# WILLKIE FARR & GALLAGHER LLP

MICHAEL H. HAMMER
202 303 1110
mhammer@willkie.com

1875 K Street, NW
Washington, DC 20006 1238
Tel 202 303 1000
Fax 202 303 2000

May 4, 2010

**Via Hand Delivery**

FILED/ACCEPTED

MAY - 4 2010

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re:** *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56
**REDACTED – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

On behalf of Comcast Corporation, General Electric Company, and NBC Universal, Inc., and in accordance with the First and Second Protective Orders adopted in this proceeding,[1] enclosed please find two copies of the **redacted, public** version of two separate expert economic reports (the "Economists' Reports"). The first report, written by Dr. Gregory L. Rosston, is titled *An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction*. The second report, titled *The Comcast/NBCU Transaction and Online Video Distribution*, was written by Dr. Mark Israel and Dr. Michael L. Katz.

The {{ }} symbols denote where Highly Confidential Information has been redacted, and the || || symbols denote where Confidential Information has been redacted. In addition, enclosed please find a cover letter summarizing the Economists' Reports. Highly Confidential and Confidential versions of the Economists' Reports (and discs containing Highly Confidential and Confidential attachments) are being filed simultaneously with the Office of the Secretary under separate cover. The Confidential and Highly Confidential versions of this filing will be made available pursuant to the terms of the Protective Orders.

---

1 *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Protective Order, 25 FCC Rcd 2133 (MB 2010); *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Second Protective Order, 25 FCC Rcd 2140 (MB 2010).

No. of Copies rec'd 0+1
List ABCDE

Respectfully submitted,

Michael H. Hammer
*Counsel for Comcast Corporation*

Enclosures

May 4, 2010

**Via Hand Delivery**

FILED/ACCEPTED

MAY - 4 2010

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56
**REDACTED – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

At the request of Commission staff,[1] Comcast Corporation ("Comcast"), General Electric Company, and NBC Universal, Inc. ("NBCU") (collectively, "Applicants") hereby submit two additional reports that confirm, from an economics perspective, information and analyses Applicants previously submitted for the record in their Public Interest Statement.[2] The first report, titled *An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction*, by Dr. Gregory L. Rosston (the "Rosston Benefits Report"), describes numerous public interest benefits that will result from the proposed transaction. The second report, titled *The Comcast/NBCU Transaction and Online Video Distribution*, by Dr. Mark Israel and Dr. Michael L. Katz (the "Israel/Katz Online Video Report"), confirms that the proposed transaction will have no adverse impacts on online video distribution.

Dr. Rosston finds that "[t]he transaction is likely to result in synergies and changes in incentives that will stimulate increased investment by Comcast in programming and distribution, and this, in turn, will broaden and accelerate innovation in video distribution platforms, expand the range of video programming services, and increase the quantity, quality, and convenience of

---

1 *See In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, Order, DA 10-662, ¶ 2 (MB rel. Apr. 16, 2010).

2 *See In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) ("Public Interest Statement").

video viewing by consumers."[3] Dr. Rosston's findings are consistent with and confirm Applicants' Public Interest Statement.[4]

Dr. Rosston observes that Comcast has the capacity to deliver innovative new services that consumers want, but Comcast often cannot do so, or cannot do so as quickly as it would like, because negotiations bog down over the potential impact of such new services.[5] He concludes that a "key public interest benefit" of the proposed transaction is the elimination or reduction of such negotiating friction and "the acceleration of the anytime/anywhere future of video viewing" across multiple new platforms.[6]

Drs. Israel and Katz's "central conclusion is that the proposed transaction does not threaten competition in the distribution of long-form, professional-quality video programming, notably the provision of such programming via the Internet."[7]

In support of this conclusion, Drs. Israel and Katz find that the online video business is nascent and complementary to, rather than a substitute for, traditional video services provided by Comcast and other multichannel video programming distributors ("MVPDs").[8] As long as online video distributors are complementary to traditional MVPDs, there is clearly no basis for concern about foreclosure of online video distributors by Comcast.

However, even if a viable online service were to emerge as a competitive substitute to traditional MVPDs, the transaction will not create or enhance any economic incentive for Comcast to attempt to deny NBCU's content to such a competitor.[9] Applying the Commission staff's vertical foreclosure model to the proposed transaction, Drs. Israel and Katz conclude that "even in a hypothetical future scenario in which one or more online MVPDs emerges as a substitute for traditional MVPDs, Comcast would be highly unlikely to be able profitably to induce NBCU to withhold its content from such distributors in order to increase Comcast's non-

---

3 Rosston Benefits Report ¶ 7.

4 Dr. Rosston notes that Applicants also made several voluntary public interest commitments and that the tangible consumer benefits of these commitments are discussed in the Public Interest Statement. *See* Rosston Report ¶ 7; *see generally* Public Interest Statement *passim* & App. 8.

