Testimony of

Dr. Mark Cooper
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on behalf of

Consumer Federation of America
Free Press
Consumers Union

before the

Commerce Committee
U.S. Senate

Regarding

"Consumers, Competition and Consolidation in the Video Broadband Market"

March 11, 2010

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

My name is Dr. Mark Cooper. I am the Director of Research at the Consumer Federation of America. I appear before you today on behalf of the Consumer Federation of America, Free Press and Consumers Union. We appreciate the opportunity to share our views on media markets and a merger that is unique in the history of the video market, one that will go a long way toward determining whether or not the future of video viewing in America is more competitive and consumer-friendly than the past.

The merger of Comcast and the National Broadcasting Company (NBC) is a hugely complex undertaking, unlike any other in the history of the video marketplace. Allowing the largest cable operator in history to acquire one of the nation's premier video content producers will radically alter the structure of the video marketplace and result in higher prices and fewer choices for consumers. The merging parties are already among the dominant players in the current video market. This merger will give them the incentive and ability to not only preserve and exploit the worst aspects of the current market, but to extend them to the future market.

Comcast has sought to downplay the impact of the merger by claiming that it is a small player in comparison to the vast video universe in which it exists. It has also glossed-over the fact that this merger involves the elimination of actual head-to-head competition. Finally, it has argued that existing protections and public interest promises will prevent any harms that might result from the merger. All three claims are wrong.

Neither Comcast's regurgitation of market shares and counts of outlets and products, nor its public interest commitments begin to address the fundamental public policy questions and competitive issues at stake in this merger. Nor can the merger of these companies be viewed separately from the products they sell. NBC and Comcast do not sell widgets. They sell news and information and access to the primary platforms American use to receive this news and information. Control over production and distribution of information has critical implications for society and democracy. As a consequence, the merger of these two media giants reaches far beyond the economic size of the merging parties to the very content consumers receive, and how they are permitted to access it.

Finally, if the size and scope of this merger is not sufficient to give you pause, the past actions of the acquiring party should. Comcast has raised cable rates for consumers every year, and is among the lowest ranked companies in terms of customer service. Comcast is the frequent subject of program access complaints of competing video providers, as well as of discriminatory carriage complaints by independent programmers. Finally, Comcast is on record lying to a federal agency regarding whether they blocked Internet users' access to a competing a video application for anti-competitive purposes. These past practices do not bode well for future competition if Comcast is allowed to acquire NBC. Further, Comcast's lack of candor in past proceedings cast doubt on the prudence of relying on Comcast's voluntary public interest commitments as a means of addressing the anti-consumer impacts of this merger.

The goal of mega-mergers such as this is to cut costs and increase revenues. The most direct path to those outcomes are firing workers and raising prices. Cutting jobs is hardly a laudable goal in the current environment, but the primary "synergy" that mergers produce is the ability to reduce employment by sharing resources between the commonly-held companies. To expect the opposite to happen here based on the evidence-free assertions of Comcast would be foolhardy. Simply put, this merger is about higher prices, fewer choices, and lost jobs.

THE BIGGEST GETS BIGGER (AND STRONGER)

Comcast is the nation's largest cable operator, largest broadband service provider and one of the leading providers of regional cable sports and news networks. NBC is one of only four major national broadcast networks, the third largest major owner of local TV stations in terms of audience reach, an icon of local and national news production and the owner of one of a handful of major movies studios.

As large as Comcast is nationally, it is even more important as a local provider of video services. Comcast is a huge entity in specific product markets. It is the dominant multi-channel video programming distributor (MVPD) in those areas where it holds a cable franchise, accounting, on average for over half of the MVPD market. It is the dominant broadband access provider in the areas where it has a cable franchise, accounting for over half of that market. This dominance of local market distribution platforms is the source of its market power. The merger will eliminate competing distribution platforms in some of its markets and will give Comcast control over strategic assets to preserve and expand its market power in all of its markets.

Broadcasters and cable operators are producers of goods and services that compete head-to-head, including local news, sports, and advertising. In addition, NBC and Comcast are also suppliers of content and distribution platforms, which are goods and services that complement one another. In both roles there is a clear competitive rivalry between them. For example, in providing complementary services, broadcasters and cable operators argue about the price, channel location and carriage of content. The merger will eliminate this natural rivalry between two of the most important players in the multi-channel video space, a space in which there are only a handful of large players.

These anticompetitive effects of the merger are primarily what antitrust practice refers to as horizontal effects, as shown in Exhibit 1. They are likely to reduce competition in specific local markets – head-to-head competition in local video markets, head-to-head competition for programming viewers, head-to-head competition for distributions platforms. The merger will raise barriers to entry even higher through denial and manipulation of access to programming and the need to engage in two-stage entry. The merger will increase the likelihood of the exercise of existing market power within specific markets, and will increase the incentive and ability to raise prices or profits.

