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NEWSLETTER

Comcast and NBC Universal Complete Their Merger to Form Comcast-NBC Universal

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On January 28, 2011, Comcast Corp. (Comcast) and NBC Universal, Inc. (NBC-U) completed their merger to form a new entity, Comcast-NBC Universal (C-NBCU). As a result, the nation's largest multichannel video programming distributor is also the owner of one of the four largest broadcast networks. Accordingly, the merger was closely scrutinized by the Federal Communications Commission (FCC) and the Department of Justice (DOJ).

The FCC and the DOJ determined that the combination of Comcast and NBCU would increase the incentive and ability of the merged entity to discriminate in the provision of its video content to competing distributors and in the carriage of non-affiliated services, and would threaten harm to the traditional statutory objectives of promoting diversity and localism in broadcast television and video programming distribution. Thus, the regulators imposed multiple conditions (some of which are now binding "voluntary commitments" offered by C-NBCU) affecting myriad aspects of the companies' businesses. With some exceptions, most of these conditions will remain in effect for seven years.

Of particular interest to the media industry, both the DOJ and the FCC placed substantial emphasis on promoting and preserving access to online video as a potential competitor to broadcast and cable distribution models. To that end, the conditions require C-NBCU, as both a multichannel video programming distributor (MVPD) and a programmer, to make its content available to online video distributors (including Hulu) as well as directly to consumers through the NBC website and video on demand. To safeguard the interests of broadcasters and network affiliates, the FCC prohibited Comcast from discriminating against non-NBCU stations in retransmission consent

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negotiations and from replacing the signals of NBC affiliates with same-day linear feeds of NBC Network programming during retransmission consent disputes. Program access disputes between C-NBCU and other MVPDs over access to C-NBCU broadcast, regional sports and cable network programming will be subject to a modified baseball-style arbitration process.

Also of note for the media industry is what the DOJ and the FCC did not require. While the FCC reiterated that Comcast cannot discriminate among video programmers "in the selection, price, terms or conditions of carriage" based upon their affiliation or non-affiliation, it did not provide a new remedy for alleged violations. Further, the FCC declined requests to require Comcast to place channels in the same channel neighborhood as C-NBCU-owned channels providing related programming, limiting such condition to news or business news channels and even then only if Comcast places "a significant number or percentage" of such channels "substantially adjacent to one another."

The complete list of DOJ conditions is available here.

The FCC's Order, including the FCC's conditions, is available here.