports, and diverse programming that have made this network great over the last 50 years. We discuss these specific and verifiable public interest commitments later in this testimony, and a summary is attached.

The new NBCU will advance key policy goals of Congress: diversity, localism, innovation, and competition. With Comcast's demonstrated commitment to investment and innovation in communications, entertainment, and information, the new NBCU will be able to increase the quantity, quality, diversity, and local focus of its content, and accelerate the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. Given the intensely competitive markets in which Comcast and NBCU operate, as well as existing law and regulations, this essentially vertical transaction will benefit consumers and spur competition, and will not present any potential harm in any marketplace.

NBCU, currently majority-owned and controlled by GE, is an American icon – a media, entertainment, and communications company with a storied past and a promising future. At the heart of NBCU's content production is the National Broadcasting Company ("NBC"), the nation's first television broadcast network and home of one of the crown jewels of NBCU, NBC News. NBCU also has two highly regarded cable news networks, CNBC and MSNBC. In addition, NBCU owns Telemundo, the nation's second-largest Spanish-language broadcast network, with substantial Spanish-language production facilities located in the U.S. NBCU's other assets include 26 local broadcast stations (10 NBC owned-and-operated stations ("O&Os"), 15 Telemundo O&Os, and one independent Spanish-language station), numerous national cable programming networks, a motion picture studio with a library of several thousand films, a TV production studio with a library of television series, and an international theme park business.

Comcast, a leading provider of cable television, high-speed Internet, digital voice, and other communications services to millions of customers, is a pioneer in enabling consumers to watch what they want, when they want, where they want, and on the devices they want. Comcast is primarily a distributor, offering its customers multiple delivery platforms for content and services. Although Comcast owns and produces some cable programming channels and online content, Comcast owns relatively few national cable networks, none of which is among the 30 most highly rated, and, even including its local and regional networks, Comcast accounts for a tiny percentage of the content industry. The majority of these content businesses will be contributed to the joint venture. The distribution side of Comcast (referred to as "Comcast Cable") is not being contributed to the new NBCU and will remain under Comcast's ownership and control.

The proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms. Antitrust law, competition experts, and the FCC have long recognized that vertical combinations can produce significant benefits. They also have found that vertical combinations with limited horizontal overlaps generally do not threaten competition.

The transaction takes place against the backdrop of a communications and entertainment marketplace that is highly dynamic and competitive, and becoming more so every day. NBCU – today and post-transaction – faces competition from a large and growing roster of content providers. There are literally hundreds of national television networks and scores of regional networks. These cable networks compete for programming, for viewer attention, and for distribution on various video platforms, not only with each other but also with countless other video choices.

In addition, content producers increasingly have alternative outlets available to distribute their works, free from any purported "gatekeeping" networks or distributors. Today, NBCU has powerful marketplace incentives to purchase the best available programming, regardless of source. NBCU's programming schedule bears this out. Next week, third parties will own well over half of the 47 primetime (8-11pm) programs on NBC and its major cable channels (USA, Bravo, Oxygen, and SyFy). Post-transaction, the new NBCU will have the incentive and the financial resources to compete effectively with other leading content providers such as Disney/ABC, Time Warner, Viacom, and News Corp. by providing consumers the high-quality programming they want, and it will have no incentive – or ability – to restrict competition or otherwise harm the public interest.

Competition is fierce among distributors as well. Today, consumers in every geographic area have multiple choices of multichannel video programming distributors ("MVPDs") and can also obtain video content from many non-MVPDs. In addition to the local cable operator, consumers can choose from two MVPDs offering direct broadcast satellite ("DBS") service – DirecTV and Dish Network – which are now the second and third largest MVPDs in America, respectively. Verizon and AT&T, along with other wireline overbuilders, are strong, credible competitors, offering a fourth MVPD choice to tens of millions of American households and a fifth choice to some. Indeed, as competition among MVPDs has grown, Comcast's nationwide share of MVPD subscribers has steadily decreased (it is now less than 25 percent, a share that the FCC has repeatedly said is insufficient to allow an MVPD to engage in anticompetitive conduct). Moreover, current market dynamics are more telling than static measures of market shares; over the past two years, Comcast lost 1.2 million net video subscribers while its competitors continued to add subscribers – DirecTV, Dish Network, AT&T, and Verizon added 7.6 million net video customers over the same time period.

Consumers can also access high-quality video content from myriad other sources. Some households continue to receive their video through over-the-air broadcast signals, which have improved in quality and increased in quantity as a result of the broadcast digital television transition. Millions of households purchase or rent digital video discs ("DVDs") from one of thousands of national, regional, or local retail outlets, including Walmart, Blockbuster, and Hollywood Video, as well as Netflix, MovieCrazy, Café DVD, and others who provide DVDs by mail. High-quality video content also is increasingly available from a rapidly growing number of online sources that include Amazon, Apple TV, Blinkx, Blip.tv, Boxee, Clicker.com, Crackle, Eclectus, Hulu, iReel,

iTunes, Netflix, Sezmi, SlashControl, Sling, Vevo, Vimeo, VUDU, Vuze, Xbox, YouTube – and many more. These sites offer consumers historically unprecedented quantities of professionally-produced content and user-generated content that can be accessed from a variety of devices, including computers, Internet-equipped televisions, videogame boxes, Blu-ray DVD players, and mobile devices. In addition, there is a huge supply of user-generated video content, including professional and quasi-professional content. YouTube, for example, which is by far the leader in the nascent online video distribution business, currently receives and stores virtually an entire day's worth of video content for its viewers *every minute*. And there are no significant barriers to entry to online video distribution. Thus, consumers have a staggering variety of sources of video content beyond Comcast and its rival MVPDs.

The video marketplace truly has no gatekeepers. As the United States Court of Appeals for the D.C. Circuit observed last year, "[T]he record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 [Cable] Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992. Second, over the same period there has been a dramatic increase both in the number of cable networks and in the programming available to subscribers."

The combination of NBCU and Comcast's content assets under the new NBCU – coupled with management of the new NBCU by Comcast, an experienced, committed distribution innovator – will enable the creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The companies' limited shares in all relevant markets, fierce competition at all levels of the distribution chain, and ease of entry for cable and online programming ensure that the risk of competitive harm is insignificant. Moreover, the FCC's rules governing program access, program carriage, and retransmission consent provide further safeguards for consumers, as do the additional public interest commitments the companies have made to the FCC.

At the same time, the transaction's public interest benefits – particularly for the public interest goals of diversity, localism, competition, and innovation – are substantial. Through expanded access to outlets, increased investment in outlets, and lower costs, the new venture will be able to increase the amount, quality, variety, and availability of content, thus promoting *diversity*. This includes content of specific interest to diverse audiences, children and families, women, and other key audience segments. While NBCU and Comcast both already have solid records in creating and distributing diverse programming, the transaction will enable the new NBCU to expand the amount, quality, variety, and availability of content more than either company could do on its own. The new venture will also be able to provide more and better local programming, including local news and information programming, thereby advancing *localism*. The new NBCU and Comcast will be more innovative and effective players in video programming and distribution, spurring other content producers and distributors to improve their own services, thus enhancing *competition*. Marrying NBCU's programming assets with Comcast's multiple distribution platforms will make it easier for the combined entity to

experiment with new business models that will better serve consumers, thus promoting *innovation.*

In addition, Comcast and NBCU have publicly affirmed their continuing commitment to free, over-the-air broadcasting. Despite a challenging business and technological environment, the proposed transaction has significant potential to invigorate NBCU's broadcasting business and expand the important public interest benefits it provides to consumers across this country. NBC, Telemundo, their local O&Os, and their local broadcast affiliates will benefit by having the full support of Comcast, a company that is focused entirely on entertainment, information, and communications and that has strong incentives – and the ability – to invest in and grow the broadcast businesses it is acquiring, in partnership with the local affiliates.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries will not only result in the creation of more and better programming, but will also encourage investment and innovation, accelerating the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. This is because the proposed transaction will remove negotiation friction that currently inhibits the ability of Comcast to implement its pro-consumer vision of multiplatform access to quality video programming. Post-transaction, Comcast will have access to more content that it can make available on a wider range of platforms, including the new NBCU's national and regional networks and Comcast's cable systems and video-on-demand ("VOD") platform, and online. This increase in the value of services offered to consumers by the new company will stimulate competitors – including non-affiliated networks, non-affiliated MVPDs, and the large and growing roster of participants in the video marketplace – to improve what they offer to consumers.

The past is prologue: Comcast sought for years to develop the VOD business, but it could not convince studio distributors – who were reluctant to permit their movies to be distributed on an emerging, unproven platform – to provide compelling content for VOD. This caution, though understandable in light of marketplace uncertainty, slowed the growth of an innovative and extremely consumer-friendly service. Comcast finally was able to overcome the contractual wrangling and other industry reluctance to participate in an innovative business model when it joined with Sony to acquire an ownership interest in Metro-Goldwyn-Mayer ("MGM"). This allowed Comcast to "break the ice" and obtain access to hundreds of studio movies that Comcast could offer for free on VOD. Thanks to Comcast's extensive efforts to foster the growth of this new technology, VOD has become very popular with consumers since it was invented in 2003 – the same year Apple unveiled the iTunes Music Store. Comcast customers have now used Comcast's VOD service more than 14 billion times – that's over 40 percent more than the number of downloads that consumers have made from the iTunes Store since 2003. By championing the growth of VOD, Comcast has been able to benefit not only its customers but also program producers, and it has stimulated other MVPDs to embrace the VOD model.

Similarly, there is every reason to believe that the transaction proposed here will create a pro-consumer impetus for making major motion pictures available sooner for in-home, on-demand viewing and for sustainable online video distribution – which, as the FCC has observed, will help to drive broadband adoption, another key congressional goal.

Comcast and the new NBCU will also be well positioned to help lead constructive efforts to develop consensus solutions to the problem of content piracy. NBCU has been a leading voice in the effort to reduce piracy in all its forms because it costs American jobs and trade opportunities. Comcast has consistently supported voluntary industry initiatives to deter piracy, educate consumers about copyright, and redirect them to legitimate sources of content. Together, the companies will redouble their efforts to persuade all the stakeholders to work together on the problem, while ensuring that consumer privacy and due process are always respected.

As noted above, the risk of competitive harm in this transaction is insignificant. Viewed from every angle, the transaction is pro-competitive:

First, combining Comcast's and NBCU's programming assets will give rise to no cognizable competitive harm. Even after the transaction, approximately six out of every seven channels carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU. Comcast's national cable programming networks account for only about three percent of total national cable network advertising and affiliate revenues. While NBCU owns a larger number of networks, those assets account for only about nine percent of overall national cable network advertising and affiliate revenues. Therefore, in total, the new NBCU will account for only about 12 percent of total national cable network advertising and affiliate revenues. The new NBCU will rank as the fourth largest owner of national cable networks (measured by total revenues), behind Disney/ABC, Time Warner, and Viacom – which is *the same rank that NBCU has today*. Because both the cable programming market and the broader video programming market will remain highly competitive, the proposed transaction will not reduce competition or diversity, nor will it lead to higher programming prices to MVPDs, higher advertising prices to advertisers, or higher retail prices to consumers.

Second, Comcast's management and ownership interests in NBCU's broadcast properties raise no regulatory or competitive concern. While Comcast will own both cable systems and a stake in NBC owned-and-operated broadcast stations in a small number of Designated Market Areas ("DMAs"), the FCC's rules do not prohibit such cross-ownership, nor is there any policy rationale to disallow such relationships. Cross-ownership prohibitions that had been put in place decades ago have been repealed by actions of Congress, the courts, and the FCC. The case for any new prohibition, or any transaction-specific restriction, on cable/broadcast cross-ownership is even weaker today, given the increasingly competitive market for the distribution of video programming and robust competition in local advertising. And, importantly, each of the major DMAs in question has a significant number of media outlets, with at least seven non-NBCU over-the-air television stations in each DMA, as well as other media outlets, including radio.

Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain following the combination of NBCU's broadcast stations and Comcast cable systems in each of the overlap DMAs.

Third, the combination of Comcast's and NBCU's Internet properties similarly poses no threat to competition. There is abundant and growing competition for online video content. The dominant leader in online viewing (by far) is Google (through YouTube and other sites it has built or acquired), with nearly 55 percent of online video viewing. This puts Google well ahead of Microsoft, Viacom, and Hulu (a service in which NBCU holds a 32 percent, non-controlling interest), and even farther ahead of Fancast (operated by Comcast, and currently at well below one percent). All of these services competing with Google have low- or mid-single digits shares of online video viewing. There are countless other sites that provide robust competition and near-infinite consumer choice. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share and face many competitors. On the Internet, content providers essentially control their own destinies since there are many third-party portals as well as self-distribution options. Entry is easy. Thus, the transaction will not harm the marketplace for online video.

Finally, a vertical combination cannot have anticompetitive effects unless the combined company has substantial market power in the upstream (programming) or downstream (distribution) market, and such circumstances do not exist here. As noted, the video programming, video distribution, and Internet businesses are fiercely competitive, and the proposed transaction does not reduce that competition. The recent history of technology demonstrates that distribution platforms are multiplying, diversifying, and increasingly rivalrous. Wired services have been challenged by both satellite and terrestrial wireless services. Cable has brought voice competition to the telephone companies; the telephone companies have added to the video competition that cable already faced; and both cable and phone companies are racing to deploy and improve broadband Internet. Static descriptions of markets have consistently failed to capture advances in distribution technologies. In this highly dynamic and increasingly competitive environment, speculative claims about theoretical problems arising from any particular combination should be subject to searching and skeptical scrutiny, given the accelerating power of technology to disrupt, continuously, all existing market structures.

In any event, there is a comprehensive regulatory structure already in place, comprising the FCC's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law that provides further safeguards against any conceivable vertical harms that might be presented by this transaction. The program access and program carriage rules address different aspects of the relationship between networks and MVPDs, and the retransmission consent rules address aspects of the relationship between MVPDs and broadcasters.

In a nutshell, the *program access* rules govern the process by which a satellite-delivered cable programming network that is affiliated with a cable operator sells its programming to MVPDs. These rules generally prohibit a cable operator from (i) unreasonably influencing whether an affiliated network sells its programming to an

unaffiliated MVPD (or the terms on which it does so), (ii) unreasonably discriminating in the prices, terms, and conditions of carriage arrangements among competing MVPDs, and (iii) establishing exclusive contracts between satellite-delivered cable-affiliated programming networks and any cable operator.

The *program carriage* rules apply to the process by which a cable operator -- or any other MVPD -- buys cable programming from unaffiliated programmers. These rules generally prohibit MVPDs from (i) requiring an equity interest in a program network as a condition of carriage; (ii) coercing an unaffiliated program network to provide (or punishing an unaffiliated program network for not providing) exclusive rights as a condition of carriage; and (iii) unreasonably restraining the ability of an unaffiliated program network to compete fairly by discriminating on the basis of affiliation in the selection, terms, or conditions for carriage.

The *retransmission consent* rules generally require that broadcasters and MVPDs bargain in good faith over retransmission consent (i.e., the right to retransmit a broadcaster's signal). Like the program access rules, the good-faith bargaining rules generally ban exclusivity and unreasonable discrimination.

Although the competitive marketplace and regulatory safeguards protect against the risk of anticompetitive conduct, the companies have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. Comcast will commit voluntarily to extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O broadcast stations for as long as the FCC's current program access rules remain in place (and Comcast has expressed a willingness to discuss with the FCC making the program access rules binding on it even if the rules were to be overturned by the courts).[1] Of particular note, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo stations' decisions about whether to sell their programming, or the terms and conditions of sale, to non-affiliated distributors. It would also shift to NBCU the burden of justifying any differential pricing between competing MVPDs. And the companies would accept the five-month "shot

[1] In October 2007, the FCC released an Order extending for an additional five years the ban on exclusive contracts between vertically integrated programmers and cable operators -- the one portion of the program access rules that Congress had slated to sunset in 2002. On appeal, Cablevision and Comcast have argued that the FCC applied an incorrect standard governing the circumstances under which the FCC may prevent the exclusivity rule from sunsetting automatically; and that the FCC was required to let the rule sunset, or at least narrow it. Comcast was motivated in large part by the inequity of applying an anti-exclusivity rule to cable, while our satellite competitors are able to use exclusive programming contracts against us. Oral argument was held on September 22, 2009. Contrary to the claims of some outside parties, Comcast has not challenged all of the features of the program access rules in this litigation or asserted that the exclusivity ban, or any other portion of the program access rules, is unconstitutional. Rather, we have challenged only the extension of the exclusivity ban, and have reminded the FCC and the courts that they must take the First Amendment into account when they make, review, or apply the program access rules.

clock" that the Commission applies to program access adjudications that is intended to expedite resolution.

Moreover, the companies have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction.

In addition to the commitment to continue to provide free, over-the-air broadcasting, mentioned previously, the companies have committed that following the transaction, the NBC O&O broadcast stations will maintain the same amount of local news and information programming they currently provide for three years following the closing of the transaction and will produce an additional 1,000 hours per year of local news and information programming for distribution on various platforms. The combined entity will maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints, maintaining the journalistic integrity and independence of NBCU's news operations.

The companies also have committed that, within 12 months of closing the transaction, Telemundo will launch a new Spanish language digital broadcast channel drawing on programming from Telemundo's library. Additionally, Comcast will use its On Demand and On Demand Online platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its VOD platforms. Comcast also will continue to provide free or at no additional charge the same number of VOD choices that it now provides, and will make available within three years of closing an additional 5,000 VOD choices over the course of each month that are available free or at no additional charge.

As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions. Independent programmers would be defined as networks that (i) are not currently carried by Comcast Cable, and (ii) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of cable networks, as measured by revenues.

With respect to public, educational, and governmental ("PEG") channels, Comcast has affirmatively committed not to migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution, or until a community otherwise agrees to digital PEG channels, whichever comes first. Comcast has also committed to innovate in the delivery of PEG content On Demand and On Demand Online.

We have proposed that these commitments be included in any FCC order approving the transaction and become binding on the parties upon completion of the transaction. A summary of the companies' commitments is attached to this testimony.

In the end, the proposed transaction simply transfers ownership and control of NBCU from GE, a company with a very diverse portfolio of interests, to Comcast, a company with an exclusive focus on, and a commitment to investing its resources in, its communications, entertainment, and information assets. This transfer of control, along with the contribution of Comcast's complementary content assets, will enable the new NBCU to better serve consumers. The new NBCU will advance key public policy goals: diversity, localism, competition, and innovation. Competition, which is already pervasive in every one of the businesses in which the new NBCU – and Comcast Cable – will operate, provides abundant assurance that consumer welfare not just be safeguarded, but increased. Comcast and NBCU will succeed by competing vigorously and fairly.

We intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. We would welcome your support.

COMCAST/NBCU TRANSACTION
PUBLIC INTEREST COMMITMENTS

Comcast, GE, and NBC Universal take seriously their responsibilities as corporate citizens and share a commitment to operating the proposed venture in a way that serves the pubic interest. To demonstrate their commitment to consumers and to other media partners, the parties have made a set of specific, written commitments as part of their public interest filing with the Federal Communications Commission. Comcast, GE, and NBCU are committed to expanding consumer choice, ensuring the future of over-the-air broadcasting, enhancing programming opportunities, ensuring that today's highly competitive marketplace remains so, and maintaining journalistic independence for NBC's news properties. The parties' commitment to these principles will ensure that consumers are the ultimate beneficiaries of the proposed Comcast/NBCU transaction.

Applicants' Voluntary Public Interest Commitments

Local Programming

Commitment #1. The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As Comcast negotiates and renews agreements with its broadcast affiliates, Comcast will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.

Commitment #2. Comcast intends to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&O schedules, Comcast believes it can expand the availability of all types of local and public interest programming.

- For three years following the closing of the transaction, NBC's O&O stations will maintain the same amount of local news and information programming that they currently provide.

- NBC's O&O stations collectively will produce an additional 1,000 hours a year of local news and information programming. This additional local content will be made available to consumers using a combination of distribution platforms.

Children's Programming

Commitment #3. Comcast will use its On Demand and On Demand Online platforms and a portion of the NBC O&Os' digital broadcast spectrum to speak to kids. Comcast intends to develop additional opportunities to feature children's content on all available platforms.

- Comcast will add 500 VOD programming choices appealing to children and families to its central VOD storage facilities within 12 months of closing and will add an additional 1,000 such VOD choices (for a total of 1,500 additional VOD choices) within three years of closing. (The majority of Comcast's cable systems will be connected to Comcast's central VOD storage facilities within 12 months of closing and substantially all will be connected within three years of closing.) Comcast will also make these additional choices available online to authenticated subscribers to the extent that Comcast has the requisite online rights.

- For three years following closing, each of NBC's O&O stations will provide one additional hour per week of children's educational and informational programming utilizing one of the station's multicast channels.

Commitment #4. Comcast reaffirms its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company, and to apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency, and duration.

- NBCU will triple the time that program ratings remain on the air after each commercial break (from 5 seconds to 15 seconds).

- NBCU will make program ratings information more visible to viewers by using a larger format.

Commitment #5. In an effort to constantly improve the tools and information available for parents, Comcast will expand its growing partnership with Common Sense Media ("CSM"), a highly respected organization offering enhanced information to help guide family viewing decisions. Comcast will work to creatively incorporate CSM information it its emerging On Demand and On Demand Online platforms and other advanced platforms, and will look for more opportunities for CSM to work with NBCU.

- Comcast currently gives CSM content prominent placement on its VOD menus. Comcast and the new NBCU will work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast and NBCU will explore cooperative efforts to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband.

- Upon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign. The NBCU transaction will create the opportunity for CSM and Comcast to work with NBCU's broadcast networks, local broadcast stations, and cable networks to provide a targeted and effective public education campaign on

digital literacy, targeting underserved areas, those with high concentrations of low-income residents and communities of color, as well as target Latino communities with specifically tailored Spanish-language materials.

Programming for Diverse Audiences

Commitment #6. Comcast intends to expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital broadcast spectrum of Telemundo's O&Os (as well as offering it to Telemundo affiliates) to enhance the current programming of Telemundo and mun2.

- Within 12 months of closing the transaction, Telemundo will launch a new Spanish language channel using programming from Telemundo's library that has had limited exposure, to be broadcast by each of the Telemundo O&O stations on one of their multicast channels. The Telemundo network also will make this new channel available to its affiliated broadcast stations on reasonable commercial terms.

Commitment #7. Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.

Commitment #8. Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.

- Comcast will increase the number of VOD choices from Telemundo and mun2 available on its central VOD storage facilities from approximately 35 today, first to 100 choices within 12 months of closing and then to a total of 300 additional choices within three years of closing. Comcast will also make these additional choices available online to its subscribers to the extent that it has the requisite online rights.

Expanded Video On Demand Offerings At No Additional Charge

Commitment #9. Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge.

Commitment #10. NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer will continue to be made available at no additional charge for the three-year period after closing.

Public, Educational, and Governmental ("PEG") Channels

Commitment #11. With respect to PEG channels, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

Commitment #12. To enhance localism and strengthen educational and governmental access programming, Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing.

- Comcast will select five locations in its service area to test various approaches to placing PEG content on VOD and online. Comcast will select these locations to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities, and will consult with community leaders to determine which programming – public, educational and/or governmental – would most benefit local residents by being placed on VOD and online.

- Comcast will file annual reports to inform the Commission of progress on the trial and implementation of this initiative.

Carriage for Independent Programmers

Commitment #13. As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions.

- New channels are channels not currently carried on any Comcast Cable system.

- Independent programmers are entities that are not affiliated with Comcast, NBCU, or any of the top 15 owners of cable networks (measured by revenue).

Expanded Application of the Program Access Rule Protections

Commitment #14. Comcast will commit to voluntarily accept the application of program access rules to the high definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission's current program access rules remain in place.

Commitment #15. Comcast will commit to voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to

the signals of NBC and Telemundo O&O stations for as long as the Commission's current program access rules remain in place.

- Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo O&O stations' decisions about the price or other terms and conditions on which the stations make their programming available to unaffiliated MVPDs.

- The "burden shifting" approach to proof of discriminatory pricing in the program access rules will be applied to complaints regarding retransmission consent negotiations involving the NBC and Telemundo O&O stations.

- The five-month "shot clock" applied to program access adjudications would apply to retransmission consent negotiations involving the NBC and Telemundo O&O stations.

Journalistic Independence

Commitment #16. The combined entity will continue the policy of journalistic independence with respect to the news programming organizations of all NBCU networks and stations, and will extend these policies to the potential influence of each of the owners. To ensure such independence, the combined entity will continue in effect the position and authority of the NBC News ombudsman to address any issues that may arise.

Labor-Management Relations

Commitment # 17. Comcast respects NBCU's existing labor-management relationships and expects them to continue following the closing of the transaction. Comcast plans to honor all of NBCU's collective bargaining agreements.

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NBC UNIVERSAL

COMCAST AND NBCU'S
SUMMARY OF DIVERSITY COMMITMENTS

Comcast Corporation ("Comcast") and NBC Universal ("NBCU") have made a series of commitments to diverse communities in connection with the joint venture between Comcast and General Electric ("GE") relating to NBCU. Except as otherwise indicated, all of these commitments are new or expand upon current commitments by the companies. These commitments span the organizations' business practices with respect to governance, workforce recruitment and career development, supplier diversity, media ownership, programming, and community and partnership investment.

1. Existing Initiatives and Commitments

Comcast and NBCU will honor their respective existing diversity commitments, including those contained in the diversity memorandum of understanding between NBC and a coalition representing the interests of various minority organizations reached in the year 2000, to the extent the commitments remain relevant. Those commitments will be extended to the programming assets that Comcast will contribute to the newly formed Comcast Entertainment Group upon closing of the joint venture.

2. Governance

Comcast and NBCU: New External Diversity Advisory Councils. Comcast and NBCU will establish four external Diversity Advisory Councils (collectively called the "Joint Council") representative of African American, Latino, Asian Pacific Islander, and other diverse communities, to facilitate open communication on the development, monitoring, and evaluation of the companies' diversity initiatives. Comcast will appoint up to nine (9) members to each Diversity Advisory Council with input from national minority leadership organizations. The Joint Council and each Advisory Council will meet at least two times per year with Comcast's and NBCU's internal Diversity Councils, including an annual meeting with Comcast's Chairman and Chief Executive Officer. In addition, the Diversity Councils will interact throughout the year on diversity issues with representatives of Comcast and NBCU.

The Advisory Councils will provide advice to the senior executive teams at Comcast and NBCU regarding the companies' development and implementation of a strategic plan to improve diversity practices. Comcast will develop a strategic plan, with advice from the Joint Council, to address five critical "Focus Areas" related to diversity – governance, workforce recruitment and career development, supplier diversity, programming, and community investment and partnerships.

Comcast: Benchmarking and Ongoing Reporting. Comcast will conduct a benchmark study of the diversity initiatives in these Focus Areas which it will update annually to facilitate input and recommendations from the Joint Council for strategies to improve performance in the five Focus Areas. Annually, Comcast will provide diversity data to the Advisory Councils related to the five

Focus Areas, subject to a non-disclosure agreement and the understanding that the data will be used only for internal discussions and development of progress reports by the Joint Council.

NBCU: Coalition Reporting. NBCU will continue to report annually on its corporate diversity efforts, with particular emphasis on programming/content, procurement, and pipeline programs, to a Coalition consisting of the following four organizations ("NBCU Coalition"):

National Association for the Advancement of Colored People, Inc. ("NAACP");
American Indians in Film and Television;
National Asian-Pacific American Media Coalition; and
National Latino Media Council.

NBCU's Chief Diversity Officer will consult quarterly with each of these NBCU Coalition members on diversity issues.

Comcast and NBCU: Diversity Oversight. Comcast and NBCU each will continue to support their respective internal Diversity Councils. Each organization also will provide annual reports to the Joint Council analyzing success in achieving diversity objectives and offering recommendations for improvement.

3. Workforce Recruitment & Career Development

Comcast and NBCU: Increased Minority Representation: Comcast and NBCU are committed to be industry leaders in the arena of workforce diversity. Both organizations commit that they will increase minority representation at all levels of their respective organizations and will recruit and retain more minorities so that their workforces more accurately reflect the communities they serve.

Comcast and NBCU: Joint Council Input on Recruitment and Leadership Development. Comcast and NBCU will seek the advice of the Joint Council in reviewing and selecting executive leadership development programs, recommendations for minority-owned executive search firms that may be helpful in finding and retaining diverse talent, and assistance in the development of internship programs aimed at exposing college and university-level students to career opportunities.

Comcast and NBCU: Career Path Programs. Comcast and NBCU will continue to develop career-path programs, including mentoring programs, designed to enhance the promotion potential of identified diverse talent, moving individuals from entry-level, to mid-level, to senior management.

Comcast and NBCU: Minority Internship and Scholarship Programs. Comcast and NBCU will increase support for programs focusing on the growth and development of minorities, such as the Emma L. Bowen Foundation for Minority Interests in Media ("Emma Bowen Foundation") and similar internship and scholarship programs focusing on diverse communities (see further discussion of Emma Bowen Foundation under Programming and Community Investment and Partnerships below).

Comcast: Workforce Diversity Initiatives. In addition, Comcast will implement the following workforce diversity initiatives:

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- **Diversity Forum.** Develop a diversity forum and action plan to increase director-level representation of minorities;
- **Focus Groups.** Create minority focus groups with the objectives of gaining insight, creating opportunities, and identifying high potential employees;
- **Boot Camp.** Implement a boot camp program for mid-level vice president candidates which will include not less than 80% diverse candidates; and
- **Search Firms.** With the cooperation of the Advisory Councils, identify search firms with track records of successfully recruiting diverse pools of talent to partner with the company in identifying diverse leaders.

Comcast: Senior Position Candidate Pools. Comcast will enhance minority representation in the leadership ranks of the organization by requiring a diverse pool of candidates for all hires at the vice president level and above, including the commitment to have at least one person of color on every slate for all such hires.

NBCU: Diverse Senior Level Executives. NBCU will focus on hiring opportunities for diverse senior level executives in development, production, casting, marketing, legal/business affairs, and distribution.

Comcast and NBCU: Workplace Diversity Training Programs. Both Comcast and NBCU have active workplace diversity programs that include training on diversity issues. Both organizations are committed to exploring ways in which to expand their respective programs, including, for example, in the case of NBCU, by offering a new online diversity training module for its regular employee base.

4. Supplier Diversity

Comcast and NBCU: Increased Spend on Diverse Suppliers. Comcast and NBCU will enhance diversity in their procurement of goods and services and company-wide supplier diversity activities, increasing the amount spent on diverse business partners, including minority-owned enterprises. On a nationwide basis, Comcast and NBCU will strive to increase the percentage of business conducted with minority-owned vendors to be on par with the percentage of minority-owned businesses in the communities they serve.

Comcast and NBCU: Increased Partnerships with Diverse Organizations. Comcast and NBCU will partner with diverse organizations to enhance the utilization of minority-owned enterprises, specifically minority-led chambers of commerce and/or other minority-led business organizations, at the national, regional, and local levels.

Comcast and NBCU: Joint Council Input on Minority Suppliers. Comcast and NBCU will seek advice from the Joint Council to identify opportunities for spending with minority-owned suppliers in agreed-upon categories.

Comcast and NBCU: Second Tier Procurement Programs. Comcast and NBCU have "second tier" procurement programs designed to encourage their top suppliers to purchase goods and services from minority-owned vendors. As part of these programs, Comcast and NBCU encourage their largest vendors to report quarterly on their spending with minority-owned vendors. Comcast and NBCU will expand their programs to create additional opportunities and an even greater impact, including expanding of second tier reporting to encompass more suppliers as well as automation of the reporting process.

Comcast and NBCU: Banking. Comcast will grow the diversity of its investment banking and banking partners through its minority banking program and through the development and expansion of relationships with minority investment firms. After the closing, NBCU will participate in Comcast's minority banking initiative. Comcast has established banking relationships with numerous minority-owned financial institutions and has included them in the creation and syndication of numerous credit facilities. Where practicable, NBCU will be a depositor in these institutions.

Comcast and NBCU: Advertising Spend. In 2011, following the close of the transaction, Comcast and NBCU jointly will commit at least an additional $7 million in spending on advertising with minority-owned media.

Comcast and NBCU: Law Firms. In 2010, Comcast became a founding partner in the Inclusion Initiative, a collaborative effort among several publicly held corporations designed to increase significantly business opportunities for law firms owned by diverse individuals. The overall goal for this initiative is $30 million, of which Comcast has committed $1 million. As part of the Inclusion Initiative, Comcast will use its best efforts to retain minority-owned law firms that participate in the Initiative. Further, NBCU commits post-close to expand its business with minority-owned law firms. NBCU will establish a working relationship with one or more minority firms in at least three cities where it has headquarters operations – New York City, Los Angeles, and Washington, D.C. In addition, NBCU will commit to have its General Counsel meet annually with the executive director of the National Association of Minority and Women Owned Law Firms ("NAMWOLF") and the senior executive of the National Bar Association to review NBCU's outreach efforts to minority-owned law firms and review its efforts to expand the amount of business that NBCU does with minority-owned firms.

5. Media Ownership

Comcast: New Independently-Owned and -Operated Cable Networks. It is Comcast's intention to ensure that there are substantial opportunities for diverse programmers to benefit from its commitment to add two new independently-owned and -operated cable networks to its systems for each of the next three years starting in 2011. To that end, Comcast commits that at least half of the six networks to be added to its systems pursuant to this three-year pledge will be networks in which minorities have a substantial ownership interest.

NBCU: L.A. Station Divestiture. NBCU has agreed to divest its ownership interest in KWHY-TV, an independent Spanish-language broadcast station in Los Angeles. This process presents a key opportunity for minority ownership in one of the nation's top two largest media markets. To

facilitate this opportunity, NBCU has established a process to identify potential buyers and has selected the Minority Media and Telecommunications Council ("MMTC") as co-advisor for this transaction. MMTC has had demonstrable success in identifying qualified minority buyers in similar divestitures.

In the event these efforts do not result in the sale of KWHY-TV, the station license and assets will be placed in a divestiture trust at the closing of the proposed transaction. If this becomes necessary, MMTC will work with the trustee to effectuate the sale to a qualified third party. On May 17, 2010, an application was filed seeking FCC consent for the assignment of KWHY-TV to a divestiture trust. The proposed trustee, Bahia Honda LLC, has as its sole member Jose Cancela, the principal of media consulting firm, Hispanic USA. NBCU and MMTC will remain actively engaged in efforts to sell KWHY-TV while the application for assignment to the divestiture trust is pending.

Comcast and NBCU: Minority Buyers for Media Assets. Although no additional divestiture of media assets is contemplated in connection with the NBCU transaction, the companies are committed to having an appropriate sensitivity to minority ownership issues in the event media assets are divested in the future, including involvement of specialists to identify minority buyers for any future asset sales.

6. Programming

Comcast: Expanded Services and Competitive Pricing. Comcast Cable is committed to maintain and improve its track record in bringing diverse programming to its subscribers. Moreover, Comcast Cable remains committed to providing competitive and affordable video services to its customers, including its minority customers. As part of its regular meetings with the external Advisory Councils, Comcast will review the pricing and packaging of its minority-oriented programming.

Comcast: Expansion of Diverse Video On Demand ("VOD") Content. On Demand and On Demand Online are dynamic and innovative platforms, and Comcast intends to help opportunities for owners of diverse content to utilize them. On Demand affords independent and minority owners of content with an unparalleled opportunity to reach niche audiences in a direct way and with scheduling directed by the viewers' time preference. As Comcast expands On Demand and On Demand Online, it will focus on ways to ensure that independent and minority owners of content can take advantage of these next-generation platforms.

- **African American Content.** Comcast Cable recently launched Black Cinema On Demand, a VOD channel that celebrates black films, filmmakers, and actors past, present and future, focusing on the wide range of experiences, accomplishments, and points-of-view of black people as expressed through the artistic medium of film. In addition, Comcast Cable features On Demand programming that delivers a variety of television, entertainment, and music choices from various networks and programs that target African American audiences, including Black Entertainment Television (BET), H2O (Hip Hop On Demand), and recently acquired Soul Train content.

- **Asian Content.** This fall, Comcast Cable will launch Asian Cinema On Demand that will feature films from across the Asian Pacific Islander diaspora that highlight the experiences,

accomplishments, and points-of-view of this community as expressed through the artistic medium of film. This permanent platform will allow Comcast Cable to work with Asian Pacific Islander English-language content developers and will be programmed by experts in the Asian Pacific Islander film space. This channel will be available 24 hours a day, 365 days a year; contain 20 hours of content; be refreshed up to 100% a month but no less than 50%; and will include a specific marketing plan developed to promote the offering.

- **Latino Content.** Within twelve months of the transaction closing, Comcast Cable plans to launch Hispanic Cinema On Demand featuring Latino-themed movies. In addition, Comcast Cable will use its On Demand and On Demand Online platforms to feature Telemundo programming and to continue expanding the availability of NBCU's mun2 (MunDos). Comcast Cable will use these platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast Cable has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its On Demand platform.

Comcast: Continued Reliance on Unaffiliated Content. There is no prospect that the proposed transaction with GE and NBCU will diminish Comcast's reliance on unaffiliated content. Following consummation of the proposed transaction, Comcast will continue to rely on other content providers to provide the vast majority of its video content. Comcast will not rely exclusively or even primarily on NBCU content.

NBCU: Entertainment Programming. With respect to entertainment programming, NBCU makes the following commitments:

- **Building Diverse Relationships.** NBCU commits to double (from two to four) the number of formal networking events hosted each year to provide information on employment opportunities for diverse directors, writers, and directors of photography with its senior executives (at the president, executive vice president, senior vice president, and vice president levels) in the feature, broadcast, cable, and digital divisions of NBCU.

- **Diverse Writers Program.** To promote diversity among its writers, NBCU commits to continue to fund diversity writer positions for three years, selected by the show-runner/producer, for each of its scripted series on the NBC broadcast network and for each of NBC's three late night programs. In addition, NBCU commits to expand this program to fund a diverse writer position on each scripted series on NBCU's cable networks.

- **Directors Fellowship Program.** NBCU will continue to sponsor this important shadowing program, which offers diverse participants a developmental opportunity with a DGA director, as well as exposure to other aspects of NBCU Television Studios production.

- **Casting (TV and Film).** NBCU will commit to use its influence to encourage diversity among the freelance casting directors hired in connection with the production of NBCU programming. In addition, NBCU will create a casting associates program for TV and film with an emphasis on diversity in what would be a model for the industry.

comcast NBC UNIVERSAL

- **Professional Development Programs.** NBCU will continue to support the following four pipeline development programs offering hands-on experience in programming development and management, and other areas of NBCU's business: Entertainment Associates, NBCU/Canada Fellowships, the Universal Pictures Leadership Program, and multiple NBCU Internship Programs.

- **Benchmarking and Reporting.** NBCU commits to report annually to the Joint Council on the diversity of: (i) on-camera talent in regular, recurring, and guest roles in both scripted and reality TV programming, as well as to continue annual reporting in those areas to the members of the NBCU Coalition; and (ii) production executives (directors, writers) in primetime TV programming. NBCU will expand this annual report by including the diversity of the producers and executive producers of primetime TV series. NBC also commits to continue quarterly meetings with each NBCU Coalition member to seek input on ways for NBC to increase diverse participation in each category.

NBCU: News Programming. With respect to news programming, NBCU makes the following commitments:

- **News Associate Program:** NBC's News Associate Program is a highly competitive program that identifies outstanding aspiring journalists who bring diverse backgrounds to news production and news coverage. NBCU will expand this program beyond NBC News to also include the NBC-owned and -operated stations' news departments. This means an expansion annually from six to twelve News Associates.

- **Diversity Leadership Program.** NBCU will explore ways to expand its Diversity Leadership Program, through which NBC News operates a mid-career program designed to train diverse producers and associate producers for executive producer roles. The program lasts for 18 months and involves monthly workshops, business, and finance seminars, "shadowing" days with key senior executives, individual mentoring, and presentation skills training. The program enrolls eight to ten high potential journalists every 18 months.

- **Recruitment Outreach to Minority Journalists.** NBC recruits every year at the annual conventions of the National Association of Black Journalists ("NABJ"), National Association of Hispanic Journalists ("NAHJ"), Asian-American Journalists Association ("AAJA"), National Lesbian & Gay Journalists Association, Native American Journalists Association ("NAJA"), and South Asian Journalists Association. Representatives of NBC News, NBC Sports, Local Media, and Telemundo contribute on all levels to seminars, career fairs, and student networking events, resulting in the tracking and hiring of diverse candidates. NBCU will explore ways in which this recruitment outreach can be expanded.

- **Meetings with Congressional Caucuses.** NBCU commits to annual meetings between the President of NBC News and the NBC News D.C. Bureau Chief with the Congressional Black Caucus, the Congressional Hispanic Caucus, and the Asian-American Caucus, to discuss diversity practices as they affect the News Division.

- **NBC News Summer Fellowship Program.** NBCU will explore ways to expand its News Summer Fellowship Program, under which NBC sponsors two (2) paid internships every summer for nominees from each of three organizations: NABJ, NAHJ, and AAJA. These six (6) paid interns are selected jointly every year by the individual organizations and NBC News. NBCU will expand its news internships and increase to a minimum of nine paid internships annually with NABJ, NAHJ, and AAJA (three each year per organization), while also seeking to extend the program to NAJA, to foster the careers of aspiring diverse journalists.

NBCU: Programming Leadership Diversity. NBCU commits that it will continue to take steps to increase the diversity of its executives in each of the following areas: development (television and film); production (television and film); and marketing (television and film). NBCU will work diligently to ensure that key slates for executive openings include diverse candidates identified either through leveraging internal succession plans or using external sources, such as recruiting firms that have strong expertise and track records in identifying diverse candidates within these fields, as needed or appropriate.

NBCU: Emma Bowen Foundation. NBCU is one of the largest supporters of the Emma Bowen Foundation, a preeminent organization dedicated to preparing minority youth for careers in the media industry. NBCU has sponsored more than 100 students, a significant number of whom have taken positions at NBCU and elsewhere in the industry. NBCU commits to continuing as an industry leader in this program and will expand its participation in and support of the program by sponsoring at least 50 students annually for the next five years, as well as continuing to house the Foundation in its Washington, D.C. offices and providing administrative support to the organization on a *pro bono* basis.

Comcast and NBCU: Expansion of Minority Programming. Comcast Cable and NBCU are committed to expanding minority-focused programming and will have discussions with the external Diversity Advisory Councils representing each minority community about measures that can be taken to achieve this objective for their respective communities.

7. Community Investment & Partnerships

Comcast and NBCU: Ten Percent Increase in Community Investment. Comcast and NBCU commit to increase their philanthropic efforts to support minority-led and minority-serving institutions and to establish more specific benchmarks for their investment activities in minority communities in consultation with the Joint Council. Upon closing of the transaction, Comcast is prepared to increase its community investment spend on minority-led and minority-serving institutions by 10% per year for each of the next three years. Similarly, NBCU will increase its funding by 10% per year for each of the next three years in the areas of community-based philanthropic focused organizations that serve youth and family in under-served communities and community engagement organizations with broad missions of serving diverse communities.

Comcast: Community Investment and Partnership Programs. Comcast will enhance its investment in diverse communities and its partnerships with diverse organizations by taking the following steps.

comcast NBC UNIVERSAL

- **Comcast Leaders and Achievers Scholarship Program.** Comcast will increase outreach to diverse students and schools for The Comcast Leaders and Achievers Scholarship program.

- **Internship and Scholarship Programs.** Comcast remains the largest supporter of the Emma Bowen Foundation internships. Comcast will increase its support for this program and similar internship and scholarship programs and will seek to enhance participation of minority students in these programs. In addition, Comcast will work with its Human Resources Department to ensure that graduates of these programs are being considered for entry level positions.

- **Beyond School Walls Program.** Through the Big Brothers Big Sisters Beyond School Walls program, Comcast will ensure that school assignments are in diverse communities.

- **Comcast Cares Day.** Comcast will expand its Comcast Cares Day focus to add organizations being served in diverse communities and to increase the number of organizations that are serving diverse beneficiaries.

- **Comcast Digital Connectors Program.** Comcast will ensure that locations of its programs through the Comcast Digital Connectors program (in partnership with One Economy) are in diverse communities.

- **Promotion of Diverse Partnerships.** Comcast will promote and communicate the positive work and impact of its diverse partners, including increases in public service announcements, social media communications, advertising, and media placement, both locally and nationally.