5 *See* Rosston Benefits Report ¶ 43.

6 *Id.* ¶ 15.

7 Israel/Katz Online Video Report ¶ 3.

8 *Id.* ¶ 4.

9 It is also worth noting, as Drs. Israel and Katz point out, that under the terms of the agreement establishing the joint venture, the venture's directors and officers owe fiduciary duties to the joint venture and its members, including GE. These duties would be violated if the directors and officers made business decisions that intentionally sacrificed joint venture profits in order to increase Comcast's MVPD profits. *See id.* ¶ 123.

NBCU profits."[10] Drs. Israel and Katz's conclusions apply not only to the hypothetical future case in which an online distributor has established itself in the marketplace, but also to the hypothetical case of a new online entrant. Specifically, they find that "in the new-entrant scenario, too, Comcast would be very unlikely to be able profitably to induce NBCU to withhold its content from online MVPDs in order to increase Comcast's non-NBCU profits."[11]

Both of the reports contain Confidential and Highly Confidential Information. Accordingly, Applicants are filing public (redacted) versions in the public record and are submitting Confidential and Highly Confidential versions under seal. Pursuant to the protective orders,[12] the Confidential and Highly Confidential versions of the reports will be made available upon request to parties whose authorized representatives have signed the appropriate protective orders.

Respectfully submitted,

*Michael H. Hammer*
Michael H. Hammer
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000
*Counsel for Comcast Corporation*

*A. Richard Metzger, Jr.*
A. Richard Metzger, Jr.
LAWLER, METZGER, KEENEY & LOGAN, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700
*Counsel for General Electric Company*

---

10 *Id.* ¶ 55. While Drs. Israel and Katz use the label "online MVPD," they do so as a convenient shorthand only, and they offer no opinion on whether any such entity would meet the statutory definition of an MVPD. *See id.* ¶ 50 n.71.

11 *Id.* ¶ 134.

12 *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Protective Order, 25 FCC Rcd 2133 (MB 2010); *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Second Protective Order, 25 FCC Rcd 2140 (MB 2010).

*David H. Solomon*

David H. Solomon
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
(202) 783-4141
*Counsel for NBC Universal, Inc.*

Enclosures

# THE COMCAST/NBCU TRANSACTION AND ONLINE VIDEO DISTRIBUTION

May 4, 2010

**Mark Israel**
**and**
**Michael L. Katz**

## Contents

I. **INTRODUCTION** ..... 1

II. **THE ROLE OF ONLINE VIDEO VIEWING IN THE BROADER VIDEO MARKETPLACE** ..... 7

A. THE VERTICAL STRUCTURE OF THE U.S. VIDEO MARKETPLACE ..... 8

1. CONTENT CREATION. ..... 9
2. PACKAGING AND CONTENT PRESENTATION. ..... 12
3. TRANSPORT. ..... 16
4. CONTENT SEARCH AND DISCOVERY. ..... 17

B. BUSINESS MODELS BUILT AROUND INTERNET TRANSPORT OF VIDEO TAKE MANY FORMS AND ARE RAPIDLY EVOLVING. ..... 17

C. THE CHARACTERISTICS OF ONLINE VIDEO VIEWING ARE STARKLY DIFFERENT FROM THE CHARACTERISTICS OF TRADITIONAL TELEVISION VIEWING. ..... 20

1. CONSUMERS WATCH MUCH LESS ONLINE VIDEO THAN THEY WATCH TRADITIONAL TELEVISION. ..... 21
2. TRADITIONAL TELEVISION VIEWING HAS CLEAR PEAK TIMES WHILE ONLINE VIEWING DOES NOT. ..... 21
3. ONLINE VIDEO SITES OFFER VIDEO-ON-DEMAND BUT NOT LINEAR NETWORKS. ..... 23
4. ONLINE VIEWING TENDS TO BE SPORADIC WHILE TELEVISION VIEWING TENDS TO BE CONTINUOUS. ..... 24
5. CONSUMERS USE ONLINE VIEWING TO SUPPLEMENT TRADITIONAL TELEVISION VIEWING. ..... 24
6. A GIVEN VIEWER IS LIKELY TO UTILIZE MULTIPLE ONLINE VIDEO SITES BUT ONLY ONE MVPD. ..... 26

