Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter Of	)	
	)	
Application of Comcast Corp., General Electric Company, and NBC Universal Inc., to Assign Licenses or Transfer Control of Licenses	))))	**MB Docket No. 10-56**

Petition to Deny of Greenlining Institute

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SUMMARY

Comcast Corporation, General Electric Company, and NBC Universal (collectively the "Applicants") are seeking to merge Comcast's cable and content holdings with NBC Universal's vast content library and production facilities into a newly formed joint venture. In order to do so, they must receive approval from the FCC for the transfer of various licenses. However, before the FCC may approve the transaction, the Applicants must have met their burden of showing that the transaction serves the public interest. Applicants have not met this burden because they have failed to show that the transaction will promote diversity, localism, and competition.

Over the last 20 years, media consolidation has squeezed out independent viewpoints and sources of information, particularly those reflecting diverse communities. Today, only five companies own 90% of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70% of the prime time television market share. These same companies also own over 85% of the top 20 Internet news sites. The proposed merger would exacerbate this already dire situation.

With respect to the public interest goal of diversity, the proposed merger will eliminate diverse ownerships, viewpoints and content. It will do so by discouraging minority ownership of television stations by increasing consolidation of the media market, which is a key factor in reducing minority owned media. Since the FCC relaxed its ownership regulations the number of diverse owners has plummeted and today, the number of minority-owned media outlets is vastly out of step with the increasing minority population in this country. The proposed merger will make it even more difficult for minority owned television stations to enter and survive in this already consolidated market.

Moreover, the diversity of viewpoints will be reduced as Applicants have displayed a poor track record of protecitng minorities. A related concern is source diversity, in other words ensuring that content from a number of different independent sources is broadcast. Here, it will be reduced because the merged entity, with its vast content library from both Comcast and NBCU will have no incentive to purchase independent content. Finally, Comcast must show a greater commitment to economic

development in diverse communities, specifically by increasing its supplier diversity. Unless and until these diversity concerns that this merger raises are addressed, the FCC should not permit this merger to proceed.

Applicants have also failed to demonstrate the proposed merger will benefit localism. Localism imposes on broadcasters the duty to ensure the needs of the communities they serve are met. This will not be the case here because the merger will result in a reduction of local television newscasts, which are integral to ensuring an informed electorate who can participate fully in representative democracy. Moreover, the proposed transaction will reduce community responsive programming, severely alter the network-affiliate relationship and hinder the dissemination of effective and timely emergency-disaster warnings. Finally, the risk of reduction in localism, due to Comcast and NBCU's history of reducing local content based on purported efficiency concerns, is unacceptably high. This history is tipified by NBC Universals gutting of Telemundo operations in 2006 and Comcast's repeated consolidation of markets resuling in massive layoffs. The FCC must hold official public hearings to understand the needs of communities across the nation that will be affected by the prosed transaction. Only then will it be able to craft appropriate remedies to the various harms. Unless and until it does so this merger must not be approved.

Applicants have also failed to show that the media giant resulting from this merger will not harm competition in the video programming, video distribution, and online video markets. If the merger is approved, Comcast could utilize its vast wealth of programming to raise prices and eliminate rivals in the distribution market. Unfortunately, the current statutory and regulatory scheme is unable to prevent these harms, as demonstrated by Comcast's history of anti-competitive activities in the video distribution market. In addition, the proposed merger would harm the video programming market by increasing media conglomeration, further eliminating competition and variety in media production. Comcast will also be able to increase its domination of the broadband market, thereby frustrating the universal access and affordability objectives of the National Bradband Plan. Finally, the proposed merger will throttle the burgeoning online video market, curbing online competition and innovation.

Not only are these harms real and significant, they are not mitigated or remedied by Applicants' sixteen "Voluntary Public Interest Commitments" which accompanied their filing with the FCC. We note Applicants have also promulgated additional "Diversity Commitments," however these are neither binding nor enforceable and should not be considered during the FCC's review. Applicants' so-called Commitments are vacuous and merely a ploy to avoid regulatory scrutiny.

Diverse communities that stand to be the most harmed by this merger must be given an opportunity to express their concerns. Congress has demonstrated a willingness to hear from the public, already holding five public hearings, while the FCC has not held one public hearing and has announced merely a public forum. Public hearings on this merger, where FCC decision makers receive the voice of the public, are a must. Otherwise, the transaction should be denied

ARGUMENT

I. INTRODUCTION.

On January 28, 2010 Comcast Corporation ("Comcast"), General Electric Company ("GE"), and NBC Universal, Inc. ("NBCU" and, collectively with Comcast and GE, the "Applicants") jointly submitted applications to the Federal Communications Commission ("FCC") seeking to transfer various licenses to a limited liability company, structured as a joint venture between Comcast and GE.[1] Specifically, the joint venture entity would retain the NBCU name, would be managed by Comcast, and would be would be 49 percent owned by GE and 51 percent owned by Comcast, who also holds various right of first refusal and redemption rights enabling it to obtain 100 percent ownership.[2] Thus, while styled as a joint venture, this transaction will, in effect, be a merger between NBCU and Comcast.

A. Statement of Interest.

The Greenlining Institute ("Greenlining") hereby files this Petition to Deny the Applicants' Applications, pursuant to Section 309(d)(I) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(l), and the FCC's Public Notice of March 18, 2010.[3] Greenlining is a non-profit organization dedicated to empowering communities of color and other disadvantaged groups. Started in 1993 by the Greenlining Coalition, Greenlining seeks to protect consumer interests while partnering with some of the largest companies in America to better serve this country's multi-ethnic and underserved communities. The Greenlining Coalition is perhaps the oldest and most diverse coalition of Asian/Pacific Islander, Black, and Latino community leaders. Beyond ethnic diversity, the coalition represents diverse constituents that include faith-based organizations, minority business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets. Members of the Greenlining Coalition reside in communities served by Comcast and NBCU, and many are subscribers to their services. In fact, communities in California comprise two of the

[1] *Applications for Consent to the Transfer of Control Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Applications and Public Interest Statement* (filed Jan. 28, 2010) ("Application").
[2] *Id*. at 1, 12, 14-15
[3] FCC Public Notice, DA 10-457 (March 18, 2010) (Seeking Comment on Applications of Comcast, GE and NBCU; Establishes Pleading Cycle), *amended by* FCC Public Notice, DA 10-636 (May 5, 2010) (Announcing Revised Pleading Schedule).

top ten and four of the top thirty designated market areas.[4] As this petition will demonstrate, the proposed merger would directly and adversely impact the communities the Greenlining Institute represents. Therefore, Greenlining has standing to oppose the Applicants' joint application.[5]

B. This Merger Will Have Significant Horizontal Effects in the Relevant Television Markets.

Applicants allege that the "proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms."[6] While there are vertical aspects of this merger; it also has significant horizontal implications. Within the television market, there are three distinct tiers or submarkets, as outlined in Appendix II. Due to this unique market composition, "ownership structure at *any point in the chain* of *either* [the content production, programming network, or distribution] market can influence outcomes like the quantity and quality of television programming provided to households."[7] Comcast and/or NBCU are involved in all levels of the television market: they both produce content, they both own program networks, and they are both involved in the distribution market, NBC on the broadcast side and Comcast on the cable side. Hence, the proposed transaction can be expected to have a significant impact both vertically and horizontally.

II. THE PROPOSED MERGER IS NOT IN THE PUBLIC INTEREST.

Before the FCC may grant an application for the transfer of control of any authorization and licenses it must find that the transfer will "serve the public interest, convenience and necessity."[8] This statutory requirement is imposed to promote the interest of American citizens and includes the "well settled Communications Act values of competition, diversity, localism,

[4] THE NIELSON COMPANY, LOCAL TELEVISION MARKET UNIVERSE ESTIMATES: COMPARISONS OF 2008-2009 AND 2009-2010 MARKET RANKS 1 (2009), *available at* <http://en-us.nielsen.com/etc/content/nielsen_dotcom/en_ us/home/measurement/tv_ research.mbt.39577.RelatedLinks.13293.MediaPath.pdf>. These markets are as follows: (2) Los Angeles with 5,659,170 viewers; (6) San Francisco-Oakland-San Jose with 2,503,400 viewers; (20) Sacramento-Stockton-Modesto with 1,404,580 viewers; and (28) San Diego with 1,073,309 viewers.
[5] Affidavits of Orson Aguilar, Executive Director of Greenlining Institute and Joey Quinto, Publisher of the California Journal for Filipino Americans are attached hereto as Appendix I.
[6] Application, *supra* note 1, at 2.
[7] Gregory S. Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming*, Federal Communications Commission Media Ownership Study #3, p. 6 (July 23, 2007).
[8] The Communications Act, 47 U.S.C. § 301(d) (2009).

and a deep respect for the First Amendment."[9] Moreover, the Applicants "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest."[10]

Here, Applicants have not met their burden of demonstrating that the proposed transaction will be in the public interest. Specifically, the transaction does not promote competition, diversity, or localism and Applicants' "Voluntary Public Interest Commitments" are insufficient to mitigate the potential harms.

A. The Increased Consolidation Resulting from the Proposed Merger Will Eliminate Diverse Ownership, Viewpoints and Content.

The television and cable industry plays a significant role in today's society and has become much more than a provider of entertainment. Americans depend heavily on media to learn about local and national news, participate in civic issues, gather information pertinent to their communities, and gain exposure to diverse viewpoints that exist within and outside of their communities. Therefore, it is of utmost importance that today's media reflects this country's changing demographics and cater to more than just a handful of perspectives.

While the concept of diversity may not seem overly complex, it is actually a nuanced term that is difficult to define. Indeed, diversity can mean different things to different people and varies depending on the context in which it is used. Therefore, to follow precedent and provide consistency, this petition will follow the FCC's approach to diversity. The FCC approaches diversity from various perspectives, such as (i) ownership diversity; (ii) viewpoint diversity; and (iii) source diversity.[11] This petition will demonstrate how the proposed merger will have an adverse impact on the FCC's principles of diversity and others forms of diversity, such as workforce and supplier diversity.

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[9] *Hearing on Consumers, Competition, and Consolidation in the Video and Broadband Market Before the S. Comm. on Commerce, Science, and Transportation* 111th Cong. 2 (2010) (statement of Julius Genachowski, Chairman of the FCC) *available at* <http://commerce.senate.gov/public/?a=Files.Serve&File_id=948a15c8-1698-4321-b30c-cb6b3b9b08bb>.

[10] *DirectTV- Liberty Media Order*, 23 FCC Rcd 3265 ¶ 22. *See also*, *SBC-AT&T Order*, 20 FCC Rcd 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd 18443 ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd 23255 ¶ 26; *EchoStar-DIRECTTV HDO*, 17 FCC Rcd 20574 ¶ 25.

[11] *See, e.g., 2002 Biennial Review Order;* 18 FCC Rcd at 13627-37 ¶¶ 18-52; *Media Ownership Notice of Inquiry*, FCC 10-92, MB Docket No. 09-182 ¶ 75 (May 25, 2010) (hereinafter *Ownership NOI*).

i. The proposed merger will spur a wave of further consolidation, which will significantly decrease minority ownership of television stations.

The FCC has recognized that ensuring minority and female ownership of broadcast stations is an important objective.[12] In addition, the Telecommunications Act of 1996 mandates the Commission distribute "licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. . . ."[13] Ownership diversity is essential to ensure that a small group of companies will not have inordinate control over our media. Comcast may point to diversity success stories like BET or TV One. The truth is that many so-called "minority stations" are in fact owned by large media conglomerates: Viacom owns BET and Comcast holds a substantial ownership in TV One.[14] Today there are very few truly minority owned media outlets, due in large part to massive media consolidation, such as the proposed merger.