List of Supportive Letters Received by the Federal Communications Commission (as of June 3, 2010)

1. North Bay Leadership Council
2. Police Athletic League of Philadelphia
3. Mission Kids
4. Coconut Grove Arts Festival
5. Aurora Economic Development Council
6. The Second Mile
7. Vermont Public Television
8. Texas State Representative Carol Alvarado
9. National Black Caucus of State Legislators
10. James Kenney - Councilman-at-Large, Philadelphia
11. American Cancer Society
12. The Enterprise Center
13. Georgia State Representative David Casas
14. National Conference of Hispanic Legislators
15. League of United Latin American Citizens, Council 402
16. Career and Recovery Resources, Inc.
17. Asian Pacific American Leadership Institute
18. Self-Help for the Elderly
19. Communities in Schools
20. Tennessee State Representative John DeBerry
21. Spirit of Springfield, Massachusetts
22. Michigan State Senator Valde Garcia
23. Tennessee State Senator Tim Burchett
24. Redwood City Chamber of Commerce
25. Old Saybrook Chamber of Commerce
26. Middlesex United Way
27. Michigan State Senator Martha Scott
28. Marin Services for Women
29. Lake Champlain Regional Chamber of Commerce
30. Habitat for Humanity of Greater Pittsburgh
31. Big Brothers Big Sisters of Greater Twin Cities
32. Mayor Salina of Berlin, Connecticut
33. Assistant Manager of Monroeville, Pennsylvania
34. Springfield Performing Arts Development Corporation
35. Better Business Bureau of Southern Colorado
36. Greater Pittsburgh Community Food Bank
37. Vermont Business Roundtable
38. Florida State Senator Stephen R. Wise
39. Florida State Senator Carey Baker
40. Florida State Representative Steve Precourt
41. Pennsylvania Association of Latino Organizations
42. Miami-Dade County League of Cities
43. Literacy Coalition of Palm Beach County
44. Boys & Girls Clubs of the Tennessee Valley

45. Latino Community Foundation
46. Tallahassee, Florida Commissioner Andrew D. Gillum
47. Shaler Township, Pennsylvania
48. City of Las Vegas Mayor Oscar Goodman
49. Fort Lauderdale, Florida City Commissioner
50. Engaging Loveland
51. Mayor of Newark, Delaware Vance A. Funk III
52. Big Brothers Big Sisters of Broward County
53. Pittsburgh Airport Area Chamber of Commerce
54. Here's Help, Inc.
55. Mayor of Stafford, Texas
56. Our Family Place
57. Score a Goal in the Classroom
58. SOS Outreach
59. Governors Arnold Schwarzenegger (CA), David A. Paterson (NY), and Edward Rendell (PA)
60. Reverend Al Sharpton, National Action Network
61. Mississippi Governor Haley Barbour
62. Florida State Representative Alan Williams
63. Florida State Senator Gary Siplin
64. Center for Family Services, Inc.
65. National Black Chamber of Commerce
66. Volunteer Broward
67. WRLR 98.3 FM (Rondaradio)
68. Urban League of Broward County
69. U.S. Hispanic Chamber of Commerce
70. Voice of the City
71. City Year of Miami, Florida
72. Village of Inverness
73. United Way of Greater Union County
74. Town of Billerica
75. Springfield Boys and Girls Club
76. Speaker Pro Tempore Bryan Pratt, Missouri House of Representatives
77. Spanish Community Center of Joliet, Illinois
78. Pittsburgh Technology
79. Montgomery County-Norristown Public Library
80. Montclair Neighborhood Development Corporation
81. Illinois Policy Institute
82. Housing Building Association of Colorado Springs
83. Graham Memorial Community Church of God in Christ
84. Florida State Representative Mia Jones
85. Delaware County SPCA
86. Delaware County Chamber of Commerce
87. City of Apopka, Florida
88. Chester County Chamber
89. Boston Public Library

90. Village of Phoenix, Illinois
91. United Way of Monmouth County
92. Richland County Council
93. U.S. Representatives Michael F. Doyle (D-PA) and Fred Upton (R-MI)
94. U.S. Representative Paul E. Kanjorski (D-PA)
95. National Gay & Lesbian Chamber of Commerce
96. Montgomery County Chamber of Commerce
97. Mayor of Salem, Oregon
98. Lansing Regional Chamber of Commerce
99. Kankakee County Humane Society
100. Fountain, Colorado City Manager
101. Florida State Representative Audrey Gibson
102. Detroit Area Agency on Aging
103. Chinese Consolidated Benevolent Association of Chicago
104. Boys & Girls Club of New Britain, Connecticut
105. Boy Scouts of America, Coastal Carolina Council
106. Big Brothers Big Sisters of Greater Miami
107. Athletes Against Drugs
108. Albuquerque Public Schools Foundation
109. United Way of Miami-Dade
110. South Florida Hispanic Chamber of Commerce
111. Latin American Business Association
112. Georgia State Representative Chuck Martin
113. National Conference of State Legislatures
114. Matrix Communication Services
115. Mississippi Secretary of State Hosemann
116. Mayor of Tucson, Arizona
117. Memphis Branch NAACP
118. Fifteen Members of Congress from Pennsylvania
119. U.S. Senators Arlen Specter and Bob Casey
120. Orlando Mayor Buddy Dyer
121. Greater Norristown, Pennsylvania Police Athletic League
122. Builders Association of South Florida
123. GolTV
124. Amigos for Kids
125. YWCA Silicon Valley
126. YMCA of Philadelphia & Vicinity
127. United Way of Southeastern Pennsylvania
128. The Salvation Army National Capital Area Command
129. South Carolina Secretary of State
130. Sitar Arts Center
131. National Multiple Sclerosis Society
132. National Capital Coalition to Prevent Underage Drinking
133. Multnomah County, Oregon
134. Martin Library Association
135. Junior League of San Jose

136. Italian American Human Relations Foundation
137. Indiana State Representative Mara Candelaria Reardon
138. HARC, Inc.
139. Greater Washington Urban League, Inc.
140. Future Cable Electronics, LLC.
141. Forest Preserve District of Will County, Illinois
142. Equality Forum
143. Condista
144. American Red Cross Connecticut Chapter
145. Chicago Southland Chamber of Commerce
146. Youth Job Center of Evanston, Inc
147. Whitman-Walker Clinic
148. United Neighborhood Organization
149. Special Olympics Connecticut
150. Silicon Valley FACES
151. San Francisco AIDS Foundation
152. Petit Family Foundation
153. March for Babies Foundation
154. LA Tan
155. Fremont Chamber of Commerce
156. Communities in Schools of Greater Tarrant County
157. American Red Cross Connecticut Blood Services
158. 100 Black Men of Greater Washington, DC
159. Village of Steger, Illinois
160. Urban League of Greater Hartford
161. Special Love
162. San Jose Holiday Parade
163. Salvation Army of Dallas/Fort Worth
164. Reelz Channel
165. Christmas in the Park (San Jose, California)
166. Catholic TV
167. By the Hand Club for Kids (Chicago, Illinois)
168. American Cancer Society - Connecticut
169. Youth Conservation Corps
170. Tech Museum
171. Palos Bank and Trust
172. International Detroit Black Expo
173. Arts Council of Greater Lansing
174. Centro Hispano Spanish American Civic Association
175. Muscular Dystrophy Association
176. Boys & Girls Club of Dundee Township, Illinois
177. Adams Community Television
178. Chinese Mutual Aid Association
179. Castalia Communications Corporation
180. Abraham Lincoln Center
181. Manchester Craftsmen's Guild

182. Brick Township, New Jersey
183. Association House of Chicago
184. Village of Richton Park, Illinois
185. Special Olympics Vermont
186. PENCIL Foundation (Nashville, Tennessee)
187. Georgia-Carolina Council of Boy Scouts of America
188. Community YMCA (New Jersey)
189. City of Galveston, Texas
190. City of Allen Park, Michigan
191. Beacon Therapeutic Diagnostic and Treatment Center (Chicago, Illinois)
192. Square One (Springfield, Massachusetts)
193. Indiana State Rep. Sheila Klinker
194. Hope House, Inc. (Missouri)
195. Connecticut Children's Medical Center
196. Boys & Girls Club of Hartford
197. Skye Cable XIII
198. Prevention First
199. North Star Cable Construction
200. City of Boston Parks and Recreation Dept.
201. Valparaiso Community Festivals & Events
202. Texas State Rep. Patricia Harless
203. Outdoor Channel
204. Mary Ellen McNally
(Colorado Springs Community Leader)
205. Main Line Chamber of Commerce (Wayne, Pennsylvania)
206. MacMedia
207. Junior Achievement of Western Pennsylvania
208. Jackson County, Michigan Chamber of Commerce
209. Tennessee State Representative Joe Armstrong
210. NeighborScapes
211. IndyVision TV
212. Gateway Regional Chamber of Commerce
213. El Mundo
214. Communities in Schools of Spokane
215. City Year Washington, DC
216. Network of Victim Assistance
217. Michigan State Representative Lee Gonzales
218. Indiana State Representative Phil GiaQuinta
219. Indiana State Representative Dave Cheatham
220. Greater Elkhart, Indiana Chamber of Commerce
221. Elk Grove Village, Illinois
222. A. Philip Randolph Institute, Tacoma, Washington Chapter
223. WRCT York, Pennsylvania (PEG station)
224. Tejano Center for Community Concerns (Houston, Texas)
225. Republican Mayors and Local Officials
226. Nutmeg Big Brothers Big Sisters, Connecticut

227. Latin American Economic Development Association, Inc.
228. Cheyenne Village, Inc.
229. City of Sycamore, Illinois
230. Detroit Association of Black Organizations
231. Arab Community Center for Economic and Social Services
232. Middlesex YMCA
233. Inclusion Center for Community and Justice
234. Centro de la Familia de Utah
235. Tacoma Urban League
236. Texas State Representative Sylvester Turner
237. Majority Leader of the Mississippi House of Representatives Tyrone Ellis
238. Memphis Urban League

Mr. CONYERS. There are no contributions or donations being made in those letters, are there?

Ms. MADISON. Not at all.

Mr. CONYERS. Well, 230. I will have to take that under advisement, because if every witness submits a couple hundred letters, this will become the most referenced hearing in the congressional history. And so I think we are going to have to trim that number down a little bit.

Ms. MADISON. Okay. Thank you.

Mr. CONYERS. Our next witness is Samuel Kang, a lawyer, with a sort of modest bio, from San Francisco. A commissioner on Alameda County Parks Recreational Commission, and yet the preparation that you submitted to us was very moving to me. I want to congratulate you for it and welcome you to the hearing.

TESTIMONY OF SAMUEL KANG, MANAGING ATTORNEY, THE GREENLINING INSTITUTE

Mr. KANG. Well, thank you, Mr. Chairman. That says a lot, coming from you, a civil rights leader, and pioneer.

Mr. Chairman, and Members of the Committee, it is indeed my honor and my pleasure to speak to you this morning.

The Greenlining Institute is a nonprofit advocacy organization that seeks to protect consumer interests, while partnering with some of the largest companies in America, to better serve this country's multiethnic and underserved communities.

Although there are a myriad of issues and significant problems with this merger, I will limit my testimony to three key issues in the interest of time, and that is one, diversity in ownership, two, the impact on our democracy, and three, what a merger would mean for our economy.

So over the last 20 years, media consolidation has diminished independent voices and source of information, particularly diverse voices. Unfortunately, the proposed merger does not seem to provide much to improve the situation, and as Congresswoman Waters and Chu have stated, the numbers just speak for themselves in terms of ownership.

But the question is: What is the problem with the lack of minority ownership? Well, the answer is this. It has a direct correlation with the lack of minority programming. So what is Comcast's role in this? Comcast may state that there is not a problem, and point to diversity success stories, like BET, TV One, and Oxygen.

The reality is, that despite Comcast and NBCU's substantial holdings, none of these channels is minority-owned. Many so-called minority stations are in fact owned by large media conglomerates. BET is owned by Viacom. Comcast holds a substantial ownership in TV One, and a large interest in Oxygen actually belongs to Time Warner.

Comcast's leadership might reveal some of the reasons for this deficiency. The company's 13-member board of directors includes only one woman and one person of color.

A report by the Hispanic Association on Corporate Responsibility gave Comcast a failing grade on the diversity of its workforce.

NBC, similarly, has a poor track record, with Ms. Madison aside. For example, NBC's CEO, Jeff Zucker, admitted that even though NBC runs Telemundo, one of the largest Latino TV networks in the country, they have no Latinos on the board or executive team. This is quite disturbing.

Comcast and NBC both say they are serious about diversity, but the truth is, both struggle, when it comes to the number of minorities within their workforce and management who actually have the ability to hire or influence content.

But why, exactly, is diverse programming such a vital issue? The answer is that diverse programming has a critical impact on the health of our democracy.

In 2009, the American Economic Review, one of the leading economic journals in this country, published a ground breaking study that showed that Spanish language local television news can substantially boost Hispanic voter turnout. Hispanic voter turnout increased by as much as 5 to 10 percentage points in markets where Spanish language local television news was available.

Local news in Spanish causes about one in five, one in five Spanish language news viewers, who had never voted before, to start voting. The results are real and they are significant.

If you build it, they will come, and they will vote.

Unfortunately, Comcast and NBCU have a poor track record of promoting minority perspective and preserving local content. This is most starkly demonstrated by NBC's systematic dismantling of Spanish language stations after NBC took over Telemundo.

For example, in December 2006, NBCU eliminated locally-produced Telemundo stations newscasts in seven markets. They were instead replaced with regional content transmitting from consolidated hubs. The markets that were gutted of its local programming include Houston, Dallas, San Antonio, San Jose, and Phoenix. The gutting consisted of terminating dozens of reporters, camera persons, production team members, and producers. These markets alone comprise five of the top ten Hispanic markets in the country.

In response to audience outrage, NBCU brought back four local Telemundo newscasts in February 2010, Dallas, Houston, San Jose and Phoenix. However, these news casts rely on reports and images received from NBC News sources, not from locally-generated content, and only a smattering of content is locally produced, and the resources are still threadbare.

Comcast has demonstrated a penchant to cut local content as well. In 2008, Comcast consolidated operations in Denver, Colorado, and gutted local coverage of nearby Colorado Springs. That same year, Comcast consolidated its East Coast operations, cutting 300 positions, by combining six regions into four.

In 2009, Comcast too a hatchet to New England Cable News, and most recently did it against to Sarasota and Fort Myers-Naples, in Florida. What is most disturbing about these practices is that both NBCU and Comcast seem proud about their track record.

The proposed marriage of NBCU and Comcast seemingly is a union of two corporations that operate by remarkably similar modus operandi, and that is to gut, to cut, and to strut.

The final point I would like to highlight is how Comcast, in this proposed merger, is likely to impact the economy. As the Nation's largest cable company, and the Nation's second-largest Internet service provider, Comcast employs and contracts with numerous business enterprises.

Therefore, the fact that Comcast has demonstrated, at best, a weak commitment to contracting with minority and women-owned businesses, is extremely concerning.

The procurement of minority women and disabled veteran-owned businesses, otherwise known as supplier diversity, has been long led by two prominent leaders over the last several years. Specifically, Verizon and AT&T's efforts in California have become national models of supplier diversity.

Comcast has neither been transparent nor active in supplier diversity. In 2009, Comcast spent over $315 million in outside procurement in California, less than 16 percent of that total, 16 percent, a paltry $48.5 million, were attributed to minority women and disabled veteran-owned business combined.

Verizon and AT&T directly injected almost $600 million in diverse businesses in 2009 alone, most of it benefiting small businesses, and creating jobs in diverse communities in the process. In stark contrast, Comcast's supplier diversity efforts are negligible, and yet, Comcast competes, head to head, against AT&T and Verizon.

So when Comcast takes customers and revenues away from AT&T and Verizon, Comcast is siphoning away hundreds of millions of dollars from California's diverse communities. As a result, this would take away much-needed jobs that otherwise would have been created.

If Comcast is allowed to get bigger, and further proliferate their current business practices in California, the state's diverse economies will be put in imminent danger.

Mr. Chairman, the scenario that I am presenting is not merely theory. It is rooted in what Comcast CEO Brian Roberts has already confirmed. In a previous congressional hearing, Mr. Roberts all but assured job losses would directly result from the merger. All that he could promise was that the merger would lead to no massive layoffs.

It is unacceptable, that when everyone is trying to figure out how to create jobs, Comcast's best prognosis is no massive layoffs. But Comcast is only following its own MO, that is, to gut, to cut, and to strut.

So how come there are such gaping deficiencies in Comcast's application? A major reason is the lack of public input in the regulatory process. After today, Congress will have held five hearings on this landmark transaction. The FCC still has yet to hold one. The FCC took an adequate first step with the announcement of one event in Chicago. Unfortunately, the Chicago event is classified as a forum and not a hearing.

I am encouraged by the prospect of more hearings, but they have to be a formalized and official public hearing, where the FCC, led by Chairman Genachowski, can gain input directly from members of the public.

We have learned from the BP disaster, what can happen when there isn't diligent and transparent regulatory scrutiny. The scrutiny must be on the front end, not an afterthought. I sincerely hope that this Administration's regulatory scrutiny of the Comcast merger is more comprehensive than its regulatory scrutiny of offshore drilling.

Comprehensive hearings require public hearings. Otherwise, the consequences could be just as disastrous. Thank you very much.

[The prepared statement of Mr. Kang follows:]

PREPARED STATEMENT OF SAMUEL KANG

Testimony of

Samuel Kang
Managing Attorney
The Greenlining Institute

Before the

U.S. House of Representatives
Committee on the Judiciary

Regarding

The Proposed Combination of Comcast and NBC-Universal

June 7, 2010

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INTRODUCTION

Mr. Chairman, and Members of the Committee, I am pleased to appear before you today to discuss Comcast Corporation's ("Comcast") proposed joint venture with General Electric Company ("GE") and NBC Universal, Inc. ("NBCU").[1] I am the managing attorney of the Greenlining Institute, a non-profit organization dedicated to empowering communities of color, low income communities, and other disadvantaged groups. Started in 1993 by the Greenlining Coalition, the Greenlining Institute seeks to protect consumer interests while partnering with some of the largest companies in America to better serve this country's multi-ethnic and underserved communities. The Greenlining Coalition is perhaps the oldest and most diverse coalition of Asian/Pacific Islander, Black, and Latino community leaders. Beyond ethnic diversity, the coalition represents diverse constituents that include faith-based organizations, minority business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets. Members of the Greenlining Coalition reside in communities served by Comcast and NBCU, and many are subscribers to their services. The proposed merger will directly and adversely impact the communities the Greenlining Institute represents.

Before the Federal Communications Commission (FCC) may grant an application for the transfer of control of any authorization and licenses it must find that the transfer will "serve the public interest, convenience and necessity."[2] Comcast, GE and NBCU "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest."[3] Here, they have not met their burden. Specifically, the transaction will promote neither competition, diversity, nor localism. Moreover, Applicants' "Voluntary Public Interest Commitments" are insufficient to mitigate the potential harms. Without a more complete understanding of how this transaction will impact communities across the nation, this transaction should not be allowed to proceed.

I. THE PROPOSED MERGER WILL ELIMINATE DIVERSE PERSPECTIVES AS IT WILL EXACERBATE MEDIA CONSOLIDATION.

In today's society, Americans depend heavily on media to learn about local and national news, participate in civic issues, and gather information pertinent to their communities. Accordingly, because of the important role media plays in people's lives, it is of utmost importance that media reflect a diversity of viewpoints and provide equal access to information for all persons, regardless of which platform they choose.

Unfortunately, millions of Americans do not have access to quality media that meets their information and entertainment needs. As a result of massive media consolidation smaller media outlets have been pushed out of the market or have been purchased by giant media

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[1] *Applications for Consent to the Transfer of Control Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Applications and Public Interest Statement* (filed Jan. 28, 2010) ("Application").
[2] The Communications Act, 47 U.S.C. § 301(d) (2009).
[3] *DirectTV- Liberty Media Order*, 23 FCC Rcd 3265 ¶ 22. *See also*, *SBC-AT&T Order*, 20 FCC Rcd 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd 18443 ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd 23255 ¶ 26; *EchoStar-DIRECTTV HDO*, 17 FCC Rcd 20574 ¶ 25.

conglomerates. As such, it is unsurprising that diversity, localism and competition in media have been severely harmed.

A few months ago, in protest of the merger, Congressman Maurice Hinchey, supported by 6 other House members,[4] wrote the FCC and DOJ, urging them to acknowledge dangers of this merger and stressed that media consolidation over the last 20 years diminished independent voices and sources of information. To emphasize his point Congressman Hinchey provided theses shocking statistics:

> "Today, five companies own the broadcast networks, 90 percent of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70 percent of the prime time television market share. These same companies own the nation's most popular newspapers and networks also own over 85 percent of the top 20 Internet news sites. There has also been a severe decline in the number of minority-owned broadcast stations. In 2007, minorities owned just 3.2 percent of the U.S. television stations and 7 percent of the nation's full power radio stations, despite making up more than 34 percent of the population."[5]

A. Consumers Will be Harmed by a Merger That Creates a Media Goliath With Too Much Market Control

If Comcast's acquisition of NBC is approved, the transaction will create a behemoth that would control content production and content distribution at an unprecedented level.

NBC is one of the nation's largest networks and has an impressive portfolio, which includes numerous broadcast stations, broadcast rights to the Olympics, numerous national cable channels, film and production studios, several Internet properties and a theme park. Comcast is already the largest cable company and the largest Internet service provider in the United States. It serves customers in 39 states and the District of Columbia. Comcast has 23.5 million cable subscribers, 18.8 million digital cable subscribers, 16.3 million high-speed Internet customers and 7.9 million voice customers. Comcast serves customers in 39 states and the District of Columbia. Comcast is also a joint shareholder of Metro-Goldwyn-Mayer and the owner of several sports teams. [6]

This merger will create a media Goliath that would have the market power to control what content consumers can access, which platforms consumer can use, and how much consumers have to pay.

This is especially concerning as our media systems transition from the old system of broadcasting and cable to digital platforms and the Internet. Comcast undoubtedly wants to assert as much control over the new media system as they have been able to do over the old system of broadcasting and cable, and this merger will help them maintain and grow their power.

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[4] Congresswoman Donna Edwards (D-MD), Congressman John Olver (D-MA), Congressman Bob Filner (D-CA), Congressman Pete Stark (D-CA), Congresswoman Lynn Woolsey (D-CA), and Congresswoman Carolyn McCarthy (D-NY) follows:

[5] http://www.house.gov/list/press/ny22_hinchey/morenews/242010comcastnbcletters.html

[6] http://www.freepress.net/ownership/chart/main

This merger will give Comcast the ability to control the industry and use its assets as leverage throughout broadcast, cable, and potentially on the Internet.

B. Ownership Diversity

i. *The current number of minority-owned media outlets does not reflect the number of minorities in the US*

Between the 1980 and 2000 censuses, the number of people identifying themselves as White fell from 83% to just over 75% of the U.S. population.[7] During this same period other demographic groups increased. For example, the Asian/Pacific Islander population grew from 1.5% of the population in 1980 to 3.6% in 2000.[8] The biggest growth came in people who identified themselves in the U.S. Census as Hispanic or Latino. In 1980, there were 14.6 million self-described Hispanics and Latinos, representing 6.4% of the U.S. population. By 2000, there were 35.3 million self-described Hispanic and Latinos, representing 12.5% of the U.S. population.[9]

Census data revealed that people of color made up 53% of California's population in 2000. More specifically, Asians accounted for 11% of California's population, African Americans accounted for 6% of California's population, and Latinos accounted for 32% of California's population.[10] These are statistics from 10 years ago, and we expect that the number of minorities in California is even greater.

Looking simply at the demographic shifts over the past years, it would stand to reason that the nation's ethnic media would grow. However, the current number of minority-owned media outlets does not even come close to representing the number of minorities in the US.

A recent study found that while minorities comprise 34% of the U.S. population, they own just 3.15% of television stations.[11] African American media provides an example of how dire the situation is. Approximately 12% of the nation's African American homes are in the New York City and Los Angeles markets. However, there are no African American-owned stations in these markets. Moreover, African Americans do not own stations in cities with large black populations like Detroit, Atlanta and New Orleans. African American owned stations reach just 5.3% of the African American TV households in the US.[12]

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[7] 1. US Census data. Charts: "Race and Hispanic or Latino: 2000" and "Race and Hispanic Origin 1790 to 1990." factfinder.census.gov

[8] *Id*

[9] *Id.;* The Census figure for "Blacks" does not include African Americans of Hispanic or Latino background who chose to identify themselves as "Hispanic/Latino."

[10] http://www.cpehn.org/demochartdetail.php?btn_viewchart=1&view_144.x=53&view_144.y=15&view_144=Get+Statistics%21

[11] http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4848291

[12] "Out of the Picture 2007: Minority & Female TV Station Ownership in the United States" by Derek Turner and Mark Cooper

NCAAOM similarly reported that African Americans make up almost 13% of the U.S. population, according to the U.S. Census Bureau but own less than 1% of the country's television channels.[13]

These statistics are shocking and, unfortunately, they are not simply a representation of our past. Because of massive media consolidations and the application for the merger between Comcast and NBC, hope is dim that minority-ownership will improve.

ii. *Market concentration is a key factor in pushing out minority-owned media*

The media industry plays a vital role in informing and entertaining the public. As such, it is indisputable that media ownership and the availability of diverse programming are crucial. However, studies have consistently shown that massive consolidation and market concentration are key structural factors keeping minorities from accessing the public airwaves.[14] Minority owners tend to have smaller operations or own a single station. Therefore, they find it difficult to compete with their big-media counterparts for programming and advertising revenue, and the few minority-owned stations that exist are often pushed out of the market.[15] Furthermore, consolidation has a particularly onerous impact on minority owners, 61% of whom are single-station operators, because investors want to put their money into larger media conglomerates.[16]

iii. *Many minority stations are owned by large media conglomerates*

Comcast may state that there is not a problem and point to diversity success stories like BET, TV One and Oxygen. The reality is that none of these channels is minority-owned. The truth is that many "minority stations" are in fact owned by large media conglomerates. Viacom owns BET; Comcast holds a substantial ownership in TV One; and a large interest in Oxygen belongs to Time-Warner.[17] The only cable network that meets the government's definition of "minority-owned"[18] is Univision, which is one of the most popular Spanish-language channels in the country.

iv. *Ownership diversity impacts programming diversity*

Media mergers have proven to be bad for diverse programming. When media companies consolidate and there are fewer owners and the diversity of viewpoints, cultures and voices can dramatically decrease.

Studies show that poor representation in programming occurs when minorities are unable to gain access to ownership and employment within the media industry. For example, a study by the National Association of Hispanic Journalist found that "of the estimated 16,000 stories

[13] http://www.theskanner.com/article/view/section/23/page/2/id/12282
[14] http://www.stopbigmedia.com/=minorityvoices
[15] "Out of the Picture 2007: Minority & Female TV Station Ownership in the United States" by Derek Turner and Mark Cooper
[16] http://www.hearusnow.org/mediaownership/20/

[17] http://www.hearusnow.org/mediaownership/20/
[18] Government definition of slightly more than 50% minority ownership

that aired on ABC, CBS, CNN and NBC in 2004, only 115, or 0.72 percent, were exclusively about Latinos."[19] Another example is from a recent study by Children Now who found that the 8:00-9:00 pm television-viewing "family hour" is the least ethnically diverse, with only one in eight programs having a mixed cast. Children Now contends that this sends highly skewed messages about diversity in America to viewers, especially children.[20]

The UCLA Chicano Studies Research Center found that television programming was not representative of the nation's ethnic and racial diversity.[21] More specifically, the study found that nearly 40% of all prime-time series had all-white characters and 80% of all primetime series were "white themed." In comparison, there was just one Latino-themed series in 2004, down from two during 2002 and 2003.[22] The study also found that viewers could watch 16 prime-time series featuring Latino regular characters or they could watch 93 series without any Latino characters.[23] The lack of minorities on television is both disproportionate and unsettling and does not reflect our nation's changing demographics.

Cable companies, such as Comcast, have not adequately shown concern or commitment to diversity of viewpoints, despite these glaring disparities. Rather, Comcast's history shows a consistent pattern against diversity of expression. An article about the cable industry's diversity programming revealed some interesting truths. Comcast, for example, refused to air ads against the war in Iraq.[24] Comcast refused to support an expansion of public access in such communities as Seattle and San Jose.[25] Comcast also rejected the programming ventures of two African-American creative artists (Russ Simmons and Tim Reid) because it felt their programming plans for news and entertainment were too "high-minded."[26]

v. *Programming and content diversity play an important role in all communities*

Greenlining is not simply objecting to a media merger. We are standing up for the sort of diverse and democratic media that a great nation requires.

Historically, the ethnic media have served multiple roles. They cover stories that are largely ignored by the mainstream press, they provide ethnic angles to news, and they report on events and issues taking place in their communities and back in the home countries from which those populations or their family members emigrated. Importantly, ethnic media provide communities a voice, which strengthens a community's cohesion.

Ethnic media plays an important role for civic activities and keeping government accountable because it fosters an informed populace. The public can become wise participants in societal decision-making if they have knowledge of current events and issues.

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[19] "Network Brownout" http://www.nahj.org/NAHJbrownoutreport03.pdf
[20] http://www.ethnicmajority.com/media_home.htm
[21] http://www.chicano.ucla.edu/press/reports/documents/crr_04Dec2004_000.pdf
[22] *Id.*
[23] *Id.*
[24] http://www.democraticmedia.org/diversity/alacarte_diversity
[25] *Id.*
[26] *Id.*

I would like to provide two good examples from a recent publication about the danger of losing ethnic media that demonstrate the importance of minority media.

> "[Ethnic media considers] it important to correct misperceptions promulgated by the rest of the news. They report about the community from the inside out, sometimes quite literally. When inmates of the Reeves County Detention Center protested poor medical care at the privately run Texas facility, most outlets highlighted the damage to buildings. Telemundo's station in Midland/Odessa, Texas, also described the plight of hundreds of inmates - detained there on immigration violations - who slept outside in makeshift tents despite the freezing weather." [27]

> "When the New Yorker ran its infamous caricature of Barack and Michelle Obama, the mainstream news interviewed comedians who worried about making fun of a black president. But Eric Easter of Ebony/Jet offered more insight. He wrote about the powerful impact of grotesque, racialized cartoons, from political propaganda of the Nazi era to family fare of recent decades, that "still find their ways . . . into the backs of our minds. "'The New Yorker cover did not affront because the joke failed, but because it harkened back to the dehumanizing imagery that takes up residence in our reactive minds.'"[28]

C. California Does Not Need a Jobless Merger

This merger is much more than a transaction that will affect consumers and media. This $30 billion transaction will undoubtedly affect issues of employment and economic recovery. In California, people of color have been disproportionately impacted by the recession. For example, in California in the third quarter of 2009, the unemployment rate for whites was 9.6%, while it was 15.4% for African-Americans and 15.6% for Latinos.[29]

Comcast CEO Brian Roberts reassures the public that the merger will lead to 'no massive layoffs." However, with concerns of a 'jobless recovery' on everyone's mind, the feeble guarantees presented by Comcast and NBC beg the question of the need for a jobless merger.

D. Comcast Must Show a Greater Commitment to Increasing Supplier Diversity

Comcast poses a threat to California's economy. As the largest cable company and second largest interest service provider, Comcast employs and contracts with numerous business enterprises in the state. Therefore, the fact that Comcast has not demonstrated a commitment to contracting with minority-owned business enterprises is concerning.

For over 20 years, numerous energy and telecom companies, such as Verizon and AT&T, have submitted numbers on their supplier diversity and meets with Greenlining on an annual

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[27] http://theragblog.blogspot.com/2009/03/ethnic-media-important-voice-in-danger.html
[28] http://theragblog.blogspot.com/2009/03/ethnic-media-important-voice-in-danger.html
[29] *See* Kai Filion. "Downcast Economic Forecast: Targeted Job Creation Policies Necessary to Offset Grim 2010 Projection," Economic Policy Institute, Issue Brief #270, January 14, 2010, Tables 2-4; http://epi.3cdn.net/d9904b716d3cf62538_psm6bncc9.pdf

basis.[30] Unfortunately, Comcast has been an outlier when it comes to providing statistics or participating in dialogues regarding supplier diversity even though it states on its corporate website that they "believe that diversity in our supply base is integral to our continued success."[31] For example, this year both AT&T and Verizon's filings were over 35 pages. Comcast's filing, on the other hand, was only 4 pages. Further, Verizon had a 36.48% spend specific to minority businesses and AT&T had a 34.78% spend. Comcast only had a 15.4% spend. More specifically, in 2009 Verizon spent a total of $111,733,139 on contracts with minority owned businesses and AT&T spent a total of $479,618,142.

These dollar figures and statistics are significant because the merger has the potential to jeopardize the industry's prospects for improvement in diversity practices. If accepted, the vertically-integrated Comcast-NBC conglomerate will wield a dominating share of several markets. Comcast's history of poor customer service and lack of diversity commitments coupled with NBC's lack of content diversity negatively influence the rest of the industry and local economies.

For communities of color in California, small businesses are a significant source of economic development and jobs in California. For example, in 2006, small businesses accounted for 52.1% of private-sector employment in California.[32] Many regions and communities, especially inner-city and rural communities of color, do not benefit from working with larger businesses, such as Comcast. Instead, such communities rely most heavily on small businesses for jobs and economic development. Comcast's corporate practices have a significant impact on the entire industry. Therefore, without a specific plan for increasing the number of contracts with minority owned businesses, Comcast has the potential to destabilize minority businesses and the economy of minority communities.

Comcast continues to believe that it should be allowed to operate with little state regulation even as they compete for customers with regulated companies. However, without greater commitments to diversity, competition from Comcast takes customers away from regulated companies with better, more inclusive business practices. Comcast must fully embrace not just the components but also the culture of supplier diversity that is deeply ingrained into California's business practices. Otherwise, Comcast will continue to be the lowest common denominator that could destabilize the economy of minority communities.

E. Comcast and NBC Must Demonstrate Their Commitment to Diversity

Comcast states that it has a strong commitment to diversity. On its corporate website it states that it "know[s] that an organization's commitment to diversity can truly work only when it has been embraced at all levels - starting from the top." Despite this, the reality is that Comcast has a poor track record when it comes to its executive and workforce diversity. During

[30] Greenlining consistently works with the CPUC and numerous companies on this issue and provides consultation of how companies can improve their numbers and why increased spend on contracts with minority-owned business improve their profits.
[31] http://www.comcast.com/corporate/about/diversity/suppliers/suppliers.html
[32] U.S. Small Business Administration, Office of Advocacy, "Small Business Profile: California (2008), available at http://www.sba.gov/advo/research/profiles/08ca.pdf

Congressional hearings on the merger, Comcast CEO Brian Roberts provided that its 13 member board of directors includes only one woman and one person of color.[33] Further, a report by the Hispanic Association on Corporate Responsibility gave Comcast a grade of 50 out of 100 on the diversity of its workforce.[34] It seems that Comcast's commitment to diversity is a façade that that does not reflect its true practices.

NBC similarly has a poor track record. For example, during Congressional hearings, NBC's CEO Jeff Zucker admitted that even though NBC runs Telemundo, one of the largest Latino TV networks in the country, they have no Latinos on the board or executive team.[35] Furthermore, the report by the Hispanic Association on Corporate Responsibility also gave NBCU an overall C+ grade and an F grade for "creative executives" for not having any Latinos in its creative executive roster.

These facts and statistics should be a wakeup call for Comcast and NBC. These companies say they are serious about diversity, but at the end of the day the number of minorities within their workforce and management who actually have the ability to hire or influence content falls woefully short of their desired goals.

II. THE PROPOSED MERGER WILL HARM THE PUBLIC INTEREST BY REDUCING LOCAL NEWS, POLITICAL COVERAGE AND COMMUNITY RESPONSIVE PROGRAMMING.

Localism, the third important element of the public interest, "has been a cornerstone of broadcast regulation for decades."[36] Under the localism principle, broadcasters, as trustees of the public's airwaves, must air programming that serves the interests and needs of their communities of license.[37] In particular the FCC has recognized the provision of: (i) political programming; (ii) programming targeting underserved audiences; (iii) community-responsive programming; (iv) beneficial network affiliation relationships; and (v) disaster warnings, among others, as specific facets of localism.[38] Here, the proposed merger has the potential to reduce local political programming, the qualityand amount of community-responsive programming by upsetting the network-affiliate balance, the timeliness and efficacy of disaster warnings in California, and fails to address the needs of traditionally underserved audiences.

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[33] http://www.mijc.org/richardprince/nbc-comcast-pressed-diversity
[34] http://waters.house.gov/News/DocumentSingle.aspx?DocumentID=184596
[35] *Id. See also http://www.diversityinc.com/article/7375/ComcastNBC-Merger-Spotlights-Lack-of-Diversity/*
[36] *Localism Notice of Inquiry*, 19 FCC Rcd 12425 ¶ 1 (2004) (hereinafter *Localism NOI*). *See also*, *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955) ("Fairness to communities is furthered by a recognition of local needs . . . .").
[37] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) ("It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."). *See also*, *Localism NOI*, supra note 36, at ¶ 1.
[38] *Localism NOI*, *supra* note 36, at ¶¶ 12-29; *Report on Broadcast Localism*, 23 FCC Rcd 1324 ¶10 (2008) (hereinafter *Localism Report*).

A. The Proposed Merger Will Result in a Reduction of Local Television Newscasts, Which are Integral to a Participatory Democracy.

It has long been recognized that "public deliberation is essential to democracy"[39] however, in modern societies this deliberation is "largely *mediated*, with professional communicators rather than ordinary citizens talking to each other and to the public through mass media of communications."[40] Therefore, professional communicators must be more than merely a profit center; rather they bear the onus of informing the public of current events and political issues. Two provisions of the Communications Act impose affirmative duties to air political programming but, these two duties are limited in their application and scope.[41] As a result, stations vary widely in the amount of political programming they air.[42]

Perhaps more importantly, local television news remains the primary news source that the majority of Americans turn to.[43] While many, including Comcast,[44] may cite the increase in the number of websites and blogs as mitigating the effects of media consolidation, the reality is that internet news websites rarely report original hard news; instead they provide merely opinion or commentary and link to content from traditional news media.[45] Since, the internet is not

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[39] *Hearing on Public Interest and Localism Before the S. Comm. on Commerce, Science, and Transportation* 108th Cong. 1 (2003) (statement of Martin Kaplan, Assoc. Dean, USC Annenberg School for Communication) *available at* < http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=b24d6d6b-2c07-47ee-8fe4-3b4a08a7f175&Statement_id=37ff5962-3d6e-479f-a18f-3f4a45c46213&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7cd&Group_id=b06c39af-c033-4cba-9221-dc668ca1978a&MonthDisplay=7&YearDisplay=2003> (quoting Thomas Jefferson's statement that "the strength of our democracy would depend on how well-informed the American electorate is.").

[40] BENJAMIN I. PAGE, WHO DELIBERATES DEMOCRACY? MASS MEDIA IN MODERN DEMOCRACY 1 (1996).

[41] 47 U.S.C. §312(a)(7) (the reasonable access provision grants the FCC the authority to revoke the license of any broadcaster that does not provide reasonable access to candidates for *Federal* offices; however, it only applies to Federal, not state or local, candidates and is satisfied if the station allows a candidate to *purchase* reasonable amounts of time); 47 U.S.C. § 315(a) (the equal opportunities provision requires that broadcasters provide equal access to broadcasting to all political candidates but is only triggered if the *broadcaster* permits a candidate for public office to use the broadcasting station.).

[42] *Localism NOI*, *supra* note 36, at ¶ 56.

[43] MARTIN KAPLAN & MATTHEW HALE, USC ANNENBERG SCHOOL FOR COMMUNICATION & JOURNALISM, LOCAL TV NEWS IN THE LOS ANGELES MEDIA MARKET: ARE STATIONS SERVING THE PUBLIC INTEREST? (2010) *available at* <http://www.learcenter.org/pdf/LANews2010.pdf>; Pew Research Center for the People and the Press, *Stop the Presses? Many Americans Wouldn't Care a Lot if Local Papers Folded*, PEWRESEARCHCENTERPUBLICATIONS, March 12, 2009, <http://pewresearch.org/pubs/1147/newspapers-struggle-public-not-concerned> (Found that most people (68%) get their news from local television); Adam Lynn, S. Derek Turner & Mark Cooper, Traditional Content is Still King as the Source of Local News and Information 3-4 (Paper Presented at the Annual Meeting of the International Communications Association, Montreal, Quebec, Canada, May 21, 2008), *available at* <http://www.allacademic.com/meta/p233147_index.html> (Found that over 86% of people rely on traditional media for local news and information).

[44] *Application*, *supra* note 1, at 4.

[45] Lynn, Turner & Cooper, *supra* note 43, at 13 (finding that "only 3.6 percent of the entire sample consisted of original hard news reporting"); S. Derek Turner and Mark Cooper, *Independent Local News Sites Do not Significantly Contribute to Source or Viewpoint Diversity*, *in* Reply Comments of Consumers Union, Consumer Federation of America and Free Press, *In the Matter of 2006 Quadrennial Regulatory Review*, Appendix B at 161, MB Docket No. 06-121 (Filed Jan. 16, 2007) (concluding that while 18% city specific internet sites was based on original reporting, most of this was on subjects dealing with arts and entertainment or food. In contrast, only 2.6% of the stories on city-specific websites contained original reporting on "hard topic" news like politics or community governance).

currently a generator of significant independent, original content, the consolidation of content production that will result from the proposed merger will have profound effects. Even if we close the digital divide, the effects of consolidation will not be mitigated by the presence of or duplication of information on the internet.

i. *Consolidated ownership reduces the quantity and quality of local news.*

The reason this consolidation will have such a drastic impact is because ownership matters with respect to local television news.[46] In general, independent stations broadcast more local content on their news; conversely "consolidated media ownership negatively affects the production of local content on local television newscasts."[47] The presence of local content is the major indicia of the "quality" of a newscast.[48] This is why the related concern that "heavy concentration of ownership in local television by a few large corporations will erode the quality of news Americans receive" is particularly alarming.[49] Since our democracy depends on a well informed public, and the consolidation of media outlets is reducing the quality of the local news that keeps the public well informed, there will be significant consequences for participatory democracy.

This is nowhere more relevant than in majority-minority states, such as California.[50] Taking the Hispanic population as an example, there is evidence that Spanish-language local television news substantially boosts Hispanic voter turnout, especially in non-presidential election years.[51] In contrast, "Hispanics without access to local television news are significantly less likely to participate in elections."[52] The results are real and significant: "news in Spanish caused about a fifth of Spanish-language news viewers to *start* voting."[53] The perspectives of underserved audiences must be represented in order to ensure a politically engaged society.

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[46] DANILO YANICH, OWNERSHIP MATTERS? CONTENT, LOCALISM & OWNERSHIP IN LOCAL TELEVISION NEWS (2010) *available at* <http://mediaresearchhub.ssrc.org/ownership-matters-content-localism-ownership-on-local-television-news/attachment>; Carolyn Byerly, Kehbuma Langmia & Jamila A. Cupid, *Media Ownership Matters: Localism, the Ethnic Minority News Audience and Community Participation* in DOES BIGGER MEDIA EQUAL BETTER MEDIA?: FOUR ACADEMIC STUDIES OF MEDIA OWNERSHIP IN THE UNITED STATES 4 (2006), *available at* <http://www.benton.org/sites/benton.org/files/archive_files/benton_files/mediaownership reportfinal.pdf>; PROJECT FOR EXCELLENCE IN JOURNALISM, DOES OWNERSHIP MATTER IN LOCAL TELEVISION NEWS: A FIVE-YEAR STUDY OF OWNERSHIP AND QUALITY (2003) *available at* <http://www.journalism.org/sites/journalism.org/files/ownership.pdf> (Hereinafter PEJ LOCALISM STUDY).

[47] YANICH, *supra* note 46, at 4.

[48] A "quality" newscast has been described as one that should "1) cover the whole community 2) be significant and informative 3) demonstrate enterprise and courage 4) be fair, balanced and accurate 5) be authoritative [and] 6) be highly local." PEJ LOCALISM STUDY, *supra* note 46, at 2. *See also* YANICH, *supra* note 46, at 12 (how useful a newscast is to citizens depends on the degree of "local" content that is included).

[49] PEJ LOCALISM STUDY, *supra* note 46, at 2. More specifically, "concentration of vast numbers of TV stations into the hands of a few very large corporations . . . though it may prove the most profitable model, is likely to lead to further erosion in the content and public interest value of the local TV news Americans receive." *Id.* at 7.

[50] Texas, Hawaii, New Mexico and California are majority minority states; five others – Maryland, Mississippi, Georgia, New York and Arizona – are next in line. Press Release, U.S. Census Bureau, *Texas Becomes Nation's Newest "Majority-Minority" State, Census Bureau Announces* (August, 11, 2005) *available at* < http://www.census.gov/newsroom/releases/archives/population/cb05-118.html>.

[51] Felix Oberholzer-Gee & Joel Waldfogel, *Media Markets and Localism: Does Local News en Espagnol Boost Histpanic Voter Turnout?*, 99 AM. ECON. REV. 2120, 2127 (2009).

