Areas of Concern (primary parties raising concern)[1]	Applicants' Response	Record Cites To Applicants' Response[2]
	to foreclose that distributor would be unprofitable for the joint venture • The parties' joint venture agreement prohibits NBCU from sacrificing its own profits in order to benefit Comcast, and so long as GE retains a stake in the joint venture, it has the incentive and ability to enforce this prohibition. • Moreover, even if NBCU were wholly owned by Comcast, Comcast would still not find foreclosure of online video distributors to be profitable. To create a service that is substitutable for MVPD service, an online video distributor would have to offer content owners revenues on par with the revenue streams content owners currently enjoy from traditional MVPDs today. A foreclosure strategy would require the combined firm to forego these substantial revenues. Because Comcast's share of all MVPD subscriptions nationwide is less than 24 percent, a foreclosure strategy would mean that the combined entity would forego 100 percent of the revenue from selling NBCU content to a national online distributor but capture only a quarter of the purported benefits of the strategy. • Given the substantial bandwidth requirements of online video distribution, any online distributor competitive with Comcast's MVPD service would be complementary to Comcast's HSI operations. If a foreclosure strategy were to cause an online distributor to lose subscribers, those losses could reduce demand for Comcast's HSI service, further diminishing any incentives Comcast might have to impair the development of online video.	

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The transaction will lead to foreclosure of online video distribution platforms. (WealthTV)	• Given the highly competitive and open nature of the Internet, it would be impossible for the combined entity to "foreclose" the distribution of independent content. • The combined entity lacks the market power in online video distribution necessary for a successful foreclosure strategy. Following the transaction, other online distributors would continue to account for nearly 90 percent or more of professional video content viewed online. • The combined entity would also lack any economic incentive to pursue a distribution platform foreclosure strategy. As in the MVPD business, it would be bad for business to exclude desirable content from an online video distribution site; indeed, the negative impact would likely be even greater and more immediate, since the "switching costs" of going to an alternative website are virtually nonexistent and the number of alternative sites almost limitless.	• Opposition & Response at 189-191.
The transaction will lead to foreclosure of or discrimination against ISPs. (Bloomberg, CFA *et al.*, Dish Network, EarthLink, WealthTV)	• Comcast accounts for only 20 percent of broadband ISP customers nationwide and, accordingly, lacks the market power necessary to implement an ISP foreclosure strategy. As noted, the D.C. Circuit and Commission have recognized in the MVPD context that this is an insufficient presence to implement an effective foreclosure strategy. Moreover, the competition that Comcast and other cable operators face from telco broadband Internet services has continued to intensify. • Comcast has never blocked HSI subscribers' access to lawful content, and nothing about the transaction will alter that practice. With respect to BitTorrent, Comcast's sole objective in managing the use of bandwidth-intensive P2P traffic was to prevent degradation of the Internet experience for everyone on the network. Comcast did not	• Israel/Katz Reply Report ¶¶ 88-92. • Opposition & Response at 191-200.

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	prohibit the use of P2P, nor did it block P2P downloads, and the vast majority of P2P flows on Comcast's network were entirely unaffected. • Fancast Xfinity TV is subject to the same Comcast usage cap and congestion management practices as, for example, Netflix's streaming video service or online content delivered from any other source. • Comcast supports, and has consistently supported, an open Internet. Comcast's 2009 petition for review of the FCC order concerning Comcast's management of P2P protocols does not contradict its abiding commitment to the four principles of the FCC's Internet Policy Statement. This appellate litigation focused on whether the FCC had acted within its statutory authority when it found that Comcast had violated the federal Internet "policy," and the court unanimously agreed with Comcast that the FCC had not done so. • Comcast is and will remain committed to the principles of the Internet Policy Statement, regardless of whether the FCC adopts any of the rules or reclassifications it is currently considering in its other proceedings, or reclassifies broadband Internet services. Indeed, the pendency of those proceedings underscores that issues involving ISP network management practices are not transaction specific and should be addressed on an industry-wide basis. • EarthLink's proposed conditions (*e.g.*, that Comcast sell its HSI service at a 40 percent discount to four national unaffiliated ISPs) should be rejected. To support these conditions, EarthLink relies on flawed economic reasoning and inaccurate anecdotal evidence.	