1. Media consolidation practices over the years have diminished independent and diverse voices in the media.

In February 2010, Congressman Maurice Hinchey stressed the dangers of the proposed merger and provided that media consolidation over the past 20 years had diminished independent and diverse ownership of television stations.[15] The Congressman further provided:

> Today, five companies own the broadcast networks, 90 percent of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70 percent of the prime time television market share. These same companies own the nation's most popular newspapers and networks also own over 85 percent of the top 20 Internet news sites. There has also been a severe decline in the number of minority-owned broadcast stations. In 2007, minorities owned just 3.2 percent of the U.S. television stations and 7 percent of the nation's full power radio stations, despite making up more than 34 percent of the population.[16]

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[12] *Ownership NOI, supra* note 11, at ¶ 75.
[13] 47 U.S.C. § 309(j)(3)(b) (2009).
[14] Columbia Journalism Review, Who Owns What?, http://www.cjr.org/resources/index.php (last visited June 16, 2010).
[15] Press Release, Maurice Hinchey, Hinchey Leads House Effort Urging DOJ & FCC to Block Comcast's Acquisition of NBC Universal (Feb. 4, 2010), *available at* <http://www.house.gov/list/press/ny22_hinchey /morenews/242010comcastnbcletters.html>.
[16] *Id.*

Media consolidation has a particularly onerous impact on minority owners, 61% of whom are single-station operators.[17] One specific way consolidation disadvantages minority owners is because advertisers are willing to pay higher rates to larger media conglomerates.[18] Therefore, small outlets find it difficult to obtain advertising rates commensurate with performance.[19] Moreover, minority stations have more difficulty attracting investors and ensuring adequate access to capital.[20] Due to these two factors, the few minority-owned stations that try to enter the market are often pushed out.[21] If the proposed merger is permitted, these two factors will be even more insurmountable. Comcast's increased market power, due to its control of NBC's vast asset portfolio, will enable them to dictate advertising rates for the entire market. This will further harm small minority owners by reducing their leverage and bargaining power.

As discussed in further detail below, a merger between Comcast and NBC is dangerous because it will undoubtedly spur a wave of further media consolidation.[22] Competitors, in both the distribution and content markets, will be forced to merge in order to have enough market power to effectively compete against the combined company. In light of the current state of the media, further consolidation and reduction in diversity is unacceptable. Without safeguards to prevent this, the merger should not be permitted.

2. The current number of minority-owned media outlets is astonishingly disproportionate to the number of minorities in the United States.

The number of minorities in the United States is rapidly increasing. Between the 1980 and 2000 censuses, the number of people identifying themselves as White fell from 83% to just over 75% of the U.S. population.[23] During this same period other demographic groups increased. For example, the Asian/Pacific Islander population grew from 1.5% of the population

[17] MINORITY TELECOMMUNICATIONS DEVELOPMENT PROGRAM, U.S. DEPARTMENT OF COMMERCE, CHANGES, CHALLENGES, AND CHARTING NEW COURSES: MINORITY COMMERCIAL BROADCAST OWNERSHIP IN THE UNITED STATES 35 (2000), *available at* <http://search.ntia.doc.gov/pdf/mtdpreportv2.pdf>.
[18] *Id.* at 58.
[19] *Id.*
[20] *Id.* at 60-61.
[21] DEREK TURNER & MARK COOPER, OUT OF THE PICTURE 2007: MINORITY & FEMALE STATION OWNERSHIP IN THE UNITED STATES 38 (Oct. 2007) *available at* <http://www.freepress.net/files/otp2007.pdf>.
[22] *See* discussion *infra* Part II.C.ii.
[23] *Compare* U.S. CENSUS BUREAU, CENSUS 1980, TABLE A-3. RACE AND HISPANIC ORIGIN: 1980, *available at* <http://www.census.gov/population/www/documentation/twps0056/tabA-03.pdf> *with* U.S. CENSUS BUREAU, 2000 CENSUS, TABLE QT-P3 RACE AND HISPANIC OR LATINO: 2000 *available at* <http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=01000US&-qr_name=DEC_2000_SF1_U_QTP3&-ds_name=DEC_2000_SF1_U>.

in 1980 to 3.6% in 2000.[24] The biggest growth came in people who identified themselves in as Hispanic or Latino. In 1980, there were 14.6 million self-described Hispanics and Latinos, representing 6.4% of the U.S. population; by 2000, there were 35.3 million self-described Hispanic and Latinos, representing 12.5% of the U.S. population.[25] Most recently, the U.S. Census announced that the aggregate minority population is projected to become the majority in 2042.[26]

This trend is even more pronounced in California. California, along with Texas, Hawaii, New Mexico and the District of Columbia, is a "majority-minority" state.[27] The most recent census figures show that Asians account for 12.3% of California's population, African Americans accounted for 6.2%, and Latinos accounted for 36.1% of California's population.[28] Communities of color, particularly in majority-minority states such as California, should have a voice in and ownership of media outlets. Unfortunately this is not the case.

The current number of minority-owned media outlets does not even come close to representing the number of minorities in the US. Specifically, in 2009 the FCC recognized that minorities comprise 34% of the population yet own only 3.15% of commercial television stations.[29] In their seminal and oft quoted study, OUT OF THE PICTURE 2007, Mark Cooper and Derek Turner detailed the abject state of minority owned television stations in the United States.[30] For example, "blacks or African Americans comprise 13% of the entire U.S. population but only own a total of 8 stations, or 0.6% of all stations."[31] Those eights stations reach just

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[24] *See supra* note 23.
[25] *See supra* note 23.
[26] GREYSON K. VINCENT & VICTORIA A. VELKOFF, U.S. CENSUS BUREAU, THE NEXT FOUR DECADES: THE OLDER POPULATION IN THE UNITED SATES 2010 TO 2050 1 (2010) *available at* <http://www.census.gov/prod/2010pubs/p25-1138.pdf>.
[27] Press Release, U.S. Census Bureau, Texas Becomes Nation's Newest "Majority-Minority" State, Census Bureau Announces (August, 11, 2005) *available at* < http://www.census.gov/newsroom/releases/archives/population/cb05-118.html>.
[28] Fact Sheet: California, U.S. Census, American Community Survey (2008), <http://factfinder.census.gov/servlet/ACSSAFFFacts?_event=&geo_id=04000US06&_geoContext=01000US|04000US06&_street=&_county=&_cityTown=&_state=04000US06&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=040&_submenuId=factsheet_1&ds_name=DEC_2000_SAFF&_ci_nbr=null&qr_name=null&reg=null:null&_keyword=&_industry=> (last visited June 16, 2010).
[29] *Ownership NOI*, *supra* note 11, at ¶ 75; *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, ¶ 1 n. 2 (2009) (citing DEREK TURNER & MARK COOPER, *supra* note 21.
[30] TURNER & COOPER, *supra* note 21. They define minority ownership as "the race of owners with voting interests that exceeded 50 percent alone or in the aggregate. *Id*. at 12.
[31] *Id*. at 2.

5.3% of the African American television households in the United States.[32] Latinos or Hispanics, who comprise 15% of the entire United States population fared no better, owning only 1.25% of all stations.[33] These statistics are shocking, and will only be exacerbated by the increase in consolidation resulting from the proposed merger.[34]

ii. Viewpoint diversity will be further reduced because the proposed merger will create a media goliath with a poor track record of protecting minority interests.

The U.S. Supreme Court has long recognized that ensuring viewpoint diversity is a basic tenet of communications policy.[35] Viewpoint diversity means simply that media content reflects a variety of perspectives.[36] When media companies consolidate the viewpoints of communities of color often get overlooked, as more independent voices are shut out of the media market. If Comcast's acquisition of NBC is approved, the transaction will create a behemoth that would control content production and content distribution at an unprecedented level. Moreover, neither company has a strong track record of fostering diverse viewpoints. Hence, the proposed merger has a dangerous potential to profoundly reduce viewpoint diversity. The FCC must closely examine Comcast and NBC's track records and stated intentions to craft appropriate remedies if this transaction is to be approved.

1. News broadcasts and entertainment programs currently do not adequately reflect a diversity of viewpoints, and specifically do not represent the viewpoints of communities of color.

One way to evaluate viewpoint diversity is to examine how news broadcasts address the issues that are relevant to various communities, particularly communities of color. A study conducted in the Washington D.C. metro area found that minorities were depicted more negatively than whites, and that the only local issues covered were crime.[37] Study participants

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[32] *Id*. at 4. Even in markets where there are significant African American populations, such as New York, Los Angeles, Detroit, Atlanta and New Orleans, there are no African American owned stations. *Id.* at 33.
[33] *Id.* at 2.
[34] *See* discussion *infra* in Part II.C.ii.
[35] *See, e.g.*, Turner Broadcasting System, Inc. v. Federal Communications Commission, 512 U.S. 622, 663-64 (1984); United States v. Midwest Video Corp., 406 U.S. 649, 668 n.27 (1972); Associated Press v. United States, 326 U.S. 1, 20 (1945).
[36] *Ownership NOI*, *supra* note 11, at ¶71.
[37] Carolyn Byerly, Kehbuma Langmia & Jamila A. Cupid, *Media Ownership Matters: Localism, the Ethnic Minority News Audience and Community Participation* in DOES BIGGER MEDIA EQUAL BETTER MEDIA?: FOUR

indicated a desire to have issues such as health care, illiteracy and widespread poverty addressed.[38] Another survey found that "the proportion of crime committed by people of color (usually African Americans) is over-reported and that Black victims are under-represented."[39] Similarly, a study of over 23,000 news programs over the course of five years found that only 12% of all stories included a minority on camera (as either the subject, an expert or street interview), only 0.2% (32 stories) concerned the poor, and only 0.3% (57 stories) concerned the elderly.[40] In contrast, over 500 stories concerned celebrities.[41] These studies are illustrative of the current failure of consolidated big-media to achieve viewpoint diversity.

Another way to evaluate viewpoint diversity is to evaluate whether entertainment programs adequately reflect the racial makeup of society. The results are not encouraging. The UCLA Chicano Studies Research Center found that television programming was not representative of the nation's ethnic and racial diversity.[42] Specifically, the study found that nearly 40% of all prime-time series had all-white characters and 80% of all primetime series were "white themed."[43] In comparison, there was just one Latino-themed series in 2004, down from two during 2002 and 2003.[44] The study also found that viewers could watch 16 prime-time series featuring Latino regular characters or they could watch 93 series without any Latino characters.[45] The lack of minorities on television is both disproportionate and unsettling, because it does not adequately reflect our nation's increasingly diverse demographics and viewpoints.

ACADEMIC STUDIES OF MEDIA OWNERSHIP IN THE UNITED STATES 17 (2006), *available at* <http://www.benton.org/sites/benton.org/files/archive_files/benton_files/mediaownership reportfinal.pdf>

[38] *Id*.

[39] Lori Dorfman & Vincent Schiraldi, Off Balance: Youth, Race & Crime in the News, 7-8 (Building Blocks for Youth 2001) *available at* <http://www.buildingblocksforyouth. org/media/media.html>. Finally, a study of youth and violence on the news in California concluded that "most local news reports involving young people highlight their roles as victims or perpetrators of violence . . . [and] . . . youth are rarely portrayed on local television news as contributing members of families and communities." Lori Dorfman, Katie Wodruff, Vivian Chavez & Lawrence Wallack, *Youth and Violence on Local Television News in California*, 87(8) AM. J. OF PUB. HEALTH 1311, 1315 (1997).

[40] Dorfman & Schiraldi, *supra* note 39, at 8.

[41] PROJECT FOR EXCELLENCE IN JOURNALISM, DOES OWNERSHIP MATTER IN LOCAL TELEVISION NEWS: A FIVE-YEAR STUDY OF OWNERSHIP AND QUALITY 16 (2003) *available at* <http://www.journalism.org/sites/journalism.org/files/ownership.pdf> (Hereinafter PEJ LOCALISM STUDY).