[52] *Id.*

[53] *Id.* at 2120 (emphasis added).

Unfortunately however, Comcast and NBCU have a poor track record of promoting minority perspectives and preserving local content.[54] This is demonstrated by the by the fate of KSTS (Channel 48) a Telemundo owned and operated station in San Jose, California. In December 2006 NBCU decided to eliminate locally produced Telemundo newscasts in seven markets, including San Jose, and replaced them with regional content transmitted from Forth Worth, Texas.[55] These markets comprise five of the top ten Hispanic markets in the country.[56] As a result, KSTS was forced to gut their operations, terminating dozens of reporters, camerapersons, production team members, and producers.[57] In response to audience outrage, NBCU decided to bring back four local newscasts in February 2010.[58] However these newscasts rely on reports and images received from NBC news sources, only a smattering of content is locally produced and the resources are still threadbare.[59]

ii. *Local news must not be migrated from broadcast channels to cable channels, video-on-demand, or online platforms.*

Finally, the risk of reduction in local broadcast news is heightened by the fact that broadcast television is simply not as profitable as cable television.[60] Cable news was the only sector that did not suffer declining revenue in 2009; local television ad revenue fell twenty-two percent.[61] Thus, while it makes economic sense for Applicants to transition news content from local broadcast channels to cable networks, it also flies in the face of their public interest commitments.

Unfortunately, Comcast has already indicated that this is what the future holds: the Application specifically states that Comcast intends to distribute local content through its "local and regional cable networks, its video-on-demand service, and its online platform."[62] For example, Comcast recently partnered with the U.S. Small Business Administration to provide

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[54] *See also*, KAPLAN & HALE, *supra* note 43, at 7 (in a study of half-hour news broadcasts, KNBC broadcast the most ads, 9:22 min, and sports and weather content, 4:22 min, of all 8 major LA stations, but the least amount of local issues, 50 seconds, and only 32 seconds of local government coverage).

[55] *See, e.g.*, Meg James, *Less Local News for Some at Telemundo*, LOS ANGELES TIMES, Nov. 13, 2006 (Professor at USC Annenberg School for Communications commented: "No matter how they frame it, this means there will be less local news . . . .").

[56] Elena Shore, *Attention NBC Telemundo: Latinos Need Local News Too*, NEW AMERICAN MEDIA, November 1, 2006.

[57] *Unhappy Holiday News for Local TElemundo Staff*, LATINO PERSPECTIVES MAGAZINE, Dec. 2006 (Noting a Telemundo journalist's comment "I thought with the big chain buying us we'd get more resources, not less.")

[58] David Tanklefsky, *Telemundo Rolls Out Enhanced Local Newscasts in Key Markets*, Broadcasting & Cable, Feb. 2, 2010 (the markets are Dallas, Houston, San Jose and Phoenix), *available at* <http://www.broadcastingcable.com/article/447300-Telemundo_Rolls_Out_Enhances_Local_Newscasts_in_Key_Markets.php>.

[59] This information was provided anonymously to the Greenlining Institute. In order to protect that source, we cannot disclose his identity in this testimony. However, we strongly encourage the FCC to investigate the merits and accuracy of this claim.

[60] Broadcast television has only one source of revenue (advertising) whereas cable has two (advertising and consumer fees). *See infra* Appendix I.

[61] PEW PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM Overview 1 (2010), <http://www.stateofthemedia.org/2010/> (hereinafter STATE OF THE NEWS MEDIA 2010).

[62] Application, *supra* note 1, at 41.

video-on-demand coverage of business related workshops and seminars in San Francisco.[63] While it is laudable to include this content within the on-demand platform, this must not replace local broadcast coverage of these events. Simply put, relegating this type of content to the depths of the video-on-demand offering is not acceptable; it is not a substitute for local broadcast coverage. The U.S. Supreme Court has underscored this point, saying that "it is the *right of the public* to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[64] These rights must not be abrogated. At a minimum we must have public hearings to assess how this transaction will affect consumers and whether it should be allowed to proceed.

B. The Proposed Transaction Will Reduce Community Responsive Programming, Severely Alter the Network-Affiliate Relationship and Hinder the Dissemination of Effective and Timely Emergency-Disaster Warnings.

The localism principle mandates not only the provision of local news, but also the provision of programming tailored to other community needs, such as: (1) public affairs programs; (2) the right of network affiliates to reject or refuse to air programs offensive to their communities; and (3) the provision of adequate disaster warnings. The proposed transaction has the potential to reduce the amount of local public affairs programs, provide Comcast with the market power to strong-arm its network affiliates, and poses the threat of reduced or ineffective disaster warnings. It has been noted that "[t]he more disconnected the ownership of the media is from a community the less it is devoted to serving it."[65]

i. *The proposed transaction will reduce community responsive programming.*

I is unclear how Comcast, a company headquartered in Philadelphia, or NBCU, headquartered in New York City, can be responsive to communities in Oakland, San Jose, Los Angeles, or San Diego. At the risk of stating the obvious: the needs of communities in New York and Pennsylvania are vastly different from the needs of communities in California, Washington D.C., and everywhere in between. This transaction must not proceed until we have a thorough understanding of how this transaction will impact these needs.

In general, "local ownership is correlated with more Public Affairs and Family programming."[66] Specifically, smaller markets, and independent, locally owned or female owned stations have more public affairs programming.[67] Studies show that consolidation does

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[63] Press Release, Comcast California, In Celebration of National Small Business Week, U.S. Small Business Administration & Comcast Partner to Help Small and Medium Sized Businesses (May 20, 2010), <http://comcastcalifornia.mediaroom.com/index.php?s=43&item=364>.
[64] Red Lion Broadcasting, 395 U.S. at 390 (emphasis added).
[65] Common Cause Education Fund, Media and Democracy in America Today: A Reform Plan for a New Administration 5 (2008) *available at* <http://www.commoncause.org/atf/cf/{fb3c17e2-cdd1-4df6-92be-bd4429893665}/MEDIAPLAN082108.PDF>.
[66] Gregory S. Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming*, Federal Communications Commission Media Ownership Study #3, p. 26 (July 23, 2007).
[67] *Id.* at 23 and Table 18.

not increase the quantity and quality of public affairs programming.[68] Simply put, Comcast's argument that the proposed transaction will increase public affairs programming does not hold water.[69]

ii. *The merged entity will have the market power to prevent affiliates from preempting regional and national content in favor of local and community responsive programming.*

A second area of concern with respect to community responsive programming, is the ability of the Comcast-NBC behemoth to strong-arm NBC network affiliates into carrying programs that are either not relevant or even patently offensive to the communities they serve. There are two FCC rules that regulate the network affiliate relationship.[70] However, the efficacy of these rules has recently come into question.[71] The FCC has recognized that "it is critical to maintain a balance in the network-affiliate relationship that affords local broadcasters ultimate power over programming decisions without risking undue financial hardship or implicit threats of unanticipated disaffiliation, so that they retain unfettered discretion to select what they air, including network-provided programming."[72] Here, the merged entity will have the market power to effectively mandate that a local station broadcast only centrally produced regional or national content. This would preempt all local programming targeted to "niche" audiences, such as communities of color, low income communities, or other traditionally underserved audiences. In an ethnically diverse 'majority-minority' state such as California, for any network to be truly responsive to its constituency, it must broadcast local programs targeted to those communities.

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[68] Michael Zhaoxu Yan & Yong Jin Park, *Duopoly Ownership and Local Information Programming on Broadcast Television: Before-After Comparisons*, 53(3) J. OF BROADCASTINGS & ELECTRONIC MEDIA 383 (2009). There is no benefit to public affairs broadcasting due to consolidation of media ownership; duopoly stations provided the least amount of programming and other stations in duopoly markets did not perform better than stations in non-duopoly markets. *Id.* at 397. Moreover, another study found that "[o]wnership by one of the BIG FOUR commercial broadcast networks [ABC, CBS, FOX and NBC] . . . significantly decreased the amount of local public affairs programming on Television." MICHAEL YAN & PHILLIP NAPOLI, MARKET STRUCTURE, STATION OWNERSHIP, AND LOCAL PUBLIC AFFAIRS PROGRAMMING ON LOCAL BROADCAST TELEVISION 13, *presented at* The Telecommunications Policy Research Conference (2004), *available at* <http://web.si.umich.edu/tprc/papers/2004/374/tprc2004_yan.pdf>.

[69] Application, *supra* note 1, at 40.

[70] The first is the time option rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time". 47 C.F.R. § 73.658(d). The second is the right to reject rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from: (1) rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) substituting a program which, in the station's opinion, is of greater local or national importance." 47 C.F.R. § 73.658(c).

[71] *Network Affiliated Stations Alliance Declaratory Ruling*, 23 FCC Rcd 13610 (2008) (In 2001 the Network Affiliated Stations Alliance, a.k.a. "NASA", filed a Petition for Inquiry into Network Practices with the FCC. In the intervening years, NASA and the Networks renegotiated their Affiliation Agreements to ameliorate their concerns. However, in order to avoid future controversies the FCC issued this Ruling, affirming various principles relating to the right-to-reject rule and option-time rules.). *See also*, *Localism Report*, *supra* note 38, at ¶¶ 94-96 (discussing the FCC's continuing concerns regarding network affiliation and seeking comment on the right to review programming in advance); *Localism NOI*, *supra* note 36, at ¶¶ 30-32 (stating the FCC is concerned "that the networks are hindering the affiliates' ability to preempt network shows for local programming.").

[72] *Localism Report*, *supra* note 38, at ¶ 94.

The merged entity will have the ability to drastically alter the network-affiliate balance and should not be permitted.

iii. *The proposed transaction may result in less effective disaster and emergency warnings.*

Finally, the provision of adequate emergency and disaster warnings is another way that broadcasters must be responsive to community needs.[73] Having effective, timely, over-the-air local broadcasting capabilities for severe weather and disaster warnings is imperative for communities in California, where earthquakes, severe wild-fires, and mudslides occur far too often. Moreover, local television broadcasts are likely the primary way that low income communities are apprised of the dangers and relief efforts during an emergency situation.[74] We must not forget the 2002 chemical spill disaster in Minot, North Dakota that resulted in death and more than a thousand injuries.[75] Because local radio stations were remotely owned and operated by an automated system, local emergency responders could not contact anyone to implement an emergency warning.[76] Over fifteen thousand local residents were unaware that an impending toxic ammonia cloud was bearing down on them and had no way to find out how to respond.[77] This example highlights the unique role that local broadcasters, both television and radio, play in ensuring the safety of the communities they serve. Comcast may tout the expansion of their on-demand platform, but it has utterly failed to address this basic and essential concern.

C. The Risk of Reduction in Localism is Unacceptably High.

As discussed above, ownership of media matters, not only for competition and diversity, but also for localism. Applicants allege that the "proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms."[78] However, this transaction is not merely a vertical integration; rather it has significant horizontal implications. Moreover, due to the unique nature of the television market,[79] "ownership structure at *any point in the chain* of *either* [the programming production, programming network, or distribution] market can influence outcomes like the quantity and quality of television programming provided to households."[80] Since Comcast and/or NBCU are involved in all three television markets, the proposed transaction can be expected to have a significant impact both vertically and horizontally.

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[73] 47 U.S.C. § 151 (the FCC was created to promote: "safety of life and property through the use of wire and radio communication."). *See also*, *Localism NOI*, *supra* note 36, at ¶ 27 ("a fundamental way in which broadcasters use the medium to serve their communities of license is to provide emergency information."); *Localism Report*, *supra* note 38, at ¶ 87 (discussing whether the FCC should require a physical presence at a TV broadcasting facility or whether they should be allowed operate remotely).

[74] *Broadcast Localism Hearings Before the F.C.C.*, Rapid City, S. Dakota 56-60 (May 26, 2004) (statement of Park Owens, Director of Emergency Management in Rapid City and Pennington County, discussing the importance of access to local broadcasts) *available at* <http://www.fcc.gov/localism/rapid_city_transcript.pdf>.

[75] ERIC KLINENBERG, FIGHTING FOR AIR: THE BATTLE TO CONTROL AMERICA'S MEDIA 10 (2007).

[76] *Id.* at 9-10.

[77] *Id.* at 10-11.

[78] Application, *supra* note 1, at 2.

[79] *See infra* Appendix B.

[80] Crawford, *supra* note 66, at 6.

Moreover, both companies have demonstrated a willingness to sacrifice local content and operations for the sake of efficiency. For example, citing efficiency concerns as justification, Comcast has repeatedly consolidated operations. For example, in 2008 Comcast consolidated operations in Denver, Colorado, and shut off a local television channel that provided coverage of the community calendar, civic events and local political forums in nearby Colorado Springs.[81] That same year, Comcast consolidated its east-coast operations, cutting 300 positions by combining six regions into four.[82] In 2009, when Comcast became the sole owner of New England Cable News, a leading source of news in New England and one of the most recognized documentary producers in the country, it immediately fired the station's president in order to operate it under Comcast Sports Group.[83] Also in 2009, Comcast announced the purchase of DailyCady, a self-proclaimed 'insider's guide to your city', and ceased producing seven of the twelve local publications in favor of an 'Everywhere' edition.[84] Most recently, January, 2010, Comcast merged yet another two if its regions, this time Sarasota and Fort Myers-Naples in Florida.[85] NBCU is no different – perhaps this is a perfect match, one made in hell. As discussed above, NBCU closed seven local Telemundo news desks in favor of remotely produced content.[86] In addition, NBCU has pioneered content sharing agreements with other television news broadcasters, such as FOX and CBS, in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York.[87] Aside from the competition concerns that this collusion raises, it patently reduces the variety, quantity and quality of local news.

Finally, in their application to the FCC, Comcast and NBCU stated that the merger will enable them to "share talent, facilities, and programming with the combined entities other programming business, thereby achieving economies of scale and scope."[88] In other words, consolidation of content production and programming is already on the horizon. This will, in

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[81] Ralph Routon, *Comcast Turns off Springs*, COLORADO SPRINGS INDEPENDENT, Mar. 13, 2008.

[82] *Comcast Cutting 300 Positions*, PHILADELPHIA BUSINESS JOURNAL, Oct. 21, 2008 (Comcast cut 300 by combining Philadelphia and New Jersey into "Freedom Region", and Potomac, Maryland, Delaware and Richmond regions into the "Beltway Region"); Mike Farrell, *Comcast To Lay Off 300: Top Cabler Combining Regions Within Eastern Division*, MULTICHANNEL NEWS, October 22, 2008.

[83] Johnny Diaz, *Comcast Assumes Full Ownership of NECN*, BOSTON GLOBE, June 18, 2009 (New England Cable News will be "folded into Comcast's programming division and be operated under Comcast Sports group").

[84] Dylan Stableford, *Comcast Casualty: Layoffs at DailyCandy*, THE WRAP, Dec. 4, 2009 *available at* <http://www.thewrap.com/ind-column/roller-coaster-day-comcast-dailycandy-ends-layoffs-11236>.

[85] Kevin McQuaid, *Comcast Merges Two of its Regions, Including Sarasota*, HERALD TRIBUNE, Jan. 12, 2010, at D1 (Comcast consolidating Sarasota and Fort Meyers-Naples DMAs to save money and raise efficiency).

[86] NBCU attempted to use efficiency considerations to justify the closure of seven Telemundo local news desks. *See* discussion *supra*.

[87] NBCU has concluded in News "Sharing Agreements" in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York. *See, e.g.*,P.J. Bedarski, *Philly Stations Like Share and Share Alike*, TVNEWSCHECK, Apr. 21, 2010 (the Local News Service has its own planners, assignment editors and photographers that distribute stories to NBC and Fox); Michael Malone, *New York Pool: WNYW, WNBC, WCBS, WPIX*, BROADCASTING & CABLE, June 8, 2009 (In NY, an independent editor will determine the daily coverage and distribute it to all participating stations); Michael Malone, *Three LA. Stations to Begin Local News Video Share June 15*, BROADCASTING & CABLE, June 2, 2009 (In LA, the local news share desk will be housed at NBC and overseen by a NBC veteran); Michael Malone, *Ganett, Fox, NBC Share in DC*, BROADCASTING & CABLE, May 21, 2009 (In DC NBC shares ground and aerial news video coverage); Michael Grotticelli, *Chicago Stations Join to Share Video Crews for ENG*, BROADCAST ENGINEERING, May 8, 2009 (NBC, CBS, FOX and Tribune to pool content in Chicago); *Fox Television Stations and NBC Local Media Form Local News Service*, BUSINESS WIRE, Nov. 13, 2008 (Fox and NBC O&Os to share news video coverage in Philadelphia).

[88] Application, *supra* note 1, at 40

turn, directly reduce the amount and diversity of local content, not to mention jobs. Based on the Applicants' track records and stated intentions, the only reasonable conclusion is that this merger will result in less localism. Until these concerns are adequately addressed and all potential harms successfully mitigated, this transaction should not be permitted to go forward.

D. Applicants' Voluntary Public Interest Commitments are Insufficient to Mitigate the Potential Harms.

Voluntary public interest commitments have not been successful. Take for example, the voluntary commitment that broadcasters air 5 minutes per night (between 5 and 11:35 pm) of candidate centered discourse during the 30 nights prior to an election.[89] Among others, NBC made a public commitment to ensure that its owned and operated channels met this target.[90] Unfortunately however, a Lear Center study of the 2000 general election shows that only one of the 74 stations surveyed met the five minute target; NBC owned and operated channels averaged just over two and a half minutes of candidate centered discourse per night.[91] Thus, it is doubtful whether voluntary public interest commitments can provide a meaningful check on the myriad public interest harms that will flow from the proposed transaction. However, even if the public interest commitments suggested by Comcast are made binding and enforceable by the FCC order, they still do not prevent or remedy public interest harm. These concerns must be addressed. However, the petition process before the FCC is insufficient to adequately discern community needs. The FCC must hold public hearings in order to fully appreciate the impact of this transaction and so that they can craft appropriate mitigating conditions.

i. *Comcast has failed to show that local television newscasts and political coverage will not be harmed by the merger.*

As discussed above, the proposed transaction will result in a reduction in the amount and quality of local newscasts, in particular, coverage of local political issues. However, none of the public interest commitments addresses this harm. While Comcast asserts that it "intends to preserve and enrich the output of local news" in Commitment # 2, the only way they have suggested doing this is by putting local programming on cable networks, video-on-demand and online.[92] Simply put, transitioning or replicating content on multiple platforms does not increase the quality of local news. Comcast has not, for example, committed to increase the number of local reporters stationed at NBC and Telemundo news desks. Comcast states that the NBC owned and operated stations will "collectively produce an additional 1,000 hours per year of local news and information programming." However, this is not in the official Commitment # 2 and, even if it becomes binding, it is not clear how these hours will be allocated and whether this includes the fifteen Telemundo owned and operated stations or only the ten NBC owned and

[89] This was suggested by the Presidential Advisory Committee on Public Interest Obligations, co-chaired by Leslie Moonves, President of CBS. CHARTING THE DIGITAL BROADCASTING FUTURE, FINAL REPORT OF THE ADVISORY COMMITTEE ON PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 59 (1998) *available at* <http://www.benton.org/sites/benton.org/files/recs.pdf>.
[90] Norman J. Ornstein, *Broadcasters Need to Do More to Give Candidates Air Time*, Research Roll Call, June 23, 2004, *available at* <http://www.aci.org/article/20783>.
[91] Martin Kaplan & Matthew Hale, Local TV Coverage of the 2000 General Election 3, 15, *available at* <http://www.learcenter.org/pdf/campaignnews.PDF>.
[92] Application, *supra* note 1, at 41-42.

operated stations.[93] It is also unclear whether this commitment will continue year over year, or only during the first post-transaction year.

Further, Applicants have not committed to allocate or provide any air time to political programming. Of specific concern is the lack of any commitment dealing with air time for local political issues, especially those affecting low income communities and communities of color. While speech may be free, communication is expensive.[94] However, there is no commitment to establish a fund to subsidize or a commitment to provide free airtime to those candidates who are disadvantaged by the ever increasing cost of communications: minority or low income candidates. Likewise, Applicants have made no mention of, much less a commitment, ensuring adequate political coverage on the basic tier of service; instead they intend to relegate this to higher cost and less accessible platforms.[95] Finally, there is no commitment to air political programming on local television *at a time when most people would watch it* instead of airing it only during times when the only viewers are insomniacs. Any commitment without specifics of this sort is vacuous.

Finally, Commitment #16 alleges that the combined entity will "continue the policy of journalistic independence" and will retain the position of the NBC News ombudsman.[96] While at first glance, this appears to be a laudable claim, it is similarly toothless. It is unclear what authority the ombudsman would have, whether this authority can be increased or decreased at will by Comcast, and what the term of the position is.[97] In general, "the media [doesn't] initiate investigations of corporations, particularly their advertisers, until after the demise of the company."[98] If this is true for advertisers, how much more true will it be for their owners? NBC news must not be hampered in reporting on the activities of GE or Comcast. As it currently stands, the harm to local news and political programming is grave and unmitigated by the stated commitments.

ii. *Comcast has failed to show how they will be responsive to local communities.*

As discussed above, "[b]roadcasters have an obligation to serve the public's interests, not just their own commercial interests."[99] In Commitment #1, Applicants claim to be committed to the provision of free over the air television.[100] However, in the text accompanying this commitment, Comcast indicates that they intend for the NBC, Telemundo, and locally owned

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[93] If it includes the Telemundo O&Os, this works out to 40hrs per station per year, or roughly 6.5 minutes per day. If it applies only to the NBC O&Os, it would be 100hrs per station per year, or roughly 16 minutes per day.
[94] Common Cause, *Public Interest Obligations*, http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773669 (last visited May 25, 2010).
[95] Application, *supra* note 1, at 41-42 (Comcast will put local content online and on the video-on-demand platform). *See also, id.* at 50 (Comcast will put Telemundo and mun2 programming on video-on-demand platform); *id.* at 68-69 (Comcast will put PEG content on video-on-demand platform).
[96] Application, *supra* note 1, at 133.
[97] For example, if the ombudsman can be removed by Comcast without cause, this offers very little independence or protection.
[98] Eric Chiappinelli, Adam Candeub, Jeffrey Chester, Lawrence Soley, *The Corporatization of Communication*, 30 SEATTLE U. L. REV. 959, 974-75 (2006-2007).
[99] The Benton Foundation, CITIZEN'S GUIDE TO THE PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 4 (2005), *available at* <http://www.benton.org/sites/benton.org/files/citizensguide.pdf>.
[100] Application, *supra* note 1, at 40.

and operated stations to share "talent, facilities, and programming with the combined entity's other programming businesses, thereby achieving economies of scale and scope."[101] By placing efficiency concerns above their obligation to serve the public, Comcast has shown itself to be an enemy rather than a champion of the public interest.

Secondly, Comcast has not indicated how it will assess the public interest needs of the various communities it will serve. There is no commitment to create citizen advisory boards, no suggestion of any sort of ascertainment process, and not even an acknowledgement of the fact that communities in California have very different needs than those in Philadelphia and New York. If the transaction is approved, Comcast will have the duty to serve local communities. Without meeting with community leaders in the major DMAs it will serve, it is unclear how they intend to fulfill this duty.

A related harm that Comcast has failed to address is the impact that the increased market share will have on its network-affiliate relationships. Comcast has not made any commitments with respect to local NBC affiliates preempting or refusing to air national or regional content. Similarly, Comcast has not indicated that the NBC and Telemundo owned and operated stations would be able to preempt regional or national content in favor of local programming. In sum, Comcast has proposed no way of discovering local needs and has provided no mechanism to ensure that local broadcast affiliates can serve those needs without fear of repercussions, increased retransmission fees, disaffiliation or non-carriage.

Moreover, Comcast has indicated that it intends that local must-have "NBC's sports programming to be distributed on Versus, Golf Channel, and Comcast's multiple RSNs."[102] In other words, sporting events such as the 2010 Olympic Summer Games, a significant number of NFL Sunday Night games, and even the 2012 Superbowl, could potentially no longer be aired on broadcast television channels.[103] For example, Comcast will have the power to move national 2012 Superbowl coverage to a cable channel, such as Versus. Similarly, if sports fans in the San Francisco/San Jose/Oakland DMA want to watch the Sharks, the Giants, the A's, or the Warriors, they will need to pay for Comcast SportsNet Bay Area, Comcast SportsNet California and Versus.[104] Taking local sports broadcasts and migrating them to expensive cable pay stations is simply not responsive to local needs.

Finally, Comcast has failed to address the fact that local broadcasters must be available to air emergency weather and disaster warnings. There are no commitments to ensure that a live person will staff NBC and Telemundo owned and operated stations on a 24-7 basis in order to ensure that timely warnings are effectively broadcast. An automated and remote service cannot substitute for a live person. This is particularly crucial in California, where a truly effective warning takes account for the multi-lingual population. This in effect requires warnings in languages other than English. No community should be endangered because it chooses to watch Telemundo rather than NBC.

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[101] *Id.*
[102] *Id.* at 50.
[103] *See* Appendix C for a list of the various sports broadcast rights that Comcast and NBC currently hold.
[104] *Id.*

III. THE PROPOSED MERGER WOULD CREATE A MEDIA GIANT WITH STRONG CONTROL OF BOTH THE VIDEO PROGRAMMING AND DISTRIBUTION MARKET.

Comcast proposes the combination of two giants in the media industry. Comcast is the nation's largest multichannel video programming distributor (MVPD), with almost one-quarter of the market. Comcast also has control over vast amounts of video programming content and several popular online properties. NBCU is one of the nation's four main broadcast television networks and owns 27 broadcast television stations as well as a vast array of national cable networks and online properties. Comcast contends that as this is a largely vertical merger, there is a minimal reduction of competition in either the video distribution market or the video programming market. However, because the proposed entity would have unprecedented control over both video distribution and video programming, it would have new-found power and incentive to undertake a number of horizontal anti-competitive activities in both markets.

With a newly acquired wealth of programming content, the merged company would be able to price-gouge and force bundles of content onto its distribution competitors. As the most dominant player in the video distribution market, the proposed entity will also have the power and incentive to impose its terms on rival video programming producers that must access its strong distribution platform. Thus, this vertically integrated media giant would be able to affect considerable horizontal harms to both the video distribution and video programming markets. The ultimate effect on the consumer would be to raise prices for MVPD services and to reduce the variety and innovation of content. The merger should not be approved unless conditions are in place to protect against these negative effects on competition.

A. The Proposed Merger Would Have Strong Anti-Competitive Effects on the Video Distribution Market.

Comcast is the largest provider of MVPD services in the United States, serving 23.5 million subscribers, almost one-quarter of the national market. While the proposed merger will not add to Comcast's market position in the MVPD market, it will provide the merged company with a wealth of additional content with which it can price-gouge MVPD competitors.

In recent years, Comcast has increasingly gained control over vast amount of video content, acquiring such cable networks as the Golf Channel, E! Entertainment Television, Style Network, Versus and G4. Most significantly, Comcast also owns ten Regional Sports Networks (RSNs), which are considered must-have video programming by the FCC.[105] Besides the NBC and Telemundo network, NBCU also controls 14 popular cable networks, including the USA Network, Syfy, Bravo, CNBC, MSNBC, Oxygen, mun2, The Weather Channel and others.

The merged company would be able to raise prices for all of its content, most especially for must-have video programming. Must-have programming is not replicable, and must be carried by a MVPD distributor in order to retain its customers. Comcast already has such must-have programming in the form of its ten RSNs. The proposed company would be adding additional must-have programming from NBC, including NBC's national and news

[105] *See In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, MB Docket No. 07-198 (rel. Jan. 20, 2010) at ¶8.

programming, affiliated local new programming, NBC's sports programming, such as the 2012 Summer Olympics and other highly demanded content from NBC and its cable networks.

Previously, Comcast bargained tightfistedly with NBC for distribution of NBC/Telemundo content, attempting to keep the price down. If the merger is approved, Comcast could freely over-pay for NBC content, as it would simply be moving money from one pocket to another. However, this would set a price standard that must be matched by Comcast's competitors, such as DirectTV and AT&T, as well as the small cable companies that serve niche communities. Thus, the increased costs for NBC's content, artificially set by Comcast, would raise prices for MVPD services for all consumers.

The media giant would also be able to bundle less popular programming with highly demanded programming, thus forcing MVPD competitors to pay for content that may not be suitable for its customers. Comcast has already been accused of such practices involving its RSNs in California. In December 2009, two small cable companies serving the San Mateo Peninsula in California filed a program access complaint against Comcast for moving the games of Major League Baseball's Oakland A's and the National Hockey League's San Jose Sharks from its San Francisco RSN (CSN Bay Area) to its Sacramento-based RSN (CSN California).[106] According to the complaint, MVPD competitors are now required to buy both RSNs in order to continue to carry the "must-have" local sports programming. The complainants claim that Comcast raised the price of CSN Bay Area without replacing it with "reasonably equivalent" marquee sports programming that was lost, yet still charged more for CSN California to reflect the addition of the added sports programming. Thus, the result was an increase in the price of the same programming, now distributed among two separate RSNs.

The proposed company could use similar bundling practices, mixing and matching Comcast's current content with NBC content. For example, the merged company will have the ability and the incentive to split programming from the 2012 Summer Olympic Games from NBC onto a number of different networks, including Comcast's current networks. In fact, the Applicants have stated such intentions.[107] The merged company can raise the price of these networks, citing the increased incentive of the Olympic Games. MVPD competitors will then be required to carry all of these networks, at the increased prices, if they want to give their viewers full access to the Olympics.

i. *Applicants' commitments are inadequate to prevent anti-competitive behavior in the video distribution market.*

The "public interest commitments" proposed by the Applicants to address anti-competitive behavior in the video distribution market are wholly inadequate. Under Commitment #15, Comcast would voluntarily extend the key components of the FCC's program

[106] *See In the Matter of WaveDivision Holdings, LLC, et al. v. Comcast Corporation, et al.*, CSR 8257-P. *See also* John Eggerton, *Stanford, San Bruno File Program Access Complaint Against Comcast*, The Business of Television Broadcasting & Cable, Dec. 29, 2009, available at http://www.broadcastingcable.com/article/441950-Stanford_San_Bruno_File_Program_Access_Complaint_Against_Comcast.php

[107] Applicants state that they will be able to distribute NBC's sports programming to Comcast's "sports networks" such as Versus, Golf Channel, and RSNs instead of to NBC's networks. *See* Application, p. 50.

access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo owned and operated stations for as long as the current program access rules remain in place.[108] This commitment is inadequate for a number of reasons. First, the program access rules are set to expire in 2012. In any case, the program access rules cannot protect against price-gouging because although they ostensibly prohibit discriminatory pricing between MVPDs, the rules place no restriction on quantity discounts. Therefore, the merged company will have unlimited freedom to charge competing MVPDs a much higher price for content than it charges itself – the largest MVPD and thus a recipient of a generous "quantity discount." Thus competitors will be forced to over-pay for NBC/Telemundo content, especially the smaller niche cable companies that cannot take advantage of any quantity discount. The American Cable Association, which represents small cable companies, estimates that its members are paying at least 20-30% more for programming than the larger cable operators.[109] Especially for smaller cable companies, Comcast's proposed mitigations provide absolutely no relief. Unless real protections are in place against such anti-competitive activities, the merger should not be approved.

ii. *The rising price of cable services continues to outstrip inflation despite the addition of competition from satellite television.*

Despite the addition of MVPD competitors such as satellite systems, in recent years, cable service has seen its prices far outstrip the cost of living. From 1995 to 2008, the price of expanded basic cable service grew from $22.35 to $49.65, an increase of 122.1 percent, more than three times the rate of inflation over the same period.[110] One would hope that the price increase of cable would stop or at least slow its rate of increase when faced by increasing competition from satellite television MVPD providers. However, the *rate* of price increase for cable has actually increased for each year in the three years leading up to January 2008.

Comcast may describe the increase in its rates as reflecting an increase in the value of its products, as more channels are added to the basic and expanded basic cable package. However, increasingly, such channels may be affiliated with Comcast, may constitute the same content split into separate channels (as in the case of CSN Bay Area and CSN California) or in the case of Comcast's competitors, may include undesirable channels and content bundled and forced upon the MVPD. Especially with increasing media conglomeration, an increase in the number of channels does not translate into a substantive increase in the variety of offerings.

The effect of anti-competitive practices such as price-gouging and forced bundling of programming would only exacerbate the already severe price increases for MVPD service for all

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[108] Applicants' Commitment #14 also called for voluntary application of program access rules to the high-definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission's current program access rules remain in place. However, earlier this year, an FCC ruling required much these same actions.

[109] *See* Testimony of Colleen Abdoulah, President and Chief Executive Officer, WOW!, Board Member, American Cable Association, March 11, 2010, before the Senate Committee on Commerce, Science & Transportation, Consumers, Competition, and Consolidation in the Video and Broadband Market, available at http://energycommerce.house.gov/Press_111/20100204/abdoulah_testimony.pdf

[110] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13th Annual Report, MB Docket No. 06-189, FCC 07-206 (rel. Jan. 16, 2009), at ¶2.

consumers. These severe price increases create a barrier to access of important media resources for all consumers, but especially for low-income consumers. To the extent consumers purchase their MVPD service bundled with broadband service, increased prices for MVPD service will retard broadband adoption and exacerbate the Digital Divide.

B. The Proposed Merger Would Harm the Video Programming Market.

The resulting media giant will have the incentive to impose its will over content producers, placing unaffiliated networks in disadvantageous situations compared to its affiliated networks. Comcast could move programming from unaffiliated entities from highly-penetrated basic cable tiers to more expensive low-penetration tiers. The effect on the merged company's programming competitors would be to lower the penetration of their networks, so that they will receive less advertising revenue. Comcast could also require that it receive interest in unaffiliated networks as a condition of carrying them on Comcast, thus increasing its control over programming.

In recent years, the NFL Network, the Tennis Channel, the Mid-Atlantic Sports Network and Wealth TV all filed complaints with the FCC against Comcast arguing that Comcast had discriminated against these unaffiliated networks in favor of networks owned by the cable operators. The combination of Comcast's already significant programming assets with NBC's extensive programming would give the merged entity many more opportunities and a strong incentive to discriminate against non-affiliated networks.

For consumers, the effect of such anti-competitive activities in the programming market will be that they will have to pay for more expensive cable tiers if they wish to continue to see the wide variety of programming that is not affiliated with the merged company. In many cases, competing content producers will not be able to survive these anti-competitive tactics and will cease operation. As a result, consumers will face a reduction of their programming options, as more and more content is controlled by the Comcast/NBCU behemoth or similar media conglomerates.

i. *Applicants' commitments would not prevent the proposed company from imposing its will on competitors in the video programming market.*

The Applicants claim that they will not have the incentive to discriminate against unaffiliated networks. They also propose Commitment #13, that Comcast will, once it has completed its digital migration company-wide ("anticipated" to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for three years on "customary terms and conditions." Despite this commitment, there is nothing to prevent Comcast from adding these channels to its most expensive tier of service, where it will be available only to a low-penetration market. This commitment will not prevent anti-competitive harms to the video programming market.

ii. *The proposed merger would lead to increasing media conglomeration, further eliminating competition in both the video distribution and programming market.*

The proposed merger heralds much greater impairments to competition than those illustrated above, in that it could trigger a wave of further media consolidation. Other distribution and programming companies will need to merge – both horizontally and vertically – in order to have sufficient bargaining power to effectively compete against the Comcast/NBCU media giant. Media consolidation will become a self-fueling cycle, as smaller companies are absorbed by large media conglomerates. Only these large media conglomerates will be able to survive in this environment.

The effect on consumers will be an exacerbation in the rising price of MVPD service. As fewer and fewer gatekeepers have control of media, consumers will also have less variety and choice in media content. Independent sources of media will especially be lacking. In essence, consumers will be paying more, yet receiving less.

C. Comcast Should Leverage Its Increasing Domination of the Broadband Market to Support the Important Objectives of the National Broadband Plan, Not Strangle the Burgeoning Online Video Market.

Throughout its Application, Comcast states that it anticipates investments in the growth of on-line video viewership will accelerate broadband adoption, which Comcast recognizes as an important FCC goal.[111] Invariably, when Comcast claims the merger will benefit broadband adoption, in reality, they are merely citing the increasing reach of Comcast's broadband market and of its online properties and functionality. Despite its lip service to increasing broadband adoption, Comcast does not make any actual commitment of resources towards broadband adoption or any other of the nation's broadband goals.[112]

As part of the American Recovery and Reinvestment Act of 2009 ("the Recovery Act"), Congress directed the FCC to develop a National Broadband Plan to ensure that every American has "access to broadband capability."[113] Congress recognized the fundamental role of universal broadband access as the vehicle of the nation's social and economic health. For this reason, Congress required that the National Broadband Plan include a plan for maximizing the use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency,

[111] *See e.g.*, Application, pp. 7, 37, 55.
[112] Comcast promises to partner with Common Sense Media (CSM) and "[u]pon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign." *Id.*, p. 47. However, these resources are not definitively committed, and these public awareness efforts may look very similar to a marketing campaign for Comcast.
[113] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act), § 6001(k)(2).

education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes."[114]

Congress also recognized that the objectives of the Recovery Act and the National Broadband Plan cited above, which depended on universal broadband access, could only be achieved if broadband was actually affordable for all Americans. Thus, Congress charged the FCC with creating a "detailed strategy for achieving affordability of [broadband] service."[115] Unfortunately, the price for broadband service continues to rise exorbitantly.[116] Universal broadband access and affordability are two fundamental issues that must be addressed for the nation to continue its economic recovery and for the long-term viability of the nation's physical and social infrastructure.

Comcast is in a unique position to contribute to these vital national efforts. Comcast is by far the nation's largest broadband internet service provider, serving 16.3 million subscribers, also almost one-quarter of the market. Moreover, Comcast is continually increasing its share of the broadband market, greatly outpacing its competitors as it added 399,000 new broadband customers in the First Quarter of 2010 – Comcast's nearest competitor in the broadband market (AT&T) only added 255,000 broadband customers in the same time period.[117]

Comcast could utilize its increasing domination of the broadband market to support the universal access and affordability objectives of the National Broadband Plan. Instead, the proposed merger only heralds an attempt to corral the nascent online video marketplace.

D. The Proposed Merger Would Exacerbate Anti-Competitive Harms to the Burgeoning Online Video Market, Reducing Competition and Innovation.

Although the majority of video programming viewership continues to be through either traditional television broadcast or MVPD technology, an increasingly important emerging market is the nation's online video marketplace. A number of companies such as Youtube, Netflix, Amazon Video, and others offer video programming content online. Numerous companies, such as Roku, Boxee and Apple TV are developing technologies and business models to facilitate the delivery of video over the Internet. A free and open Internet offers the opportunity for innovative, independent production and distribution of video content free of the controls of traditional media powers. However, this burgeoning market and forum for innovative media may be choked off at its inception by the proposed media giant.

Online viewership is often a means by which viewers complement their traditional television viewership – for example, it is utilized to catch up on episodes that the viewer had missed watching on traditional television. However, increasingly, online video viewership is itself a competitive alternative to MVPD service. A recent industry report stated that 800,000

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[114] *See id*, § 6001(k)(2)(D).
[115] *See id*, § 6001(k)(2)(B).
[116] The average monthly bill for broadband service nationwide in April 2009 was $39.00 an increase from $34.50 in May 2008. *See* John Horrigan, *Home Broadband Adoption 2009*, Pew Internet & American Life Project, June 2009, p. 29, available at http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx?r=1
[117] *See* Leitman Research Group, "1.4 Million Add Broadband in the First Quarter of 2010" May 12, 2010, available at http://www.leichtmanresearch.com/press/051210release.pdf

households (often referred to as "cord cutters") dropped their MVPD subscriptions in the years 2008-2009, preferring to view video content over the Internet.[118] The report forecast that the number of "cord cutting" households will reach 1.6 million by year-end 2011.[119]

Comcast has its own online video provider services and, in acquiring NBCU, the merged company would have 32% ownership in Hulu, the nation's second largest online video provider. Hulu delivers programming from the broadcast networks and cable channels of NBC, ABC and Fox, currently without charge to viewers.

The merged company would have the incentive to forestall the new online video market, in order to protect Comcast from losing customers that choose to eliminate their expensive MVPD service in favor of online viewing. The merged company could do so by denying its vast wealth of video content to online competitors, or by only offering the content at unfavorable terms. Additionally, the merged company could also place much of its content, including the content from NBC, behind a paywall, so that it would only be available to Comcast subscribers. In that way, Comcast could assure that viewers would be required to pay Comcast for content – either as Comcast MVPD subscribers or as Comcast broadband subscribers.

NBC's programming assets have already been restricted from online viewing on a number of occasions. NBC restricted video of premiere competitions from the 2010 Winter Olympics to television viewing only, either on NBC or its affiliated cable networks. NBC only carried tape delayed video of premiere competitions, and live streams of other competitions on its Olympics website. However, for this online viewing, NBC instituted a web authentication system, restricting viewership to paid subscribers of cable, satellite or IPTV services. The merged company will have a strong incentive and free reign to use a similar web authentication system to further restrict online viewership of some or all of the upcoming 2012 Olympics to only Comcast cable subscribers. This is the essence of anti-competitive bundling, requiring consumers to purchase one product (Comcast cable services) in order to receive another product (Olympics programming online).

NBCU's Hulu has already indicated its intention of restricting some of its content to a paid premium tier.[120] A Merger with Comcast will only exacerbate this move to a paywall for content – either by requiring a premium subscription to Hulu, or by restricting access to Comcast cable subscribers.

Such anti-competitive activities will strangle the nascent online video marketplace, and establish the proposed media giant as a controlling market player. This will not only reduce competition, but it can also arrest the development and implementation of new video technologies. Hulu has already acted in an anti-competitive manner with respect to innovative

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[118] This figure was reported in the Convergence Consulting Group, Inc., "The Battle for the American Couch Potato: Bundling, Television, Internet, Telephone, Wireless," April 2010.
[119] *See id.*
[120] *See* Dawn C. Chmielewski & Meg James, *Hulu pushes forward with $9.95 subscription service*, Los Angeles Times Business Blog, April 21, 2010, available at http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/04/hulu-pushes-forward-with-995-subscription-service.html

technologies, preventing Hulu's "free" content from being viewed by viewers using Boxee's online video technology. Unless protections are in place, the proposed merger will reduce competition and stifle innovation in the burgeoning online video marketplace.

i. *Applicants' commitments would not prevent anticompetitive activities against online video rivals.*

Throughout its application, Comcast and NBCU profess support for the online video marketplace. Comcast touts its new initiatives to bring video content on-line and its adherence to the "TV Everywhere" principles.[121] Comcast states:

> It bears emphasis that a fundamental element of the TV Everywhere principles mentioned above is that arrangements be open and non-exclusive. Thus, a programming vendor that agrees to make its content available on Fancast Xfinity TV is free to license its content to the online platforms of other MVPDs, and an MVPD that licenses content from one programming vendor is not precluded from licensing content from other programming vendors.[122]

While these stated open and non-exclusive "principles" are exemplary, in no way does Comcast actually proscribe the merged company from restricted programming content from competitors. Commitment #10 barely addresses the online video market, promising that "NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no-additional charge to the consumer will continue to be made available at no additional charge for the 3 year period after closing." There would be nothing to prevent the merged company from denying NBC content to online competitors, or requiring a Comcast cable subscription for online viewing. And after three years, Comcast could begin charging for online NBC content.

ii. *Comcast could use its broadband services to discriminate against competing online video companies.*

As the nation's largest broadband service provider, with almost one-quarter of the market (and growing), Comcast will have the power to act as a gatekeeper to the Internet and discriminate against Online Video companies that compete with its affiliated Online Video platforms. With the addition of a large interest in Hulu, the nation's second largest online video provider, Comcast will have new found incentive to do so. Comcast has a history of using its broadband services to discriminate online against unaffiliated companies. For example, in 2007 Comcast subscribers began to notice that they had problems using BitTorrent and similar peer to peer file sharing technologies.[123] Comcast originally denied that it was unilaterally degrading

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[121] *See* Application, pp. 59-60

[122] *See id*, p. 61.

[123] *See In re Formal Complaint of Free Press & Pub. Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling That Degrading an Internet Application Violates the FCC's Internet Policy Statement & Does Not Meet an Exception for "Reasonable Network Management*, Mem. Opin. and Order, 23 FCC Rcd. 13028 (2008), at ¶6.

any Internet traffic – but these denials later proved to be false.[124] The FCC investigated the issue, found fault with Comcast and in August 2008 issued a "cease and desist" order.[125] Unfortunately, the legality of Comcast's targeted throttling of lawful Internet usage is currently still at issue before the FCC and the courts. Unless the FCC institutes robust rules requiring Net Neutrality, Comcast will be free to discriminated and degrade the use of competing Online Video companies on its broadband service, just as it degraded BitTorrent users. This would be a significant setback for the nascent online video market, as Comcast controls almost one-quarter of the broadband market.

