documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 8, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–14582 Filed 6–13–11; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on July 7 and July 8, 2011.

DATES: Thursday, July 7, 2011, from 9 a.m. to 5 p.m., and Friday, July 8, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in at the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC on Thursday, July 7, 2011, from 9 a.m. to 5 p.m., and Friday, July 8, 2011, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2011 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2011 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the May 2011 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 8 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 30, 2011, to 202–622–8300, *Attn:* Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, *Attn:* Executive Director SE:OPR, Room 7238, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: June 8, 2011.

Patrick W. McDonough,

Executive Director. Joint Board for the Enrollment of Actuaries.

[FR Doc. 2011–14619 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Comcast Corp., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States et al.* v. *Comcast Corp. et al.*, Civil Action No. 1:11–CV–00106–RJL, which were filed in the United States District Court for the District of Columbia on June 6, 2011, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF FLORIDA, STATE OF MISSOURI,
STATE OF TEXAS, and STATE OF WASHINGTON,

Plaintiffs,

v.

COMCAST CORP., GENERAL ELECTRIC CO., and NBC UNIVERSAL, INC.,
Defendants.

CASE: 1:11–cv–00106
JUDGE: Leon, Richard J.

PLAINTIFF UNITED STATES'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States's response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court, pursuant to 15 U.S.C. § 16(b)–(h), to enter the proposed Final Judgment after the public comments and this Response have been published in the Federal Register pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

On January 18, 2011, the United States and the States of California, Florida, Missouri, Texas, and Washington (''the States''), filed a Complaint in this matter, alleging that the formation of a Joint Venture (''JV'') among Comcast Corporation (''Comcast''), General Electric Company (''GE''), NBC Universal, Inc. (''NBCU''), and Navy, LLC, which gives Comcast majority control over the NBC broadcast and NBCU cable networks, would substantially lessen competition in the market for timely distribution of professional, full-length video programming to residential consumers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with its filing of the Complaint, the United States filed a Competitive Impact Statement (''CIS''), a proposed Final Judgment, and a Stipulation and Order signed by the United States and the Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA.

The proposed Final Judgment and CIS were published in the Federal Register on January 31, 2011. See 76 Fed. Reg. 5,440 (2011). A summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in The Washington Post for seven days, from January 31, 2011 through February 7, 2011. The Defendants filed the statement required by 15 U.S.C. § 16(g) on April 18, 2011. The 60-day period for public comments ended on April 9, 2011, and eight comments were received as described below and attached hereto, including a comment from The American Antitrust Institute (''AAI''), a joint comment from The Consumers Federation of America and Consumers Union (''CFA/CU''), and six comments from individuals.

II. THE INVESTIGATION AND PROPOSED RESOLUTION

A. Investigation

On December 3, 2009, Comcast, GE, NBCU and Navy LLC, entered into an agreement to form a JV to which Comcast and GE contributed their cable and broadcast networks, as well as NBCU's interest in Hulu, LLC. Over the next 13 months, the United States Department of Justice (''Department'') conducted a thorough and comprehensive investigation of the potential impact of the JV on the video programming distribution industry. The Department interviewed more than 125 companies and individuals involved in the industry, obtained testimony from Defendants' officers, required Defendants to provide the Department with responses to numerous questions, reviewed over one million business documents from Defendants' officers and employees, obtained and reviewed tens of thousands of third-party documents, obtained and extensively analyzed large volumes of industry financial and economic data, consulted with industry and economic experts, organized product demonstrations, and conducted independent industry research. The Department also consulted extensively with the Federal Communications Commission (''FCC'') to ensure that the agencies conducted their reviews in a coordinated and complementary fashion and created remedies that were both comprehensive and consistent. As part of its investigation, the Department also reviewed and considered many of the thousands of pages of comments filed in the FCC docket in this matter that raised competition issues, including but not limited to the comments filed by AAI and CFA/CU.[1]

B. Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the market for timely distribution of professional full-length video programming to residential consumers in the United States. The proposed Final Judgment accomplishes this in a number of ways. First, the proposed Final Judgment requires the JV to license its broadcast, cable, and film content to online video distributors (''OVDs'') on terms comparable to those contained in similar licensing arrangements with traditional multichannel video programming distributors (''MVPDs'') or OVDs. It provides two options through which an OVD may be able to obtain the JV's content. The first option, set forth in Section IV.A of the proposed Final Judgment, requires the JV to license the linear feeds of the JV's video programming to OVDs on terms that are economically equivalent to the terms contained in certain MVPDs' video programming agreements. The second option, set forth in Section IV.B of the proposed Final Judgment, requires the JV to license to a qualified OVD the broadcast, cable, or film content of the JV that is comparable in scope and quality to the content the OVD receives from one of the JV's defined programming peers.[2] While the first option ensures that Comcast, through the JV, will not disadvantage OVD competitors in relation to MVPDs, the second option ensures that the programming licensed by the JV to OVDs will reflect the licensing trends of its peers as the industry evolves. If an OVD and the JV are unable to reach an agreement for carriage of programming under either of these options, the OVD may apply to the Department to submit the dispute to baseball-style arbitration pursuant to Section VII of the proposed Final Judgment.[3]

Second, the proposed Final Judgment alters the JV's relationship with Hulu, LLC (''Hulu''), an OVD in which the JV owns a 32 percent interest. Hulu is one of the most successful OVDs to date. Section V.D of the proposed Final Judgment requires the Defendants to relinquish their voting and other governance rights in Hulu, and Section IV.E prohibits them from receiving confidential or competitively sensitive information concerning Hulu. At the same time, Section V.G of the proposed Final Judgment seeks to ensure that the JV continues to honor its commitments to supply programming to Hulu at levels commensurate with the supply of content provided to Hulu by its other media partners.

Third, the proposed Final Judgment prohibits Defendants from engaging in certain conduct that could prevent OVDs or MVPDs from competing effectively. Section V.A of the proposed Final Judgment prohibits Defendants from discriminating against, retaliating against, or punishing any content provider for providing programming to any OVD or MVPD. Section V.A also prohibits Defendants from discriminating against, retaliating against, or punishing any OVD or MVPD for obtaining video programming, for invoking any provisions of the proposed Final Judgment or any FCC rule or order, or for furnishing information to the Department concerning Defendants' compliance with the proposed Final Judgment.

Fourth, the proposed Final Judgment further protects the development of OVDs by preventing Comcast from using its position as the nation's largest MVPD or as the licensor, through the JV, of important video programming, to enter into agreements containing restrictive contracting terms. Sections V.B and V.0 of the proposed Final Judgment set forth broad prohibitions on restrictive contracting practices, including exclusives, with appropriately tailored exceptions. In so doing, the proposed Final Judgment strikes a balance between allowing reasonable and customary exclusivity provisions that enhance competition while prohibiting provisions that, without offsetting procompetitive benefits, hinder the development of effective competition from OVDs.

Fifth, Section V.G requires Comcast to abide by certain restrictions on the operation and management of its Internet facilities, which OVDs depend upon in order to deliver video content to OVD customers. Absent such restrictions, Comcast would have the incentive and ability to undermine the

[1] See, e.g., Comments of the American Antitrust Institute, in re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, FCC MB Docket No. 10–56 (June 21, 2010) (''AAI's FCC Comments''); Reply to Opposition of Free Press, Media Access Project, Consumer Federation of America, and Consumer's Union, In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, FCC MB Docket No. 10–56 (Aug. 19, 2010).

[2] The programming peers include the owners of the three major non-NBC broadcast networks (CBS, FOX, and ABC), the largest cable network groups (including News Corporation, Time Warner, Inc., Viacom, Inc., and The Walt Disney Company), and the six largest production studios (including News Corp., Viacom, Sony Corporation of America, Time Warner, and Disney).

[3] ''Baseball-style'' arbitration is a method of alternative dispute resolution in which each party submits its preferred price and other terms, and the arbitrator selects the proposal that is most reasonable and fair in light of the relevant market. The arbitrator must choose one party's proposal or the other's, with no option to implement a different set of price and other terms, e.g., a compromise involving aspects of both. The name is derived from arbitrations of Major League Baseball player salary disputes in which this format has been employed for a number of years. The FCC has also adopted this format as part of the conditions set forth in several merger orders. See, e.g., Memorandum Opinion and Order, In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control, 19 F.C.C.R. 473,¶ 222 (rel. Jan. 14, 2004), available at *http://hraunfoss.fcc.goviedocs_publiclattachmatchIFCC-03-330A1.pdf.*

effectiveness of the proposed Final Judgment by, for instance, giving priority to non-OVD traffic on its network, thus adversely affecting the quality of OVD services that compete with Comcast's OVD or MVPD services.

