

21 June 2010

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: MB Docket No. 10-56  
In the Matter of Applications of Comcast Corporation, General Electric  
Company and NBC Universal, Inc., For Consent to Assign Licenses or Transfer  
Control of Licenses

Summary: The assigning and transferring of licenses made necessary to facilitate the purchase of NBC Universal by Comcast should be permitted to proceed without attaching any special policy conditions or policy requirements. The merger is a logical consequence of the convergence of the media and communications industries, and it should be permitted to succeed or fail based on the response of consumers in the marketplace. Because merger conditions can become precedent, policy should be made through a deliberative policy process involving all participants in the marketplace and not through the exceptional circumstances and vulnerability of a merger review process.

Dear Commissioners:

This letter is in response to the FCC's merger review "In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., For Consent to Assign Licenses or Transfer Control of Licenses," MB Docket No. 10-56.

The Institute for Policy Innovation (IPI)<sup>1</sup> is a public policy think tank, recognized by the IRS as a 501(c)(3) non-profit organization. Within our several areas of policy work IPI has been involved with in depth evaluation of the communications marketplace for a number of years. Specifically we have worked on policy development with regards to opening, expanding and preserving markets for video, voice and Internet access.

We have found that where government at all levels – federal, state, local or other political subdivision – has engaged in reducing, streamlining or eliminating regulation that a discernable benefit to the marketplace has occurred. More specifically these actions led to an increase in capital formation, resulting in the creation of jobs; a noticeable increase in product and service development and deployment; a corresponding increase in consumer choice; and a reduction in overall consumer price.

Additionally, we are troubled by the tendency to make policy through the merger review process—in other words, to extract policy commitments from companies

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<sup>1</sup> These comments express the views of Bartlett Cleland and Tom Giovanetti. The views expressed do not necessarily represent the views of the IPI Board of Directors, staff, or any others associated with the Institute for Policy Innovation.

while they are at the mercy of a regulatory agency during a merger review or license transfer review. Special interest groups and supposed “consumer” groups have become adept at using such reviews as opportunities to further *their* agendas and achieve *their* policy goals through the unique and exceptional processes available to them during a review. Some, in fact, seemingly spring to life only to shake down those in a vulnerable position. This is policy making under duress, and these policy concessions inevitably obtain the power of precedent, even though they were obtained without anything resembling a deliberative policy process.

Policy affecting the entire economy or entire industries should be set through a deliberative process, such as a regulatory rulemaking process, or through the legislative process. Policy should not be made under exceptional circumstances such as a merger review.

We therefore urge the Federal Communications Commission to consider the merger on its merits, and to resist the temptation to apply special conditions to the merger of the organizations, regardless of the arguments by special interests.

### **Reject Subjective Policy-making**

Today those who compete in the communications and media marketplaces look increasingly similar.

For over 100 years “telecommunications” referred to two-way voice-grade analog wire-line service. But today the reality is that new applications and technologies make prior stovepipe definitions and regulatory approaches irrelevant and anti-consumer.

With convergence, communications is not just voice communication. As analog technology gave way to digital, voice service has merged with all other forms of data transmission. Today communications is the transmission and distribution of multiple forms of data (voice, text, video and more) through a variety of means. Most providers now carry multiple data formats over all three technologies. “Telephone” companies are offering digital video, cable companies are offering voice communications, satellite companies are offering Internet access. And while wireless companies also offer all three, everyone is looking to mobile access as a necessity. Indeed, today almost everyone is in the “bit business.”

Convergence in communications continues to bring extensive competition between new and old firms using very different technologies—transmission technologies may differ but the “content” sent across them is indistinguishable. For example, wireless competes with wire-line; 13 percent of consumers use wireless alone with no traditional phone service, 25 percent consider wireless their main voice communication device and mobile phones are computers offering text messaging, games, Internet access, and video, just as a laptop or personal computer do.