CONCLUSION

Comcast has not evidenced a thorough understanding of its public interest requirements much less mitigated the potential harms of the proposed transaction. It is irresponsible and reprehensible to entrust the nation's oldest broadcasting company to a corporation that does not fully appreciate the magnitude of the public interest responsibility it must shoulder. While Comcast may be able to disregard the needs of its customers as a mere cable provider, it cannot do so as a broadcast entity, where the needs of the public reign supreme. Moreover, it is the FCC's responsibility to ensure that broadcasters fulfill these obligations. The FCC must hold formal public hearings to get answers to these many questions. Until these concerns are fully understood and addressed the proposed transaction should not be approved.

Therefore, Greenlining Institute requests the following conditions be imposed if the transaction is approved:

- At least thirty-five (35%) set aside for minority owned media.
- At least 5 hours a week of primetime programming geared towards minorities on its network channels.
- At least 50 hours a week of minority and produced content on its network and cable channels.
- Establish an internal Content Advisory Board to consult the merged entity about increasing the number or minority characters in leading roles in its programming, increasing the number of minority actors represented in its programming, and increasing the number of programs geared towards minority viewers. The Advisory Board will also consult the merged entity about content to ensure an accurate depiction of minority characters without reinforcing negative stereotyping.
- Comcast will commit to have at least six minorities on its thirteen member board of directors. There will be at least one board member who represents each minority community (African-American, Asian-America, Latino, and multi-ethnic populations) at all times.
- The merged entity will commit to agree to attain executive and management teams comprised of at least 50% minorities.
- Comcast will commit to reporting its supplier diversity numbers to the California Public Utilities Commission and The Greenlining Institute on an annual basis.

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[124] *See id*, ¶¶7-9.
[125] *See id*, ¶¶53-56.

- Comcast will commit to meeting with The Greenlining Institute on an annual basis to discuss its supplier diversity numbers.
- The merged entity will commit to increase local reporters at the owned and operated stations as follows:
    - With respect to NBC owned and operated stations, commit to hire at least three new minority reporters per station.
    - With respect to Telemundo owned and operated stations, commit return to the pre-2006 consolidation staff levels.
- The merged entity will ensure that the NBC owned and operated stations produce an additional 1,000 hours of local news in the year following the conclusion of the merger and will commit to maintain that level indefinitely. The merged entity will ensure that Telemundo owned and operated stations produce an additional 1,000 hours of local news in the year following the conclusion of the merger and will commit to maintain that level indefinitely.
- The merged entity will commit to establish a content advisory board to evaluate the diversity and localism aspects of all programming. A member of this board will be the NBC Ombudsman, who shall have a term of not less than 3 years, be removable only for cause, and who shall have the authority to recommend or remove news stories.
- The Comcast and the merged entity commits to include a provision in all of its network affiliation and retransmission agreements that indemnifies, holds harmless and covenants that it will not disaffiliate, undertake acts of financial retribution or refuse carriage, in the event an affiliate preempts regional or national programming in favor of local programming.
- Commitment that there will be one person staffing every owned and operated station on a 24-7 basis in order to ensure disaster and emergency warnings are timely transmitted.
- Political Programming
    - Commitment that, in the month leading up to any election, all NBC and Telemundo owned and operated stations will air 10 minutes per day of local political coverage, particularly issues affecting communities of color and low income communities.
    - Commitment to establish a philanthropic fund to subsidize airtime to minority or low income candidates. The amount of the fund shall match all lobbying contributions that Comcast has made in the same financial quarter.
    - Commitment to ensure that both the above types of coverage are on local broadcast television during primetime hours.
    - Commitment to provide as much time to substantive local political coverage as they do to political advertisements.
- Maintaining Competition
    - Adoption of the 11 conditions proposed by U.S. Senator Herb Kohl (D-Wisc), chair of the Senate Judiciary Antitrust Subcommittee, in his May 26, 2010 letter to Christine Varney, Assistant Attorney General of the U.S. Dept. of Justice and FCC Chairman Julius Genachowski.
    - The merged company will commit that all of its video programming content that is currently available for online viewing on any of Comcast's online properties free of subscription or premium charges will remain free of any subscription or premium charges.
- Supporting the Goals of the National Broadband Plan

- Comcast should commit to maintaining affordable broadband service by not raising prices at a rate above that of inflation without FCC approval.
- Comcast should commit to prioritizing the deployment of broadband infrastructure to low-income communities.
- Comcast should establish an independently administered fund dedicated to improving connectivity, enhancing hardware and training personnel of libraries and community-based organizations (CBOs) in low-income communities.
- Comcast should establish an independently administered fund dedicated to advancing digital literacy by conducting trainings and outreach in low-income communities.

APPENDIX A
COMCAST AND NBCU ASSETS

Comcast owns the following[126]:

- Cable Networks: E! Entertainment Television, Style, The Golf Channel, G4, CN8, Versus, Exercise TV, PBS Kids Sprout (partial), International Networks, FEARnet (partial), TV One (partial). Comcast SportsNet (CSN) includes CSN Bay Area, CSN California, CSN Chicago, CSN Philadelphia, CSN New England, CSN Mid-Atlantic, CSN Northwest, SportNet New York (partial), MountainWest Sports Network (partial), CSS (partial).
- High-speed Internet: Comcast has 14.9 million high-speed Internet subscribers and 6.5 Voice over IP (VoIP) subscribers.
- Online Holdings: Comcast.net, Fancast.com, Fandango.com, DailyCandy.com, Movies.com, Plaxo, thePlatform, Streamsage.
- Production and distribution: Comcast acquired Metro-Goldwyn-Mayer (MGM) with Sony Pictures and other investors.
- Sports: Comcast-Spectator is a sports and entertainment firm, which owns the Philadelphia 76ers and the Philadelphia Flyers. Comcast also runs and owns the Spectrum and the Wachovia Center, two major indoor arenas, and Flyers Skate Zone, a group of community skating rinks.
- Comcast-Spectator owns a majority interest in Global Spectrum, which markets and manages public assembly facilities, Ovations Food Services, a food vendor for sports arenas and major events, Front Row Marketing Services and New Era Tickets.
- Misc: Comcast Interactive Capital, Comcast Spotlight, TVWorks (partial), GuideWorks (50 percent).

NBCU owns the following[127]:

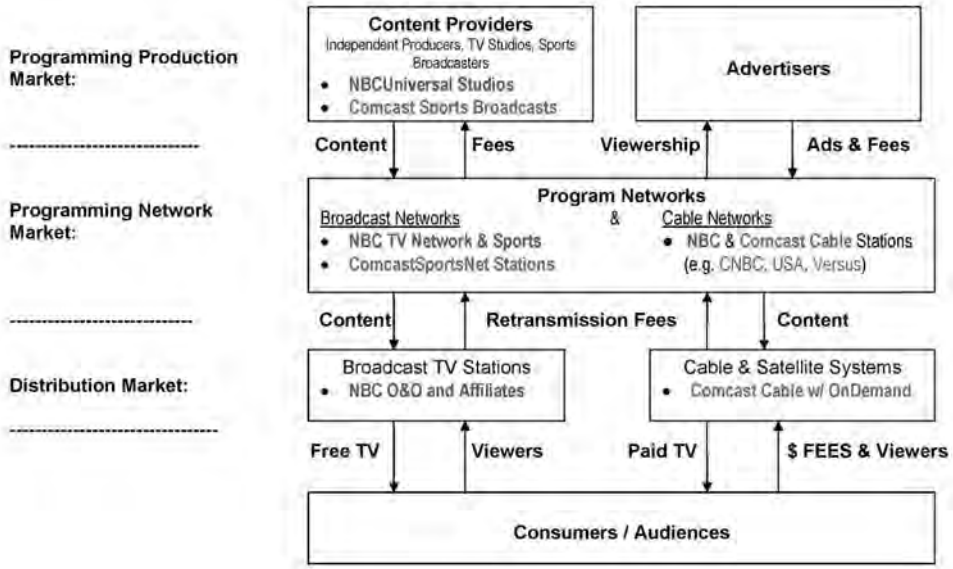
- Television networks: NBC Networks, Telemundo, Ion Media (partial stake).
- Cable: NBC Entertainment, NBC News, NBC Sports, NBC Television, NBC Universal, CNBC, CNBC World (Arabia, India, Asia, Europe), MSNBC, Bravo, Sci Fi Channel, Telemundo, USA, Oxygen, Weather Plus, Mun2, Sleuth, Chiller, Universal HD, A&E Networks (25%; includes A&E, the History Channel, History en español, the Biography Channel, Military History Channel, Crime & Investigation Network, A&E HD, the History Channel HD, History International), the Weather Channel (partial), Sci-Fi Channel HD.
- Production and distribution companies: NBC Universal Television Distribution, Universal Media Studios
- 26 television stations, owned under the "NBC Universal" division. These include NBC affiliates, 46 stations, Telemundo affiliates, and a small number of independents.
- International Channels: 13eme Rue (France), 13th Street (Germany), Studio Universal (Germany), Sci-fi Channel (Germany), Calle 13 (Spain), Sci Fi Channel UK, Movies 24

[126] http://www.freepress.net/ownership/chart/main
[127] http://www.freepress.net/ownership/chart/main

(UK), DivaTV (UK), Studio Universal (Italy), Universal Channel (Latin America), CNBC Asia, CNBC Europe, 18 Hallmark Channels (worldwide), KidsCo (worldwide, partial).

- Television networks: NBC Networks, Telemundo, Ion Media (partial stake).
- Programming: NBC Network News, NBC Universal Global Networks, NBC Universal International Channels, The Today Show, NBC Nightly News with Brian Williams, Dateline NBC, Meet the Press, Early Today, CNBC, Squawk Box, Mad Money, CNBC World, CNBC Arabia, CNBC-India TV-18, Hardball with Chris Matthews, the Rita Cosby Specials Unit, Morning Joe, Mun2, Sleuth, A&E [partial], the History Channel [partial], the Biography Channel (partial), ShopNBC (27%).
- Production: NBC Universal (80% ownership): Universal Pictures, Focus Features, Rogue Pictures. Universal has production agreements with Imagine Entertainment, Jersey Films, Tribeca Films, Shady Acres, the Kennedy/Marshall Company, Playtone Company, Strike Entertainment, Type A Films, Depth of Field, Stephen Sommers and Working Title Films (Europe).
- Distribution: Universal Studios Home Entertainment.
- Magazines: *SciFi* Magazine
- Online Holdings: NBC.com, CNBC.com, iVillage.com, Scifi.com, telemundo.com, nbc.com, hulu.com (a joint venture between NBC Universal and News Corp.), Bravotv.com, Triotv.com, msnbc.msn.com, nbcolympics.com, ShopNBC.com. Partial: aetv.com, biography.com, historychannel.com, military.history.com, Thehistoryhcannelclub.com, Historytravel.com, Newsvine.com.
- Military Production: Manufactures and maintains engines for the F-16 Fighter jet, Abrams tank, Apache helicopter, U2 Bomber, Unmanned Combat Air Vehicle (UCAV), A-10 aircraft, and numerous military equipment including planes, helicopters, tanks, and more.
- Parks: Universal Studios Theme Parks and Resorts (Orlando, FL; Hollywood, CA; Costa Durada, Spain; Universal City, Japan)
- Consumer Products: NBC Stores, ShopNBC (partial), GE Industrial (Formerly, GE Consumer and Industrial), AETN Consumer Products (37.5% equity).
- Other:
    - GE Commercial Finance: GE Capital Aviation Services, GE Commercial Equipment Financing, GE Corporate Financial Services, GE Structured Finance Global Energy Unit, GE Fleet Services, GE Healthcare Financial Services, GE Real Estate, GE Vendor Financial Services.
    - GE Consumer & Industrial (appliances, lighting, and Industrial Systems).
    - GE Healthcare (diagnostic and interventional medical imaging, information and services technology)
    - GE Infrastructure (comprised of GE Water Technologies, GE Silicones, GE Superabrasives, and GE Quartz, commercial aviation financing, and serves various industries including cosmetics, semi-conductors, oil drilling, construction and telecommunications)
    - GE Money

APPENDIX B
STRUCTURE OF THE TELEVISION MARKET



APPENDIX C
SPORTS BROADCASTING IN CALIFORNIA

Baseball – Major League

- National Content – shared between Fox / TBS / ESPN
- Local Content – local broadcasters negotiate with teams individually
  - SF Giants – Comcast Sports Net Bay Area (CSNBA) (118 games) / NBC (15 games) / Fox (5 games)
  - Oakland A's – Comcast Sports Net California (CSNCA) exclusive contract
  - LA Dodgers – KCAL (CBS) / PRIME (Fox) / Fox
  - LA Angels – Fox Sports West / ESPN / KCOP (Fox)
  - SD Padres – 4 San Diego (owned by Cox)
  - N.B. All games are available on MLB.TV which is a subscription service costing $99.95-119.95 per year OR $19.95-24.95 per month.

Basketball - NBA

- National Content – ABC / TNT / ESPN / NBA TV.
- Local Content – local broadcasters negotiate with teams individually
  - Warriors – CSNBA exclusive
  - LA Lakers – KCAL (CBS) / Fox Sports West
  - LA Clippers – PRIME (Fox)

Basketball - NCAA

  - NCAA Mens Div. I Tournament (March Madness) – CBS / Turner / ESPN
  - Regular Season Games – Versus / CBS / ESPN / Fox

Football

- All broadcast rights are negotiated by NFL, not individual teams, and shared between NBC, CBS, ESPN and NFLNetwork.
  - NBC = NFL Kickoff game; 16 Sunday Night Games; 2 wild-card playoff games; **Super Bowl XLVI (2012)**; 3 preseason games.
  - CBS: AFC Sunday afternoon games; 1 Thanksgiving Day game; 4 AFC playoff games; Super Bowl XLIV (2010); 3 preseason games.
  - Fox: NFC Sunday afternoon games; 1 Thanksgiving Day game; 4 NFC playoff games; Super Bowl XLV (2011); 3 preseason games.
  - ESPN: 17 Monday night games (Doubleheader Week 1, Singleheader Weeks 2–16); 4 preseason games
  - NFL Network: 8 late-season NFL games (starting early November) - six on Thursday nights, two on Saturday Nights. Also, all preseason games (aside from the above) are shown either live or on delay

College Football

  - Bowl Games – Fox / CBS / ABC / ESPN
  - Pac-10 Conference – shared between Versus / ABC / Fox Sports Net
  - Mountain West Conference – Versus / Mountain West Sports Network

Hockey - NHL

- National Coverage
  - Versus / NBC / NHL Network (part owned by Comcast)
  - All Stanley Cup PlayOffs: Versus
  - **Stanley Cup Finals:**
    - Versus: games 3 & 4 through 2011

- NBC: games 1&2 and 5-7 through 2011
- Local Coverage
  - SJ Sharks – CSNCA
  - LA Kings – Fox Sports West
  - Anaheim Ducks – PRIME (Fox)

Soccer – Major League

- National Content – ESPN / Fox / Univision until the end of this season
  - Versus and MLS in talks regarding future coverage
- Local Content
  - SJ Earthquakes – CSNCA / CSNBA
  - LA Galaxy – Fox Soccer Channel, Fox en Espagnol, Fox Sports West, Prime (Fox), Telefutura, ESPN, ESPN Deportes, Galavision

Cycling

- Tour de France – Versus
- UCI ProTour – Versus
- Tour of California – Versus
- Tour of Missouri – Universal Sports (NBC)

Golf

- The Players Championship – Golf Channel (first 2 rounds) / NBC (last 2 rounds)
- US Open – ESPN / NBC
- Ryder Cup – ESPN / NBC
- The Masters – ESPN / CBS
- British Open – ESPN
- PGA Championship – TNT / CBS
- Other PGA Tour Coverage – CBS / NBC / The Golf Channel

Miscellaneous

- Olympic Games – NBC has broadcast rights through 2012 Summer Games.
- America's Cup – NBC
- US Figure Skating Championships – NBC
- World Swimming Championships – NBC / Universal Sports
- IAAF World Championships in Athletics – NBC / Versus
- World Equestrian Games – NBC

Motor Sports

- NASCAR – Fox / TNT / ESPN / ABC
- IRL IndyCar Series – ABC airs Indy 500 + 4 others / Versus airs 13 races
- Other races on various other non-Comcast/NBC channels.

Tennis

- French Open: ESPN / Tennis Channel / NBC
- Wimbledon: ESPN / Tennis Channel / NBC
- Other Opens, Cups & Matches on either ESPN or the Tennis Channel.

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Mr. CONYERS. Our next witness is Alfred Liggins, III, president and CEO of Radio One and TV One, and one of the largest radio broadcasting companies in urban radio. He has gone to a number of schools and universities, and then became chief operating officer at Radio One, served as the production assistant with CBS

Records, the WOL AM account manager, and then general sales manager.

Mr. Liggins helped launch TV One with the Comcast Corporation in 2003. We welcome you to the Committee.

TESTIMONY OF ALFRED C. LIGGINS, III, PRESIDENT AND CHIEF EXECUTIVE OFFICER, RADIO ONE

Mr. LIGGINS. Thank you, Mr. Chairman, Ms. Waters, and the other Members of the Committee. I wanted to clear up a few things, first, about Radio One and TV One, and our relationship and status as a minority company, minority-owned company.

First of all, Radio One is minority supplier, with a minority supplier development council. Between my mother and myself, my mother, Cathy Hughes, we control 90 percent, actually 95 percent of all the voting classes of stock of Radio One. We also, even more importantly, control 40 percent of the economics of Radio One, which will probably, in time, go higher.

But that 40 percent is more than Rupert Murdoch controls, economically, of Fox. It's more than Sumner Redstone controls of Viacom, and Bill Gates controls of Microsoft. And nobody would argue whether or not they own their companies. And so when I hear that Radio One, because we are public, is not a minority-owned company, or owned by Cathy Hughes, I sometimes take offense at it because there is a very high bar set for us, for ownership. But we believe that bar is very high now and will continue to go higher.

Radio One owns 37 percent of TV One, and through a series of transactions that will be announced shortly, over the next 12 to 18 months, we will be extending that ownership from 37 percent up to 66 percent. So we are going to be substantially increasing the minority ownership of TV One, even though we already control the company now and are the single largest shareholder.

Thank you for the opportunity to testify here today on the pending joint venture between Comcast and NBC Universal. There is one simple truth that should govern our thinking about the joint venture between Comcast and NBCU.

General Electric, which has had a controlling share of NBCU since 1986, is selling its interest in NBCU. The acquiring company could be a partially-owned foreign firm, or one with little experience in television or management of far-flung assets.

It could be a company that has no appreciation for the value of diversity, or no demonstrable track record in diversity, whatsoever. Happily, that will not be the case. GE has chosen to work with Comcast. There are some critics of the Comcast-NBCU deal. They generally argue that big is bad, and insist that this combination cannot possibly be good for those concerned about diversity or competition in media.

I have an alternative view, based on my own personal experience with Comcast, at both the highest executive and operational level. Based on my 8-year relationship with Comcast, I can offer a personal testament to Comcast's commitment to TV diversity. Eight years ago, I began to pitch the idea of a new cable television channel that would provide real entertainment and education to the African American community.

Television that assumed the audience's intelligence instead of insulting it. Programming that would inspire, uplift and educate. Programming that would allow the African American community to see itself as it really is, but also would allow our fellow citizens to see us too, unfiltered. Our goal was to create the Nation's only African American-owned, controlled and operated programming service, given that BET's found had long ago sold off his network.

For the most part, cable operators granted me polite audiences to pitch carriage on their systems, but then ultimately turned me down as occurs with most programmers, these days. There was one exception. Brian Roberts, Steve Burke, David Cohen, and the senior leadership team at Comcast, seemed to get it, right away.

Comcast understood the value and importance of their African American customers and quickly agreed to become our major strategic partner.

They gave us significant exposure on their cable systems, which helped to create momentum with advertisers. They also negotiated a deal that helped finance the network, made a sizeable cash investment, while allowing my team to retain significant ownership, even in excess of Comcast's own ownership stake.

They ceded management control and worked with me to allow a competitor of theirs, DirecTV, to also acquire an interest in the network, so the network could grow even further.

And it was with great pride that we launched TV One on January 19, 2004, the day that the Nation paid tribute to Martin Luther King.

Today is one of the Nation's two major African American-oriented channels and the only one owned by African Americans. TV One now reaches more than 50 million homes by cable and satellite. We deliver a wealth of original programming designed to delight, inform, and intrigue millions of African American adults.

By staying true to our original vision, we have expanded our viewership to reach adults of all races and creeds, so that they too can see us as we are, as ourselves.

I think it's significant that Comcast showed this commitment to diversity when its core business was in distribution rather than production of television, and now that they are joining forces with NBCU, they have committed, in writing, to do even more to promote diversity.

Some may have concerns about GE's stewardship of NBCU. That is not something for which Comcast should be held accountable for. Rather, that is something for which Comcast can be the solution.

Because of my personal experience working with Comcast, I am confident, that if allowed to acquire NBCU, Comcast will look for opportunities to create managerial and content diversity.

Mr. Chairman, I know the men and women of Comcast, as I know you do. I believe they are a good, solid company that has been, and will continue to be, responsible to the needs of our communities. I look forward to answering any questions.

[The prepared statement of Mr. Liggins follows:]

PREPARED STATEMENT OF ALFRED C. LIGGINS, III

Proposed Combination of Comcast and NBC-Universal

Testimony of Alfred C. Liggins, III
Chairman, TV One

Committee on the Judiciary
Monday, June 7, 2010
Los Angeles' California Science Center
700 Exposition Park Drive (the Loker Conference Center)

Testimony of Alfred C. Liggins

Chairman, TV One, LLC

Mr. Chairman, and members of the Committee:

Thank you for the opportunity to testify here today on the pending joint venture between Comcast and NBC Universal (NBCU).

There is one simple truth that should govern our thinking about the joint venture between Comcast and NBCU.

General Electric -- which has had a controlling share of NBCU since 1986 -- is selling its interest in NBCU. The acquiring company could be a partially-owned foreign firm or one with little experience in television or management of far flung assets. It could be a company that has no appreciation for the value of diversity or no demonstrable track record in diversity whatsoever. Happily, that will not be the case - GE has chosen to work with Comcast.

There are some critics of the Comcast/NBCU deal. They generally argue that "big is bad" and insist that this combination cannot possibly be good for those concerned about diversity or competition in media.

I have an alternative view based on my own personal experience with Comcast at both the highest executive and operational levels. Based upon my eight year relationship with Comcast, I can offer a personal testament to Comcast's commitment to TV diversity.

Eight years ago, I began to pitch the idea of a new cable television channel that would provide real entertainment and education to the African-American community -- television that assumed the audience's intelligence, instead of insulting it. Programming that would inspire, uplift and educate. Programming that would allow the African-

American community to see itself as it really is, but also would allow our fellow citizens to see us, too, unfiltered. Our goal was to create the nation's only African-American controlled and operated programming service, given that BET's founder had long ago sold off his network.

For the most part, cable operators granted me polite audiences to pitch carriage on their systems, but then ultimately turned me down as occurs with most programmers these days. There was one exception. Brian Roberts, Steve Burke, David Cohen and the senior leadership team at Comcast seemed to "get it" right from the start. Comcast understood the value and importance of their African-American customers and quickly agreed to become our major strategic partner. They gave us significant exposure on their cable systems, which helped to create momentum with advertisers. They also negotiated a deal that helped finance the network, made a sizable cash investment while allowing my team to retain significant ownership, even in excess of Comcast's ownership stake, ceded management control and worked with me to allow a competitor, DirecTV, to acquire an interest in the network. And, it was with great pride that we launched TV One on January 19, 2004, the day that the nation paid tribute to Martin Luther King.

Today, as one of the nation's two major African-American-oriented channels (and the only one owned by African-Americans), TV One now reaches more than 50 million homes by cable and satellite. We deliver a wealth of original programming designed to delight, inform and intrigue millions of African-American adults. By staying true to our original vision, we've expanded our viewership to reach adults of all races and creeds so that they, too, can see us as we see ourselves.

I think it's significant that Comcast showed this commitment to diversity when its core business was in *distribution* rather than *production* of television. And, now that they are joining forces with NBCU, they have committed in writing to do even more to promote diversity.

Some may have concerns about GE's stewardship of NBCU. That is not something for which Comcast should be held accountable. Rather, that is something for which Comcast can be the solution. Because of my personal experience working with Comcast, I am confident that if allowed to acquire NBCU, Comcast will look for opportunities to create managerial and content diversity.

Mr. Chairman, I know the men and women of Comcast, as I know you do. I believe they are a good, solid company that has been and will continue to be responsive to the needs of our communities.

Mr. CONYERS. Our next witness is Mr. Stanley Washington, president of the National Coalition on African American Owned Media. He was a regional vice president for American Express, worked for the publishing company, Dow Jones & Company, the Walter Kaitz Foundation, and is a graduate of Morehouse College, where my son attempted to stay in school, and has a degree in marketing. We welcome you to this proceedings.

TESTIMONY OF STANLEY E. WASHINGTON, CHAIRMAN AND CEO, NATIONAL COALITION OF AFRICAN AMERICAN OWNED MEDIA

Mr. STANLEY WASHINGTON. Thank you, Mr. Chairman. I must admit, I am happy to be out of Morehouse myself. I would like to also say thank you to Congresswoman Waters and to the Committee.

NCAAOM calls for a boycott of Comcast. The time has come for Comcast to understand that African Americans are no loner interested in living on the Comcast plantation. The National Coalition of African American Owned Media further denounces Comcast and its nonexistent carriage of 100 percent African American-owned channels on its nationwide platforms of approximately 24 million homes, and underscores its opposition to the Comcast-NBC merger, unless specific ownership conditions are enforced by the FCC and the DOJ.

In a recent LA Times article dated April 27, I stated, for decades, Comcast has shut the door to widely-distributed, wholly-owned African American channels, and pension funds, by virtue of their investment in Comcast, are supporting apartheid right here in America.

Comcast brings in approximately $3 billion per month, $36 billion per year, from nearly 24 million cable subscribers. Based on the large number of African American-populated cities which Comcast serves, we estimate there are millions of African American subscribers that contribute approximately 40 percent, or $15 billion of Comcast's annual revenue. Based on the enormous support that the African American community has shown Comcast for over four decades, we find it unacceptable that none of the 250-plus channels that are offered on the Comcast platform are 100 percent African American owned and widely distributed on their nationwide platform.

Further, in many of the U.S. cities where Comcast has a dominant share of the cable market, African Americans comprise a majority, or near majority of the population.

For example, in Philadelphia, the city in which Comcast is headquartered, African Americans make up more than 43 percent of the city's population.

A little more than half of all the residents of Washington, D.C. are African American. In Detroit, eight out of ten residents are African American. Other Comcast markets with high concentrations of African American subscribers include Atlanta, Baltimore, Birmingham, Chicago, Jackson, Mississippi, Memphis, New Orleans, Oakland, California, Pittsburgh, Raleigh-Durham, and many more.

Nevertheless, the availability of African American wholly-owned media does not reflect these statistics. Indeed, not one of the net-

works on Comcast's cable television platform is 100 percent African American owned and widely distributed.

Even channels that are African American targeted content are not 100 percent owned by African American companies. Viacom owns BET and Comcast owns 33 percent of TV One. The proposed merger will perpetuate, or even worsen the lack of 100 percent African American-owned cable networks.

The deal will reduce competition by permitting Comcast-NBCU to play favoritism to their massive portfolio of 44 owned cable networks, and more to be launched in the future, in lieu of 100 percent African American-owned channels which will never get widely distributed on the Comcast platform.

So we have no opportunity to survive, or thrive, and to support these facts, please refer to the FCC carriage complaint filed on January 5, 2010, by the Tennis Channel against Comcast for this very reason.

Additionally, Comcast was caught blocking and slowing down competing video content on their broadband platform, which recently resulted in a class action law suit against Comcast, and which they settled in the amount of $16 million for their deplorable behavior.

These are just two examples of their anti-competitive conduct.

Dr. Maya Angelou said it best. When someone shows you who they are, believe them the first time. 2009 compensation packages for Brian Roberts, chairman, and Steve Burke, chief operating officer of Comcast, were in excess of $35 million each. These two men, Brian Roberts and Steve Burke, paid themselves significantly more than what Comcast paid to wholly-owned African American media, collectively.

Comcast spends approximately $7 billion a year on content from cable networks, and less than $2 million per year is allocated to wholly-owned African American networks.

Matt Bond, Comcast executive vice president, Programming Content Acquisitions, should be subpoenaed to testify, under oath, as to how many African American-owned companies have been allowed to pitch him, or not pitch him, for carriage distribution agreements.

How many African American-owned companies have been consistently denied such opportunities? Clearly, the answer is disturbing, given the lack of 100 percent owned African American cable networks, widely distributed, on the Comcast platform.

And it is not for lack of trying. Businessman Alvin James, who actually is sitting here with me today, right behind me, along with Marlin Jackson of the Jackson Five, attorney Willie Gary, heavyweight champion, Evander Holyfield, baseball icon Cecil Fielder, raised in excess of $60 million to fund a 100 percent African American-owned network called the Black Family Channel.

Instead of Comcast ensuring that the Black Family Channel succeeded, they exploited these African American entrepreneurs, by charging them millions of dollars in unnecessary launch fees.

We ask, if Comcast did not support a network called the Black Family Channel, then why should Black families support Comcast? I had a letter sent to Brian Roberts dated April 9, 2010, stating my position, and requesting a meeting to resolve this urgent issue.

On May 12, I introduced myself to Brian Roberts at the NCTA cable show in Los Angeles and requested a meeting with Mr. Roberts about these issues. Unfortunately, the meeting request was denied.

If this is their conduct while they're trying to secure approval for the largest media acquisition in history, how do we think they are going to act when they get approved?

The time has come for Comcast to understand that African Americans are no longer interested in living on the Comcast plantation. Until Comcast does business with African American-owned media in a significant way, we are going to boycott, and campaign, to have African American families and supporters disconnect their services immediately.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Washington follows:]

PREPARED STATEMENT OF STANLEY E. WASHINGTON

Testimony of Stanley E. Washington,
President and Chief Executive Officer
National Coalition of African American Owned Media

Before the U.S. House of Representatives,
Committee on the Judiciary
Hearing on
"The Proposed Combination of Comcast and NBC-Universal"

June 7, 2010

NCAAOM |Stanley E. Washington | President & Chief Executive Officer
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Testimony of Stan Washington,
President and Chief Executive Officer
National Coalition of African American Owned Media

Before the U.S. House of Representatives,
Committee on the Judiciary
Hearing on
"The Proposed Combination of Comcast and NBC-Universal"

June 7, 2010

Good morning Chairman Conyers and Members of the Judiciary Committee. Thank you for holding this important hearing on the proposed merger between Comcast and NBC Universal here in Los Angeles, where so many creative minds, companies and workers stand to be affected if this merger is approved. I am pleased that you have come here to understand how this merger will impact issues such as the lack of 100% African American owned cable networks on the Comcast platform. I want to especially thank my Congresswoman, Maxine Waters, for her leadership and devotion to this issue. I look forward to discussing the effects that this merger will have on African American owned media.

About the National Coalition of African American Owned Media (NCAAOM)

NCAAOM was founded to represent the interests of African American media owners. We work to ensure that African American owned media companies are given the same opportunities as their non-African American counterparts to own and distribute cable networks and flourish in today's integrated media landscape. While other African American groups, including many of our historic civil rights organizations have taken up the fight regarding the lack of African American jobs, senior management, television show runners, suppliers and board members within the industry, we believe that the single greatest impact on African American owned media is the non-existence of 100%

NCAAOM |Stanley E. Washington | President & Chief Executive Officer
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African American ownership of cable networks. The ability for African Americans to own and compete fairly within the media industry will have a far greater impact on the creation of jobs, procurement and talent development – as well as the overall economic viability of the African American community. Moreover, research studies continue to show the negative social impact on African Americans when our images are not controlled by African Americans and are negatively seen in the media and on television - this has a significant affect on the world's perception of African Americans. An increased ability by African Americans to own content and major channels of distribution will further build positive perceptions and strong economic impact for our community.

NCAAOM's goals are to: 1) Protect and increase African American owned media and 2) Ensure that African American owned cable television networks have nationwide distribution on all platforms. In short, we represent the interests of African American owned media companies to compete fairly by having access to distribution platforms.

While we support the important goals of increasing the visibility of African Americans on television, cable and now the Internet, our organization is focused on the critical need of ownership of media in the African American community, which includes not just providing cable networks targeted only to African Americans but cable networks targeted to the general market which is owned by African Americans. It is important to note, that we support ownership opportunities for African Americans who provide competitive general market programming nationwide, which may include some African American targeted programming. Our goal is to ensure that African Americans have the opportunity to wholly own, maintain and distribute cable networks across the rich geographic, ethnic, and income diversity of the American viewing audience.

Merger of Comcast and NBC Universal Threatens African American Owned Media

African American media owners are deeply concerned about the proposed merger of Comcast and NBC Universal because this critical merger threatens to entrench the status quo that keeps African American owned cable networks from being able to secure distribution on the Comcast Platform.

The lack of African American owned media companies in broadcast and cable networks in the U.S., simply put by a FCC Commissioner, "is a national disgrace." Consider these facts. Over the last three decades, the African American consumer segment has grown to represent more than $1 trillion in spending power from a base of 13% of the U.S. population. Yet, according to a 2007 report issued by Free Press[1], only 0.6 percent of all broadcast television stations in the nation are 50% owned by African Americans. Even fewer are 100% African American owned. More alarming still, we are moving backwards instead of forward in addressing this situation. The same report found that between October 2006 and October 2007, the number of African American

[1] Free Press, *Out of the Picture 2007: US Minority & Female TV Station Ownership in the United States,"* October 2007.

owned full power commercial television stations decreased by nearly 60 percent. [2] As of 2007, there were only eight African American owned full power commercial television stations left in the entire nation. And most importantly, that same report showed that in 2007, no cable networks were 100% African American owned. Today, there are no cable networks with full nationwide distribution that are 100% African American owned; thanks to gatekeepers such as Comcast.

Comcast brings in approximately $3 billion per month, $36 billion per year, from nearly 24 million cable subscribers. Based on the large African American populated cities in which Comcast serves, we estimate there are millions of African American subscribers that contribute approximately 40% or $15 billion of Comcast's annual revenue. Because of the enormous support that the African American community has shown Comcast over four decades, we find it unacceptable that none of the 250 plus channels that are offered on the Comcast platform are 100% African American owned and widely distributed on their nationwide platform. Further, in many of the U.S. cities where Comcast has a dominant share of the cable market, African Americans comprise a majority or near majority of the population. For example, in Philadelphia --- the city in which Comcast is headquartered --- African Americans make up more than 43 percent of the city's population. A little more than half of all residents of Washington, D.C. are African American. In Detroit, 8 out of 10 residents are African American. Other Comcast markets with high concentrations of African American subscribers include Atlanta, Baltimore, Birmingham, Chicago, Jackson, MS, Memphis, New Orleans, Oakland, CA. Pittsburgh, Raleigh-Durham, and many more. Nevertheless, the availability of African American owned media does not reflect these statistics. Indeed, not one of the networks on Comcast's cable television platform is 100% African American owned and widely distributed. Even channels that carry African-American targeted content are no longer 100% owned by African-American companies. Viacom owns BET and Comcast owns 33% of TV One. The proposed merger will perpetuate or even worsen the lack of 100% African American owned cable networks.

As you know, the tremendous size and significance of this merger threatens to lay the foundation for how video content is distributed in the 21st century. While Comcast has supported charity efforts in the African American community, its purchase of NBCU without conditions on ownership will continue to kill African American owned media companies that are struggling to get a foothold in the market. Comcast is already the nation's largest cable and broadband operator, with over 250 channels on its platform, approximately 24 million cable television subscribers, 16 million high-speed broadband subscribers, and 7.6 million digital voice customers. After the proposed merger, Comcast/NBCU will control or have an attributable ownership interest in 44 cable networks, own 10 regional sports networks, 2 broadcast networks, 26 owned and operated broadcast TV stations, 32 online video properties, as well as Universal Studios and Focus Features. In short, the Comcast/NBCU merger would further consolidate content and platform ownership in the hands of an entity that already controls the

[2] Id.

means of access to cable television for millions of American homes, many of which are African American.

Despite their market power and the large number of African American subscribers that help make Comcast a profitable company, Comcast has not demonstrated the industry leadership to support African American owned media. Rather, they have continued to demonstrate predatory behavior, denying nationwide access to any 100 percent African American owned channels in which they do not own equity. Without constraints imposed by the Federal Communications Commission ("FCC"), Comcast/NBCU would have the unfettered ability to favor certain types of programming over others consistently violating the FCC's Cable Act Section 616 and to reduce or even eliminate ownership opportunities for African American owned media.

The Merger is Anti-competitive

The public interest of broadcasting and cable is served if the industry prevents concentration of economic power. [3] However, if this merger is completed, it will increase both horizontal and vertical integration in the cable/broadcast industry and will precisely concentrate power into the largest distributor. There will be significant impact that will hit African American owned media companies, which are generally much smaller than other media companies. This merger, in many ways, will completely eliminate their chances of success in media. First, the deal will reduce competition by permitting Comcast/NBCU to play favoritism to their massive portfolio of 44 owned cable networks, and more to be launched in the future, in lieu of 100% African American owned channels which will never get widely distributed on the Comcast platform. So we have no opportunity to survive and thrive. And to support these facts, please refer to the FCC Carriage Complaint filed January 5, 2010, by the Tennis Channel against Comcast for this very reason. Additionally, Comcast was caught blocking and slowing down competing video content on their broadband platform which recently resulted in a class action lawsuit against Comcast in which they settled in the amount of $16 million for their deplorable behavior. These are just two examples of their anti-competitive conduct. Dr. Maya Angelou said it best, "When someone shows you who they are, believe them the first time."

Brian Roberts, Chairman and Steve Burke, Chief Operating Officer, 2009 compensation packages were in excess of $35 million each. These two men, Brian Roberts and Steve Burke, paid themselves significantly more than what Comcast paid to wholly-owned African American media collectively. Comcast spends approximately $7 billion per year on content from cable networks and less than $2 million per year is allocated to wholly-owned African American networks. Matt Bond, Executive Vice President, Programming Content Acquisitions, should be subpoenaed to testify under oath as to how many African American owned media companies have been allowed to pitch him (or not pitch him) for Carriage Distribution Agreements. And how many African American owned media companies have been consistently denied such opportunities?

[3] Federal Communications Comm'n v. Nat'l Citizens Comm. for Broad., 436 U.S. 775, 780 (1978).

Clearly the answer is disturbing, given the lack of 100% African American owned cable networks widely distributed on the Comcast platform. I had a letter sent to Brian Roberts, dated April 9, 2010, stating our position and requesting a meeting to resolve this urgent issue. We have been completely ignored and no one from Comcast has reached out or acknowledged the NCAAOM position until the end of last week right before this hearing. On May 12, 2010, I personally introduced myself to Brian Roberts at the NCTA Cable Show in Los Angeles and requested a meeting about these issues. Unfortunately the meeting request was denied. If this is their conduct while they are trying to secure approval of the largest media acquisition in history, how do you think they are going to act if they get approved? **The time has come where Comcast needs to understand that African Americans are no longer interested in living on the Comcast plantation.**

Comcast discriminates against independent African-American focused programming

Comcast does not carry independent African-American owned or focused programming on the same programming tier as similar channels controlled by Comcast or other programmers that bundle highly desirable programming. While NCAAOM advocates strongly that African Americans should be able to own and produce all kinds of general market content, not just content specific to the African American community, this discriminatory impact is best observed in certain cases that did involve African American themed programming. For example, Comcast carries the African Channel in only 8 U.S. markets and in those markets; the Channel is carried on the lowest penetrated programming tier. This means that the Channel's subscribers are limited to roughly 4% penetration or 1 million households, on Comcast cable systems that serve 24 million households. Not only is the Channel receiving a reduced per subscriber fee compared to similar programming on the basic and more widely distributed tiers, but it is viewed by few subscribers because it is on the lowest penetrated tier. As a result, the total compensation the Africa Channel receives for carriage is much less than what similar programming does receive on the most widely distributed tiers. TV One, an African American targeted network in which Comcast has a significant equity stake, is carried on a more widely distributed Comcast tier.

The Black Family Channel, financed by African American entrepreneurs, was not supported by Comcast. Instead, they stipulated the Black Family Channel to pay millions of dollars in launch fees even though Comcast serves millions of black families. I urge you that once you have Matt Bond under oath, please ask him the question: "Why did you feel compelled not to support a network called the Black Family Channel, when you have millions of African American subscribers?" But instead, he charged them millions of dollars in unnecessary launch fees which contributed to their financial demise. In addition, Comcast shifted Black Family Channel to a tier with fewer subscribers knowing it was only a matter of months before the Black Family Channel was out of business, despite its backing from many well known African American celebrities and entrepreneurs. TV One, a Comcast-Radio One joint venture, receives favorable channel placement. If this merger proceeds, Comcast will have less incentive

to negotiate competitive carriage agreements with independent programming because it will own programming that it can carry on its cable systems on more favorable terms to Comcast. African American media owners will be forced to accept less favorable terms in order to be carried, if any terms at all.

Diverse ownership fosters content diversity for all audiences

Diversity of viewpoints in programming is critical to an informed democracy and is in the public interest. In light of the lack of African-American owned networks available on Comcast's cable systems, ensuring access to, and a level playing field for, African-American networks is more important than ever to ensure the public interest is served.

Denying the merger, as proposed, will prevent excessive consolidation. Such consolidation will reduce ownership opportunities for African-Americans and hinder wholly owned African-American cable networks to be carried on Comcast cable systems.

NCAAOM Opposes the Merger of Comcast and NBC Universal as Proposed

This proposed merger is an unacceptable proposition for African American owners of media, as well as consumers. It threatens to eliminate and prevent opportunities for wholly owned African American cable networks to be widely distributed. It consolidates multiple distribution networks – some of which are currently free to independent programmers – in the hands of a few, and it reduces consumer access to many of the independent voices and expressions available through media. As a result, NCAAOM opposes the Comcast/NBC-Universal merger and is petitioning the Federal Communications Commission (FCC) and Department of Justice (DOJ) to deny this merger because it threatens to eliminate and prevent opportunities for wholly owned African American networks. The only way to protect African-American owned cable networks if this transaction is approved is for the FCC and DOJ to require Comcast to provide African-American owned media with certain protections. We believe that, should the merger be approved, the FCC should mandate, as a condition of the merger, that the merged Comcast/NBCU allocate 10 percent of its channel capacity (a minimum of 25 channels) to 100% African American owned media companies. This is not an unprecedented demand. When the Commission approved the application of Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings Inc. ("XM") in 2008, it obtained voluntary commitments from the two parties to dedicate eight percent of their channel capacity to African American owned media and others. Here, the stakes are even higher, as the proposed Comcast/NBCU merger will affect substantially more consumers than the Sirius/XM merger.

In addition, NCAAOM believes the FCC should condition the merger of Comcast/NBCU in which the NBC broadcasting network will allocate four (4) hours of prime time programming per week out of 22 hours per week to African American owned media. These conditions will at least allow African American owned companies to compete on a

level playing field – which is all we deserve given our significant contribution to the Comcast platforms by African American subscribers.

Conclusion

In summary, NCAAOM advocates for the right of African Americans to own networks which distribute both general market and African American themed content.

NCAAOM believes that this merger, as it currently is proposed, is horrible for African American media owners and consumers, and therefore, without our proposed conditions we oppose the merger. We believe that our proposed conditions will provide a level playing field for wholly-owned African American media. Please consider our recommendations thoroughly before any final action is taken.

We urge Members of Congress to be mindful of the critical importance of African American owned media in the emerging new 21st century world of media distribution, a market which is rapidly changing year to year. Although African Americans have been represented in network classics, and African American actors have been integrated into a range of roles on today's dramas, the barriers to African American owned content are still extreme, unjustifiable and reprehensible in an industry where so many talented African Americans have fought for an equal opportunity to own, produce, distribute and air programming for all consumers nationwide. Without ownership opportunities, African Americans will not have a seat at the table in which we help shape our images and instead, have to remain on the sidelines.

We look forward to continuing to work with this Committee, and Congress as a whole, as you review the myriad of issues surrounding this merger and its affect on American consumers and the media community.

Thank you for your time and the opportunity to speak with you today.

NCAAOM |Stanley E. Washington | President & Chief Executive Officer
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Mr. CONYERS. Mr. Jim Weitkamp, vice president of the Communications Workers. He has been with them a long time, became part of the CWA staff in 1988 as the director for Southern California, and has been a leader in the workers' right protection activities. We welcome you.

