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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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August 17, 2010

1430  
MB  
Merge  
Comcast / NBCU

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Genachowski:

I write to you concerning the Federal Communications Commission's investigation into the proposed combination of Comcast and NBC Universal, which would join together our nation's largest cable company with one of our nation's most venerable networks and its accompanying suite of broadcast stations, cable stations, and other entertainment properties.

I appreciate your commitment to conducting a searching, fact-based analysis into the impact that the creation of this telecommunications superpower will have upon competition and consumers. Competition is about more than just the price that is paid, although that is perhaps the most well known aspect of competition. It is important to remember that competition also involves innovation and consumer choice, and in few areas are these aspects of competition as important as the telecommunications and media marketplaces.

The Judiciary Committee has held several public hearings into this transaction, and I have heard from many parties concerning the potential impact that this transaction may have upon competition. With such a large and complicated transaction, which could transform an industry and lead to similar combinations in the future, it is imperative that the Commission conduct an exhaustive investigation into what conditions, if any, will be sufficient to prevent a lessening of competition from the merger. It is also imperative that the Commission work closely with the Justice Department to ensure that both agencies have the opportunity to consider the consequences of all aspects of the transaction. I urge you to move with all due speed in your investigation, but to reject any demands for artificial time constraints.

The Honorable Julius Genachowski  
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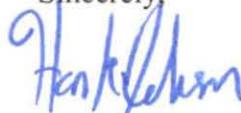
One area that I hope that the Commission will take a close look at is in the burgeoning online broadband and video marketplace. As it stands, there are not currently any broadband network nondiscrimination principles in place to ensure that broadband providers, such as Comcast, cannot prefer certain content over other content in their delivery to broadband content to home consumers. While this is already a concern, the transaction under review would create new incentives for Comcast to prefer the distribution of NBC Universal content to their customers, or to restrict the access of NBC Universal content by consumers using an internet connection provided by a competitor to Comcast. In the absence of an industry wide solution to this problem, I urge the Commission to ensure that this transaction does not exacerbate the problem by making certain that the combined company cannot prefer its own content when delivering broadband services or tie NBC Universal content to the use of Comcast's broadband services.

I further urge the Commission to examine how this combination will effect the combined company's incentives to negotiate with both multichannel video programming distributors (MVPDs) as well as content providers in the future. The unprecedented combination of distribution and content provision under one company, something that has never been done on this scale before, may alter the combined company's incentives in future negotiations. It may also lead the company to prefer its own content to that of other providers or provide the combined company's content to competing MVPDs on less-favorable terms, potentially denying such content to customers of competing MVPDs. While there are some restrictions on the combined company's ability to do so, such as the Commission's program access rules, many have expressed concern that those rules are insufficient in practice to protect consumers against such anti-competitive harms. I urge the Commission to ensure that the combined company cannot use its increased market presence to reduce consumer choice or increase consumer price, in either the MVPD or content markets.

I appreciate your consideration of these concerns. When dealing with transactions such as the Comcast-NBC combination, which so often lead to a cascade of similar transactions, it is imperative that the Commission take whatever time it needs to get their analysis correct and to ensure that consumers are protected.

With much appreciation for your good work.

Sincerely,



Henry C. "Hank" Johnson, Jr., Chairman  
Subcommittee on Courts and Competition Policy

cc: Howard Coble, Ranking Member