

**Written Statement of
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Chairman
Federal Communications Commission**

**Hearing on Consumers, Competition, and
Consolidation in the Video and Broadband Market**

**Before the
Committee on Commerce, Science and Transportation
United States Senate**

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Mr. Chairman and members of the Committee, thank you for this opportunity to address the role of the Federal Communications Commission in reviewing proposed mergers in the communications industry, including the contemplated transaction involving Comcast and NBC Universal.

The Commission approaches these matters mindful that maintaining a vibrant, innovative, consumer-friendly, and competitive communications sector is essential for our economy, our society, and our democracy. Communications policy affects the lives of all Americans – and is becoming ever more important. Communications represents a major sector of our economy and plays a vital role in addressing many of the challenges our Nation faces.

Congress has set the basic framework for our review of mergers and transactions in the communications industry. Sections 214 and 310 of the Communications Act require that before FCC licenses or authorizations may be transferred from one holder to another, the FCC must find affirmatively that the transfer is in the public interest. This is a statutory requirement to protect and promote the interests of all Americans.

In exercising our statutory responsibilities in the context of reviewing transactions, the Commission is focused on several important and interrelated principles. These include protecting and advancing the interests of consumers, as well as those of children, and families;

ensuring effective competition; promoting innovation; and encouraging investment and the broad and rapid deployment of broadband and other advanced communications services throughout the United States. Specifically with respect to television programming, the Commission's goals include a vibrant and healthy marketplace, guided by the well-settled Communications Act values of competition, diversity, localism, and a deep respect for the First Amendment.

In the review of any particular transaction, some of these considerations may be more centrally at issue than others. Additional factors, such as spectrum, universal service, or foreign ownership and national security, may also be important in specific cases.

The law further requires that the Commission analyze these issues through an open process. The Administrative Procedure Act provides for a record-based agency review, with a full opportunity for interested persons to file their facts and arguments, and a decision supported by the evidence. The Commission's staff reviews and analyzes the record, issues information requests when appropriate for additional necessary data, meets with the applicants, opponents, and others to understand and discuss positions on all sides, and reaches out to affected parties to obtain various perspectives on the proposed transaction. The staff then prepares a draft order addressing the record and reaching tentative conclusions. Ultimately the five-member Commission votes on whether to approve the transfer, with or without specific conditions, or to reject it. Our decision can be challenged in court, like any other administrative order.

Consistently over many years, the FCC and the federal antitrust agencies reviewing particular transactions have worked out procedures that allow the agencies to cooperate, taking advantage of the respective expertise of their staffs. This cooperation includes sharing information and analysis; identifying issues; avoiding conflict regarding any necessary remedies;

and making the review process as efficient as possible for all concerned. At the same time, each reviewing agency must make its own decisions, under its own governing statutes and standards.

The FCC's public interest standard and procedures are different from the ones the Department of Justice applies when it reviews transactions. Unlike the FCC's review standard, the Department of Justice determines whether the transaction may "substantially lessen competition" under the antitrust laws and, when appropriate, fashions antitrust remedies. The Department of Justice's investigations are not focused on issuance of an administrative order, but instead primarily on whether or not to challenge the transaction in court. The Hart-Scott-Rodino Act, which is its governing statute, requires strict confidentiality concerning the investigative process, allowing public disclosure only under limited circumstances.

In terms of remedies, in the Communications Act, Congress granted the FCC flexibility to address potential harms and reinforce promised benefits by using tailored remedies requiring or prohibiting particular conduct. Accordingly, the Commission's review of communications transactions fills a unique role that complements the role played by the Department of Justice.

Especially given its unique function, the FCC's review of communications industry transactions must be thorough, efficient, timely, and transparent. It must have the appearance as well as the reality of objectivity, fairness, and reliance on the best available data and analysis. In the past, some have expressed concerns about whether FCC review of some transactions has taken longer than the circumstances warranted. Some have also questioned in particular cases whether the Commission's processes were sufficiently open and reflected a sufficiently thorough analysis of the relevant data and issues. I am committed to working with my fellow Commissioners to ensure that the agency's review procedures meet the highest standards of

openness, transparency, rigor, and fairness, and minimize costs and delay while fully protecting the public interest.

In general, the FCC begins its transaction-review process once a complete and compliant transfer application has been received from the parties. At that point, we ask for public comment.

In the Comcast/NBC Universal proceeding, for example, the companies filed an initial Application and Public Interest Statement on January 28, 2010. At the request of the applicants, the Commission awaited the filing of a supplemental economic report, which we received last Friday, March 5. The Commission will soon issue a notice that begins the public comment period and informs interested persons how they can address the applicants' submissions and participate in the FCC proceeding.

To promote a thorough and efficient process, a dedicated team has already begun work on staff-level review of the proposed transaction. Reflecting the scope of the transaction, the team members come from a number of the agency's bureaus and offices and bring to bear years of expertise. I have directed the team to learn from experience—to examine past similar transactions and see, with the benefit of hindsight, what the FCC did right, and where the agency could have done better. Our staff has also begun the process of consultation and cooperation with our colleagues at the Department of Justice.

The legal requirements of record-based decision-making prevent me from commenting in any way on the merits of pending transactions, including the Comcast/NBC Universal transaction. Our decisions on mergers are made only after we compile and review a full record. The FCC will of course thoroughly consider all of the important issues that have been raised or will be raised in the context of the transaction.

As the Committee is aware, the communications and media landscape is rapidly evolving. New media and new communications technologies are an increasingly important part of the landscape, even as millions of Americans continue to rely on traditional forms of media and communications. The landscape today is very different from five and ten years ago, and will be very different five and ten years from now.

While the changing landscape must of course inform the FCC's decision-making, certain core values remain constant. Robust and healthy competition is essential to producing consumer benefits – better services, and lower prices. An important part of our responsibility at the Commission is to ensure that communications industry transactions do not enable firms to frustrate innovation or raise prices ultimately paid by consumers. We must ensure that American consumers continue to enjoy all the benefits of competition and choice, in a vibrant and diverse communications and media environment that upholds vital First Amendment values. Investment, innovation, and employment are key objectives, as is the rapid and widespread deployment of advanced communications services. These and other traditional goals and values will inform our review of transactions.

Thank you for the opportunity to appear before you today. I look forward to working with the Committee, and I would be happy to address any questions the Committee may have.