[42] ALISON R. HOFFMAN & CHON A. NORIEGA UCLA CHICANO STUDIES RESEARCH CENTER, LOOKING FOR LATINO REGULARS ON PRIMETIME TELEVISION: THE FALL 2004 SEASON, (Dec. 2004, CSRC Research Report No. 4), *available at* <http://www.chicano.ucla.edu/press/reports/documents/crr_04Dec2004_000.pdf> .

[43] *Id*. at 2

[44] *Id*.

[45] *Id*.

These disparities are dangerous and disheartening because they have an impact that goes beyond entertainment and information. In "Young Men of Color in the Media: Images and Impacts," Dr. Robert Entman explains that a persistent disparity in the treatment of people of color and whites by mainstream media profoundly shapes the way that the white majority reacts to them on a personal and policymaking level.[46] For example, because the media stereotypes African Americans and Latinos as aggressive by connecting them to stories of crime and poverty, this creates a tendency for racial profiling by law enforcement.[47] Further, misrepresentation of minorities creates a bias that influences white voters to vote for measures that cut back support for programs that benefit many minorities, such as health benefits.[48] Here, the proposed merger would only exacerbate the lack of viewpoint diversity based on the Applicants' poor track records.

2. The proposed merger will further reduce the diversity of viewpoints because neither Comcast nor NBCU have a strong track record of fostering diverse viewpoints.

NBC is one of the nation's largest networks and has an impressive portfolio, which includes numerous NBC and Telemundo owned and operated broadcast stations, NBC News, CNBC, MSCBC, numerous other national cable programming networks, film and production studios, and several Internet properties, including Hulu.com.[49] Comcast is already the largest cable serving approximately 23.8 million customers across 39 states and the District of Columbia.[50] In the content spectrum, Comcast is the sole owner of five cable networks, has an attributable interest in six other cable networks, owns or has interests in a variety of regional and local programming networks, ten regional sports networks and is a minority stakeholder of Metro-Goldwyn-Mayer.[51] The result of the merger will be the consolidation of Comcast and NBCU content, much of which is "must-have," into the hands of a single entity. This will directly and dramatically reduce viewpoint diversity.

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[46] ROBERT ENTMAN, JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES, YOUNG MEN OF COLOR IN THE MEDIA: IMAGES AND IMPACTS 19 (2006), *available at* <http://www.jointcenter.org/publications1/publication-PDFs/DellumsReport1JanA.pdf>.
[47] *Id* at 5.
[48] *Id* at 5, 14.
[49] Application, *supra* note 1, at 26-33.
[50] *Id.* at 17.
[51] *Id.* at 19-22.

Comcast has not adequately shown concern or commitment to diversity of viewpoints, despite these glaring disparities. Rather, Comcast's history shows a consistent pattern against diversity of expression. An article about the cable industry's diversity programming revealed some interesting truths. Comcast, for example, refused to air ads against the war in Iraq.[52] Comcast also refused to support an expansion of public access in such communities as Seattle and San Jose, two heavy minority viewer markets.[53] Comcast also rejected the programming ventures of two African-American creative artists (Russell Simmons and Tim Reid) because it felt their programming plans for news and entertainment were too "high-minded."[54]

In addition, Comcast has a poor track record when it comes to fostering diverse views among its executives and employees. During Congressional hearings on the merger, Comcast CEO Brian Roberts provided that its 13 member board of directors includes only one woman and one person of color.[55] Further, a report by the Hispanic Association on Corporate Responsibility gave Comcast a grade of 50 out of 100 regarding diversity of its workforce, procurement, philanthropy and governance.[56] Only three companies scored lower, one of which was GE, NBCU's parent organization.[57] It seems that Comcast's commitment to diversity is a façade that does not reflect its true practices.

NBC similarly has a poor track record. For example, during Congressional hearings, NBC's CEO Jeff Zucker admitted that even though NBC runs Telemundo, one of the largest Latino television networks in the country, they have no Latinos on the board or executive team.[58] In addition, upon acquiring Telemundo NBCU gutted the local stations and consolidated

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[52] Big Picture on A La Carte Diversity, Center for Digital Democracy, http://www.democraticmedia.org/diversity /alacarte_diversity (submitted by admin on March 7, 2007).
[53] *Id.*
[54] *Id.*
[55] Lorraine Woellert, *Comcast-NBC Deal Will Benefit Consumers, Roberts Tells Congress*, BLOOMBERG BUSINESSWEEK, (Feb. 25, 2010), *available at* <http://www.businessweek.com/news/2010-02-25/conyers-tells-comcast-he-is-alarmed-at-internet-cable-mergers.html> (quoting a statement made by Mr. Roberts in response to questioning from Representative Maxine Waters during the *Hearing on Competition in the Media and Entertainment Distribution Market Before the H. Comm. On the Judiciary*, 111th Cong. 2 (2010)).
[56] Hispanic Association on Corporate Responsibility, "2009 HACR Corporate Inclusion Index" (December 2009) at 11, available at <http://www.hacr.org/docLib/20091218_2009HACRInclusionIndex.pdf>
[57] *Id*.
[58] Posting of Felix Sanchez & Joseph Torres to Stop Big Media Blog, http://www.stopbigmedia.com/blog/2010/ 03/comcast-nbc-is-this-merger-good-for-latinos (Mar. 1, 2010, 9:24am) (quoting a statement Mr. Zucker made in response to questioning during the *Hearing on Competition in the Media and Entertainment Distribution Market Before the H. Comm. On the Judiciary*, 111th Cong. 2 (2010)).

content.[59] Furthermore, the report by the Hispanic Association on Corporate Responsibility also gave NBCU an overall C+ grade and an F grade for "creative executives" for not having any Latinos in its creative executive roster. Comcast and NBCU say they are serious about diversity, but at the end of the day the number of minorities within management who actually have the ability to influence content and ensure diverse viewpoints are heard falls woefully short of their desired goals.

iii. Source diversity will be reduced because Comcast will have no incentive to purchase independent content.

Yet another way that the FCC may seek to foster diversity is source diversity.[60] Source diversity refers "to the availability of media content from a variety of content creators."[61] While the FCC is currently seeking comments on what role source diversity should play in its policy goals, there is little doubt that source diversity could and should be part of the diversity discussion.[62] The U.S. Supreme Court first noted in 1945 that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[63] They reaffirmed this basic tenet of communications policy in 1972 and then again in 1994.[64] Hence, even if the Commission determines that source diversity is only a means to other diversity goals, it must be addressed. At a minimum, source diversity has the potential to ameliorate the dismal state of viewpoint diversity.

Source diversity, particularly when based on ethnic media, plays an important role in communities of color. Historically, ethnic media have served multiple roles: they cover stories that are largely ignored by the mainstream press; they provide ethnic angles to news; they report on events and issues taking place in their communities; and they report on events occurring in the countries from which those populations or their family members emigrated. Importantly, ethnic media provide communities a voice, which strengthens a community's cohesion. Moreover, ethnic media plays an important role for civic activities and keeping government accountable

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[59] *See infra* discussion accompanying notes 113-118.
[60] *Ownership NOI*, *supra* note 11 at ¶ 66.
[61] *Id*. at ¶ 73.
[62] *Id.*
[63] *Associated Press*, 326 U.S. at 20.
[64] *Midwest Video*, 406 U.S. at 668 fn.27; *Turner*, 512 U.S. at 663-63. In *Turner* the Court further stated that "assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment." 512 U.S. at 663.

because it fosters an informed populace. Like local news, discussed below, ethnic media is crucial to our democracy.[65]

It is imperative that independent content not be stifled. Well loved shows including the *Cosby Show*, *Doogie Howser, M.D.*, *The Wonder Years*, and *Who's the Boss* were independently produced.[66] Today, independent content producers would have very little chance of being able to create a show like the *Cosby Show* much less get it shown on a network like NBC, whose lineup includes only ten percent independent content.[67] Content that has the power to challenge viewers, to transform racial attitudes, and confront stereotypes must not be overlooked for the sake of efficiency or top dollar.[68] As the President and CEO of the Independent Film and Television Alliance pointed out to the House Committee on the Judiciary in March, "the percentage of independently produced series on the national broadcast networks have declined from over 50% in 1989 (when there were four national networks) to just 5% (on the now five networks) in 2008."[69] While these statistics are disturbing enough, if this merger is permitted the statistics will only get worse.

Comcast and NBC have already evinced the intent to further this trend. Specifically, they expect the proposed transaction to "reduce transaction and contracting costs."[70] In other words, Comcast won't have to pay NBC for content whereas it will for independent content. In addition, they indicate that once a program is created, it can be shown on multiple platforms at different times.[71] Simply put, recycled content is not the same as independently produced content, from diverse sources such as ethnic media.

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[65] *See* discussion *infra* Part II.B.i.
[66] *Hearing on Consumers, Competition, and Consolidation in the Video and Broadband Market Before the S. Comm. on Commerce, Science, and Transportation* 111th Cong. 2 (2010) (Written statement of John Wells, President of the Writers Guild of America, West), *available at* <http://commerce.senate.gov/public/?a= Files.Serve&File_id=71b63984-911f-47a0-9c73-7801f78daf9f>.
[67] *Id.*
[68] *Hearing on Competition in the Media and Entertainment Distribution Market Before the H. Comm. On the Judiciary*, 111th Cong. 2 (2010) (Written statement of Jean Prewitt, President and CEO of the Independent Film & Television Alliance), *available at* <http://judiciary.house.gov/hearings/pdf/Prewitt100225.pdf>.
[69] *Id*. at 4.
[70] *Application*, supra note 1, at 70.
[71] *Id*.

iv. Comcast must show a greater commitment to economic development in diverse communities.

The FCC has demonstrated its commitment to protecting and promoting diversity in ownership, viewpoint and source of media. Greenlining urges the FCC to also consider supplier diversity. Supplier diversity is a key component of the economic recovery, especially within diverse communities in California. Though not traditionally within the FCC's purview, here the FCC should consider the economic impacts of the proposed merger through the lens of supplier diversity.

The proposed merger is sure to have significant economic impacts. Comcast Chief Executive Officer Brian Roberts reassured legislators and the public that the merger will result in "no massive layoffs."[72] However, the Application contains no substantive commitments to protect jobs or promote economic development. The threat of extensive job loss is real, as Comcast is the nation's largest cable company and the largest broadband service provider.

Moreover, the proposed merger will likely result in further media consolidation.[73] As Comcast increases its control of traditional video distribution and programming markets, as well as the online video and broadband markets, competing companies in a broad range of industries will be squeezed out of business. The loss of these companies will mean lost jobs, as well as lost economic development, as all of the smaller businesses that contract with these foreclosed companies will also feel the effect.

Greenlining is concerned about the economic impacts of the merger, especially within the state of California. The state, especially its communities of color, has been hard hit by the economic recession. In California, during the third quarter of 2009, the unemployment rate for whites was unacceptably high at 9.6%, but even more so for African-Americans (15.4%) and Latinos (15.6%).[74] The potential of massive job loss resulting from the proposed merger is a huge concern for California's economy.

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[72] *Hearing on an Examination of the Proposed Combination of Comcast and NBC Universal Before the Subcomm. on Communications, Technology and the Internet of the H. Comm. on Energy & Commerce*, 111th Cong. 2 (2010) (Oral Statement of Brian L. Roberts, CEO, Comcast Corp.), *available at* <http://www.comcast.com/ nbcutransaction/pdfs/FINAL%20BLR%20ORAL%20STMT%202.4.10.pdf>.

[73] *See* discussion *infra* Part II.C.ii.

[74] KAI FILION, ECONOMIC POLICY INSTITUTE, DOWNCAST ECONOMIC FORECAST: TARGETED JOB CREATION POLICIES NECESSARY TO OFFSET GRIM 2010 PROJECTION, ISSUE BRIEF #270, Tables 2-4 (Jan. 14, 2010), *available at* <http://epi.3cdn.net/d9904b716d3cf62538_psm6bnec9.pdf>

An equally significant concern is the economic development that results from the contractors and subcontractors that supply media companies with products and services – from advertising services, to information technology services, to financial services. The economic impacts of media companies such as Comcast do not end with its workforce – they also extend to its network of suppliers. California has created a system to direct the economic development from utilities' supplier contracts to those communities that need it most.