Finally, Sections IV.I–0 and VIII.A–B of the proposed Final Judgment impose reporting and document retention requirements on the Defendants to better enable the Department to monitor compliance and to assist it in enforcement proceedings.

III. STANDARD OF JUDICIAL REVIEW

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' United States v. Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995). See generally United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); United States v. InBev N.V./S.A., 2009–2 Trade Cas. (CCH) ¶ 76,736, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; United States v. Alcoa, Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, the court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); United States v. Archer-Daniels-Midland Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983); see also United States v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). As this Court has previously recognized, to meet this standard ''[t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms, it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' United States v. Abitibi-Consolidated Inc., 584 F. Supp. 2d 162, 165 (D.D.C. 2008) (citing SBC Commc'ns, 489 F. Supp. 2d at 17).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, rather than to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The clause reflects what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc 'ns, 489 F. Supp. 2d at 11.

IV. SUMMARY AND RESPONSE TO PUBLIC COMMENTS

During the 60-day public comment period, the United States received comments from the following associations and individuals: The American Antitrust Institute (''AAI''); The Consumers Federation of America and Consumers Union (''CFA/CU''), filing jointly; and Noelle Levesque, Chris Muse, David Neckolaishen, Denna Teece, Ira Warren

[4] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

[5] The 2004 amendments substituted the word ''shall'' for ''may'' when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

Patasnik, and Bill Dunn. Upon review, the United States believes that nothing in these comments demonstrates that the proposed Final Judgment is not in the public interest. Indeed, the joint comments filed by CFA/CU outline the numerous public benefits flowing from the proposed Final Judgment. What follows is a summary of the comments and the United States's responses to those comments.

A. AAI

AAI describes itself as ''an independent Washington-based non-profit education, research, and advocacy organization.'' [6] AAI's membership is comprised primarily of antitrust lawyers and economists. It is managed by a Board of Directors that authorized the filing of its comments in this proceeding.[7]

AAI argues that because the proposed Final Judgment contains conduct remedies, it fails to match the allegations of the Complaint with an appropriate cure and thereby diverges from the Department's Antitrust Division Policy Guide to Merger Remedies and from longstanding policy in vertical merger cases.[8] AAI's statement of Department policy is incorrect. The Department has long recognized that there may be certain situations, i.e., vertical mergers in particular, ''where a structural remedy is infeasible.'' [9] In such cases, the Department's choice ''necessarily will come down to stopping the transaction or imposing a conduct remedy.'' [10] The Department analyzes each merger according to its unique facts. In this case, the Department determined that the transaction would result in anticompetitive harm and that the harm was not outweighed by merger-specific efficiencies. Contrary to AAI's comments, the Complaint does not allege that there were no efficiencies associated with the transaction. Rather, the Complaint alleges that ''[Ole proposed JV will not generate verifiable, merger-specific efficiencies sufficient to reverse the competitive harm of the proposed JV.'' [11] The proposed Final Judgment cures the anticompetitive harm while preserving the potential efficiencies flowing from the transaction.

AAI also criticizes the proposed Final Judgment's licensing provisions as ''requir[ing] ongoing oversight, monitoring, and compliance'' that antitrust enforcers and courts are ''woefully'' equipped to handle.[12] This criticism ignores the proposed Final Judgment's incorporation of an arbitration mechanism to resolve any disputes over whether the JV is meeting its obligations under the proposed Final Judgment to license popular NBCU content to competitors. Arbitration is commonly used to resolve such disputes, and the arbitration mechanism incorporated in the proposed Final Judgment should prevent the Department, or the Court, from being unnecessarily embroiled in difficult issues.'' [13]

AAI further argues that the proposed Final Judgment contains requirements with subjective terms that ''will open the door to disputes * * * '' [14] Any remedy, particularly one that involves a rapidly changing, high-technology market, will necessarily contain some open-ended or subjective terms to preserve needed flexibility. Arms-length negotiations should resolve most issues regarding these terms. The proposed Final Judgment sets out a general framework of access with a backstop of baseball-style arbitration. Unlike the FCC's arbitration provisions, which are appealable, arbitration under the proposed Final Judgment is binding on the parties. Thus, the parties have an increased incentive under the proposed Final Judgment to reach a commercial agreement without intervention by a third-party arbitrator. To the extent that the parties cannot reach agreement, an aggrieved OVD may appeal to the Department for the right to arbitrate. Under baseball-style arbitration, both parties submit their best offers to a neutral, third-party arbitrator who then decides which of the two offers is more reasonable based upon evidence in the record, including contracts with other parties. Baseball-style arbitration has been successfully employed as a vertical merger remedy pursuant to numerous FCC orders [15] and there is no evidence that it will not be an effective remedy in this case.

AAI also claims that the proposed Final Judgment relies on static benchmarks that fail to account for change in an emerging and dynamic OVD industry.[16] AAI is mistaken. The proposed Final Judgment explicitly recognizes that online video distribution is in its infancy and that the identity of new competitors, and the terms and conditions under which providers of programming will contract with them, may change. The proposed Final Judgment, therefore, sets forth different scenarios under which OVDs may seek video programming from the JV, both now and in the future. For example, Section IV.B.6 of the proposed Final Judgment sets forth different scenarios under which a Qualified OVD may seek additional video programming from the JV. Similarly, Section IV.B.7 defines the circumstances under which an OVD that subsequently becomes a Qualified OVD may seek new or additional video programming from the iv. Finally, Section IV.G which governs the JV's provision of video programming to Hulu, contemplates that the JV will enter agreements with Hulu on substantially the same terms and conditions as those of the broadcast owner whose renewed agreement is most economically advantageous to Hulu.

With respect to Hulu, AAI further argues that the proposed Final Judgment's delegation of voting rights in Hulu to the non-JV partners compromises the development of Hulu.[17] Although there is no question that Fox and ABC have a greater say in Hulu as a consequence of the proposed Final Judgment's requirement that Comcast vote its shares in line with their votes, AAI has not explained how this requirement is harmful to Hulu's development. The integrated Comcast-NBCU has different incentives vis-à-vis Hulu than does a standalone NBCU. By requiring the JV to relinquish its voting rights in Hulu to the non-JV partners, the proposed Final Judgment does not deprive the decision-making process of an ''independent'' non-voting member but, rather, restores how a standalone media partner would have voted with respect to Hulu. Additionally, Hulu, whose future competitiveness AAI purports to protect, does not object to the delegation of voting rights.

Ultimately, AAI's comments boil down to the argument that other remedies would be better than those contained in the proposed settlement. At some points, AAI contends that nothing short of a full prohibition of the merger would be adequate to redress the harm alleged in the Complaint.[18] At other

[6] Tunney Act Comments of the American Antitrust Institute on the Proposed Final Judgment, United States, et al., v. Comcast Corp., et al., No. 1–II–cv–00106 (RJL) (D.D.C.), at 2 (Mar. 29, 2011) (''AAI Comments''). These comments are attached as Exhibit A.

[7] Id. at 2.

[8] Id. at 5.

[9] U.S. Dep't of Justice, Antitrust Division Policy Guide to Merger Remedies, at 21 (Oct. 2004) (''Antitrust Division Remedies Guide''). The Antitrust Division Remedies Guide clarifies the policy considerations behind the Department's merger remedies. It expressly states that conduct remedies may provide effective relief for the likely anticompetitive effects of some vertical mergers. Id. Indeed, the Department has imposed conduct remedies in decrees pertaining to previous transactions involving vertical elements. See, e.g., Final Judgment, United States v. Northrop Grumman Corp. et al., 2003–1 Trade Cas. (CCH) ¶ 74,057 (D.D.C. June 10, 2003), 2003 WL 21659404.

[10] Antitrust Division Remedies Guide at 22.

[11] Complaint, *United States, et al.* v. *Comcast Corp., et al.,* No. 1–11–cv–00106 (RU), ¶ 56 (D.D.C. filed Jan. 18, 2011).

[12] AAI Comments at 11. AM's criticism is disingenuous. Elsewhere in its comments, AM suggests that a conduct remedy involving ''[w]alling off management decisions on the programming side of the JV from decisions on the distribution side will help prevent foreclosure of OVDs.'' Id. at 19–20. AAI does not explain how or why the proposed Final Judgment's conduct remedies are less likely to be successful than AAI's proposed conduct remedy.

[13] AAI's criticism also ignores the ongoing regulation and oversight of this industry by the FCC. Indeed, the FCC has imposed licensing conditions on the Defendants similar to those contained in the proposed Final Judgment. See Memorandum Opinion and Order, In re Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, FCC MB Docket No. 10–56, 2011 WL 194538 (rel. Jan. 20, 2011), available at litvilwww.fcc.govily_Releases_ Business12011/ db0309/FCC-11-4A1pdf.

[14] AAI Comments at 13.

