

To get NBC, Comcast still has persuading to do

January 24 2010, By JOELLE TESSLER , AP Technology Writer

(AP) -- Before Comcast Corp. can transform the entertainment business by taking control of NBC Universal, it must convince Washington that the plan won't hurt rivals and consumers. And the promises the cable company has made so far don't impress opponents who want federal regulators to attach strict conditions to the deal.

To show that it would not abuse its control over NBC's broadcast networks, cable TV channels and movie studios, the nation's largest cable provider is making nine pledges, including a vow not to move the [NBC](#) broadcast network to cable and a commitment to expand public interest programming.

But consumer groups and competitors say Comcast is offering token concessions that don't address their biggest fears about the NBC combination.

"Comcast is either promising to do what it was already planning to do or simply what it is required to do by law," says Corie Wright, policy counsel at the public interest group Free Press. "I don't think Comcast can just tie a bow around the status quo and call it a public interest commitment."

Comcast is quick to defend its position. "We think we have made significant and meaningful commitments that are designed to ensure the deal is pro-consumer," says Comcast Executive Vice President David Cohen.

Now it is up to Washington to decide. The Justice Department and the [Federal Communications Commission](#) are examining Comcast's plans to buy a 51 percent stake in NBC Universal from [General Electric Co.](#) for \$13.75 billion. Those reviews could last up to a year. Congressional hearings are also scheduled for February.

The government will scrutinize the implications of allowing a company with nearly 24 million cable customers and nearly 16 million broadband subscribers to take control of so much popular programming.

Comcast already owns cable channels, including E! Entertainment and the Golf Channel. It also has a controlling interest in the Philadelphia 76ers and Flyers, and its SportsNet Philadelphia channel carries Flyers, Phillies and Sixers games.

NBC Universal would give it the NBC and Telemundo broadcast networks; 26 local TV stations; popular cable channels such as CNBC, Bravo and Oxygen; the Universal Pictures movie studio and theme parks; and a stake in Hulu, which distributes TV programming online.

This week, Comcast and NBC will file paperwork with the Justice Department to comply with the Hart-Scott-Rodino Act, an antitrust law governing mergers and alliances. It will also file a public interest statement with the FCC, which must approve the transfer of NBC's broadcast licenses.

Those filings will provide more detail on Comcast's public interest commitments. Already, though, two key elements are clear: Comcast promises to keep providing free, over-the-air broadcasts of the NBC and Telemundo networks, and it pledges to extend the FCC's "program access rules" to the local NBC and Telemundo stations it would acquire.

The program access rules are designed to ensure that satellite TV and

other rival video services can carry channels owned by cable companies. The rules require cable companies to make their channels available to rivals on equal terms.

Comcast says the program access rules do not automatically apply to local NBC and Telemundo broadcast programming and insists that its offer to extend the rules is therefore significant.

However, other FCC rules already prohibit broadcast stations from reaching exclusive distribution agreements and require them to negotiate in good faith.

And either way, competitors fear Comcast will still ratchet up prices for - or even withhold - must-have national and local programming, including NBC broadcasts and regional sports, says Matt Polka, head of the American Cable Association, which represents smaller cable companies.

For one thing, Comcast's rivals note, even as Comcast is pledging to expand the program access rules, it is seeking to overturn those same rules in court.

What's more, many rivals believe the program access rules are not very meaningful anyway. Bringing a complaint to the FCC is slow and costly and the commission doesn't enforce the rules aggressively, they say.

What Polka wants - and what Comcast so far has not offered - is a commitment to submit to arbitration in disputes and a pledge not to pull a broadcast signal during negotiations. Polka also wants Comcast to promise not to require rival cable and satellite TV services to carry niche channels in order to get access to must-have programming.

"Comcast's pledges don't address the harms that will result from this

unprecedented consolidation of distribution and content," says Susan Eid, senior vice president of regulatory affairs for DirecTV Inc.

People who run small, independent cable channels fear that Comcast could stop carrying channels that compete with its own, or relegate rival channels to premium tiers with fewer subscribers.

Comcast is promising to add new two new "independently owned and operated" channels to its digital lineup each year for three years. But that's not enough for Charles Herring, president of WealthTV, an independent channel focused on lifestyle and entertainment programming.

Two channels a year on a network that carries hundreds is "inadequate and insulting," Herring says. Comcast also has not defined what it means by "independent" channels. Herring fears the company could count programming owned by other big media companies.

WealthTV has filed a complaint with the FCC accusing Comcast of discrimination for refusing to carry its programming even as it carries a similar channel partially owned by the cable giant. An administrative law judge at the FCC has rejected WealthTV's claims and WealthTV is appealing that decision to the full commission.

Comcast's concessions don't address other key fears about the deal, says Stifel Nicolaus analyst Rebecca Arbogast. Those include worries that the company will have too much power in local markets where it would own both the NBC affiliate and the dominant cable system, and concerns that Comcast would begin charging for its media content online.

Public interest groups also complain that Comcast has offered few details on some of its other pledges, including promises to preserve local news and public affairs shows and to make programming for children

and Hispanics more widely available.

This week's filings could fill in some of the blanks. Meanwhile, Concept Capital analyst Paul Gallant says it is unfair to simply dismiss all of Comcast's pledges as meaningless.

The company's promise not to abandon over-the-air television is particularly important to NBC affiliate stations, Gallant noted, given that broadcast advertising is eroding as audiences spend more time with [cable TV](#) and the Internet. Broadcasters have begun to study alternative business models, including an end to the traditional network-affiliate structure and possibly relying solely on cable and satellite for distribution.

"To have a major cable operator have a stake in the success of broadcasting and say it is committed to playing a constructive role in negotiations between broadcasters and cable operators is very significant," says Rick Cotton, executive vice president and general counsel of NBC Universal.

Now it will be up to federal regulators to decide whether Comcast's promises go far enough. If Washington isn't satisfied, [Comcast](#) may have to come back with another offer.

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Citation: To get NBC, Comcast still has persuading to do (2010, January 24) retrieved 27 April 2024 from <https://phys.org/news/2010-01-nbc-comcast.html>

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