WRITTEN STATEMENT OF

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TO THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
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Mr. Chairman, and Members of the Committee, I am pleased to appear before you today to discuss Comcast Corporation's ("Comcast") planned joint venture with General Electric Company ("GE"), under which Comcast will acquire a majority interest in and management of NBC Universal ("NBCU"). The proposed transaction will combine in a new joint venture the broadcast, cable programming, movie studio, theme park, and online content businesses of NBCU with the cable programming and certain online content businesses of Comcast. This content-focused joint venture will retain the NBCU name. And I believe the new NBCU will benefit consumers and will encourage much-needed investment and innovation in the important media sector.

How will it benefit consumers?

First, the new venture will lead to increased investment in NBCU by putting these important content assets under the control of a company that is focused exclusively on the communication and entertainment industry. This will foster enhanced investment in both content development and delivery, enabling the new NBCU to become a more competitive and innovative player in the turbulent and ever-changing media world. Investment and innovation will also preserve and create sustainable media and technology jobs in the U.S.

Second, the transaction will promote the innovation, content, and delivery that consumers want and demand. The parties have made significant commitments in the areas of local news and information programming, enhanced programming for diverse audiences, and more quality educational and other content for children and families.

And finally, Comcast's commitment to preserve NBCU's journalistic independence and to sustain and invest in the NBC broadcast network will promote the quality news, sports, and diverse programming that have made this network great over the last 50 years. I discuss these specific and verifiable public interest commitments later in this testimony; for a summary of all voluntary commitments, see Attachment 1.

The new NBCU will advance key communications policy goals of Congress: diversity, localism, innovation, and competition. With Comcast's demonstrated commitment to investment and innovation in communications, entertainment, and information, the new NBCU will be able to increase the quantity, quality, diversity, and local focus of its content, and accelerate the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. Given the intensely competitive markets in which Comcast and NBCU operate, as well as existing law and regulations, this essentially vertical transaction will benefit consumers and spur competition, and will not present any potential harm in any marketplace.

NBCU, currently majority-owned and controlled by GE, is an American icon – a media, entertainment, and communications company with a storied past and a promising future. At the heart of NBCU's content production is the National Broadcasting Company ("NBC"), the nation's first television broadcast network and home of one of the crown jewels of NBCU, NBC News. NBCU also has two highly regarded cable news networks, CNBC and MSNBC. In addition, NBCU owns Telemundo, the nation's second-largest Spanish-language broadcast network, with substantial Spanish-language production facilities located in the U.S. NBCU's other assets include 26 local broadcast stations (10 NBC owned-and-operated stations ("O&Os"), 15 Telemundo O&Os, and one independent Spanish-language station), numerous national cable programming networks, a motion picture studio with a library of several thousand films, a TV production studio with a library of television series, and an international theme park business.

Comcast, a leading provider of cable television, high-speed Internet, digital voice, and other communications services to millions of customers, is a pioneer in enabling consumers to watch what they want, when they want, where they want, and on the devices they want. Comcast is primarily a distributor, offering its customers multiple delivery platforms for content and services. Although Comcast owns and produces some cable programming channels and online content, Comcast owns relatively few national cable networks, none of which is among the 30 most highly rated, and, even including its local and regional networks, Comcast accounts for a tiny percentage of the content industry. The majority of these content businesses will be contributed to the joint venture. The distribution side of Comcast (referred to as "Comcast Cable") is not being contributed to the new NBCU and will remain under Comcast's ownership and control.

The proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms. Antitrust law, competition experts, and the FCC have long recognized that vertical combinations can produce significant benefits. They also have found that vertical combinations with limited horizontal overlaps generally do not threaten competition.

The transaction takes place against the backdrop of a communications and entertainment marketplace that is highly dynamic and competitive, and becoming more so every day. NBCU – today and post-transaction – faces competition from a large and growing roster of content providers. There are literally hundreds of national television networks and scores of regional networks. These cable networks compete for programming, for viewer attention, and for distribution on various video platforms, not only with each other but also with countless other video choices.

In addition, content producers increasingly have alternative outlets available to distribute their works, free from any purported "gatekeeping" networks or distributors. Today, NBCU has powerful marketplace incentives to purchase the best available programming, regardless of source. NBCU's programming schedule bears this out. Last week, third parties accounted for well over half of the 47 primetime (8-11pm) programs on NBC and its major cable channels (USA, Bravo, Oxygen, and SyFy). Post-transaction, the new NBCU will have the incentive and the financial resources to compete effectively with other leading content providers such as Disney/ABC, Time Warner, Viacom, and News Corp. by providing consumers the high-quality programming they want, and it will have no incentive – or ability – to restrict competition or otherwise harm the public interest.

Competition is fierce among distributors as well. Today, consumers in every geographic area have multiple choices of multichannel video programming distributors ("MVPDs") and can also obtain video content from many non-MVPDs. In addition to the local cable operator, consumers can choose from two MVPDs offering direct broadcast satellite ("DBS") service – DirecTV and Dish Network – which are now the second and third largest MVPDs in America, respectively. Verizon and AT&T, along with other wireline overbuilders, are strong, credible competitors, offering a fourth MVPD choice to tens of millions of American households and a fifth choice to some. Indeed, as competition among MVPDs has grown, Comcast's nationwide share of MVPD subscribers has steadily decreased (it is now less than 25 percent, a share that the FCC has repeatedly said is insufficient to allow an MVPD to engage in anticompetitive conduct). Moreover, current market dynamics are more telling than static measures of market shares; over the past two years, Comcast lost more than 1.2 million net video subscribers while its competitors continued to add subscribers – DirecTV, Dish Network, AT&T, and Verizon added more than 7.6 million net video customers over the same time period.

Consumers can also access high-quality video content from myriad other sources. Some households continue to receive their video through over-the-air broadcast signals, which have improved in quality and increased in quantity as a result of the broadcast digital television transition. Millions of households purchase or rent digital video discs ("DVDs") from one of thousands of national, regional, or local retail outlets, including Walmart, Blockbuster, and Hollywood Video, as well as Netflix, MovieCrazy, Café DVD, and others who provide DVDs by mail. High-quality video content also is increasingly available from a rapidly growing number of online sources that include Amazon, Apple TV, Blinkx, Blip.tv, Boxee, Clicker.com, Crackle, Eclectus, Hulu, iReel, iTunes, Netflix, Sezmi, SlashControl, Sling, Vevo, Vimeo, VUDU, Vuze, Xbox, YouTube – and many more. These sites offer consumers historically unprecedented quantities of professionally-produced content and user-generated content that can be accessed from a variety of devices, including computers, Internet-equipped televisions, videogame boxes, Blu-ray DVD players, and mobile devices. In addition, there is a huge supply of user-generated video content, including professional and quasi-professional content. YouTube, for example, which is by far the leader in the nascent online video distribution business, currently receives and stores virtually an entire day's worth of video content for its viewers *every minute*. And there are no significant barriers to entry to online video distribution. Thus, consumers have a staggering variety of sources of video content beyond Comcast and its rival MVPDs.

The video marketplace truly has no gatekeepers. As the United States Court of Appeals for the D.C. Circuit observed last year, "[T]he record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 [Cable] Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992. Second, over the same period there has been a dramatic increase both in the number of cable networks and in the programming available to subscribers."

The combination of NBCU and Comcast's content assets under the new NBCU – coupled with management of the new NBCU by Comcast, an experienced, committed distribution innovator – will enable the creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The companies' limited shares in all relevant markets, fierce competition at all levels of the distribution chain, and ease of entry for cable and online programming ensure that the risk of competitive harm is insignificant. Moreover, the FCC's rules governing program access, program carriage, and retransmission consent provide further safeguards for consumers, as do the additional public interest commitments the companies have made to the FCC.

At the same time, the transaction's public interest benefits – particularly for the public interest goals of diversity, localism, competition, and innovation – are substantial. Through expanded access to outlets, increased investment in outlets, and lower costs, the new venture will be able to increase the amount, quality, variety, and availability of content, thus promoting *diversity*. This includes content of specific interest to diverse audiences, children and families, women, and other key audience segments. While NBCU and Comcast both already have solid records in creating and distributing diverse programming, the transaction will enable the new NBCU to expand the amount, quality, variety, and availability of content more than either company could do on its own. The new venture will also be able to provide more and better local programming, including local news and information programming, thereby advancing *localism*. The new NBCU and Comcast will be more innovative and effective players in video programming and distribution, spurring other content producers and distributors to improve their own services, thus enhancing *competition*. Marrying NBCU's programming assets with Comcast's multiple distribution platforms will make it easier for the combined entity to experiment with new business models that will better serve consumers, thus promoting *innovation*.