D. BROAD IMPLICATIONS OF TELEVISION VIEWING PATTERNS ..... 27

1. ONLINE VIDEO DISTRIBUTION SERVICES TODAY GENERALLY ARE COMPLEMENTS FOR THE SERVICES OFFERED BY TRADITIONAL MVPDS AND BROADCAST AND CABLE NETWORKS, AND COMPLEMENTARITIES ARE LIKELY TO CONTINUE TO EXIST. ..... 28
2. ONLINE VIDEO VIEWING THAT MIRRORED TRADITIONAL TELEVISION VIEWING LEVELS AND PATTERNS WOULD STRAIN CURRENT INTERNET ACCESS NETWORKS BUT WOULD COMPLEMENT FUTURE NETWORKS. ..... 32

**III. APPLICATION OF THE COMMISSION STAFF FORECLOSURE METHODOLOGY TO FORECLOSURE OF ONLINE DISTRIBUTION RIGHTS ..... 37**

A. A FRAMEWORK FOR ESTIMATING THE COSTS AND BENEFITS OF FORECLOSURE ..... 42

B. EFFECTS ON NBCU ..... 46

1. NBCU WOULD LOSE THE PROFITS DERIVED FROM AFFILIATE FEES AND ADVERTISING ON THE FORECLOSED ONLINE MVPDS. ..... 46

2. OVER-THE-AIR VIEWING OF NBCU'S BROADCAST PROGRAMMING MIGHT INCREASE, WHICH WOULD INCREASE THE PROFITABILITY OF NBCU'S BROADCAST OPERATIONS. ..... 50

3. THE DEMAND FOR NBCU'S PROGRAMMING ON SUPPLEMENTARY SITES MIGHT RISE, WHICH WOULD INCREASE THE PROFITABILITY OF NBCU'S PROGRAMMING OPERATIONS AND ANY SUPPLEMENTARY SITES IN WHICH NBCU HAD AN OWNERSHIP INTEREST. ..... 51

a) *OnlineSuppProfit* ..... 52

b) *OnlineSuppChange* ..... 53

4. THE DEMAND FOR TRADITIONAL MVPDS' SERVICES MIGHT RISE, WHICH WOULD INCREASE THE DERIVED DEMAND FOR NBCU PROGRAMMING ON THOSE SYSTEMS AND COULD INCREASE NBCU'S PROFITABILITY. ..... 54

a) *MVPDProgProfit* ..... 55

*b) Change in Online-MVPD Subscriptions* ..... 56

*c) Fraction Switching to Traditional MVPD* ..... 63

C. EFFECTS ON COMCAST ..... 64

1. THE DEMAND FOR COMCAST CABLE MIGHT RISE, WHICH WOULD INCREASE COMCAST CABLE PROFITABILITY. ..... 64

a) *MVPDProfit* ..... 65

*b) Diversion to Comcast Cable* ..... 66

2. THE DEMAND FOR COMCAST HIGH-SPEED DATA MIGHT FALL, WHICH COULD DECREASE COMCAST'S BROADBAND PROFITS. ..... 66

*a) Incremental HSD Profit* ..... 69

*b) Comcast's HSD Share of Households Leaving Online MVPD.* ..... 73

3. THE DEMAND FOR SUPPLEMENTAL SITES OWNED BY COMCAST COULD BE AFFECTED, ALTHOUGH THE EFFECT IS LIKELY TO BE SMALL ..... 73

D. RELATIVE WEIGHTS ON NBCU AND COMCAST PROFITS ..... 74

E. APPLICATION OF THE COMMISSION STAFF MODEL INDICATES THAT FORECLOSURE IS UNLIKELY ........ 75

**IV. CONCLUSION ........ 82**

## I. INTRODUCTION

1. Comcast Corporation ("Comcast") and General Electric Company ("GE") propose to create a joint venture that combines the broadcast, cable programming, movie studio, theme park, and online content businesses of NBC Universal ("NBCU") with the cable programming and certain online content businesses of Comcast.[1] At the request of counsel for Comcast and GE, we wrote an economic report in which we applied to this transaction the mathematical model developed by the staff of the Federal Communications Commission ("Commission") to analyze the issue of vertical foreclosure in the News Corporation/DirecTV transaction.[2]

2. Commission staff, after an initial review of our earlier economic report, requested that we submit an additional economic report "addressing the potential impacts of the transaction on online video distribution."[3] Specifically, staff asked us to provide an overview of the online video marketplace together with an economic analysis of whether the proposed transaction would give the joint venture the incentive and/or ability to disadvantage an online rival, should one emerge at some point in the future.

