

# Congress of the United States

Washington, DC 20515

May 7, 2010

Julius Genachowski  
Chairman  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Dear Chairman Genachowski,

We write to commend you and the Media Bureau for accepting the request for an extension of the comment period in the Federal Communications Commission's review of Comcast Corporation's proposed acquisition of NBC Universal. We strongly believed that it was in the public interest for the FCC to provide adequate time for all impacted parties to file detailed comments and analysis detailing the impact this merger would have on consumers and the media industry.

While your leadership is to be commended on issues such as network neutrality and the preservation of diverse ownership of media licenses, the Commission must give the Comcast-NBC merger its most labor-intensive review. We urge the FCC to thoroughly review this merger and consider Comcast and NBC's previous records on diversity, consumer relations, and labor relations. In addition, the FCC must hold public hearings so that the newly appointed FCC Commissioners will have every opportunity to understand how this merger will impact communities across the nation.

As Members of Congress, including many from the Congressional Black Caucus (CBC) and Congressional Hispanic Caucus (CHC), we are most interested in how the applicants to this merger will involve underserved communities and minorities in media programming and ownership opportunities. As Comcast Corporation stands to gain the controlling interest in NBC Universal properties, its record on diversity, labor, and consumer relations must be fully reviewed by the FCC. Recently, the Hispanic Association on Corporate Responsibility (HACR) and the National Hispanic Media Coalition issued report cards grading both companies on the diversity of their workforce. HACR gave Comcast 50 points on a 100-point scale. Similarly, the National Hispanic Media Coalition gave NBC Universal an overall grade of C+, which included an F grade for "Creative Executives." The failing grade was attributed to the absence for several years of any Latinos in NBC Universal's team of creative executives.

Therefore, we have attached a list of questions that we urge the FCC to require Comcast and NBC Universal answer for the public record. These questions include a detailed analysis of the companies' employment of women and minorities in executive leadership, management positions, and contracting opportunities. We also need to understand what Comcast and NBC have done to foster creative freedom and diversity in media programming, distribution, and ownership. In order to fulfill its obligation to review the merger's impact on the public interest, the FCC must consider this and other information on the companies' carriage agreements, cable rate increases, labor relations, advertising, and the companies' compliance with current FCC rules.

In addition to the attached questions, the FCC must also hold public hearings. Ultimately, the impact of a deal between Comcast and NBC Universal will be felt by consumers at the local level. Therefore, it is imperative that the public be given ample opportunity to have an open dialogue with the Commission about how this merger will affect local communities – particularly minority and low-income communities.

By the standards of the current FCC, public hearings are appropriate. This Commission has repeatedly expressed its commitment to greater transparency and public outreach. Indeed, in a number of other important proceedings the FCC has scheduled and held multiple field hearings: AOL/Time Warner (7/27/00); AT&T/Media One (2/4/00), and MCI WorldCom/Sprint (4/5/00). We expect this same commitment to apply to this Commission's review of the Comcast-NBC merger. The fact that merger-specific public hearings have not been held by the last two chairmen of the Commission merely reflects the prior administration's approach to merger review – an approach that led to massive media consolidation and FCC deregulation.

Therefore, we urge the Commission to prepare a plan for multiple hearings and require that Comcast and NBC answer the attached questions. Further, the FCC must provide the public with sufficient notice, time, and opportunity to participate. Your vision and leadership on critical issues has proven invaluable in steering the FCC towards policies that consider the importance of diversity, localism, and competition within an ever-evolving dynamic media market. We sincerely hope you will continue to fulfill your commitment to the American public and ensure that the FCC gives the Comcast-NBC merger an exhaustive and thorough review.

Sincerely,

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John Rahall

Al Green

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Diana

CC: Michael J. Copps, FCC Commissioner  
CC: Robert M. McDowell, FCC Commissioner  
CC: Mignon Clyburn, FCC Commissioner  
CC: Meredith Attwell Baker, FCC Commissioner