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General need for government regulation of online video distribution. (AAI, Dish Network, DirecTV)	• As the Commission has recognized on numerous occasions, any proposal to regulate a nascent industry should be approached with considerable restraint and caution. • DirecTV and Dish Network have recognized this in other regulatory proceedings. Dish Network has urged that the Commission "avoid over-regulating" and allow consumer demand to drive the marketplace, and DirecTV has cautioned that "unwise regulatory intervention could have seriously negative consequences – interfering with market-based initiatives already in place and harming consumers." • While ongoing experimentation is occurring at all levels of the online business, no clear business model has emerged. Given the current uncertainty, it would be premature to place restrictions on Applicants at this point in time, as doing so would have significant and long-lasting ramifications on the entire online video distribution industry.	• Israel/Katz Online Video Report ¶ 17. • Opposition & Response at 200-204.
IV. ADVERTISING		
The transaction will reduce competition in advertising. (AOL, Bloomberg, CFA *et al.*, Dish Network, Greenlining Institute, Senator Kohl)	• The transaction will not diminish competition in local advertising. Cable and broadcast advertising are not close substitutes. The Justice Department has recognized that, at least for a significant number of advertisers, cable television advertising is not a meaningful substitute for broadcast television advertising. This is generally true of Comcast Spotlight (Comcast's local advertising unit) and NBC O&O broadcast stations: each focuses to a large degree on advertisers whose needs would not be met by the other. Thus, because Comcast's cable systems (through Spotlight) and NBC's broadcast stations serve different advertisers, the transaction will not reduce competition in any relevant advertising market.	• Public Interest Statement at 8. • Rosston Benefits Report ¶¶ 44-47. • Responses to Several Members of Congress at 23-24. • Opposition & Response at 73-76; 120-128.

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	• Even if certain advertisers regard local cable and local broadcast advertising as reasonable substitutes, advertising competition is and will remain vibrant in every market with both a Comcast cable system and an NBC O&O station. In each overlapping city, there will be at least seven non-NBCU broadcast stations, as well as a variety of other local advertising media, including Internet, radio, newspapers, billboards and other "out-of-home" advertising, and direct mail. • No commenter has demonstrated that either Comcast or NBCU has market power in any relevant advertising market. To the contrary, Applicants' experts Drs. Rosston and Topper have observed that "neither NBCU nor Comcast currently has a large share in the broad, dynamic marketplace for advertising, and the transaction will result in only a very small increase in concentration in that broad marketplace." • In fact, the transaction will provide benefits in the area of advertising. For example, it will allow the companies to offer complementary advertising opportunities and/or volume discounts, which are pro-competitive. The transaction will also accelerate the deployment of advanced advertising services. • No advertisers or marketing agencies have filed comments objecting to the transaction. Several, however, have filed comments expressing their support for the transaction and agreeing that the innovations that will result present a significant benefit.	• Rosston/Topper Reply Report ¶¶ 41-86.

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V. COMPLIANCE WITH TELEVISION DUOPOLY RULE		
NBCU's Los Angeles triopoly violates Commission rules. (Rita Guajardo Lepicier)	• NBCU currently owns and operates Station KWHY-TV pursuant to a waiver of the Commission's broadcast ownership rules. NBCU is actively attempting to sell Station KWHY-TV to a third party, and is particularly focused on minority or women buyers. The sale of Station KWHY-TV will bring the combined entity into compliance with the Commission's television duopoly rule (even without the need for the waiver). • In the event NBCU's efforts do not result in the sale of Station KWHY-TV prior to the closing of the transaction, NBCU will put Station KWHY-TV into a Commission-approved divestiture trust at closing. To this end, NBCU has filed an application seeking Commission consent for the assignment of Station KWHY-TV to a divestiture trust, with Bahia Honda LLC serving as trustee.	• Public Interest Statement at 73-74. • Applicants' May 17, 2010 Ex Parte Letter. • NBCU Response to Information Request No. 58.
VI. OTHER ISSUES		
Prices/volume discounts (ACA)	• Volume discounts with regard to the sale of cable programming have a long history in MVPD distribution. • Any concerns regarding Comcast's ability to provide volume discounts are not specific to the transaction. Volume discounts exist in virtually every sector of the U.S. economy and make simple economic and business sense; video programming distribution is not unique in this regard. • Legitimate economic benefits underlying volume discounts and other pricing differentials include: (1) the existence of major economies of scale in video programming and (2) the fact that additional subscribers	• Opposition & Response at 208-211.

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	yield disproportionate benefits to programmers in terms of additional advertising revenues. • The benefits of volume discounts are available to small cable operators and other distributors.	
Bundling/tying of programming networks (CWA, Entertainment Studios, FACT Coalition, Senator Franken, Greenlining Institute, ITTA, WealthTV, WGAW)	• Commenters' criticism of wholesale transactions between network owners and MVPDs is neither new nor specific to the transaction. The Commission is considering the bundling issue in an ongoing rulemaking proceeding and NBCU has already responded to such critics at length in its filings in the rulemaking on wholesale bundling of video programming. • NBCU does not engage in unlawful tying: It does not possess market power in any relevant programming market, and does not "coerce" or "force" MVPDs to select any particular combination or bundle of channels. Moreover, commenters have never attempted to establish which are the tying products and which are the tied ones, or to show that these products are in separate and distinct markets; nor have they demonstrated that NBCU's alleged conduct has foreclosed competition in any tied product market. • NBCU does, however, offer MVPDs discounted prices if they purchase a larger package of NBCU programming networks. Programming is no different from other aspects of telecommunications, where bundling has proved beneficial to consumers. • Wholesale packaging of programming networks allows programmers to realize economies of scale and scope that reduce the costs of producing, marketing, and distributing their programming.	• Opposition & Response at 211-218.