[15] See, e.g., Memorandum Opinion and Order, In re The DirecTV Group and Liberty Media Corp., Applications for Transfer of Control, 23 F.C.C.R. 3265, 3342–49 (2008); Memorandum Opinion and Order, In re Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp., Applications for Transfer of Control, 21 F.C.C.R. 8203, 8337–40 (2006); Memorandum Opinion and Order, In re General Motors Corporation, Hughes Electronics Corporation, and News Corporation, Applications for Transfer of Control, 19 F.C.C.R. 473, 677–82 (2004).

[16] AAI Comments at 15.

[17] Id. at 17.

[18] See AAI Comments at 4, 18. This argument is not new. As noted above, AAI previously filed comments with the FCC in which encouraged the

Continued

points, it suggests a variety of modifications to the proposed Final Judgment.[19] Although AAI concedes that ''this Court is not authorized to re-write the consent decree,'' it appears to invite the Court to do exactly that. However, the Department in a Tunney Act proceeding must show only that the settlement is ''within the range of acceptability or 'within the reaches of the public interest.' ''[20] As set forth in the CIS and as discussed above, the Department believes that the proposed Final Judgment is not only ''reasonably adequate,''[21] but that it provides effective, carefully tailored relief that will prevent the anticompetitive harms alleged in the Complaint. Nothing in AAI's comments should dissuade this Court from concluding that entry of the proposed Final Judgment is in the public interest.

B. CFA/CU

The Consumers Federation of America (''CFA'') is an association of three hundred nonprofit organizations that promote consumer issues through research, education, and advocacy.[22] Consumers Union (''CU''), the publisher of Consumer Reports, is a non-profit that provides consumers with information, education, and policy advice on a range of issues affecting consumer health and welfare.[23] Both CFA and CU met with the Department and filed comments with the FCC relating to this transaction.[24] While CFA/CU's ''initial take'' on the acquisition was that it should be blocked, CFA/CU now believes that ''the FCC and the DOJ have put together a set of conditions and enforcement measures that * * * protect consumers and promote the public interest.''[25] Specifically, CFA/CU argues that the proposed Final Judgment's licensing conditions, which require the JV to match the best practices of its peers, as well as the proposed Final Judgment's prohibitions on restrictive contracting practices, will better ensure the availability of programming for online video distribution.[26] CFA/CU not only believes that the licensing provisions are enforceable, but that the proposed Final Judgment provides the Defendants with strong incentives to reach commercially reasonable agreements without invoking enforcement mechanisms.[27] For these and other reasons, CFA/CU concludes that ''[c]onsumers and competition will be better off as a result of the judgment than if the merger had been denied.''[28]

C. Additional Comments

The United States also received comments from six citizen complainants.[29] The citizen complainants generally argue that the Department should not have allowed the transaction to have gone forward. None of these comments raises substantive issues regarding the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm in the market for distribution of full-length professional video programming to residential consumers alleged in the Complaint.

V. CONCLUSION

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. The relatively small number of comments filed by persons objecting to the settlement, especially when weighed against the size and complexity of the transaction, is itself indicative of the adequacy of the proposed Final Judgment. Accordingly, after the comments and this response are published, the United States will move this Court to enter the proposed Final Judgment.

Dated: June 6, 2011

Respectfully submitted,

\s\

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March 29, 2011

VIA ELECTRONIC MAIL

Nancy Goodman
Chief, Telecommunications & Media Enforcement Section
Antitrust Division
Department of Justice
450 Fifth Street, NW.,
Suite 7000
Washington, DC 20530

Re: Tunney Act Comments in U.S. v. Comcast Corp., General Electric Co., and NBC Universal, Inc.

Dear Ms. Goodman:

Attached please find comments of the American Antitrust Institute in U.S. vs. Comcast Corp., General Electric Co., and NBC Universal, Inc., pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (Tunney Act).

Sincerely,

Diana L. Moss
Vice President and Director

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF FLORIDA,
STATE OF MISSOURI,
STATE OF TEXAS, and
STATE OF WASHINGTON,

Plaintiffs,

v.

COMCAST CORP., GENERAL ELECTRIC CO., and NBC UNIVERSAL, INC.,
Defendants

Case: 1:11-cv-00106
Judge: Richard, J. Leon

TUNNEY ACT COMMENTS OF THE AMERICAN ANTITRUST INSTITUTE ON THE PROPOSED FINAL JUDGEMENT

I. Introduction

The American Antitrust Institute (AAI) is an independent Washington-based nonprofit education, research, and advocacy organization. The AAI is devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws. The AAI is managed by its Board of Directors, which alone has approved this filing. Its Advisory Board consists of over 115 prominent antitrust lawyers, economists, and business leaders. The AAI has had an interest in this proceeding because it raises critical issues of competition policy and consumer choice involving video programming and distribution and diversity in the media. In June 2010, the AAI filed comments with the Federal Communications Commission (FCC) in the docket assigned to the Comcast/NBCU joint venture (IV).[1] Those comments discuss some of the key competitive issues raised by the JV and urge the FCC to reject the transaction.[2]

Commission to deny approval of the Comcast/NBCU transaction. AAI's FCC Comments at 7, 26.

[19] See, e.g., AAI Comments at 19.

[20] See United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983); see also, e.g., SBC Commc'ns, 489 F. Supp. 2d at 17 (''Further, the Court must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.''). In this case, the Department concluded that entry of the proposed Final Judgment was preferable to incurring the costs and risks associated with seeking an injunction to block the transaction, especially since the former may allow the realization of merger-specific efficiencies.

[21] See SBC Commc 'ns, 489 F. Supp. 2d at 17.

[22] See Tunney Act Comments of Consumer Federation of America and Consumers Union, United States, et al., v. Comcast Corp., et al., No. 1–11–cv–00106 (RJL) (D.D.C.), at 1 n.1 (Apr. 1, 2011) (''CFAJCU Comments''). These comments are attached as Exhibit B.

[23] Id.

[24] See supra note 1.

[25] CFA/CU Comments at 2.

[26] See id. at 4.

[27] Id. at 4–5.

[28] Id. at 5.

[29] The citizen complainants are Noelle Levesque, Chris Muse, David Neckolaishen, Denna Teece, Ira Warren Patasnik, and Bill Dunn. Their comments are attached as Exhibits C–H. Pursuant to a specific request, the Department has redacted the e-mail and mailing addresses of the citizen complainants.

[1] See Federal Communications Commission, in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56.

[2] American Antitrust Institute, Comments, in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56 (June 21, 2010). Available at http://www.antitrustinstitute.oresiteddefault/files/AAI_Comcast_NBCU%20Comments_2_070220101958.pdf.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16 (Tunney Act), the AAI submits these comments on the Proposed Final Judgment (PFJ or consent decree) in the above-mentioned case.[3] Congress has made this Court the final arbiter of the propriety of mergers under the antitrust laws. The Court must ''determine that the entry of such judgment is in the public interest.''[4] If the Court cannot make this finding, it must reject the PFJ unless more adequate provisions are made to protect the public interest. In the following analysis, the AAI respectfully argues that for the numerous reasons set forth, the consent decree is not in the public interest and should be rejected by the Court.

The AAI's comments proceed as follows. Section II provides an overview of the Comcast/NBCU JV and details the major reasons why it will establish poor precedent for merger policy. Section III summarizes the U.S. Department of Justice (DOJ) Complaint.[5] Section IV outlines specific problems that make the consent decree unsuitable, and Section V concludes with suggested modifications to the PFJ that would bring it more into line with the Complaint. The PFJ suffers from the following problems:

- The PFJ lacks a strong justification for the use of open access remedies, which are inconsistent with the DOJ's guidelines and principles of antitrust remedies.
- The PFJ contains requirements that are defined by subjective terms and therefore invite dispute, arbitration, delay, and expense.
- The PFJ's requirements are based on static benchmarks that will undoubtedly change in an emerging and dynamic online video distribution (OVD) industry but for which the PFJ envisions no adjustments or flexibility.
- The PFJ's delegation of NBCU's voting rights in Hulu will compromise important voting dynamics regarding management and governance, potentially affecting how the most important OVD develops.
- Short of the DOJ suing to stop the transaction, no set of remedies will prevent the JV from controlling how rivalry develops between two major, important systems—the delivery of programming through cable television and cable modem high-speed internet (HSI).

II. Overview

The combined Comcast/NBCU will arguably be the pre-breakup ''Standard Oil'' of modern video programming and distribution. By placing valuable and important NBCU programming under Comcast's control, the JV will directly or indirectly control everything from the creation to delivery of video programming to the consumer through a variety of distribution conduits or channels. With the JV, Comcast will be in a position to decide whether or not to sell important NBCU programming to its rivals, including other multi-video programming distributors (MVPDs) such as digital broadcast satellite (DBS) providers, telcos, cable overbuilders, and OVDs. Because the OVD segment of the video programming distribution (VPD) market is in the early stages of development and would benefit the most from competitive market forces, the JV is particularly troublesome. And because Comcast is a dominant supplier of cable modem HSI and cable television services in numerous geographic areas in the U.S., its control over NBCU will enable it to determine, step-by-step, how the delivery of programming via the two competing modes of distribution develops over time. As a result, the JV will adversely affect competition in the market for VPD, to the detriment of consumers.

