Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Applications of Comcast Corporation,	)	MB Docket No. 10-56
General Electric Company and NBC	)	
Universal, Inc., for Consent to Assign	)	
Licenses or Transfer Control of Licenses	)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST

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Introduction

Writers Guild of America, West (WGAW) is pleased to offer comments in the important matter of applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to assign and transfer control of FCC licenses, MB Docket No. 10-56.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). Many WGA members are employed by companies owned or controlled by applicants.

WGAW is concerned about the impact the proposed merger of NBC Universal (NBCU) and Comcast will have on content creators and consumers. The WGA has represented television and movie writers for more than 50 years and over that time, has witnessed the consolidation of the media industry into the hands of a few conglomerates. This consolidation has led to a decline in creative and economic opportunities for WGAW members, and has reduced the dissemination of diverse and independent viewpoints in the media, all to the detriment of consumers. If approved, the Comcast – NBCU entity will cause a further concentration of content sources.

While the applicants have proposed voluntary public interest commitments and continue to pronounce the putative benefits of this merger, we fear that, unless substantial *requirements* are placed on Comcast and NBCU, they will be the only parties who truly benefit from this combination.

This merger will compound the consolidated state of the entertainment industry and will likely lead to further consolidation as other companies merge to challenge the dominance of Comcast-NBCU, a vertically integrated entertainment company that will control content from its inception through the cable lines that deliver the content to consumers. Media consolidation did not start with Comcast and NBCU, but the proposed merger represents a significant advance along that path; the effects of this consolidation on the public and on entertainment industry workers must be mitigated. The FCC can and must require strong protections of competition and promotion of content diversity as part of this merger. Doing so will limit the negative impact of this merger and can provide constructive precedent for the consideration of proposed media consolidation in the future.

The Repeal of Fin-Syn and Media Consolidation

The WGAW does not believe that media consolidation has been positive either for consumers, who are offered increasingly homogenized content, or content creators, who face a shrinking market in which to sell their product. The repeal of the Financial Interest and Syndication (Fin-Syn) rules in the 1990's facilitated a wave of industry consolidation that vertically integrated production and exhibition in television, combining the networks with previously independent studios. This historical trend includes Viacom's 1994 purchase of Paramount and the subsequent merger in 1999 with CBS, Disney's acquisition of Capital Cities/ABC in 1995, Time Warner's purchase of Turner Broadcasting in 1996, and NBC's combination with Universal in 2003.[1] Broadcast networks, which were once required to air independently-owned content, chose to merge with studios and shift away from independent

[1] CBS and Viacom split in 2005 with Paramount film production and distribution remaining with Viacom and Paramount television production with CBS; both remain controlled by Sumner Redstone through National Amusements.

production in favor of in-house content or content produced by other media conglomerates. This has significantly decreased opportunities for independent production of television programming. In the absence of significant mitigating measures, the present merger would represent a harmful continuation of this trend.

The WGAW's analysis of primetime series on the Fall 2009 network schedule found that, across the five broadcast networks, only 16 percent of series were independently produced. The WGAW defines independent programming as content produced by a studio or production entity that is not affiliated with a broadcast network. It is worth noting that the independent programming currently aired on broadcast networks is almost all so-called "reality" programs like *American Idol, The Biggest Loser* and *The Apprentice.*[2] These programs are typically enjoyed by viewers only once and do not generate the same revenue from reruns, syndication sales, DVDs or other revenues streams that scripted shows do. As a result, it appears that the media conglomerates are less interested in owning these programs. In contrast, 20 years ago under the Fin-Syn regulations, 78 percent of the primetime lineup was independently produced, including such successful shows as *Doogie Howser, M.D., The Wonder Years, Cosby Show, Who's the Boss* and *Designing Women.* This trend was recently confirmed by the GAO's report on media programming, which found that in 2009 82.5 percent of broadcast primetime hours were from broadcast affiliated studios.[3]

[2] Among dramas and comedies, only three half-hour comedies were considered independently produced. All three were produced by Sony companies.
[3] United States Government Accountability Office, "Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio," March 2010, pp. 13.

