

Testimony of
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To the
Federal Communications Commission
Public Forum
On
Proposed Comcast / NBC Universal
Joint Venture

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Chicago, Illinois

Commissioner Copps, Mr. Lake, members of the FCC Staff, thank you for taking the time to conduct this field hearing in Chicago. The Commission is to be commended for employing this approach, along with many others, to secure citizen comment on the immensely important proposed merger between Comcast and NBC Universal. The Commission must decide whether it will approve, as part of the merger, transfers to Comcast of more than 25 licenses of NBC-owned TV broadcast stations.

I am here today as a former FCC Commissioner and as the President of Media Access Project, a communications public interest law firm and advocacy organization. I am here also as an individual who often has helped to direct, and has sometimes taken active ownership in, start-up minority-controlled communications and media companies. As a sometimes struggling entrepreneur, I am very impressed by Comcast's recently announced commitments, if the merger is approved, to advance minority ownership and fuller minority participation in programming and program distribution companies. If made enforceable conditions of the merger, the Comcast commitments would be clear pluses. In a close case, they may make me more sympathetic to the merger.

This is not a close case, however. The former entrepreneur in me is certain that approval of transfer of the NBC broadcast stations to Comcast, especially those that are co-located with Comcast cable systems in some of our largest media markets, would give Comcast market-moving power that it would deploy to the detriment of MVPD competitors and the viewing public.

The former Commissioner in me is equally certain that approval of these license transfers would result in a significant diminishment of what the Supreme Court has called the free and open "marketplace of ideas." Preservation of that marketplace is critically important to our democratic society, and its protection is the FCC's most special mission.

One has difficulty getting their mind's arms around the enormity of the proposed Comcast/NBCU combination. An AT&T/ABC Disney combination would not compare in terms of video program distribution capacity. To that combination, one would need to add both Time Warner Cable and Cox Cable to approximate the size and muscle of Comcast/NBC's unified TV program distribution capacity. A Verizon/Fox/Direct TV combination would be only half as strong as Comcast/NBC in terms of MVPD homes reached nationally, and would be even less of a force in the largest markets.

In Comcast/NBCU's co-located markets, in the give and take of negotiations, Comcast will most certainly deploy the power of NBC's over-the-air and cable networks – along with Comcast's own impressive power as cable operator to select, tier neighborhood, bundle and package – all with the intent to gain leverage over competing MVPDs. Against this dynamic, no amount of FCC review will overcome the adverse impact to other MVPDs. Comcast will operate within the rules, but it also will exact arbitrage from other MVPDs and their customers.

Most likely Comcast will use its enhanced market power to drive up consumer price for MVPD offerings across the board, and Comcast will disproportionately reap the benefit of those increases.

This result is neither desirable nor necessary. Under the public interest standard, the Commission is obligated to ask whether the proposed license transfers will increase or decrease competition in the marketplace of ideas, whether they will increase or decrease diversity, and indeed, whether they will serve or disserve the goals of localism.

This merger will reduce competition in the marketplace of ideas. As surely as we sit here today, Commission approval will be viewed in the future as a milestone in a journey to a program marketplace where three mega-companies – at most four – will effectively control very aspect of the product chain, from creation to distribution to the customer. This is exactly the opposite of what we were led to expect when cable emerged as the predominant MVPD vehicle.

The merger will reduce diversity. Assured adverse impact on competitors in the marketplace of ideas, and resulting harm to the viewing public, far outweighs less certain benefits that might eventuate from Comcast's diversity commitments.

The merger is not likely to serve the goals of localism. Comcast has had ample resources and opportunity to contribute its own programming to the pool of locally-originated programming in the communities where it is franchised. Aside from public service announcements and regional sports programming, about which Comcast is very aggressive, it has largely declined to get into the mix of creating its own local programming. Based on past performance, Comcast is more like than not to decrease rather than maintain or increase local programming at the NBC-owned stations.

These are the reasons why I urge the Commission not to approve the license transfers contemplated in the proposed merger, to the extent that they would result in co-location of a Comcast cable system with a leading NBC-owned TV station in any TV market.

Thank you.