Department of Justice

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JUSTICE DEPARTMENT ALLOWS COMCAST-NBCU JOINT VENTURE TO PROCEED WITH CONDITIONS

Companies Agree to License Programming to Online Distributors and Comply with Anti-Retaliation Provisions and Open Internet Requirements

WASHINGTON – The Department of Justice announced today a settlement with Comcast Corp. and General Electric Co.'s subsidiary NBC Universal Inc. (NBCU) that allows their joint venture to proceed conditioned on the parties' agreement to license programming to online competitors to Comcast's cable TV services, subject themselves to anti-retaliation provisions and adhere to Open Internet requirements. The department said that the proposed settlement will preserve new content distribution models that offer more products and greater innovation, and the potential to provide consumers access to their favorite programming on a variety of devices in a wide selection of packages.

The Department of Justice's Antitrust Division, along with five state attorneys general, filed a civil antitrust lawsuit today in U.S. District Court for the District of Columbia, to block the formation of the joint venture, alleging that the transaction would allow Comcast to limit competition from its cable, satellite, telephone and online competitors. At the same time, the department and the states filed a proposed settlement that, if approved by the court, would resolve the competitive concerns in the lawsuit. The participating states are: California, Florida, Missouri, Texas and Washington.

"The Antitrust Division worked in close cooperation and unprecedented coordination with the Federal Communications Commission (FCC) to reach a result that fully protects competition, allowing businesses to bring new and innovative products to the marketplace, providing consumers with more programming choices," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The conditions imposed will maintain an open and fair marketplace while at the same time allow the innovative aspects of the transaction to go forward."

Today, the FCC also issued an order approving the proposed transaction subject to conditions, some of which are similar to those in the department's settlement. The department and FCC consulted extensively to coordinate their reviews and create remedies that were both consistent and comprehensive. Consistent with the department's complaint, the FCC order requires the joint venture to license NBCU content to Comcast's cable, satellite and telephone competitors, making it unnecessary for the department to impose the same requirement.

The department's complaint alleges that Comcast's traditional and online rivals need access to NBCU programming, including the NBC broadcast network, to compete effectively against Comcast. The joint venture would have less incentive to distribute NBCU programming to Comcast's video distribution rivals than a stand-alone NBCU, and could cause Comcast's rivals and their customers to face higher prices for that content. The department said that the joint venture, as originally proposed, may have substantially lessened competition for video programming distribution in major portions of the United States. The department also said that the market would experience lower levels of investment, less experimentation with new models of delivering content and less diversity in the types and range of product offerings.

Under the proposed settlement and the FCC order, the joint venture must make available to online video distributors (OVDs) 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.).

In the event of a licensing dispute between the joint venture and an online video distributor, the department may seek court enforcement of the settlement or permit, in its sole discretion, the aggrieved online video distributor to pursue a commercial arbitration procedure established under the settlement. The FCC order also requires the joint venture to license content to OVDs on reasonable terms and includes an arbitration mechanism for resolving disputes. If timely arbitration is available for resolution of disputes under the FCC order, the department ordinarily will defer to the FCC's arbitration process to resolve such disputes. The FCC order also allows Comcast's traditional competitors, such as satellite and telephone companies, to invoke arbitration at the FCC to resolve program access and retransmission consent disputes.

The settlement also includes other relief aimed at ensuring that Comcast cannot evade the provisions designed to protect competition. For example:

- Comcast may not retaliate 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 department or the FCC;

- Comcast must relinquish its management rights in Hulu, an OVD. Without such a remedy, Comcast could, through its seats on Hulu's board of directors, interfere with the management of Hulu, and, in particular, the development of products that compete with Comcast's video service. Comcast also must continue to make NBCU content available to Hulu that is comparable to the programming Hulu obtains from Disney and News Corp;

- In accordance with recently established Open Internet requirements, Comcast is prohibited from unreasonably discriminating in the transmission of an OVD's lawful network traffic to a Comcast broadband customer. Comcast must also maintain the high-speed Internet service it offers to its customers by continuing to offer download speeds of at least 12 megabits per second in markets where it has upgraded its broadband network. Additionally, Comcast is required to give other firms' content equal treatment under any of its broadband offerings that involve caps, tiers, metering for consumption or other usage-based pricing; and

- Comcast may not, with certain narrow exceptions, require programmers or video distributors to agree to licensing terms that seek to limit online distributors' access to content.

Comcast is a Pennsylvania corporation headquartered in Philadelphia. It is the largest video programming distributor in the nation, with approximately 23 million video subscribers. Comcast wholly owns national cable programming networks (*e.g.*, E! Entertainment, Golf, Style), has partial interests in other networks (*e.g.*, MLB Network, PBS KIDS Sprout), and has controlling interests in regional sports networks. Comcast also owns digital properties such as DailyCandy.com, Fandango.com and Fancast, its online video website. In 2009, Comcast reported total revenues of $32 billion.

GE is a New York corporation with its principal place of business in Fairfield, Conn. GE is a global infrastructure, finance and media company. GE owns 88 percent of NBCU, a Delaware corporation, with its headquarters in New York City. NBCU is principally involved in the production, packaging and marketing of news, sports and entertainment programming. NBCU wholly owns the NBC and Telemundo broadcast networks, as well as 10 local NBC owned and operated television stations (O&Os), 16 Telemundo O&Os and one independent Spanish language television station. In addition, NBCU wholly owns national cable programming networks – Bravo, Chiller, CNBC, CNBC World, MSNBC, mun2, Oxygen, Sleuth, SyFy and USA Network – and partially owns A&E Television Networks (including the Biography, History and Lifetime cable networks), The Weather Channel and ShopNBC. NBCU also owns Universal Pictures, Focus Films and Universal Studios. In 2009, NBCU had total revenues of $15.4 billion.

As required by the Tunney Act, the proposed seven-year settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 7000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may enter the proposed settlement upon finding that it is in the public interest.

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