Thousands of pages of comments and protests in the FCC docket describe the multitude of competitive and consumer harms potentially inflicted by the merger.[6] Questions, concerns, and calls for rigorous merger enforcement have been raised in media commentaries, hearings, and other public fora. Yet we need look no further than the DOJ Complaint itself to assess the gravity of the JV's anticompetitive effects:

> * * * the proposed joint venture * * * would allow Comcast, the largest cable company in the United States, to control some of the most popular video programming among consumers, including the NBC Television Network [ ] and the cable networks of NBC Universal, Inc. []. If the JV proceeds, tens of millions of U.S. consumers will pay higher prices for video programming distribution services, receive lower-quality services, and enjoy fewer benefits from innovation.[7]

Herein lies the dilemma facing the court. The DOJ's failure to match its Complaint with an appropriate cure diverges from its own remedies guidelines and from long-standing precedent in vertical merger cases. For example, the DOJ's Antitrust Division Policy Guide to Merger Remedies (Policy Guide) states: ''There must be a significant nexus between the proposed transaction, the nature of the competitive harm, and the proposed remedial provisions.''[8] For the reasons set forth in Section IV below, the lack of such a nexus means that the PFJ will not protect or restore competition, which the Supreme Court has emphasized is the paramount purpose of an antitrust remedy.[9] Moreover, if the PFJ is found by the Court to be in the public interest, it will set a dangerous precedent for merger policy, for three major reasons.

First, the troubling incongruity between the strength of the DOJ's Complaint and the weakness of the PFJ will only encourage the very conduct identified in the Complaint; it is reminiscent of when a larcenist gets off with a warning and immediately repeats his crime. This incongruity creates a standard that is likely to serve as a green light for all future mergers to come—no matter how anticompetitive or anti-consumer. Enforcement with a ''bark but no bite'' will limit the effectiveness of merger control as a tool for protecting competition in the U.S. economy.

Second, the PFJ employs weak, regulatory-style conduct remedies for a transaction that, as discussed later, the DOJ Complaint states is devoid of any countervailing efficiencies.[10] Indeed, the antitrust agencies have reserved conduct remedies for cases where they specifically wish to preserve demonstrated efficiencies resulting from vertical integration. The Policy Guide states, for example, that:

> * * * the use of conduct remedies standing alone to resolve a merger's competitive concerns is rare and almost always in industries where there already is close government oversight. Stand-alone conduct relief is only appropriate when a full-stop prohibition of the merger would sacrifice significant efficiencies and a structural remedy would similarly eliminate such efficiencies or is simply infeasible.[11]

Whether this departure from the agency's preferred practice reflects the undue influence of the regulatory culture in the DOWFCC collaborative process or other forces, it is a dangerous line to cross. If the PFJ is not rejected, it is likely to set a precedent for the use of weak behavioral remedies in similarly harmful transactions.

Finally, we can expect that the demonstrated and documented problems with conduct remedies will come to bear on the post-merger conduct of the JV, limiting their effectiveness and exposing competition and consumers to the harms so clearly described in the Complaint. For example, conduct remedies are known to be easy to circumvent. Moreover, such remedies are difficult to enforce and impose undue compliance and monitoring burdens on the Courts. For these reasons, the antitrust agencies themselves have typically disfavored such approaches. Adopting conduct remedies here is unprecedented and effectively transforms the DOJ into a regulatory agency.

III. The Complaint—Competitive Harm Inflicted by the Proposed Comcast/NBCU JV

According to the Complaint, by adding NBCU's content to its existing arsenal of assets, Comcast will have the increased ability to cut off or raise the price of important NBCU programming to rival VPDs. Those distributors include both (1) traditional MVPDs such as rival cable companies, DBS, cable overbuilders, and

[3] U.S. Department of Justice, Proposed Final Judgment, U.S. and Plaintiff States v. Comcast Corp., et al., No. 1:11–cv–00106 (D.C. Cir. January 18, 2011).

[4] 15 U.S.C. § 16(e). See, e .g., United States v. Microsoft Corp., 56 F.3d 1448, 1458 (D.C. Cir. 1995).

[5] U.S. Department of Justice, Complaint, U.S. and Plaintiff States v. Comcast Corp., et al., No. 1:11–cv00106 (D.C. Cir. January 18, 2011).

[6] See Federal Communications Commission transaction team re: Comcast Corporation and NBC Universal. Available *http://www.fcc.gov/transaction/comcast-nbcu.html#record.*

[7] Supra note 5, at para. 2.

[8] United States Department of Justice, Antitrust Division, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES (October 2004), at p. 2. Available *http://www.justice.goviatr/public/guidelines/205108.pdf.*

[9] Id., at p. 4. Citing to United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961).

[10] Supra, note 5, at para. 56.

[11] Id. at para. 20.

telcos, and (2) OVDs.[12] These effects thus capture standard anticompetitive vertical foreclosure or raising rivals costs concerns associated with vertical integration. Comcast/NBCU, however, is a one-sided coin. Vertical efficiencies such as economies of coordination and lower transaction costs that often have a countervailing effect on anticompetitive harms are not present here. The Complaint, in fact, states that the proposed JV ''will not generate verifiable, merger-specific efficiencies sufficient to reverse the competitive harm of the proposed JV.'' [13]

The loss of NBCU as an independent force in the production of programming will inflict particularly serious damage to competition and consumers. For example, the Complaint stresses the importance of NBCU's programming to both MVPDs and OVDs, referring to it as ''vital'' and a ''potent tool'' which, if controlled by Comcast, could be used to disadvantage VPD rivals.[14] Moreover, NBCU content is critical for rival distributors to ''attract and retain customers'' and to ''compete effectively.'' [15] Further, NBCU has been one of the content providers ''most willing to support OVDs and experiment with different methods of online distribution.'' [16] The Complaint's predicted effects of the IV include a diminution of innovation in the relevant market for VPD, fewer choices for consumers, and higher prices for programming.[17]

The likely effect of the JV on OVDs, however, is particularly pernicious. The Complaint notes that Comcast documents ''consistently portray the emergence of OVDs as a significant competitive threat'' [18] and that Comcast has taken steps to prevent its cable customers from cord-shaving or cord-cutting in favor of OVDs.[19] The Complaint characterizes the impact of the JV on emerging competition from OVDs as ''extremely troubling'' given that OVDs are in the nascent stages of development and that they have the potential to ''significantly increase competition'' by introducing programming with new and innovative features, packaging, pricing, and delivery methods.'' [20]

Thus, by cutting off or raising prices of NBCU content to OVDs, the Complaint predicts that Comcast could ''curb'' nascent OVD competition and ''encumber'' the development of ''nascent distribution technologies and the business models that underlie them.* * *'' [21] As a result, Comcast will face less competitive pressure to innovate and the future evolution of OVDs will likely be muted.[22] Given that entry in traditional VPD in Comcast's many service areas is difficult and unlikely, the Complaint states that OVDs' are ''likely the best hope for additional video programming distribution competition in Comcast's cable franchise areas.'' [23] Impairing competition from OVDs would therefore inflict particularly grave harm on consumers.

IV. The Proposed Final Judgment—Weak Conduct Remedies that Fail to Address Competitive Harms and do not Preserve Competition

The breadth and depth of the competitive concerns articulated in the Complaint could, in theory, support a government decision to seek a full-stop injunction that would prevent the parties from consummating the transaction. Absent that, the strength of the Complaint warrants conditions that are far stronger than the conduct remedies that are contained in the consent decree. The contrived world in which the JV is allowed to go forward will be defined by a series of prescriptive and far-reaching prohibitions, requirements, and permissions regarding the JV's conduct, many of which are duplicated in the FCC's order.[24] The DOJ's guidelines for remedies clearly disfavor conduct-based fixes. The logic behind this is well known. For example, the Policy Guide states that:

''A carefully crafted divestiture decree is simple, relatively easy to administer, and sure to preserve competition. A conduct remedy, on the other hand, typically is more difficult to craft, more cumbersome and costly to administer, and easier than a structural remedy to circumvent.'' [25]

The following sections address several flaws in these myriad conditions that make them subject to dispute and arbitration, relatively ineffective, difficult to enforce, and therefore not in the public interest.

A. The PFJ lacks a strong justification for the use of open access remedies, which are inconsistent with the DOJ's guidelines and principles of antitrust remedies.