**DIVERSITY IN OWNERSHIP - PROGRAMMING RELATED**

1. How many cable networks that are solely owned by people of color or women does Comcast carry on its basic package? Can Comcast provide data showing ownership by African Americans, Latinos, and Asian Americans?
2. Has Comcast ever conditioned carriage upon their receipt of a financial interest in the network? Why or why not?
3. What types of information and data guide Comcast's decision-making with respect to carrying cable networks?
4. What types of ownership and programming opportunities does Comcast offer to Latinos, African Americans, Asian Americans, and women? How long have such opportunities existed? What specifically is the company doing to extend ownership opportunities to a diverse group?
5. Does Comcast have any internal mechanisms for tracking ownership and programming diversity? Can the company describe this internal process, how long it has been operational, and what actions the company has taken since implementing the internal mechanism?
6. Has the executive leadership ever commissioned an independent diversity report or implemented a business strategy that indicates ownership and programming diversity as a priority? When was such action taken and what were the results? What gains have Comcast achieved since the report was received?
7. Does Comcast provide any sort of support or mentorship opportunities for minority or independent programmers? What types of opportunities exist, and how long have such activities been operational?
8. Can Comcast describe in detail its outreach activities to communities of color over the last ten years?
9. How many cable networks does Comcast currently carry that are geared toward Latino, African American, Asian and women audiences? Who owns those channels? Does Comcast own a financial stake in those channels?
10. How will Comcast preserve an open Internet that provides for distribution opportunities for a diversity of independent producers/filmmakers?

## DIVERSITY IN EMPLOYMENT AND EXECUTIVE LEADERSHIP

11. How many executives of color does Comcast currently employ? How many have been promoted through the ranks? How many of Comcast's executives color have been in their position for more than five years? Ten years? Can Comcast provide information listing their executives distinguished by race and gender?
12. How many managers of color does Comcast currently employ? Can Comcast show information comparing managers of color with their total employees and distinguish these numbers by race and gender (not including independent contractors)? How many minority managers have been promoted through the ranks? How many of those managers of color have worked in that capacity for more than five years? Ten years?
13. How many minority and women-owned small businesses have independently contracted with Comcast over the last ten years (distinguished by race)?
14. What type of recruitment and retention programs does Comcast have in place to ensure a diverse workforce? When was the diversity programs launched? What were the results? What does Comcast intend to do to ensure a diverse work force post-merger? Can Comcast describe their prospective program in detail?
15. What kinds of accountability measures are in place to support workplace diversity, include diverse people in work teams, and understand the impact of diversity on business relationships? How long have these measures been in place?
16. Can Comcast list the company-wide demographics by race and/or ethnicity for the past ten years (distinguishing independent contractors)?
17. In its public interest statement, Comcast has stated it will add "two new independently-owned and -operated channels to its *digital* line-up each year for the next three years" as part of the company's migration to digital cable.
  - How will Comcast define "independent?" For example, will it mean channels in which no cable operator, broadcaster, or other programming conglomerate will have an ownership interest?
  - What consideration will Comcast give to independent programmers of color or women?
  - Of the channels carried on these same tiers, how many does Comcast have a financial stake in?
  - Can Comcast name 3 or 4 independent networks that they have added over the last 2 or 3 years of the kind they are committing to add and discuss what kind of distribution they have gotten and the percentage of its total subscribers that represents?

## **ADVERTISING DIVERSITY**

18. The merged company would be able to control and offer advertisers ad space across a whole line-up of channels and systems. Will this put other local broadcasters, especially stations owned by people of color, who are already struggling for ad revenues, at a significant competitive disadvantage?
19. How much did Comcast Corporation spend on advertising in minority publications and newspapers? What was the percentage of their advertising budget that was expended on African American, Latino, and Asian American publications?

## **CABLE RATES QUESTIONS**

1. Cable rates have increased at twice the rate of inflation since 1996. Comcast, the nation's largest cable operator, has raised its rates every year.

Comcast has argued that this merger is in the public interest because of all the benefits to consumers, yet Comcast has not said anything about how this merger will affect cable rates for subscribers. One of the purported benefits of vertical integration is that it will result in certain efficiencies – in this case, reduced costs to Comcast in acquiring the roster of NBC broadcast and cable programming. Will consumers see these cost savings in their monthly cable bills? Can Comcast promise that, post-merger, its subscribers' cable bills will be reduced?

## **LABOR QUESTIONS**

1. Some claim Comcast has pursued an aggressive policy to keep unions out. What will Comcast pledge to do to protect the rights of its workers, as well as those employed by NBC?
2. Assuming that Comcast is successful in acquiring NBC, will Brian Roberts continue to have dominant voting rights in the merged entity, as he does at Comcast (even though Brian Roberts and his family have only about 3 percent of the ownership of the company)? Presently, NBC-Universal has a "one share one vote" corporate governance structure. What will Comcast do to ensure that it will respect labor rights of the companies it acquires, if the merger is approved, to protect the collective bargaining relationship the unions have had for seventy years with NBC?
3. As a part of the transaction, NBC debt will increase by approximately \$8 billion. This debt may put the new merged entity under pressure to cut costs and jobs. How will Comcast be able to meet all of its voluntary commitments as well as maintain current employee levels?