The fact that some of the leverage is brought to bear because of the link to complementary products (i.e. is vertical in antitrust terms), should not obscure the reality that the ultimate effects are on horizontal competition in both the distribution and programming markets. The merger would dramatically increase the incentive and ability of Comcast to raise prices, discriminate in carriage, foreclose and block competitive entry and force bundles on other cable systems. The merger enhances the ability of Comcast to preserve its position as the dominant local MVPD, reinforce its ability to exercise market power in specific cable or programming markets and extend its business model to the Internet.

We raise these concerns about the merger based on eight specific anti-competitive effects that the merger will have on the video market. The attached exhibit presents the list of distribution and content assets owned in whole or in part by these two companies. The exhibit makes it crystal clear that they do compete head-to-head across a number of product and geographic markets and the assets represent an arsenal of complements that would be powerful ammunition to use as leverage against existing competitors and new entrants.

HIGHER PRICES, FEWER CHOICES, LESS COMPETITION

The history of the cable industry since the passage of the Telecommunications Act of 1996 has been a history of consolidation and higher prices. We are all familiar with the fact that cable prices have increase twice as fast as the rate of inflation since the 1996 (as shown Exhibit 2, cable rates increased approximately 100%, while Consumer Price Index increased about 50%). It is less widely known, but equally important to note that the operating cash flow of the cable operators – that is the cash left over after all operating expenses, including programming costs – has increased four times faster than the rate of inflation. That is how during the worst recession since the Great Depression, Comcast has secured the $6.5 billion in cash necessary to pay General Electric for 51 percent of NBC-Universal. Many of the processes that have operated in the cable market to enable cable to push up prices and cash flow in the decade and a half since the telecommunications Act of 1996 will be reinforced and perpetuated by this merger.

(1) This Merger will reduce choice and competition in local markets. The merging parties currently compete head-to-head as distributors of video content, in local markets. Because broadcasters own TV stations, they compete with cable in local markets for audiences and advertisers – especially in the production and distribution of local news, and local and political advertising. This merger eliminates this head-to-head competition in 11 major markets where NBC owns broadcast stations and Comcast operates a cable franchise. These 11 markets account for nearly a quarter of U.S. TV households.

This merger also eliminates a competitor for local and political advertising. In fact, in 2006 NBC told the Federal Communications Commission that local cable operators present the single biggest threat to broadcasters in terms of securing local and political advertising.[1] The concentration of local markets and increase in concentration created by this merger, as measured by local advertising vastly exceed the level that should trigger close antitrust scrutiny under the DOJ/FTC *Merger Guidelines*. Now that NBC is looking to merge with Comcast, the potential elimination of this local competition has been conveniently ignored. But federal authorities cannot and should not ignore the fact that a merger between Comcast and NBC is likely to cause a significant decline in competition in local advertising markets and excessive domination by the merged company. Not only will advertisers lose an important option, but also the merger will be to the detriment of other local broadcasters - particularly smaller, independent ones - who are already facing ad revenue declines in an economic downturn. A stand-alone broadcaster will not be able to offer package deals and volume discounts

[1] NBC Media Ownership Comments, FCC Docket 06-121 (filed Oct. 2006).

for advertising across multiple channels the way that Comcast/NBC will be able to do post-merger. That means other local broadcasters will have less money to produce local news and hire staff. To compete, rival broadcasters will have two options: fire staff and reduce production of local news and information; or consolidate in order to compensate for market share lost to the new media mammoth.

(2) This merger removes an independent outlet and an independent source of news and information. These two companies compete in the video programming market, where Comcast's regional sports and news production compete with NBC's local news and sports production. By acquiring NBC, Comcast's incentive to develop new programming would be reduced. Instead of continuing to compete to win audience, it just buys NBC's viewers. Where two important entities were producing programming, there will now be one.

(3) The merger will eliminate competition between Comcast and NBC in cyberspace. NBC content is available online in a variety of forms and on different websites and services. Most prominently, of course, NBC is a stakeholder in Hulu – an online video distribution portal that draws millions of viewers. Comcast has put resources into developing its own online video site - "Fancast" – where consumers can find content owned by the cable operator. The merger eliminates this nascent, head-to-head competition.

Moreover, Comcast is the driving force behind the new "TV Everywhere" initiative. This collusive venture – which we believe merits its own antitrust investigation – would tie online video distribution of cable content to a cable subscription and pressure content providers to restrict or refrain from online distribution outside of the portal. This is a disaster for video competition. The proposed merger strengthens Comcast's hand in this scheme by increasing their market power in both traditional and online video distribution. Comcast is clearly attempting to control the distribution of the video content it makes available on the web by restricting sales exclusively to Comcast cable customers. It does not sell that content to non-Comcast customers. By contrast, NBC has exactly the opposite philosophy – or at least it did. Through Hulu, NBC is competing for both Comcast and non-Comcast customers by selling video online that is not tied to cable. NBC also has incentives to make its programming available in as many points of sale as possible. Merger with Comcast will put an end that pro-competitive practice. "TV Everywhere" is a blatant market division scheme intended to extend the cable "non-compete" regimen from physical space to cyberspace.