3. In the present declaration, we analyze the structure of, and nature of competition in, the evolving electronic video distribution marketplace, in general, and the nascent online video

---

1 *See Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee*, Applications and Public Interest Statement, Lead Application File Nos. BTCCDT-20100128AAG (MB), SES-ASG-20100201-00148 (IB), and 0004101576 (WTB) (filed Jan. 28, 2010) (hereinafter, *Public Interest Statement*).

2 Mark Israel and Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction, *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, 26 February 2010 (hereinafter, *Israel-Katz Initial Declaration*).

3 Chief, Media Bureau, Federal Communications Commission, Order, *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, rel. April 16, 2010.

sector, in particular. We do not attempt to provide a broad overview of all aspects of the electronic video distribution marketplace. Rather, we discuss those characteristics most relevant to analyzing whether the proposed joint venture is likely to have the incentive and ability to disadvantage a hypothetical rival online distributor. Given the rapidly changing nature of technology and consumer tastes, as well as ongoing innovation in business models, it is impossible to predict with certainty which business models will be tried, let alone which will succeed. However, the fundamental economic forces at work in this marketplace will not change with the particulars of taste, technology, and business model. Consequently, it is possible to reach some broad conclusions about the future of the online video marketplace with confidence. Our central conclusion is that the proposed transaction does not threaten competition in the distribution of long-form, professional-quality video programming, notably the provision of such programming via the Internet.[4, 5]

4. Our central conclusion is supported by the following findings:

- *The majority of online video distribution today is complementary to the services offered by traditional television broadcasters and multichannel video programming distributors ("MVPDs").* Current online services, such as TV.com, CBS.com, and Hulu.com, supplement traditional MVPD services and promote the viewing of traditional television programming. This is evidenced by the fact that people have been watching increasing

4 To be clear, we also believe that the proposed transaction poses no threat to competition in the provision of short-form or amateur-produced content. We do not address this point further because we take it to be self-evident.

5 As will become evident below, we are not asserting that the electronic distribution of long-form, professional-quality video programming constitutes a relevant antitrust market for purposes of competitive effects analysis. Among other reasons why such a market definition could be inappropriate, we observe that the distribution of long-form, professional-quality video programming over the Internet is currently a complement to—rather than a substitute for—traditional delivery of such content over dedicated networks (*i.e.*, cable networks, direct broadcast satellite ("DBS"), and telco video networks).

amounts of television through traditional MVPDs even as online viewing has been increasing. The number of MVPD subscribers is also rising along with the number of consumers who view video content online. Because online video distribution services are currently complementary to Comcast's cable services and NBCU's programming services, both Comcast and NBCU benefit from online video distribution services and have incentives to promote them, not attempt to undermine them.

- *As new online video distribution models emerge, online providers are likely to differentiate themselves from traditional MVPDs and to incorporate in their business models unique capabilities of online platforms that complement the services offered by traditional MVPDs.* Although the business models used by online video providers remain very much in flux, there are strong reasons to expect that online video providers will seek to differentiate themselves from traditional MVPDs in order to obtain a competitive advantage and achieve profitability. Online video providers may accomplish this differentiation, in part, by incorporating some of the unique capabilities of online platforms that allow them to supplement and complement traditional MVPD offerings. Insofar as online video providers are differentiated from, and complementary to, traditional MVPDs, Comcast's cable operations and NBCU will have no incentive and little ability to hinder the growth of these providers.

- *Online video distribution is complementary to Comcast's broadband Internet access operations.* In order for a household to view video programming delivered over the Internet, the household must purchase Internet access. The development of improved online video offerings can thus be expected to stimulate the demand for Internet access services, especially broadband services. Online video viewing that mirrored traditional television viewing levels and patterns would hugely increase Internet traffic levels to U.S. households and could overwhelm today's broadband Internet access networks. However, if broadband Internet access networks evolve to have sufficient capacity, then online video viewing that mirrors traditional television viewing would stimulate the demand for broadband Internet access and, thus, increase broadband Internet access providers' profits. These profits would represent an incentive for Comcast to promote online video providers, not attempt to stifle them.