Broadcast Network Primetime Fall TV Series[4]

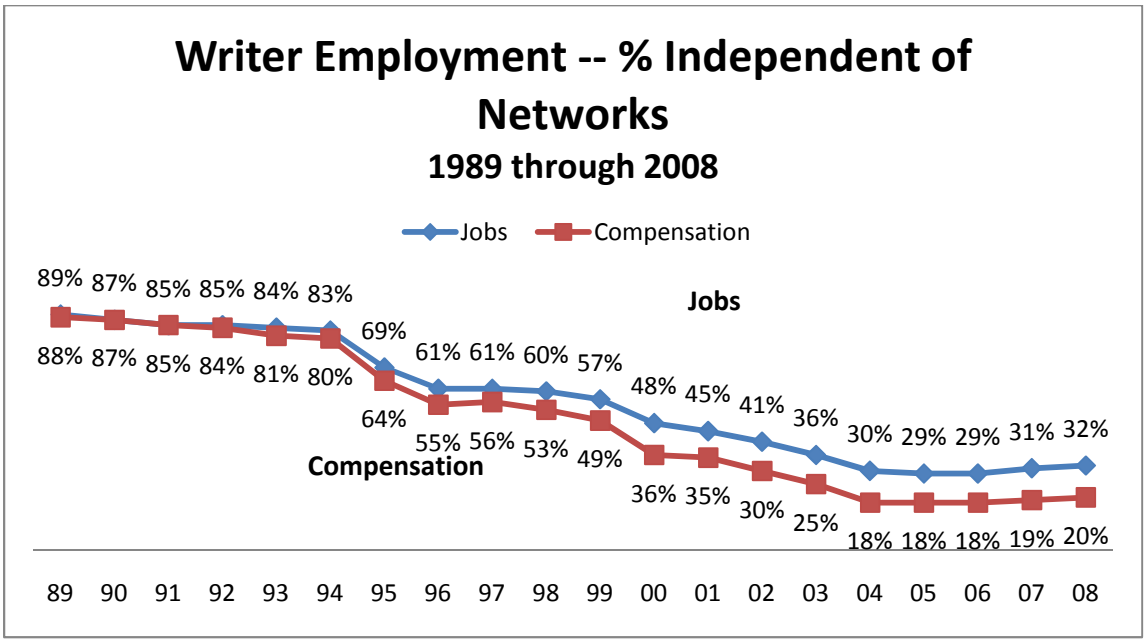
	1989	1999	2009
Independently Produced Series	78%	28%	16%
Media Conglomerate Produced Series	22%	72%	84%

Source: WGAW Analysis

Because viewers are watching television programming from fewer sources, WGAW members are also faced with fewer employers. In 1989, 89 percent of TV writing jobs and 88 percent of TV writing compensation came from outside the conglomerates. Twenty years later, by 2008, those figures had declined to 32 percent and 20 percent, respectively.[5] The pivotal moment was the repeal of Fin-Syn in the early 1990s. The following chart highlights both employment and compensation for WGAW members, as reported to the Guild. It paints a clear picture of the decline in independent employment opportunities for WGAW members. Over the past twenty years, both jobs and compensation have shifted from independent studios and production companies to vertically integrated media conglomerates.

[4] For the purposes of our analysis of the Fall television schedules and WGAW member earnings and employment, Sony Pictures Television is considered independent for the entire period, as it is not affiliated with a broadcast network. Warner Bros. Television is considered independent prior to the creation of the WB Network in 1995. Disney Television is considered independent prior to the acquisition of ABC in 1995. Universal is considered independent prior to its 2003 merger with NBC.

[5] These figures include all TV programming written by WGAW members, not just prime time.



When examining independent production on a broadcast network level, we found that for the 2009 broadcast primetime lineup, only 10 percent of NBC's schedule consisted of independent programming licensed from outside sources. This has declined from 84 percent in 1989.