The core of the PFJ describes what is essentially an open access or fair dealing requirement for how Comcast/NBCU may deal with OVDs that the Complaint stresses are particularly imperiled by the JV. The open access requirement also covers how the JV deals specifically with Hulu, a leading OVD, in which NBCU will be allowed to maintain its ownership interest. The FFJ requires the JV to provide programming to OVDs that is: (1) Economically equivalent to what it provides to rival MVPDs and (2) economically equivalent and comparable to what a rival OVD receives from a peer (i.e., broadcast networks, cable programmers, etc.).[26] The PFJ also requires the JV to provide programming to Hulu comparable to that offered by a Hulu broadcast network owner providing the greatest quantity of programming.[27]

Presumably, the open access requirement is designed to replicate a situation where competitive market forces govern how an independent NBCU engages with OVDs. This is a notoriously difficult task, however, and doing so in a nascent industry is a largely untested and risky endeavor. This regulatory framework will shape how the industry evolves, the pace of innovation, and the choices available to consumers, with uncertain and potentially harmful effects relative to what might happen if NBCU remained independent. The Policy Guide again provides critical insight: ''When used at all in Division decrees, such [conduct] provisions invariably require careful crafting so that the judgment accomplishes the critical goals of the antitrust remedy without damaging market performance.'' [28]

Open access conditions have been favored by regulators in restructuring industries such as electricity, natural gas, and telecommunications. They have also been employed in some cases as conditions required for regulatory approval of mergers.[29] Conduct remedies require ongoing oversight, monitoring, and compliance that regulators are institutionally set up to deal with, but which the courts are woefully not. Such fixes have even stymied regulators, as vertically-integrated firms find loopholes and ways to work around the requirements to engage in the discriminatory behavior that is in their best economic interest. Indeed, the DOJ's Policy Guide identifies this very concern in discussing conduct remedies when it states: ''* * * care must be taken to avoid potential loopholes and attempted circumvention of the decree.'' [30] Perhaps the most notable example is open access in the U.S. electricity industry. Ongoing anticompetitive behavior by vertically-integrated transmission owners has perpetuated successive rulemakings designed to patch or close gaps in conduct requirements.[31]

Rarely have open access conditions been employed as a merger remedy by an antitrust agency. In the merger of America Online/Time Warner, the Federal Trade Commission used an open access requirement to ensure that the merged firm would not foreclose rival internet service providers.[32] However, in comparison to the sweeping open access requirements employed by the DOJ in Comcast/NBCU, it was a tailored remedy and did not involve technologies or markets in the same formative stage as OVDs. In light of the foregoing, the use of open access or fair dealing remedies are inconsistent with internal guidelines and well-established principles of antitrust remedies. As a result,

[12] Supra note 5, at para. 4.

[13] Id., at para. 56.

[14] Id., at para. 4.

[15] Id., at para. 6 and 49.

[16] Id., at para 52.

[17] Id., at para 4.

[18] Id., at para 36 and 46.

[19] Id., at para. 53.

[20] Id., at para. 52.

[21] Id., at para. 54.

[22] Id.

[23] Id., at para. 9.

[24] See Federal Communications Commission, Memorandum Opinion and Order, the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56 (January 20, 2011), Appendix A.

[25] Supra note 8, at p. 8 (internal citation and quotation omitted).

[26] Supra note 3, Sections IV(A) and (B).

[27] Id., Section IV(G).

[28] Supra note 8, at p. 25.

[29] See, e.g., Public Serv. Co. of Col., 58 F.E.R.C. 61,322, at 62,039 (1992) (approving the proposed merger because the parties agreed to provide transmission access to third parties).

[30] Supra note 8, at p. 6.

[31] See, e.g., Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, FERC Stats. & Regs.1 ¶ 31,241, at para. 26.

[32] See Federal Trade Commission, Decision and Order, in the Matter of America Online Inc. and Time Warner Inc., Docket No. C–3989 (December 14, 2000).

there ought to be a strong justification for their use here, which is lacking in the PFJ.

B. The PFJ contains requirements that are defined by subjective terms and therefore invite dispute, arbitration, delay, and expense.

Under the PFJ's open access requirements, programming to be provided by the JV to OVDs must be economically equivalent to that which: (1) It provides to MVPDs and (2) peers provide to OVDs. Economically equivalent means the ''prices, terms, and conditions that, in the aggregate, reasonably approximate'' those on which the JV provides programming to an MVPD.[33] The open access requirement with respect to the programming provided by the JV to an OVD is also required to be ''comparable'' or ''reasonably similar in kind and amount, considering the volume and its value'' to that which an OVD receives from a peer.[34] Moreover, the programming to be provided by the JV to Hulu must be ''comparable'' in terms of ''type, quantity, ratings, and quality'' and provided on ''substantially the same terms and conditions.'' [35]

Any condition containing subjective terms such as ''in the aggregate'' or ''reasonably approximate,'' ''reasonably similar,'' or ''substantially the same'' lacks clarity and requires the application of judgment. The Policy Guide emphasizes that remedies must be clear and understandable:

''Consequently, decree provisions must be as clear and straightforward as possible, always focusing on how a judge not privy to the settlement negotiations is likely to construe those provisions at a later time.'' [36]

and:

''Remedial provisions that are vague or that can be construed when enforced in such a manner as to fall short of their intended purposes can render the enforcement effort useless.'' [37]

The need for clear and precise terms is essential for establishing the starting set of open access conditions that constitute economic equivalency and comparability for the JV's provision of programming. Clarity and precision, however, become particularly important when determining what adjustments to the prices, terms, and conditions for the JV's programming are necessary over the term of the PFJ.[38] The meaning of these terms—which is not specified in the PFJ—will be interpreted differently by the JV and rival OVDs. This will open the door to disputes and arbitration, thus impeding the implementation of the remedies and increasing the costs of monitoring and compliance. Predictability, which is so important for investment decisions that will be critical to this industry's future, is absent. Unpredictability is inherently advantageous to the JV, whose decisions will have to be challenged after the fact, implying a competitive disadvantage in time and expense to competitors.

C. The PFJ's requirements are based on static benchmarks that will undoubtedly change in an emerging and dynamic OVD industry but for which the PFJ envisions no adjustments or flexibility.

Key elements of the PFJ's open access requirements are defined by benchmarks that will undoubtedly change as the nascent OVD industry develops over the time the PFJ is in effect. But the consent decree does not explain or account in any way for how such benchmarks should be adjusted or modified as a result of changes in a dynamic industry. There are three major areas where the open access requirement suffers from this problem.

First, the PFJ states that economic equivalence will be determined, in part, by differences in the: (1) Advertising revenues earned through MVPD versus OVD distribution and (2) value of programming received by the JV versus through a peer.[39] As a preliminary matter, how these important revenue and value differences should be interpreted is not explained in the PFJ, making it a ''black box'' calculation that will inevitably lead to disputes. More important, advertising revenue and value are particularly dynamic concepts in a nascent OVD market. As the market develops over the seven years the PFJ is in effect, we could expect differences in these parameters to change as a result of how OVDs and their business models evolve and how the MVPD segment of the VPD market responds to changes in competition from OVD.

Second, the open access condition makes the provision of video programming by the JV to OVDs contingent on a current set of OVD relationships. For example, provision of programming by the JV is contingent on what the OVD already receives—both in terms of the category of peer (e.g., broadcast network, cable programmer, or production studio), choice of specific peer, and number of peers.[40] In regard specifically to Hulu, the PFJ requires the JV to continue to provide programming on ''substantially the same'' terms and conditions that were in place on January 1, 2011.[41] Again, as the OVD industry develops and matures, we would expect change not only in the programming that Hulu buys, but the types of peers with which Hulu deals.

Third, the PFJ's open access requirements state that the provision of programming by the JV to OVDs that is also provided to MVPDs may be conditioned on the ability of the OVD to ''satisfy reasonable quality and technical requirements for the display and secure protection of the JV's programming.'' [42] As in many other instances, the PFJ does not state how such quality and technical requirements are to be determined. More importantly, the consent decree does not make provisions for how quality and technical standards might change as the OVD industry develops and matures.

Static benchmarks for setting the JV's programming terms for OVDs generally, and for Hulu specifically, take no account of how such entities will develop over time in an emerging OVD market and how their programming needs will change as a result of changes in the market. The DOJ's Policy Guide identifies this as a distinct downside of conduct remedies when it states: ''* * * even where 'effective,' efforts to regulate a firm's future conduct may prevent it from responding efficiently to changing market conditions.'' [43] Tying the conduct of the firm to parameters that are rooted in existing market conditions in a dynamic market situation runs the risk of shaping or constraining how competition in a nascent OVD market develops. Such conditions are ill-founded and likely to be ineffective, time consuming, and expensive. The PFJ is devoid of any provisions that specifically address the importance of this aspect of emerging competition from OVDs that the Complaint so clearly states is at risk.