For over twenty years, the California Public Utilities Commission (CPUC) has led the effort to facilitate economic development in diverse communities through its supplier diversity program. The program was created by statute in 1986[75] and requires each electrical, gas, and telephone corporation (with gross annual revenues exceeding $25 million) to annually submit a detailed and verifiable plan for increasing the diversity of its suppliers.[76] As part of this program, the companies annually provide data on the current status of their supplier diversity.[77]

Numerous energy and telecommunications companies submit statistics on their supplier diversity not just to the CPUC, but also to Greenlining, with whom they meet on an annual basis to discuss supplier diversity efforts.[78] Unfortunately, Comcast has been an outlier when it comes to providing statistics or participating in substantive dialogues regarding supplier diversity. Comcast's filing with the CPUC did not follow the designated reporting structure, consisting only of four pages of narrative, with only two actual data points provided and absolutely no data specific to minority business enterprises.[79] Contrary to CPUC guidelines, Comcast also provided little strategic planning for increasing their supplier diversity[80] and had no short or mid term goals.[81] Comcast only included one goal, and not a very ambitious one – increasing their

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[75] CAL. PUB. UTIL. CODE §§ 8281-8286 (codifies CA Assembly Bill 3678 (Moore) Ch. 1259, Statutes of 1986).
[76] CAL. PUB. UTIL. CODE § 8283(a). Diversity is evaluated in terms of business enterprises owned by women, minorities, and disabled veterans. *Id.*
[77] *Id*.
[78] Greenlining consistently works with the CPUC and numerous corporations and provides consultation on improving supplier diversity efforts.
[79] Although Comcast is not required to file supplier diversity reports, California law encourages entities not technically required to submit a plan to do so anyways. CAL. PUB. UTIL. CODE § 8283(f). The CPUC's requirements for annual reports include breakdowns for ethnicity, product and service categories. *See* Cal. Pub. Util. Comm., General Order 156, § 9.1.2, *available at* <http://docs.cpuc.ca.gov/published/Graphics/608.PDF>. Comcast only provided data for total dollars spent with diverse business enterprises, and percentage of total dollars spent with diverse business enterprises. Comcast did not provide any data granulated for ethnicity, gender or disabled veteran status, nor did they provide granulation for product and service categories.
[80] Cal. Pub. Util. Comm., General Order 156 at § 10.1.
[81] *Id*. at § 10.1.1.

supplier diversity to 20 percent.[82] This is despite the fact its corporate website states that they "believe that diversity in our supply base is integral to our continued success."[83] By comparison, both AT&T and Verizon's supplier filings were extensive, with dozens of data points reported in numerous categories, extensive descriptions for improving supplier diversity in these categories, and short, mid and long term goals.

Perhaps Comcast prefers not to discuss supplier diversity because it has lagged far behind its competitors in California. For example, in 2009 Verizon spent 36.48% of its supplier contracts with total diverse business enterprises while AT&T had a 34.78% spend.[84] Comcast, however, spent only 15.4% of its supplier dollars with diverse business enterprises.[85]

The contracts that these large corporations have with diverse contractors and subcontractors constitute a huge source of economic development. For example, in 2009 AT&T spent a total of $479,618,142 in contracts with minority-owned businesses (not including women, disabled veteran or multi-ethnic-owned businesses) while Verizon spent a total of $111,733,139.[86] This represents a sorely needed infusion of resources, for diverse, small businesses that are the backbone of jobs and economic development in many communities, especially communities of color. Small businesses are also expected to drive job creation and economic recovery in California. For example, in 2006, small businesses accounted for 52.1%

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[82] Recently, at their testimony in a field hearing before the House Judiciary Committee, Comcast and NBC provided additional commitments to supplier diversity. *Field Hearing on The Proposed Combination of Comcast and NBC Universal Before the H. Comm. on the Judiciary* 111th Cong. 2 (2010) (Written Testimony of Paula Madison, Executive Vice President, Diversity NBCU and Vice President, GE), *available at* <http://judiciary.house.gov/hearings/pdf/Madison100607.pdf>. These commitments are largely illusory and unenforceable. The only substantive commitment made is $7 million in advertising spending with minority-owned media, although there is no mechanism for enforcement. There is also goal of $1 million in business opportunities with minority-owned law firms. These nation-wide figures pale in comparison to the supplier diversity spend reported by competing corporations in only California, as reported below.

[83] Comcast.com, Vendor and Supplier Partnerships, http://www.comcast.com/corporate/about/diversity/suppliers/suppliers.html (last visited June 18, 2010).

[84] These figures were compiled by Greenlining using statistics for percentage of total supplier contract spend to diverse business enterprises (women, minority and disabled veteran owned) supplied by each company in preparation of Greenlining's annual report on supplier diversity. Percentage of total budget spent on minority-owned business enterprises and disabled veteran-owned business enterprises is reported in this report. *See* Samuel Kang & Samar Shah, *Supplier Diversity Report Card 2010: Who's Getting the Contracts?* The Greenlining Institute (June 2010), pp. 7, 11. This report is attached hereto as Appendix IV and will be available to the public soon at <http://www.greenlining.org/publications/>

[85] *Id*. at 26.

[86] These figures were compiled by Greenlining using statistics for total spend to minority-owned business supplied by each company. Comcast only spent $48,574,759 with diverse suppliers.

of private-sector employment in California.[87] Many communities, especially inner-city and rural communities of color, do not benefit directly from larger businesses, such as Comcast. Instead, such communities rely heavily on small businesses.

However, Comcast's corporate practices have a significant impact on the entire industry. Without a specific plan for increasing the number of contracts with minority owned businesses, Comcast has the potential to destabilize minority businesses and the economy of minority communities. The vertically-integrated Comcast-NBC conglomerate will wield a dominating share of several markets. Comcast's history of poor customer service and lack of diversity commitments coupled with NBC's lack of content diversity would negatively influence the rest of the industry and local economies.

Comcast continues to believe that it should be allowed to operate with little state regulation even as it competes for customers with regulated companies. However, without greater commitments to diversity, competition from Comcast will continue to unacceptably divert customer dollars away from companies with better, more inclusive business practices. Comcast must fully embrace not just the components but also the culture of supplier diversity that is deeply ingrained into California's business practices. Otherwise, Comcast will continue to be the lowest common denominator that could destabilize the economy of minority communities.

B. The Proposed Merger Will Harm the Public Interest by Reducing Local News, Political Coverage and Community Responsive Programming.

Localism is another important element of the public interest. While it may be "perhaps the least understood and certainly the subject of the least amount of research"[88] it "has been a cornerstone of broadcast regulation for decades."[89] The U.S. Supreme Court has explained localism as follows: "[i]t is the right of the viewers and listeners, not the right of the

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[87] U.S. SMALL BUSINESS ADMINISTRATION, SMALL BUSINESS PROFILE: CALIFORNIA (2008), *available at* <http://www.sba.gov/advo/research/profiles/08ca.pdf>.

[88] Philip M. Napoli, THE LOCALISM PRINCIPLE IN COMMUNICATIONS POLICYMAKING: AN ANNOTATED BIBLIOGRAPHY 3 (2004) *available at* <http://www.fordham.edu/images/undergraduate/communications/localismbibliography.pdf>.

[89] *Localism Notice of Inquiry*, 19 FCC Rcd 12425 ¶ 1 (2004) (hereinafter *Localism NOI*). *See also*, *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955) ("Fairness to communities is furthered by a recognition of local needs . . . .").

broadcasters, which is paramount."[90] Thus, the FCC imposes upon broadcasters, as trustees of the public's airwaves, the duty to air programming that serves the interests and needs of their communities of license.[91]

Historically, the FCC used various policies and procedures to ensure that broadcasters were responsive to the interests and needs of local communities.[92] While the specific rules and policies[93] are admittedly no longer in place, the concerns they addressed are a helpful tool in evaluating whether the merger will harm localism. In particular, the FCC recognizes the provision of: (i) political programming; (ii) programming targeting underserved audiences; (iii) community-responsive programming; (iv) beneficial network affiliation relationships; and (v) disaster warnings, among others, as specific facets of localism.[94] Here, the proposed merger has the potential to reduce local political programming. In addition it will reduce the quality and quantity of community-responsive programming by upsetting the network-affiliate balance. It also has the potential to affect the timeliness and efficacy of disaster warnings in California, and fails to address the needs of traditionally underserved audiences.

i. The proposed transaction must not be approved because it will result in a reduction of local television newscasts, which are integral to our democracy.

It is well established that "public deliberation is essential to democracy."[95] In modern societies this deliberation is "largely *mediated*, with professional communicators rather than ordinary citizens talking to each other and to the public through mass media of communications."[96] Therefore, professional communicators must be more than a mere profit center; they bear the onus of informing the public of current events and political issues. The

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[90] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).
[91] *Localism NOI*, *supra* note 89 at ¶ 1.
[92] *Id*. at ¶ 4.
[93] For example the ascertainment process, guidelines evaluating programming during licensing renewal, and local ownership incentives.
[94] *Localism NOI*, *supra* note 89 at ¶¶ 12-29; *Report on Broadcast Localism,* 23 FCC Rcd 1324 ¶10 (2008) (hereinafter *Localism Report*).
[95] *Hearing on Public Interest and Localism Before the S. Comm. on Commerce, Science, and Transportation* 108th Cong. 1 (2003) (statement of Martin Kaplan, Assoc. Dean, USC Annenberg School for Communication) *available at* < http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=b24d6d6b-2c07-47ee-8fe4-3b4a08a7f175&Statement_id=37ff5962-3d6e-479f-a18f-3f4a45c46213&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=7&YearDisplay=2003> (quoting Thomas Jefferson's statement that "the strength of our democracy would depend on how well-informed the American electorate is.").
[96] Benjamin I. Page, Who Deliberates Democracy? Mass Media in Modern Democracy 1 (1996).

FCC has recognized these obligations, citing two provisions of the Communications Act that impose affirmative duties to air political programming.[97] However, these two duties are limited in their application and scope.[98] As a result, stations vary widely in the amount of political programming they air.[99]

Ensuring sufficient political coverage is important because local television news remains the primary news source to which the majority of Americans turn.[100] While many, including Applicants,[101] may cite the increase in the number of websites and blogs as mitigating the effects of media consolidation, the reality is that internet news websites rarely report original hard news; instead, they provide only opinion or commentary and link content from traditional news media.[102] Therefore, Applicants cannot point to the internet as a generator of independent, original content. Even if we close the digital divide, the effects of consolidation will not be mitigated by the duplication of information on the internet.

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[97] *Localism NOI*, *supra* note 89, at ¶ 55; 47 U.S.C. §312(a)(7) (the reasonable access provision grants the FCC the authority to revoke the license of any broadcaster that does not provide reasonable access to candidates for *Federal* offices); 47 U.S.C. § 315(a) (the equal opportunities provision requires that broadcasters provide equal access to broadcasting to all political candidates).

[98] The reasonable access provision only applies to Federal, not state or local, candidates and is satisfied if the station allows a candidate to *purchase* reasonable amounts of time. Likewise, the equal opportunities provision is only triggered if the *broadcaster* permits a candidate for public office to use the broadcasting station.

[99] *Localism NOI*, *supra* note 89, at ¶ 56.