2009 Broadcast Network Fall Lineup

Percent Independent	1989	1999	2009
ABC	81%	22%	29%
CBS	83%	27%	4%
CW	--	--	11%
Fox	50%	37%	25%
NBC	84%	32%	10%
UPN	--	50%	--
WB	--	7%	--
Total	78%	28%	16%

Source: WGAW Analysis

Further analysis reveals that the overwhelming majority of NBC's broadcast primetime lineup was actually produced by NBC entities. Of the 90 percent of content on NBC's fall

primetime lineup that was produced by broadcast network affiliated studios, 86 percent was produced by studios which are part of the NBC Universal organization.

2009 Broadcast Network Fall Lineup: Series from In-House Production Studio

Network	% In-House
ABC	48%
CBS	57%
CW	89%
FOX	63%
NBC	86%
Total	66%

Source: WGAW Analysis

The WGAW has not been alone in raising concern about the lack of independent programming resulting from the repeal of Fin-Syn. In fact, in 2003, Universal Television raised the issue with the Commission, stating,

> "As an independent producer of programming for broadcast network television, Universal Television Group has witnessed the trend of broadcast networks to air an increasing percentage of affiliated or network-owned programming. Universal Television Group believes that the diversity and quality of broadcast network television programming has been diminished by this trend."[6]

At the time, Universal Television was wholly owned by Vivendi Universal. In 2004, NBC and Universal merged, thus ensuring Universal Television's access to network airtime and eliminating at least one voice expressing concern over the effects of media consolidation.

Because these statistics highlight the historical shift towards consolidation and away from diverse production sources, they are relevant when analyzing the impact of this merger. Comcast's statements about the benefits that would result from the merger, as well as its

[6] Notice of Oral *Ex Parte* Presentation by Vivendi Universal Entertainment, In 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act of 1996, MB Docket No. 02-277, February 5, 2003.

proposed voluntary commitments regarding independent programming, must be analyzed with the understanding that the media industry is *already* heavily consolidated. Comcast and NBCU together hold ownership stakes in 30 national cable channels and five regional sports networks. While there are hundreds of channels available on cable, the combined entity would control the NBC broadcast network and some of the highest rated cable networks, including USA. Together, these holdings represent a total of 20 percent of all primetime television viewers.[7]

Comcast's *Application and Public Interest Statement* makes several claims about the impact this merger will have on content. The company broadly asserts that the merger will meet the FCC's goals of diversity, saying:

> "Diversity: The new venture will expand the amount, quality, variety and availability of content more than either company could on its own, thus promoting the Commission's touchstone goal of diversity."[8]

While the Applicants' Voluntary Public Interest Commitments ("Commitments") include a promise to increase the availability of certain types of programming (news, local, children's and Hispanic programming) primarily through increased Video-On-Demand (VOD) offerings, Comcast fails to offer any commitments regarding program source diversity. Indeed, taken as a whole, the Commitments contain no guarantee that any of the promised programming will come from independent or diverse sources. We can only assume that the bulk of this new programming will come from the merged company itself. In fact, Comcast's *only* concession to independent programming comes in Commitment 13, where it offers to add a total of six independently owned and operated channels once its digital migration is completed. In a

[7] Lieberman, David, "Comcast pounces for control of NBC Universal," USA Today, December 3, 2009. http://www.usatoday.com/money/media/2009-12-02-comcast02_CV_N.htm.

[8] Applications and Public Interest Statement, Comcast Corporation, General Electric Company and NBC Universal, Inc., In the Matter of Applications for Consent to the Transfer and Control of Licenses from General Electric Company to Comcast Corporation, January 28, 2010. p. 36.

landscape of more than 500 channels, this offer of one percent for new, independent channels is a negligible concession. What is most critical to the promotion of independent programming on television is access to platforms that viewers currently flock to, like broadcast networks and popular cable channels. Independent programming, if offered on these platforms, would be given the same opportunity for success as programs produced by Comcast – NBCU and other media conglomerates.