D. Delegation of NBCU's voting rights in Hulu will compromise important voting dynamics regarding management and governance, potentially affecting how the most important OVD develops.

Hulu is one of the leading and most innovative OVDs. Rather than require the divestiture of Hulu, in which NBCU has a 33 percent interest, the PFJ will allow the JV to retain its ownership share, subject to a number of restrictions. The PFJ states, among other things, that the JV must delegate its voting and other rights in Hutu ''* * * in a manner and amount proportional to the vote of all other votes cast by other Hulu owners * * *'' [44] The effect of this provision will be to proportionately ''scale-up'' the voting shares of the other Hulu owners—ABC, Fox, and Providence Equity Partners. In other words, each remaining owner will assume a portion of NBCU's voting rights, in proportion to its ownership share.

This remedy will potentially affect decision-making that has made Hulu an innovative OVD and shaped competition in that segment of the VPD market. For example, under the PFJ, each non-NBCU Hulu owner will have a larger vote in matters relating to governance and management. This is akin to NBCU giving its proxy to the remaining three owners in proportion to their respective ownership shares. As a preliminary matter, the downsides of proxy voting are well-known, which deprives the decision-making process of the independent, informed judgment of the non-voting member. The scaling-up approach also changes the dynamics of consensus-building involving Hulu governance and management decisions. For example, before the JV, NBCU needed the vote of any one of the remaining three owners to gain a majority. But unless the remaining three owners all teamed up, they could not gain a majority. Post-JV, any of the three owners with adjusted voting shares would gain a majority if they team up with only one other owner. The adjustment of voting shares under the PFJ condition will soften the internal ''give and take'' among the Hulu owners necessary to reach consensus on key decisions.

[33] Supra note 3, at Section IV(A).

[34] Id., at Section IV(B).

[35] Id., at Section IV(G).

[36] Supra note 7, at p. 6.

[37] Id., at p. 5.

[38] Supra note 3, at Section IV(B)(4).

[39] Supra note 3, at Section IV(A)(1).

[40] Id., at Section IV(B)(5).

[41] Id., at Section (IV)(G).

[42] Supra note 3, at Section IV(A)(6).

[43] Supra note 7, at pp 8–9.

[44] Supra note 3, at Section IV(D).

The critical question therefore is whether the scaling-up of voting shares envisioned by the consent decree will preserve the dynamics that have been responsible for Hulu's innovative strategy and growth. This dynamic has, in turn, played a fundamental role in shaping competition in the OVD segment of the VPD market. The scaling-up condition will likely not protect competition (as is required for the PFJ to be in the public interest) relative to a scenario that preserves the pre-JV structure of voting on Hulu governance and management matters. Such an approach would require NBCU to divest its interest in Hulu to a viable third party buyer.

E. Short of the DOJ suing to stop the transaction, no set of remedies will prevent the IV from controlling how rivalry develops between two major, important systems—the delivery of programming through cable television and cable modem HSI.

As described in the Complaint, the adverse effect the IV will have on competition can be viewed through a slightly different lens. In its comments to the FCC, for example, the AAI characterized the competitive problem as one in which the JV will increase Comcast/NBCU's control over two major programming and distribution systems—cable television and cable modem HSI. Such control allows the JV to potentially forestall inter-system rivalry, by monitoring and controlling the development, pace of innovation, accessibility, quality, positioning, and viability of the two systems.[45] Indeed, the Complaint highlights the fact that Comcast has taken actions to control how consumers make choices between programming delivered via the two competing systems.[46]

Absent the JV, market forces would be the determining factor in how the delivery of programming to consumers via the two rival systems evolves over time. In light of the flaws in the PFJ's conditions and requirements described above, there is a high probability that the JV will exercise significant control over how the OVD system develops relative to the cable television distribution system, to the detriment of competition and consumers.

V. Conclusion

Based on the foregoing analysis, the AAI respectfully suggests that the weaknesses in the remedies set forth in the PFJ are ill-matched to the competitive harms outlined in the Complaint. The Court should not give DOJ ''a pass'' in its review of this merger. There is little in the PFJ that is likely to preserve effective competition in the relevant markets, or to prevent the consumer harm that will flow from the impairment of competition. We understand that this Court is not authorized to re-write the consent decree, but it can note the availability of modifications to which the parties might agree in order to meet the public interest test.

First, rather than risking the inevitable disputes and abuse that open access remedies invite, independent management and governance of the JV should be considered. Walling off management decisions on the programming side of the JV from decisions on the distribution side will help prevent foreclosure of OVDs. Under this condition, all officers and directors of the JV should be unaffiliated with either of the JV owners. Second, NBCU should divest its ownership interest in 1-lulu to an independent party that will exercise full voting rights and inject the competitive discipline that is an essential part of corporate decision-making. That Hulu is a key player in the OVD industry stresses the importance of divestiture as the only way to ensure that it does not suffer anticompetitive harm at the hands of the JV and that it remains a viable entity, unfettered by the constraints of the JV.

Respectfully Submitted,

Diana Moss, Vice President and Director
American Antitrust Institute
P.O. Box 20725
Boulder, CO 80308
phone: 720–233–5971
e-mail: *dmoss(a)antitrustinstitute.org*
web: *www.antitrustinstitute.org*

[45] Supra note 2, at pp. 4, 6, and 17.

[46] Supra note 20.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, State of California, State of Florida, State of Missouri, State of Texas, State of Washington

Plaintiffs,

v

Comcast Corp., General Electric Co., and NBC Universal Inc.

Case: 1:11-cv-00106
Judge: Richard, J. Leon

TUNNEY ACT COMMENTS OF THE CONSUMER FEDERATION OF AMERICA AND CONSUMERS UNION

Commenters

The Consumer Federation of America (CFA) [1] and Consumers Union (CU) [2] participated actively in the review of the Comcast-NBCU merger at the Federal Communications Commission (FCC) and met with the team reviewing the merger at the Department of Justice (DOJ). CF/CU have decades of experience in examining mergers and public policy in the sectors affected by this merger—multichannel video programming distribution (MVPD), Internet access, and media markets.[3]

The Competitive and Consumer Benefits of the Proposed Final Judgment

In testimony before the Senate over a year ago, the Consumer Federation of America and Consumers Union pointed to critical moments in the recent history of the multichannel video market when policy makers had failed to effectively protect competition and consumers.

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

Our initial take was that the merger should be rejected, but the FCC and the DOI have put together a set of conditions and enforcement measures that we believe will protect consumers and promote the public interest. The Proposed Final Judgment in the instant proceeding, combined with the conditions included in the Memorandum and Order transferring various broadcast and cable license issued by the Federal Communications Commission (FCC),[4] mark an important milestone in the quarter of a century long struggle to protect consumers from the abuse of market power that was unleashed by the Cable Deregulation of 1984. These comments review both key conditions in the Proposed Final Judgment and the FCC Memorandum and Order, in so far as it affects the online video market. We state the obvious, when we point out that if the DOI had locked the merger, none of the public interest benefits that flow from the Memorandum and Order would be realized.

The post-merger marketplace with the conditions will be friendlier to Internet consumers and more supportive of video competition than if the FCC and the DOI

[1] The Consumer Federation of America is one of the nation's oldest and largest consumer groups. Formed in 1968, CFA is an association of some 300 non-profit organizations, working to advance the consumer interest through research, education, and advocacy. Dr. Mark Cooper is Director of Research at CFA.

[2] Consumers Union of United States, Inc., publisher of Consumer Reports, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 7.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support. Patti! P. Desai is communications policy counsel for Consumers Union, working out of the Washington, DC office. Parul manages the organization's advocacy efforts on cable, wireless, telephone, and Internet policy. She is also responsible for working closely with Federal policy makers on telecommunications and media law and policy.

[3] Testimony of Dr. Mark Cooper, Director of Research, Consumer Federation of America on behalf of Consumer Federation of America, Free Press and Consumers Union before the Commerce Committee, U.S. Senate, Regarding, ''Consumers, Competition and Consolidation in the Video Broadband Market,'' March 11, 2010, p. 11.

[4] In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees Memorandum opinion and order, NB Docket No. 10–56, January 20, 2011.

would have blocked the merger in three critical ways:

• Consumer access to broadband,
• distributor access to consumers, and
• the availability of programming on the Internet platform.

The Proposed Final Judgment adopts a framework that we have advocated for decades and presented in comments to the FCC and testimony to the Congress. It defines the markets carefully to assess the potential for the abuse of market power by the post-merger firm.