Consumers use various technologies and applications for communications, and do not distinguish among them except to choose the most convenient service and best value. Federal, state and local governments must understand this fact when making policy or providing oversight. Understanding this paradigm is the key to long-term industry and technological growth.

At the same time, the content industry continues to look increasingly diverse, diffuse, and different. Not many years ago the average American could expect to receive three broadcast networks, a handful of radio stations and a local paper. These were communication industry choices for news and entertainment.

Today the choices are nearly limitless. New sound systems for the home brag of over 100,000 stations, various video sites on the Internet hold millions of videos, broadcast stations have grown, written news is available across the Web from thousands of sources no longer constraining readers to one editorial page for the town. In addition the growth of citizen news and opinion has exploded on the scene offering tens of thousands more editorial voices.

The news and entertainment industry is nothing like it was even a handful of years ago. The competition and challenges have had manifold increases. Even how and where the public consumes media has changed, especially with the ability to be mobile with their content and consume it on a variety of devices.

These trends point to one policy conclusion – that the communications and media marketplaces should be seen as a whole, not a collection of various sub industries defined by means of transmission or as a group of companies defined by a business model or history.

Simply put, regulatory policy should be technology neutral.

Particularly from the point of view of the consumer, a policymaker's goal should be neutrality, so that technologies and companies succeed or fail in the marketplace, not through the success or failure of their lobbying efforts. But neutrality should not be achieved by applying pervasive regulation to new technologies.

And so in a case where one company is under review the temptation to layer on new regulations that only impact the one company may be present, but it should be immediately rejected for the damage it would cause in the marketplace. Discriminatory rules that are opportunistically applied are best viewed as only as harmful to the marketplace, depriving consumers of the best potential products and services.

Convergence, and especially so in the case of communications and media where in both the traditional continues to be radically altered, makes old legal and regulatory distinctions irrelevant. Regulations based on invalid distinctions will fail in their purpose and do real economic harm. More damaging then are regulations which would apply to only one company out of the myriad of those competing in the same space.

## **Review and Debate is Critical**

A fundamental tenant of good policy making is that of review and debate. Almost predictably rules made without critical review result in bad policy. Moreover, extremely subjective rules, such as those applied to only one entity affecting the reality of only that entity, are the worst rules to make because they most dramatically bias the marketplace towards, or away, from

individual participants in the marketplace and deprive consumers of one more competitor who is able to bring the best price, products and service to bear.

In an environment such as a merger review, any rules crafted to only apply to the new entity would be rules that otherwise would not, or could not, be imposed. That is to say that only in such an environment would the free speech of critique and analysis be effectively quashed, that hearings and debate would be all but completely shunted. In this environment only the worst limitations could be set, and only the most ill considered rules layered into existing regulation.

If there is a compelling case for new regulations, then those potential government rules should be vetted through a system that allows for broader public discourse, through hearings, via comments, and in the press. In other words via a rulemaking procedure not as the extraction of regulatory rents from an otherwise functioning market.

### **Freedom to Fail**

The Comcast-NBCU makes sense to us, but most important, it makes sense to the parties involved and to their shareholders. Whether or not it is a success is a decision for consumers and shareholders, not for government. In fact, the freedom to fail is a fundamental element in an economy that learns.

If successful, the new business models which will be developed will provide an example for others to follow as they compete and provide even better, and a greater variety, of products for consumers. If a failure, the lessons learned will provide warning signs for other parties considering a similar action.

In summation, in your review of the proposed merger, you must resist any temptation to apply conditions specific to the new entity. Such discriminatory application of government rules and conditions drafted and implemented without proper reviews, input and proceedings would only serve to burden one competitor in a vibrant free market, lessening the advantages brought to consumers. The harm caused by the likely unintended consequences of discriminatory conditions and regulations placed upon any single company would outweigh any potential or assumed benefit of such regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Bartlett D. Cleland', with a stylized flourish at the end.

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