In addition, Comcast and NBCU have publicly affirmed their continuing commitment to free, over-the-air broadcasting. Despite a challenging business and technological environment, the proposed transaction has significant potential to invigorate NBCU's broadcasting business and expand the important public interest benefits it provides to consumers across this country. NBC, Telemundo, their local

O&Os, and their local broadcast affiliates will benefit by having the full support of Comcast, a company that is focused entirely on entertainment, information, and communications and that has strong incentives – and the ability – to invest in and grow the broadcast businesses it is acquiring, in partnership with the local affiliates.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries will not only result in the creation of more and better programming, but will also encourage investment and innovation, accelerating the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. This is because the proposed transaction will remove negotiation friction that currently inhibits the ability of Comcast to implement its pro-consumer vision of multiplatform access to quality video programming. Post-transaction, Comcast will have access to more content that it can make available on a wider range of platforms, including the new NBCU's national and regional networks and Comcast's cable systems and video-on-demand ("VOD") platform, and online. This increase in the value of services offered to consumers by the new company will stimulate competitors – including non-affiliated networks, non-affiliated MVPDs, and the large and growing roster of participants in the video marketplace – to improve what they offer to consumers.

The past is prologue: Comcast sought for years to develop the VOD business, but it could not convince studio distributors – who were reluctant to permit their movies to be distributed on an emerging, unproven platform – to provide compelling content for VOD. This caution, though understandable in light of marketplace uncertainty, slowed the growth of an innovative and extremely consumer-friendly service. Comcast finally was able to overcome the contractual wrangling and other industry reluctance to participate in an innovative business model when it joined with Sony to acquire an ownership interest in Metro-Goldwyn-Mayer ("MGM"). This allowed Comcast to "break the ice" and obtain access to hundreds of studio movies that Comcast could offer for free on VOD. Thanks to Comcast's extensive efforts to foster the growth of this new technology, VOD has become very popular with consumers since it was invented in 2003 – the same year Apple unveiled the iTunes Music Store. Comcast customers have now used Comcast's VOD service more than 14 billion times – that's over 40 percent more than the number of downloads that consumers have made from the iTunes Store since 2003. By championing the growth of VOD, Comcast has been able to benefit not only its customers but also program producers, and it has stimulated other MVPDs to embrace the VOD model.

Similarly, there is every reason to believe that the transaction proposed here will create a pro-consumer impetus for making major motion pictures available sooner for in-home, on-demand viewing and for sustainable online video distribution – which, as the FCC has observed, will help to drive broadband adoption, another key congressional goal.

Comcast and the new NBCU will also be well positioned to help lead constructive efforts to develop consensus solutions to the problem of content piracy. NBCU has been a leading voice in the effort to reduce piracy in all its forms because it costs American jobs and trade opportunities. Comcast has consistently supported voluntary industry initiatives to deter piracy, educate consumers about copyright, and redirect them to legitimate sources of content. Together, the companies will redouble their efforts to persuade all stakeholders to work together on the problem, while ensuring that consumer privacy and due process are always respected.

As noted above, the risk of competitive harm in this transaction is insignificant. Viewed from every angle, the transaction is pro-competitive:

First, combining Comcast's and NBCU's programming assets will give rise to no cognizable competitive harm. Even after the transaction, approximately six out of every seven channels carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU. Comcast's national cable programming networks account for only about three percent of total national cable network advertising and affiliate revenues. While NBCU owns a larger number of networks, those assets account for only about nine percent of overall national cable network advertising and affiliate revenues. Therefore, in total, the new NBCU will account for only about 12 percent of total national cable network advertising and affiliate revenues. The new NBCU will rank as the fourth largest owner of national cable networks (measured by total revenues), behind Disney/ABC, Time Warner, and Viacom – which is *the same rank that NBCU has today*. Because both the cable programming market and the broader video programming market will remain highly competitive, the proposed transaction will not reduce competition or diversity, nor will it lead to higher programming prices to MVPDs, higher advertising prices to advertisers, or higher retail prices to consumers.

Second, Comcast's management and ownership interests in NBCU's broadcast properties raise no regulatory or competitive concern. While Comcast will own both cable systems and a stake in NBC owned-and-operated broadcast stations in a small number of Designated Market Areas ("DMAs"), the FCC's rules do not prohibit such cross-ownership, nor is there any policy rationale to disallow such relationships. Cross-ownership prohibitions that had been put in place decades ago have been repealed by actions of Congress, the courts, and the FCC. The case for any new prohibition, or any transaction-specific restriction, on cable/broadcast cross-ownership is even weaker today, given the increasingly competitive market for the distribution of video programming and robust competition in local advertising. And, importantly, each of the major DMAs in question has a significant number of media outlets, with at least seven non-NBCU over-the-air television stations in each DMA, as well as other media outlets, including radio. Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain following the combination of NBCU's broadcast stations and Comcast cable systems in each of the overlap DMAs. Indeed, as Professor Matthew Spitzer of the University of Southern California noted in expert testimony submitted to the FCC, "[t]here is nothing in the fundamentally vertical structure of *this* transaction that would reduce the number of independent broadcast voices in any local market. After the transaction, all of NBCU's O&O broadcast stations will continue to operate and provide local news and other local programming. There is no consolidation of broadcast assets within any local markets as a consequence of this transaction." See Attachment 2, "Expert Declaration of Matthew L. Spitzer Concerning Diversity and Localism Issues Associated with the Proposed Comcast-NBCU Transaction," January 26, 2010, at 8.

Third, the combination of Comcast's and NBCU's Internet properties similarly poses no threat to competition. There is abundant and growing competition for online video content. The dominant leader in online viewing (by far) is Google (through YouTube and other sites it has built or acquired), with nearly 55 percent of online video viewing. This puts Google well ahead of Microsoft, Viacom, and Hulu (a service in which NBCU holds a 32 percent, non-controlling interest), and even farther ahead of Fancast (operated by Comcast, and currently at well below one percent). All of these services competing with Google have low- or mid-single digits shares of online video viewing. There are countless other sites that provide robust competition and near-infinite consumer choice. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share and face many competitors. On the Internet, content providers essentially control their own destinies since there are many third-party portals as well as self-distribution options. Entry is easy. Thus, the transaction will not harm the marketplace for online video.

Finally, a vertical combination cannot have anticompetitive effects unless the combined company has substantial market power in the upstream (programming) or downstream (distribution) market, and such circumstances do not exist here. As noted, the video programming, video distribution, and Internet businesses are fiercely competitive, and the proposed transaction does not reduce that competition. The recent history of technology demonstrates that distribution platforms are multiplying, diversifying, and increasingly rivalrous. Wired services have been challenged by both satellite and terrestrial wireless services. Cable has brought voice competition to the telephone companies; the telephone companies have added to the video competition that cable already faced; and both cable and phone companies are racing to deploy and improve broadband Internet. Static descriptions of markets have consistently failed to capture advances in distribution technologies. In this highly dynamic and increasingly competitive environment, speculative claims about theoretical problems arising from any particular combination should be subject to searching and skeptical scrutiny, given the accelerating power of technology to disrupt, continuously, all existing market structures.

In any event, there is a comprehensive regulatory structure already in place, comprising the FCC's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law that provides further safeguards against any conceivable vertical harms that might be presented by this transaction. The program access and program carriage rules address different aspects of the relationship between networks and MVPDs, and the retransmission consent rules address aspects of the relationship between MVPDs and broadcasters.

In a nutshell, the *program access* rules govern the process by which a satellite-delivered cable programming network that is affiliated with a cable operator sells its programming to MVPDs. These rules generally prohibit a cable operator from (i) unreasonably influencing whether an affiliated network sells its programming to an unaffiliated MVPD (or the terms on which it does so), (ii) unreasonably discriminating in the prices, terms, and conditions of carriage arrangements among competing MVPDs, and (iii) establishing exclusive contracts between satellite-delivered cable-affiliated programming networks and any cable operator.

The *program carriage* rules apply to the process by which a cable operator -- or any other MVPD -- buys cable programming from unaffiliated programmers. These rules generally prohibit MVPDs from (i) requiring an equity interest in a program network as a condition of carriage; (ii) coercing an unaffiliated program network to provide (or punishing an unaffiliated program network for not providing) exclusive rights as a condition of carriage; and (iii) unreasonably restraining the ability of an unaffiliated program network to compete fairly by discriminating on the basis of affiliation in the selection, terms, or conditions for carriage.