(4) The merger will provide Comcast with greater means to deny rivals access to Comcast controlled programming. Comcast already has incentive to undermine competing cable and satellite TV distributors by denying them access to critical, non-substitutable programming, or by extracting higher prices from competitors to induce subscribers to switch to Comcast. Post-merger it will have a great deal more content to use as an anticompetitive tool. Comcast has engaged in these anticompetitive acts in the past and by becoming a major programmer it will have a much larger tool to wield against potential competitors. Moreover, Comcast has opposed, and is currently challenging in court, the few rules in place that would prevent it from withholding its programming from competing services. Strangely enough, Comcast's CEO promised members of Congress in a previous hearing that the company would continue to abide by these rules even if they were successful in getting the court to throw them out. Yet Comcast continues to spend shareholder dollars trying to overturn an FCC regulation that it promises to follow regardless of the case's outcome. As a show of good faith, we have asked Comcast to withdraw its suit. In response Comcast has equivocated. Now it claims it made no such promise.

(5) The merger will provide greater incentive for Comcast to discriminate against competing independent programmers. Comcast already has a strong incentive to, and significant track record of, favoring its own programming over the content produced by others with preferential carriage deals. Post-merger it will have a lot more content to favor. The current regulatory structure does not appear sufficient to remedy the existing problem and cannot be expected to address the resulting post-merger threat to independent programmers. The econometric analysis of program carriage indicates there is a great deal of discrimination occurring already. The fact that the FCC is continually trying to catch up with complaints of program carriage discrimination is testimony to the existence of the problem and the inability of the existing rules to correct it.

(6) The merger will stimulate a domino effect of concentration between distributors and programmers. The new combination will create a major asymmetry in the current cartel model in the cable industry. It brings together a large cable provider with a huge stable of must-have programming *and* the largest wireline broadband platform in America. Very likely, this will trigger more mergers and acquisitions because it changes the dynamics of the market. But there will be no positive competitive outcomes resulting from this change.

This merger signals that the old, anticompetitive game is still on -- but with a twist. Like all other cable operators, Comcast has never entered the service territory of a competing multi-channel video program provider, allowing everyone to preserve market power and relentlessly raise prices. But Comcast's expanded assets and especially its new leverage over the online video market will give it a substantial edge against its direct competitors in its service territory. The likely effect of the merger will be for other cable distribution and broadband companies to muscle up with their own content holdings to try and offset Comcast's huge advantage. In other words, there is only one way to deal with a vertically integrated giant that has must-have content and control over two distribution platforms – you have to vertically integrate yourself. This merger would send a signal to the industry that the decades old game of mutual forbearance from competition will be repeated but at the next level of vertical integration that spills over into the online market. Watch for AT&T and Verizon to be next in line for major content acquisitions. When that happens, it will be extremely difficult for any company that is merely a programmer or merely a distributor to get into the market. Barriers to entry to challenge vertically integrated incumbents will be nearly unassailable. The only option may be a two-stage entry into both markets at the same time – which is an errand reserved only for the brave and the foolish.

(7) By undermining competition this merger will result in higher prices for consumers. Comcast already raises its rates every year for its cable subscribers, and prices are likely to rise further after the merger. By weakening competition, Comcast's market power over price is strengthened, but there are also direct ways the merger will push the price to consumers up. Comcast will have the opportunity and incentive to charge its competitors more for NBC programs and force competitors to pay for less desirable Comcast cable channels in order to get NBC programming -- those added costs will mean bigger bills for cable subscribers. Furthermore, the lack of competitive pressure that has failed to produce any appreciable downward pressure on cable rates since 1983, will not discipline Comcast from raising its own rates.

(8) This merger will result in higher prices for consumers through the leveraging of "retransmission rights." Recently, disputes over retransmission consent payments between broadcasters and cable TV providers have escalated to the point where local television stations have pulled their broadcast signals from cable operators – leaving consumers without access to important local news and entertainment programming. Comcast's takeover of NBC will exacerbate this trend. Through its takeover of local NBC broadcast stations, Comcast will gain the retransmission consent rights to negotiate fees for cable carriage of NBC's broadcast signals. These rights will enable Comcast to leverage control over must-have local programming and larger bundles of cable channels to charge competing cable, telco and satellite TV providers more money for content. Once Comcast acquires NBC, it will a two-fold incentive to drive-up retransmission rates for NBC broadcast stations: first, higher rates mean more revenues for Comcast. Even if Comcast also pays those higher rates, it is essentially charging itself. Second, Comcast has a strong incentive to raise rates on competitive MVPDs to force them to either absorb these extra costs, or to pass them through to consumers who will then have an incentive to switch to Comcast. Moreover, if retransmission consent negations reach a stalemate, Comcast has additional incentive to pull NBC's signal from competing pay TV operators as a way to induce customers to switch to Comcast. Either way Comcast wins, but consumers and competition are caught in the crosshairs.