- *Application of the Commission staff's foreclosure methodology indicates that online foreclosure would be unprofitable.* The Commission staff has developed an approach to estimating the expected costs and benefits of foreclosure and then using those estimates to predict whether a proposed merger or joint venture will create an entity with an economic incentive to engage in foreclosure. As noted above, online video services today largely complement—rather than compete with—Comcast's cable services.[6] Comcast would have no incentive to attempt to weaken online video providers—whether by trying to induce NBCU to withhold programming from them, or by any other means—as long as those providers offered complementary services. Hence, we interpret the Commission staff's request as requiring us to *assume* the emergence of one or more hypothetical online distributors that are direct competitors for traditional MVPD services. Even making this assumption, application of the Commission staff's methodology to the

[6] In addition, as discussed in the prior bullet point, whether or not online video services complement Comcast's cable services, third-party online video distributors' services increase the demand for Comcast's broadband Internet access services.

present transaction demonstrates that it would be very unlikely for foreclosure to be profitable.

This conclusion follows from several facts, including:

- *NBCU would lose significant advertising revenues and affiliate fees if it were to deny its programming to online competitors, should they develop.* To the extent that a significant online competitor develops, the amount that NBCU would lose from denying access to those subscribers could be expected to be substantial. Even for a smaller online competitor, NBCU would likely lose a large amount on a per-subscriber basis.

- *There is no basis for expecting that withholding current NBCU networks from online providers could significantly harm the ability of an online provider to attract or retain subscribers.* This is so for several reasons. First, NBCU controls the relevant online rights to programming accounting for only {{ }} of all television viewing minutes, and there are many substitutes for this NBCU programming. Second, as summarized above, online video providers can be expected to seek to differentiate themselves from traditional MVPDs. Hence, these online providers would likely be able to offer attractive value propositions to consumers without having to replicate the full programming line-ups of traditional MVPDs. Third, the Commission has previously expressed concern that the four major broadcast networks constitute "must-have" programming for traditional MVPDs,[7] which might be seen as

---

7 *See* Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control,* 19 FCC Rcd 473 (2004) (hereinafter *News Corp.-Hughes Order*), §§ V.B.3 and VI.C.4.c.(iii).

suggesting that withholding the rights to NBC broadcast network programming could be a particularly powerful way to disadvantage online rivals. However, two facts indicate that such a conclusion would be unwarranted. One is that NBCU cannot deny consumers access to NBC's signal via over-the-air reception. The other is that, to the extent that empirical evidence from the MVPD market is informative, past analyses have shown little effect on MVPD subscribership from the temporary loss of a single broadcast television network. For all of these reasons, it is unlikely that NBCU could successfully engage in foreclosure that would significantly harm an online distributor's ability to attract and retain subscribers.

– *Comcast Cable has a limited geographic footprint and, consequently, would gain only a small share of any benefits from foreclosure accruing to traditional MVPDs.* If direct online competitors to traditional MVPDs develop, they would almost certainly have national (or even international) geographic footprints. In contrast, Comcast Cable has a limited footprint. If NBCU were to deny its programming to these online competitors, then it would forgo profits from selling programming nationally but Comcast Cable would reap any benefits of foreclosure only in limited geographic areas. Stated another way, Comcast has only a 23.8 percent share of the national MVPD marketplace. Consequently, over three fourths of any benefits to traditional MVPDs from any weakening of online competitors would be captured by MVPDs other than Comcast.

– *If an online service emerges that is a direct competitor of Comcast's traditional MVPD business, then that competitor's service would be complementary to*

*Comcast's broadband Internet access operations.* If a household viewed video streamed over the Internet in patterns mirroring traditional television viewing, then it would download approximately one hundred times more data per month than the average current subscriber to Comcast's broadband Internet access service. If and when Comcast's Internet access networks develop the capacity to handle this additional traffic without suffering significant quality degradation from congestion, the additional demand for broadband access services created by online viewing would promote the profitability of Comcast's broadband Internet access services. Hence, Comcast's broadband Internet access operations would be harmed to the extent that foreclosure was successful at reducing the penetration of online video services.

5. The remainder of this report is organized as follows. In Section II, we provide an overview of the U.S. video marketplace, place the nascent and rapidly evolving online video sector into the context of the broader industry, and discuss the stark differences between how viewers currently consume online video and how they consume traditional television. In Section III, we apply the Commission staff's methodology for the analysis of foreclosure to a hypothetical scenario in which one or more online services have emerged as competitors—rather than complementors—of traditional MVPDs.