The *retransmission consent* rules generally require that broadcasters and MVPDs bargain in good faith over retransmission consent (i.e., the right to retransmit a broadcaster's signal). Like the program access rules, the good-faith bargaining rules generally ban exclusivity and unreasonable discrimination.

Although the competitive marketplace and regulatory safeguards protect against the risk of anticompetitive conduct, the companies have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. Comcast will commit voluntarily to extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O broadcast stations for as long as the FCC's current program access rules remain in place (and Comcast has expressed a willingness to discuss with the FCC making the program access rules binding on it even if the rules were to be overturned by the courts).[1] Of particular note, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo stations' decisions about whether to sell their programming, or the terms and conditions of sale, to non-affiliated distributors. It would also shift to NBCU the burden of justifying any differential pricing between competing MVPDs. And the companies would accept the five-month "shot

[1] In October 2007, the FCC released an Order extending for an additional five years the ban on exclusive contracts between vertically integrated programmers and cable operators -- the one portion of the program access rules that Congress had slated to sunset in 2002. On appeal, Cablevision and Comcast have argued that the FCC applied an incorrect standard governing the circumstances under which the FCC may prevent the exclusivity rule from sunsetting automatically; and that the FCC was required to let the rule sunset, or at least narrow it. Comcast was motivated in large part by the inequity of applying an anti-exclusivity rule to cable, while our satellite competitors are able to use exclusive programming contracts against us. Oral argument was held on September 22, 2009. Contrary to the claims of some outside parties, Comcast has not challenged all of the features of the program access rules in this litigation or asserted that the exclusivity ban, or any other portion of the program access rules, is unconstitutional. Rather, we have challenged only the extension of the exclusivity ban, and have reminded the FCC and the courts that they must take the First Amendment into account when they make, review, or apply the program access rules.

clock" that the Commission applies to program access adjudications that is intended to expedite resolution.

Moreover, the companies have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction.

In addition to the commitment to continue to provide free, over-the-air broadcasting, mentioned previously, the companies have committed that following the transaction, the NBC O&O broadcast stations will maintain the same amount of local news and information programming they currently provide for three years following the closing of the transaction and will produce an additional 1,000 hours per year of local news and information programming for distribution on various platforms. The combined entity will maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints, maintaining the journalistic integrity and independence of NBCU's news operations.

The companies also have committed that, within 12 months of closing the transaction, Telemundo will launch a new Spanish language digital broadcast channel drawing on programming from Telemundo's library. Additionally, Comcast will use its On Demand and On Demand Online platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its VOD platforms. Comcast also will continue to provide free or at no additional charge the same number of VOD choices that it now provides, and will make available within three years of closing an additional 5,000 VOD choices over the course of each month that are available free or at no additional charge.

As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions. Independent programmers would be defined as networks that (i) are not currently carried by Comcast Cable, and (ii) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of cable networks, as measured by revenues.

With respect to public, educational, and governmental ("PEG") channels, Comcast has affirmatively committed not to migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution, or until a community otherwise agrees to digital PEG channels, whichever comes first. Comcast has also committed to innovate in the delivery of PEG content On Demand and On Demand Online.

The parties have proposed that these commitments be included in any FCC order approving the transaction and become binding on the parties upon completion of the transaction. A summary of the companies' commitments is attached to this testimony.

In the end, the proposed transaction simply transfers ownership and control of NBCU from GE, a company with a very diverse portfolio of interests, to Comcast, a company with an exclusive focus on, and a commitment to investing its resources in, its communications, entertainment, and information assets. This transfer of control, along with the contribution of Comcast's complementary content assets, will enable the new NBCU to better serve consumers. The new NBCU will advance key public policy goals: diversity, localism, competition, and innovation. Competition, which is already pervasive in every one of the businesses in which the new NBCU – and Comcast Cable – will operate, provides abundant assurance that consumer welfare not just be safeguarded, but increased. Comcast and NBCU will succeed by competing vigorously and fairly.

We intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. We would welcome your support.

ATTACHMENT 1

COMCAST/NBCU TRANSACTION
PUBLIC INTEREST COMMITMENTS

Comcast, GE, and NBC Universal take seriously their responsibilities as corporate citizens and share a commitment to operating the proposed venture in a way that serves the pubic interest. To demonstrate their commitment to consumers and to other media partners, the parties have made a set of specific, written commitments as part of their public interest filing with the Federal Communications Commission. Comcast, GE, and NBCU are committed to expanding consumer choice, ensuring the future of over-the-air broadcasting, enhancing programming opportunities, ensuring that today's highly competitive marketplace remains so, and maintaining journalistic independence for NBC's news properties. The parties' commitment to these principles will ensure that consumers are the ultimate beneficiaries of the proposed Comcast/NBCU transaction.

Applicants' Voluntary Public Interest Commitments

Local Programming

Commitment #1. The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As Comcast negotiates and renews agreements with its broadcast affiliates, Comcast will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.

Commitment #2. Comcast intends to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&O schedules, Comcast believes it can expand the availability of all types of local and public interest programming.

- For three years following the closing of the transaction, NBC's O&O stations will maintain the same amount of local news and information programming that they currently provide.

- NBC's O&O stations collectively will produce an additional 1,000 hours a year of local news and information programming. This additional local content will be made available to consumers using a combination of distribution platforms.

Children's Programming

Commitment #3. Comcast will use its On Demand and On Demand Online platforms and a portion of the NBC O&Os' digital broadcast spectrum to speak to kids. Comcast intends to develop additional opportunities to feature children's content on all available platforms.

- Comcast will add 500 VOD programming choices appealing to children and families to its central VOD storage facilities within 12 months of closing and will add an additional 1,000 such VOD choices (for a total of 1,500 additional VOD choices) within three years of closing. (The majority of Comcast's cable systems will be connected to Comcast's central VOD storage facilities within 12 months of closing and substantially all will be connected within three years of closing.) Comcast will also make these additional choices available online to authenticated subscribers to the extent that Comcast has the requisite online rights.

- For three years following closing, each of NBC's O&O stations will provide one additional hour per week of children's educational and informational programming utilizing one of the station's multicast channels.

Commitment #4. Comcast reaffirms its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company, and to apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency, and duration.

- NBCU will triple the time that program ratings remain on the air after each commercial break (from 5 seconds to 15 seconds).

- NBCU will make program ratings information more visible to viewers by using a larger format.

Commitment #5. In an effort to constantly improve the tools and information available for parents, Comcast will expand its growing partnership with Common Sense Media ("CSM"), a highly respected organization offering enhanced information to help guide family viewing decisions. Comcast will work to creatively incorporate CSM information it its emerging On Demand and On Demand Online platforms and other advanced platforms, and will look for more opportunities for CSM to work with NBCU.

- Comcast currently gives CSM content prominent placement on its VOD menus. Comcast and the new NBCU will work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast and NBCU will explore cooperative efforts to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband.

- Upon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign. The NBCU transaction will create the opportunity for CSM and Comcast to work with NBCU's broadcast networks, local broadcast stations, and cable networks to provide a targeted and effective public education campaign on digital literacy, targeting underserved areas, those with high concentrations of low-income residents and communities of color, as well as target Latino communities with specifically tailored Spanish-language materials.

Programming for Diverse Audiences

Commitment #6. Comcast intends to expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital broadcast spectrum of Telemundo's O&Os (as well as offering it to Telemundo affiliates) to enhance the current programming of Telemundo and mun2.

- Within 12 months of closing the transaction, Telemundo will launch a new Spanish language channel using programming from Telemundo's library that has had limited exposure, to be broadcast by each of the Telemundo O&O stations on one of their multicast channels. The Telemundo network also will make this new channel available to its affiliated broadcast stations on reasonable commercial terms.

Commitment #7. Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.

Commitment #8. Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.

- Comcast will increase the number of VOD choices from Telemundo and mun2 available on its central VOD storage facilities from approximately 35 today, first to 100 choices within 12 months of closing and then to a total of 300 additional choices within three years of closing. Comcast will also make these additional choices available online to its subscribers to the extent that it has the requisite online rights.

Expanded Video On Demand Offerings At No Additional Charge

Commitment #9. Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge.

Commitment #10. NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer will continue to be made available at no additional charge for the three-year period after closing.

Public, Educational, and Governmental ("PEG") Channels

Commitment #11. With respect to PEG channels, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

Commitment #12. To enhance localism and strengthen educational and governmental access programming, Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing.

- Comcast will select five locations in its service area to test various approaches to placing PEG content on VOD and online. Comcast will select these locations to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities, and will consult with community leaders to determine which programming – public, educational and/or governmental – would most benefit local residents by being placed on VOD and online.

- Comcast will file annual reports to inform the Commission of progress on the trial and implementation of this initiative.