For consumers, the purported benefit of increased content to which Comcast alludes will primarily be realized in the forms of additional content coming from one source: Comcast-NBCU. While this new content will clearly benefit Comcast, it is unlikely to represent greater content diversity for viewers. For content creators and entertainment industry workers, this means any increased opportunities for work will likely be with one company.

Preserving the Value of Content

Of significant concern for professional writers is the potential devaluation of content resulting from the combination of a major content producer and one of the country's largest content distributors. Comcast, which is primarily a distribution company, will now have control over a large amount of content, much of which is written and produced by WGAW members. This merger represents a second degree of integration. NBCU is already vertically integrated between a studio that produces content and networks that air content. This combination will add another layer of integration through the inclusion of distribution to the consumer via Comcast's cable business. This proposed merger will eliminate competition between a major content producer and one of the country's largest content distributors. Comcast has openly stated that a major factor behind the merger has been its inability to reach "optimal agreements" with

producers that allow Comcast to distribute content as it sees fit.[9] Robert Pick, Senior Vice President for Comcast stated in his declaration to the FCC,

> "A key rationale for the Transaction is to ameliorate the negotiation friction that has made it difficult for Comcast, primarily a distribution and communications company, to convince content owners and programmers to work with us to create and deliver more content to consumers in a greater variety of ways."[10]

These statements arouse major concern for the WGAW and writers because the "negotiation friction" between two independent parties is what determines the fair market value of the content the parties negotiate over. Eliminating this friction, as Comcast seeks to do, will allow one party to decide the value of the content. As Comcast is the larger entity and will be taking control of NBCU, it will determine the value of the content. For Comcast, the ability to acquire content at below market rates will give it a competitive advantage over other multichannel video programming distributors and thus enhance the value of its investments in cable assets.

While Comcast views the merger as eliminating barriers to distribution, the WGAW is concerned that the actual effect will be to devalue content. The consolidation of such a major producer and distributor raises a concern that the transfer prices imputed to content created by the joint venture will understate its value and deprive talent of the fair market payments they are due. Cross-subsidization of businesses is common among business entities with a portfolio of assets. Vertical integration provides new opportunities for shifting profits outside of the reach of the market.

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[9] Declaration of Robert Pick, In the Matter of Applications for Consent to the Transfer of Control of Licenses from General Electric Company to Comcast Corporation, January 27, 2010.
[10] Pick, *Ibid*, p. 2.

Ensuring a fair value is applied to internal content is critical to writers and other members of the Hollywood community who depend on residual payments derived from the reuse of content in order to sustain their careers and support their health and pension plans. Writers and other entertainment industry workers not only receive initial compensation for their work but also subsequently receive residual payments when their product is aired in syndication, sold on DVD, or purchased online. These payments essentially serve as R&D for the entertainment industry, allowing writers to develop new material while waiting for their next employment opportunity. Any devaluation of content could significantly impact the ability of writers to spend time developing original content and entertainment industry workers to remain available for their next job.

Residual payments are truly the lifeblood of individual writers, and allow this creative community to remain solvent despite the fluctuations and near-constant uncertainties of the entertainment industry. In 2008, professional writers represented by the WGAW received over $1 billion in compensation. Of this total, $286 million came in the form of residual payments for the reuse of original material on DVD, in international sales, syndicated on broadcast and cable channels, sold on iTunes, streamed online and viewed in many other markets. These residual payments constitute approximately 25 percent of total writer income.

Residuals due to writers depend on the type of content written, the initial market the content is made for (theatrical motion pictures, network primetime, basic cable, pay TV, Internet) as well as the market the content is subsequently exhibited in. The Minimum Basic Agreement (MBA), negotiated every three years between the Writers Guild of America and the Association of Motion Picture and Television Producers (AMPTP) sets the terms for residuals to

writers, among other things. In general, there are two types of residuals: (1) "revenue based," meaning the residual is based on the Company's receipts, or (2) "fixed"/"run based," meaning the residual payment is a specific percentage of the residual base for each exhibition. The exploitation of content that Comcast describes in its filing (e.g., increased VOD and online offerings) would largely generate revenue-based residuals, which will rely on fair valuation of these transactions to ensure fair compensation for talent.

