**QUESTIONS FOR THE RECORD ADDRESSED TO MR. ZUCKER**

**FROM MEMBERS OF THE SENATE JUDICIARY COMMITTEE**

**FROM THE HEARING ENTITLED "THE COMCAST/NBC UNIVERSAL MERGER: WHAT DOES THE FUTURE HOLD FOR COMPETITION AND CONSUMERS?"**
**HELD FEBRUARY 4, 2010**

**<u>Senator Al Franken</u>**

***1) <u>INTERNET VIDEO</u>***
*The Internet is the future of the media business, and what happens to online programming will help determine the future of show business. Currently, NBC's shows are freely available to Internet viewers on websites such as Hulu.*

*a) If this merger goes through, will you guarantee that the company won't remove NBC's or Comcast's current shows from the Internet?*

NBCU is proud to be a pioneer in providing high-quality news, sports and entertainment programming to viewers over the Internet. Through NBC.com and other NBC Universal websites, fans have been given easy access to a wealth of information and video material for their favorite entertainment programs on an ad-supported basis. Viewers interested in news can watch popular full-length news shows like Nightly News with Brian Williams or Meet the Press through MSNBC.MSN.com, also on an ad-supported basis. The sites even contain a tool that allows viewers to embed portions of these shows into their own blogs or websites. Similarly, sports fans have access through NBCSports.MSNBC.com to abundant information and video content on an ad-supported basis. Extraordinary access to Olympic material was provided on-line at NBCOlympics.com in a hybrid form, with large amounts being available on an ad-supported basis, and some material being included in the cable subscription package.

NBCU is also proud to be a founding partner of the website Hulu.com. We noted that the naysayers who confidently predicted that "old media" companies would fail miserably on the Internet have lavished Hulu with praise for its wealth of content and ease of use.

Today, NBCU programming is available over the Internet in a variety of ways – including ad-supported, subscription-based, and downloadable for a per program fee to view or to own. NBCU will continue to experiment with different business models for different programming to respond to consumer and market demands.

In a business that has seen changes that were unimaginable just a few years ago, and with the only certainty being that more rapid and vast changes are in store, it would be irresponsible to guarantee that anything will forever remain static. That said, however, we emphasize what was said repeatedly in the testimony: NBC Universal remains committed to providing viewers with the ability to access the programs that they want, when and where they want, under a sustainable business model that provides a reasonable return on investment. And specifically, NBC Universal has no plans to remove the kind of shows currently offered over the Internet on an ad-supported basis – generally, programs that have previously been on over-the-air broadcast television.

*b) Can you <u>also</u> guarantee that the merged company won't provide them only to the company's cable subscribers?*

We are strong supporters of the "TV Everywhere" concept. We believe that consumers who pay for subscription television services, such as those offered by cable, satellite or similar MVPD services, want to be able to access online the programming they subscribed to and have paid for through their MVPD services. TV Everywhere would give them this valuable bonus option at no additional cost.

As noted above, we will work with MVPDs to offer NBCU cable programming to subscribers, and NBCU has no plans to remove the kind of shows that we currently provide over the Internet on an ad-supported basis – generally, programs that have previously been on broadcast television.

*c) If this merger goes through, will you guarantee that the company will place any future shows it owns on the Internet?*

As set forth in the answer to 1(a) above, NBC Universal currently has a number of different business models for Internet exhibition of different types of programming. NBCU plans to continue to seek the widest possible distribution of its content on the internet under a sustainable business model that provides reasonable return on investment. NBCU has no plans to remove the kind of shows currently offered over the Internet on an ad-supported basis – generally, programs that have previously been exhibited on ad-supported broadcast television.

*d) Can you <u>also</u> guarantee that the merged company won't provide them only to the company's cable subscribers?*

Please see answer to 1(b), above.

***2) <u>NET NEUTRALITY</u>***

*Comcast and NBC Universal have argued that FCC program carriage rules will make sure that the company can't favor its own programming—but no such rules exist for Internet video. To make matters worse, a Comcast case currently in front of the D.C. Circuit Court of Appeals could prevent the FCC from being able to <u>make</u> such Internet regulations in the future.*

*a) Do you promise not to discriminate against other companies' programming on the Internet, even if the FCC never promulgates net neutrality regulations?*

Question 2(a) is more appropriately answered by Comcast, which has provided an answer to this question to the Committee.

*b) If the merger goes through and there are no net neutrality regulations in place, would you agree to binding merger conditions forbidding you from favoring your own programming on your own Internet video websites for five years?*

*c) Would you agree that these merger conditions would also bind any future incarnations of your companies resulting from future mergers, acquisitions or corporate restructuring?*

*d) If the FCC does not or cannot make net neutrality regulations, would you support legislation that extends program carriage rules to the Internet?*

*e) If the FCC does not or cannot make net neutrality regulations, would you urge any trade group to which you belong to support legislation that extends program carriage rules to the Internet?*

First, I would note that the online video marketplace is in its infancy -- but competition is healthy and very robust. For example, NBCU' s share of online video is just 0.7% (measured by videos viewed). When we combine with Comcast, which has a 0.3% share of online viewing, we will have not much more than 1% of online viewing. Hulu (in which we are co-investors with three other partners) has just 4.0% of online video. By way of comparison, Google sites represent over 50% of online viewing.

NBCU offers programming on our own web site, NBC.com. Consumers expect that they will have access to NBCU content on this site and come to it for that reason. By definition, then, NBC.com favors NBCU content and imposing a merger condition that would prohibit that would make no sense. If consumers want CBS content, for example, they are able to go to the CBS web site, CBS.com. Given the nature of this very dynamic and competitive marketplace, it is also difficult to see why there is a need for a merger condition to forbid any future incarnation of the company from favoring our own programming on NBC.com for five years. It is not clear to me what problem it would address, and such a condition or rule would not serve consumers. If NBC.com had to also offer programming from every other content provider who sought to put their content on NBC.com, I think it might cause NBC to refrain from hosting the site in the first place. For the same reasons, I also am not ready to suggest that there is a need for legislation in this area.

***3) <u>TERRESTRIAL LOOPHOLE</u>***

*In January, the FCC tightened the "terrestrial loophole," which allowed cable companies to withhold certain programming, especially regional sports programming, from its competitors. Comcast has opposed closing this loophole.*

*a) If this merger goes through, will you promise not to appeal the FCC's order through litigation in court?*

*b) If this merger goes through, will you promise not to appeal the FCC's order within the FCC?*

*c) If this merger goes through, will you urge any trade group to which you belong* <u>*not*</u> *to appeal the order, either through litigation in court or within the FCC?*

Questions 3(a) through 3(c) are more appropriately answered by Comcast, which has provided answers to these questions to the Committee.