Carriage for Independent Programmers

Commitment #13. As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions.

- New channels are channels not currently carried on any Comcast Cable system.

- Independent programmers are entities that are not affiliated with Comcast, NBCU, or any of the top 15 owners of cable networks (measured by revenue).

Expanded Application of the Program Access Rule Protections

Commitment #14. Comcast will commit to voluntarily accept the application of program access rules to the high definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission's current program access rules remain in place.

Commitment #15. Comcast will commit to voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O stations for as long as the Commission's current program access rules remain in place.

- Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo O&O stations' decisions about the price or other terms and conditions on which the stations make their programming available to unaffiliated MVPDs.

- The "burden shifting" approach to proof of discriminatory pricing in the program access rules will be applied to complaints regarding retransmission consent negotiations involving the NBC and Telemundo O&O stations.

- The five-month "shot clock" applied to program access adjudications would apply to retransmission consent negotiations involving the NBC and Telemundo O&O stations.

Journalistic Independence

Commitment #16. The combined entity will continue the policy of journalistic independence with respect to the news programming organizations of all NBCU networks and stations, and will extend these policies to the potential influence of each of the owners. To ensure such independence, the combined entity will continue in effect the position and authority of the NBC News ombudsman to address any issues that may arise.

Labor-Management Relations

Commitment # 17. Comcast respects NBCU's existing labor-management relationships and expects them to continue following the closing of the transaction. Comcast plans to honor all of NBCU's collective bargaining agreements.

ATTACHMENT 2

Expert Declaration of Matthew L. Spitzer

Concerning Diversity and Localism Issues Associated with the Proposed Comcast-NBCU Transaction

January 26, 2010

I. Introduction

1. At the request of Comcast Corporation ("Comcast"), I have reviewed the proposed Comcast/General Electric ("GE") transaction relating to NBC Universal ("NBCU") with a focus on the core public interest concerns of diversity and localism that underlie the Federal Communications Commission's (the "Commission") broadcast ownership regulations.

2. Some critical commentary already surrounds the proposed transaction, casting it as everything from a "mega-merger"[1] to a "juggernaut"[2] to a "train wreck."[3] Such discourse rings hollow; familiar refrains and the automatic equation of "big" with "bad" media provide little insight into the Commission's appropriately nuanced public interest inquiry. Instead, conceptualizing the proposed transaction in the modern media marketplace requires considered thought, and such an analysis shows that this transaction is not the type of transaction that implicates the Commission's core concern about a reduction in the diversity of voices. Thus, amidst alarmist claims that the proposed transaction "poses a genuine threat to free expression and diversity of speech in our democratic society,"[4] I will calmly focus on the framework and core concerns of the Commission's traditional public interest inquiry.

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[1] Press Release, Free Press, Comcast/NBC Universal Merger Bad for the Public Interest (Oct. 13, 2009).
[2] *Id.*
[3] Josh Silver, *Too Big to Block? Why Obama Must Stop the Comcast-NBC Merger*, THE HUFFINGTON POST, Nov. 13, 2009, http://www.huffingtonpost.com/josh-silver/too-big-to-block-why-obam_b_356826.html.
[4] The Editors, *Should Consumers Fear the Comcast Deal?*, N.Y. TIMES, Dec. 8, 2009 (quoting Andrew Jay Schwartzman, President, Media Access Project), http://roomfordebate.blogs.nytimes.com/2009/12/08/should-consumers-fear-the-comcast-deal/?pagemode=print.

3. As discussed in detail below, I conclude that the proposed transaction, representing a fundamentally vertical combination of a content producer and a distributor, does not raise the traditional diversity and localism concerns regarding media consolidation and the reduction of local broadcast voices. As demonstrated herein, the Commission has been very concerned about mergers that reduce diversity of voices, such as the combination of two competing broadcast outlets, two cross-service broadcast outlets, or a newspaper and broadcaster in the same market.[5] This is not that type of transaction.[6]

II. QUALIFICATIONS

4. I am a lawyer and an economist. I have a J.D. from the University of Southern California ("USC") and a Ph.D. in Social Science from the California Institute of Technology ("Caltech"). I currently hold joint appointments at USC, where I am a Professor of Political Science and hold the Robert C. Packard Trustee Chair in Law, and at Caltech, where I am a Professor of Law and Social Science. Previously, from July 2000 through June 2006, I was Dean of the Gould School of Law at USC.

5. Over the past 30 years, I have studied, taught, hosted conferences, and written about the Commission's regulation of broadcasting and cable television, including its regulation of media ownership and concentration. I was the founding director of the USC Center for Communication Law and Policy (http://cclp.usc.edu/) and in that capacity I created and hosted many conferences and roundtables on broadcasting and cable regulation. The topics ranged from a retrospective on the deregulation of cable television to an evaluation of sex and violence on television. In this capacity, I followed closely the Commission, Congress, and the broadcasting and cable industries, and categorized and evaluated the various arguments about media ownership.

6. I currently teach Regulatory Policy and Administrative Law (at USC), Introduction to Law (at Caltech), and a graduate course in Law and Politics (at Caltech).

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[5] *See infra* Part III.

[6] I base my analysis on information provided to me by Comcast and NBCU, from the Commission and other government agencies, and from academic, journalistic, and foundation sources. Where I rely on such information, I cite it here.

Previously during my academic career, I have taught Broadcasting Regulation, Telecommunications Regulation, Antitrust Policy, Law and Economics, Torts, Property, and Administrative Law.

7. I have published numerous books and articles on a variety of legal and economic issues associated with Broadcast and Cable Regulation.[7] These include Public Policy Toward Cable Television (1997, AEI/MIT Press, with Thomas Hazlett) and "Television Mergers and Diversity in Small Markets" in the *Journal of Competition Law and Economics* (forthcoming 2010). Finally, I have attached my curriculum vitae, which includes a more formal list of my background, experience and publications.

III. SUMMARY OF TRANSACTION STRUCTURE

8. On December 3, 2009, Comcast and GE announced an agreement pursuant to which Comcast would acquire a majority interest in NBCU and its affiliated broadcast licensee companies from GE.[8] The transaction will create a joint venture that combines,

[7] SEVEN DIRTY WORDS AND SIX OTHER STORIES: CONTROLLING THE CONTENT OF PRINT AND BROADCAST (1986). PUBLIC POLICY TOWARD CABLE TELEVISION (1997) (with Thomas Hazlett). *Multicriteria Choice Processes: An Application of Public Choice Theory to* Bakke, *the FCC, and the Courts,* 88 YALE L.J. 717 (1979). *Radio Formats by Administrative Choice*, 47 U. CHI. L. REV. 647 (1980). *Controlling the Content of Print and Broadcast*, 58 S. CAL. L. REV. 1349 (1985). *Broadcasting and the First Amendment*, *in* 1 NEW DIRECTIONS IN TELECOMMUNICATIONS POLICY 155 (Paula R. Newberg ed., 1989). *The Constitutionality of Licensing Broadcasters*, 64 N.Y.U. L. REV. 990 (1989). *Justifying Minority Preferences in Broadcasting*, 64 S. CAL. L. REV. 293 (1990). *Testing Minority Preferences in Broadcasting*, 68 S. CAL. L. REV. 841 (1995) (with Jeff Dubin). *Dean Krattenmaker's Road Not Taken: The Political Economy of Broadcasting in the Telecommunications Act of 1996,* 29 CONN. L. REV. 353 (1996). *An Introduction to the Law and Economics of the V-Chip*, 15 CARDOZO ARTS & ENT. L.J. 429 (1997). *A First Glance at the Constitutionality of the V-Chip Ratings System*, *in* TELEVISION VIOLENCE AND PUBLIC POLICY [*page range*] (James T. Hamilton ed., 1998). *Turner, Denver and Reno, in* A COMMUNICATIONS CORNUCOPIA: MARKLE FOUNDATION ESSAYS ON INFORMATION POLICY 172-217 (Roger Noll & Monroe Price eds., 1998). *Digital Television and the Quid Pro Quo*, 2 BUS. & POL. 115 (2000) (with Thomas Hazlett). *Advanced Wireless Technologies and Public Policy,* 79 S. CAL. L. REV. 595 (2006) (with Thomas W. Hazlett). *Television Mergers and Diversity in Small Markets*, __ J. COMP. L. & ECON. ___(forthcoming 2010).

[8] Comcast and GE to Create Leading Entertainment Company, Joint Announcement by Comcast Corporation and General Electric Company (Dec. 3, 2009) *available at* http://www.genewscenter.com/content/detail.aspx?ReleaseID=9206&NewsAreaID=2.