## II. THE ROLE OF ONLINE VIDEO VIEWING IN THE BROADER VIDEO MARKETPLACE

6. In this section, we provide an overview of the U.S. video marketplace that puts the nascent and rapidly evolving online video sector into context. We then discuss the marked differences between how viewers currently consume online video and traditional television, and how the evidence that these two types of viewing are currently complementary. Based on these

industry characteristics, we conclude that: (a) it is unlikely that an online replacement for traditional MVPDs will emerge in the near-term, and (b) if one does emerge over the longer-term, then it will have important complementarities with Comcast's services.

### A. The Vertical Structure of the U.S. Video Marketplace

7. American consumers view video content delivered to a variety of screens through a variety of distribution systems. The screens used by consumers to view content include televisions, computers, mobile phones, and other mobile devices. Content is delivered to those screens through a combination of mechanisms, including: over-the-air broadcasting, traditional MVPD networks (*i.e.*, cable, telco video, and DBS), broadband distribution over the Internet (including streaming video as well as the rental or purchase of downloaded video), distribution via radio spectrum to mobile phones or similar devices, and DVDs rented or purchased at retail outlets or delivered by mail.[8]

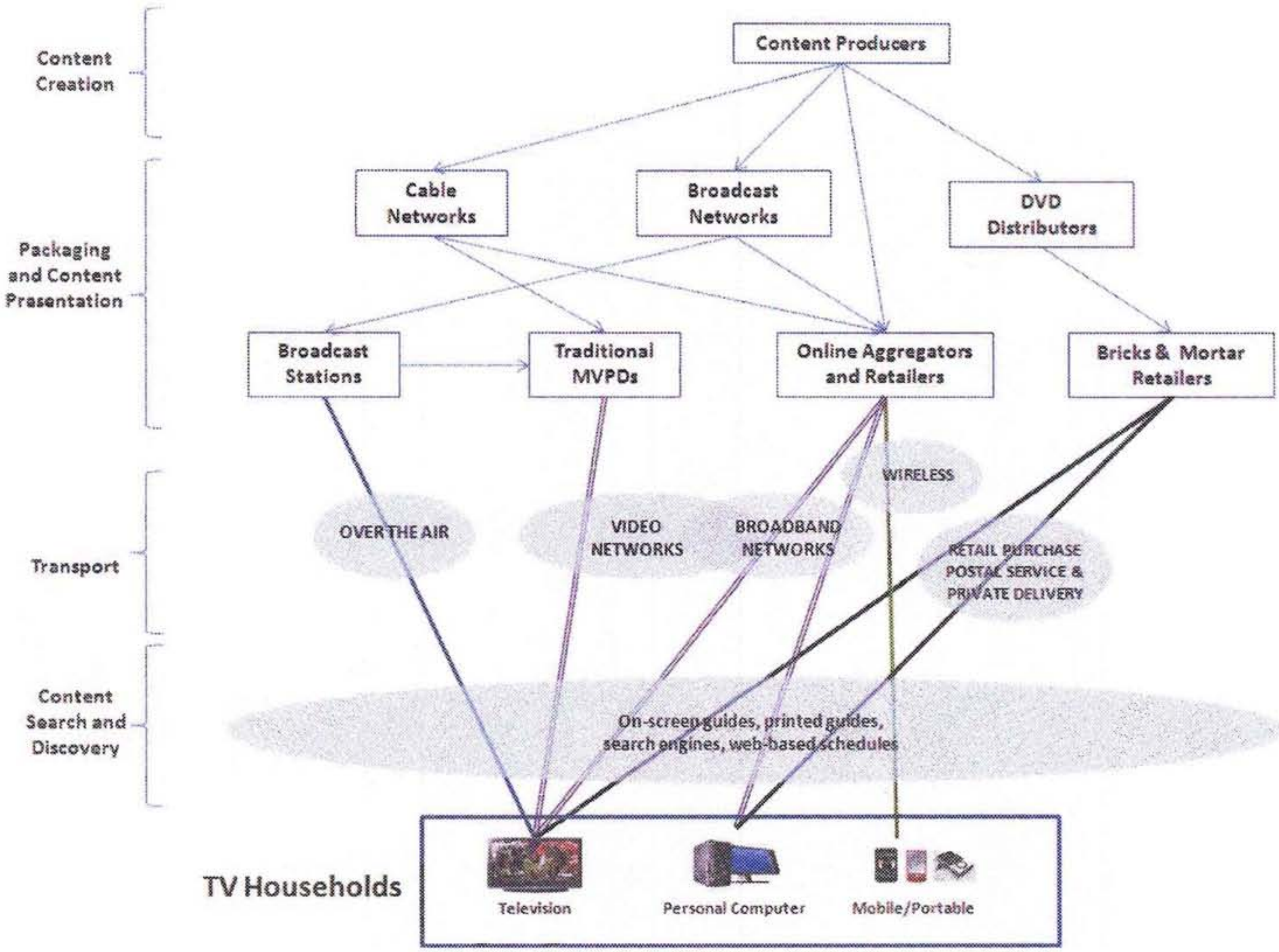
8. Video content viewed by consumers is the end product of several different activities, undertaken by multiple economic actors. There are many ways to categorize these activities. Figure 1 illustrates one taxonomy, in which the activities are organized into a vertical value chain: content creation; the packaging and presentation of content; transport of content to consumers; and the provision of tools by which consumers can search for and discover content.[9] The remainder of this section discusses each of these activities in turn.