TESTIMONY OF JIM WEITKAMP, VICE PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Mr. WEITKAMP. Thank you, Mr. Chairman. My name is Jim Weitkamp. I am vice president for CWA District 9, which represents 66,000 employees in California, Nevada, and Hawaii. Nationally, CWA represents more than 700,000 employees, including workers at Comcast and NBC Universal.

So I believe I can provide a unique perspective on the impact of this transaction on workers and the industry.

My testimony will focus on three areas. First, the impact of this combination on jobs. Second, how the proposed merger will aggravate current anti-competitive behavior in the cable industry. And third, the problems that will result in the emerging Internet video marketplace.

The bottom line is this. The public must be protected from the significant harms created by a combination of such unprecedented scale.

A Comcast-NBC combination will lead to the loss of good jobs. Comcast-NBC debt will increase by approximately $8 billion after this transaction, and to pay for this debt, the company will have two choices. Cut jobs or raise cable prices. Either way, consumers and workers lose.

In addition to job loss, the combination will depress labor standards. Comcast has a terrible track record of aggressive action to eliminate worker organization at companies that it acquires. As a result, Comcast wages and benefits trail those at unionized telecom companies by about one-third. This has a considerable impact on minority workers who comprise about one-third of the workforce in this sector.

In 2002, Comcast acquired AT&T broadband. At the time, CWA represented about 5,000 cable employees, nationally, and about a thousand, here, in California, including units in Los Angeles, Sacramento, Modesto, Fresno, and the Bay Area.

Comcast executives reassured the CWA leadership that they would respect their employees' right to a union voice.

Well, I can tell you what a Comcast commitment means. After Comcast took over AT&T broadband, a senior vice president of the company, in Oregon, announced we're going to wage war directly to certify CWA. And that's precisely what Comcast did.

In Fresno, Modesto, Sacramento and Los Angeles, Comcast delayed bargaining for more than 18 months, denied workers wage and benefit improvements that they provided to non-union employees, and supported decertification elections.

Across the country, Comcast refused to reach agreement on a first contract in sixteen or the organized units that it acquired from AT&T.

In the San Francisco Bay Area, where CWA has represented cable workers for many years, Comcast initiated decertification elections as recently as 3 years ago. The workers elected to keep union representation, and we are now bargaining with Comcast over a new contract.

But even here, Comcast has attempted to get around the union by shifting about half of its work to non-union lower-wage employ-

ees. Where workers try to form a union, Comcast has fired and retaliated against union supporters.

Two years ago, Comcast waged an aggressive campaign against employees in San Jose who sought union representation with CWA. The company scheduled weekly mandatory meetings to spread their anti-union message. In one of those meetings, a Comcast manager told the workers that anyone passing out union cards is like spam in his computer and he kills spam.

In contrast, collective bargaining at NBC Universal dates back to the 1930's. Our NABET affiliate represents broadcast technicians at NBC, and although we are currently in difficult negotiations with NBC, and have been without a contract for over a year, the bottom line is that NBC workers have a collective voice through their union, a right that Comcast denies to their employees.

Let me now turn to the anti-competitive issues associated with this transaction. There is already too little competition in the video marketplace. Cable rates have grown at three times the rate of inflation. This merger would provide Comcast-NBC with added incentive, an ability to engage in anti-competitive practices that would increase cable rates.

After the merger, Comcast will own NBC's premier programming. It will have the ability to bundle its less-desirable cable channels with must-have NBC programming. This forced bundling will raise other video providers' costs, which translates into higher cable rates for consumers.

Today, some companies are trying to compete with the incumbent cable providers. They are investing significant resources to build their networks. This merger would provide Comcast-NBC with the incentive and ability to raise the prices it charges new entrants for must-have NBC and sports programming, effectively blocking or limiting competition, investment, and jobs that accompany those efforts.

The third area of concern involves the online video market. The Internet allows consumers to access video content of their choice, unmediated by the prepackaged bundles of the cable company.

The Comcast-NBC merger has the potential to bring this to a halt. A combined Comcast-NBC could limit consumers' online access to NBC content, or it could charge consumers higher prices to access that content, unless they are cable subscribers. This is the TV everywhere model, that Comcast and NBC have already begun to deploy, which forces Internet customers to buy cable packages in order to see content online.

These actions protect the cable channel business platform at the expense of new video entrants, and devalue the broadband investment of competitive companies. The end result is that companies will invest less in broadband deployment, put less fiber in the ground, and hire fewer people.

In summary, the Comcast-NBC merger's potential to limit growth, investment, and jobs, is not in the public interest. Federal regulators cannot pass this merger without carefully considering the significant impact emerging companies will have on video competition, choice, and jobs.

Again, I thank the Committee for the opportunity to testify today and I ask that my written records be put, placed into the record.

Mr. CONYERS. We will now hear from Mr. Will Griffin. What a mixed background you have here. You graduated from Dartmouth College, and the you went to Harvard for your law degree. You are the president and chief operating officer of Hip Hop On Demand, and yet you served in executive positions with Goldman Sachs, which you have not removed from your resume yet. And McKinsey & Company, the largest—what is it that they do?—in the country, and you have worked for the News Corporation which owns Fox.

Now I can't hardly wait to hear your testimony, and we welcome you to the Committee proceedings.

TESTIMONY OF WILL GRIFFIN, PRESIDENT AND COO, HIP HOP ON DEMAND

Mr. GRIFFIN. Thank you, Mr. Chairman, and Congressman Waters, and Members of the Committee. Well, how I got from Ivy League to hip hop can be explained by the fact that I am from Texas, where, unfortunately, John Carter is my representative, and no matter how much schooling I get, it can't smooth out my rough edges. So that pretty much explains that.

I thank you for the opportunity to testify, and by way of background, I have seen the inner workings of most of the major media companies. So while in law school, my faculty adviser was Deputy Commerce Secretary Dennis Hightower, who was the first African American president of Walt Disney Television. As the director of the Harvard Consultation Project, I was advised by Motown Chairman Clarence Avant who opened the door of access to practically all the CEOs, and that gave me my start in the media industry. So you can blame him for part of it.

Subsequently, at McKinsey & Company's Entertainment and Media Group, I worked on projects at Time Warner during its post-merger integration with Turner, and later joined News Corp. in the Strategy and Marketing Group.

For the past 10 years, I have been an entrepreneur, an African American media producing film with Reuben Cannon, Bishop TD Jakes, and ultimately, running a film and television production company in conjunction with Stan Lathan and Russell Simmons, where, 5 years ago, we created and launched Hip Hop On Demand on Comcast.

Those experiences have led me to support this joint venture with Comcast, as the controlling partner, for two overwhelming reasons. One, despite the testimony, Comcast actually has the best infrastructure of inclusion to build upon in the media industry, and second, African American consumers and policy makers have more potential leverage over Comcast than any other media company.

I don't come to this conclusion lightly, because there is no doubt that the history of African Americans and media consolidation creates a visceral, negative reaction to any merger or consolidation.

When I watched Congresswoman Waters' hearings on the financial services industry and the lack of diversity, I applaud. When I see you come out to the hip hop summits, I know your heart is in

the right place, and you are connected to the issues in the community.

Because I remember sitting in my dorm room, in 1992, when Bill Cosby expressed his desire to purchase NBC, a network he turned around, and was told that it was not for sale. It begged the existential question: Why? Many African Americans remember when Fox launched with a focus on African American programming. They had iconic shows like Queen Latifah's Living Single, Martin, Roc, New York Undercover.

Then, through a series of acquisitions, mergers, stock swaps and expansion, into Fox News, the company has morphed into the monstrosity that we see today.

From Queen Latifah to Glenn Beck. Why?

More recently, Viacom's UPN and Time Warner's the WB merged, and the first casualties were the African American shows—Girlfriends, Eve, All Of Us, Everybody Hates Chris—that made up the bulk of their line-up. Why?

Here is my answer. Because advertisers have only been willing to pay for a limited amount of African American impressions, and they will not pay for every African American view generated. It is why African American icons like Ebony/Jet are in decline. That should be the subject of future hearings, and I was delighted to hear you say that you will have more hearings on these issues, because if we are to remove the primary barrier to growth and sustainability of minority media companies, your intervention and oversight of the advertising industry is sorely needed.

This is true of my own experience with Hip Hop On Demand. At about the same time we launched on Comcast, there other African American channels also entered into long-term distribution agreements, Vibe OnDemand, Quincy Jones III's channel and TV One. Two of the other companies quickly folded, despite a long-term distribution contract, because they were not able to secure advertisers.

Fortunately, we had General Motors, The Coca Cola Company, and Reebok as charter sponsors. Then foreign-owned Adidas acquired Reebok and zeroed out the African American marketing budget. GM experienced their problems, came to Congress to bail them out, and returned to profitability, and they have not come back to our channel, despite the fact that we have experienced viewership growth in each and every quarter.

If my company was paid for every one of the 500 million impressions that we generated, I could have made my own run at NBC. The root of the problem is this. Advertisers' unwillingness to allocate minority marketing budgets in proportion to viewership and ratings.

Which brings me to why I support this transaction. Comcast has the best infrastructure of inclusion to build upon in the media industry. Some of the very systems at the core of the Comcast media empire were actually birthed by African American media owners through some of your legislative efforts.

The Washington, D.C. cable system, and Chicago cable systems were founded by Bob Johnson with funding from Herb Wilkins of Syncom, with pension fund money that you lobbied to get on their behalf, and I liken this corporate family tree to Thomas Jefferson/

Sally Hemmings descendants. It is in your DNA. You might as well embrace it.

I believe they have. In its official response to this Committee's questionnaire, Comcast has quantified thousands of minorities in management positions and its tens of thousands of minority employees. Moreover, in each of the last 5 years, that number has continued to grow at a rate more than Whites in its corporate structure.

Now I read attorney Kang's testimony. I thought it was brilliant and well put-together. However, on the data, I believe there is a problem. There are 24,000 African Americans out of 90,000 employees. It would be virtually impossible for 24,000 African Americans to show up anywhere and have someone not notice it.

I believe that they have, the growth rate is strong, and the minority composition is vastly superior to any other media company. And I think it bears knowing that it is eons ahead of the advertising, telecommunications and financial services industry.

That context is extremely important, because I would like to highlight some examples of having African Americans in leadership positions, has been invaluable to me as an African American media owner.

When we launched with three other African American channels, it was because of Comcast Corporate Vice President Payne Brown, came to dozens of African Americans in the creative community, to educate us on video-on-demand platform and the investment Comcast was making to become the industry leader.

When we saw the ability to get distribution and programming directly to our core viewers, we were one of the few who actually raised capital, in our case from Syncom and Pacesetter Capital, and we secured advertisers to pursue the opportunity. Once on the platform, we began to market our channel, get support from the African American general managers who run the cable systems in Chicago, D.C., Houston, South Florida, and the entire Western region, are all run by African Americans, and as part of our ongoing process of making viewers aware of our channel, we have supplied information to Comcast customer services teams, who are largely African American, and supervised by an African American senior VP. It certainly helps when explaining our channel to subscribers.

The result is that according to a study by Starcom Media Group, African Americans are more than twice as likely to use video-on-demand than any other demographic.

Finally, when our channel had trouble securing sponsors, Comcast has packaged our channel, along with some of their properties, and was able to secure sponsors for us, which subsequently came to us directly.

They have also served as our syndicator and secured distribution for us on Cox, Insight, Bresnan and other cable systems, almost doubling our reach.

Now Congressman Cohen asked the question, how does Comcast compare to other cable operators? CableVision is the worst, on the record. You can't serve Harlem, Brooklyn, Queens, and not have any interest whatsoever in putting on African programming. Awful. Time Warner's difficult.

We talked to every cable operator, and kind a like Alfred's point, Comcast was the only one who opened the door, and then were willing to walk us into other cable operators, despite the fact that they have absolutely zero equity participation in our company.

Brings me to my second reason for supporting the transaction. African American consumers and policy makers have more potential leverage over Comcast than any other media company. Now I don't know how to characterize the attempt to exercise their leverage through an announced boycott today, but I think it's problematic, for many reasons.

But as a result of its origins in the urban population centers, the bulk of Comcast's early and current subscribers are African Americans. The estimates range from 20 to 25 percent of the subscriber base.

If it fails to live up to its commitments to add more independent channels, promote African Americans into leadership positions, and allow minority media owners to purchase assets they divest, consumers could be mobilized and have a direct impact by switching service providers.

This is superior to the leverage over General Electric at the moment, where we can only affect their through shareholders, pension funds, etcetera. Their leverage over Comcast is direct. It's also more immediate and direct than over any other media company and network.

A second layer of leverage, unique to Comcast, is that in each of its markets, Comcast must get its franchises renewed, and many of the major markets are run by African American and Hispanic representatives, the city councils, directors of cable franchising commissions, at both the state and local levels. In Michigan, it is at the state level.

This leverage is effective when combined with the Hispanic influence at state and local level in the Western and Southern regions. Now some have called for Congress and the FCC to exercise regulatory leverage at the Federal level, by mandating that Comcast set aside 25 channels for African American media owners, defined as 100 percent African American owned.

It is not that the demand is too high. It is that the demand is unworkable. If you define African American media ownership at 100 percent, that undercuts the decades-long work that Congressman Waters and Congress have fought for for years, namely, getting public pension funds to invest in minority asset managers, who, in turn, invest in minority firms like Radio One and Hip Hop On Demand.

By definition, taking money from pension funds would make our companies not African American owned. That standard cannot be adopted because it would reverse decades-long work to get us into the capital markets. And although we control the voting equity, in our case, almost all of the equity, we are still not considered African American owned by some. This definition is untenable. It may explain why we have not received an invitation, a call, an e-mail, or even a Facebook friend request to join the Coalition of African American Media Owners.

The definition creates a coalition that is so exclusive, that there is nobody there. The idea that the company that Cathy Hughes

founded, and she and Alfred Liggins built, that reaches tens of millions of African Americans each day through Tom Joyner, Roland Martin, and thousands of African American employees, is not "Black enough," almost disqualifies someone from a serious discussion of African American media ownership.

This line of racial purity in public policy almost cost us a chance at history. I submit that President Obama is Black enough, and so is TV One, and so is Hip Hop On Demand.

The proposed myopic approach also tends to measure African American media ownership with a protractor, when what is really needed is a compass. The True North is heading in the direction of greater distribution and access on more platforms, increased leadership inside media companies, and combining our influence to secure our fair share of advertising dollars.

In conclusion, True North is also exercising our potential leverage by staying connected to our viewers and communities, and working together to develop the next generation of African American media owners to travel along the path that we blaze today.

For all the reasons stated above, I believe the proposed Comcast joint venture is a step in the right direction. Thank you..

[The prepared statement of Mr. Griffin follows:]

WRITTEN TESTIMONY OF

WILL GRIFFIN

CHAIRMAN AND CHIEF EXECUTIVE OFFICER
HIP HOP ON DEMAND

TO THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

"PROPOSED COMBINATION OF COMCAST AND NBC-UNIVERSAL"

June 7, 2010

Mr. Chairman, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the proposed combination of Comcast and NBC-Universal and its potential impact on Minority-Owned Media companies.

By way of background, I have seen the inner workings of most of the major media companies. While, in law school, my faculty advisor was current Deputy Commerce Secretary Dennis Hightower, who was the first African-American President of Walt Disney Television. As the Director of the Harvard Consultation Project, I was advised by former Motown Chairman, Clarence Avant, who opened the door of access into the CEO's of the major record labels which started my career in the media industry. Subsequently, at McKinsey & Company's entertainment and media group, I worked on projects at Time Warner during its post-merger integration with Turner, and then later joined News Corp. in the Strategy and Marketing Group. For the past ten years, I have been an entrepreneur in African-American media producing film with Reuben Cannon and Bishop TD Jakes, and ultimately running a film and television production company in partnership with Russell Simmons and Stan Lathan, where we created and launched Hip Hop OnDemand on Comcast five years ago.

These experiences have led me to support this Joint Venture with Comcast as the controlling partner for two overwhelming reasons: 1) Comcast has the best Infrastructure of Inclusion to build upon in the media industry, and 2) African-Americans consumers and policy-makers have more potential leverage over Comcast than any other media company. I do not come to this conclusion lightly, because there is no doubt…

THE HISTORY OF AFRICAN-AMERICANS AND MEDIA CONSOLIDATION CREATES A VISCERAL NEGATIVE REACTION TO ANY MERGER OR CONSOLIDATION

When I watch Congresswoman Waters' hearings on the lack of diversity in financial services I applaud. Likewise, I believe this hearing is vitally important because I remember sitting in my dorm room in 1992 when Bill Cosby expressed his desire to purchase NBC (a network that he turned around with African-American programming) and was told it was not for sale. And it begged the existential question "Why?"

Many African-Americans remember when Fox launched with a focus on African-American programming. They had iconic shows like Queen Latifah in *Living Single. Martin. Roc. New York Undercover.* Then through a series of acquisitions, mergers, stock swaps and expansion into Fox News, the company has morphed into the monstrosity that we see today. From Queen Latifah to Glenn Beck. Why?

More recently, when Viacom's UPN and Time Warner's The WB merged, the first casualties were the African-American shows --*Girlfriends, Eve, All of Us, Everybody Hates Chris*-- that made up the bulk of UPN's line-up. Why?

Here's my answer: because advertisers have only been willing to pay for a limited amount of African-American impressions and will not pay for every African-American view generated. It is why African-American icons like *Ebony/Jet* are in decline and should be the subject of future hearings if we are to remove the primary barrier to the growth and sustainability of minority media companies. Your intervention and oversight of the advertising industry is sorely needed.

This is true of my own experience with Hip Hop OnDemand. At about the same time that we launched on Comcast, three other African-American channels also entered into long-term distribution agreements with Comcast: Vibe OnDemand, Quincy Jones III's channel, and TV One. Two of the other companies quickly folded because they could not secure advertisers. Fortunately we had General Motors, The Coca Cola Company, and Reebok as charter sponsors. Then foreign-owned Adidas acquired Reebok and zeroed out their African-American marketing budget. Then GM experienced their problems, came to Congress to bail them out, and re-emerged to profitability, and they have not come back to our channel - despite the fact that we have experienced viewership growth in each and every quarter. If my company was paid for every one of the 500 Million potential ad impressions generated, I could have made my own run at NBC!

The root of the problem is this: advertisers' unwillingness to allocate minority marketing budgets in proportion to viewership ratings -- which brings me to why I support this transaction.

COMCAST HAS THE BEST INFRASTRUCTURE OF INCLUSION TO BUILD UPON

IN THE MEDIA INDUSTRY

Some of the very systems at the core of the Comcast media empire were birthed by African-American media owners. The Washington DC cable system was founded by Bob Johnson and funded by Herb Wilkins and Syncom. Syncom, along with John Johnson of Johnson Publishing, founded the Chicago Cable System. I liken this corporate family tree to the Thomas Jefferson/Sally Hemming descendents -- it's in your DNA, you might as well embrace it.

I believe they have. In its official response to this committee's questionnaire, Comcast has quantified its thousands of minorities in management positions and its tens of thousands of minority employees. Moreover, in each of the last five years, that number has continued to grow at a rate greater than that of whites in its corporate structure. This minority composition is vastly superior to any other media company and is eons ahead of the advertising, telecommunications, and financial services industries. That context is extremely important. But I'd like to highlight some examples of how having thousands of minorities in leadership positions at Comcast have been invaluable to me as an African-American Media owner.

When we launched along with three other African-American channels, it was because a Comcast Corporate Vice President, Payne Brown, came to dozens of African-Americans in the creative community to educate us on the video on demand platform and the multi-billion-dollar investment that Comcast was making to become the industry leader in VOD. When we saw the ability to get distribution and programming directly to our core viewers, we were one of the few who actually raised the capital (from Syncom and Pacesetter Capital Group) and secured the advertisers to pursue the opportunity. Once on the platform, we began to market our channel and get support from the African-American General Managers who run the cable systems in Chicago, Washington, DC, Houston, South Florida and the entire Western Region of the United States. It is no coincidence that the larger markets with African-American GMs are our top performing markets. As part of our ongoing process of making viewers aware of our channel, we have supplied information to Comcast's customer service teams who are largely African-American and supervised by an African-American Female SVP. It certainly helps when explaining our channel to subscribers.

The result is that, according to a study conducted by Starcom Media Group, African-Americans are more than twice as likely to use VOD than any other demographic.

Finally, when our channel had trouble securing sponsors, Comcast packaged our channel along with some of their properties and was able to secure sponsors for us, which subsequently decided to advertise directly with us because of what we were able to deliver.

Moreover, Comcast has served as our syndicator and secured us distribution on Cox, Insight, Bresnan and other cable systems, almost doubling our distribution reach –despite the fact that Comcast has no equity position in our company.

This brings me to my second reason for supporting this transaction…

AFRICAN-AMERICAN CONSUMERS AND POLICY MAKERS HAVE MORE POTENTIAL LEVERAGE OVER COMCAST THAN ANY OTHER MEDIA COMPANY

As a result of its origins in urban population centers, the bulk of Comcast's early and current subscribers are African-American -- the estimates range from twenty to twenty-five percent of Comcast's subscriber base. If Comcast fails to live up to its Voluntary Commitments to add more independent channels, promote African-Americans into leadership positions, or allow minority media owners to purchase assets they divest, these consumers could be mobilized and have a direct impact by switching service providers.

This is far more direct and immediate market leverage than minorities have over other media companies through the indirect impact of boycotting advertisers of networks.

A second layer of leverage unique to Comcast is that in each of its markets, Comcast must get is franchises renewed and many of these major markets are run by African-American and Hispanic state representatives, mayors, city councils and directors of cable franchising commissions at both the state and local levels. If Comcast fails to live up to its commitments, we can prevail upon these officials to act and apply greater conditions upon renewals of cable franchise agreements.

This leverage is effective and even more potent when combined with the Hispanic influence at the state and local level in the Western and Southern regions that represent the core sources of Comcast's future growth plans.

Now some have called for Congress and the FCC to exercise regulatory leverage at the federal level by mandating that Comcast set aside twenty-five channels for African-American media owners, defined as 100% African-American owned. It is not that the demand is too high, it is that the demand is unworkable for a couple of reasons.

If you define African-American Media Ownership at 100% , thatundercuts the long-standing and important work that Congresswoman Waters and Conyers have fought for for years -- namely, getting Public Pension funds to invest in minority asset managers who in turn invest in minority media firms like Radio One and Hip Hop On Demand. Although we control the voting equity (and in our case almost all of the equity), we are still not considered African-American owned by some. This untenable definition may explain why we have not received an invitation, call, email. or even a Facebook friend request to join the Coalition of African-American Media Owners. The definition creates a coalition that is so exclusive that there is nobody there. The idea that the Company that Cathy Hughes founded and she and Alfred Liggins built that reaches tens of millions of African-Americans each day through Tom Joyner, Roland Martin and thousands of African-American employees is not Black enough almost disqualifies someone from a serious discussion of African-America media ownership. This line of racial purity in public policy almost cost us a chance at American History. Our President is Black enough. And so is TV One and so is Hip Hop On Demand.

This proposed myopic approach attempts to measure African-American media ownership with a protractor, when what is truly needed is a compass. The True North is heading in the direction of greater distribution access on more platforms, increased leadership inside of media companies, and combining our influence to secure our fair share of advertising dollars. True North is also exercising our potential leverage by staying connected to our viewers and communities and working together to develop the next generation of African-American media owners to the travel along the trails we blaze today.

For all the reasons stated above, I believe the proposed Comcast-NBCU Joint Venture is a step in the right direction.

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Mr. CONYERS. Thank you. Without objection, the Chair will be allowed to revise out of his introductory statement of you any remarks that might be considered snide or cynical, of any kind, at all, now that you have explained how you came to be what you are.

We are very grateful that you are here.

Mr. GRIFFIN. Thank you.

Mr. CONYERS. Professor of University of Santa Clara Law School, Allen Hammond, and the former president of the Alliance For Pub-

lic Technology, past chair of the AT&T Telecommunications Consumer Advisory Panel. We welcome you to the hearing.

TESTIMONY OF ALLEN S. HAMMOND, PHIL AND BOBBIE SANFILIPPO PROFESSOR OF LAW, SANTA CLARA UNIVERSITY SCHOOL OF LAW

Mr. HAMMOND. Thank you. Thank you, Mr. Chairman, Congresswoman Waters, and distinguished Committee Members. I am going to talk, very briefly, about this merger. As you know, the FCC is considering the merger of Comcast and NBC, and I think there are potential dangers for minority ownership. I would like to identify those.

Studies have shown that minority ownership of broadcast stations has enhanced diversity of news and public affairs programming provided to ethnic, minority and majority communities. Despite this fact, the FCC——

Ms. WATERS. Excuse me. Would you pull the microphone a little bit closer.

Mr. HAMMOND. A little closer.

Ms. WATERS. And speak a little bit louder. Yes.

Mr. HAMMOND. Thank you. I am sorry about that.

Despite this fact, the FCC has too often failed to take this valuable contribution into account when formulating its multiple and cross-ownership policies.

For instance, the Third Circuit Court, in issuing its stay of the commission's ownership rules, in its decision, *Prometheus Radio Project v. FCC,* recognized that the commission had failed to account for the impact of its policies on minority ownership.

Historically, the FCC has not given sustained serious consideration to that impact, allowing greater concentration of ownership and therefore having an adverse impact on small minority and women-owned broadcasters.

A study conducted for the FCC by myself, and others, was initiated in response to the court's stay. That study found that the commission's relaxation of the duopoly rule had no favorable impact on minority and women-owned commercial stations. And the reason that that is important will become clear in a moment, but I liken the situation with Duopoly Rules on to what we are proposing to do now with the merger of NBC and Comcast.

For instance, the study found that from 1999 to 2006, the relaxation of the duopoly rule did not appear to have any positive impact on minority or female ownership of television stations.

Specifically, the majority of broadcast group owners who benefited from the relaxation of the TV duopoly rule were the largest top 25 group broadcast owners, based on revenue, national market reach and/or the number of stations owned.

As of 2005, they accounted for 83 of the 109 duopolies identified. Across all markets in which minority-owned television stations operated between 1999 and 2006—by the way, I should stop and say the only reason that this data only goes from 1999 to 2006 is because prior to that, the FCC collected no statistics on minority ownership, despite the fact that the minority ownership policy was in place since 1978.

So across all markets in which minority-owned television stations operated between 1999 and 2006, the number of minority-owned television stations dropped by 27 percent.

Within markets entered and/or occupied by TV duopolies, the number of minority-owned stations dropped by more than 39 percent. By contrast, in non-duopoly markets, the number of minority-owned stations dropped by 10 percent.

When National Broadcast Group owners became duopoly station owners as well, they were able to exercise some control over access to programming, and advertising dollars within specific markets.

The net result of increased multiple ownership with local markets, coupled with the substantial national ownership, is an increase in duopoly owner control over market access to programming and ad dollars.

The impact on stand-alone broadcasters, like minority owners, was that they found it more difficult to compete as they could not offer the same packages, or package deals with volume discounts for advertising across multiple stations in the markets.

Less revenue meant less revenue for staff, less money for programming, which could have an adverse impact on diversity of programming, which is what minority-owned stations have been able to provide. To a greater extent, the majority-owned stations.

The increase in demand generated by relaxing the ownership rules could also adversely affect minority broadcast stations seeking to acquire more desirable properties.

For instance, soaring station prices bid up by the demand due to the relaxation of these multiple ownership rules in radio put minority outlets in double jeopardy. They couldn't afford to trade up to better facilities in their markets, and the stations against which they were competing were rapidly becoming parts of the large broadcast groups, capable of bringing significant economies of scale to market.

And this is a paraphrase of a quote from Pierre Sutton, which was also agreed to by Amancio Suarez, who was then the secretary and treasurer of the American Hispanic Owned Radio Stations.

Under the Telecom Act of 1996, the commission is obligated to perform quadrennial reviews regarding the media ownership, to determine whether or not its rules serve the public interest.

The commission's reviews are crucial and during these reviews they should examine the policies on diversity and media ownership and begin compiling statistics on minority and women-owned broadcast stations.

The commission cannot know how its changing policies on media ownership affect minorities and women until it starts compiling and analyzing its own statistics and data.

It cannot know the impact of the Comcast-NBC merger on minority ownership, unless it has this data.

So this is especially important with regard to the disputed merger of Comcast and NBC. The commission is considering this merger before it has completed its 2010 quadrennial review, and before it has examined the current state of media ownership in America.

The commission has not begun to compile its own statistics on competition, localism, and diversity, and cannot know how the

merger of such powerful media corporations will affect competition among single-station broadcast owners and local media outlets.

Similar to the experience of the aftermath of the duopoly rule relaxation, the Comcast-NBC merger would eliminate head-to-head competition in the 11 major markets where NBC owns broadcast stations and Comcast operates cable franchises. These markets currently account for almost 25 percent of the U.S. TV households. Each of these markets would lose a competitor for local and political advertising. This could lead to a significant decline in competition in local advertising markets and excessive domination by the merged company.

As a result, advertisers would lose an alternative outlet, but meanwhile, other local broadcasts, particularly small, independent ones, already facing ad revenue declines in an economic downturn, would be unable to offer package deals and volume discounts for advertising across multiple channels, the way that a merged Comcast and NBC could.

These stand-alone stations would have less money to produce local news and hire staff. In order to remain competitive, these broadcasters would have to fire staff and reduce production of local news and information, or consolidate in order to compensate for market share loss to the merged company. This result could adversely affect local diversity as well.

Finally, the merger would prompt other requests for similar mergers as other media players seek to keep pace with Comcast-NBC's economies of scale, in the same manner that the lax local market agreement policies and the duopoly relaxation caused increased consolidation.

Stand-alone stations, like minority-owned facilities, will have to weather yet another wave of consolidation, and as a result, will have to cut costs and may, as a result of doing so, reduce diversity. Thank you.

[The prepared statement of Mr. Hammond follows:]

PREPARED STATEMENT OF ALLEN S. HAMMOND

The Potential Impact of the Comcast-NBC Merger on Minority Ownership of Broadcasting, Testimony of Professor Allen S. Hammond, IV, Phil and Bobbi Sanfilippo Professor of Law, Santa Clara University School of Law, and Director, *B*road*B*and *I*nstitute of *C*alifornia, before the House Judiciary Committee, Los Angeles, California, June 7, 2010.

The Problem:

The Federal Communications Commission is considering a merger of two very large competing video distribution and program providers that will potentially affect many small broadcast providers in absence of the Commission's own data on how that merger will affect media ownership.

In 2003, the Commission attempted to replace regulations against ownership of television, newspapers, and radio stations in a single market with a "diversity index" that would allow a mathematical formula to measure the diversity of media voices in a given market.[1] This "diversity index" did not take into account the importance of viewpoint diversity on the Internet or the effect of consolidation on minority-owned broadcast stations.[2] Additionally, it was poorly crafted, "employ[ing] several irrational assumptions and inconsistencies."[3]

Minority Ownership and Viewpoint Diversity

Studies have shown that Minority Ownership has enhanced diversity of news and public affairs programming provided to ethnic, minority and majority communities. Despite this fact, the FCC has too often failed to take this valuable contribution into account when formulating its multiple and cross ownership policies. Public interest and media organizations have argued this point for years.[4]

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[1] *See* Prometheus Radio Project v. FCC, 373 F.3d 372, 403 (3d Cir. 2004).
[2] *Id.* at 407-08; 420.
[3] *Id.* at 402. Specifically, the Third Circuit found that the Commission's methodology in creating its Diversity Index was fundamentally flawed, because "the Commission gave too much weight to the Internet as a media outlet, irrationally assigned outlets of the same media type equal market shares, and inconsistently derived the Cross-Media Limits from its Diversity Index results." *Id.*
[4] These organizations include the Broadband Institute of California at the Santa Clara University School of Law, the Media Access Project, the Free Press, the Citizens Communications Center, the Georgetown University Institute for Public Representation, the National Black Media Coalition, the Minority Media and Telecommunications Council, the National Association of Black Owned Broadcasters and Operation Push.

Policy Disconnect

The Third Circuit court, in issuing its stay of the Commission's ownership rules decision in *Prometheus Radio Project v FCC*, recognized that the Commission had failed to account for the impact of its policies on minority ownership.[5] The court's assessment of the FCC's policy myopia need not be limited to the specific instance before the court in 2003. Historically, the FCC has not given sustained serious consideration to the impact of policies allowing greater concentrations of ownership on small, minority, and women owned broadcasters.[6]

Inadequate Data and Ignorance of Policy Impact

This myopia has been facilitated and exacerbated by the FCC's failure to keep adequate data on minority and female ownership of broadcast facilities. Despite the fact that the FCC initiated minority ownership policies in 1978, it did not begin to acquire data on minority and female ownership of broadcast stations until 1999.[7] Because relatively reliable data on broadcast owner race and/or gender did not exist before 1998, there was no opportunity to examine the impact of the FCC's broader set of ownership rule changes on minority ownership. Because the television duopoly rule was the only ownership rule revised during the time period for which data on broadcast owner race and/or gender has been reliably recorded, researchers were constrained to examine its impact on minority and female broadcast television owners.

Adverse Impact of De-Regulation

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[5] *See generally* Prometheus Radio Project v. F.C.C., 373 F.3d 372, 435 (3rd Cir. 2004).

[6] *See* Catherine J. K. Sandoval, MINORITY COMMERCIAL RADIO OWNERSHIP IN 2009: FCC LICENSING AND CONSOLIDATION POLICIES, ENTRY WINDOWS, AND THE NEXUS BETWEEN OWNERSHIP, DIVERSITY AND SERVICE IN THE PUBLIC INTEREST, COMMUNICATIONS RESEARCH IN ACTION: SCHOLAR-ACTIVIST COLLABORATIONS FOR A DEMOCRATIC PUBLIC SPHERE 4 (Minna Aslama & Philip M. Napoli, eds.) (Fordham University Press 2009); S. Derek Turner, *Off The Dial: Female and Minority Radio Station Ownership in the United States*, FREE PRESS, June 2007 at 12, *available at* http://www.freepress.net/files/off_the_dial.pdf.

[7] Allen S. Hammond, IV, Barbara O'Connor, Tracy Westin, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006*, 2007 FCC MEDIA OWNERSHIP STUDIES 26, 2006, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A9.pdf.

The study conducted for the FCC[8] was initiated in response to the court's stay. The study found that the Commission's relaxation of the duopoly rule had no favorable impact on minority and women owned commercial television stations.[9] It provided no lasting increase in minority or women owned stations.[10] Only one minority owned station took advantage of the policy and that owner exited the market within two years.[11] Instead, the actual beneficiaries of the repeal were the largest broadcast station group owners (including the national networks).[12] Indeed, in markets in which duopolies were allowed, a minority owner was more likely to exit the market.[13]

The study found that from 1999 to 2006 the relaxation of the television duopoly rule (TVDR) did not appear to have a positive impact on minority and female ownership of television stations. Instead, the major beneficiaries were the largest twenty-five television broadcast station owners. Specifically, the study found:

- The relaxation of the TVDR codified the existing contractual relationships (local management agreements or LMAs) between group station owners and the stations they managed.
- Some group station owners leveraged their control of LMAs into control of access to attractive syndicated programming as well as access to programming affiliations with emerging networks.
- The majority of the broadcast group owners who benefited from the relaxation of the TVDR were the largest (top twenty-five) group broadcast owners (based on revenue, national market reach and/or number of stations owned). As of 2005, they accounted for 83 of the 109 (76%) duopolies identified.
- Many of the group owners that managed "sister" stations acquired them outright once the TVDR was relaxed.
- Only one minority-owned duopoly was created. It has since been dissolved.

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[8] Allen S. Hammond, IV, Barbara O'Connor, Tracy Westin, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006*, 2007 FCC MEDIA OWNERSHIP STUDIES 31, 2006, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A9.pdf.
[9] *Id.* at ??.
[10] *Id.* at ??.
[11] *Id.* at ??.
[12] *Id.* at ??.
[13] *Id.* at ??.

- There were no surviving minority-owned duopolies.
- Across all markets in which minority-owned television stations operated between 1999 and 2006, the number of minority-owned television stations dropped by twenty-seven percent.
- Within markets entered and or occupied by TV duopolies, the number of minority owned stations dropped by more than thirty-nine percent.
- By contrast, in non-duopoly markets the number of minority-owned stations dropped by ten percent.
- The duopolies created in markets in which female owned television stations operated were non-female owned.
- There were no female-owned television duopolies.
- 36% of the female owned stations operating in duopoly markets were sold. All of the stations were sold to non-female, non-minority-owners.
- Female owned stations were more likely to be found in non-duopoly markets.
- The change to the TVDR has not had a positive impact on minority or female ownership of television stations.

Economies of Scale Induced by De-Regulation

Many of the alleged market conditions that prompted group owners to circumvent the duopoly rule limitation and later successfully pressure the FCC to repeal the rule are the same ones cited by Comcast-NBC today: retention of station viewing audience in the face of alternative providers; control of programming costs; and access to advertising revenue. The acquisition of additional television stations in the same market allows owners to reduce head to head competition by one, increase audience reach, reduce programming costs, and pursue increased ad revenues. When national broadcast group owners became duopoly station owners as well, they were able to exercise some control over access to programming and advertising dollars within specific markets.[14] The net result of

[14] "Through LMAs, group owners such as Sinclair Broadcast Group and Clear Channel Television have been able to control two outlets in one market. That means that when it comes to negotiating with studios for programming, they can often dictate the terms of deals because they control the likely buyers. Sinclair, for example, controls two stations in several major markets including Baltimore, Pittsburgh, Milwaukee and Indianapolis." Christopher Stern, FCC Duopoly Delight, Variety, November 11, 1996 - November 17,

increased multiple station ownership within local markets coupled with substantial national ownership is an increase in duopoly owner control over market access to programming and ad dollars. The impact on stand alone broadcasters like minority owners is that they find it harder to compete as they cannot offer package deals across multiple outlets and or discounts.

Barriers to Entry Exacerbated by De-Regulation

The impact of increased economies of scale is not the only consequence. In the past, FCC relaxations of multiple ownership rules have caused an increased market demand for stations that were attractive as second TV properties in a market. The increase in demand generated by relaxing ownership rules adversely affected minority broadcast station owners seeking to acquire more desirable properties. "[S]oaring station prices after…(FCC relaxation of the multiple ownership rules) put minority outlets in 'double jeopardy.'" Minority station owners, who are generally single-station owners, can't afford to trade up to the better facilities in their markets, because they can't compete against the prices group owners are willing to pay and the stations against which they are competing rapidly become parts of large broadcast groups, capable of bringing significant economies of scale to the market. Further rule relaxation would only exacerbate an already negative situation.[15]

Prometheus Stay Lifted

In March 2010, the Third Circuit lifted the stay of the media ownership rules imposed in *Prometheus*, allowing the Commission to reconsider regulations on cross-media

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1996, Pg. 76. In response to Sinclair's $1.2 billion dollar acquisition of a broadcast station group, program syndicators expressed concern because between its owned stations and its LMAs Sinclair had garnered "incredible leverage when it comes to buying programs. And that extends beyond the LMA markets. Many syndicators privately complain[ed] of having to sell a show to Sinclair in one market if they want clearances in other markets where the broadcaster has two outlets." Joe Flint, Sinclair's Power Play, Daily Variety, April 12, 1996, Pg. 1.

[15] Sikes Unscathed at Hearing: FCC May Settle On Permitting Ownership Of 30 AMs, 30 FMs; Change Duopoly Rule, Communications Daily, March 12, 1992, Pg. 1. Quoting Pierre Sutton, Chairman of Inner City Bro casting and the National Assn. of Black Owned Bcstrs. and Amancio Suarez, Secretary and Treasurer of American Hispanic Owned Radio Stations and of WAQI(AM).

ownership in light of the influence of the Internet.[16] This decision is contemporaneous with the Commission's quadrennial review of media ownership rules.[17] Under the Telecommunications Act of 1996, the Commission is obligated to perform quadrennial reviews regarding media ownership to determine whether or not its rules serve the public interest.[18] During the quadrennial reviews, the Commission conducts workshops and seeks to determine whether its rules on media ownership foster competition, localism, and diversity.[19]

The Commission's quadrennial reviews are a crucial step. During these reviews, the Commission should examine its own policies on diversity in media ownership and begin compiling statistics on minorities and women owning broadcast stations. The Commission's Annual Ownership Report form, FCC Form 323, includes a section requiring owners to identify their race or ethnicity and their gender; however, the Commission currently does not rely on that data for rulemaking, nor does it provide that data in a form conducive to statistical analysis.[20] The Commission cannot know how its changing policies on media ownership affect minorities and women until it starts compiling and analyzing its own statistics.

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[16] *See* Prometheus Radio Project v. FCC, 2010 WL 1133326 No. 08-3078 at *1 (3rd Cir. March 23, 2010). Former FCC Chairman Michael Powell expressed hope that the Commission would use this opportunity to remedy what he saw as the *Prometheus* court's failure to consider the power of the Internet in terms of a competing voice in the news market. *See* John Eggerton, Third Circuit Lifts Stay On Media Ownership Rules, Broadcasting & Cable, March 23, 2010 http://prometheusradio.org/Third_Circuit_Lifts_Stay.

[17] *See* 2010 Review of Media Ownership Rules, Fed. Commn'ns Commission, http://www.fcc.gov/ownership/.

[18] *See* 47 U.S.C. § 202(h).

[19] *See* 2010 Review of Media Ownership Rules, *supra* note 5.

[20] *See* Allen S. Hammond, IV, Barbara O'Connor, Tracy Westin, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006*, 2007 FCC MEDIA OWNERSHIP STUDIES 26, 2006, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A9.pdf; Catherine J. K. Sandoval, MINORITY COMMERCIAL RADIO OWNERSHIP IN 2009: FCC LICENSING AND CONSOLIDATION POLICIES, ENTRY WINDOWS, AND THE NEXUS BETWEEN OWNERSHIP, DIVERSITY AND SERVICE IN THE PUBLIC INTEREST, COMMUNICATIONS RESEARCH IN ACTION: SCHOLAR-ACTIVIST COLLABORATIONS FOR A DEMOCRATIC PUBLIC SPHERE 4 (Minna Aslama & Philip M. Napoli, eds.) (Fordham University Press 2009); *see also* S. Derek Turner, *Off The Dial: Female and Minority Radio Station Ownership in the United States*, FREE PRESS, June 2007 at 12, *available at* http://www.freepress.net/files/off_the_dial.pdf [hereinafter Off The Dial].

Comcast-NBC Merger

This is especially important in the disputed merger of Comcast and NBC Universal. The Commission is considering this merger before it has completed its 2010 quadrennial review, and before it has examined the current state of media ownership in America. The Commission has not begun to compile its own statistics on competition, localism, and diversity, and cannot know how the merger of such powerful media corporations will affect competition among single-station broadcast owners and local media outlets.

Additionally, the Internet provides a wealth of diversity in media,[21] and the Commission should consider how this merger will affect the voices of minorities and women on the Internet. NBC owns 30% of Hulu,[22] and Comcast could not only stifle diversity by controlling the content on Hulu, it could throttle competitors to Hulu such as YouTube, BlackTV247, or web sites owned by individual television stations.[23] Moreover, Comcast already owns Fancast.com,[24] which is a competitor to Hulu. Thus, Comcast has already entered the market for offering content online, and by acquiring NBC Universal and its stake in Hulu, it stands to dominate the online television distribution market and its growing advertising revenue.[25]

Exacerbating the Already Tilted Playing Field

Similar to the experience in the aftermath of the duopoly rule relaxation, the Comcast-NBC merger would eliminate "head-to-head" competition in the 11 major markets where NBC owns broadcast stations and Comcast operates a cable franchise. These markets

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[21] *See, e.g.,* BlackTV247, http://www.blacktv247.com/.
[22] *See* Kenneth Corbin, Comcast CEO defends NBC deal, unsure on Hulu, InternetNews, March 11, 2010, http://blog.internetnews.com/kcorbin/2010/03/comcast-ceo-defends-nbc-deal-u.html.
[23] In the past, Comcast has throttled traffic it has deemed unwanted for reasons that may be anticompetitive. *See Comcast Corp. v. Federal Communications Commission,* 600 F.3d 642, 642 (D.C. Cir. 2010).
[24] *See* Fancast, http://www.fancast.com/.
[25] *See* Dianna Dilworth, Marketers expect increase in ad revenue this year, Datran Media, April 01, 2010 http://www.dmnews.com/marketers-expect-increase-in-ad-revenue-this-year-datran-media/article/167059/ ("As the economy rebounds, marketers are spending more money on online channels, which are both cost effective and measurable". A survey found that 93.6% of marketers will increase their budgets for online marketing next year.)

currently account for almost 25% of U.S. TV households.[26] Each of these markets would lose a competitor for local and political advertising.[27] This could lead to a significant decline in competition in local advertising markets and excessive domination by the merged company. As a result, advertisers would lose an alternate outlet.[28]

Meanwhile, other local broadcasters - particularly smaller, independent ones - already facing ad revenue declines in an economic downturn – would be unable to offer package deals and volume discounts for advertising across multiple channels the way that a merged Comcast/NBC could. These stand alone stations would have less money to produce local news and hire staff. In order to remain competitive, these broadcasters would have to fire staff and reduce production of local news and information, or consolidate in order to compensate for market share lost to the merged company. This result could adversely affect local diversity.