• It rests its concern on the local market power of the cable operators, including high current market shares protected by substantial barriers to entry.
• It defines the product market as the professional video programming industry, brushing aside the claim that all manner of short form content competes with long-form programming content.
• It identifies online video distribution (OVD) as an important nascent model that competes with the incumbent multichannel video program distributors (MVPD).

It identifies two specific types of anticompetitive conduct that would be rendered much more likely as a result of the merger.

• The withholding of must have content from potential or actual competitors could weaken competition.
• The provision of broadband Internet access service, as the key choke point and the indispensible input for OVD delivery of service, can be used to dramatically undermine competition through restriction on the availability of capacity, management of traffic flows, and/or pricing.

The Proposed Final Judgment addresses the vertical leverage problem that this merger poses.

Consumer Access to Broadband Internet Access Service

Consumers, particularly low income consumers, will have better access to broadband Internet access service.

• The program to increase broadband adoption among low income households will not only add millions of subscribers to the Broadband network in Comcast's service territory, it will serve as a model for the nation as we move into the implementation of the national broadband plan.
• Standalone broadband will be available at a price that cannot increase for three years.
• The DOJ ensures that service available to consumers will be required to be of sufficient quality to support OVD competition.

Distributor Access to the Broadband Internet

Distributors of video content over the Internet will have better access to broadband consumers.

• The network neutrality conditions recently implemented are secured for the largest broadband Internet access provider, regardless of the outcome of legislation or litigation.
• A minimum capacity adequate to support video distribution will be available for competing video is guaranteed.

The Flow of Programming Onto the Internet Platform

The availability of programming for Internet distribution will be better.

• NBC will be required to match the best practices in making content available by independent programmers that are similar in size.
• The contracting practices of Comcast and NBC will be constrained with respect to Internet distribution.
• The DOJ consent decree and the FCC order lay the foundation for ensuring that the Internet TV enjoys the Communications Act protections from the abuse of market power.
• The DOJ has tackled the problem of vertical integration more effectively than has been the case in decades.

Enforcement

These conditions will be enforceable and the enforcement mechanisms have been strengthened in two ways.

• The Federal Communications Commission has outlined improvements in its complaint process to accelerate dispute resolution and give.
• Most importantly, the Department of Justice will have the ability to enforce a consent decree.

These two improvements will work hand in hand. Since Comcast will have a strong incentive to avoid being hauled into the antitrust court, it will have an incentive to bargain in good faith and resolve disputes at the FCC.

Progress and Challenges

In our view the proposed final judgment accomplishes the immediate goals of the merger review and then some. Consumers and competition will be better off as a result of the judgment than if the merger had been denied. That does not mean there is not more work to be done. Monitoring and enforcement will have to be vigilant and aggressive. The conditions in the Proposed Final Judgment are not static by any stretch of the imagination. They seek to ensure that Comcast-NBC affords the same treatment to OVD competitors that MVPD and OVPD participants secure in the marketplace. Thus, the DOI will have to closely monitor the development of competition in this space to enforce.

Moreover, the complaint lays the basis for broader Section I or Section II action against other operators in the PVDI/MVPD sector. The Department has now established the product and geographic market definitions, the structural sources of horizontal market power and vertical leverage, and the behaviors that would constitute anticompetitive conduct that seeks to defend or extend the market power of the cable/broadband access companies.

Mark Cooper Consumer Federation of America 1620 I St., NW., Suite 200 Washington, DC 20006

Parul Desai Consumers Union 1101 17th Street, NW., Suite 500 Washington, D.C. 20026

From: Noelle Levesque
To: AIR–Antitrust—Internet
Subject: Comcast takeover of NBC Universal
Date: Tuesday, January 18, 2011 6:42:45 PM

DO NOT APPROVE THIS!!!!!!!!!!
THIS IS GOING TO STIFLE COMPETITION!!!!!!!!!!
CORPORATION TAKING OVER OTHER CORPORATIONS IS NOT GOOD FOR THE AMERICAN PEOPLE!!!!!!!!!!
NBC UNIVERSAL NEEDS TO BE BROKEN UP INTO SMALLER COMPANIES!!!!!!!!!!

Noelle

From:
To: ATR–OPS Citizen Complaint Center
Subject: Comcast + NBC = The antithesis of LAW + ECONOMICS + JUSTICE FOR THE AMERICA = CAPITULATION AND BETRAYAL of the PEOPLE
Date: Sunday, January 23, 2011 9:12:06 PM

ANTITRUST DEPARTMENT

What a disgrace. To permit further media concentration by an industry pariah. I'll never forget Brian Robert's father (Ralph Roberts) sitting behind him at a hearing before a Congressional Committee, as if this were a small Father and Son operation representing the American Dream in a festival of generosity to the American PEOPLE, rather than showing it for what it is, a cannibalistic, predatory mega-oligopolistic American Nightmare. This merger is anathema to competition and the spirit of Antitrust, Justice, the Protection of the American People from concentration in industries where there are few competitors, high barriers to entry, anticompetitive behaviour by the would be acquisitionor, predatory behaviour, and all of the earmarks for the disapproval of a merger.

You caved.

You are fodder for the lobbyists.

You completely gave away the store, burned down the barn, and salted the earth that is the landscape of the American Media System.

Shame.

In my ultimate disgust and revulsion you have capitulated to Corporocracy.

Already they (COMCAST) have trotted out 2 new cable channels to broadcast reruns, [which they are running on another channel I MONETISE their new channels by running commercials on the reruns, have failed to fix their ISP so that they can handle Expose' and Spaces on Safari. Their abuse, exploitation, anticompetitive behaviour, and predation will undoubtedly continue unabated, thanks to a Government which is apparently of the PERSONS, by the PERSONS and FOR THE PERSONS.

Too bad PEOPLE couldn't flood you with Lobbyists the way COMCAST obviously did, or maybe you would have followed the Law and repudiated the merger. Oh Well, another victory for EVIL.

I hate to engage in hyperbole, and ad hominem, but in this case, I'm afraid the comments are warranted,

YOU ARE A DISGRACE TO THE SPECIES,

SINCERELY

Chris Muse, ESQ

From: Sent: Thu 2/3/2011 6:58 PM
To: ASKDO3
Cc:
Subject: USDO1 Comments
Attachments:

I believe that the recent FCC Ruling to allow Comcast and NBC to Merge is extremely Anti-Consumer in nature and should be looked at Very Closely!!! In that Ruling the FCC requires that Comcast:

''Offers stand alone broadband Internet access services at reasonable prices and of sufficient bandwidth so that customers can access online video services without the need to purchase a cable television subscription from Comcast'' Who is going to Oversee this requirement? As far as I have seen through personal experience; Comcast makes it very difficult to order Internet Service as a ''Stand Alone'' Service and charges a ''Premium Rate'' to do so!!

As a private Citizen and Consumer; I am Very Much Against this merger being allowed to go forward! I have expressed this to the FCC during their Hearing Period as well as to my Congressmen. Please Stop this Merger from taking place.

Thank You.

David Neckolaishen

From: denna
To: ATP–Antitrust—Internet
Subject: Comcast
Date: Tuesday, January 18, 2011 3:39:28 PM

I don't understand a lot about antitrust laws, but I don't understand how giving Comcast the power to take over one of the 3 major networks in the US can possibly be good for anyone but Comcast and those whose hands are in their pockets. This move definitely does not inspire trust that our government is looking out for the little guy/gal. It is hard to believe that this event could occur with out bribery and promises of special favors being a factor. It seems so obvious to the average American that this kind of monopoly can only limit our choices and empty our pockets. So many Americans fear Socialism because they think it would give the government more control over our lives. How much more control could that be, if our lawyers and judges allow such an obvious takeover of our what we are allowed to see on out televisions and computer screens and how much it will cost. This is way too much power for one company to have and frankly it scares me and eats away at my trust in my government. It makes me want to cry in despair when more profit and power are given to companies by a government that claims it is for the people and by the people'

Denna Teece

From:
To: ATR–OPS Citizen Complaint Center
Cc: ATR–Antitrust—Internet
Subject: THE LEFT OVER BUSH FEDERAL ATTORNEYS NEED TO GO
Date: Monday, April 04, 2011 3:00:18 PM

From: Ira Warren Patasnik
To: Eric H. Holder, JR

Dear Attorney General Eric H Holder:

It seems to me that after all the six big monopolies running radio, the justice department did not understand the size of the NBC Comcast merger.

Evidently you and the Attorneys in the Justice Department do not comprehend what defines a Monopoly. The only logical reason is that when George W Bush was president, he fired all the attorneys and hired these corporate thug attorneys from the Global Monopolies that now own all the American Corporations that are Foreign owned.