[100] Martin Kaplan & Matthew Hale, USC Annenberg School for Communication & Journalism, Local TV News in the Los Angeles Media Market: Are Stations Serving the Public Interest? (2010) *available at* <http://www.learcenter.org/pdf/LANews2010.pdf>; Pew Research Center for the People and the Press, *Stop the Presses? Many Americans Wouldn't Care a Lot if Local Papers Folded*, PewResearchCenterPublications, March 12, 2009, <http://pewresearch.org/pubs/1147/newspapers-struggle-public-not-concerned> (Found that most people (68%) get their news from local television); Adam Lynn, S. Derek Turner & Mark Cooper, Traditional Content is Still King as the Source of Local News and Information 3-4 (Paper Presented at the Annual Meeting of the International Communications Association, Montreal, Quebec, Canada, May 21, 2008), *available at* <http://www.allacademic.com/meta/p233147_index.html> (Found that over 86% of people rely on traditional media for local news and information).

[101] *Application*, *supra* note 1, at 4.

[102] Lynn, Turner & Cooper, *supra* note 100, at 13 (finding that "only 3.6 percent of the entire sample consisted of original hard news reporting"); S. Derek Turner and Mark Cooper, *Independent Local News Sites Do not Significantly Contribute to Source or Viewpoint Diversity*, *in* Reply Comments of Consumers Union, Consumer Federation of America and Free Press, *In the Matter of 2006 Quadrennial Regulatory Review*, Appendix B at 161, MB Docket No. 06-121 (Filed Jan. 16, 2007) (concluding that while 18% city specific internet sites was based on original reporting, most of this was on subjects dealing with arts and entertainment or food. In contrast, only 2.6% of the stories on city-specific websites contained original reporting on "hard topic" news like politics or community governance); Maurice E. Stucke & Allen P. Grunes, *Toward a Better Competition Policy for the Media: The Challenge of Developing Antitrust Policies that Support the Media Sector's Unique Role in Our Democracy*, 42 Conn. Law Rev. 101, 114-15 (2009) (online news merely complements and does not replace traditional news media because the internet remains a distribution medium, not a source of original news content).

1. Consolidated ownership reduces the quantity and quality of local news.

The proposed merger will have a drastic impact on local television news because ownership matters.[103] As one commentator noted:

> Concentrated communicative power creates demagogic dangers for a democracy, reduces the number of owners who can choose to engage in watchdog roles, may reduce the variety in perspectives among the smaller group of people who hold ultimate power to choose specific (varying) watchdog projects, and multiplies the probable conflicts of interest that can muzzle these watchdogs.[104]

The myriad perspectives of our multi-ethnic country must be presented if our deliberative democracy is to be representative and participatory. While the reduction in the number of perspectives is concerning, it is not the only worrying consequence of the proposed merger. Independent stations broadcast more local content on their news, whereas "consolidated media ownership negatively affects the production of local content on local television newscasts."[105] The presence of local content is the major indicia of the "quality" of a newscast.[106] This is why the related concern that "heavy concentration of ownership in local television by a few large corporations will erode the quality of news Americans receive" is particularly alarming.[107] Since our democracy depends on a well informed public, and the consolidation of media outlets is reducing the quality of the news that keeps the public well informed, there will be significant consequences for participatory democracy.

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[103] DANILO YANICH, OWNERSHIP MATTERS? CONTENT, LOCALISM & OWNERSHIP IN LOCAL TELEVISION NEWS (2010) *available at* <http://mediaresearchhub.ssrc.org/ownership-matters-content-localism-ownership-on-local-television-news/attachment>; Carolyn Byerly, Kehbuma Langmia & Jamila A. Cupid, *Media Ownership Matters: Localism, the Ethnic Minority News Audience and Community Participation* in DOES BIGGER MEDIA EQUAL BETTER MEDIA?: FOUR ACADEMIC STUDIES OF MEDIA OWNERSHIP IN THE UNITED STATES 4 (2006), *available at* <http://www.benton.org/sites/benton.org/files/archive_files/benton_files/mediaownership reportfinal.pdf>; PEJ LOCALISM STUDY, *supra* note 41, at 1.

[104] C. EDWIN BAKER, MEDIA CONCENTRATION AND DEMOCRACY: WHY OWNERSHIP MATTERS 120-121 (2007).

[105] YANICH, *supra* note 103, at 4.

[106] A "quality" newscast has been described as one that should "1) cover the whole community 2) be significant and informative 3) demonstrate enterprise and courage 4) be fair, balanced and accurate 5) be authoritative [and] 6) be highly local." PEJ LOCALISM STUDY, *supra* note 41, at 2. According to this definition then, a high quality newscast should accurately reflect its local community. *See also* YANICH, *supra* note 103, at 12 (how useful a newscast is to citizens depends on the degree of "local" content that is included).

[107] PEJ LOCALISM STUDY, *supra* note 41, at 2. More specifically, "concentration of vast numbers of TV stations into the hands of a few very large corporations . . . though it may prove the most profitable model, is likely to lead to further erosion in the content and public interest value of the local TV news Americans receive." *Id.* at 7.

Preserving local news is particularly important in majority-minority states, such as California.[108] Taking the Hispanic population as an example, there is evidence that Spanish-language local television news substantially boosts Hispanic voter turnout, especially in non-presidential election years.[109] In contrast, "Hispanics without access to local television news are significantly less likely to participate in elections."[110] These results are real and significant: "news in Spanish caused about a fifth of Spanish-language news viewers to *start* voting."[111] Similarly, African-American voter turnout is significantly higher in markets that have a media outlet targeted to African Americans.[112] The perspectives of underserved audiences must be represented in order to ensure a politically engaged society. However, studies show that mainstream media rarely reflects the diverse perspectives that make up our society, particularly those of underserved audiences.

Specifically and even more concerning is Applicants' poor track record of promoting minority perspectives and preserving local content.[113] This is demonstrated by the by the fate of KSTS (Channel 48) a Telemundo owned and operated station in San Jose, California. In December 2006, NBCU decided to eliminate locally produced Telemundo newscasts in seven markets, including San Jose, and replaced them with regional content transmitted from Forth Worth, Texas.[114] These markets comprise five of the top ten Hispanic markets in the country.[115] As a result, KSTS was forced to gut their operations, terminating dozens of reporters,

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[108] Texas, Hawaii, New Mexico and California are majority minority states; five others – Maryland, Mississippi, Georgia, New York and Arizona – are next in line. Press Release, U.S. Census Bureau, *Texas Becomes Nation's Newest "Majority-Minority" State, Census Bureau Announces* (August, 11, 2005) *available at* < http://www.census.gov/newsroom/releases/archives/population/cb05-118.html>.
[109] Felix Oberholzer-Gee & Joel Waldfogel, *Media Markets and Localism: Does Local News en Espagnol Boost Histpanic Voter Turnout?*, 99 AM. ECON. REV. 2120, 2127 (2009).
[110] *Id.*
[111] *Id.* at 2120 (emphasis added).
[112] Stucke & Grunes, *supra* note 102, at 129 (African-American voter turnout is 10-15% higher in areas with a weekly newspaper or radio station targeted to African-Americans).
[113] *See* discussion *supra* Part II.A.ii and discussion *infra* part II.C.iii. *See also*, KAPLAN & HALE, *supra* note 100, at 7 (in a study of half-hour news broadcasts, KNBC broadcast the most ads, 9:22 min, and sports and weather content, 4:22 min, of all 8 major LA stations, but the least amount of local issues, 50 seconds, and only 32 seconds of local government coverage).
[114] *See, e.g.*, Meg James, *Less Local News for Some at Telemundo*, LOS ANGELES TIMES, Nov. 13, 2006 (Professor at USC Annenberg School for Communications commented: "No matter how they frame it, this means there will be less local news . . . .").
[115] Elena Shore, *Attention NBC Telemundo: Latinos Need Local News Too*, NEW AMERICAN MEDIA, November 1, 2006.

camerapersons, production team members, and producers.[116] In response to audience outrage, NBCU decided to bring back four local newscasts in February 2010.[117] However these newscasts rely on reports and images received from NBC news sources, only a smattering of content is locally produced and the resources are still threadbare.[118]

2. Local news must not be migrated from broadcast channels to cable channels, video-on-demand, or online platforms.

The risk of reduction in local broadcast news is heightened by the fact that broadcast television is simply not as profitable as cable television.[119] Cable news was the only sector that did not suffer declining revenue in 2009; on the other hand, local television ad revenue fell twenty-two percent.[120] While it makes economic sense for Applicants to transition news content from local broadcast channels to cable networks, to do so flies in the face of their public interest commitments.

Unfortunately, Applicants have already indicated that this is what the future holds: the Application specifically states that Applicants intend to distribute local content through its "local and regional cable networks, its VOD service, and its online platform."[121] For example, Comcast recently partnered with the U.S. Small Business Administration to provide video-on-demand ("VOD") coverage of business related workshops and seminars in San Francisco.[122] While it is laudable to include this content within the VOD platform, this must not replace local broadcast coverage of these events. VOD is often more expensive and therefore less accessible to low income communities. Simply put, relegating this type of content to the depths of the digital on-

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[116] *Unhappy Holiday News for Local Telemundo Staff*, LATINO PERSPECTIVES MAGAZINE, Dec. 2006 (Noting a Telemundo journalist's comment "I thought with the big chain buying us we'd get more resources, not less.")

[117] David Tanklefsky, *Telemundo Rolls Out Enhanced Local Newscasts in Key Markets*, Broadcasting & Cable, Feb. 2, 2010 (the markets are Dallas, Houston, San Jose and Phoenix), *available at* <http://www.broadcastingcable.com/article/447300-Telemundo_Rolls_Out_Enhances_Local_Newscasts_in_Key_Markets.php>.

[118] This information was provided anonymously to the Greenlining Institute. In order to protect that source, we cannot disclose his identity in this petition. However, we strongly encourage the FCC to investigate the merits and accuracy of this claim.

[119] Broadcast television has only one source of revenue (advertising) whereas cable has two (advertising and consumer fees). *See infra* Appendix II.

[120] PEW PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM Overview 1 (2010), <http://www.stateofthemedia.org/2010/> (hereinafter STATE OF THE NEWS MEDIA 2010).

[121] Application, *supra* note 1, at 41.

[122] Press Release, Comcast California, In Celebration of National Small Business Week, U.S. Small Business Administration & Comcast Partner to Help Small and Medium Sized Businesses (May 20, 2010), <http://comcastcalifornia.mediaroom.com/index.php?s=43&item=364>.

demand offering is not acceptable: VOD is not a substitute for local broadcast coverage. We must not forget that "it is the *right of the public* to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[123] These rights must not be abrogated. Until and unless this issue is properly addressed, the proposed transaction should be denied.

ii. The proposed transaction will reduce community responsive programming, severely alter the network-affiliate relationship and hinder the dissemination of effective and timely emergency-disaster warnings.

The localism principle mandates not only the provision of local news, but also the provision of programming tailored to other community needs, such as: (1) public affairs programs;[124] (2) the right of network affiliates to reject or refuse to air programs offensive to their communities; and (3) the provision of adequate disaster warnings. The proposed transaction has the potential to reduce the amount of local public affairs programs, provide Comcast with the market power to strong-arm its network affiliates, and poses the threat of reduced or ineffective disaster warnings. It has been noted that "[t]he more disconnected the ownership of the media is from a community the less it is devoted to serving it."[125] Comcast has a statutory duty to adequately serve its communities, not merely profit from them. If this merger is allowed to go forward, Comcast must effectively be held to this duty.

1. The proposed transaction will reduce community responsive programming.

It is unclear how Comcast, a company headquartered in Philadelphia, or NBCU, headquartered in New York City, can be responsive to communities in Oakland, San Jose, Los Angeles, or San Diego. At the risk of stating the obvious: the needs of communities in New York and Pennsylvania are vastly different from the needs of communities in California,

[123] Red Lion Broadcasting, 395 U.S. at 390 (emphasis added).
[124] Public Affairs programs have been defined by the FCC as: "Programs dealing with local, state, regional, national or international issues or problems, documentaries, mini-documentaries, panels, roundtables, and vignettes, and extended coverage (either live or recorded) of public events or proceedings, such as local council meetings, congressional hearings and the like." *Revision of programming and commercialization policies, ascertainment requirements, and program log requirements for commercial television stations*, 98 FCC2d 1076, 1173 (1984).
[125] Common Cause Education Fund, Media and Democracy in America Today: A Reform Plan for a New Administration 5 (2008) *available at* <http://www.commoncause.org/atf/cf/{fb3c17e2-cdd1-4df6-92be-bd4429893665}/MEDIAPLAN082108.PDF>.