Finally, the merger would prompt other requests for similar mergers as other media market players seek to keep pace with Comcast-NBC economies of scale in the same manner that the lax LMA policy and the duopoly relaxation caused increased consolidation. Stand alone stations like minority owned facilities will have to weather yet another wave of consolidation.

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[26] Statement of Dr. Mark Cooper Director of Research Consumer Federation of America, before the Committee on Senate Commerce, Science and Transportation, CQ Congressional Testimony, March 11, 2010.

[27] *Id.* ("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. . . . The concentration of local markets and increase in concentration created by this merger, as measured by local advertising vastly exceed the level that should trigger close antitrust scrutiny under the DOJ/FTC Merger Guidelines.")

[28] *Id.*

Ms. WATERS. Mr. Chairman, before you move to the next witness, we have Mr. Mike Davis, assemblyman, that is in the audience today, and I want to make sure I announce the correct caucus that you are chairing. It is the Entertainment and Sports Caucus of the California state assembly. Welcome, Mr. Davis. We are in your district. Thank you.

Mr. CONYERS. Our next witness it the Emmy award winning television producer Alex Nogales, who is president of the National Hispanic Media Coalition and has been tireless in promoting and advocating on behalf of the under-represented voices in the industry. Welcome.

TESTIMONY OF ALEX NOGALES, PRESIDENT AND CEO, NATIONAL HISPANIC MEDIA COALITION

Mr. NOGALES. Thank you very much, Congressman Conyers, and the rest of your congressmen and congresswomen, for allowing me to speak here today.

I have a long version and a short version of my testimony.

Mr. CONYERS. Shorter is always better than longer.

Mr. NOGALES. I was going to say that you have the long version. I will read you the short version. The bottom line, you will see, is one and the same.

NHMC has a long history of holding the media accountable to the public. We also have an intimate past with Comcast and NBC Universal.

Congressmen, congresswomen, there are many reasons why distinguished individuals and organizations are against this joint venture, and NHMC's reasons in media transactions are already going to be based, first and foremost, on diversity concerns.

Diversity in employment, governance, procurement, programming, minority media ownership, and philanthropy.

NHMC is not against this joint venture, providing, and only providing, that strong verifiable and enforceable conditions are imposed and agreed to by Comcast. This is a gigantic deal, one of such enormous proportions, that it is sure to bring about more media consolidation.

For the first time in our history, a cable giant, Comcast, will not only have dissemination of content but also own the content of a major film studio and television, broadcast and cable networks.

NBC has a relatively fair record with the diversity initiatives I mentioned earlier. Comcast does not. In the year 2000, the Multi-Ethnic Media Coalition signed diversity memorandums of understanding, MOUs, with ABC, NBC, CBS and Fox.

The progress at the networks has been incremental but we are a long way from where we started. And now for Comcast. Its diversity record, as I said before, is spotty. NHMC's direct involvement with Comcast began in 2005, at the time of the Adelphia/Time Warner/Comcast license transfer.

The National Latino Media Council, of which NHMC is a member, had a heated discussion with Comcast over its diversity record regarding Latinos. Shortly thereafter, Comcast released a report of its diversity numbers and efforts, promising, along the way, to include more Latinos in its employment ranks.

The report said little, as it gave percentages, but failed to provide aggregate data, making it impossible to analyze diversity performance. In July 2005, NHMC filed a petition to deny the transfer of Adelphia Communications' licenses to Comcast. NHMC asked that the transfer be designated for hearings and have conditions imposed.

In November of that same year, it was also announced that Comcast and the Hispanic Association on Corporate Responsibility, HACR, formed the Comprehensive Multi-Year Diversity Partnership. This brings us to the present.

In December 2009, HACR released a corporate inclusion index, reporting the diversity performance of 34 Fortune 100 companies, including Comcast. The index rates companies on a 100 point scale based on four diversity criteria.

Comcast received only 50 points out of one hundred. Only three companies score worse, one of which was General Electric.

Comcast, as I indicated, does not have a great diversity record, but the past is the past, and we can only concentrate on the present and the future. This is a gigantic deal, and if Comcast wants our support, it must agree to conditions.

NHMC is part of a six Latino organization team negotiating an MOU with Comcast. We are very close to agreeing on all the diversity initiatives. For NHMC, the most important initiative is media ownership.

We are not asking, any of us, for a give-away. Latinos currently make up 15 percent of the U.S. population, and with the current census, that percentage is expected to rise to 17 percent. African Americans are expected to hit 15, and the Asian Pacific Americans 5 percent. Combined, these three groups will make up from 35 to 37 percent of the national population.

Allow me to give you some other numbers. In 2008, Comcast earned over $34.3 billion in revenue. NBC earned $16.9 billion. Comcast reaches one in four cable subscribers and its service territory covers 52 percent of all ethnic able households.

NBC owns 25 local television stations, and the National Broadcast Network reaches 99 percent of U.S. homes with television sets. And I am not even referring to the affiliates. That is a couple of hundred more.

In other words, an incredible amount of revenue that a combined Comcast-NBC Universal powerhouse will earn, if this deal is approved, will come from communities of color.

It is therefore reasonable to expect that people of color should also share in the prosperity by having their own minority-owned and operated, or has been described here, have substantial ownership of those bodies, and that they should carry, Comcast should carry and distribute all of their cable systems, in all of their cable systems.

We hope you agree. This body has a say in approving the joint venture. We ask that it insist on the diversity initiatives discussed. Thank you very much.

[The prepared statement of Mr. Nogales follows:]

PREPARED STATEMENT OF ALEX NOGALES

Testimony of

Alex Nogales

President and CEO

National Hispanic Media Coalition

before the

Committee on the Judiciary

Regarding

Proposed Combination of Comcast and NBC-Universal

Los Angeles, CA

June 7, 2010

Thank you for inviting me to speak here today. My name is Alex Nogales and I am the President and CEO of the National Hispanic Media Coalition, also known as NHMC. NHMC is a national non-profit organization based here in Los Angeles with chapters across the nation in major metropolitan areas. For 25 years we have been monitoring and pressuring the media to amplify positive portrayals of Latinos and increase Latino employment in all facets of the media industry. NHMC also has a Washington, D.C. office and advocates for media and telecommunications policies that benefit the Latino community and other communities of color.

As the oldest Latino media advocacy organization in the country, we have a long history of holding the media accountable to the public. As part of that effort we have long been opposed to media consolidation as countless studies demonstrate that consolidation diminishes ownership opportunities for people of color. We also have an intimate past with both Comcast and NBC-Universal, both on a national level and locally here in Los Angeles.

Congressmen, Congresswomen, there are a lot of reasons why distinguished individuals and organizations are against this joint venture. NHMC's reasons in all media transactions are always going to be based first and foremost on diversity concerns: diversity in employment, governance, procurement, programming, minority media ownership and philanthropy.

NHMC is not against this joint venture providing, and only providing, that strong, verifiable and enforceable conditions are imposed and agreed to by Comcast. This is a gigantic deal, one of such enormous proportions that it is sure to bring about more media consolidation by other media competitors, Time Warner, Disney and FOX included. For the first time in our history a cable giant, Comcast, will not only have dissemination of content but also own the content of a major film and television network. I know you're aware of all the properties NBC-Universal and Comcast own or manage, but I've listed them nevertheless at the end of my testimony for your ready reference.

NBC has a relatively fair record with the diversity initiatives I mentioned earlier. Comcast does not. In the year 2000, the Multi-Ethnic Media Coalition, consisting of the National Latino Media Council, the NAACP, the Asian Pacific American Media Coalition and Indians in Film and Television, signed Memorandums of Understanding (MOU) with ABC, NBC, CBS and FOX. The initiatives in the MOU were intended to increase the number of people of color both in front and in back of camera, to increase our numbers in procurement, in the Executive ranks and to have programming with minority leads and themes. The progress has been incremental, but it is nevertheless progress - a long way from where we started. At NBC these initiatives under the leadership of Jeff Zucker and Paula Madison have now extended to NBC's other entertainment cable networks, USA, Bravo, Syfy among them. The film entity, Universal, sorely lacks minority participation and we are committed to commencing that process this year.

And now for Comcast… Its diversity record is spotty. NHMC's direct involvement with Comcast began in 2005 at the time of the Adelphia/Time Warner/Comcast License Transfer. At that time, Comcast carried Si TV then the only Latino operated English language cable network in only three small markets. TV One, a predominantly African American network in which Comcast had an economic interest was carried in Dallas. Si TV was not, despite the fact that Dallas has a much greater Latino population than African Americans. Understand, we didn't

begrudge the African American TV One leadership for Comcast's action. However, we did begrudge Comcast for looking out for its economic interest while ignoring the needs of the sizeable Dallas Latino population. Senator Salazar, now Secretary of the Interior, Representatives Baca, Becerra, Ortiz, Gonzalez and Solis, now Secretary of Labor, sent a letter to Comcast President and CEO Brian Roberts, requesting a meeting and a report on Comcast's diversity practices, specifically regarding Latinos.

The National Latino Media Council, of which NHMC is a member, had a heated discussion with Comcast over the Si TV matter as well as its diversity record regarding Latinos. Shortly thereafter Comcast released a report of its diversity numbers and efforts promising along the way to include more Latinos in its employment ranks. The report said little as it gave percentages but failed to provide aggregate data making it impossible to analyze diversity performance.

In July 2005, NHMC filed a petition to deny the transfer of Adelphia Communications' licenses to Comcast. NHMC asked that the transfer be designated for hearing and/or have the following conditions imposed: (1) fulfill enforceable benchmarks for deployment of advanced services, new cable services and customer service to minority communities; (2) provide English language programming oriented to Hispanics and other minorities; (3) submit quarterly reports on national, regional and local employment recruitment of minorities; and (4) increase over time its employment of minorities in decision-making positions.

In November of that same year, it was also announced that Comcast Corporation and the Hispanic Association on Corporate Responsibility (HACR) formed a comprehensive, multi-year partnership in which HACR would support Comcast's continuing outreach efforts to effectively engage the Hispanic community in the company's business operations and assist Comcast with further strengthening its relationships with the Hispanic community. Comcast's ongoing diversity commitment has four major areas of focus: workforce diversity, supplier diversity, programming, and community investment. Comcast formed this partnership with HACR, a coalition of 14 prominent national Hispanic organizations, to help achieve continued growth and success in each of these areas.

This brings us to the present. In December 2009, HACR released a Corporate Inclusion Index, reporting the diversity performance of 34 Fortune 100 companies, including Comcast. The index rates companies on a 100 point scale, based on four criteria: employment which includes workforce and recruitment; procurement; philanthropy and governance. Comcast received only 50 out of 100 points; only 3 companies scored worse, one of which was General Electric, NBC Universal's parent organization, which scored a pitiful 30 out of 100 points. The score was low as a consequence of not answering several questions, which GE felt were proprietary.

Comcast, as I've indicated does not have a great diversity record. But the past is the past, and we can only concentrate on the present and future. This is a gigantic deal and if Comcast wants our support for the merger, it must agree to conditions. NHMC is part of a six Latino organizations team negotiating an MOU with Comcast. We're very close to agreeing on all the diversity initiatives to be contained in the MOU and insist on having verifiable, enforceable data in employment, procurement, governance, programming and philanthropy. And we must have the

right to grade diversity performance without restrictions. Most important of all, people of color must have a piece of the action.

This is not a give away. Latinos currently make up 15% of the U.S. population and with the current census that percentage is expected to rise to 17%. African Americans are expected to hit 15% and Asian Pacific American 5%. Combined, these three groups will make up 35 to 37 percent of the national population.

Allow me to give you some other numbers. In 2008, Comcast earned over $34.3 billion in revenue. NBC earned $16.9 billion. Comcast reaches one in four cable subscribers and its service territory covers 52% of all ethnic cable households. NBC owns 25 local television stations and the national broadcast network reaches 99% of U.S. homes with television sets. Reports have indicated that Comcast enjoys an 80% profit margin. In other words, an incredible monetary amount of revenue that a combined Comcast NBC-Universal powerhouse will earn if this deal is approved will come from communities of color. Given these statistics, it is reasonable to expect that people of color should also share in the prosperity by having their own minority owned and operated networks carried and distributed by Comcast in all of their cable systems. We hope you agree, and if this body has a say in approving the joint venture, we hope that it will insist on the diversity initiatives discussed. Thank you.

Appendix A

Comcast and NBC's post merger properties

Cable TV Networks
USA
Bravo
Syfy
Universal HD
CNBC
CNBC World
MSNBC
Chiller
mun2
Sleuth
Oxygen
E!
Golf Channel
Style Network
Versus
G4
The Comcast Network
Comcast Regional Sports Networks
CSN Bay Area (67%)*
CSN California
CSN Mid-Atlantic
CSN Chicago (30%)*
CSN MTN (50%)*
CSN New England
CSN Northwest
CSN Philadelphia (85%)*
CSS (81%)*
SNY (8%)* (not managed)
New England Cable News
Exercise TV (65%)*
Sprout (40%)*
ShopNBC (39%)* (not managed)
The Weather Channel (25%)* (not managed)
Universal Sports (8%)* (not managed)
FearNet (33%)* (not managed)
A&E (16%)* (not managed)
A&E HD (16%)* (not managed)
Biography (16%)* (not managed)
History (16%)* (not managed)
History International (16%)* (not managed)
History en Espanol (16%)* (not managed)
Military History (16%)* (not managed)

Lifetime (16%)* (not managed)
Lifetime Movie Network (16%)* (not managed)
Lifetime Real Women (16%)* (not managed)
Crime and Investigation (16%)* (not managed)
TVOne (33%)* (not managed)
Retirement Living TV (RL TV) (3.4%)*(not managed)

International Channels
Syfy Universal
Diva Universal
Studio Universal
Universal Channel
13th Street Universal
CNBC Europe
CNBC Asia

Broadcast Networks
NBC
Telemundo

NBC Television Network
234 NBC-affiliated stations
across the country

Digital Media Properties
CNBC.com
ivillage.com
NBC.com
fandango.com
movies.com
dailycandy.com
bravotv.com
eonline.com
thegolfchannel.com
golfnow.com
usanetwork.com
oxygen.com
style.com
chillertv.com

syfy.com
versus.com
comcastsportsnet.com
holamun2.com
universalhd.com
g4tv.com
sleuthchannel.com
accesshollywood.com
nbcsports.com
nbcolympics.com
televisionwithoutpity.com
exercisetv.tv (65%)*
sproutonline.com (40%)*
universalsports.com (8%)* (not managed)
fearnet.com (33%)* (not managed)
msnbc.com (50%)* (not managed)
hulu.com (27%)* (not managed)
weather.com (25%)* (not managed)

NBC Local Media Division
10 NBC owned and operated
broadcast TV stations
New York / WNBC
Los Angeles / KNBC
Chicago / WMAQ
Philadelphia / WCAU
San Jose / KNTV
Dallas/Ft.Worth / KXAS
Washington / WRC
Miami / WTVJ
San Diego / KNSD
Hartford / WVIT

Telemundo Stations
15 Telemundo owned and
operated stations
Los Angeles / KVEA
New York / WNJU
Miami / WSCV

Houston / KTMD
Chicago / WSNS
Dallas/Ft.Worth / KXTX
San Antonio / KVDA
Las Vegas / KBLR
San Francisco/San Jose / KSTS
Phoenix / KTAZ
Fresno / KNSO
Denver / KDEN
Boston/Merrimack / WNEU
Tucson / KHRR
Puerto Rico / WKAQ
1 independent Spanish-language
owned and operated station
Los Angeles/KWHY

NBC Universal Domestic & International Distribution
Distributes NBC Universal's first-run, syndicated and library content nationally and internationally, including more than 55,000 TV episodes

Universal Studios/Production
Universal Pictures
Focus Features
Universal Media Studios
Universal Cable Productions
Carnival
Cattleya (18.5%)* (not managed)

Universal Studios Home Entertainment
Distributes more than 4,000 film titles

Parks & Resorts
Universal theme parks
Orlando (50%)*
Hollywood

Mr. CONYERS. Ms. Kathryn Galan has created the Latino Producers Academy, the Latino Writers Lab, the Latino Media Market, the latino Media resource Guide, and was a production vice president at Walt Disney Studios before she became the executive director of the National Association of Latino Independent producers. We welcome you.

TESTIMONY OF KATHRYN F. GALAN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF LATINO INDEPENDENT PRODUCERS

Ms. GALAN. Thank you, Chairman Conyers, Representative Waters, and the other Members of the House Judiciary Committee. I appreciate your time and attention to this significant proposal, the greater concentration of power, influence and outreach, into a single media entity that would result from the merger of Comcast and NBC Universal.

I am the executive director of the National Association of Latino Independent Producers, a national arts, nonprofit organization, that represents the community of Latino media professionals. For 11 years, NALIP has worked to promote the advancement, development and funding of Latino and Latino film and media arts in all genres.

Our constituency is quite broad. It includes Latino and Latina producers, directors, writers, and crew, that create media content. Our community of professionals work in film, in public and commercial television, and in news media. They make feature films, television series and documentaries. They fill executive positions in media companies and they advocate for more representation of Latinos everywhere that you see media.

A further conglomeration of power in the media industry concerns my constituency on two fronts. The first concern has been articulated here and arises from history. When the decision making and economic power of our business is more concentrated, the decrease in competition directly impacts content creators. It has led to fewer opportunities for Latino production companies, distributors, media entrepreneurs, station and channel owners and suppliers, as well as content producers and media artists.

The past 15 years have been marked by a series of acquisitions, mergers and partnerships, that have greatly decreased the number of independent buyers or employers for creative content.

This has also centralized the nexuses of opinion and information, putting greater power in the hands of few.

The second concern, however, arises not from history but from the reality of the present. I am here today primarily to provide you with the information that is most troubling to the Latino media community, the lack of representation of Latinos across the broad spectrum of the media landscape.

I would like to bring these facts to your attention because we believe, at NALIP, and throughout our constituency, that change will only come around these issues of diversity and representation in film, on television, and that the decision making levels of a media corporation like the proposed Comcast-Universal NBC, if specific concrete, generous, and even aggressive commitments are made to hire and promote Latinos and other executives of color, to develop and produce the material of Latino producers, writers and directors, and to invest in the next generation of minority managers and artists, so that we can't sit here, 5 or 10 years from now, providing this Committee with the same disturbing statistics.

I do not need to remind the Committee of the impact and influence of media. We look to creative content to educate and entertain, to acculturate and to serve as our ambassador to the world.

The media industry is a very lucrative one, that employs a significant workforce, and one that generates considerable profits, not just in a year when product is produced, but its digital assets for many, many years in the future.

A benchmark of a rich and thriving democracy is diverse and representative media. Latinos do represent 15 percent of the national population. However, when considered in terms of age demographics, Latinos represent 24 percent of all Americans under the age of 30, with a median age of 27.7, the most sought-after and valuable demographic to advertisers, as well as the most avid moviegoers.

So today, nearly one out of every four Americans is a Latino in the most desirable age demographic for media companies. Yet the status of Latinos in the entertainment industry lags far behind that of other ethnic minority groups and other protected classes.

At this time, there is only one Latino senior executive, that is to say, president, senior vice president, vice president, director or manager, in any of the major or minor/major theatrical motion picture companies like Universal or Universal Focus, in the departments of development or production, marketing, publicity or acquisitions.

There is stronger representation in the television industry, including CBS President Nina Tassler, and newly-appointed NBC VP of drama development, Lourdes Diaz. But the programming of Latino-themed or Latino-created films in television is scant.

In the past decade, all four major broadcast networks have made important strides, as Alex indicated, in increasing diversity. More actors of color are on the air, particularly as ensemble players.

Progress has been slower in areas that, arguably, could have the great impact, writing and producing. White males have always dominated the entertainment industry, and that continues to be largely the case.

The Directors Guild report, and other analyses of independent production, estimate that only 2 to 3 percent of directors in film and television are Latino. Only 3 to 5 percent of writers, 5 to 7 percent of roles and characters are Latino.

NALIP has advocated for more images by and about Latinos for 11 years, and gathered metrics alongside the guilds, unions, and other advocacy organizations. There are small relative improvements, but the Writers Guild of America, for example, notes in their 2009 Hollywood Writers Report, which was written, in part, by Dr. Hunt, that minority writing and earning percentages have been frozen since 1999.

Lower-income consumers of media over-index as viewers of public and free broadcast media. Here, it is critical to have a broad, balanced representation of Latinos as well. Unfortunately, in recent years, fewer hours by producer, directors of color have made it to broadcast. There have also been fewer resources available in the sectors that support nonfiction programming, which include documentaries that reflect the communities and concerns of the Latino population, and has made it more difficult for independent Latino and native producers to develop and deliver new work.

According to a 2009 report on women and minorities by the Corporation for Public Broadcasting, where the vast majority of U.S.

documentaries receive funding and broadcast, under 19 percent of their programs feature minorities, any minorities, down from 25 percent 10 years ago, and less than 7 percent of minority program is seen in primetime.

As Comcast and NBC Universal ask to take an even greater share of the media real estate, we ask that they play an even stronger role in the diversity efforts of the entertainment industry.

The long-term struggle for accurate portrayals and economic inclusion of people of color is an initiative with far-reaching social and cultural consequences. Given the significant deficiencies and the representation of racial minorities in their employment ranks, including their content creators and suppliers, we ask that Comcast, NBC Universal articulate a plan to address this plan before they receive the community support in moving forward. Thank you.

Mr. CONYERS. Dr. Darnell Hunt received his doctorate in sociology from UCLA. He has written a number of books on the subjects relating to media, race and cultural studies, and we are proud to have you here today.

TESTIMONY OF DARNELL M. HUNT, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA, LOS ANGELES, CA

Mr. HUNT. Thank you, Chairman Conyers, Representative Waters, and other Members of the Committee.

I am a sociologist who was invited to comment on the state of diversity in the Hollywood industry as background for today's discussion about the proposed merger.

For nearly 20 years, I have worked to better understand the state of diversity in the Hollywood entertainment industry. I have collaborated with both industry insiders, such as the WGA, the Writers Guild of America, and the Screen Actors Guild, and community advocates, such as the NAACP, to generate reports on the Hollywood industry aimed at documenting patterns in minority employment, access and earnings.

These experiences, over nearly two decades, have given me firsthand knowledge about the state of diversity in the Hollywood creative community. In a world where neither race nor gender matters, we would observe a Hollywood industry where minorities and women participate at rates comparable to their share of the general population.

Unfortunately, we do not live in such a world. Our world is one in which race and gender continue to play profound roles in the choices people make. These categories tend to define the risks we are willing to take to pursue our dreams. They also motivate our tendency to feel more comfortable working with those who seem similar to ourselves.

These realities are particularly salient in the Hollywood industry. It is a highly competitive industry, dependent upon creative talent, freedom of expression, and more than a fair share of good luck. It is also a profoundly insular industry, that White males have traditionally dominated, where employment opportunities rest squarely on personal networks largely defined by race and gender.

Indeed, if we consider the latest available statistics, we see that we have made little progress, if any, on the Hollywood diversity front, despite the continuing diversification of the American population.

In 2007, minorities accounted for about a third of the American population, or 34 percent, but only 9 percent of its employed television writers and 6 percent of its employed film writers. That is all minorities combined. In other words, minorities were under-represented among employed television and film writers by factors of nearly four and six, respectively.

Meanwhile, women writers continue to lag behind their male counterparts, accounting for only about 28 percent of employed television writers and 18 percent of employed film writers, under-representation by factors of nearly two and three, respectively.

Now although there is relatively little research available regarding diversity among Hollywood directors, a recent study by the Directors Guild of America found that White males, who, as a group, comprise only about 33 percent of the U.S. population, directed 80 percent of the episodes in the top 40 television shows during the 2004-2005 season.

An anecdotal observation suggests the state of diversity within the directing corps is even more troubling in film.

While at first glance, the numbers appear to be better in front of the camera, when we look more closely, we see a similar pattern of under-employment and exclusion among minority actors.

That is, although the White share of all television and theatrical roles in 2008, 72.5 percent, was only marginally greater than the White share of the population, 67 percent, when we look at the most important leading roles, we see that White dominance was more pronounced.

Here, Whites accounted for 76 percent of the roles and minorities combined for only 24 percent. And these figures are consistent with other studies, noting that White characters tend to dominate, not only in terms of the on-screen population, but also in terms of time on the screen.

Minority characters, by contrast, are typically relegated to being the coworkers and/or friends of the more prominent White characters, the characters around whom stories usually revolve.

In short, my experience has convinced me that business as usual in the industry is wholly inadequate for addressing the stagnation in Hollywood diversity that we see today.

A new paradigm is needed that understands diversity as a public good, and a sure bet for the bottom line. This new paradigm would move beyond symbolic pronouncements and token gestures. It would establish realistic goals that the industry can agree upon, reasonable timetables, and effective mechanisms for an industry truly committed to catching up with a changing America. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hunt follows:]

PREPARED STATEMENT OF DARNELL M. HUNT

Testimony on Hollywood Diversity
Hearing on the Proposed Combination of Comcast and NBC/Universal

Dr. Darnell M. Hunt
Director, Ralph J. Bunche Center for African American Studies
Professor of Sociology
University of California, Los Angeles
June 7, 2010

For nine years, I have served as Director of the Ralph J. Bunche Center for African American Studies and Professor of Sociology at the University of California, Los Angeles (UCLA). Prior to my tenure at UCLA, I chaired the Department of Sociology at the University of Southern California (USC), where I was a professor for seven years.

For nearly 20 years I have worked to better understand the state of diversity in the Hollywood entertainment industry. I have collaborated with both industry insiders and community advocates to generate reports on the Hollywood industry aimed at documenting patterns in minority employment, access, and earnings. I have also worked to identify best practices that might facilitate increased industry diversity. My earliest work was as a staff member of the U.S. Commission on Civil Rights, which investigated diversity trends in Hollywood for a 1993 hearing largely focused on the 1992 Los Angeles uprisings. I followed this work up with a 2000 study on African Americans in television, "The African American Television Report," which was commissioned by the Screen Actors Guild (SAG). Two follow-ups to this study – part of the Bunche Center's "Prime-Time in Black in White" research series – were produced in 2002 and 2003. Since 2005, I have worked with the Writers Guild of America, West (WGA) to produce its "Hollywood Writers Report," which examines trends in employment and earnings for minority, women and older writers in television and film. I have also served as a consultant throughout this period to the National Association for the Advancement of Colored People's (NAACP) "Out of Focus, Out of Sync" series, which is designed to monitor industry progress on the diversity front and to inform the organization's advocacy efforts. These experiences, over nearly two decades, have given me firsthand knowledge about the state of diversity in the Hollywood industry.

Business As Usual: The Case of Network Television

In a world where neither race nor gender matters, we would observe a Hollywood industry in which minorities and women participate at rates comparable to their shares of the general population.

Unfortunately, we do not live in such a world.

Our world is one in which race and gender continue to play profound roles in the choices people make. These categories tend to define the risks we are willing to take to pursue our dreams; they also motivate our tendency to feel more comfortable working with those who seem similar to ourselves. These realities are particularly salient in the Hollywood industry. It is a highly competitive industry dependent upon creative talent, freedom of expression, and more than a fair share of good luck. It is also a profoundly insular industry that white males have traditionally dominated, where employment opportunities rest squarely on personal networks largely defined by race and gender.

Consider the case of primetime television. On May 28, 1999 an article appeared in the *Los Angeles Times* that would have a profound impact on the politics of prime time. Television beat reporter Greg Braxton revealed that the four major television networks – ABC, CBS, NBC, and Fox – planned to introduce twenty-six new situation comedies in

the fall 1999 season. Incredibly, however, not one of the new programs would feature a minority in a lead role. "A White, White World on TV's Fall Schedule," as the story was headlined, was clearly out of sync with a society that was more than 30 percent minority and becoming more diverse by the minute. Not long after this revelation, public discussions of the profound disconnect between the nation's demographic makeup and prime time portrayals of race reached a feverish pitch.

By the end of that summer, the networks had reacted quickly to address the situation by adding minority characters to the previously all-white casts. As at least one content analysis of the 1999 season would later suggest, however, these eleventh-hour additions were largely window dressing, tokens that facilitated the business-as-usual, white world of prime time television to continue largely unscathed.[i]

Indeed, a month later the NAACP anchored a nineteen-member "grand coalition" created to press for the diversification of network television.[ii] A report from the NAACP's "Out of Focus, Out of Sync" series would later explain how the coalition focused its efforts on increasing minority employment in the industry as a means to the age-old end of producing more progressive images for minorities:

> The current initiative has focused primarily on the greater inclusion of racial minorities in the broadcast network television industry. Although the accurate depiction of minorities in front of the camera continued to be a critical consideration, the impetus behind the current initiative was the belief that once integration took place behind the camera in executive and decision-making positions, the proper portrayal of the American public would naturally evolve.[iii]

Following the coalition's threat of network and advertiser boycotts, a 51st Annual Emmy Awards program in which a few of the virtually non-existent minority award winners publicly criticized the lack of industry diversity[iv], and the employment guilds' public pledge to join this latest push for increasing minority employment in the industry[v], voluntary agreements were signed between the coalition and each of the networks. The non-binding documents stipulated, among other provisions, that the networks would strive to increase minority casting, create programs to develop young writers, develop plans to increase purchases from minority vendors, and appoint network diversity executives responsible for implementing the other plans.[vi]

By the end of 2003, the diversity agreements —which some critics had described as "lacking teeth" -- had been in place for nearly four years. The networks had established vice president positions focused on diversity, and periodic reports by industry watchdog groups revealed possible signs of progress, albeit amidst considerable industry inertia.[vii]

But the coalition itself had largely fallen apart.[viii] Member advocacy groups had begun to feel the tug of group-specific interests, prompting them to issue separate report cards on industry efforts to diversify. Latino, Native American, and Asian American evaluations of the industry were generally negative, while a 2003 NAACP report was cautiously optimistic about the progress made in network television.

Meanwhile, the Federal Communications Commission (FCC) moved forward with its plans to further deregulate the media industry, a development that would most likely retard efforts for meaningful diversification by further consolidating media ownership in a few hands, thereby reducing the points of access for those traditionally excluded from industry participation.[ix]

Little of the concern surrounding minority exclusion from the industry was new. A series of studies by the U.S. Commission on Civil Rights in the late 1970s had documented the insular nature of the television industry, showing how the absence of minorities behind the camera was intimately connected to problems with the images in front of it.[x] But this realization seemed to result in minimal change at best. Testifying at the 1993 Los Angeles hearing on which I worked, the head of entertainment at CBS echoed a common industry refrain —while much work remains to be done, the industry is committed to diversity:

> I think that there are and have been some successes and there are things that the industry, I think, still has a lot of work to do on. I think that certainly one of the great successes is that there is much more awareness and concern about the problem. I don't think there's a development session that I attend or a casting session that I go to where the issue of minority representation and portrayal is not discussed.[xi]

Meanwhile, other witnesses were less optimistic about the industry's commitment to diversity and the resulting prospects for meaningful change. An official for the WGA — an industry labor union whose own membership was only about 4 percent minority at the time —suggested that the talk of "progress" was little more than an attempt at public relations. Reports documenting the involvement of minority writers, he noted, showed only "miniscule incremental advances":

> I mean, we're sitting here going over and playing this numbers game. If you look at the last two reports that preceded this one [a prominent guild study on industry diversity], you could see some really miniscule incremental advances in certain areas for certain groups.[xii]

The Bottom Line

What I have witnessed over the years is a clear pattern concerning responses to the issue of diversity in the Hollywood industry. This pattern is defined by five basic moments connected in a circular chain: 1) periodic circulation of outrageously insensitive and offensive portrayals of minorities (usually black Americans, as other nonwhites were virtually invisible), 2) public outrage and/or pressure, 3) the release of depressing statistics about minority exclusion from or underemployment in the industry, 4) token or symbolic industry diversity initiatives designed to appease critics, and 5) a return to business-as-usual practices, which virtually guaranteed the conservation of a radically insular industry dominated by white males.

Indeed, if we consider the latest available statistics, we see that we have made little progress on the Hollywood diversity front (in some cases we have gone backwards[xiii]), despite the continuing diversification of the American population.

In 2007, minorities accounted for about a third of the American population (33 percent), but only 9 percent of its employed television writers and 6 percent of its employed film writers. In other words, minorities were underrepresented among employed television and film writers by factors of nearly 4 and 6, respectively (see Figures 1 and 2). Meanwhile, women writers continued to lag behind their male counterparts, accounting for only 28 percent of employed television writers and 18 percent of employed film writers (see Figure 3) – under-representation by factors of nearly 2 and 3, respectively.[xiv] Although relatively little research is available regarding diversity among Hollywood directors, a recent study by the Director's Guild of America found that white males – who as a group comprise only about 33 percent of the U.S. population -- directed 80 percent of the episodes from the Top 40 television shows during the 2004-2005 season.[xv] Anecdotal observations suggest that the state of diversity within the directing corps is even more troubling in film.

While at first glance, the numbers appear to be better in front of the camera, when we look more closely we see a similar pattern of underemployment and exclusion among minority actors. That is, although the white share of all television and theatrical roles in 2008 (72.5 percent) was only marginally greater than the white share of the population (67 percent) (see Figure 4), when we look at the most important, leading roles we see that white dominance was more pronounced. Here, whites accounted for 76 percent of the roles, and minorities combined for only 24 percent (see Figure 5).[xvi] These figures are consistent with other studies noting that white characters tend to dominate not only in terms of the on-screen population but also in terms of *time* on the screen. Minority characters, by contrast, are typically relegating to being the co-workers and/or friends of the more prominent white characters, the characters around whom stories usually revolve.[xvii]

In short, my experience has convinced me that business as usual in the industry is wholly inadequate for addressing the stagnation in Hollywood diversity. A new paradigm is needed that understands diversity as a public good and a sure bet for the bottom line. This new paradigm would move beyond symbolic pronouncements and token gestures; it would establish realistic goals, reasonable timetables, and effective mechanisms for an industry truly committed to catching up with a changing America.

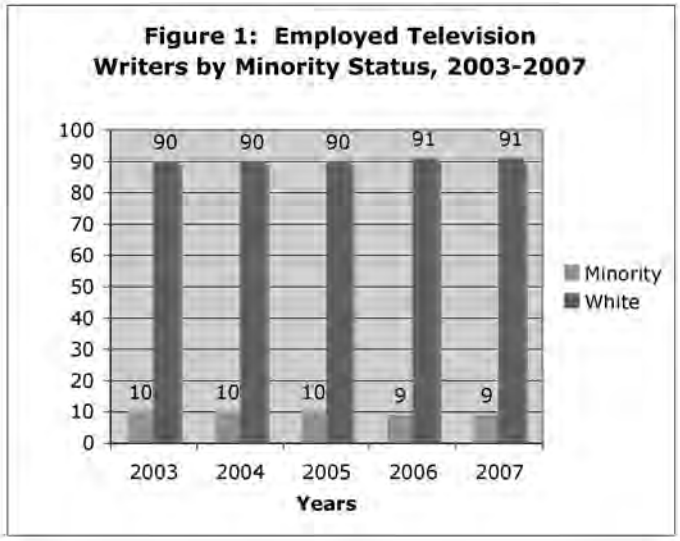


Figure 1: Employed Television Writers by Minority Status, 2003-2007
100
90
80
70
60
50
40
30
20
10
0
90
90
90
91
91
10
10
10
9
9
2003
2004
2005
2006
2007
Years
Minority
White

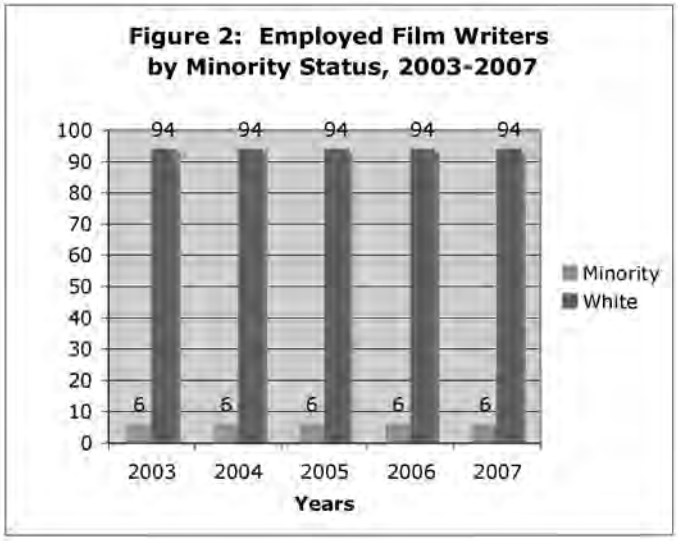


Figure 2: Employed Film Writers by Minority Status, 2003-2007
100
90
80
70
60
50
40
30
20
10
0
94
94
94
94
94
6
6
6
6
6
2003
2004
2005
2006
2007
Years
Minority
White

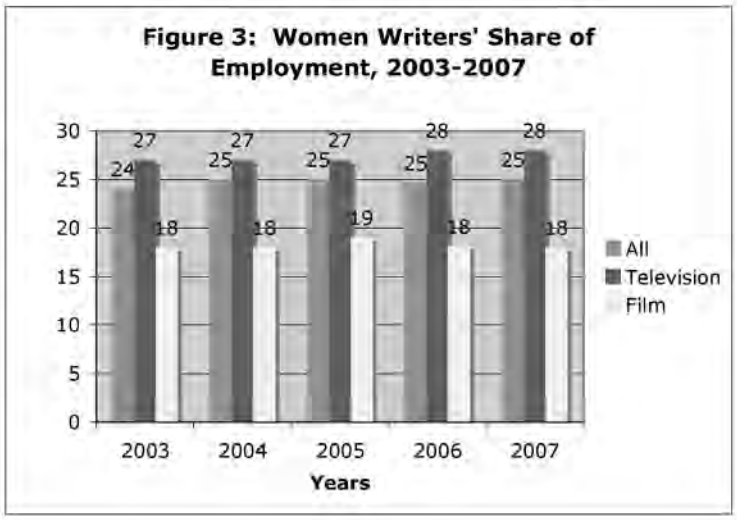


Figure 3: Women Writers' Share of Employment, 2003-2007
30
25
20
15
10
5
0
24
27
18
25
27
18
25
27
19
25
28
18
25
28
18
2003
2004
2005
2006
2007
Years
All
Television
Film

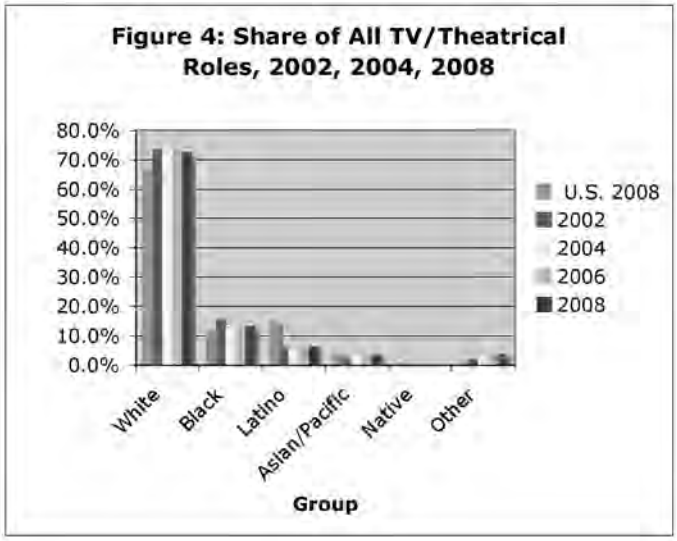
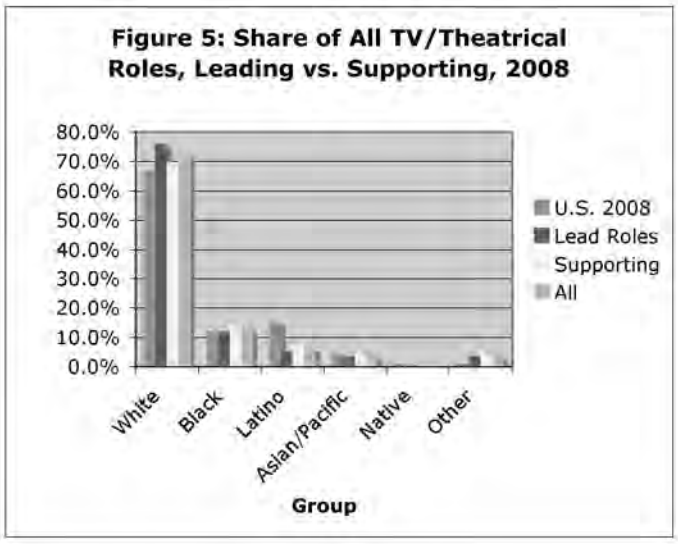


Figure 4: Share of All TV/Theatrical Roles, 2002, 2004, 2008
80.0%
70.0%
60.0%
50.0%
40.0%
30.0%
20.0%
10.0%
0.0%
White
Black
Latino
Asian/Pacific
Native
Other
Group
U.S. 2008
2002
2004
2006
2008



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[i] *The African American Television Report, 2000: Progress and Retreat*, Screen Actors Guild.
[ii] *Los Angeles Times*, September 11, 1999, p. F2.
[iii] *Out of Focus – Out of Sync: Take 3*, National Association for the Advancement of Colored People, 2003, p. 7.
[iv] *Los Angeles Times*, September 13, 1999, p. F13
[v] *Los Angeles Times*, October 27, 1999, p. F1.
[vi] For example, see *Los Angeles Times*, January 6, 2000, p. A1; *Los Angeles Times*, January 7, 2000, p. A1; *Los Angeles Times*, January 12, 2000.
[vii] Throughout the period, a number of studies were produced by the employment guilds (e.g., the Screen Actors Guild, the Writers Guild of America, West, and the Directors Guild of America), advocacy groups (e.g., Children Now, the Asian Pacific Media Coalition, the National Latino Media Council, and the NAACP) and other research organizations (e.g., the Bunche Center for African American Studies at UCLA) that chronicled lackluster industry progress on the diversity front.
[viii] See *Los Angeles Times*, October 14, 2003, p. C2.
[ix] See Bielby, William T. and Denise D. Bielby, 2003, "Controlling Primetime: Organizational Concentration and Network Television Programming Strategies," *Journal of Broadcasting and Electronic Media*, 47, 573-596. See also *2009 Hollywood Writers Report: Rewriting an All-Too-Familiar Story?*, Writers Guild of America, West. This

latter report discusses a 34 percent decline in the employment of black television writers following the merger of UPN and WB.

[x] *Window Dressing on the Set: Women and Minorities in Television*, U.S. Commission on Civil Rights, 1977.

[xi] Hearing Before the United States Commission on Civil Rights, "Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination – Los Angeles Hearing," June 15-17, 1993.

[xii] Ibid.

[xiii] See the *2009 Hollywood Writers Report*.

[xiv] Ibid.

[xv] Directors Guild of America Television Diversity Report press release, February 21, 2006.

[xvi] *2008 Casting Data Report*, Screen Actors Guild.

[xvii] See, Hunt, Darnell M. 2005, *Channeling Blackness: Studies on Television and Race in America*, New York, Oxford University Press.

Mr. CONYERS. Frank Washington, Cornell University graduate. Yale University Law School. Carter administration, with President Carter administration, with the Domestic Policy Council. Later became deputy chief of the Federal Communications Commission. He did not work with Kevin Martin, who is present here at this hearing, and later became vice president of Time Mirror Company. He also served as president and CEO of System Integrators, here, in California. Welcome.

TESTIMONY OF FRANK WASHINGTON, CHAIRMAN AND CEO, TOWER OF BABEL LLC

Mr. FRANK WASHINGTON. Thank you, Mr. Chairman, Representative Waters, other Members of the Committee. I am here today to relate my experience with Comcast, what it portends for program diversity and service to minority audiences, and, as a consequence, why I support the Comcast-GE joint venture.

I have had a long history with minority participation in media. This includes my invention of the minority tax certificate while in the Carter White House and at the Federal Communications Commission. The certificate did more to foster minority ownership of broadcast and cable media than anything else before or since.

My focus today, however, is on my experience with Comcast in the role of founder and CEO of an ethnic language television service called Crossings TV. Crossings reaches 2 million ethnic language people in the Central Valley of California and New York City on Time Warner cable.