EMPIRICALLY GROUNDED, RESPONSIBLE MERGER ANALYSIS V. "DO NOTHING THEORY"

In response to my February 4, 2010 testimony in the House Commerce Committee and the Senate Judiciary Committees, the Free State Foundation has posted a rebuttal by Richard Epstein, a law professor at the University of Chicago and a Senior Fellow at the Hoover Institution.[2] His response to my testimony is an example of the predictable chorus of free market ideologues who inevitably parrot the claims of the merging parties that new efficiencies will benefit consumers and that there is more than enough competition to prevent abuses.

Thankfully, the era of "don't worry, be happy" antitrust enforcement in America is over.[3] Professor Epstein's approach to merger analysis reflects all of the worst weaknesses of the Chicago School approach that he espouses. It is based on pure theory, no facts.[4] Moreover, it is premised on a theory that is biased toward the approval of mergers[5] because it favors the creation of monopoly rents[6] by dominant firms[7] and ignores the importance of dynamic efficiency and disruptive entrants and mavericks.[8]

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[2] Richard Epstein, "The Comcast and NBCU Merger: The Upside Down Analysis of Dr. Mark Cooper," *Perspectives from FSF Scholars,* 5:4, February 12, 2010.

[3] This critique of the Chicago School is amply documented in Robert Pitfosky (Ed.), *How the Chicago School Overshot the Mark: The Effects of Conservative Economic Analysis on U.S. Antitrust* (Oxford: Oxford University Press, 2008). On the under enforcement that results from the Chicago school approach see 6, 36, 244-247.

[4] *Id.,* at 5, 42, 57, 82.

[5] *Id.,* at 48, 52, 123.

[6] *Id.,* at 6, 37-38, 85, 183.

[7] *Id.,* at 86, 127, 165.

[8] *Id.,* 79-81.

Professor Epstein ignores the mountain of evidence that there are numerous clearly defined markets in which Comcast and NBC compete head-to-head. In part this stems from the fact that he never attempts to define product and geographic markets. This failure is rooted conceptual and empirical flaws in his approach. On the one hand, the Chicago School approach assumes that self-correcting markets will automatically respond to the market power created by mergers,[9] because entry is easy.[10] One the other hand, the approach defines markets too broadly[11] and underestimates the importance of horizontal market power.[12]

Efficiency gains and benefits are overblown in the Chicago School approach. Indeed, they are used as an excuse to justify market power, rather than an empirically demonstrated fact.[13] All merging parties claim efficiency gains and "synergies", though few actually deliver on those promises. Nevertheless, the Chicago School treats those claims as a bona fide magic wand that blesses every merger that comes along.[14] Professor Epstein provides no evidence of efficiency gains or that the assumed benefits will be passed on to consumers and ignores the importance of wealth transfers as a consumer harm that can result from mergers, weaknesses that are endemic to this school of thought.[15]

The theoretically induced blindness to horizontal problems of this merger is matched by the utter ignorance of the vertical problems that it poses.[16] Abuse of vertical leverage has long been recognized as a critical problem that is ignored by Chicago School theory.[17] The cable industry has long been afflicted by the use of vertical leverage to undermine horizontal competition and Comcast has been in the forefront of that practice.[18] Empirical studies have repeatedly shown that by discriminating against independent programmers in affording carriage, cable operators have advanced the interest of their own programming and undermined the prospect for independent programming, impairing competition in content markets. By denying competing distribution platforms access to video content, cable operator have retarded competition in the distribution market, a practice that has led to repeated disputes at the Federal Communications Commission.

The bitter fruit of lax, "don't worry, be happy" antitrust enforcement has been tasted by the public in the approval of a string of mergers that have allowed the MVPD market to become concentrated and sustained the constant increase in prices in the cable industry. Professor Epstein asks us to ignore this central fact of life in the MVPD market because Chicago School Theory pays little attention to consumer welfare.[19] Responsible antitrust authorities cannot do so.

The track record of past mergers and merger conditions has become a bone of contention in the Comcast NBC case. In a thin attempt to soothe worries regarding the merger, merger supporters have listed a number of recent media and communications mergers, which they claim, did not

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[9] *Id.,* at 5.
[10] *Id*., at 42, 236.
[11] *Id.,* 243.
[12] *Id.,* 27, 57, 80, 126.
[13] *Id.,* at 5, 18, 42, 263.
[14] *Id.,* at 5.
[15] *Id.,* at 90, 263
[16] *Id.,* at 52, 127, 141.
[17] *Id.,* at 148-149.
[18] Mark Cooper, *Cable Mergers and Monopolies: Market Power in Digital Media and Communications Markets* (Washington, D.C.: Economic Policy Institute, 2002).
[19] *Id, at 93-97.*

result in the sky falling-in on consumers (to wit, AT&T-SBC, Verizon-MCI, News Corp.-DirecTV, AOL-Time Warner, XM-Sirius). However, in referencing past mergers as a defense, supporters of the present merger draw the wrong conclusions in four crucial respects.