Washington D.C., and everywhere in between. Comcast has failed to indicate how it will determine local needs and what mechanisms it will implement to ensure that those needs are met. This transaction must not proceed until we have a thorough understanding of how this transaction will impact these needs and how a remote owner will asses them.

The merged entity will be less likely to air community responsive programming. In general, "local ownership is correlated with more Public Affairs and Family programming."[126] Specifically, smaller markets, and independent, locally owned or female owned stations have more public affairs programming.[127] Studies show that consolidation does not increase the quantity and quality of public affairs programming.[128] Instead, consolidation of media ownership results in *no* benefit to public affairs broadcasting.[129] Simply put, Comcast's argument that the proposed transaction will increase public affairs programming does not hold water.[130] The proposed transaction will more than likely reduce the amount and quality of public affairs programming.

2. The merged entity will have the market power to prevent affiliates from preempting regional and national content in favor of local and community responsive programming.

A second area of concern with respect to community responsive programming, is the ability of the Comcast-NBCU behemoth to strong-arm its network affiliates into carrying programs that are either not relevant or patently offensive to the communities they serve. There are two FCC rules that regulate the network affiliate relationship.[131] However, the efficacy of

[126] Crawford, *supra* note 7, at 26.
[127] *Id*. at 23 and Table 18.
[128] Michael Zhaoxu Yan & Yong Jin Park, *Duopoly Ownership and Local Information Programming on Broadcast Television: Before-After Comparisons*, 53(3) J. OF BROADCASTINGS & ELECTRONIC MEDIA 383 (2009). Duopoly stations provided the least amount of programming and other stations in duopoly markets did not perform better than stations in non-duopoly markets. *Id*. at 397. Moreover, another study found that "[o]wnership by one of the BIG FOUR commercial broadcast networks [ABC, CBS, FOX and NBC] . . . significantly decreased the amount of local public affairs programming on Television." MICHAEL YAN & PHILLIP NAPOLI, MARKET STRUCTURE, STATION OWNERSHIP, AND LOCAL PUBLIC AFFAIRS PROGRAMMING ON LOCAL BROADCAST TELEVISION 13, *presented at* The Telecommunications Policy Research Conference (2004), *available at* <http://web.si.umich.edu/tprc/papers/2004/374/tprc2004_yan.pdf>.
[129] Yan & Park, *supra* note 128, at 397.
[130] Application, *supra* note 1, at 40.
[131] The first is the time option rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time". 47 C.F.R. § 73.658(d). The second is the right to reject rule, which prevents licensees from concluding any agreement which "prevents or hinders the station from: (1) rejecting or refusing network

these rules has recently come into question.[132] The FCC has recognized that "it is critical to maintain a balance in the network-affiliate relationship that affords local broadcasters ultimate power over programming decisions without risking undue financial hardship or implicit threats of unanticipated disaffiliation, so that they retain unfettered discretion to select what they air, including network-provided programming."[133]

Here, the merged entity will have the market power to require that a local network broadcast only centrally produced regional or national content, thereby preempting all local programming targeted to "niche" audiences, such as communities of color, low income communities, or other traditionally underserved audiences. Concerns about network autonomy were expressed during the FCC Localism Hearings in 2004: "An affiliate is now asked to pay compensation, and even risks losing its affiliation, if it preempts more than a specified number of hours of Big Four network programming."[134] In the context of the proposed merger, the risks and consequences to local content are magnified exponentially. The Comcast-NBCU merged entity will have even more coercive power because it can leverage not only the network affiliation process, but also and perhaps more significantly, the retransmission consent process. The results range from financial repercussions to Comcast simply blacking out or refusing to carry the affiliate at all. In an ethnically diverse 'majority-minority' state such as California, for any network to be truly responsive to its constituency, it must broadcast local programs targeted to those communities. It must be able to make these determinations autonomously and without

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programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) substituting a program which, in the station's opinion, is of greater local or national importance." 47 C.F.R. § 73.658(e).

[132] *Network Affiliated Stations Alliance Declaratory Ruling*, 23 FCC Rcd 13610 (2008) (In 2001 the Network Affiliated Stations Alliance, a.k.a. "NASA", filed a Petition for Inquiry into Network Practices with the FCC. In the intervening years, NASA and the Networks renegotiated their Affiliation Agreements to ameliorate their concerns. However, in order to avoid future controversies the FCC issued this Ruling, affirming various principles relating to the right-to-reject rule and option-time rules.). *See also*, *Localism Report*, *supra* note 94, at ¶¶ 94-96 (discussing the FCC's continuing concerns regarding network affiliation and seeking comment on the right to review programming in advance); *Localism NOI*, *supra* note 89, at ¶¶ 30-32 (stating the FCC is concerned "that the networks are hindering the affiliates' ability to preempt network shows for local programming.").

[133] *Localism Report*, *supra* note 94, at ¶ 94.

[134] *Broadcast Localism Hearing Before the F.C.C.*, Monterey, California 97 (July 21, 2004) (statement of Harry Pappas, Chairman and CEO, Pappas Telecasting Companies), *available at* <http://www.fcc.gov/localism/monterey_transcript.pdf>. It was also a concern at the Localism Hearings in San Antonio, Texas: "We've heard that many independent affiliates are afraid to preempt programming because the networks threaten to take away their affiliation during the next round of contract talks." *Broadcast Localism Hearing: Field Hearing Before the F.C.C.*, San Antonio, Texas 58 (Jan. 28, 2004) (statement of Ray Rossman, San Antonio Chapter Director, Parents Television Council), *available at* <http://www.fcc.gov/localism/sanantonio_transcript.pdf>.

fear of recrimination. This merger will drastically alter the network-affiliate balance and should not be permitted.

3. The proposed transaction may result in less effective disaster and emergency warnings.

Finally, the provision of adequate emergency and disaster warnings is another way broadcasters must be responsive to community needs.[135] Having effective, timely, over-the-air local broadcasting capabilities for severe weather and disaster warnings is imperative for communities in California, where earthquakes, severe wild-fires, and mudslides occur far too often.[136] Local television broadcasts are likely the primary way that low income consumers, who may not be able to afford a computer or internet in their homes, are apprised of the dangers and relief efforts during an emergency situation.[137] In addition, for warnings to be effective they must be in a language that the target audience can easily comprehend. For example, merely airing an English-language NBC generated warning or disaster coverage on a Telemundo station is not enough. Both NBC and Telemundo owned and operated stations must have the capacity to effectively warn the communities they serve of an impending disaster.

We must not forget the 2002 chemical spill disaster in Minot, North Dakota that caused one death and more than a thousand injuries.[138] Because local radio stations were remotely owned and operated by an automated system, local emergency responders could not contact anyone to implement an emergency warning. [139] Over fifteen thousand local residents were unaware that an impending toxic ammonia cloud was bearing down on them and had no way of

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[135] 47 U.S.C. § 151 (the FCC was created to promote: "safety of life and property through the use of wire and radio communication."). *See also*, *Localism NOI*, *supra* note 89, at ¶ 27 ("a fundamental way in which broadcasters use the medium to serve their communities of license is to provide emergency information."); *Localism Report*, *supra* note 94, at ¶ 87 (discussing whether the FCC should require a physical presence at a TV broadcasting facility or whether they should be allowed operate remotely).

[136] *See, e.g. Broadcast Localism Hearing Before the F.C.C.*, Monterey, California 128-33 (July 21, 2004) (statement of Harry Robins, the Emergency Services Manager in Monterey County, discussing the needs of Californians and concerns about increasing automation of stations) *available at* <http://www.fcc.gov/localism/monterey-_transcript.pdf>; *Broadcast Localism Hearing Before the F.C.C.*, Washington, D.C. 24-26 (October 31, 2007) (statement of Marcellus Alexander, the Executive Vice President for Television at the National Association of Broadcasters discussing how crucial local broadcasters were in responding to California wild-fires) *available at* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278750A1.pdf>.

[137] *Broadcast Localism Hearings Before the F.C.C.*, Rapid City, S. Dakota 56-60 (May 26, 2004) (statement of Park Owens, Director of Emergency Management in Rapid City and Pennington County, discussing the importance of access to local broadcasts) *available at* <http://www.fcc.gov/localism/rapid_city_transcript.pdf>.

[138] ERIC KLINENBERG, FIGHTING FOR AIR: THE BATTLE TO CONTROL AMERICA'S MEDIA 10 (2007).

[139] *Id*. at 9-10.

finding out how to respond.[140] This example highlights the unique role that local broadcasters, both television and radio, play in ensuring the safety of the communities they serve. Applicants utterly fail to address this basic and essential concern.

iii. The risk of reduction in localism, due to Comcast and NBCU's history of reducing local content based on purported efficiency concerns, is unacceptably high.

Ownership of media matters, not only for competition and diversity, but also, for localism.[141] Unfortunately, both Comcast and NBCU have demonstrated a willingness to sacrifice local content and operations, citing efficiency as an excuse. Citing efficiency concerns as justification, Comcast has repeatedly consolidated operations. For example, in 2008 Comcast consolidated operations in Colorado, shutting off a local television channel that provided coverage of the community calendar, civic events and local political forums in Colorado Springs.[142] That same year, Comcast consolidated its east-coast operations, cutting 300 positions by combining six regions into four.[143] In 2009, when Comcast became the sole owner of New England Cable News, a leading source of news in New England and one of the most recognized documentary producers in the country, it immediately fired the station's president in order to operate it under Comcast Sports Group.[144] Also in 2009, just over one year after it purchased DailyCandy.com, a self-proclaimed 'insider's guide to your city,' Comcast ceased producing seven of the twelve local publications in favor of an 'Everywhere' edition.[145] Most recently, in

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[140] *Id.* at 10-11.
[141] *See, e.g.*, YANICH, *supra* note 103; Byerly, Langmia & Cupid, *supra* note 103; Michael Yan & Philip M. Napoli, *Market Structure, Station Ownership, and Local Public Affairs Programming on Local Broadcast Television*, Presented at the Telecommunications Policy Research Conference (2004) *available at* <http://web.si.umich.edu/tpre/papers/2004/374/tpre2004_yan.pdf>; PEJ LOCALISM STUDY, *supra* note 41; FCC, DO LOCAL OWNERS DELIVER MORE LOCALISM? SOME EVIDENCE FROM LOCAL BROADCAST NEWS (Working Paper June 17, 2004) *available at* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267448A1.pdf> (This study was made part of the public record September 15, 2006 after being suppressed for two years).
[142] Ralph Routon, *Comcast Turns off Springs*, COLORADO SPRINGS INDEPENDENT, Mar. 13, 2008.
[143] *Comcast Cutting 300 Positions*, PHILADELPHIA BUSINESS JOURNAL, Oct. 21, 2008 (Comcast cut 300 by combining Philadelphia and New Jersey into "Freedom Region", and Potomac, Maryland, Delaware and Richmond regions into the "Beltway Region"); Mike Farrell, *Comcast To Lay Off 300: Top Cabler Combining Regions Within Eastern Division*, MULTICHANNEL NEWS, October 22, 2008.
[144] Johnny Diaz, *Comcast Assumes Full Ownership of NECN*, BOSTON GLOBE, June 18, 2009 (New England Cable News will be "folded into Comcast's programming division and be operated under Comcast Sports group").
[145] Dylan Stableford, *Comcast Casualty: Layoffs at DailyCandy*, THE WRAP, Dec. 4, 2009 *available at* <http://www.thewrap.com/ind-column/roller-coaster-day-comcast-dailycandy-ends-layoffs-11236>.

