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**United States Senate**  
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SPECIAL COMMITTEE ON AGING  
AD HOC SUBCOMMITTEE ON  
CONTRACTING OVERSIGHT,  
CHAIRMAN

January 7, 2011

**0039**

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

Dear Mr. Chairman,

I am writing to express concerns about the proposed merger between Comcast Incorporated and NBC Universal, Inc. (NBCU), which is currently under review by the Federal Communications Commission.

If completed, this merger will combine one of the nation's largest providers of video content with the largest cable company and largest provider of residential broadband service. I understand and appreciate that Comcast will continue to support local news and public affairs programming but this merger could result in fewer program choices while potentially raising prices for consumers. Accordingly, I believe that this combination requires your careful review, in order to ensure that consumers are not harmed and that the transaction is truly in the public interest.

In particular, I have strong concerns regarding the viability of independent programming on Comcast platforms, should this merger be consummated. As you know, Section 616 of the Communications Act (47 U.S.C. § 536) prohibits cable and satellite operators from engaging in conduct that unreasonably restrains "the ability of an unaffiliated programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors". However, some stakeholders suggest that Comcast and other multichannel video programming distributors have a history of placing independent and unaffiliated programming on premium tiers while placing content that it owns on more widely-distributed basic cable tiers. These actions may violate the spirit, if not the law in Section 616. I am also concerned that they may become more commonplace following this merger, as Comcast will have even greater programming interests than it does today, including several top-rated national cable networks and a major movie and television studio.

Moreover, while the statute is designed to prevent such discriminatory behavior from occurring, the regulatory dispute process for independent program carriage is both onerous and expensive. In practice, this deters independent programmers from filing complaints. As a result, I believe the Commission should impose enforceable conditions to guard against the potential harms that are specific to this merger, in order to protect the ability of independent programmers to access audiences over Comcast systems and protect the diversity of video programming in the marketplace. Further, I believe

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you should work to ensure that consumers whom have already experienced substantial inflation in cable rates will not experience new, disproportionate rate increases as a result of the merger.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" being more prominent than the last name "McCaskill".

Claire McCaskill  
United States Senator