First, these mergers pale in comparison to consolidation of control over both programming production and distribution that would occur as a result of a Comcast takeover of NBC. The Comcast-NBC merger is much larger and involves uniquely anticompetitive threats resulting from the marriage of a major video content producer to the nation's largest cable television provider and broadband service provider.

Second, many of these past mergers were prevented from doing their worst because, in every case, antitrust authorities imposed important conditions to prevent the anticompetitive, anti-consumer harms that the consolidation would have produced. These conditions were, of course, opposed by the Chicago School ideologues, just as they now oppose the imposition of any conditions on the current merger.

Third, virtually all of these mergers all resulted in consumer harm, even in spite of conditions that helped to mitigate the damage to some extent. The telecom mergers, in particular were disastrous for consumers. They eliminated major competitors in the marketplace for wireline broadband service, reversed the outcomes of the pro-competitive breakup of AT&T and the pro-competitive 1996 Telecommunications Act, and delivered a wireline duopoly that has resisted meaningful price competition ever since. These mergers also resulted in massive consolidation in the wireless industry (by virtue of granting huge market power to these wireline companies that also had wireless services) – pushing AT&T and Verizon into dominant positions that are quickly giving us the same problems in mobile communications.

Finally, these mergers did not produce the synergies and efficiencies that these companies promised. Instead, the claims of efficiency, that were used to justify mergers in the past decade, were vastly overblown or failed to materialize at all. The "efficient market hypothesis" at the center of the Chicago School analytic framework, which allowed companies to wave a magic efficiency wand and blind the antitrust authorities to the anticompetitive impact of merger, was the cornerstone of the "don't' worry, be happy" era. The "efficient market hypothesis" is crumbling; buried, if not dead, beneath the rubble of the financial system.[20]

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[20] The charge that set off the implosion of the theory was ignited by Allan Greenspan's admission that there is a fundamental flaw in the theory. "Those of us who looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief. Such counterparty surveillance is a central pillar of our financial markets state of balance…If it fails, as occurred this year, market stability is undermined…"I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such that they were best capable of protecting their own shareholders and their equity in the firms (U.S. House of Representatives, Committee on Oversight and Government Reform, October 23, 2008) This has set off a series of analyses on all sides that retrospectively examine the cracks and weaknesses in the intellectual structure that should have been recognized (see for example Justin Fox, *The Myth of the Rational Market: A History of Risk, Reward and Delusion on Wall Street* (New York: Harper Collins, 2009); Richard Posner, *A Failure of Capitalism: The Crisis of and the Decent Into Depression* (Cambridge: Harvard University Press, 2009); John Cassidy, *How Markets Fail the Logicfo Economic Calamities* New York: Farrar, Straus and Giroux, 2009). There were, of course, critics who recognized the problems much earlier, but whose warnings went unheeded (see for example, Joseph E. Stiglitz, *The Roaring Nineties* (New York: Norton, 2003); Robert Pollin, *Contours of Descent: U.S. Economic Fractures and the Landscape of Austerity* (Verso, 2005); Frank Portnoy, *Infectious Greed* (New York Holt, 2003); Robert Schiller, *Irrational Exuberance* (New York: Currency/Doublday, 2005);
Pitofsky, *op. cit.;* George Cooper, *The Origin of Financial Crises: Central Banks, Credit Bubbles and the Efficiency Market Fallacy* (New York: Vintage, 2008).

A COMCAST/NBC MERGER SHOULD NOT BE ALLOWED TO PROCEED WITHOUT MAJOR STRUCTURAL REFORMS OF THE VIDEO MARKET

The merger has so many anti-competitive, anti-consumer, and anti-social effects that it cannot be fixed. Comcast's claim that FCC oversight will protect the public is absurd. Moreover, such claims are undercut by the fact that Comcast is presently opposing the very rules it says will prevent it from anticompetitive conduct. The challenges that this merger poses to the future of video competition cannot be ignored, or brushed aside by reliance on FCC rules that have yet to remedy current problems and, thus, are ill-equipped to attend to the increased anticompetitive means and incentives that will result from Comcast's acquisition of NBC. The FCC rules have failed to break the stranglehold of cable to-date. There is no reason to believe they will be better able to tame the video giant that will result from this merger.

Further, any suggestion that the public interest commitments Comcast has made will solve these problems is misguided. Temporary band-aids cannot cure long-term structural injuries. Comcast's promises lack substance and accountability. More importantly, the commitments do not begin to address the anticompetitive effects of the merger. Many of Comcast's commitments amount to little more that a promise to obey the law. Where they go beyond current law, they largely fall within the company's existing business plans. Anything beyond that is meager at best, and in no way substitutes for the localism and diversity that a vigorously competitive industry would produce.