Accompanying the announcement, the applicants set forth certain voluntary Public Interest Commitments that build on their strengths and histories of service to the public, particularly in the areas of diversity and local programming. Of note, the applicants have committed to "continuing to provide free over-the-air television through [NBCU's O&O] stations and through local broadcast affiliates across the nation," to "using the combined resources of NBC and Comcast to strengthen localism," to "ensuring that the content of NBC's news and public affairs programming [will] not be influenced by the non-media interests of [its corporate parents]," to "mak[ing] an expanded commitment to meeting the viewing needs of children, and the needs of parents to better control their family's viewing," and to "expand[ing] the *inter alia*, NBCU's national broadcast networks (NBC and Telemundo), NBCU's owned and operated ("O&O") broadcast television stations, cable programming networks, theme parks, and a motion picture studio (Universal), with Comcast's cable programming and regional sports networks, as well as certain online content businesses of Comcast. Upon closing, Comcast and GE will own 51-percent and 49-percent shares in the joint venture, respectively. Thus, the transaction is fundamentally a vertical integration of content (in the joint venture) with distribution (Comcast's cable systems held outside the joint venture).

9. This transaction is not the sort of horizontal merger that has been at the core of the concerns about localism and diversity over the past several decades. The Commission has been very concerned about mergers that combine two or more broadcasters within the same service in the same market. The Commission has also been concerned about mergers of broadcasters in different services within the same market.[9] These concerns, in fact, led the Commission decades ago to adopt numerous structural rules that control the ability of broadcasters to merge in the same market.[10] These rules are founded on the concepts that having a healthy and robust marketplace of ideas requires independent voices, that the public benefits from having many types of programs from which to choose, and that a broadcaster must address the needs, interests, and issues of concern of the community that it is licensed to serve. And, of course, horizontal mergers between television stations and daily newspapers in the same market have generally been prohibited by structural ownership rules adopted in 1975.[11]

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availability of over-the-air programming to the Hispanic community." Letter from David L. Cohen, Executive Vice President, Comcast Corporation, *Comcast/ GE Announcement Regarding NBC Universal* (Dec. 3, 2009) ("December 3 Cohen Letter").

[9] *See, e.g., Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 19861, 19863 ¶ 6 (2001) ("In the early 1970s, the Commission briefly restricted local radio ownership further by prohibiting, with certain exceptions, common ownership of different service broadcast stations in the same market. These limits were designed to advance diversity by maximizing the number of independent owners of broadcast media in a market.") (internal citation omitted).

[10] *Id.* at 19899 ("The effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in making this public interest determination. The Commission's concern for diversity and competition in broadcast markets has prompted us to adopt and maintain structural ownership rules intended to vindicate these interests.").

[11] *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 23 FCC Rcd 2010, 2018-19 ¶¶ 13-14 (2008) ("2006 Quadrennial Review Order") (adopting a presumption that "certain limited

10. But this transaction has none of these elements. It is, from the standpoint of traditional Commission concerns, almost entirely a vertical transaction. Comcast does not have a broadcast network (or a daily newspaper) and has modest cable programming assets, and NBCU is bringing a pair of broadcast networks and a number of local broadcasting stations. Conversely, NBCU does not provide cable, high-speed Internet, or digital voice services, which form the bulk of Comcast's business. Thus, in terms of traditional considerations, combining the NBCU content with Comcast distribution does not result in the sort of reduction in the number of local broadcast voices that has prompted Commission concern.[12] Instead, at its core, it is much more a vertical combination, putting together a company which produces popular content (NBCU) with a company that distributes content over cable television systems (Comcast).

IV. PUBLIC INTEREST CONCERNS OF DIVERSITY AND LOCALISM

11. The Commission must determine whether the proposed transaction would comply with the Communications Act of 1934 ("Communications Act"), other applicable statutes, and its own rules.[13] As part of this inquiry, the Commission must determine whether the applicants for transfer or assignment of broadcast licenses have shown that the public interest, convenience, and necessity will be served by the proposed transaction.[14]

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combinations in the of newspaper and broadcast facilities in the largest markets are in the public interest"), *appeal pending*, Prometheus Radio Project v. FCC, Nos. 08-3078 et al. (3d. Cir. Apr. 14, 2009); *See generally Chancellor Media/Shamrock Radio Licenses, L.L.C. and Cox Radio, Inc.*, 15 FCC Rcd 17053, 17055 ¶ 6 (2000) ("In adopting the 1975 rule that generally prohibited the common ownership of a newspaper and broadcast station serving the same community, the Commission made it clear that fostering diverse viewpoints from antagonistic sources is at the heart of our licensing responsibility.").

[12] There are some possible horizontal elements in the combination of cable networks, but these do not represent the traditional, core concerns of the Commission. Because the horizontal aspects of this merger involving cable networks are very unlikely to have any significant effect on over-the-air broadcast diversity and localism, I will not discuss them in this Declaration. In addition, there are vertical aspects of the transaction that will be examined, particularly under the competition prong of the public interest standard. Others will examine pricing issues within the vertical aspects of the transaction. In terms of diversity and localism, the vertical aspects of the transaction are extremely unlikely to be troublesome. Creation of a problem in diversity or localism in the broadcast markets, as a result of the vertical elements of this transaction, would require a very convoluted and improbable mechanism.

[13] *See Clear Channel Communications, Inc.*, 23 FCC Rcd 1421, 1423 ¶ 3 (2008); *Citadel Broadcasting Corp. and The Walt Disney Co.*, 22 FCC Rcd 7083, 7104 ¶ 50 (2007).

[14] 47 U.S.C. § 310(d).

12. There are a number of rules that control directly the ownership structure and market behavior of broadcasters, cable systems, and cable networks.[15] The Commission's structural rules, notably its media ownership rules, include limitations on newspaper/broadcast cross-ownership in a single market,[16] radio/television cross-ownership in particular markets,[17] ownership of multiple television stations in a single market,[18] ownership of multiple radio stations in a single market,[19] national reach of television stations owned by a single entity,[20] and dual broadcast network rules.[21] These media ownership rules are designed to foster the Commission's longstanding public interest policies of competition, diversity, and localism.[22] And more specifically, as further described below, each of these rules is intended to protect against reduction in the number of independent broadcast voices in a local market. Indeed, with respect to transactions involving broadcast licenses, the Commission's central theory has been that

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[15] Also relevant to the proposed transaction is the lack of applicable rule. The DC Circuit vacated the once-extant cable/broadcast cross-ownership rule, opining "that the Commission's diversity rationale for retaining the [Cable/Broadcast Cross-Ownership] Rule is woefully inadequate." Fox Television Stations, Inc. v. FCC, 280 F.3d 1027 (D.C. Cir. 2002), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) (vacating cable-broadcast cross-ownership rule); *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 3002 (2003) (repealing cable/broadcast cross-ownership rule)). The DC Circuit also has remanded the horizontal ownership rule adopted by the Commission for further consideration. *The Commission's Cable Horizontal and Vertical Ownership Limits, Fourth Report & Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 2134, 2187-92 ¶¶ 125-34 (2008) ("2008 Cable Ownership Order"), *vacated* Comcast Corp. v. FCC, 579 F.3d 1, 23 (D.C. Cir. 2009) (holding the [horizontal] 30% subscribership limit as arbitrary and capricious because "the Commission failed adequately to take account of the substantial competition cable operators face from non-cable video programming distributors.").

[16] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2018-57 ¶¶ 13-79.

[17] *Id.* at 2057-60 ¶¶ 80-86.

[18] *Id.* at 2060-69 ¶¶ 87-109.

[19] *Id.* at 2069-82 ¶¶ 110-38.

[20] *See id.* at 2084 ¶ 142 n.454 (noting that Section 629(l) of the 2004 Consolidated Appropriations Act "amends *Section 202(c)* of the 1996 Act to direct the Commission to modify the national television ownership limit, contained in *section 73.3555* of the Commission's rules, to specify 39 percent as the maximum aggregate national audience reach of any single television station owner.") (citing 47 U.S.C. § 202(c)(1)).

[21] *Id.* at 2082-84 ¶¶ 139-41.

[22] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2016-17 ¶ 9 ("The media ownership rules are designed to foster the Commission's longstanding policies of competition, diversity, and localism. We set these policies out in detail in the 2002 Biennial Review Order, and we reaffirm those goals.") (citing *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13627-45 ¶¶ 17-79 (2003) ("2002 Biennial Review Order"), *aff'd in part and remanded in part*, Prometheus Radio Project v. FCC, 373 F.3d 372 (3d. Cir. 2004)).

maintaining a sufficient number of independent voices is crucial to supporting the core concerns of diversity and localism.[23]

13. Throughout the last decade, the Commission has consistently applied a corresponding public interest framework to media transactions.[24] In this Declaration, I will address the public interest concerns of diversity and localism as they relate to the proposed transaction.