---

[8] We use DVDs as a shorthand to refer to all types of physical media, which might also include Blu-ray discs, for example.

[9] Figure 1 is a stylized and simplified representation of the video marketplace, and it does not illustrate all of the possible links. For example, some households stream video programming to their video game consoles. In addition, the signal of a broadcast station might be reformatted and then broadcast over a specialized wireless network that serves mobile devices.

**Figure 1: Overview of the Structure of the Video Marketplace**




*1. Content creation.*

9. Content-creation activities include writing and producing video programming. Much of the video content viewed by consumers is professionally created. However, millions of people create "user-generated videos" at very low cost and post them to the Internet, where generally they are available for downloading or viewing worldwide at any time. In addition to whether it

is professionally created or user-generated, content can be categorized based on whether it is short or long form. Although there is some debate about the precise definition of short-form versus long-form video content, NBCU indicates that, in its view, "long-form video is typically longer than five minutes and usually refers to full episodes of television or movies."[10] Under this categorization scheme, for example, movies or episodes of a broadcast television show are considered professional, long-form content, while a clip from a movie or television episode is considered professional, short-form content.[11]

10. Producing professional long-form content of the type that generally airs on broadcast and cable networks is expensive and risky. Prime-time entertainment dramas for broadcast or premium cable networks currently can cost up to $4 million *per hour* to produce.[12] Studios never recoup their production costs on most scripted series.[13] A relatively small number of series are "hits" and earn large profits.[14]

11. The profitability of creating non-sports, network-quality content depends, in part, on the ability of the content producer, or studio, to manage the type, timing, and release of rights to different distributors in different release windows.[15] On those shows that are considered a "hit,"

---

[10] Vivi Zigler, President, Digital Entertainment, NBCU, April 26, 2010, interview.

[11] Although useful, these categorizations are not sharply defined. In addition to some disagreement over the maximal length of short-form content, industry sources discuss a category of content that sits on the border between professional and user-generated content called "prosumer." *See* IAB, "Long Form Video Overview," September 2009, at 6, *available at* http://www.iab.net/media/file/long-form-video-final.pdf, *site visited* April 28, 2010.

[12] *See* Larry Gerbrandt, "Hour dramas face risky economics," Hollywood Reporter, March 19, 2010, *available at* http://www.hollywoodreporter.com/hr/content_display/television/news/e3i9622dc15ab8161178e353cf46fd7d6a4, *site visited* April 26, 2010.

[13] Michael Bonner, SVP, Digital Products & Marketing, NBCU, April 28, 2010, interview.

[14] *Id.*

[15] As part of managing these rights, a studio aggregates the rights of the various parties (writers, actors, *etc.*) involved in creating the content.

generally the studio's most substantial source of profits is the re-licensing of the episodes to additional outlets (beyond the first-run premiering on a broadcast or cable network).[16] A broadcast or cable network has an economic interest in maximizing the ratings of its initial airings of a series. Consequently, networks generally insist on broad exclusivity (historically against all competing media domestically) for as many as the first four seasons of a series' life and exclusivity limited mainly to the current season after that.[17] However, the studio may obtain through negotiation limited rights to exploit the series during the network's exclusivity period in ways that are not perceived as disruptive to the network's ratings.[18] For example, the studio may obtain the right to release the prior-season episodes of the series on DVD.[19] Also, the studio traditionally would be permitted to license the prior-season episodes of the series into syndication on both local broadcast stations and basic cable networks, beginning typically after four seasons have aired in first-run on the network.[20]

12. The proliferation of digital technology has made the licensing and windowing structure more complex. Now, in addition to "linear networks," which air a particular show in a set time slot on a given date, there are also "video-on-demand" services, through which providers offer libraries of programming that consumers can access at times of their choosing. Until recently, the studio-network license agreement would usually limit the network's grant of rights to a

---

16 Michael Bonner, SVP, Digital Products & Marketing, NBCU, April 28, 2010, interview.

The studio may also realize revenue on a series from international licensing, format licensing, merchandising, and ancillary sources.