We recognize that the company has made some promises that address some specific concerns of members of the Congress and this committee. We appreciate the fact that everyone recognizes that those special interest promises are far from adequate to protect the interests of the broader public. So in my remarks today I will take up the challenge that some members of the Committee have laid down in terms of identifying the conditions that would begin to address the broader problems with this merger and in this industry. I emphasize the structure and process of enforcement of conditions, rather than the details.

First, all of the major areas of competitive concern should be addressed, in addition to the localism and diversity areas that Comcast has admitted are a problem – local markets/affiliate relations, cable program access, cable carriage, Internet distribution, independent programming in broadcast and prime time. If federal authorities allow this merger to go forward, they should not merely impose conditions on the merger, they should reform the regulatory structure of the industry to address the underlying problems that this merger will make much worse. The only way to address the harm that this merger will do to competition and consumers is to address the underlying problems that afflict video consumers in America.

To ensure that the conditions are enforceable, we believe that the federal authorities with oversight over this merger should complete industry-wide proceedings that address the underlying problems before the merger is approved. In every one of the areas where we believe that broad public interest is at risk, there is a pending proceeding or complaint that provides the opportunity to address the underlying problems in the industry that would be made so much worse by this merger. When it comes to relations between the networks and their affiliates, cable program access, cable program carriage, and independent programming on broadcast networks, the FCC has available vehicles to move quickly to adopt strong rules to protect the public. The antitrust authorities have been asked to examine the anti-consumer, anticompetitive market division scheme Comcast is pushing for Internet distribution of video content. These agencies should act to outline the rules of the road and create the institutional structures that will prevent the abuse of market power and promote competition in the MVPD market.

Once these industry-wide mechanisms are in place, the agencies should then consider whether additional conditions are necessary to meet the unique threat to competition and the public interest embodied in this merger.

Finally, federal authorities must not only impose meaningful conditions with enforceable sanctions, but the Comcast should also agree not to challenge the legality of the conditions or render aid and comfort to those who do. If they challenge the legality of the regulatory mechanisms that underlie any of the major conditions imposed on the merger that should immediately trigger a reconsideration of the merger and a reconsideration of the transfer of the broadcast licenses in a proceeding that is treated as a *de novo* review of the merger. Since Comcast has volunteered to give up its right to stop obeying a law in the event it is declared illegal or unconstitutional, it should have no problem giving up it right to challenge such a law.

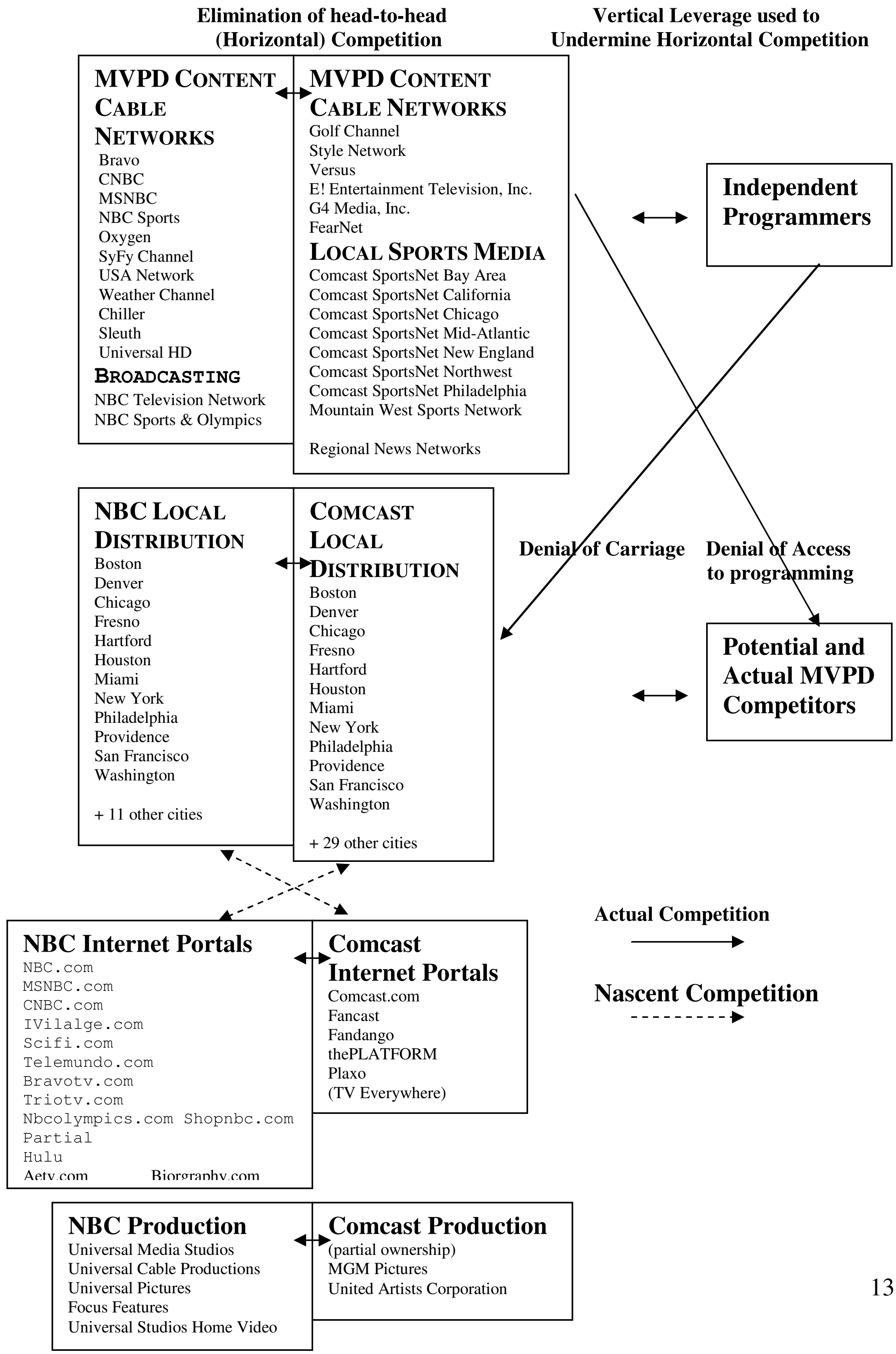
FUNDAMENTAL REFORM IS LONG OVERDUE, FEDERAL AUTHORITIES SHOULD SEIZE THE MOMENT OF THE LARGEST MERGER IN HISTORY TO JUMP START THE REFORM PROCESS