A. Diversity

14. Diversity has long been considered by the Commission to be a guiding principle for its regulation of the media marketplace because it resonates with values implicit in the First Amendment.[25] The two crucial aspects of diversity for purposes of evaluating this transaction are *viewpoint* diversity and *program* diversity.

15. Viewpoint diversity, defined as "the availability of media content reflecting a variety of perspectives,"[26] is of central importance to the Commission. The Commission has stated that viewpoint diversity helps to ensure an informed citizenry in our

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[23] *UTV of San Francisco Inc. et al. and Fox Television Stations, Inc.*, 16 FCC Rcd 14975, 14977 ¶ 8 (2001) ("Where broadcast licenses are concerned, the effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in determining whether a transaction serves the public interest, convenience, and necessity.").

[24] *Applications for Consent to the Transfer of Control of Licenses from XM Satellite Radio Holdings Inc. to Sirius Satellite Radio Inc.*, 23 FCC Rcd 12348, 12364 ¶ 30 (2008); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, 23 FCC Rcd 3265, 3276-77 ¶ 22 (2008); *Applications for Consent of Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation to Time Warner Cable Inc., and from Adelphia Communications Corporation to Comcast Corporation*, 21 FCC Rcd 8203, 8217-18 ¶ 23 (2006); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee,* 19 FCC Rcd 473, 483 ¶ 15 (2004); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 23246, 23255 ¶ 26 (2002).

[25] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, 17 FCC Rcd 18503, 18516 ¶ 33 (2002) ("2002 Biennial Review Notice") ("It advances the values of the First Amendment, which, as the Supreme Court stated, 'rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'") (quoting Associated Press v. United States, 326 U.S. 1, 20 (1945)).

[26] *2002 Biennial Review Order*, 18 FCC Rcd at 13627 ¶ 19.

democratic society.[27] Accordingly, having independent voices in the media marketplace is needed for a healthy and robust marketplace of ideas, particularly with respect to news and public affairs.[28] The basic idea is that if a single person were to gain control of a substantial amount or all of the media in a market, he or she could tilt the discussion of news and public affairs in a way that would mold public opinion to resemble his or her own, even if the facts and arguments would not support such a result. On the other hand, if there is a large number of independent voices in the media marketplace, any attempt to tilt coverage of news and public affairs will be counterbalanced by others, who can be counted on to point out the tilt and correct it. Thus, preventing concentrated political influence provides the strongest justification for viewpoint diversity and the maintenance of a large number of independent voices in news and public affairs programming.[29]

16. The main focus of concern for viewpoint diversity is *local* broadcast news, public affairs, and other local programming. Applying this insight, the Commission has stated that "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[30] There is nothing in the fundamentally vertical structure of *this* transaction that would reduce the number of independent broadcast voices in any local market. After the transaction, all of NBCU's O&O broadcast stations will continue to operate and provide local news and other local programming. There is no consolidation of broadcast assets within any local

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[27] *Id.* (citing Richard Brown, *Early American Origins of the Information Age*, A NATION TRANSFORMED BY INFO.: HOW INFORMATION HAS SHAPED U.S. FROM COLONIAL TIMES TO THE PRESENT (Oxford Univ. Press, New York, NY, 2000) at 44-49 *passim* ("Because people widely believed that their republican government required an informed citizenry, they scrambled to make sure that they, and often their neighbors, were properly informed.")).

[28] While the most important influence on our civic life comes from local news and public affairs, the Commission has acknowledged that entertainment programming may have significant public affairs content. *Id.* at 13631 ¶ 33.

[29] *See, e.g.*, *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038 ¶ 49 ("[O]ur new rule is designed to promote diversity by presumptively prohibiting combinations in the markets with the fewest number of voices, while presumptively permitting certain combinations in the largest markets where the loss of diversity is not a significant risk."). *See generally*, *2002 Biennial Review Order*, 18 FCC Rcd at 13630 ¶ 28 ("[O]wners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news and public affairs. Even if our inquiry were to find that media outlets exhibited no apparent 'slant' or viewpoint in their news coverage, media outlets possess significant *potential* power in our system of government.").

[30] *Id.* at 13632 ¶ 38 (quoting *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 F.C.C. 1476, 1477 ¶ 3 (1964)).

market as a consequence of this transaction. Instead, this transaction *transfers* broadcast licenses from the control of GE to the control of Comcast. In no way does this combination of content with distribution impinge on the Commission's core concern – the *reduction* in the number of independent voices in local broadcast markets. Nor does the transaction impact *national* viewpoint diversity in any way.[31]

17. *Program* diversity refers to providing a large number of types of programs (dramas, sitcoms, "reality" a.k.a. nonscripted, science fiction, sports, news, children's, etc.) to viewers.[32] The Commission clearly prefers to rely, in general, on competition in the video marketplace to ensure diversity of programming, rather than try to regulate the provision of program types directly.[33]

18. There is no basis to anticipate that NBC, Telemundo, or any of their O&Os will alter programming in a way that would decrease the diversity of programming. The slight horizontal aspects of the merger (Comcast is contributing no over-the-air broadcast assets to the joint venture) indicate that there will be no significant, transaction-specific incentive to change or reduce programming for the NBC or Telemundo networks, or in the programming of their O&Os. All program types that are currently represented will continue to be represented – there is simply no credible incentive for the new entity to reduce program diversity, and no apparent reason to expect that such a reduction will take place. Thus, we should anticipate no reduction in program diversity in broadcast outlets. In addition, the December 3 Cohen Letter demonstrates that the companies intend to increase the diversity of content available on multiple platforms as well as

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[31] In any event, the Commission has clearly concluded that there is a very robust market in national news and public affairs. *Id.* at 13631 ¶ 35.
[32] *Id.* at 13631 ¶ 36.
[33] The Commission restated this preference within the last decade. *Id.* at 13632 ¶ 37. This is a long-running preference of the Commission. *See* FCC v. WNCN Listener's Guild, 450 U.S. 582, 590 (1981) ("[T]he Commission explained why it believed that market forces were the best available means of producing diversity in entertainment formats. First, in large markets, competition among broadcasters had already produced 'an almost bewildering array of diversity' in entertainment formats. Second, format allocation by market forces accommodates listeners' desires for diversity within a given format, and also produces a variety of formats. Third, the market is far more flexible than governmental regulation and responds more quickly to changing public tastes. Therefore, the Commission concluded that 'the market is the allocation mechanism of preference for entertainment formats, and . . . Commission supervision in this area will not be conducive either to producing program diversity [or] satisfied radio listeners.'") (citing *Development of Policy re: Changes in the Entertainment Formats of Broadcast Stations, Memorandum Opinion and Order,* 60 F.C.C.2d 858, 863-866 (1976)).

adding programming targeted to children and the Hispanic community.[34] This provides further assurance that the public interest concern of diversity will be served by the transaction.

19. Of course, individual programs may be replaced as they lose popularity, as is the nature of series programming. But the public interest goal—diversity of programming—is not about preserving individual shows. Rather, it is about ensuring a broad menu of *types* of programs for viewers. In this case, the types of programming that are supplied by the networks will almost certainly continue to be supplied; sports programming, comedies, dramas, science fiction, food, fashion, celebrity gossip, and so forth will continue to be available in abundance. In short, there is no significant probability that diversity of programming in broadcasting will be adversely affected by this transaction due to horizontal integration. The transaction is predominantly vertical in nature, and such combinations do not tend to induce the parties to eliminate program types that would otherwise be profitable to produce and distribute.

B. Localism

20. The phrase "localism" covers many different topics,[35] linked by the concern that a broadcaster must address the needs, interests, and issues of concern of the community that it is licensed to serve.[36] The Comcast and NBCU transaction is irrelevant to most of these topics, and does not threaten, and in some cases may aid, the remainder. This result is reinforced by the applicants' voluntary public interest commitments in the December 3 Cohen Letter to strengthen localism through their owned-and-operated broadcast stations, On Demand and On Demand Online Programming platforms, and public,

[34] *Supra* note 8.
[35] There is a set of issues, usually addressed with fairly precise regulations, that is often addressed under the banner of localism. However, they are all quite tangential to evaluating the transaction *in this case*. These include disaster warnings, *In the Matter of Broadcast Localism*, *Report and Notice of Proposed Rulemaking*, MB Docket No. 04-233, 23 FCC Rcd 1324, 1358-61 ¶¶ 81-87 (2008) ("2008 Broadcast Localism Report"), Network Affiliation Rules, *id.* at 1361-64 ¶¶ 88-96, payola and sponsorship identification, *id.* at 1364-69 ¶¶ 97-112, and license renewal procedures, *id.* at 1370-73 ¶¶ 113-124. Because this transaction raises no genuine issue as to any of these concerns, I will not discuss them in text.
[36] *Id.* at 1326 ¶ 2.

educational, and government ("PEG") access programming.[37] Putting more local content on more platforms will directly promote localism.