We are concerned that these below-market transfer prices may become standards for pricing content from third-party suppliers. The combination of these companies may permit Comcast to increase its profit, but in doing so will create an inefficient marketplace in which ideas and consumer choice will be diminished. If returns to capital and innovation are determined by competitive interaction among market participants, the public interest is better served. This merger represents a shift away from this type of healthy competition. If Comcast is able to use its power to set artificially lower prices for content it will favor innovation in distribution at the expense of innovation in content. Indeed, the ever increasing cost of cable services shows that the history of innovation in distribution models has been that consumers pay sharply higher prices for what has become an essential service. This implies that lower-income consumers must cut back on purchases of other equally essential goods and services to maintain access to cable television.

Comcast has said that the company would like to use its control over NBC Universal content to establish a model that can be replicated with other third-parties.[11]

> "Comcast's vertical integration with NBCU could facilitate Comcast's efforts to accelerate the development of new media business models and technologies by breaking

[11]Pick, *Ibid.*

> through fears and uncertainties and finding deal terms that make sense in the marketplace. This, in turn, should spur other content and distribution companies to develop their own new and innovative business plans and technologies in order to maintain their competitiveness."[12]

This argument further implies that other companies are likely to replicate Comcast's business decision to acquire content production and exhibition businesses, which will reduce competition through additional media consolidation.

Further, while Dr. Gregory L. Rosston, author of Comcast's report, *An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction*, states that the content will be accessed on arm's length terms, this is not guaranteed anywhere by Comcast.[13] Indeed, if these deals are the first of their kind, there may not be a similar arm's length deal that can be used as a benchmark.

If the merger is approved, Comcast should be required by the FCC to apply a "fair market value" standard to content it purchases or licenses from a related or affiliated entity. In doing so, accountable receipts received by the internal content producer must be measured by Comcast's payments to unrelated and unaffiliated entities in arms' length transactions for comparable pictures or, if none, the amounts received by the content producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions for comparable pictures, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable pictures.

Without this type of requirement, there is simply no guarantee that Comcast will act in the best interest of those who create the content. Comcast reported annual revenue of $35.75

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[12] Pick, *Ibid*, p. 3.
[13] Rosston, Gregory L., Ph.D, "An Economic Analysis of Competitive Benefits from the Comcast-NBCU Transaction," May 4, 2010, p.8.

billion in 2009, with 95 percent or $33.9 billion flowing from its cable segment.[14] NBC Universal in contrast, reported $15.4 billion in annual revenue as a segment of General Electric.[15] Post- merger, Comcast's main business will continue to be its distribution business. We fear that when the company says "NBCU's and Comcast' incentives will be better aligned after the transaction which will make it easier to take risks and will encourage experimentation, innovation and investment" that it means the incentives for NBCU content will be subsumed by the objectives of the controlling organization."[16] While we support the notion of finding new and innovative ways to bring content to the consumer, we do not agree that diminishing competition will bring about efficiencies for anyone besides Comcast. Reducing the returns to investment in content production may increase the economic rents that Comcast receives on its installed base of transmission equipment, but shifting revenue and profits away from the production of content will reduce investment in the segment of the media industry where innovation brings the greatest benefit to the public. In particular, lower prices will impact less well known content producers who operate with smaller margins and have fewer financial resources.