The inspiration for Crossings came from Comcast. In 2003, the senior Comcast executive then overseeing Northern California, pointed out that there was a large Russian language population in Sacramento for whom no local, in-language TV services were available.

I separately determined that there was a similar lack of service to a variety of other, mostly Asian language groups, including Hmong, Lao, Vietnamese, Chinese, South Asian and Filipino. At the time, I was also a part-owner of a full power television station in Seattle that offered a multi-language service.

Thus I knew that the ethnic populations in the immediate Sacramento area were not large enough, in terms of population or potential ad revenue, to support the acquisition of a full power TV station, even if one were available.

So I devised a different approach, based upon buying a lower power TV station at a small fraction of the cost. To compensate for the much lower over-the-air coverage area, I sought carriage on the Comcast-owned cable system in Sacramento. But I faced a challenge. There was, and is, no Government requirement for low power TV stations to be carried by cable.

A further complication was that a private equity firm, interested in investing in my venture, would only do so if we had cable carriage. Quite simply, without Comcast, there would have been no Crossings TV.

In 2004, we approached Comcast in Sacramento, which by then was under a different executive from the one who gave me the idea. He quickly grasped what we were proposing and said he wanted to carry out service throughout the Sacramento area. This would

give us several times the coverage of our low power over-the-air signal.

My mid 2005, we had a signed agreement. What is more, we approached Comcast a number of months later about also being carried in Stockton, near Sacramento. To our pleasure, they not only agreed but suggested that Crossings also be distributed throughout the entire Central Valley, including Fresno, Chico, Modesto, Stockton, Yuba City, Marysville, as well as Sacramento.

We had been on Comcast in these areas since 2006. We are currently engaged in discussions with Comcast regarding other markets.

The question is why. Why did Comcast do this? Comcast is known for its fair but tough-minded business approach. Based on this, we came to the table with a well-thought-out business plan and an executive team with demonstrable ability to execute it. We made the case that much of the Comcast growth opportunity, in its mostly urban markets, was likely to come from minority audiences.

Comcast decided to carry Crossings because it meant a unique need and because it was based on a sound business premise. Crossings has unique local programming that draws ethnic subscribers who might sign up for ethnic language pay tiers.

Comcast has made diverse programming a priority because it sees the value in growing its business. This is Adam Smith's invisible hand operating at its best, motivating a large, well-run company, to cater to under-served audiences because it benefits Comcast shareholders. This is what America is all about.

That said, Comcast should be acknowledged for realizing the power and the promise of this country's ethnic communities. Not every media company does.

My experience with the minority tax certificate and the absence of minority-owned media alternatives suggests that too often, companies either willfully ignore, or incompetently overlook the business opportunity represented by this country's minorities. Comcast appears to be a strong exception in this regard.

All this suggests that Comcast and NBCU together will create a media company more sensitive to the needs and interests of minorities than most. That is why I support their joint venture. Thank you.

[The prepared statement of Mr. Washington follows:]

PREPARED STATEMENT OF FRANK WASHINGTON

PROPOSED COMBINATION OF COMCAST AND NBC-UNIVERSAL

JUNE 7, 2010 TESTIMONY OF CROSSINGS TV CEO

Frank Washington

I AM HERE TODAY, TO RELATE MY EXPERIENCE WITH COMCAST, WHAT IT PORTENDS FOR PROGRAM DIVERSITY AND SERVICE TO MINORITY AUDIENCES, AND AS A CONSEQUENCE, WHY I SUPPORT THE COMCAST – GE JOINT VENTURE.

I HAVE HAD A LONG HISTORY WITH MINORITY PARTICIPATION IN MEDIA. THIS INCLUDES MY INVENTION OF THE MINORITY TAX CERTIFICATE WHILE IN THE CARTER WHITE HOUSE AND AT THE FEDERAL COMMUNICATIONS COMMISSION. THE CERTIFICATE DID MORE TO FOSTER MINORITY OWNERSHIP OF BROADCAST AND CABLE MEDIA THAN ANYTHING ELSE BEFORE OR SINCE. I AM ALSO A CO-FOUNDER OF BLACKBIRD (AT BLACKBIRDHOME.COM), AN IDENTITY BROWSER TARGETING THE BLACK COMMUNITY. MY FOCUS TODAY, HOWEVER, IS ON MY EXPERIENCE WITH

COMCAST IN THE ROLE OF FOUNDER AND CEO OF AN ETHNIC LANGUAGE TELEVISION SERVICE CALLED CROSSINGS TV. CROSSINGS REACHS TWO MILLION ETHNIC LANGUAGE PEOPLE IN THE CENTRAL VALLEY OF CALIFORNIA AND NEW YORK CITY.

THE VERY INSPIRATION FOR CROSSINGS CAME FROM COMCAST. IN 2003, THE SENIOR COMCAST EXECUTIVE THEN OVERSEEING NORTHERN CALIFORNIA POINTED OUT, TO MY AMAZEMENT, THAT THERE WAS A LARGE RUSSIAN LANGUAGE POPULATION IN SACRAMENTO FOR WHOM NO LOCAL, IN-LANGUAGE TV SERVICES WERE AVAILABLE. I SEPARATELY DETERMINED THAT THERE WAS A SIMILAR LACK OF SERVICE TO A VARIETY OF OTHER, MOSTLY ASIAN LANGUAGE GROUPS, INCLUDING, HMONG, LAO, VIETNAMESE, CHINESE (INCLUDING MANDARIN AND CANTONESE), SOUTH

ASIAN (INCLUDING PUNJABI, GUJARATI, TELEGU and HINDI) AND FILIPINO.

AT THE TIME, I WAS ALSO A PART OWNER OF A FULL POWER TELEVISION STATION IN SEATTLE THAT OFFERED A MULTI-LANGUAGE SERVICE. THUS, I KNEW THAT THE ETHNIC POPULATIONS IN THE IMMEDIATE SACRAMENTO AREA WERE NOT LARGE ENOUGH – IN TERMS OF POPULATION OR POTENTIAL AD REVENUE -- TO SUPPORT THE ACQUISITION OF A FULL POWER TV STATION, EVEN IF ONE WERE AVAILABLE. SO, I DEVISED A DIFFERENT APPROACH, BASED UPON BUYING A LOW POWER TV STATION AT A SMALL FRACTION OF THE COST. TO COMPENSATE FOR THE MUCH LOWER OVER-THE-AIR COVERAGE AREA, I SOUGHT CARRIAGE ON THE COMCAST OWNED CABLE SYSTEM IN SACRAMENTO. BUT I FACED A CHALLENGE --- THERE WAS AND IS NO GOVERNMENT REQUIREMENT FOR LOW POWER

TV STATIONS TO BE CARRIED BY CABLE. A FURTHER COMPLICATION WAS THAT A PRIVATE EQUITY FIRM INTERESTED IN INVESTING IN MY VENTURE WOULD ONLY DO SO IF WE HAD CABLE CARRIAGE. QUITE SIMPLY, WITHOUT COMCAST THERE WOULD HAVE BEEN NO CROSSINGS TV.

IN 2004, WE APPROACHED COMCAST IN SACRAMENTO, WHICH BY THEN WAS UNDER A DIFFERENT EXECUTIVE FROM THE ONE WHO GAVE ME THE IDEA. HE QUICKLY GRASPED WHAT WE WERE PROPOSING AND SAID HE WANTED TO CARRY OUR SERVICE THROUGHOUT THE SACRAMENTO AREA -- THIS WOULD GIVE US SEVERAL TIMES THE COVERAGE OF OUR LOW-POWER OVER-THE-AIR SIGNAL. BY MID 2005, WE HAD A SIGNED AGREEMENT. WHAT IS MORE, WE APPROACHED COMCAST A NUMBER OF MONTHS LATER ABOUT ALSO BEING CARRIED IN STOCKTON. TO OUR

PLEASURE, THEY NOT ONLY AGREED, BUT SUGGESTED THAT CROSSINGS ALSO BE DISTRIBUTED THROUGHOUT THE ENTIRE CENTRAL VALLEY, INCLUDING FRESNO, CHICO, MODESTO, STOCKTON, YUBA CITY/MARYSVILLE AS WELL AS SACRAMENTO. WE HAVE BEEN ON COMCAST IN THESE AREAS SINCE 2006. WE ARE CURRENTLY ENGAGED IN DISCUSSIONS WITH COMCAST REGARDING OTHER MARKETS WE HAVE TARGETED.

THE QUESTION IS WHY? WHY DID COMCAST DO THIS? COMCAST IS KNOWN FOR ITS FAIR BUT TOUGH-MINDED BUSINESS APPROACH. BASED ON THIS, WE CAME TO THE TABLE WITH A WELL THOUGHT OUT BUSINESS PLAN AND AN EXECUTIVE TEAM WITH THE DEMONSTRABLE ABILITY TO EXECUTE IT. WE MADE THE CASE THAT MUCH OF THE COMCAST GROWTH OPPORTUNITY IN ITS MOSTLY URBAN MARKETS WAS LIKELY TO COME FROM MINORITY

AUDIENCES. COMCAST DECIDED TO CARRY CROSSINGS BECAUSE IT MET A UNIQUE NEED AND BECAUSE IT WAS BASED ON A SOUND BUSINESS PREMISE. CROSSINGS HAS UNIQUE LOCAL PROGRAMMING THAT DRAWS ETHNIC SUBSCRIBERS, WHO MIGHT SIGN UP FOR ETHNIC LANGUAGE PAY TIERS. COMCAST HAS MADE DIVERSE PROGRAMMING A PRIORITY BECAUSE IT SEES THE VALUE IN GROWING ITS BUSINESS. THIS IS ADAM SMITH'S INVISIBLE HAND OPERATING AT ITS BEST, MOTIVATING A LARGE, WELL-RUN COMPANY TO CATER TO UNDER-SERVED AUDIENCES BECAUSE IT BENEFITS COMCAST SHAREHOLDERS. THIS IS WHAT AMERICA IS ALL ABOUT.

THAT SAID, COMCAST SHOULD BE ACKNOWLEDGED FOR REALIZING THE POWER AND THE PROMISE OF THIS COUNTRY'S ETHNIC COMMUNITIES. NOT EVERY MEDIA COMPANY DOES. MY EXPERIENCE WITH THE MINORITY TAX

CERTIFICATE AND THE ABSENCE OF MINORITY ORIENTED MEDIA ALTERNATIVES SUGGEST THAT, TOO OFTEN, COMPANIES EITHER WILFULLY IGNORE OR INCOMPETENTLY OVERLOOK THE BUSINESS OPPORTUNITY REPRESENTED BY THIS COUNTRY'S MINORITIES. COMCAST APPEARS TO BE A STRONG EXCEPTION IN THIS REGARD.

ALL THIS SUGGESTS THAT COMCAST AND NBCU TOGETHER WILL CREATE A MEDIA COMPANY MORE SENSITIVE TO THE NEEDS AND INTERESTS OF MINORITY INTERESTS THAN MOST. THAT IS WHY I SUPPORT THEIR JOINT VENTURE.

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Ms. WATERS. I would like to thank the Chairman for giving me the opportunity to introduce a woman I greatly admire. Ms. Suzanne de Passe, the CEO of the de Passe Jones Entertainment, and the first female African American to be nominated for an Academy Award for screen writing. Ms. de Passe was a force that signed, de-

veloped, and coached the Jackson Five, among other leading Motown recording artists.

She was also the executive producer for various ministries, including Lonesome Dove, Buffalo Girls, Streets of Laredo, and Dead Man's Walk. Ms. de Passe's production of Motown 25, and Motown Returns To The Apollo, both won her Emmy awards. Additionally, in 1990, Ms. de Passe was inducted into the Black Film Makers Hall of Fame.

Additionally, Ms. de Passe and her partner, Madison Jones, are producing a feature length film on Dr. Martin Luther King with Dreamworks and Steven Spielberg. I wish I could go into all of her credits. I cannot possibly do that. We don't have enough time. Let me just conclude by saying she is one of the most respected, the most honored, in this business, and we are so delighted that she joins us today with testimony. Welcome, Suzanne de Passe.

TESTIMONY OF SUZANNE de PASSE, CO-CHAIR, de PASSE JONES ENTERTAINMENT

Ms. DE PASSE. Thank you. Thank you very much, Congresswoman Waters, and Chairman Conyers, Members of the Judiciary Committee. I am so pleased to have the opportunity to be here today regarding the proposed merger of NBC Universal and Comcast.

My entrance into the Hollywood entertainment industry was unique. I had the benefit of being on the executive staff of Mr. Barry Gordy, founder and chairman of Motown records. It was under the protective umbrella provided by Mr. Gordy and Motown, that I was able to gain my sea legs in what is commonly referred to as the business.

When I moved into television and film as president of Motown Productions, I realized that I was, indeed, in a very unique position.

I also began to realize that the barrier to entry into mainstream Hollywood was daunting, at best, for everyone, and exceptionally so for minorities.

When I speak of minorities, I am referring to African Americans, Latinos, Asians, Native Americans, and women, among others. However, my professional experience comes from general market and African American content. So those are the areas I will address today.

Also, while there are myriad issues with respect to this merger, my focus today will be on how the merger might affect the African American entertainment and media professional, especially the creative production community.

Over the years, I have witnessed the consolidation of content and distribution, and entertainment and media, has done to significantly slow down and diminish opportunities for minority professionals, rather than accelerate and increase them. What has happened to the likes of the Cosby Show, Fresh Prince of Bel Air, the Jamie Fox Show, In Living Color, Living Single, Girlfriends, Sister Sister, Moesha, A Different world, the Jeffersons, Martin, Soul Food, and Sanford & Son?

What has happened? We have gone backwards. The question is why. With very few exceptions, the same networks that broadcast

those shows now only seem to offer a minority cast member, here and there. Where is the business? Granted, the economics of the television industry have changed dramatically over the years.

Much less expensive reality programming has taken the place of many scripted shows, which now appear to be coming back. However, the most recent network announcements for the fall, for the coming fall season, have once again been disappointing with respect to minority involvement, both in front of and behind the camera.

Today, when we walk into a movie studio, network or cable meeting to pitch a project, we already know that we are going to be required to give up all ownership in exchange for reduced fees, and the likely possibility of being fired off the project, without cause, at the discretion of the studio or network.

In other words, we bring a hit project, retain no ownership, lose control of the intellectual property, get paid less, likely generate significant revenue for the studio or network, and end up getting bounced out the door, with no further participation in the ongoing success.

In business, the greatest decision making factor is the power to say yes. In our business, we call that greenlight power. At present, greenlight authority in mainstream entertainment rests with a rarified group of executives. They have the power to say yes, in television and film.

Despite our collective experience and success, Black executives have never had greenlight power at a major studio or network. Most of us have had such difficulty getting to yes, that we have had to make the word no our vitamin.

Only the most dedicated, resilient and determined individuals are cut out for this relentless dance of rejection. All professionals in our business share the experience of rejection, regardless of color. But just imagine what it must be like for the minorities in Hollywood, who are almost always relegated to minority theme content, which is now almost nonexistent, a strong incentive to grow African American media ownership.

And it must be noted that we are not just skilled at creating and producing Black or minority programs. In my own case, an epic 8 hour miniseries about the Old West, entitled Lonesome Dove, that I found, nurtured and produced, was nominated for 18 Emmys, won seven, a Golden Globe, and Peabody Award. And yet the number one question from the press was: What is a Black woman doing producing a Western?

I would be willing to bet that no one ever asked my friends, Marcy Carsey or Tom Warner, what they were doing producing the Cosby Show. It has been proven, time and time again, that doing business with minorities is good business.

While this proposed merger of Comcast and NBC Universal represents for many yet another door closing, it also presents the opportunity for doors to open. This powerful combination of content and distribution can further raise the barrier to minority participation, or become a bridge to an historic new opportunity for inclusion.

Comcast has both the financial and distribution resources to use this opportunity to create meaningful and institutional change in

a system that has proven it will not do so on its own. Hollywood is a place of dreams, and I believe that all of Hollywood will embrace a solution that will give minority executives, producers, writers, directors, and other professionals the opportunity to make their dreams come true, while they positively impact the bottom line.

Simply said, we need greenlight power, the power to say yes. I was invited here today to give my opinion on the NBC-Comcast merger, and if I think it is a positive thing for minorities. My answer today is this can be a historic moment for minorities, but only if Comcast decides to take the leadership position among all other media giants, and make meaningful, lasting, comprehensive and institutional change. Thank you.

[The prepared statement of Ms. de Passe follows:]

PREPARED STATEMENT OF SUZANNE DE PASSE

House Judiciary Committee Field Hearing
Los Angeles, CA

Written Testimony of
Suzanne de Passe
Co-Chairperson of de Passe Jones Entertainment

June 7, 2010

Chairman Conyers, Congresswoman Waters, Members of the Judiciary Committee, and Members of Congress. Thank you for the opportunity to appear at this hearing regarding the proposed merger of NBC/Universal and Comcast.

My entrance into the Hollywood entertainment industry was unique. I had the benefit of being on the Executive Staff of Berry Gordy, founder and Chairman of Motown Records. It was under the protective umbrella provided by Mr. Gordy and Motown, that I was able to gain my sea legs in what is commonly referred to as "the business".

When I moved into television and film as President of Motown Productions, I realized that I was in a very unique position. I also began to realize that the barrier to entry into mainstream Hollywood was daunting at best for everyone and exceptionally so for minorities.

When I speak of minorities I am referring to African Americans, Latinos, Asians, Native Americans and women. However, my professional experience comes from General Market and African American content. So those are the areas I will address today.

Over the years, I have witnessed what consolidation of content and distribution in entertainment and media has done to significantly slow down and diminish opportunity for minority professionals rather than accelerate and increase it.

What has happened to the likes of The Cosby Show, Fresh Prince of Bel Air, The Jamie Foxx Show, In Living Color, Living Single, Girlfriends, Sister Sister, Moesha, A Different World, The Jeffersons, Martin, Soul Food AND Sanford and Son?

What has happened?

We have gone backwards. The question is why?

With very few exceptions, the same networks that broadcast those shows now only offer a minority cast member here and there and a long list of contributions to minority charities under the catch-all word, "Diversity." Where's the business?

Granted the economics of the television industry have changed dramatically over the years. Reality programming has taken the place of many scripted shows, which now appear to be coming back. However, the most recent network announcements for the coming fall season have been disappointing with respect to minority involvement both in front of and behind the camera.

Today, when we walk into movie studio, network, and cable meetings to pitch a project, we already know that we are going to be required to give up all ownership in exchange for reduced fees and the likely possibility of being "fired" off the project without cause at the discretion of the studio or network. In other words, we bring a "hit" project, retain no ownership, lose control of the

intellectual property, get paid less, likely generate significant revenue for the studio or network and end up getting bounced out the door with no further participation in the ongoing success.

In business the greatest decision making factor is the power to say, "YES". In our business we call that "green light power". At present, green light authority in mainstream entertainment rests with a rarified group of executives. They have the power to say "yes" in television and film. Despite our collective experience and success, Black executives, have never had green light power at a Major network or studio.

Most of us have such difficulty getting to "yes" that we have had to make the word "NO" our vitamin. Only the most dedicated and determined individuals are cut out for this relentless dance of rejection. All professionals in our business share the experience of rejection, regardless of color, but just imagine what it must be like for the minorities in Hollywood who are almost always relegated to minority themed content, which is now almost non-existent. It must be noted that we are not just skilled at creating and producing Black or minority programs. In my own case an epic eight-hour mini series about the old west entitled, LONESOME DOVE, that I found, nurtured and produced, was nominated for 18 Emmys, won seven, a Golden Globe, and a Peabody Award, and yet the number one question from the press was, "what is a Black woman doing producing a western?" I would be willing to bet that no one ever asked my friends, Marcy Carsey and Tom Werner what they were doing producing The Cosby Show.

It has been proven time and time again that doing business with minorities is good business.

While this merger of Comcast and NBC Universal represents for many yet another door closing, it also presents the opportunity for doors to open. This powerful combination of content and distribution can further raise the barrier to minority participation or become a bridge to an historic new opportunity for inclusion.

Comcast has both the financial and distribution resources to use this opportunity to create meaningful and institutional change in a system that has proven it will not do so on its own.

Hollywood is a place of dreams and I believe that all of Hollywood will embrace a solution that will give minority executives, producers, writers, directors and other professionals, the opportunity to make their dreams come true while they positively impact the bottom line.

Simply said we need GREEN LIGHT POWER... the power to say YES!

I was invited here today to give my opinion on the NBC Comcast merger and if I think it is a positive thing for minorities. My answer today is this can be an historic moment for minorities...

BUT ONLY IF

Comcast decides to take the leadership position among all other media giants and make meaningful, lasting, comprehensive and institutional change.

Thank you very much.

Mr. CONYERS. Judge Louie Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. If I might ask, normally, we have the 5 minute rule, and obviously the lights wasn't working. I think there was one speaker out of twelve that stayed

within 5 minutes. Just from a structural standpoint, since we have 12 witnesses, and I'm asking, would it be possible, maybe, to have us each have 10 minutes, since there are so many witnesses?

Mr. CONYERS. Judge Gohmert, you can have as much time as you desire.

Mr. GOHMERT. I think everybody would storm out, if that happened, but anyway, it is about opportunities, and that would forestall too many, I am afraid.

I really appreciate the witnesses' perspectives and input, and it was pointed out to me, earlier, that I am the minority on this panel today, and so I appreciate your indulgence with me.

But I am really struggling with this, and my friend from Tennessee brought up a public option. Unfortunately, the last Administration, and this Administration, both have bought into this thing, that some entities can get too big to fail, and my feeling was, if something is too big to fail, we need to let it fail so it won't ever be that too big to fail again, and we should have done that with AIG, and Goldman Sachs, and whoever. Let them reorganize.

And so I want to be careful, as we do what we should be doing, not picking winners and losers, but making sure that there is opportunity out there, and that people are playing by the rules, and playing fair, rather than us get involved as a Government, telling, you know, people what they have to do.

And so I really have been struck by some of the interesting observations. And one of the things, in going through the material in preparation for the hearing, I noted that there are some who would like to require NBC to divest its 32 percent stake in Hulu-you know, it is an Internet video provider—within 1 year of acquiring the network, and I am doing what we were trained as lawyers not to do, not to ask a question you don't know the answer to.

But I really am curious: What would be the purpose of requiring NBC to divest of the 32 percent ownership in Hulu? For anyone that might have an answer.

AUDIENCE MEMBER. Competition.

Mr. GOHMERT. Somebody in the audience was answering. And I realize we want competition, and that's one of the concerns I think all of us have, is making sure there is adequate competition. Anybody on the panel have a comment on this?

Mr. LIGGINS. I have got a comment.

Mr. GOHMERT. Yes, sir.

Mr. LIGGINS. I mean, I think that Hulu was actually brought together by, you know, NBC and a couple other big content providers, to actually compete with the Internet and YouTube. So Hulu actually is the competition, if you will, because the fact that you have Google, YouTube, the Internet, creates a wealth of opportunities to zip video all around the Internet and for people to get it in various forms, whether they pay for some of it or they don't.

So Hulu, in my view, is actually the new start-up competitive entrant, and if you take 32 percent out of that, what you then now have is a service that is less competitive with YouTube, because they don't have the NBC Universal content. And if you want a competitor to Google and YouTube, you have to, I think, look at the consortium that Hulu's put together and leave it intact, and let it compete, because, you know, Google, YouTube, is considerably more

massive in terms of its reach and scale than anything Hulu could ever be.

Mr. GOHMERT. And, you know, I've gone to Hulu some, in looking for things in the past, and it does seem to be an alternative, but I legitimately was not sure what effect that would have to force NBC out of that.

And, you know, from my standpoint, wanting competition, I have wondered, well, why don't we just let, you know, the American people decide what they like the best, and what they don't, and that dictates, without the Government coming in and saying you have to have so many with this color faces in this show, and this color faces in ownership, and just let the market decide what they want to see.

And, you know, as a kid, I think of my first six LPs. Three of them were Bill Cosby. I mean, the guy was fabulous. I didn't recall him having a interest in buying NBC. Man, would that have been wonderful.

But I note that Comcast had mentioned, and CEO Brian Roberts had mentioned that customers will be able to program their Comcast set-top boxes remotely, using the latest gadget, the Apple iPad, and I just got one for my wife and she absolutely loves it.

But I am wondering, that raises another issue, and I realize we don't have a witness from Comcast, but I'm curious, as we are looking at these exclusivity relationships, is there one developing there between Comcast and Apple, that may make it an even bigger entity?

Ms. MADISON. Mr. Gohmert.

Mr. GOHMERT. Yes.

Ms. MADISON. Maybe I can address that.

Mr. GOHMERT. Yes. Please.

Ms. MADISON. I am actually speaking on behalf of——

Mr. GOHMERT. Right. NBC.

Ms. MADISON. NBC Universal, and the new NBC Universal, post the deal close. We are in the business of competing with not only other networks and broadcasters, but also any content creator out there, whether that content creator be a Hulu, or be Google, or be iPad. So for us, the important aspect of this dynamic and competitive marketplace is that we are trying to get our content out in front of as many people as possible.

So for us, as NBC Universal, we are interested in getting into business with any content creators who are doing to develop, deliver to us quality products.

Mr. GOHMERT. And I appreciate that. But is there any exclusivity in the agreement——

Ms. MADISON. There is none.

Mr. GOHMERT [continuing]. Without Apple? None; okay.

Ms. MADISON. There is none.

Mr. GOHMERT. But one of the things that my eyes have been opened to is I want to see people make their own choices, let them, you know, decide which programs they want to watch, and of course that dictates which advertisers pay the most for.

One of the things I have heard here, today, that I wasn't familiar with, not being in entertainment, is whether or not the door is open to those groups that have this fantastic show, that never makes it

to the air, so we never find out that the public would have loved it, everybody would have watched, if the door had been open.

And so that seems to me to be the area we really need to concentrate, and I am not sure how we go about doing that. And one of the things I appreciate about you, Chairman, is we've done, done more oversight hearings that I recall in my first 2 years, and that is what we need to be doing, rather than getting involved and actually being a participant.

But I would be open to any suggestions about how the Government, in that overseeing role, can make sure that the opportunities are there, so that people can make the best choices, and I would be open to anybody's comment now, or in the future, if you have further thoughts, what we could do to make sure, just the opportunity to come sell a show that America could have the chance to enjoy.

Mr. NOGALES. This is a very, very lucrative business. Nobody wants to let go of it. So you fire, hire, your boyfriends, your girlfriends, and so forth. And if you see the incestuous nature of the business, you see that that's precisely the case. The prejudicial treatment of people of color in Hollywood is legendary. Nobody wants to share in the wealth. Nobody wants to know what the other person has to say, if you are a minority.

Arizona didn't just happen. It happened because we are excluded, number one, and—bear with me.

Mr. GOHMERT. I don't want to get into the Arizona law, because for people that read it, they say it is not as stringent as the Federal law. But, see, I guess that is why I was surprised, and, and it makes sense, about the closed doors being the problem, is because—exactly what you said.

Since you know people want to make money, then why wouldn't they put on the best show they possibly could, and then you find out what you're talking about, there's so many faces that haven't been allowed through the door to make those presentations, and that is what I am wanting to get at, is how we go about making sure that the opportunities are there, not that you get your show on but that you have the opportunity.

And that is what I really want to try to figure out, how we——

Mr. NOGALES. It is not going to happen without conditions.

Mr. GOHMERT. Without what?

Mr. NOGALES. Conditions.

Mr. GOHMERT. Yeah. Okay. What kind of conditions?

Mr. NOGALES. In a big acquisition like this, diversity, diversity conditions. NBC didn't get to where they are just because. It would have gone on the merry road and never hired people of color, if it hadn't been for the MOU that was signed 10 years ago.

Now we are not solving the problem here, but at least you have a lot more people in place that are being trained, that are being mentored, who will pull other people of color in. Because our stories are wonderful. but you can't get them in front of people that don't respond to them.

Mr. GOHMERT. You said an incestuous relationship among those involved.

Mr. NOGALES. Well, it is also something else. You know, they have a lot in common. We want to hire those individuals that are

like us. It is very natural. The problem is that when you do that, you have exclusion, and the moment you have exclusion, the rest of us don't get the opt to get in.

We are just as talented, we are just as wonderful story tellers as anybody else. But if you don't have the opportunity, you can't put it on the air.

Mr. STANLEY WASHINGTON. Judge Gohmert, can I make a comment as well.

Mr. GOHMERT. Mr. Washington.

Mr. STANLEY WASHINGTON. Thank you. I look to add to Alex's comments, our good friends at the Hispanic Media Coalition. You know, the primary challenge today, in the industry, is that it is not a free market environment. The cable industry, and the broadcast industries, are really predicated on a few individuals who are making all of the decisions.

Mr. GOHMERT. Yeah. That is what we are hearing, and that is why I am asking, how do you——

Mr. STANLEY WASHINGTON. And I think that Alex is absolutely correct. You know, at the end of the day, someone has to, the FCC has to step in and put very specific ownership conditions on this merger.

I mean, if you ask the question, the fundamental question, Does the Comcast-NBCU merger further the FCC's goal for African American and diversity ownership, the answer is no. There are no specific conditions, there is no specific desire that Comcast has indicated, put, put that in place. It was stated earlier, that the, that our coalition, you know, is challenging TV One because they are not Black enough.

The truth of the matter is the issue isn't if Alfred's company is Black enough. It is not independent enough. You know, the challenge is that Comcast owns a part of TV One.

Mr. GOHMERT. But you don't want to be prejudiced against Alfred's company just because you don't think he is Black enough.

Mr. STANLEY WASHINGTON. No, you know, actually, actually, actually—actually, I must admit, I have had a great conversation with Alex, other than I, other than the fact I was dismayed, that I found out he is a Celtics fan. It has been good. It has been a good discussion.

But, you know, I think, you know, there have been a number of people, witnesses, that have been indicating that Comcast has been doing great by them. They have been doing a wonderful job advancing our business.

Well, that is because they are in business with Comcast. You know, the statement was made earlier, that there is no one from Comcast testifying today. Actually, there are a number of people from Comcast testifying today, and they, and they are as, as effectively—— [Applause.]

And they are as effectively as they can, trying to communicate that Comcast has been a good citizen. Mr. Cohen asked: How does Comcast rate in reference to the rest a the industry? Well, it was suggested by Mr. Griffin that they are not the worst. Well, I think it is the opposite. Of course they are the worst, because they are the biggest, because they are the market leader, because they have

a responsibility to the industry to set the tone and the direction of where the entire industry should go. At——

Mr. GOHMERT. Well, but if there are people who are minorities, working with Comcast, wouldn't you expect them to come forward?

Mr. STANLEY WASHINGTON. Well, here is a good question.

Mr. GOHMERT. I mean, I am not sure if I like this deal or not, but I certainly would expect, that if Comcast has minorities, they are going to step forward and say don't mess over my company, it is doing fine by me. I mean——

Ms. MADISON. Mr. Gohmert, may I give you some facts?

Mr. STANLEY WASHINGTON. Well, let me——

Ms. MADISON. May I give you some facts?

Mr. STANLEY WASHINGTON. Let me just make one comment.

Mr. GOHMERT. Well, I have used more than my time and the Chairman has been very——

Mr. STANLEY WASHINGTON. If I can make one more comment.

Mr. GOHMERT. Sure.

Mr. STANLEY WASHINGTON. I think the question is, we have heard again from a number of individuals that have said our company is doing well, but what happened to the Black Family Channel, which had been in business for 6 years, 25 million subscribers? And when they decided that they would not give Comcast distribution, Comcast turned around and did a deal with our, our good friend over here, TV One, and systematically started to push them out of the business.

And they did that again because they had a vested interest, from a competitive, a anti-competitive, in the success of TV one over the Black Family Channel.

Mr. GOHMERT. Yeah, that——

Mr. STANLEY WASHINGTON. What I am suggesting is that there is a pattern, an ongoing pattern of predatory behavior that is based on their dominance, their desire to control and own, as they move forward.

And when we hear that there is not an ability to greenlight projects, that is because at the end of the day, we don't have the control, the ownership, on our own, to push those projects through.

Mr. GOHMERT. I just want to make sure, if there are other—I don't know how there could be another Bill Cosby, but if there are other Cosby shows out there, where you have a man and a woman that are married, they are smart, their kids love them, they love the kids—man, I would like to see those again.

Mr. STANLEY WASHINGTON. I love Ms. de——

Ms. MADISON. It is premiering on NBC this fall.

Mr. STANLEY WASHINGTON. I love Ms. de Passe's comments, because Bill Cosby owned 42 percent of his show.

Mr. GOHMERT. Yeah.

Mr. STANLEY WASHINGTON. And that is what is missing in industry. You know, the question was asked, what happened to the Jeffersons? What happened to Different World?

Mr. GOHMERT. Yeah; right.

Mr. STANLEY WASHINGTON. You know where they are? They are on TV One. That is what happened to them.

Mr. LIGGINS. And just a little color on the whole Black Family Channel situation. One, I know a lot about it, because Black Fam-

ily Channel launched before TV One did. They actually did have Comcast distribution in Price George's County, and Washington, other, other, a number of other places. Willie Gary is a dear friend of our family's. I looked at doing things with him, with his channel, a number of times, as I was trying to get in the door.

The ultimate demise of the Black Family Channel, in my view, was it wasn't set up for success as a cable network from the very beginning that it was put together.

We spent $130 million launching TV One. $130 million. I put up seventy-six of it. Willie and his partners were funding this out of their pocket. They have a lot of money but unless you're funding it with a big public company, bankroll, as opposed to your own personal bankroll, you run out of patience when things don't go as fast as you think they are.

It took us 5½ years to make money, and we went through almost all that hundred and thirty. So, in the end, they did actually have distribution. They just couldn't outrun the advertising catching up, the ratings catching up. It takes more than $60 million to put one a these cable networks together.

We had $130 million and a whole media platform with radio stations and Internet sites supporting it, and ultimately, that was the difference between our success and their failure.

And ultimately, what happened with the Black Family Channel is they ended up combining it with the Gospel Music Network, and the Gospel Music Network wanted Black Family Channel's distribution. So they had distribution. They just didn't have a business model set up for them to succeed.

Mr. STANLEY WASHINGTON. What the Black Family Channel couldn't outrun was Comcast's desire to push them out of the business. As a shareholder in Radio One, my question to Alfred would be, why would they spend $75 million, 40 percent of TV One, and allow Comcast to spend $10 million for 33 percent, unless the goal was to expand them through distribution? The reality is when the Black Family Channel decided not to allow Comcast to own, to have equity in their channel, the support started to wane.

Now all the other comments about how things are run behind the scenes, the truth of the matter is the revenue is so significant in channel ownership—right? TV One is generating somewhere around 6 cents per subscriber on 25 million subscribers, per month.

Where the Black Family Channel, when they were asked to come on to the platform, as Alfred has indicated, the Black Family Channel was told you're going to have to pay a launch fee of $1.50 per subscriber to come, to come on our platform.

The truth of the matter is the environment, because there is not true free market corrective action program—you know, all we are really arguing for is the ability to compete fairly on a level playing field.

Mr. GOHMERT. That is what I would like to see.

Mr. STANLEY WASHINGTON. Right. And at the end of the day, again, I applaud—this is, this is—this discussion, you know, Alfred and I disagree on their level of independence; right? Them being a wholly-owned African American channel. I will concede it.

The issue is, even if they count, we have one African American wholly-owned channel in the entire industry. And it is appalling.

Ms. MADISON. And Comcast does recognize that this is an industry-wide issue. This is not just limited to Comcast.

Mr. STANLEY WASHINGTON. But Comcast has the most subscribers.

Ms. MADISON. All right. But let me just state some facts.

Mr. STANLEY WASHINGTON. I apologize. Go ahead, Paula.

Ms. MADISON. Okay. So the facts are that as you probably have seen, hopefully in the commitments, that the NBC Universal-Comcast group have put together, includes that beginning next year, there would be the launch, annually, of minority-owned channels. So exactly what you are asking for—or I should say not exactly, because the threshold that you have set for 100 percent African American owned, means that there can't be any equity partners, and that is just not the way business is done today.

So there would have to be investors. You would have to go out and seek money, so that what happened to Willie Gary, and others, where they ran out of their own money, coming out of their own pockets, does not happen.

So in Comcast's commitments, beginning in 2011, every year, for the next 3 years, there would be two independently-owned stations launched, cable networks launched, not owned by Comcast, not having Comcast investments, but independently owned.

The other thing that I would like to make sure that we are talking about, cause on the one hand we were talking about ownership. On the other hand we were talking about creative executives.

And inside the world of creative executives, every one of us in this room, including some of my fellow folks on this panel, knows that yes, it is an industry-wide problem. Suzanne de Passe is accurate. Greenlighting, and having th ability in the hands of diverse people to greenlight, has been a problem, historically, in this, in this industry. Again, the commitments that Comcast has made, and NBC Universal has made, means that we have made specific steps that are cited in those commitments as to how we will grow and groom, and put into place presidents, executive vice presidents, senior vice presidents, who are running divisions, and some of the folks, frankly, who are with NBC Universal and Telemundo are present today.

The last point I would like to make is that when we talked about executives, Telemundo, which NBC bought in the mid 2000's, presently has 85 percent of its senior executives, its executive teams are Latino.

When we were first bought Telemundo, about a third were Latino. So we have increased. The other thing I would say is that NBC Universal's board of directors presently is comprised of 15 people. Four of us are racially diverse and five of us are female.

Mr. GRIFFIN. Mr. Chairman, I would like to comment on that, if possible. I mean, I want to make just two points. And I know that Congresswoman Waters, and Conyers, understand this. Radio One is a three decades-old project. That was political, social, economic, cultural. It wasn't just born overnight. The idea that, you know, they showed up and then a baseball player, a lawyer, a singer, and a boxer, decide they want to start a cable channel. You cannot compare those two things.

It was just better set up to be successful. And the idea that you can't study successes, I think the idea is we had a successful relationship with Comcast, and we are still alive and relevant in the industry to talk about it. The idea that you can't study successes is ridiculous.

Now to your point about what the core problem in the industry is, and, you know, you are a Texas guy; right? Right?

Mr. GOHMERT. I know I sound like I am from New York. But yeah, I am from Texas.

Mr. GRIFFIN. Well, you can probably get this. My family, from Washington County, I think you probably get this. Two farmers raised a 100 head a cattle. One goes down to the slaughterhouse. One gets paid for a 100 head a cattle. Another gets paid for 50 head a cattle. That is the entertainment business. That is why these companies are not successful.

We can have great shows, we can generate viewers, but at the end of the day, when we go to the advertiser, we're not getting paid, dollar for dollar, for every impression that we generate. That is the root of the problem.

You know, we could debate all day about——

Mr. GOHMERT. So how do we address that? That is——

Mr. STANLEY WASHINGTON. Well, let me just——

Mr. GOHMERT. Well, let Mr. Griffin finish.

Mr. GRIFFIN. Well, I think the way that you address it, and some groups have tried to address it outside of Government. You know, there is not a natural regulatory home for the advertising industry in media spending.

And I think that kind a has been falling in the gray areas, and when people see big media, they hope on the bogeyman of the distributor, or they hop on Hollywood, not enough Black films, and then they don't focus on where the money is, which is why Willie Sutton said he robbed banks, cause that is where the money is. All these companies want to get money from advertisers, and you have to hold hearings and pull the advertisers in front. You can lay out Mr. Washington's proposal.

You could say if Comcast agreed to 25 African American channels, which, among the top 100 advertisers, who—how much would you commit to advertise on each of these channels for African Americans? Who will sign up? If—if the advertisers say, hey, I will sign up. Coca Cola, Johnson & Johnson say, hey, we will commit 10-, 15, $20 million to that. Now your problem is with Comcast.

If they say, well, come back when the channels are launched, I have to see the programming, I need to know the distribution, I need to know who is in the cast, and it is contingent upon a bunch of other things, then you realize your problem is with the advertiser.

I submit to you, based on, based on my time and experience, that what you will find is no advertiser will commit to any of these channels. Perhaps, you know, he wants Comcast to commit to 25 channels.

One advertiser who says, in a letter, who will submit it, Comcast-not to get in a battle of letters—but they have got hundreds of letters. One advertiser, the right one, who says, hey, you launch that, we are advertising——

Mr. STANLEY WASHINGTON. What I would like to just comment, on top of this is—and again, I apologize, cause I'm not from Texas, I am from Los Angeles——

Mr. GOHMERT. All right.

Mr. STANLEY WASHINGTON. And the only thing I know about cows is why buy one when you can get the milk free? And that is part of the channels that we have in this industry.

Mr. GRIFFIN. That is good.

Mr. STANLEY WASHINGTON. And I think that it is surprising to me that Mr. Griffin, who is on a second carriage tier for Comcast, would suggest—and I assume you are suggesting—that you would not rather be on a widely-distributed tier that you own.

Mr. GRIFFIN. I am on 100 percent of Video On Demand——

Mr. STANLEY WASHINGTON. But you are not on the most widely-distributed tier that they offer. You are saying that——

Mr. GRIFFIN. I am on the most widely-distributed Video On Demand tier that there is.

Mr. STANLEY WASHINGTON. No, but video demand is not the most widely-distributed tier within Comcast.

Mr. LIGGINS. But that is the business he is in.

Mr. GRIFFIN. Let me make a comment.

Mr. STANLEY WASHINGTON. Oh, no, no, I'm not—I'm not—let me just——

Mr. GRIFFIN. Let me just make one main point. I realize, you know, based on my experience, what it takes to be successful in some businesses, and I realize I didn't have a hip pocket with $150 million to launch a linear channel. That is what it takes. Your efforts, over the years, advertisers—that is what it takes to build that type of company. For the type of company that we want to build, we come out ahead. But we are cash and carry. We do a share. We want the money, upfront. So when we got on Comcast, we had the opportunity to go out, sell, pre-sell advertisers, buy programming at a certain cost, and we were profitable from day one.

That is the reason why we are on Video On Demand. We think it is an opportunity to talk directly to consumers, profitably. It sounded like a good proposition, and we have been doing it for 5 years. That is the reason why we are on that tier. We are 100 percent distributed on Video On Demand. We have never been dropped from a home. We have been expanded to other cable operators through the deal. That is just a fact.

Mr. STANLEY WASHINGTON. And I think that is a excellent fact. Our point is that there are many, first of all, there are many African American entrepreneurs, who today run 100 percent owned media businesses. I think Tyler Perry would take exception, to note that there is a belief that there is an impossibility to do that.

Byron Allen, who owns Entertainment Studios, has six channels up on the Verizon network right now, for over a year.

The thought that African Americans, like everyone else, can't finance on their own, and to suggest that we should be relegated to only having to finance through venture capital is counterproductive to the growth of our community, and it is insulting to——

Ms. MADISON. I am glad you brought up, Byron Allen because I would like to say that when I was general manager at KNBC in Los Angeles, and he didn't get distribution anywhere in this mar-

ket, I broadcast two of his programs on a barter deal. That was NBC. That was not me personally. That was NBC. So we have, in fact, assisted independent programmers to get—and by the way, in order for him to sell his product, he had to be able to demonstrate that he had support in a certain percentage of the U.S. population. And we got him there.

Mr. STANLEY WASHINGTON. I think it is wonderful that Comcast and NBCU today, on the day of this hearing, have announced they are going to give two channels—I'm sorry—three channels, over the next 3 years, to African Americans. And they are going to do that to a substantial group of minority investors.

The challenge with that is it is not enough. It is crumbs, and they know it is crumbs. Alex is absolutely correct. And by the way, not just 25 channels for African Americans. Twenty-five channels for Hispanics, 25 channels for Asians. Comcast today has 252, 500 channels throughout their platform in various marketplaces. It is dumbfounding to me, that we are sitting here, and we think it is acceptable that Comcast is willing to have a conversation about diversity, and the one, most meaningful conversation in diversity is ownership, and they think that three channels for the entire minority segment—and by the way, that includes so many derivatives of populations, that it is hard for me to count—that that is acceptable to our community. It is not. [Applause.]

Ms. MADISON. What it is, Stan, and again, I will sit here and tell you that this is an industry-wide problem. But what I also say to you is no one else has made this kind of commitment in the past or present. So it is a start and we stated that it is a base, not a ceiling.

Mr. STANLEY WASHINGTON. Is a low base.

Ms. MADISON. So what I would just ask you to consider is, is there not a way to begin conversations with Comcast and NBC Universal, in order to use this to grow whatever the commitment is, if possible? But if what is happening is, before we even get out the door, you are pooh-poohing it, saying that it is in effect worthless, then what we are saying is that there is a business community out there, and there is an audience out there, that we recognize and understand is looking to see itself not only in business but on the air.

And based upon, without question, a lot of conversations that have arisen as a result of this acquisition, we came together and said these are the things that we want to put on the table.

Mr. GOHMERT. Thank you. This has been tremendously interesting.

Mr. CONYERS. Could I identify myself. I am the Chairman of this Committee and I am running this Committee. Now that we have got that established, I would like you all to know that Judge Gohmert is not from New York. We want to clear that up while we are at it.

