February 4, 2010

Hon. Rick Boucher, Chairman
U.S. House Subcommittee on Communications,
Technology, and the Internet
2125 Rayburn House Office Building
Washington, D.C. 20515

Hon. Cliff Stearns, Ranking Member
U.S. House Subcommittee on Communications
Technology, and the Internet
2370 Rayburn House Office Building
Washington, D.C. 20515

Re: Comcast and NBC Universal Merger

Dear Chairman Boucher and Ranking Member Stearns:

DISH Network would like to thank you for holding a hearing that examines the impact of the proposed $30 billion merger between Comcast and NBC Universal. Merging together the largest cable company, a massive broadband infrastructure, and a content conglomerate should cause alarm. It will result in a giant with brute strength capable of crippling competition and causing injury to consumers.

Going down this perilous road endangers competition in the video distribution marketplace. But that's not all. Broadband will be as important to our lives in the future as electricity is today. Education, healthcare, energy management, home security and countless other applications are moving to the Internet. Such a behemoth will touch almost every aspect of our lives.

The stakes are too high to allow a Comcast-NBCU merger to proceed as the applicants propose. Once a merger is complete, there is no "second chance" to get it right. If the government allows this merger to proceed, it must be only after meaningful, tough conditions are firmly in place.

<u>Tough Conditions</u>

Comcast's proposed merger conditions provide no real comfort. Indeed, Comcast failed to include even a single network neutrality principle in its list of proposed conditions. Comcast should not be permitted to squeeze out the competition by consolidating its market power across industries. Direct Broadcast Satellite providers, for example, offer stand-alone video service. Thus, their subscribers must obtain broadband connections from companies like Comcast. Video distribution companies are increasingly combining traditional video services with Internet-delivered video on demand ("VOD") that can be delivered to consumers via broadband. The public good requires an open and non-discriminatory broadband pipe to ensure that vibrant competition remains in the video marketplace and that consumer choice does not suffer.

Given this incestuous relationship, the potential for anti-consumer, discriminatory behavior in a Comcast-NBCU merger abounds. Incredibly, Comcast believes that it was appropriate for it to covertly block certain Bit-Torrent use over its network with no notice to consumers. That conduct is but a small sample of what Comcast is capable of doing in the future. For example, Comcast could price its bundled services in such a way that stand-alone providers could not compete. Likewise, Comcast would have the incentive to prioritize its own NBC content or service offerings, like VOD or Fancast XFINITY TV, over VOD services sent through Comcast's "pipe" to a DISH Network subscriber. To protect against this type of harm, Comcast, at a minimum, should be required:

- **To refrain from discriminating against any competitive services when content is delivered over its broadband network;**
- **To provide broadband at wholesale rates to other service providers that want to offer a competitive bundle of services; and**
- **To offer to consumers a stand-alone, low-cost broadband service with robust bandwidth.**

In addition to broadband-related conditions, protections are needed to ensure that Comcast will no longer be able to combine content and distribution in a way that stymies competition. One need look no farther than the city of Philadelphia where Comcast is headquartered to see that when it owns the local sports team, arena, sports network, and cable system, it will go to remarkable lengths to deny its competitors, like DISH Network, access to "must have" programming. Therefore, instead of the symbolic gestures proposed by Comcast, the merged company should, at minimum, be:

- **Prevented from evading program access rules by delivering affiliated content (including broadcast channels) to consumers through alternative means such as IP networks;**
- **Required to submit to mandatory "baseball-style" arbitration with interim carriage if negotiations over affiliated content break down, so that consumers can continue to watch their favorite shows; and**
- **Required to offer all affiliated content to its competitors on a stand-alone basis, and not be allowed to tie any of its programming together.**

DISH Network is the third largest pay-TV provider in the U.S., and arguably the last major independent distributor unaffiliated with any flagship content providers. DISH Network has experienced first-hand Comcast's tactics for thwarting competition through denying competitors must-have programming. Comcast should not be permitted to combine its current power in the traditional video and residential broadband markets with NBC-Universal's content, and leverage that position into the emerging broadband video and applications markets. If the door is left open for mischief, consumers, competition, and the vibrancy of American media will suffer.

Very Truly Yours,

s/R.Stanton Dodge

R. Stanton Dodge
Executive Vice President & General Counsel