4. Has Comcast ever attempted to stifle worker organization or union activity? Has Comcast ever fired or retaliated against workers that try to form a union? Has Comcast ever denied workers wage and benefits improvements to union employees? Has Comcast supported union decertification? Has Comcast shifted more work to non-union lower wage contractors?

### **STIFLING RIVAL PROGRAMMING DISTRIBUTORS**

1. In markets where Comcast will own an NBC O&O station and have a cable system, what prevents Comcast from driving-up the cost of the broadcast station for competing multichannel video programming distributors (“MVPDs”), including small cable companies, satellite providers, and telephone companies now entering the video business?
2. Comcast claims that any concerns stemming from the vertical integration of NBC programming with Comcast’s distribution power should be assuaged by the fact that the FCC has “program access” rules in place. Comcast also has committed to voluntarily apply the program access rules to NBC broadcast programs. What protections are there, however, to guarantee that Comcast will adhere to that promise? Is it the case that Comcast is currently fighting in the courts to have these program access rules overturned? Finally, how successful have the program access rules been in ensuring access by rival MVPDs to programming owned by Comcast and other incumbent cable operators?

### **PROGRAM CARRIAGE QUESTIONS**

1. Comcast’s President and COO, Mr. Steve Burke, has acknowledged under oath (see April 16, 2009 FCC Hearing Testimony, NFL v. Comcast, page 1696-7) that Comcast treats its own programming services like “siblings,” providing preferential carriage consideration and a different level of scrutiny to these affiliates as compared to unaffiliated networks. After the costly acquisition of NBC-Universal, with its wealth of programming, what would prevent Comcast from treating these new “siblings” in the same way? In other words, what would prevent Comcast from according all of its newly acquired programming services the same preferential treatment in terms of carriage consideration decisions and conditions for carriage?
2. Is it not the case that the NFL filed a complaint against Comcast, alleging that the company would not place the NFL Network on the same tier that it placed its own sports networks? Moreover, did Comcast attempt to condition its willingness to carry the NFL Network upon receipt of a financial interest in NFL programming? What will prevent Comcast from continuing this preferential treatment?
3. How many carriage access complaints are currently pending against Comcast?



4. How many notices of intent to file carriage access complaints has Comcast received in the past three years? How many remain unresolved? How many were resolved? How were they resolved?
5. If the acquisition were approved, what would ensure arms' length carriage negotiations between Comcast and NBC-Universal programming services? Wouldn't such negotiations simply become an exercise in pulling money from one pocket and putting it into another pocket? What prevents Comcast from charging itself higher wholesale programming costs to show a higher top line revenue number?
6. Comcast could acquire a number of programming services in the NBC-Universal transaction that compete directly with programming services owned by neither Comcast nor NBCU. What mechanisms – either regulatory in nature or specific to this transaction – would prevent Comcast from discriminating against such unaffiliated, competitive services?
7. What regulatory safeguards are in place to ensure Comcast will not block or otherwise diminish consumers' access to competitive online content? Is it not the case that the FCC has penalized Comcast for blocking online content in the past?

#### **ADDITIONAL QUESTIONS**

1. How many hours of programming does NBC provide its affiliates per week?  
How many programs fill those hours?
2. Of those programs, how many are owned by independent producers?
3. How many of those programs are owned by African American, Latino, Asian or Native American production companies?
4. How many of those programs are supplied by independent producers?
5. How many of those programs are supplied by African American, Latino, Native American, or Asian production companies?
6. How many of those programs have African American, Latino, Native American, or Asian show runners?
7. On the below-the-line staffs of those shows, how many total people are employed? What percentage of those employees are African American, Latino, Native American, or Asian?

8. On the above-the-line staffs of those shows, how many total people are employed? What percentage of those employees are African American, Latino, Native American, or Asian?
9. Understanding that NBC does not control the ethnic make-up of its 230 (?) affiliates, how many are African American, Latino, Native American, or Asian owned?
10. How many of NBC's ten owned and operated television stations have African American, Latino, or Asian General Managers?
11. What percentage of the full-time staff employees of NBC Entertainment are minorities?
12. What percentage of the full-time staff employees of NBC News are African American, Latino, Native American, or Asian?
13. What percentage of the full-time staff employees of NBC Sports are minorities?
14. What percentage of the full-time staff employees of Universal Pictures, Focus Features, and Universal Studios Home Entertainment are African American, Latino, Asian, or Native American?
15. What percentage of the full-time staff employees of Universal Parks and Resorts are African American, Latino, Asian or Native American?
16. What percentage of the full-time staff employees of NBC/Universal's Digital Media properties are African American, Latino, Asian or Native American?