And the third thing is it should be made clear that Judge Gohmert has asked all the questions and elicited all the answers, so that none of us have anything else to do.

I want to——

Mr. GOHMERT. Well, actually, you know, I usually spend most of my time talking myself. But this is an area I don't know that much

about. So it has been immensely interesting to hear the different responses. I appreciate your patience.

Mr. CONYERS. Thank you. I want to turn, now, to our marvelous host, Maxine Waters. Give her a round of applause, please. [Applause.]

Ms. WATERS. Thank you, Mr. Chairman. Before I get started, let me thank Mr. Gohmert for being here. I would also like to thank you for the way that you have come with an open mind, raising relevant questions, and not assuming anything but trying to get answers. And why do I do this?

Mr. Gohmert is from the opposite side of the aisle and we find ourselves in quite different positions. Philosophically, we often come from different places. Mr. Gohmert does not always, most of the time doesn't even agree with the Chairman. He is very articulate. He is extremely bright, well-read, with a lot of experience, and for him to come here, in this manner today, really does speak to the need to understand this merger and what it is all about. Thank you. Give him a big round of applause. [Applause.]

And I would certainly like to thank the Chairman. You know, John Conyers is an international icon. He talked about how long we have known each other. But this is a man whose life has been dedicated to civil rights and social justice.

This is a man who has put himself on the line for all of the major issues relative to not only this kind of merger, and dealing with FCC, but he is constantly dealing with issues in the Justice Department. He is constantly dealing with issues about intellectual property. He is constantly dealing with the tough issues of our time, and he talks about applauding me.

This man should have a standing ovation for the work that he has done over the years, and I am going to stand. [Applause.]

Mr. CONYERS. The check is in the mail.

Ms. WATERS. Now I want you to know that what we are doing today is not normally how we do these hearings in Washington, D.C., but because the Chairman is in charge, he gets to do what he thinks needs to be done.

The kind of interaction that you just heard, the back and forth conversations, you don't get this in Washington, D.C. I am so pleased about this. I was enjoying, so much, the exchange, that I wanted it to go on even longer but I guess we can't be here all day. But thank you, Mr. Chairman, for your generosity.

Let me start with a little bit of background. Let me just say to Ms. Madison and others in the room, you are in a complex in what is viewed as South Los Angeles. This is a complex that I know an awful lot about because I served in the California state legislature with what is known as Subcommittee 4. There have been attempts to dismantle this complex. They wanted to turn the famous rose garden into a parking lot. They wanted to get rid of all of the minority security guards when the Olympics was here in Los Angeles, and they wanted to choke this existence by denying it the resources and the funds that were needed.

Because I was Chair of Sub 4, this was in my jurisdiction, I didn't let any of that happen. We fought them—— [Applause.]

And under my direction, we started the reorganizing and the revamping of this entire complex. It is such an important complex,

in the middle of this community, where our school children come, where we have the opportunity to have open space and events, and all of that. So we had to fight very hard in order to maintain this important complex.

And I am just delighted that you are here today. Why do I give you that background? I give you that background because some of us are in the constant struggle for justice and equality in everything that we do. Most people don't have a clue about what it is we do constantly and what we have done in our careers.

Even today, for this complex, we make sure that Mr. Jeffrey Rudolph, when he comes to Washington, D.C., who's run this complex for many years, gets access to the earmarks that we have in order to keep the expansion going and the development.

Now having said that, just as one example, we are doing this in many ways, with many issues all over this country. Serving on the Financial Services Committee and the Judiciary Committee, I am oftentimes in touch with and contacted by various entities in this country, where I hear about all of the problems.

Ebony magazine is in trouble. We may lose it. And we are contacted. What can you help us do to save Ebony magazine? Inner City Broadcasting almost got shut down. GE and Goldman Sachs were calling in the loans.

I can't tell you all what all happened to save it, because again, they will want to investigate me.

But we saved Inner City Broadcasting when GE and Goldman Sachs wanted to call in those loans, and it has worked out.

But let me tell you, all of NABOB, our minority radio stations, all of NNPA, our Black newspapers, our minority banks, our automobile dealers—we have lost 50 percent of them, just in the past few years. Our minority banks cannot get capital investment in order to basically stay in compliance with the requirements to be able to operate.

I got a call, just a few weeks ago, that they were calling in the loan on Dr. J's golf course down in the Atlanta area. And it goes on and on and on. And while I am telling you about much of this which is basically African American, the same thing is happening with Latinos.

As a matter of fact, many of the Latino organizations had not reached the level of participation of African American organizations, and yet their opportunities are being denied, and it is systemic exclusion.

You understand what I'm saying? Systemic exclusion. When I first got involved in this Comcast issue, it was because some organization said we are trying to get the FCC to extend the comment period, and they said no, they won't listen to us. And so I had to develop a piece of legislation that I filed, immediately, got John Conyers and everybody, 46 other people to join with me, and send it over to the FCC. And of course when you file it, it is a piece of formal legislation and you have a significant number of members who will agree with you, they stop and they listen, and they opened up the comment period for another 45 days, and that gives us an opportunity. [Applause.]

And we thought, well, you know, that is just part of it. We need some more hearings. And so now, we are at the point where not

only are they talking about hearings, and John, we had better take a look at what shape and form those hearings will take. But the Chairman of this Committee is saying, in addition to that, we are going to continue these hearings, and we will perhaps have to go into New York and we have to go—maybe we will go right into Pennsylvania, the backyard of Comcast, and do some of these hearings.

But we are going to continue to go. So I appreciate all of those who are here today. And let me just say, to some of you who are here today, and you are representing Comcast or NBC, and that may be your job, or you may have gotten some advantage from it—let me tell you, you are going to do better because we are doing what we are doing. Do you understand? [Applause.]

I have understood, all of my career, that oftentimes, when people were taking the opposite position from me, because of what I was doing, I was creating their opportunity to get more respect in the industries that they were defending. Okay? [Applause.]

So do what you have to do, but know and understand, because of what we are doing, NBC and Comcast are talking about what they now would like to do. Would they be doing this, if we weren't doing this? What we are doing? I don't think so. We didn't hear from them prior to the expansion of the comment period, that they were thinking about opening up opportunities, that they had a plan, and they asked, one of them asked a question, Why are you just doing this to us? Why don't you look at some of these other media giants? You are before us, asking for a merger now. You give us an opportunity to raise these questions. And that is why.

Because you want the FCC and the Department of Justice to rule in your favor, and so you give us the opportunity to raise a lot of questions about who you are, and what you do.

Now having said that, because the Chairman is so generous with the time, I want to take your attention to a recent study by Brandeis University. I kind of alluded to

some of those organizations and businesses that are contacting us about their problems.

What is the Brandeis study all about? Let me tell you what the headline reads.

Study shows Blacks will never gain wealth parity with Whites under the current system. The other headline says—I will find it here in a moment.

A $95,000 question: Why are Whites five times richer than Blacks in the United States?

The conclusion is basically this. The gap between Black and White household wealth quadrupled from 1984 to 2007, totally discrediting the conventional wisdom that the U.S. is slowly and fitfully moving toward racial equality, or some rough economic parity between the races.

Like most American myths, it is a direct opposite of the truth. When measured, over decades, Blacks are being propelled economically downward relative to Whites, at quickening speed, according to a new study by Brandeis University. The gap between Black and White households ballooned during the 23 year study period, as White families went from a median of about 22,000 in wealth to 100,000, a gain of 78,000 in the same period.

Black house wealth inched up from a base of 2000 per family to only five thousand dollars. The sweat and toil of an entire generation had netted Black families only $3,000 additional dollars, while White families emerge from the period with a net worth of 100 grand, that can be used to send a couple of kids to college, make investments, help out other family members, or continue to the larger White community.

The typical Black family has no such options. The Brandeis study conducted by the university's Institute on Assets and Social Policy shows that upper-income Blacks fell even further behind their White peers than lower-income Blacks.

During the survey period, higher-income Blacks saw their wealth drop from 25,000 to just 18,000, while their White counterparts' wealth soared to $240,000.

And what is happening? Whites are both collectively privileged and capable of bestowing an endless system of privileges on each other, while Blacks are deliberately positioned outside of the stream, and are preyed upon, as a group, by powerful financial sources that profit from the wealth differential.

I will not go any further with that, because that says it all. That talks about why we are here today. That talks about the fact that we have a potential merger, a huge merger, perhaps the biggest media merger in the history of this country, with the potential to deal with this economic exclusion that we all can agree to.

There is no way that anybody can sit here and think it is all right for there to be one African American-owned network, in essence, by Comcast. [Applause.]

So when I was contacted after I got involved in this, I got a call from somebody at Comcast, and they said, What do you want? I certainly didn't know enough about the industry to start to talk about what the response should be. But I started to think about it, and I said, well, one of the things we have discovered is that the programming is such that Blacks are really excluded from having the kinds of shows and programming that Ms. de Passe alluded to or talked about.

So I started to talk, well, why don't you do this. I know all of these directors and producers, and African American and Latino. Why don't you set up a situation where at least they can come and present their treatments, and you have credible people inside the industry who would listen, and say, well, here's some good stuff. And I wanted to do that because NBC, in the hearing, had said we just can't find any good product. We can't find any good programming.

We had Jeff Zucker in front of our Committee. I said, well, let me help you find some good programming.

But the fact of the matter is this. Not only do we have the systematic exclusion, and now we have an opportunity to do something about it. We have to make this work, or the Brandeis study will continue to be worse.

So when they called me and asked me what I wanted, I started to talk about doing that kind of thing, and the representative said no, I am talking about what do you want.

And I want you to know that it is easy for Members of Congress to have those kind of conversations about What do you want? But

is just so happens that John Conyers and I, and Gohmert, and perhaps everybody on this panel, have lived long enough to understand—it is not about taking care of me or us. It is about taking care, of being fair to everybody. It is about opening up opportunities. Look. I have some friends on this panel. Cathy Hughes is one of my dearest friends in life.

But this is not about Cathy. She is rich. She is going to be all right. This is not about Suzanne. Suzanne is a talented woman, and even if she gets turned down, she is so brilliant, until finally, you know, she is going to have to work hard, perhaps at it, but they are going to have to let her in. And on and on and on. This is about generations now, and generations to come. This is about a Brandeis study, and if we are so selfish to be concerned about ourselves, we aren't worth our soul. [Applause.]

And let me just say this. Again, we have worked long enough at this, we have enough self-confidence to look Comcast in the eye, NBC in the eye, and say Not this time. Not this time.

And this goes for all of the institutions of our society that are responsible for this kind of exclusion. Much of this can be solved through public policy. Much of what we have to do means utilizing our power and our authority to break up this exclusion. I respect all of those who represent the companies. I respect those who have the designations of diversity.

I don't know what you think it means. I don't understand how, quite, you see your positions. If you can't tell me how many dollars are being spent with minorities in contracting, and every aspect of the business, if you can't tell me how many major executives making crucial decisions you have, then I don't know what you are talking about.

If you are telling me how many janitors you are hiring, how many clerks you are hiring, that is not good enough. We know that we can always get some numbers at that lower level.

So having said that, let's just understand each other. This is about ownership. This is about programming. This is about executive management. This is about advertising. [Applause.]

And again, let me reiterate, it is not about donations to the NAACP, the Urban League. Who else is, who else is, who else? It is good. Keep on donating. They need the money. But that does not do what we need to have done in opening up these opportunities where there is systemic exclusion, which keeps our communities and our people poor, and keep them from being able to gather the kind of wealth that they should be able to accumulate in America.

Having said that, one or two questions, cause I have used my time, and more than my time, to give you my take on all of this.

NBC, how many of the executive producers for your 2010 fall line-up are minorities?

Ms. MADISON. Congresswoman Waters, we have, in the 2010 line-up, for scripted shows, five out of 18 shows, Law & Order LA, Law & Order SVU, Love Bites, The Office, and Outlaw, have seven diverse co-executive producers.

Ms. WATERS. How many of the executive producers for your 2010 fall line-up are minorities? I want to ask you again so we will be on the same wavelength about what I am asking.

Ms. MADISON. There are seven.

Ms. WATERS. You have seven executive producers. Is that what you are telling me?

Ms. MADISON. These are diverse co-executive producers.

Ms. WATERS. No. Well, okay. Explain it again.

Ms. MADISON. Okay. Five of the 18 shows, and the leadership roles in the television, in these television series are executive producers, co-executive producers. Of the 18 shows we have, five of them, Law & Order LA, Law & Order SVU, Love Bites, The Office, and Outlaw, have, among them, seven diverse co-executive producers. So five of 18 shows has seven co's. And then on our reality shows——

Ms. WATERS. Yes.

Ms. MADISON. That's scripted. On our reality shows—I'm sorry. On our cable shows, there are four diverse executive producers and co-executive producers on USA and SciFi.

Ms. WATERS. All right. Let's see if we are on the same wavelength here. The Event. You have two minorities in supporting roles, no executive producers. Is that right?

Ms. MADISON. The Event, we have Blair Underwood as the president of——

Ms. WATERS. As an executive producer?

Ms. MADISON. No.

Ms. WATERS. Okay.

Ms. MADISON. I am sorry.

Ms. WATERS. If you would, please, if you call a name, I know Blair Underwood is in The Event.

Ms. MADISON. He is a lead on The Event.

Ms. WATERS. Okay.

Ms. MADISON. He plays the President of the United States.

Ms. WATERS. Okay. Do you have an executive producer on The Event?

Ms. MADISON. We do not have an executive—but we are still staffing the shows. We do not——

Ms. WATERS. So you are looking for an African American or Latino executive producer?

Ms. MADISON. We are still—— [Laughter.]

Ms. WATERS. Are there any African American executive producers types in the audience? Are there any Latino executive producers in the audience? Do you know of any African American and Latino or Asian executive producers?

Ms. MADISON. Congresswoman, we know of some, and the ones who are on the shows, we——

Ms. WATERS. No, no, no. No, no, no. No, no, no.

Ms. MADISON. We hired them on those shows.

Ms. WATERS. But you don't have them on this one. I want to know whether or not you can get the word out and help them.

AUDIENCE MEMBER. [Speaking from un-miked location.]

Ms. WATERS. I can't hear. Stand up.

Ms. MADISON. He's an executive vice president at NBC.

Ms. WATERS. Okay.

AUDIENCE MEMBER. We do have Jim Wong, Jay Wong. He's a very experienced—I have to admit, I don't know, exactly, his titles.

Ms. WATERS. Okay.

AUDIENCE MEMBER. A senior role.

Ms. WATERS. You all get the word out that they are looking.

AUDIENCE MEMBER. [Speaking from un-miked location.]

Ms. WATERS. Yes. Now I am told, because my staff really had to get involved in a lot of research, they say that co-executive producers are not show-runners. What does that mean, Suzanne?

Ms. DE PASSE. Well, a show-runner is the person who is actually most senior on the production and is chartered with the responsibility of delivering the show every week, you know, with their team. But they are the most senior of all of the producers, and just by way of information, very often, the co-executive producer, producer, supervising producer, there are lots of designated titles on a series, scripted show, that are accorded to writers, who also perform in some level of production. But it is like a bonus credit for writers to gain, because they are in training to become show-runners.

And so the truth is that you start as a story editor, you start in the writer's room, and you work your way up and you work your way up, and it is a very difficult level to achieve, to become a show-runner, and the notion that the co-executive producer role is as senior as the show-runner is just not true.

Ms. WATERS. Okay. All right.

Ms. MADISON. The show-runner is largely responsible for the budget. The show-runner is an executive producer but not all executive producers are show-runners, Congresswoman.

Ms. DE PASSE. Correct.

Ms. WATERS. Okay. You have another show, Chase, where you have one minority in a supporting role and no executive producers.

AUDIENCE MEMBER. We have two. Sorry. We have two minorities that play such a role.

Ms. WATERS. Okay. So you have two. No executive producers; is that right?

Ms. MADISON. There is no executive producer but——

Ms. WATERS. Okay. Then you have Undercovers. You have two minorities in a lead role, and no executive producers; is that right?

Ms. MADISON. In Undercovers, which again is still being staffed——

Ms. WATERS. But the fact of——

Ms. MADISON. Boris Kodjoe and Gugu Mbatha-Raw are the stars of the show. Two Black people are the stars, and a co-star, who portrays her sister, is also Black.

Ms. WATERS. And Undercovers—I want to make sure what I am saying is correct. There are two minorities in lead roles and no executive producers. Is that a correct statement?

Ms. MADISON. That is correct, presently.

Ms. WATERS. Okay. You have Outsource where you have three minorities in supporting roles and no executive producers; is that correct?

Ms. MADISON. I believe we have five minorities in the ensemble, in the cast, and I don't believe there are any executive producers. Oh. I'm sorry.

AUDIENCE MEMBER. [Speaking from un-miked location.]

Ms. WATERS. I am sorry. I can't hear you.

AUDIENCE MEMBER. [Speaking from un-miked location.]

Ms. MADISON. That is Grace Wu. She is the head of Casting.

Ms. WATERS. Suzanne, they have three minorities in supporting roles, ensemble cast. Are we talking about the same thing?

Ms. DE PASSE. Yes. I mean, listen, as hard as it is to get a job today doing anything, this is not a bad thing for them to be having diverse cast members. This is good; you know?

Ms. WATERS. Okay.

Ms. DE PASSE. This is very good.

Ms. WATERS. Okay.

Ms. DE PASSE. But I think the thing that we are trying to figure out is, when we say minority, for purposes of where I think you are going, it would be great to know how diverse. In other words——

Ms. MADISON. They are racial minorities. We are not counting women.

Ms. DE PASSE. Pardon me?

Ms. MADISON. They are racial minorities. We are not counting women.

Ms. WATERS. But what she is asking is, would you tell us what those racial minorities are.

AUDIENCE MEMBER. Mostly South Asian.

Ms. WATERS. I can't hear you.

AUDIENCE MEMBER. They are South Asian actors.

Ms. WATERS. South Asian. Okay.

AUDIENCE MEMBER. [Speaking from un-miked location.]

Ms. WATERS. That is an outsource. All South Asian?

AUDIENCE MEMBER. Yes.

Ms. WATERS. Okay. And executive producers, none. Is that right?

AUDIENCE MEMBER. That is correct.

Ms. WATERS. Okay. That is correct. Let's move on. Love Bites. No minority leads, one Asian American in a supporting role and no executive producers. Is that right?

Ms. MADISON. That's——

AUDIENCE MEMBER. It's—I'm sorry. I'm sorry.

Ms. WATERS. Who are you? [Laughter.]

You keep jumping up.

Ms. MADISON. He is an executive vice president.

Mr. SANDERS. My name is Bernie Sanders. I am the executive vice president of Current Programming. I recently was in Development at NBC as a senior role.

Ms. WATERS. Okay.

Mr. SANDERS. Love Bites, just for clarification, is a show much like Love American Style. So there is a guest cast coming in and out. The more we talk about the guest cast that was invited into that pilot episode, it is highly diverse. But in terms of series regulars, you are correct. We only have two series regular roles and both—neither of those roles are diverse.

Ms. WATERS. And you have no executive producer?

Mr. SANDERS. Correct.

Ms. WATERS. Okay. Let's move on. School Pride. Two minorities in ensemble supporting roles, no executive producers; is that correct? Come on. You jumped up on everything else. [Laughter.]

Is that right?

Mr. SANDERS. I cover scripted shows so I——

Ms. WATERS. I just thought you knew everything. Okay. All right. Okay. Paula, is that correct?

Ms. MADISON. That is a reality show, and it is a make-over of inner city schools. There are two co-hosts, and coming in and out of the co-host role, I believe there are, there is diversity. It was designed that way, so that there is diversity, depending upon which school we are looking at and when.

Ms. WATERS. You have two minorities in ensemble supporting roles and no executive producers. Is that a correct statement?

Ms. MADISON. That could be in the pilot——

Ms. WATERS. Okay. All right.

Ms. MADISON [continuing]. But not necessarily in the series.

Ms. WATERS. Outlaw. One minority lead and no executive producers. Is that right? Jimmy Smits and no executive producers; right?

Ms. MADISON. Outlaw has a co-executive producer who is diverse.

AUDIENCE MEMBER. And then we also have a co-lead, David Ramsey, who is African American, who's Jimmy Smits' partner on the show.

Ms. MADISON. Jimmy Smits is the lead.

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Ms. WATERS. Is that considered a lead role?

Ms. MADISON. Yes. He plays a Supreme Court justice, just retired.

Ms. WATERS. So you have one Latino and one Black, and no executive producer. But you have something called co-executive producer; is that correct?

Ms. MADISON. Yes.

Ms. WATERS. How many people are in the show? Describe to me what would be the total numbers——

AUDIENCE MEMBER. Of the series?

Ms. WATERS. Yes.

AUDIENCE MEMBER. There are five series regulars on the show.

Ms. WATERS. Five regulars?

AUDIENCE MEMBER. Five regulars, and two of them are diverse.

Ms. WATERS. And?

AUDIENCE MEMBER. Pardon me?

Ms. WATERS. How many, totally, in all of the shows? How many people?

AUDIENCE MEMBER [continuing]. Cast members?

Ms. WATERS. I can't hear you.

AUDIENCE MEMBER. I'm sorry. I guess I'm not clear what the question was.

Ms. WATERS. Okay, and I'm not clear either, except to say that you are casting five consistent roles but you are also casting, what do they call them? walk-ons and others who participate in this series. Is that right? How many, totally, including the ones who may be doing one show, two show, walk-on, one time, whatever. How many altogether?

AUDIENCE MEMBER. It varies. I can say for a show like Love Bites, which we will be casting, mostly guest cast every week, there'll probably be up to six to eight guest leads per episode, once we start production on that.

For a show like Outlaw, in the pilot there were probably—well, there were——

Ms. MADISON. Five.

AUDIENCE MEMBER. There were actually two guest leads, actually, both of them African American actors. It took place in Philadelphia. So——

Ms. WATERS. Okay. I think I get the picture.

The Cape. Two minorities in supporting roles; no executive producers.

Ms. MADISON. That sounds correct.

Ms. WATERS. Okay. Friends With Benefits. One person of color; no executive producers. Is that correct?

AUDIENCE MEMBER. We are, just to speak on the casting front, we are in process of—there are five series regulars. One is diverse. We'll be casting two of the actors and one of them will absolutely be diverse. So the number of diverse actors will be increased in the series.

Ms. WATERS. Okay. But for right now, what we know about it is one person of color and no executive producers. Is that right?

Ms. MADISON. Yes.

Ms. WATERS. All right. And Perfect Couples. Of course no couples of color.

AUDIENCE MEMBER. There is one.

Ms. WATERS. One. What ethnic group?

AUDIENCE MEMBER. She's Asian American.

Ms. WATERS. African American. Okay.

AUDIENCE MEMBER. Asian American.

Ms. WATERS. Asian American. Okay. All right. Harry's Law. One minority in a supporting role; is that correct?

AUDIENCE MEMBER. In the pilot, yes, but we are recasting the show, so we'll have more of an update——

Ms. WATERS. They are recasting you all.

The Paul Reiser Show. Three minorities in supporting roles. I just wanted to go through that, so that we could just get kind of an understanding of what is happening.

When Ms. de Passe alluded to the Bill Cosby Show, Moesha, Girlfriends-we don't have any of that anymore, do we?

Mr. CONYERS. No.

Ms. WATERS. We don't have any of that; right?

Mr. CONYERS. No.

AUDIENCE MEMBER. No.

AUDIENCE MEMBER. No.

AUDIENCE MEMBER. No.

Ms. WATERS. I take personal offense to that. I really liked Girlfriends. [Applause.]

Okay. And let me just ask a bottom-line question. Are there any Black or Latino show-runners in NBC primetime? Where is that gentleman that knows so much?

AUDIENCE MEMBER. The answer to your question is no.

Ms. WATERS. That is all you have to say? You don't have any. Thank you. All right. Thank you very much. Thank you very much. I had lots more questions for Comcast, but maybe in the discussion that you and others will lead us in, some of those will come up. I really appreciate you for your generosity and time. Okay.

Mr. CONYERS. Give Maxine Waters a round of applause, please. [Applause.]

I am now pleased to introduce to you, but many of you know her already because she is from the LA area as congresswoman, the first Chinese American woman in Congress in history. Judy Chu. [Applause.]

Ms. CHU. Thank you for that gracious introduction. I wanted to follow up on the responses. This is a very large document, a very detailed document called Responses of Comcast Corporation and NBC Universal to Questions Submitted by Several Members of the United States House of Representatives.

And first, I wanted to address the issue of diversity and ethnic cable packages, and programming. You talk about the fact that Comcast supports African American, Hispanic and API, Asian Pacific Island programming. And I have a concern about whether this diverse programming will primarily be in premium packages, premium packages that cost more, and whether that is exclusionary of many people in our community.

Like, for instance, you refer to a Hispanic cable package in your response. How much more does that cost?

Ms. MADISON. Congresswoman Chu, the question specifically about Comcast cable packaging, the price packaging, I would have to take back to Comcast for answers. I was primarily here to talk about the new NBC Universal.

Ms. CHU. So nobody is here from Comcast to talk about any of these very important diverse——

Ms. MADISON. There are people here from Comcast. They weren't prepared to testify, however.

Ms. CHU. Well——

Ms. WATERS. I'm sorry.

Ms. MADISON. We can get those answers for you.

Ms. WATERS. If the gentlewoman would yield one more time. You did ask if there was anybody here responding to a request from this Committee, from Comcast, to testify. I want the record to be clear. Is that what you asked?

Ms. CHU. Yes.

Ms. WATERS. And what response did you get?

Ms. CHU. Nobody is here to testify on this, even though there is a very, very thick document that is supposedly the response to us on these issues that we raise pertaining to diversity and this whole merger issue.

Ms. MADISON. So if I could answer it this way. When your Committee had the hearings in February, in Washington, the question specifically around Comcast, Brian Roberts, we thought, was the witness, the appropriate witness at the time.

Then there were a number of questions that were put to Comcast and NBC Universal by the FCC, which were just submitted, the answers to which were just submitted, in writing.

To the extent that there are more questions about Comcast pricing, I would be more than happy to take those questions back to Mr. Roberts, but he did address those in the Committee hearing in February.

Ms. CHU. I don't think they were addressed, because the responses here raise more questions.

Ms. MADISON. Then, for the record, I will be happy to take your questions back and get responses from Comcast.

Ms. WATERS. May I ask the Chairman. Mr. Chairman, you said we would have more questions. Ms. Chu, if you don't mind. Is it possible that you have the power to subpoena responses from anyone that is unresponsive? Do you have that power?

Mr. CONYERS. Who? Me?

Ms. WATERS. Yes. Is it possible that, at some point in time, you could make a decision——

Mr. CONYERS. Well, we would never consider anything like that; no.

Mr. BROWN. Mr. Chairman, if I may.

Mr. CONYERS. Yes, sir. Who are you?

Mr. BROWN. My name is Payne Brown. I am vice president of Comcast. While we did not have somebody on the panel, we're certainly here, not hiding. With regard the Congresswoman's specific question, I am happy to get back to you the pricing of those packages.

Ms. CHU. Well, then I am going to make a statement, and basically say what my concern is. Basically, in your response to us, you refer to these cable packages, but we know that certain packages that you have actually cost different community members more.

For instance, the Asian American On Demand package, like their Bollywood package, costs 12.99 a month, and the Filipino package costs 7.99 a month. So I have great concern that these packages, what you call diverse programming, are actually going to cost the community more. And there is a situation here where Comcast operated a network called AZN, which offered a diverse array of programming for Asian communities.

Then Comcast stated that AZN was unsustainable and that there wasn't sufficient demand. But considering the fact that there are 5 million Asian Americans in California, you would think that there would be sufficient demand.

So the question was availability. Was AZN only offered with premium cable packages? And we already know that it costs a lot to have a premium package, in some areas, $127, and it is really a luxury. And so if that is what is going to be the definition of diverse programming, that is not acceptable.

Mr. BROWN. If I may. And in response with regards to the price point on the packages, I can address specifically AZN. It was not a part of the premium package.

Ms. CHU. Then when you follow through with a plan to increase the number of diverse and independent programming, will the new programs be part of Comcast non-premium cable packages?

Mr. BROWN. The channels which are referenced in in our files would be two channels a year for 3 years, six channels. It is not contemplated that those will be part of premium packages.

Ms. CHU. Well, then that brings up the adding to, you know, this idea of adding two new independently-owned and operated channels each year for 3 years. Again, we could have more diverse programming coming through them. But is Comcast committing to the net addition of two new independently-owned channels per year, or are you simply replacing eliminated channels?

Mr. BROWN. No, we are not, it was not contemplated, be replacing eliminated channels. Those are additional channels, added to the ones——

Ms. CHU. And do you commit to adding the independent channels to your most highly-penetrated tiers?

Mr. BROWN. We have not made distribution commitments, other than to say to say that there will be different new channels but they are not assigned to a specific tier.

Ms. CHU. Then I will also raise a concern, which is the question of whether there would be any blocking, or otherwise diminishment of broadband subscribers' access to such competitive online content, and whether there might be an online pay wall that would be required by Comcast subscriptors for access, such as some kind of payment that they would have to pay, for those who were watching Hulu, an extra payment for accessing this kind of content. That would be counterproductive.

Then Comcast and NBC stated that, in your response to us, so maybe both of you, or either of you could answer this, which is that you will collectively produce an additional 1000 hours per year of local news and information programming.

But this was not included in a specific commitment. Is this going to be a part of a binding commitment?

Mr. BROWN. That was in the FCC filing.

Ms. MADISON. Yes. It was in the FCC filing. Yes.

Ms. CHU. So it is going to be part of a binding commitment. And how will these hours be allocated?

Ms. MADISON. Congresswoman, I think that that is part of the process. We see them as local news and information. So depending upon the various communities, and what the various communities would therefore be looking for, we would produce that kind of content that is local.

Ms. CHU. And will this commitment continue year after year, or only during the first post-merger year?

Ms. MADISON. I actually don't know.

Mr. BROWN. We will continue-

Ms. MADISON. The commitment is for 3 years but we will continue.

Ms. CHU. Okay. And then finally, you know, this issue of supplier diversity data is extremely important, I think. Is Comcast willing to disclose supplier diversity data and partner with community groups who will monitor Comcast and the joint venture's ongoing commitment to supplier diversity?

Ms. MADISON. Yes. That is part of the relationship, for example, the various diversity councils, the conversations that have been going on with Alex Nogales. that is one of the points of the MOU.

Mr. BROWN. Absolutely. And in the document that we released about other diversity commitments, we are creating diversity councils, both African American, Asian and Hispanic community, and supplier personnel which will be reviewed with those councils.

Ms. MADISON. With an eye toward getting assistance from the members of the various organizations with whom we would be partnering.

Ms. CHU. Okay. Thank you.

Mr. BROWN. Thank you.

Ms. MADISON. Thank you.

Ms. CHU. Thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Thank you. Ms. de Passe.

Ms. DE PASSE. Yeah. I, for the record, just wanted to clarify something about the show-runner situation, because I think it should be noted that part of the internship to developmental process that as how-runner goes through, or a prospective show-runner goes through, is not only something that allows them to develop their craft—this is a practice sport. What we do is a practice sport. Like a tennis serve. You can't get better at it unless you do it.

And for people to understand that it is not about a job. It is about a career. It is about a continuity of jobs. And when the sitcom basically went away, and the shows that I was talking about went away, many of the people who were developing as show-runners, or people, African Americans, in particular, who had become show-runners, lost the opportunity to have that continuity, and therefore, are now back to looking for jobs.

And it is also true that, you know, a half-hour situation comedy, which we call multi-camera shows, basically went out of fashion for a while. They are starting to come back a little bit. And so that is a good thing for many of our show-runners of color.

But it is absolutely true that we need to understand that whether it is an actor, or a crew member, or a writer, or an executive producer, or a developing show-runner, it is about a continuity. It is not about a one-time thing. That is not how you build anything, and you can never get the credibility to be in demand, or to be hired, because being a show-runner is a very, very, very important job, a very tough job, and networks care more about who it is than what it is.

And they want to know that that person knows who to deliver a show, run a show, deal with a budget, as Paula said, and it is vital, absolutely vital, that when we talk about this, we look at the opportunity for continuity, not just a job.

Mr. CONYERS. Steve Cohen comes out of a background that might surprise someone, because he is connected to Harry Belafonte and his family. So he is not without some knowledge of the rudiments of the industry and we yield to him for his questions or comments.

Mr. COHEN. I want to thank you, Mr. Chairman, for giving me the opportunity to speak after you have had a standing ovation. Congressman Waters has had an Oscar-winning type questioning session and a standing ovation. Congressman Gohmert fell into an unbelievable colloquy they never heard before in Washington. [Laughter.]

Ms. Chu has left. You know, I think this hearing has been successful, and what it is about, it is like an Impressionist painting, and the painting has been presented, and the colors are out there, and it has achieved its purpose. So I don't know that there is that much more that we could add.

But one thing I thought, I understand the need for the hearing and the need for more opportunities for minorities. The report from the Brandeis university is just indicative of something that the Chairman has worked on for so many years, and Congressman Waters has too, and it has been a part of my work, and that is trying to see that we do have fairness and justice and equity in our country, which we have not had, even though the Declaration of Independence and the Constitution claimed we did.

We are getting to be a more perfect union. We still suffer from vestiges of slavery and Jim Crow, and we passed a resolution in the House, the 110th Congress, to say we rectify those lingering consequences, and we need to do that. And that is the primary reason why I think the Brandeis study is there. And the separation in income.

The separation of income of all peoples, Black and White, has become greater and greater and greater over the last decade, and a lot of it is the Bush tax cuts.

But there are other reasons for it as well, and opportunities that haven't been presented. And this is just a part of it, and it's a great opportunity—I don't know who mentioned it, maybe it was Mr. Washington—that there are so many African American customers of Comcast, and of cable, and it is a place where pricing is equal, although you could choose different packages, that African Americans do participate in a manner that does dictate that there is more responsiveness to the African American community at large, than you might have in some other areas.

Because you can buy a Brioni suit, or you can buy another suit, but you can only buy one Comcast package, more or less. I know you get Basic Comcast, you get Comcast plus do-dads. But basically it is quite similar, and there is not that much difference, and there is a whole lot of African American participation in there. So there is a need, and I think it has been shown well.

One thing I find that is sad, and I understand the need for more programming, and more show-runners, and more jobs, and all those things—but what is sad is that Congressman Gohmert and I were big fans of the Bill Cosby Show, and we watched it, because in that time, long ago and far, far away place, there were just three stations, and they didn't have names like Hulu and Gugu. They were acronyms. They were alphabetical names.

And so people watched the Bill Cosby Show. If you were White, you saw Bill Cosby. But if you are going to end up with all these channels, and you are going to have these channels Mr. Washington talks about, which is commendable for programming and all that, African American channel, it is not going to be seen by everybody.

And we are getting in the country too striated, where all we do see what we want to see. We see the Hispanic channel if we are Hispanic. Or the Asian channel if we are Asian. Or the Africa—but when you had three channels, you all had to kind a watch, you know, each other, and it brought our country together.

And I am afraid part of what cable is doing is doing too much to keep us separate, and in our own little world, and not coming together.

So I would hope that Ms. Madison would see to it that NBC, which still has a large following, even though there are these other stations, networks, does do more in diversity, cause that does give a picture to America of people that they don't often come in contact with.

A question was asked about Meet The Press and the Sunday talk-shows, and I know you have had Congressman Ford, Jr. on there, and you had somebody else on recently who you had to tell

people who he was. I mean, he was a very bright, intelligent man, but nobody knew him. You had to give his vitae at the show.

And I mentioned to you Julian Bond, and others have mentioned Mfume. There are people of the NAACP who are the people who should be out there on Meet The Press, advocating the African American perspective, who do it in an honest and just way, with a history of doing it, that should be on those shows. [Applause.]

Mr. LIGGINS. I would like to make a plug, because we, at TV One, actually created a show called Washington Watch, about five or 6 months ago, hosted by Roland Martin of CNN, for just that purpose. It comes on Sundays at 11 a.m. and then it is reaired at 5 p.m., and the, you know, kickoff guest was Joe Biden, and we run everybody that we can get, who is African American or has constituents that are affected, that are constituents that are African Americans, or run programs, government-oriented programs that affect African Americans. I invite you all to watch it.

But we lose money on it, we put it on the air because it was the right thing to do, and it has been on for quite some time, and it is done out of the Comcast studios across from Capitol Hill, and Roland is a great host, and I think it covers the base that Meet The Press doesn't, so——

Mr. COHEN. And Roland's great, but I think, you know, Meet The Press gets into everybody's living room.

Mr. LIGGINS. Fair enough.

Mr. COHEN. And that is why it is important to have that perspective, which is missing, and it has been missing. And I am not saying that my friend, the Texas Christian, Bob Schieffer, does any better on his show.

Mr. LIGGINS. Right.

Mr. COHEN. You know, it is not there. And I want to thank you. You said something about some gigantic or great deal. I thank you for not thinking about Joe Biden. I was afraid you were going to get there. Better use of adjectives.

Mr. STANLEY WASHINGTON. Mr. Cohen, can I make a clarifying comment, if I could?

Mr. COHEN. Yes.

Mr. STANLEY WASHINGTON. What I'd like to just clarify, in my comments earlier, in reference to the condition that we are requiring, or requesting, for 25 channels. To your point, what we really are advocating isn't 25 BETs or TV Ones. What we are saying is African Americans, and Hispanics, and Asians, should have the ability to own and operate a multitude of thematic type of programming that would exist in the marketplace.

Mr. COHEN. And you are proper to correct me on that, cause you are right, cause you could produce and have African American ownership of some stupid reality shows too. I mean, that is not something that only Caucasians could do.

Mr. STANLEY WASHINGTON. We want the same right. We want the same right.

Mr. COHEN. But you are right. Our Western cowboy shows, or whatever. But I really think Mr. Griffin made a good point that, you know, Jimmy The Greek talked about other people's money, use OPM. I don't know why it takes a 100 percent African American-owned company. Better to have 51 percent. Let 49 percent

suckers give you money and you run it. That seems like a great deal.

Mr. STANLEY WASHINGTON. I think the notion, though, that gets missed is, particularly when we talk about cable ownership, is that the revenue model is secure enough for an owner, if they are being treated freely and they are being given competitive subscriber fees to compete. When Ted Turner launched his channel, when he launched his network, he was selling Ginsu knives over his network.

The notion that you must have advertising commitment to launch is not correct. If you are treated equally on the platform, and Comcast, and others, give you what you are worth to compete in their marketplace, there is plenty of opportunity to sustain yourself in the overall scheme of how you operate.

And I think that there are. I really do. I think that there are. You know, a real estate investor in acquiring Miramax. Right. There are plenty of people outside of the industry, as well as in, that have the capability, the financing and the ownership, at a 100 percent, to come in and operate and run these channels, if in a free market environment they are being treated and allowed to operate freely.

Mr. LIGGINS. Congressman, I just want to add, cause I think this is where African Americans, in general, do themselves a disservice. The misnomer, that you can have a 100 percent ownership of any large company, is just that.

Mr. COHEN. Right.

Mr. LIGGINS. It is not economically possible. It costs us $75 million a year to run TV One. Seventy-five. And it is good quality programming. If you want to spend $7 million a year, you are not going to be proud of what is on the screen. So we need to get away from this thing, that if it is not a 100 percent African American-owned, or 80 percent African American-owned, that it doesn't qualify as African American-owned, cause then you will never come up with any true quality African American-owned companies.

And I mentioned it before. Nobody doubts that Bill Gates owns Microsoft, or Rupert Murdoch owns Fox. Or Sumner Redstone owns Viacom. So why should that fall back on African Americans in terms of their value——

Ms. WATERS. Will the gentleman yield for 1 second, please, before you——

Mr. COHEN. Surely. Yield.

Ms. WATERS. Let me just say that I attempted to talk about our role and our responsibility in trying to open up opportunities in all sectors of our society, and I want you to know, to that end, we are concerned about Wall Street, and whether or not Wall Street is investing in these opportunities. I heard the discussion about Bill Cosby and Bill called me, and I talked to him about the fact that he wanted very much to acquire NBC, but Goldman Sachs and the rest of them said no. They would not help to finance him, despite the fact he was really making NBC at the time.

So to that end, on the Financial Services Committee, in the Wall Street reform legislation that will be in conference starting next week, we have some amendments that I put in, that would create the Offices of Minority Inclusion in all of our financial services of-

fices, including, you know, FDIC, the Treasury, SEC, everywhere, so that we can begin to address these issues of institutional exclusion, and get our Government not only organized to take a look at what is going on but be able to do public policy that would help to correct it.

So we recognize what you are saying, Mr. Washington, but we also recognize that equity investment is extremely important to the way we do business in this society, and that it is very difficult to do it without it. Even though we do have a few rich people, they don't usually put their total amount of funds at risk in order to advance a business where the whole thing is at risk.

So we are looking at that aspect of it also. Thank you very much.

Mr. COHEN. You are welcome, and I think Mr. Washington sought recognition.

Mr. FRANK WASHINGTON. The other Mr. Washington.

Mr. COHEN. Mr. Washington, the elder.

Mr. FRANK WASHINGTON. I am not sure I accept that, but I will take it any way I can get it.

Mr. COHEN. Pliny, the Elder, in mind. [Laughter.]

Mr. FRANK WASHINGTON. A couple of things I think that Congresswoman Waters, and you, Mr. Cohen, spoke to, I think are very important to help focus this discussion. The minority tax certificate, as I mentioned, was the most effective device for inciting minority ownership.

The reason why it worked, because it was a marketplace sensitive approach. My experience with Congress, quite honestly, in terms of mergers, was my attempt to buy Viacom's cable system 10 years ago, and that little incursion resulted not only in my deal being retroactively killed, but also in the end of the tax certificate.

So, you know, one of the things, I think you all sit in a very important position, and it is sometimes easy to forget that nobody is prescient, nobody's omniscient.

The marketplace really, I think, is going to be the answer to a lot of this stuff. So I mean, whatever solutions, whatever decides you look to, and Congressman Waters, I think your focus on sources of equity is probably the highest priority here, because at the end of the day, all of us entrepreneurs, I mean, you know, our ideas are only bounded by the money and the capital that we can get to support them.

But anyway, I think the important thing to remember is the marketplace, really, is going to what, is going to what determines this.

This merger, in a way, I think is being prompted, as we watch in a landscape where newspapers are being turned upside down by the same kind of fears, coming from disruptive technologies and services.

There may be a guy sitting in the back of the room that is going to create the next Facebook. I mean, we just don't know. I have a service called blackbird.com, which it is a Black-oriented browser, that basically pulls all the information together on to a browser that sits on your computer. You know, we have 300,000 subscribers. Who knows, you know, who is going to determine this?

But I would just caution, and pray, that you try to recognize that, like the rest of us mortals, you can't know what is going to

happen. So whatever approach you come up with is one that allows and facilitates the marketplace, as opposed to trying to apply some sort of rigid approach that, in my experience, when that has been done, it causes things, in many cases, that really are counterproductive, so——

Mr. COHEN. The gentleman back here that Congressman Waters said knew all the answers. Could you answer a question. I don't watch a lot of television, really. I watch sports, and I watch, I try to watch Rachel Maddow and Keith Olbermann, but Comcast put them on 81 instead of 48, so it is harder to find it. Kind of like taking Radio Free Europe out of the Soviet Union. [Laughter.]

What is Friends With Benefits about? [Laughter.]

Mr. SANDERS. It is about what it sounds like.

Mr. COHEN. I have got to watch that show.

Thank you. I yield back the balance of my time.

Ms. WATERS. Thank you all very, very much. First, I would like to again thank my Chairman, and the Members of the Judiciary Committee who showed up today, to be a part of this most important discussion.

Secondly, I would like to thank all of the panelists for your contribution. I would like to say for those panelists who have ideas about how we could do some corrections in this industry, don't wait until we find you, call us, and help us to be able to create good public policy, based on your knowledge and your experience. That is how we get good public policy.

If we are left to do it as best we can, we are going to do what we know how to do. You may not like what we do. So if you want us to do what you think makes a lot of sense, you have got to call us and help us out. I want to thank some of the people who have been in this struggle for so long, whether we are talking about organized labor or we are talking about greenlining, or these other panelists who are here today representing the intellectual point of view, based on the work that they do.

We really are appreciative for your participation. My Chairman not only asked me to thank all of you but to let you know that we shall continue in our efforts to learn more about this merger and to make sure that we dissect the commitments that are being made, and we will also have the opportunity to forge what we think are legitimate responses based on the information that we are learning.

So Mr. Chairman, I think with that, I will give you the microphone to adjourn this Committee, and once again, we thank you all for your participation today.

This Committee is adjourned.

[Whereupon, at 12:55 p.m., the Committee was adjourned, subject to the call of the Chair.]

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