21. There is a significant overlap between *localism* and *diversity* because one of the central concerns of each goal is the extent to which broadcasters provide local news, public affairs, and other local programming. Localism differs slightly because diversity focuses on the *number of different types* of local programs, while localism focuses more on the *amount* and *source* of local programs. [38]

22. The Commission has long been interested in whether broadcasters provide "enough" community-responsive programming.[39] Because there is no reduction in the number of independent voices in any broadcast market in this transaction, there is nothing about the transaction that would lead us to expect any reduction in local news or public affairs programming, or similar community-responsive broadcast programming.[40] In addition, the December 3 Cohen Letter demonstrates that the companies plan to increase locally-oriented programming.

23. Similarly, there is nothing about this transaction that would lead the applicants to reduce service to underserved audiences. The Commission has pursued policies directed at ensuring that "enough" programming is provided to underserved audiences, primarily women and racial and ethnic minorities.[41] The Commission's theory is that all

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[37] *Supra* note 8.

[38] Typical community-responsive content includes local news stories, investigative features, consumer advocacy issues, politics, sports, community events, cultural offerings, weather, and emergency notices. *2008 Broadcast Localism Report*, 23 FCC Rcd at 1338 ¶ 31.

[39] *See id.* at ¶ 30 ("Having recognized that certain groups have long complained that broadcasters do not air enough community-responsive programming, the Commission sought comment on the nature and amount of such programming in the *NOI.* The Commission inquired as to how broadcasters were serving the needs of their communities, whether they were providing enough community-responsive programming, whether the Commission could or should take action to ensure that broadcasters aired programming that served their communities' needs and interests, and whether non-entertainment or non-locally originated programming should constitute local programming."). This, in turn, raises questions about what "counts" as community-responsive, how to combine time allocated to different categories (such as local public affairs and public service announcements), and whether the same rules should apply in all markets and to all classes of service.

[40] Thus, for example, regardless of how one views the studies cited by the Commission in its *2008 Broadcast Localism Report*, 23 FCC Rcd at 1341-42 ¶ 38 (citations omitted), and regardless of whether one thinks the amount of local news and public affairs increases with network ownership, all of the broadcast stations in this transaction were part of a network before the transaction, and will be part of a network after the transaction. In short, there is no change.

[41] *2008 Broadcast Localism Report*, 23 FCC Rcd at 1354-55 ¶ 70.

significant groups in the community of a licensee should get some level of service.[42] This requires the Commission to walk a very fine line; intervening too far to require particular content threatens First Amendment values, while only issuing hortatory declarations may produce no action at all. The Commission's most recent approach to this subject relied on several structural responses. The Commission is proposing that broadcasters form community advisory boards that help to inform the broadcaster about the needs and issues of underserved audiences.[43] Further, the Commission is considering ways to increase ownership of broadcast outlets by "Eligible Entities," which may include minority- and women-owned businesses.[44] No matter how the Commission resolves the question of underserved audiences, there is nothing in this fundamentally vertical transaction that reduces incentives to serve underserved audiences. There is no consolidation of broadcast assets at the local market level. Hence, the broadcast outlets will continue to have every incentive to appeal to and retain as wide and diverse an audience as possible.

24. Within the localism sphere, the Commission also has expressed concern with the process of engagement among broadcasters, viewers, and community leaders. In the 1970s, the Commission promulgated a highly detailed set of regulations to govern the process of communication.[45] In the 1980s these regulations were relaxed,[46] but recently the Commission has proposed making them more formal for television.[47] Nothing about this transaction will produce any significant change in the O&Os' interactions with viewers and community leaders. The stations can be expected to continue to comply with applicable regulations, will continue to learn about the needs and interests of their local communities, and will continue to air programming that responds to these needs and interests. There is no reason why the structure of the proposed transaction would affect the merging entities' incentives to continue to comply with, or indeed exceed,

[42] *Id.* at 1354 ¶ 69.
[43] *Id.* at 1336-37 ¶¶ 25-27, 1356 ¶ 73. Note, this requirement is not yet effective.
[44] *Id.* at 1356-57 ¶¶ 74-76.
[45] *Primer on Ascertainment of Community Problems by Broadcast Applicants, Report and Order*, 27 F.C.C.2d 650 (1971); *Ascertainment of Community Problems by Broadcast Applicants, First Report and Order*, 57 F.C.C.2d 418 (1976).
[46] *Deregulation of Radio, Report and Order*, 84 F.C.C.2d 968 (1981); *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations, Report and Order*, 98 F.C.C.2d 1076, 1099 (1984).
[47] *2008 Broadcast Localism Report*, 23 FCC Rcd at 1333-37 ¶¶ 16-27.

regulations in this area. Moreover, as outlined in the December 3 Cohen Letter, the companies are undertaking additional efforts to promote localism, which will further enhance the public interest benefits of the transaction.

V. CONCLUSION

25. Based on public information provided to me by Comcast and NBCU, together with my analysis of publicly available information cited here, I have evaluated the consequences of the proposed transaction in terms of *diversity* and *localism*—two areas that have been at the center of the Commission's previous regulatory reviews with regard to the public interest. In my opinion, this transaction does not represent the sort of horizontal merger that has been at the core of the Commission's diversity and localism concerns over the past several decades. Notwithstanding the rhetoric of some, this transaction will not result in any reduction in the diversity of broadcast voices in a local market or any reduction in localism.

26. In summary, this transaction is, from the standpoint of traditional Commission diversity and localism concerns, almost entirely a vertical transaction. I conclude that the proposed transaction will have no adverse effect on localism and diversity and thus is fully consistent with the Commission's the public interest approach along these dimensions. It is not the type of transaction that implicates the core concern of reduction in the diversity of voices in a local market.

I, Matthew L. Spitzer, declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on JANUARY 26, 2010

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PROFESSIONAL ASSOCIATIONS AND SERVICE POSITIONS
Member, KUSC University Advisory Board, July 2000 to October 2001.
Member, USC Budget Steering Group, August 2000 to July 2001.
Member, USC Capital Planning Committee Radisson Subcommittee, August 2000 to August 2001.
Member, USC Urban Deans Council, July 2000 to March 2004.
Member, USC Provost's Council, August 2000 to June 2006.
Member, Executive Committee, USC Provost's Council, August 2001 to June 2005.
Member, Board of Directors, American Law and Economics Association, 1997 to 2000.
Member, Board of Editors, American Law & Economics Review, 1998 to 2000.
Director, American Law Deans Association, September 2000 to 2002.
Member, American Law Deans Association, September 2000 to June 2006.
Member, The American Law Institute, 2000 to present.
Member, The Fellows of the American Bar Foundation, 2003 to present.
Member, Board of Governors, Beverly Hills Bar Association, 2005 to 2006..
Member, Law School Council, The Committee of Bar Examiners of The State Bar of California, 2005 to 2006.
Member, Board of Directors, Telecommunications Policy Research Conference, 1993 to 1995.
Organizing Committee for Telecommunications Policy Research Conference, 1991 to1994.

APPOINTMENTS
Litigator with Nossaman, Krueger & Marsh, Los Angeles, California, from January 1977 to July 1979.
Assistant Professor of Law at the Northwestern University School of Law, July 1979 to August 1981.

Associate Professor of Law at the University of Southern California Law School, August 1981 to May 1984.

Professor of Law at the University of Southern California Law School, May 1984 to July 1987.

William T. Dalessi Professor of Law at the University of Southern California, August 1987 to June 2000.

Visiting Professor of Law and Social Science in Division of Humanities and Social Sciences at California Institute of Technology, Pasadena, California, January 1988 to June 1988; January 1990 to June 1990; January 1991 to June 1991; and January 1992 to June 1992.

Professor of Law and Social Science in Division of Humanities and Social Sciences at California Institute of Technology, Pasadena, California, July 1992 to June 2001 and July 2006 to present.

Visiting Associate in Division of Humanities and Social Sciences at California Institute of Technology, Pasadena, California, July 2001 to June 2006.

Visiting Professor of Law at University of Chicago, October 1996 to December 1996.