The exercise of monopoly power in a business to business market shifts economic benefits to the party with that monopoly power. In this case Comcast will secure revenue at the expense of content producers. While this may enable Comcast to invest more, this cannot be viewed as in increase in market efficiency or an increase in the total benefits to the public. Indeed monopoly power leads to a misallocation of capital, with decisions reflecting not the outcomes of competitive prices, but rather the interests of the firm with market power. Without

[14] Comcast Corp, Form 10-K (Annual Report), February 23, 2010, p. 24, http://files.shareholder.com/downloads/CMCSA/930917919x0xS1193125-10-37551/1166691/filing.pdf.
[15] General Electric Company, Form 10-K (Annual Report), February 19, 2010, p. 35, http://www.ge.com/pdf/investors/financial_reporting/ge_10k_4q2009.pdf.
[16] Rosston, Gregory L., Ph.D, *Ibid*, p.12.

significant conditions placed upon the merger, this vertical integration will give significant power to Comcast in determining the value of content, impacting both entertainment industry workers who depend on fair compensation and consumers who face increasing prices to access the content

Potential for Anti-Competitive Behavior Due to Vertical Integration

While Comcast claims that the merged entity will not have any motivation to engage in anti-competitive behavior, we believe there are several areas where this vertical integration may give Comcast market power to thwart competitors, to the detriment of content creators and consumers. Any approval of this merger must address these concerns.

In the provision of Cable Services

Comcast, as the largest provider of video services, is in a unique position to determine the fate of cable networks. With the merger, it will hold ownership stakes in 30 national cable channels and five regional sports networks. As the largest provider of multichannel video, Comcast has an opportunity to abuse its dominant position to bump other channels out of the most popular tiers in favor of its newly acquired networks. With the rapid growth in the number of cable channels (at 565 networks when the FCC released the Video Competition Report in 2007) cable tier options and channel positioning have become increasingly important to cable network success. A 2007 study found that in some cases dominant cable providers like Comcast and Time Warner were more likely to offer their own channels over similar unaffiliated channels or offer these channels in the basic cable package, while relegating competitors to the digital tier.[17]

[17] Chen, Dong and David Waterman, "Vertical Ownership, Program Network Carriage, and Tier Positioning in Cable Television: An Empirical Study," Springer Science + Business Media, July 17, 2007.

As the top distributor of cable services Comcast will be in a position to increase the exposure of several of the channels acquired in this merger at the expense of channels not owned by the company. Sleuth is an NBCU cable channel started in 2006 and is currently available in 52.1 million homes, approximately half of the country.[18] Chiller is another niche NBCU cable network. Started in 2007, it now has only 35.8 million subscribers.[19] Without strict conditions placed on the merger, Comcast could be free to bump cable networks it does not own in favor of its own networks, which could threaten to reduce the variety of programming available to consumers.

There is yet another potential abuse of power in this combination. The vertical integration created by this merger will likely incentivize Comcast to use its control of NBCU's top cable channels to thwart direct competition from other multichannel video program distributors (MVPDs) operating in the same market with the potential to increase prices for consumers. Comcast will likely be inclined to bundle its less desirable cable networks with the newly-acquired "must-have" networks from NBCU, which include USA, Syfy and Bravo. By bundling these channels, Comcast can effectively raise prices for competing cable providers who must accept the bundle because its subscribers expect NBCU cable networks. These increased costs will likely be passed onto consumers. In areas where Comcast faces direct competition from other MVPDs, increasing the cost of content may force consumers to switch to Comcast. The avoidance of such anti-competitive behavior is unaddressed in Comcast's public interest commitments.

In recent years, the trend away from vertical integration between cable operators and cable networks, which includes separations by Viacom, News Corp and most recently Time

[18] SNL Kagan Network Profile: Sleuth.
[19] SNL Kagan Network Profile: Chiller.

