Comcast/NBC Universal Joint Venture Receives Regulatory Approval

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The Department of Justice Antitrust Division and the Federal Communications Commission today conditionally approved a joint venture between Comcast Corp. and General Electric Co.'s subsidiary NBC Universal Inc.
The joint venture, which was announced in December 2009, combines Comcast–the nation's largest cable operator and Internet service provider–and NBC Universal's cable networks, filmed entertainment, and television programming, including the NBC broadcast network. It will be managed and 51 percent owned by Comcast, with GE holding 49 percent ownership.

Comcast's control of the NBC Universal programming raises antitrust concerns, since Comcast's rivals could face difficulties obtaining access to valuable content now controlled by the joint venture.

The Antitrust Division and five state attorneys general filed a civil antitrust lawsuit in the federal district court in Washington, D.C., alleging that the transaction would allow Comcast to limit competition from its cable, satellite, telephone, and online competitors. At the same time, a proposed consent decree was filed that, if approved by the court, would resolve the competition concerns of the U.S. Department of Justice, as well as California, Florida, Missouri, Texas, and Washington.

In a press release, announcing the settlement, Christine Varney, Assistant Attorney General in charge of the Justice Department's Antitrust Division, said that the Antitrust Division and FCC "consulted extensively to coordinate their reviews and create remedies that were both consistent and comprehensive."

According to the Department of Justice, the proposed consent decree and an FCC order require the joint venture to make available to online video distributors (OVDs), like Netflix, the same package of broadcast and cable channels that it sells to traditional video programming distributors. In addition, the joint venture must offer an OVD broadcast, cable, and film content that is similar to, or better than, the content the distributor receives from any of the joint venture's programming peers. These peers are NBC's broadcast competitors (ABC, CBS and FOX), the largest cable programmers (News Corp., Time Warner Inc., Viacom Inc. and The Walt Disney Co.), and the largest video production studios (News Corp., Sony Corporation of America, Time Warner Inc., Viacom Inc. and The Walt Disney Co.). The FCC order requires the joint venture to license NBC Universal content to Comcast's cable, satellite, and telephone competitors.

The settlements go beyond requiring that the joint venture make its cable channels and programming available to rivals. The FCC is establishing a commercial arbitration process for resolving disputes between the joint venture and rival multichannel video programming distributors–such as cable television operators and satellite television services–about prices, terms, and conditions for licensing Comcast and NBC Universal programming.

Comcast is also prohibited from retaliating against any broadcast network (or affiliate), cable programmer, production studio, or content licensee for licensing content to a competing cable, satellite or telephone company, or OVD, or for raising concerns to the Justice Department or the FCC. In addition, Comcast is prohibited from unreasonably discriminating in the transmission of an OVD's lawful network traffic to a Comcast broadband customer.

In addition, according to an FCC news release, the joint venture will increase local news coverage to viewers; expand children's programming; enhance the diversity of programming available to Spanish-speaking viewers; offer broadband services to low-income Americans at reduced monthly prices; and provide high-speed broadband to schools, libraries and underserved communities, among other public benefits.

In a joint Comcast/GE statement released on January 18, Comcast Chairman and Chief Executive Officer Brian L. Roberts said: “We are pleased that many of the voluntary commitments we proposed beginning the day the transaction was announced and continuing throughout the process have been incorporated into the FCC’s Order.”

FCC Commissioner Michael J. Copps issued a dissenting vote with respect to the transfer of GE licenses to Comcast, saying in a separate statement that the transaction “confers too much power in one company’s hands.” Copps went on to say: “Given the market power that Comcast-NBCU will have at the close of this deal over both programming content and the means of distribution, consumers should be rightfully worried.”

U.S. Senator Al Franken (Minnesota) also spoke out against the approval. “With approval of this merger, the FCC has given a single media conglomerate unprecedented control over the flow of information in America,” said Sen. Franken. “This will ultimately mean higher cable and Internet bills, fewer independent voices in the media, and less freedom of choice for all American consumers,” he added in a January 18 statement.

FCC Commissioners Robert M. McDowell and Meredith Attwell Baker concurred with the license transfers but said in a separate statement that the transaction was “only the most recent example of several problematic FCC merger proceedings that have set a trend toward more lengthy and highly regulatory review processes that may discourage future transactions and job-creating investment.”

The complaint, proposed final judgment, competitive impact statement, and other documents in *United States, State of California, State of Florida, State of Missouri, State of Texas, and State of Washington v. Comcast Corp., General Electric Co., and NBC Universal, Inc.*, Case No. 1:11-cv-00106, are available here on the Justice Department’s website.