January 2010, Comcast merged yet another two if its regions, this time Sarasota and Fort Myers-Naples in Florida.[146]

NBCU's track record is little better. As discussed above, NBCU closed seven local Telemundo news desks in favor of remotely produced content.[147] Moreover, NBCU has pioneered content sharing agreements with other television news broadcasters, such as FOX and CBS, in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York.[148] In general, these agreements result in a single television crew generating coverage of an event. This content is then disseminated to the participating networks who edit it into their newscasts. Aside from the competition concerns that this collusion raises, it patently reduces the variety, quantity and quality of local news.

Finally, Applicants have stated this merger will enable them to "share talent, facilities, and programming with the combined entity's other programming business, thereby achieving economies of scale and scope."[149] In other words, consolidation of content production and programming is already on the horizon. This will, in turn, directly reduce the amount and diversity of local content, not to mention jobs. Based on the Applicant's track records and stated intentions, the only reasonable conclusion is that this merger will result in less localism. Until these concerns are adequately addressed and all potential harms successfully mitigated, this transaction should not be permitted.

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[146] Kevin McQuaid, *Comcast Merges Two of its Regions, Including Sarasota,* HERALD TRIBUNE, Jan. 12, 2010, at D1 (Comcast consolidating Sarasota and Fort Meyers-Naples DMAs to save money and raise efficiency).

[147] NBCU attempted to use efficiency considerations to justify the closure of seven Telemundo local news desks. *See, e.g.,* Meg James, *Less Local News for Some at Telemundo,* LOS ANGELES TIMES, Nov. 13, 2006 (Local news for seven Telemundo stations will no longer be locally produced, but will originate near Fort Worth, TX. Professor at USC Annenberg School for Communications commented: "No matter how they frame it, this means there will be less local news . . . ."); *Unhappy Holiday News for Local TElemundo Staff,* LATINO PERSPECTIVES MAGAZINE, Dec. 2006 (Noting a Telemundo journalist's comment "I thought with the big chain buying us we'd get more resources, not less."); Elena Shore, *Attention NBC Telemundo: Latinos Need Local News Too*, NEW AMERICAN MEDIA, November 1, 2006 (commenting that the affected markets rank among the top ten Hispanic markets in the country).

[148] NBCU has concluded in News "Sharing Agreements" in Philadelphia, Chicago, Washington D.C., Los Angeles, and New York. *See, e.g.,*P.J. Bedarski, *Philly Stations Like Share and Share Alike*, TVNEWSCHECK, Apr. 21, 2010 (the Local News Service has its own planners, assignment editors and photographers that distribute stories to NBC and Fox); Michael Malone, *New York Pool: WNYW, WNBC, WCBS, WPIX*, BROADCASTING & CABLE, June 8, 2009 (In NY, an independent editor will determine the daily coverage and distribute it to all participating stations); Michael Malone, *Three L.A. Stations to Begin Local News Video Share June 15*, BROADCASTING & CABLE, June 2, 2009 (In LA, the local news share desk will be housed at NBC and overseen by a NBC veteran); Michael Malone, *Ganett, Fox, NBC Share in DC*, BROADCASTING & CABLE, May 21, 2009 (In D.C. NBC shares ground and aerial news video coverage); Michael Grotticelli, *Chicago Stations Join to Share Video Crews for ENG*, BROADCAST ENGINEERING, May 8, 2009 (NBC, CBS, FOX and Tribune to pool content in Chicago); *Fox Television Stations and NBC Local Media Form Local News Service*, BUSINESS WIRE, Nov. 13, 2008 (Fox and NBC O&Os to share news video coverage in Philadelphia).

[149] Application, *supra* note 1, at 40

C. The Proposed Merger Would Create a Media Giant that Could Harm Various Markets.

The Applicants propose the combination of two giants in the media industry. Comcast is the nation's largest multichannel video programming distributor ("MVPD"), with almost one-quarter of the video distribution market.[150] Comcast also has control over vast amounts of video programming content as well as several popular online properties. NBCU is one of the nation's four main broadcast television networks and owns 27 broadcast television stations as well as a vast array of national cable networks and online properties.

The Applicants misleadingly term this a vertical merger, and contend there is a minimal reduction of competition in either the video distribution market or the video programming market.[151] However, because the proposed entity would have unprecedented control over both video distribution and video programming, it would have new-found incentive – and unmatched power – to engage in anti-competitive activities in both markets.

Earlier this year, the FCC found that vertically-integrated cable companies continue to have the incentive and ability to engage in unfair acts involving their affiliated programming, unless they are barred from doing so.[152] The unfair acts cited by the FCC involving the video distribution market include withholding content from competitors and raising prices for their affiliated programming to uncompetitive levels.[153] Both of these anti-competitive activities lead to the same ultimate result – driving MVPD competitors out of business and thus resulting in severe horizontal harms to competition.

Vertically-integrated cable companies continue to have this power despite their overall decline of control of the market.[154] The FCC found these dangers existed in the then current

[150] An economic study of the proposed merger submitted by Comcast states that Comcast has 23.8 percent of the national MVPD market. *See* Mark Israel and Michael L. Katz, "The Comcast/NBCU Transaction and Online Video Distribution," submitted by Applicants to this docket, May 4, 2010, p. 6.
[151] Application, *supra* note 1, at iv-v, 9-10.
[152] *In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, MB Docket No. 07-198, (rel. Jan. 20, 2010) at ¶26 (hereinafter "*Terrestrial Loophole Order*"). In this proceeding the FCC closed the "terrestrial loophole" in the program access rules.
[153] *See id.*, ¶26, n. 89. Empirical studies have also shown that vertical ownership of video programming by MVPD companies leads to withholding of content and elevated prices. *See* Dong Chen & David Waterman, *Vertical Ownership in Cable Television: A New Study of Program Network Carriage and Positioning*, 30:3 REVIEW OF INDUSTRIAL ORGANIZATION 227, 250-51 (Sept. 2007).
[154] *Terrestrial Loophole Order*, *supra* note 152, at ¶27, n. 95. The FCC also noted that the regional market shares of cable operators often exceed the national average, making unfair activities an even more profitable and likely strategy. *Id*., at ¶27, n.97-99.

market conditions. However, the proposed merger threatens to completely change market conditions, creating the most powerful vertically-integrated media company ever. The proposed entity would have unprecedented incentive and ability to engage in anti-competitive practices.

Powerful, vertically-integrated companies can harm the video programming market as well. As the most dominant player in the MVPD market, Comcast would also have new found power and incentive to impose terms on its rivals in the video programming market who must access its strong distribution platform in order to stay in business. The ultimate effect on the consumer would be higher prices for MVPD services and reduction in the variety and innovation of content.

The current statutory and regulatory framework as well as the Applicants' commitments will not prevent the threatened harms to the video distribution, the video programming and the nascent online video market. The merger must not be approved unless conditions are in place to protect against these negative effects on competition.

i. If the merger is approved, Comcast could utilize its vast portfolio of programming to raise MVPD prices and eliminate rivals.

Comcast is the largest provider of MVPD services in the United States, serving 23.8 million subscribers, almost one-quarter of the national market. While the proposed merger will not add to Comcast's market position in the MVPD market, it will provide the merged company with a wealth of additional content which Comcast can utilize to force anti-competitive requirements on its MVPD competitors.

In recent years, Comcast has increasingly gained control over vast amount of video content, acquiring such cable networks as the Golf Channel, E! Entertainment Television, Style Network, Versus and G4. Most significantly, Comcast also owns ten Regional Sports Networks (RSNs). The proposed merger would provide the dominant MVPD with unprecedented control of one of the nation's four main broadcast networks, as well as the Telemundo network, and 14 popular cable networks, including the USA Network, Syfy, Bravo, CNBC, MSNBC, Oxygen, mun2, The Weather Channel and others.

1. MVPD competitors will be forced to pay Comcast's inflated prices for its video content.

The merged company would be able to raise prices for all of its content, most especially for "must-have" video programming. Must-have programming is highly desirable programming that is not replicable, and must be carried by a MVPD distributor in order to retain its customers.[155] When vertically integrated companies raise prices for must-have programming, competitors are forced to pay these uncompetitive prices or face losing customers.

Comcast already has such must-have programming in the form of its ten RSNs.[156] The proposed company would be adding extensive must-have programming from NBC, including all of NBC's national programming and news programming, NBC's sports programming, such as the 2012 Summer Olympics and other highly demanded content from NBC and its cable networks.[157] Comcast's MVPD competitors need access to this must-have programming in order to remain competitive.

2. Program access rules will not prevent price-gouging, especially of smaller cable companies.

The current program access rules may act to prevent Comcast from actually withholding affiliated content from competing MVPD, although the rules are imperfect.[158] The program access rules also prohibit discrimination in price for content offered to competitors.[159] However, there is absolutely nothing to prevent the proposed entity from simply raising the prices for

[155] Must-have programming is not definitively defined and should be viewed on a continuum. However, certain programming has been found by the FCC to be "must-have" programming. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 17 FCC Rcd 12124, ¶33 (hereinafter "*2002 Program Access Order*").
[156] Regional Sports Networks have been found to be must-have programming. *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., Assignees, et al*., Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶¶ 140-51.
[157] NBC's national programming and news programming should be considered "must-have" programming, as it is highly desirable and non-replicable. *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* MB Docket No. 07-198, Report and Order, 22 FCC Rcd 17791 (2007), at ¶38, n.187 (hereinafter "*2007 Program Access Order*")*, appeal pending sub nom. Cablevision Systems Corp. et al.* v. *FCC*, No. 07-1425 *et al* (D.C. Cir). News networks such as CNBC and MSNBC are an important source of information and should be considered must-have as well. *Id*. at ¶38, n.189. Cable networks such as USA Network, Syfy, Bravo and others are also highly desirable and non-replicable and should be considered must-have programming. *Id*. at ¶38, n.188. *See also 2002 Program Access Order, supra*, note 155, at ¶32.
[158] The program access rules prohibit withholding of content from competitors. 47 C.F.R. § 76.1002(c). However, the MVPD must file a program access complaint with the FCC to remedy the withholding, and will not have access to the programming content while the complaint is filed.
[159] 47 CFR §76.1002(b).

affiliated content for everyone, including itself. Unless these transactions are on an arms-length fair market basis this will harm only Comcast's competitors.

Previously, Comcast bargained tightfistedly with NBC for distribution of NBC, Telemundo and its cable networks, attempting to keep the price down. If the merger is approved, Comcast could freely over-pay for NBC-owned content, as it would simply be moving money from one pocket to another. However, this would set a price standard that must be matched by Comcast's competitors, such as DirectTV and AT&T, as well as the smaller cable companies that serve niche communities. These MVPD competitors must carry the must-have programming or else they will lose customers.

The smaller cable companies are especially subject to de facto price discrimination, as the program access rules place no restriction on quantity discounts.[160] Therefore, the proposed entity will have the freedom to charge competing MVPDs a much higher price for content than it charges itself – the largest MVPD and thus a recipient of a generous "quantity discount." The American Cable Association, which represents small cable companies, estimates that its members are paying at least 20-30% more for programming than the larger cable operators.[161] Price-gouging on small cable companies is especially concerning, as these small cable companies are often those that provide MVPD and dependent broadband service to underserved and rural communities.

If the merger is approved, the proposed entity will be free to price-gouge using its newly acquired NBC-owned content, as well as Comcast-owned content. Thus, the increased costs for NBC's content, artificially set by Comcast, would raise prices for MVPD services for all consumers. The ultimate effect on consumers will be higher prices, and as competitors fail because of the heightened costs of staying in business, a reduction in competition. The merger should not be approved unless competition and consumers are protected.

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[160] 47 CFR 1002(b)(2).