Warner, has been a positive development for content creators and consumers.[20] In the absence of guaranteed placement by a vertically integrated cable company, networks have invested heavily in original content as a means of attracting viewers and increasing channel strength. Bernstein Research estimates that cable production expenditures at Disney, News Corp, Time Warner and Viacom grew 8.5% annually from 2004 through 2008.[21] The original dramas and comedies that once were only found on network television can now be seen on multiple cable channels including AMC, TNT, Lifetime, FX, TBS, A&E and many others. This trend has benefitted consumers, who enjoy increased choices in original content, as well as WGA members, who have found new outlets for their talent. The growth in popularity of these networks can be measured both through increased ratings as well as awards. The National Cable and Telecommunications Association (NCTA) reports that 55% of Emmy awards went to cable programs in 2008.[22] Cable networks often target smaller demographics than the broadcast networks, which allows them to offer content on diverse topics and programmed for specific audiences including women (Lifetime), teens (Nickelodeon), tweens (Disney) and young adult males (Disney XD).

In the developing Online Video Marketplace

The combination of Comcast and NBCU raises significant concerns in the developing online video marketplace. While YouTube has existed since 2005 and the broadcast networks have been streaming network television repeats online since 2007, the structure of this marketplace is still emerging. As a result, it is difficult to predict what kind of marketplace will develop and how content will be delivered and accessed by consumers. However, as Comcast is

[20] Viacom sold its cable system operation in 1995. In 2008, News Corps shares of DirecTV were transferred to Liberty Media. Time Warner spun-off Time Warner Cable in 2009.
[21] Bernstein Research, "Why the Snow Will Fall Eventually," September 23, 2008
[22] "Industry Data," National Cable & Telecommunications Association, http://www.ncta.com/Statistics.aspx.

the largest provider of multichannel video, it undeniably has an interest in making sure that the online video marketplace develops in a way that complements, rather than competes with its existing services. This is evident in the Comcast initiative, known as Xfinity, which offers online viewing of television content to authenticated Comcast subscribers.

Comcast has said that it has no reason to behave in an anti-competitive manner online, but the Commission should put requirements in place that ensure Comcast will not use its market power to thwart competition. This merger gives Comcast both the means and the incentive to behave in an anti-competitive manner. First, as the largest provider of residential Internet services it is in a unique position to violate the principle of net neutrality by throttling or blocking access to competing online video services. These actions could serve to steer Internet traffic to sites of Comcast's choosing, allowing Comcast to serve as a gatekeeper of the Internet. With the acquisition of NBCU and its host of online properties, including a stake in Hulu, Comcast now has an incentive to help direct traffic to sites it owns or controls. While businesses have the right to operate in a way as to maximize their profits, Comcast's position as dominant distributor raises concerns which are not addressed by any of the voluntary public interest commitments.

Further, with the acquisition of NBC Universal, Comcast would control an extensive television and film library which it can decide to offer to consumers in a way that promotes the company's existing distribution structure and limits competition. This could take the form of increased VOD offerings of content through Comcast cable systems or Internet platforms, while restricting the availability of content to consumers through other, more popular means, like Netflix and free online video streaming. Comcast states "the combined company will not have

the ability or incentive to benefit its distribution businesses by discriminating against rival online video distributors."[23] However, NBCU has already exhibited an inclination towards this type of behavior when it required that Hulu content be restricted from the Internet platform Boxee.[24] Boxee allows consumers to easily watch online videos on television screens. It was reported that NBC and Fox, the owners of Hulu, did not want consumers watching online reruns of television content on television screens, thus directly competing with network broadcasts.[25] The WGAW believes that content owners should carefully manage the distribution of content and are not required to make all content available free-to-the consumer everywhere, but doesn't want Comcast to use its control to stifle competition. Without explicit protections, Comcast's business interests practically require that the company do everything in its power to encourage consumers to view content through platforms it controls. Using the vertical leverage created by the vast and valuable content acquired in this merger simply becomes another tool for Comcast to use to increase its control of distribution.