The reason that you can not enforce the Anti Trust laws, Wall St Laws and Banking Laws is because the left over attorneys from the Bush Administration are still in the Justice Department. A Justice Department that let wall street sell off all of Corporate America to foreign ownership so that we don't build anything here anymore because we don't own any of our companies. Your justice department let Exxon Mobil merge under the Bush administration owned by the same Rockefeller Family that Teddy Roosevelt broke up as standard oil in 1911. Now it is time to take back ownership of American Companies and break up EXXON Mobil and all these monopolies.

Wall St sold off US Steel to Japan who disassembled the factory and reassembled it in Japan and shut down Pittsburgh. Wall St has liquidated the United States and sold us out to foreign ownership and the justice department did nothing about it. You need to go after all the criminals on Wall St. You need to break up all the Monopolies. You can not do that with the corrupt attorneys left over from the Bush Administration as they are funded and paid for by the global monopolies and their lobbyist.

The real estate people dropped the values of the house down to 25% of original value, while the banks kept the inflated mortgages at their original value. The values of all mortgages should be cut to 25% of the original loan. If the property is only worth 25% of its original value then the mortgage is only worth 25% of its original value. Cutting the value of the mortgage makes more sense than foreclosing on homeowners. When these properties go to foreclosing then to a short sale, why are you using tax payer dollars to pay off the rest of the mortgage when the value of the house dropped. Since the Homeowner lost the value of the house, so should the bank. If you put a $100,000 in stock and it value drops to $20,000 and you sell you loose $80,000. It should work the same way for the banks. Using tax payer dollars in short sales is a ponzi scheme for the banks.

The scum on Wall St keeps using speculators to drive up the price of oil. When the per barrel price drops, the price of gas keeps going up.

You have done nothing to investigate the speculators on Wall Street or the corrupt oil lobbyist.

Global Oil Monopolies own all American Oil Companies thanks to Wall St. The first thing they do is stop drilling in this country. Then deliberately cause spills to get us to stop drilling. The reason for these accidents is that the Bush Administration took away the EPA from all safety regulation on oil rigs and BP has had violations since 2002 on their rigs.

Now the Food and Drug Administration no longer checks on the safety of food imported from other countries. Now our food supply is getting polluted.

Haliburton is doing fracking in Northern Penn and Southern Upstate NY. They put 1,000 toxic chemicals in the ground to get the natural gas out of the ground and in turn pollute the water supply causing cancer in people and animals in the area. Again you attorneys did nothing.

It is amazing all the damage the global monopolies, lobbyist, Wall St. and the banks have done to this country and because of the crooked paid off attorneys in the justice department that are leftovers from the Bush Administration, the ones he put in to the justice department as Federal Prosecutors when he first became president, you department has done nothing to go after the monopolies lobbyist Wall Street and the Banks.

We don't own anything here. We don't build anything here. All because you don't enforce the Anti Trust laws to break up monopolies, Banking laws that separate savings from commercial from investment and prevent Wall St from breaking up American Companies and selling them off to foreign ownership. No foreign company should own more than 49% of an American company and since Wall St committed all this fraud, we have the right to take back these companies. All American Companies should be building our products here not overseas as Wall St has caused.

The time has come that all the Federal Attorneys that Bush put into the Justice department leave because they are all paid for and funded by global monopolies. It is obvious that they don't understand what a monopoly is when they allowed NBC and Comcast to merge. Today 6 monopolies run the broadcast media and the Justice department has done nothing about that. We have judges on the supreme court who think a corporation is a person and should buy political adds. That means that while Haliburton is polluting the water supply they can buy an add and tell you that is good for you health. Again, Republican Scum Denis Scalia on the supreme court has no idea what a monopoly is.

It is bad enough the Republicans messed this country up with Deregulation. However, these laws are still on the books and you need to go after the monopolies, the banks and Wall St.

The first thing you need to do is get rid of all that corrupt Republican Garbage of Federal Attorneys funded by the global monopolies that Bush put into the Justice Department.

Reagan Screwed this country with Deregulation. Bush Cheney and Rumsfeld set up 9–11 and committed treason. They let the oil companies run this country for 8 years. Let Mobil merge and have Haliburton owning a pipe line from Saudi Arabia through Iraq into Kuwait and out into Aphghanistan that only gives us 2% of its oil while our kids protect Dick Cheney's company pipe line. While all of Alaska's oil is sold to Japan.

Perhaps you forgot that George Bushes Grandfather was Prescott Bush an American Industrialist who helped fund Adolph Hitler to power and was arrested with 14 other Americans for trying to over through the US Government. What kind of Justice Department does not go after all these criminals and prosecute an administration who committed treason to make a rich oil industry richer.

It is pretty sickening when the Justice Department lets us get taken over by foreign monopolies and lets criminals in the banking industry and Wall St get away with liquidating the United States and selling us off to foreign ownership and does not do a thing about it because we still have the federal attorneys left over from the Bush Administration who allowed these foreign monopolies rob this country blind. It is time for these federal attorneys to be fired and for the Justice Department to address all these issues.

It would be nice if you send me some kind of response as to when you will fire these corrupt left over federal attorneys form the Bush Cheney Administration. Just remember if Jeb Bush, N Sanders Saul and Katherine Harris never rigged the election, Bush and Cheney never would have been in the white house and 9–11 and the Pentagon hit by a missile never would have happened. You know it and I know it. Now how about firing these corrupt bastards who have no clue as to what defines a monopoly

Sincerely,

Ira

Ira Warren Patasnik

From: Bill Dunn
Sent: Sunday, March 20, 2011 7:12 PM
To: Bhat, Shobitha
Subject: Re: Media Conglomerates, Giant Banks, rapid business consolidation.

I read most of the rules applicable to the ComCast DOS and DONTS—It reminds me that one should let the fox into the hen house and tell him not to touch the chickens. The restrictions will be challenged and challenged, much will change and the only people that will really know what is going on is the lawyers, the company and you. By the time the consumer realizes what has happened it will be too late for them. SO MY QUESTION—WHY LET THE FOX IN THE HEN HOUSE IN THE FIRST PLACE? HOPEFULLY THE SAME THING WILL NOT BE REPEATED WITH THE AT&T AND T–MOBILE DEAL!!!!!!!!!!

[FR Doc. 2011–14629 Filed 6–13–11; 8:45 am]

BILLING CODE 4410–11–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Finance Committee of the Board of Directors; Notice

DATE AND TIME: The Finance Committee of the Legal Services Corporation will meet telephonically on June 16, 2011. The meeting will begin at 11 a.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street, NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from members of the public present for the meeting.

CALL-IN DIRECTIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "MUTE" your telephone immediately.

* * * * *

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of agenda
2. Approval of the minutes of the Committee's meeting of April 15, 2011
3. Public Comment regarding LSC's fiscal year 2013 "budget mark."
   - Presentation by Robert Stein on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defense (SCLAID)
   - Presentation by Don Saunders on behalf of National Legal Aid and Defender Association
   - Comments by other interested parties
4. Consider and act on other business
5. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 9, 2011.

Victor M. Fortuno,

Vice President, General Counsel & Corporate Secretary.

[FR Doc. 2011–14746 Filed 6–10–11; 11:15 am]

BILLING CODE 7050–01–P

MARINE MAMMAL COMMISSION

Classified National Security Information

[Directive 11–01]

AGENCY: Marine Mammal Commission.

ACTION: Notice.

SUMMARY: This notice sets out the establishment of the Marine Mammal Commission's (MMC) policy on classified information, as directed by Information Security Oversight Office regulations.

FOR FURTHER INFORMATION CONTACT: Catherine Jones, Administrative Officer, Marine Mammals Commission, (301) 504–0087.

SUPPLEMENTARY INFORMATION: The following is the text of MMC's Directive 11–01 of October 25, 2010:

Directive 11–01 October 25, 2010

1. *PURPOSE.* This directive implements the requirements of Executive Order 13526, "Classified National Security Information," and 32 CFR part 2001, "Classified National Security Information," by establishing Marine Mammal Commission policy on classified information.

2. *REFERENCES.*

a. Executive Order 13526, "Classified National Security Information," December 29, 2009

b. 32 CFR part 2001, "Classified National Security Information," June 25, 2010

3. *SCOPE.* This directive applies to all Marine Mammal Commission employees.

4. *BACKGROUND.* The Marine Mammal Commission is a micro agency of 14 full time permanent employees. Three employees have current Secret clearances and one staff has a Top Secret clearance. These employees require clearances because they attend meetings where classified information may be discussed. None of the Commission staff have approved Information Security Oversight Office (ISOO) original classification authority. The Commission does not originate, receive, or store classified documents.

5. *POLICY.* It is Commission policy to ensure the safeguarding of national security information in accordance with established rules and regulations. The Commission will:

a. Designate a senior official to direct and administer the Commission's security program

(1) The senior official will oversee the Commission's program established under this directive and institute procedures consistent with directives issued pursuant to this order to prevent