17 *Id.*

18 *Id.*

19 *Id.*

20 Theatrical motion picture distribution also follows a pattern of exhibition windows. Typically, a film is initially released to movie theaters and then it cycles through DVD, electronic-sell-through, and pay-per-view/video-on-demand windows and thereafter to premium pay windows and later to broadcast networks and/or basic cable networks. (*Id.*)

defined number of runs on its linear network.[21] However, in an effort to expand their presence on additional on-demand and online platforms, networks now typically seek to acquire additional "digital" exhibition rights for current-season episodes as part of their agreements with studios. Specifically, through negotiation with studios, networks have recently been able to obtain, for some series, the ability to make the current-season episodes available (usually for a limited number of episodes and limited time window) on a network-branded, advertiser-supported "on-demand" basis via online, mobile, and MVPD platforms. [[

]] However, all these terms are evolving and remain the subject of active negotiation between networks and studios.

2. *Packaging and content presentation.*

13. There is a cluster of activities that must be undertaken in order to turn different pieces of content into a service offered to consumers. These activities include:

- *Filtering:* Filtering activities comprise decisions regarding which programming to offer to consumers as part of the service and which not to offer.

- *Timing Decisions:* In addition to determining what content to show, an enterprise offering a video service to consumers has to make a wide range of decisions regarding the timing of when individual programs are available to be viewed. A fundamental decision is whether to offer programming as a linear network, in which case the network sets the specific date and time at which consumers can access any

[21] Statements made in this sentence and the remainder of this paragraph are based on Michael Bonner, SVP, Digital Products & Marketing, NBCU, April 28, 2010, interview.

particular program, or as video-on-demand, in which case each consumer can access programming at a time of his or her choosing. In the case of linear networks, the order in which the programs are presented can be an important element of business strategy. In the case of video-on-demand, the timing between initial linear exhibition and initial on-demand exhibition is a relevant consideration.

- *Aggregation:* In order to be able to offer the selected set of content, a video service provider must aggregate the necessary rights to distribute the programming. Rights aggregation is undertaken by both networks and MVPDs. Broadcast and cable television networks aggregate certain rights for the individual programs that comprise their linear networks. And MVPDs aggregate certain rights associated with different linear networks. It is important to understand the complexities created by the need to aggregate rights.

  Due to the granting of only limited-use rights by content creators to networks, and by networks to distribution entities, the allocation of rights associated with particular programming can be very complicated. Specifically, it is rare today for a company to aggregate rights at one stage in the vertical chain and then to provide an enterprise operating in the next stage of the vertical chain with blanket rights to all of its content.[22] Rather, consistent with the windowing strategy used by content owners, rights aggregators generally employ a set of limited-use licenses for different types of distribution. The rights contained in these licenses can make distinctions based on the business model (including advertiser-supported linear distribution, advertiser-

[22] Michael Bonner, SVP, Digital Products & Marketing, NBCU, April 28, 2010, interview.

supported, free on-demand, subscription distribution with or without advertising, and per-transaction on-demand) and by platform (including Internet-delivered, mobile, and MVPD).

An implication of these license limitations for the analysis of the online video marketplace is that, even in the common case in which a broadcast or cable network has obtained rights from the studio that include the rights for some on-demand airings of the programming, these rights may not extend to the particular business model that an online distributor has adopted. For example, the only on-demand rights a broadcast network acquires may be for free-on-demand ("FOD") service, for which no access or subscription fee is charged to the consumer and the episodes must include advertising.[23] If an online provider were looking to develop a subscription-video-on-demand ("SVOD") service (or more generally, a service that is not solely advertiser supported), then a network in this position could not extend its grant of on-demand rights to the online provider for this purpose.

{{

}}[24] {{

23 *Id.*

24 *Id.*

}}[25]

{{

}}[26]

This complicated thicket of rights, in which multiple rights holder may have partial rights (for particular distribution channels) to the same content creates a challenge for a new video programming distributor, particularly one using a new business model, such as online distribution, to overcome.

- *User interface.* A final activity in organizing content for video consumers is the development of a user interface. One example is an MVPD's organization of content into channels that can be navigated using on-screen electronic program guides. Another example is the appearance and functionality of a website (such as YouTube or TV.com) that contains video content.

25 *Id.*

26 *Id.*

{{

}}