Required Protections

If approved, the merger of Comcast and NBC Universal will lead to a further consolidation of distribution and programming, resulting in a decrease in the number of alternative, independent, and diverse programs and viewpoints. Such an outcome diminishes the culture of the United States and results in fewer creative opportunities for writers. While we are encouraged by the public interest commitments made by Comcast and NBC Universal, we believe that the concerns we have outlined are not sufficiently addressed by these proposed

[23] Applications and Public Interest Statement, Comcast Corporation, General Electric Company and NBC Universal, Inc., In the Matter of Applications for Consent to the Transfer and Control of Licenses from General Electric Company to Comcast Corporation, January 28, 2010. , p. 122.
[24] Stone, Brad, "Boxee Brings Hulu Back to Its Service," The New York Times, March 6, 2009, http://bits.blogs.nytimes.com/2009/03/06/sidestepping-objections-boxee-brings-hulu-back-to-its-service/.
[25] Stone, *Ibid.*

voluntary measures. We urge the FCC to impose additional commitments that address the concerns discussed in these comments and require Comcast to live up to its public promises of advancing the goals of diversity, localism, innovation and competition.

Promoting Content Diversity and Independence

In order to effectively meet the FCC goal of diversity and to promote independent programming Comcast must go beyond its offer of six independent channels, which will have little impact in a market of 500 plus channels. The FCC should encourage Comcast to live up to its promise of investing in new programming with the requirement that the company invest in programming from outside sources. In doing so, the Commission will ensure program source diversity. The Commission must define requirements that protect competition in the media industry and should include specific requirements on independent programming as part of Comcast – NBCU network schedules. The requirement for independent programming should be substantial enough to create meaningful program source diversity on Comcast – NBCU channels and include a variety of program types like dramas, comedies and nonfiction. In addition, the definition of independent programming should be crafted in such a way as to ensure maximum diversity of voices and artists on such programming, not just to provide more programming space for other media conglomerates. Further, Comcast should be required to promote these programs through subsidized advertising campaigns.

- *Program Source Diversity Requirement*: Require Comcast – NBCU networks to air a meaningful amount of programming that is owned and produced by independent producers. Independent producers should be defined as studios or production entities that are not owned or affiliated by a major broadcast or cable network or an MVPD provider.

The type of programs should also be defined to ensure that independent programs do not include only those programs the company does not wish to own.

Protecting the Value of Content

To protect content and those who create it, the FCC should require Comcast and NBCU to evaluate all content licensed or sold internally at a fair market value. Similar deals made between Comcast and a third-party content supplier or the internal content producer and an independent distributor must be used to evaluate the fairness of the internal deals.

- *Fair Market Valuation Requirement:* Accountable receipts received by the internal content producer must be measured by Comcast's payments to unrelated and unaffiliated entities in arms' length transactions for comparable pictures or, if none, the amounts received by the content producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions for comparable pictures, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable pictures.

Protecting Competition

To protect the public from potential abuses given the vertical integration of this merger, the FCC should require that Comcast commit to maintaining current channels positions among its cable offerings and to prohibit the company from bumping current cable networks out of tiers to be replaced by Comcast-owned or controlled networks. Further, to ensure competition among MVPD's, Comcast must be required to offer its cable network programming to competitors at reasonable rates.

- *Channel Positioning Requirement:* Restrict Comcast from bumping unaffiliated cable networks out of its basic cable tier to make room for affiliated networks.
- *Content Access Requirement:* Ensure availability of Comcast - NBCU content on an unbundled basis to unaffiliated multichannel video programming distributors on fair and reasonable rates, terms and conditions.

In the online space, regulators must require that Comcast - NBC Universal not discriminate in favor of or against content on the Internet. The merged entity should also not be allowed to use its market power to deny distribution of programming on alternative services on the Internet that might compete with Comcast - NBC Universal's various platforms or Video-On-Demand services and should preserve Internet availability of NBC video content on non-Comcast/NBC websites at fair and reasonable rates, terms and conditions.

- *Internet Access to Content Requirement*: Preserve Internet availability of NBC video content on non-Comcast/NBC websites at fair and reasonable rates, terms and conditions.
- *Nondiscrimination:* Require that Comcast remain neutral in the distribution of Internet content over its network.