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Director, Olin Program in Law and Rational Choice at the University of Southern California Law School, July 1990 to June 2000.

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Dean and Carl Mason Franklin Chair in Law at the University of Southern California Law School, July 2000 to June 2006.

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PUBLICATIONS -- BOOKS

SEVEN DIRTY WORDS AND SIX OTHER STORIES: CONTROLLING THE CONTENT OF PRINT AND BROADCAST (1986, Yale University Press).

PUBLIC POLICY TOWARD CABLE TELEVISION (1997, AEI/MIT Press)(with Thomas Hazlett).

ADMINISTRATIVE LAW AND REGULATORY POLICY: PROBLEMS, TEXT, AND CASES (5th Edition, 2002, Aspen Law & Business)(with Stephen Breyer, Richard Stewart, and Cass Sunstein).

PUBLICATIONS -- ARTICLES

1. *An Economic Analysis of Sovereign Immunity in Tort*, 50 S. CAL. L. REV. 515 (1977).
2. *Multicriteria Choice Processes: An Application of Public Choice Theory to* Bakke, *the FCC, and the Courts,* 88 YALE L.J. 717 (1979).
3. *A Reply to* Consumption Theory, Production Theory, and Ideology in the Coase Theorem, 53 S. CAL. L. REV. 1187 (1980) (with Elizabeth Hoffman).
4. *Radio Formats by Administrative Choice*, 47 U. CHI. L. REV. 647 (1980).
5. *The Coase Theorem: Some Experimental Tests*, 25 J. LAW & ECON. 73 (1982) (with Elizabeth Hoffman).
6. *Unions, Fairness, and the Conundrums of Collective Choice*, 56 S. CAL. L. REV. 465 (1983) (with Mayer Freed and Daniel Polsby).
7. *A Reply to Hyde, Can Judges Identify Fair Bargaining Procedures?* 57 S. CAL. L. REV. 425 (1984) (with Mayer Freed and Daniel Polsby).
8. *Entitlements, Rights and Fairness: An Experimental Examination of Subjects' Concepts of Distributive Justice*, 14 J. LEGAL STUDIES 259 (1985) (with Elizabeth Hoffman). [Reprinted in Fall/Winter USC Cites at 10-23; reprinted in ECONOMIC JUSTICE (G. Brosio and H. Hockman Eds. 1998).]

9. *Experimental Law & Economics: An Introduction*, 85 COLUM. L. REV. 991 (1985) (with Elizabeth Hoffman).
10. *Controlling the Content of Print and Broadcast*, 58 SO. CAL. L. REV. 1349 (1985).
11. *Experimental Tests of the Coase Theorem with Large Bargaining Groups,* 15 J. LEGAL STUDIES 149 (1986) (with Elizabeth Hoffman).
12. *Fear and Loathing in the Coase Theorem: Experimental Tests Involving Physical Discomfort,* 16 J. LEGAL STUDIES 217 (1987) (with Don L. Coursey and Elizabeth Hoffman).
13. *Coasian Solutions to the Externality Problem in Experimental Markets*, 97 ECONOMIC J. 388 (1987) (with Glenn W. Harrison, Elizabeth Hoffman and E. E. Rutstrom).
14. *Antitrust Federalism and Rational Choice Political Economy: A Critique of Capture Theory*, 61 SO. CAL. L. REV. 1293 (1988).
15. *Broadcasting and the First Amendment* in Volume 1 of NEW DIRECTIONS IN TELECOMMUNICATIONS POLICY (1989, Duke Univ. Press).
16. *The Constitutionality of Licensing Broadcasters*, 64 N.Y.U.L. REV. 990 (1989).
17. *Comment on Noll and Krier's* Some Implications of Cognitive Psychology for Risk Regulation, 19 J. LEG. STUD. 801 (1990).
18. *Justifying Minority Preferences in Broadcasting*, 64 S. CAL. L. REV. 293 (1990).
19. *Extensions of Ferejohn and Shipan's Model of Administrative Agency Behavior*, 6 J.L. ECON. & ORGANIZATION 29 (1990).
20. *Judicial Choice of Legal Doctrines*, 8 J.L. ECON. & ORGANIZATION 8 (1992)(with Pablo Spiller).
21. *Term Limits*, 80 GEORGETOWN L.J. 477 (1992)(with Linda Cohen). [Reprinted in MAXWELL STEARNS, PUBLIC CHOICE AND PUBLIC LAW (1996).]
22. *Willingness-to-Pay versus Willingness-to-Accept: Legal and Economic Implications,* 71 WASHINGTON UNIVERSITY L.Q. 59 (1993)(with Elizabeth Hoffman).
23. *Solving the* Chevron *Puzzle*, 57 JOURNAL OF LAW & CONTEMPORARY PROBLEMS 65 (1994)(with Linda Cohen).
24. *Testing Minority Preferences in Broadcasting*, 68 SOUTHERN CALIFORNIA LAW REVIEW 841 (1995)(with Jeff Dubin).
25. *Judicial Deference to Agency Action*, 69 SOUTHERN CALIFORNIA LAW REVIEW 431 (1995)(with Linda Cohen).
26. *Framing the Jury,* 81 VIRGINIA LAW REVIEW 1342 (1995)(with Ed McCaffery and Dan Kahneman).
27. *Where is the Sin in Sincere? Sophisticated Exploitation of Naive Judges*, 11 JOURNAL OF LAW, ECONOMICS & ORGANIZATION 32 (1995)(with Pablo Spiller).
28. *Dean Krattenmaker's Road Not Taken: The Political Economy of Broadcasting in the Telecommunications Act of 1996,* 29 CONN. L. REV. 353 (1996).
29. *An Introduction to the Law and Economics of the V-Chip*, 15 CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL 429 (1997).
30. *Evaluating Direct Democracy: A Response*, 4 UNIVERSITY OF CHICAGO LAW SCHOOL ROUNDTABLE 37 (1997).

31. *A First Glance at the Constitutionality of the V-Chip Ratings System*, in TELEVISION VIOLENCE AND PUBLIC POLICY, Edited by James T. Hamilton (U. Mich. Press, 1998).
32. *Turner, Denver and Reno,* pages 172-217 in A COMMUNICATIONS CORNUCOPIA: MARKLE FOUNDATION ESSAYS ON INFORMATION POLICY (1998, Roger Noll and Monroe Price, Eds.).
33. *Judicial Auditing,* 29 JOURNAL OF LEGAL STUDIES 649 (2000) (with Eric Talley).
34. *The Government Litigant Advantage: Implications for the Law,* 28 FLORIDA STATE UNIV. L. REV. 391 (2000) (with Linda R. Cohen).
35. *Digital Television and the Quid Pro Quo*, 2 BUSINESS AND POLITICS 115 (2000) (with Thomas Hazlett).
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37. *Advanced Wireless Technologies and Public Policy,* 79 SOUTHERN CALIFORNIA LAW REVIEW 595 (2006)(with Thomas W. Hazlett).
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1. *Book Review* (of HUMAN INFERENCE by Richard Nisbett and Lee Ross), 9 HOFSTRA L. REV. 1621 (1981).
2. *Book Review* (of MISREGULATING TELEVISION by Stanley M. Besen, Thomas G. Krattenmaker, A. Richard Metzger, and John R. Woodbury), 2 INFORMATION ECON. AND POLICY 91 (1986).
3. Editor of Discussion in *Symposium: Punitive Damages*, 56 S. CAL. L. REV. 1, 155 (1982).
4. *Bargaining Solutions to Environmental Problems*, NEUE ZURCHER ZEITUNG, pg. 66, Sept. 16, 1987, (with R. S. Radford).
5. *Jurisprudence and Formal Models*, 12 INT'L REV. L. AND ECON. 284 (1992).
6. *Freedom of Expression,* in THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW, Edited by Peter Newman (Stockton Press, 1998).
7. *Book Review* (of J. GREGORY SIDAK, FOREIGN INVESTMENT IN TELECOMMUNICATIONS), 59 Journal of Economic History 1124 (1999) .
8. *Taking Over*, 33 UNIVERSITY OF TOLEDO LAW REVIEW 213 (Fall 2001).
9. *Evaluating Valuing Empiricism (at Law Schools)*, 53 JOURNAL OF LEGAL EDUCATION 3 (September 2003).
10. *Diamonds and Deep Breathing*, 36 UNIVERSITY OF TOLEDO LAW REVIEW 191 (Fall 2004).
11. *Memorial Tribute to Dave Carroll*, 78 SOUTHERN CALIFORNIA LAW REVIEW 13 (2004).

PRIZE

Ronald H. Coase Prize for excellence in law and economics