Over the past quarter century there have been a few moments when a technology comes along that holds the possibility of breaking the chokehold that cable has on the multi-channel video programming market, but on each occasion policy mistakes were made that allowed the cable industry to strangle competition. This is the first big policy moment for determining whether the Internet will function as an alternative platform to compete with cable. We all hope the Internet will change everything in the video product space, but it has not yet. According to the Nielsen "Three Screen Report," 95 percent of TV viewing and 90 percent of the time spent with the media is still the traditional media. If policymakers allow this merger to go forward without fundamental reform of the underlying industry structure, the prospects for a more competition-friendly, consumer-friendly multi-channel video marketplace will be dealt a severe setback.

It is only by taking the approach I have outlined that Federal authorities can do more than just preserve the current industry structure, which is riddled with anticompetitive and anti-consumer institutions and practices, that they can improve the terrain of the American video marketplace. This merger is an opportunity to jump-start the industry reform process.

I urge policymakers to think long and hard before they allow a merger that gives the parties incentives to harm competition and consumers, while increasing their ability to act on those incentives. This hearing should be the opening round in what must be a long and rigorous inquiry into a huge complex merger of immense importance to the American people. It should be the first step in a review process that concludes the merger is not in the public interest and should not be allowed to close.

EXHIBIT 1:
THE ANTICOMPETITIVE EFFECTS OF THE COMCAST-NBC MERGER



ADDITIONAL LOCAL DISTRIBUTION

NBCU DISTRIBUTION

NBC Stations:
KNBC
Los Angeles

KNTV
San Jose/San Francisco

KXAS
Dallas/Fort Worth

WTVJ
San Diego

WNCN
Raleigh

WCMH
Columbus

WVTM
Birmingham

Telemundo Stations:

KVEA
Los Angeles

KWHY
Los Angeles

WSCV
Dallas/Fort Worth

KVDA
San Antonio

KDRX
Phoenix

KHRR
Tucson

WKAQ
Puerto Rico

COMCAST DISTRIBUTION

New Bedford

Springfield

Pittsburgh

Wilkes Barre

Baltimore

Richmond

Jacksonville

Orlando

West Palm Beach

Fort Myers

Tampa

Atlanta

Knoxville

Nashville

Chattanooga

Memphis

Peoria

Detroit

Grand Rapids

Indianapolis

Peoria

Champaign

Minneapolis/St. Paul

Albuquerque

Colorado Springs

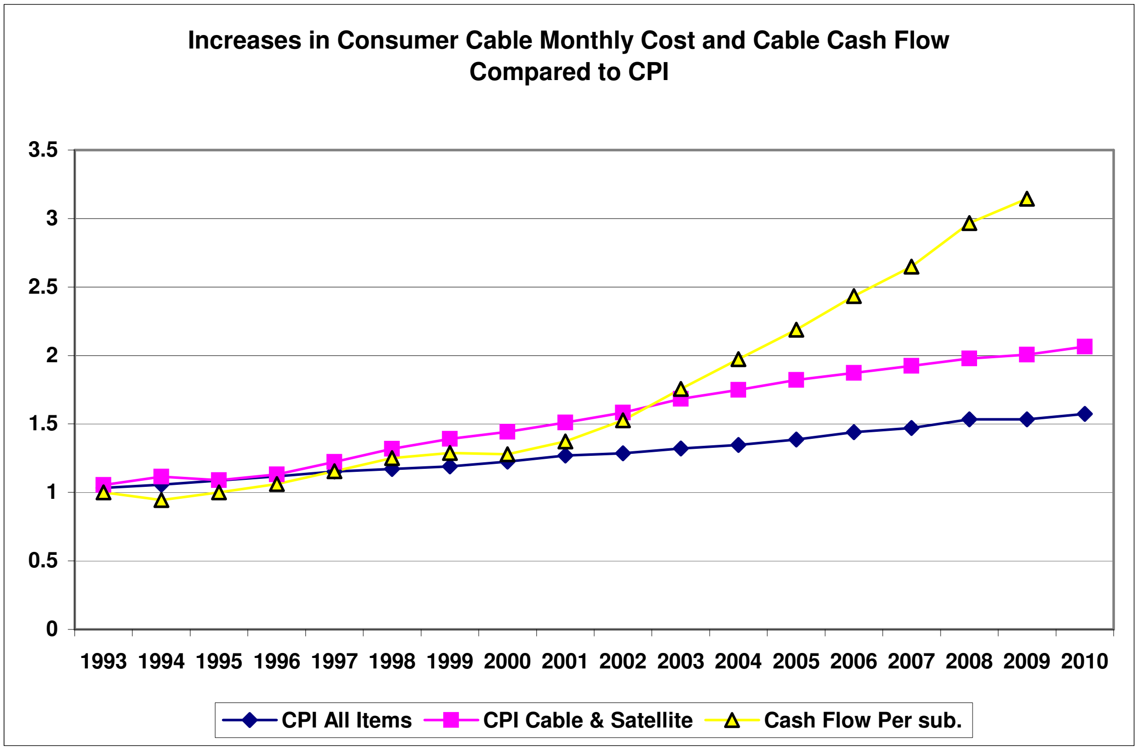
Salt Lake City

Portland

Seattle

Sacramento

EXHIBIT 2:



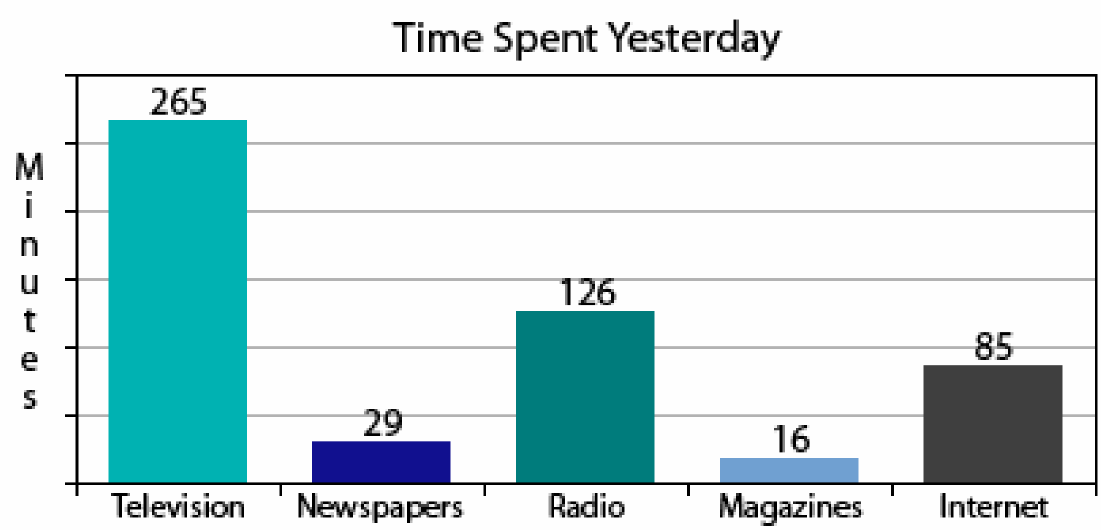
Sources: Prices: Bureau of Labor Statistics, Cash Flow: Federal Communications Commission, Annual Video Competition Reports (1993-2006), Comcast Annual Report (2007-2009).

Appetite For Media Seems Insatiable

Monthly Time Spent in Hours: Minutes Per User 2+

	Q3 2009	Q3 2008	% Diff	Absolute Diff
Watching TV in the home*	140:20	140:48	-0.3%	:28
Watching Timeshifted TV*	7:54	6:27	+22.5%	1:27
Using the Internet**	27:32	27:18	+0.9%	:14
Watching Video on Internet**	3:24	2:31	+34.9%	:53
Mobile Subscribers Watching Video on a Mobile Phone^	3:15	3:37	-10.0%	:22

Source: The Nielsen Company Q3 2009; * TV in the home includes live viewing plus playback within 7 days. ** Internet includes home and work who used internet to watch online video. ^ Mobile video audience consist of 13 or older mobile phone users who access video through any means.



Source: TVB, Nielsen Media Research Custom Survey 2006