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Withholding of programming from Boxee, Sling, and Kylo (Dish Network, Greenlining Institute, Public Knowledge, WGAW)	• NBCU could not legally provide to Boxee the distribution rights to the type of content Boxee sought – ad supported, free-on-demand video – as Hulu had the exclusive contractual rights to this content. Boxee decided to circumvent Hulu's terms-of-use restrictions by streaming through Boxee's interface without an agreement with Hulu, and Hulu ended Boxee's unauthorized access to that content. • Similarly, Kylo took Hulu's content in an unauthorized fashion to make it available through the television without payment. Such "withholding" was entirely appropriate and a unilateral decision made by Hulu, and therefore is not a basis of concern in this transaction. • NBCU licenses its programming networks for in-home residential viewing in particular geographic areas. Sling circumvents those licensing terms and has declined to negotiate for a license to exhibit NBCU content worldwide over the Internet. Dish Network has not yet attempted to negotiate for these rights. • Universal negotiated with Netflix to license its movies on a basis that provides for a 28-day delay between the time that a movie is made available for sale to the public on DVD and the time Netflix can make the DVD of that movie available by mail to its subscribers. This is consistent with a well-recognized industry practice of "windowing" content. The production of content is expensive and windowing has been widely accepted in the industry for decades as a means of providing distributors with attractive distribution rights while creating opportunities for content creators to profitably create and sell their programming.	• Opposition & Response at 219-222.
Applicants lack character to hold	• Applicants have fully demonstrated the character qualifications necessary for approval of the transaction. No commenter has raised	• Public Interest Statement at 16-35.

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Commission licenses. (CFA *et al.*, PTC, Morality in Media Senator Franken)	any legitimate character issue concerning the Applicants. • There is nothing in the Commission's network management proceeding that creates a candor issue relevant to the instant transaction, and, in any event, the Commission's decision in that proceeding has been vacated by the D.C. Circuit. • While some parties have sought to raise issues regarding Comcast's carriage of adult programming, Comcast follows the Commission's rules in its programming policies and empowers parents to decide the programming that is appropriate for their families; these arguments do not raise any character issues. • Various other allegations, including claims concerning the amount of independent programming carried on NBC following the repeal of the "fin/syn" rules, similarly fail to raise any issue relevant to Applicants' qualifications.	• Opposition & Response at 270-276.
The transaction will reduce competition in video on demand (VOD) transport. (Avail-TVN, NTCA, FACT Coalition, WealthTV)	• Applicants will face strong competition in the marketplace for video transport, VOD, and pay per view ("PPV") services. • The Comcast Media Center ("CMC"), through its HITS service, serves only about 10 percent of all MVPD subscribers and faces competition from Avail-TVN and other video transport services. • The marketplace for VOD and PPV services also is intensely competitive; indeed, Avail-TVN, not iN DEMAND, is the largest aggregator of VOD services. • There is no basis for the Commission to require Comcast to divest its ownership interest in iN DEMAND or CMC or otherwise impose conditions regarding these services, as requested by Avail-TVN and a	• Opposition & Response at 277-284.

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	few other parties. • Avail-TVN's claims are not transaction-specific and seek to misuse this proceeding to enhance its competitive position in providing video transport services.	
The transaction will create incentives to engage in unfair labor practices. (CWA, Illinois Attorney General)	• Applicants have a consistent track record of creating jobs in America, and the transaction will stimulate investment and innovation, which in turn will promote job preservation and creation. • Applicants respect their employees' right to choose whether to be represented by a union, and do not attempt to interfere with this right. • Comcast will honor all of NBCU's collective bargaining agreements, and Comcast does not anticipate that any fundamental changes will be made to the manner in which NBCU conducts labor relations. • Labor-related claims raised by the Communications Workers of America concerning Comcast's labor policies are meritless, unrelated to the transaction, and outside of the Commission's jurisdiction. Such claims involve the same sort of allegations that the Commission has dismissed in at least six prior license transfer proceedings.	• Public Interest Statement at 38. • Opposition & Response at 285-292. • Responses to Several Members of Congress at 26-29.
Comcast's HD technology fee and other fees violate Commission rules. (City of Seattle *et al.*)	• Comcast's HD technology fee, DVR service fee, and other fees are consistent with Commission regulations, closely match the offerings of Comcast's competitors, will not have a negative effect on the retail equipment marketplace, and ultimately benefit consumers. • Attempts to impose rate regulation on non-basic fees, such as the HD technology fee, are misguided because Congress placed non-basic fees outside the scope of rate regulation.	• Opposition & Response at 297-303.