[161] *Hearing on Consumers, Competition, and Consolidation in the Video and Broadband Market Before the S. Comm. on Commerce, Science, and Transportation* 111th Cong. 2 (2010) (written testimiony of Colleen Abdoulah, President and Chief Executive Officer, WOW!, Board Member, American Cable Association), *available at* <http://energycommerce.house.gov/Press_111/20100204/abdoulah_testimony.pdf>.

3. The media giant can hold competitors hostage using must-have programming such as the Olympics.

The merged company would also be able to bundle less popular programming with highly demanded programming, thus forcing MVPD competitors to pay for content that may not be suitable for its customers. Similarly, the proposed company could distribute must-have programming across several channels, thus forcing MVPD competitors to pay for additional or unwanted content.

Comcast has already been accused of such practices involving its RSNs in California. In December 2009, two small cable companies serving the San Mateo Peninsula in California filed a program access complaint against Comcast for moving the games of Major League Baseball's Oakland A's and the National Hockey League's San Jose Sharks from its San Francisco RSN (CSN Bay Area) to its Sacramento-based RSN (CSN California).[162] According to the complaint, MVPD competitors are now required to buy both RSNs in order to continue to carry the "must-have" local sports programming. The complainants claim that Comcast raised the price of CSN Bay Area without replacing it with reasonably equivalent marquee sports programming that was lost, and still charged more for CSN California to reflect the addition of the added sports programming. Thus, the result was an increase in the price for the same programming, except now distributed among two separate RSNs.[163]

The proposed company could use similar bundling and splitting practices, mixing and matching Comcast's current content with NBC content. For example, the merged company will have the ability and the incentive to split programming from the 2012 Summer Olympic Games from NBC onto a number of different networks, including Comcast's current networks. In fact, the Applicants have stated such intentions.[164] The merged company could raise the price of these

[162] *In the Matter of Wave Division Holdings, LLC, et al. v. Comcast Corporation, et al*., CSR 8257-P. *See also* John Eggerton, *Stanford, San Bruno File Program Access Complaint Against Comcast*, BROADCASTING & CABLE, Dec. 29, 2009, *available at* < http://www.broadcastingcable.com/article/441950-Stanford_San_Bruno_File_Program_Access_Complaint_Against_Comcast.php>.

[163] These two RSNs have also been used anti-competitively against other MVPDs, for example, similarly forcing Direct TV to carry both RSNs at elevated prices in various regions, despite the fact that some of the sports teams are blacked out in these regions. *See* Hal J. Singer & J. Gregory Sidak, *Vertical Foreclosure in Video Programming Markets: Implications for Cable Operators*, 6 REVIEW OF NETWORK ECONOMICS, 372, 387 (Sept. 2007) (citing *Applications of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Cable Inc., for Authority to Assign and/or Transfer Control of Various Licenses*, MB Docket No. 05-192, 23-25 (2005) (*Comments of DIRECTTV, Inc*)).

[164] Applicants state that they will be able to distribute NBC's sports programming to Comcast's "sports networks" such as Versus, Golf Channel, and RSNs instead of to NBC's networks. *See* Application, *supra* note 1, at 50.

networks, citing the increased customer demand for the Olympic Games. MVPD competitors will then be required to carry a slew of broadcast and cable networks at increased prices, if they want to give their viewers full access to the Olympics.

4. Comcast has a history of anti-competitive activities in the video distribution market.

The dangers reviewed above are made all the more real when we review Comcast's history of anti-competitive activities in the video distribution market. As discussed above, Comcast split sports content between CSN-BayArea and CSN-California. Earlier this year, the FCC cited numerous occasions of Comcast engaging in unfair acts.[165] They found that Comcast had withheld delivery of CSN-Philadelphia from satellite television companies,[166] had withheld New England Cable News from a competitor,[167] had withheld CN8 – The Comcast Network (a news and information channel) from certain competitors,[168] and had withheld iN DEMAND (a video on demand channel jointly owned by Comcast, Time Warner and Cox) from certain competitors.[169] While the current program access rules may somewhat forestall withholding video programming from competitors, there is nothing to prevent the proposed media giant from raising prices for its new wealth of content to uncompetitive levels.

Withholding content from competitors is the height of non-competitive activity. Actually sacrificing short term profit, gained from the sale of video content, so that competing MVPDs, lose subscribers and potentially go out of business is even more egregious. If Comcast was willing to conduct such a foreclosure strategy in the past, the proposed entity, controlled by Comcast, would be more than willing to simply raise prices for its video programming for all – especially as there is nothing to prevent them from doing so.

5. The rising price of cable services continues to outstrip inflation.

The Applicants tout the efficiencies created by vertical integration. However, as discussed above, it is very likely that the proposed merger will result in elevated, not reduced,

[165] *Terrestrial Loophole Order, supra*, note 152, ¶30,
[166]*Id*. at ¶30, n.113
[167] *Id*, at ¶30, n.118.
[168] *Id*, at ¶30, n.119.
[169] *Id*, at ¶30, n.120.

prices for MVPD service. This will continue the unfortunate but established trend of rising prices for cable service.

In recent years, despite the addition of MVPD competitors such as satellite systems, cable service has seen its prices far outstrip the cost of living or inflation. From 1995 to 2008, the price of expanded basic cable service grew from $22.35 to $49.65, an increase of 122.1%, more than three times the rate of inflation over the same period.[170] One would hope that the price increase of cable would stop or at least slow its rate of increase when faced by increasing competition from satellite television MVPD providers. However, the *rate* of price increase for cable has actually increased for each year in the three years leading up to January 2008.

Comcast may describe the increase in its rates as reflecting an increase in the value of its products, as more channels are added to the basic and expanded basic cable package. However, increasingly, channels affiliated with Comcast, contain the same content split into separate channels (as in the case of CSN Bay Area and CSN California) or may include undesirable channels and content bundled and forced upon another MVPD. In the context of increasing media consolidation, an increase in the number of channels does not translate into a substantive increase in the variety of offerings.

The effect of anti-competitive practices, such as price-gouging and forced bundling of programming, would only exacerbate the already severe price increases for MVPD service for all consumers. These severe price increases create a barrier to access of important media resources for all consumers, but especially for low-income consumers. To the extent consumers purchase their MVPD service bundled with broadband service, increased prices for MVPD service will retard broadband adoption and exacerbate the digital divide, as will be discussed below.

ii. The proposed merger would harm the video programming market.

The resulting media giant will have the incentive to railroad content producers, placing unaffiliated networks in disadvantageous situations compared to its affiliated networks. Comcast could move programming from unaffiliated entities from highly-penetrated basic cable tiers to more expensive low-penetration tiers. The effect on programming competitors would be to lower the penetration of their networks, so that they receive less advertising revenue. Comcast

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[170] *In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266 ¶2 (rel. Jan. 16, 2009).

could also require an ownership interest in unaffiliated networks as a condition of carrying them on Comcast, thus increasing its control over programming.

Comcast has a history of this unsavory practice. In recent years, the NFL Network, the Tennis Channel, the Mid-Atlantic Sports Network and Wealth TV all filed complaints with the FCC against Comcast arguing that Comcast had discriminated against these unaffiliated networks in favor of networks owned by the cable operators.[171] The combination of Comcast's already significant programming assets with NBC's extensive programming would give the merged entity many more opportunities and a strong incentive to discriminate against non-affiliated networks.

For consumers, the effect of such anti-competitive activities in the programming market is higher prices. Consumers will have to pay for more expensive cable tiers in order to continue to see the wide variety of programming that is not affiliated with the merged company. In many cases, competing content producers will not be able to survive these anti-competitive tactics and will cease operation. As a result, consumers will face a reduction of their programming options, as more and more content is controlled by the Comcast/NBCU behemoth or similar media conglomerates.

The proposed merger heralds greater impairments to competition than those illustrated above. Specifically it could trigger a wave of further media consolidation. Other distribution and programming companies will need to merge – both horizontally and vertically – in order to have sufficient bargaining power to effectively compete against the Comcast/NBCU media giant. Media consolidation will become a self-fueling cycle, as smaller companies are absorbed by large media conglomerates. Only these large media conglomerates will be able to survive in this environment.

The effect on consumers will be ever-rising prices for MVPD service. As fewer and fewer gatekeepers have control of media, consumers will have less variety and choice in media content. Independent sources of media will especially be lacking. As discussed above the harms to diversity will be severe, but the competitive harms are also vast. Simply put, consumers will be paying more, yet receiving less.

[171] *See, e.g.,* Program Carriage Complaint of The Tennis Channel (Complainant) against Comcast Cable Communications, LLC (Defendant), Filed Jan. 5, 2010.

iii. Comcast increases its domination of the broadband market and ignores the objectives of the National Broadband Plan.

As part of the American Recovery and Reinvestment Act of 2009 ("the Recovery Act"), Congress directed the FCC to develop a National Broadband Plan ("the Plan") to ensure that every American has "access to broadband capability."[172] Congress recognized the fundamental role of universal broadband access as the vehicle of the nation's social and economic health.[173] Congress also recognized that the objectives of the Recovery Act and the Plan depended on universal broadband access, which could only be achieved if broadband was actually affordable for all Americans. Thus, Congress charged the FCC with creating a "detailed strategy for achieving affordability of [broadband] service."[174]

Throughout its Application, Comcast states that it anticipates investments in the growth of on-line video viewership will accelerate broadband adoption, which Comcast recognizes as an important FCC goal.[175] Invariably, when Comcast claims the merger will benefit broadband adoption, in reality, they are merely citing the increasing reach of Comcast's broadband market and of its online properties. Despite its lip service to increasing broadband adoption, Comcast does not make any actual commitment of resources towards broadband adoption or any other of the nation's broadband goals.[176]

1. The nation continues to lag behind on universal broadband access and affordability.

Unfortunately, universal broadband access remains a distant goal. The Plan stated that there are 14 million people that lack access to terrestrial broadband infrastructure capable of

[172] American Recovery and Reinvestment Act of 2009, 123 Stat. 115 (2009), § 6001(k)(2) (hereinafter "Recovery Act").
[173] For this reason, Congress required that the Plan include a strategy for maximizing the use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes." *Id*, at § 6001(k)(2)(D).
[174] *Id* at § 6001(k)(2)(B).
[175] *See, e.g.*, Application, *supra* note 1 at 7, 37, 55.
[176] Comcast promises to partner with Common Sense Media (CSM) and "[u]pon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign." *Id*. at p. 47. However, these resources are not definitively committed, and these public awareness efforts may look very similar to a marketing campaign for Comcast.

meeting the National Broadband Availability Target.[177] The Plan noted that the broadband availability gap is largest in rural areas.[178] The Plan further found that 80 million adults, roughly 35% of the population, do not use broadband at home.[179] The Plan noted that some communities adopt broadband at significantly lower levels, including Hispanics, half of whom do not use broadband at home and African-Americans, 41% of whom do not adopt broadband, and those whose annual household income is less than $20,000, 40% of whom do not adopt broadband.[180]

As noted above, the nation still has a huge broadband access gap, especially in rural communities. As for affordability, the price for broadband service continues to rise exorbitantly.[181] Broadband adoption rates cited above, which are much lower for communities of color and low-income households, demonstrate this. Universal broadband access and affordability are two fundamental issues that must be addressed for the nation to continue its economic recovery and for the long-term viability of the nation's physical and social infrastructure. The proposed merger promises nothing to address these two important issues.

2. The proposed merger would only lead to further dominance of the broadband market and could frustrate the universal access and affordability objectives of the National Broadband Plan.

Comcast is in a unique position to contribute to these vital national efforts. Comcast is by far the nation's largest broadband internet service provider, serving 16.3 million subscribers, almost one-quarter of the market. Moreover, Comcast is continually increasing its share of the broadband market, greatly outpacing its competitors as it added 399,000 new broadband customers in the first quarter of 2010 – Comcast's nearest competitor in the broadband market (AT&T) only added 255,000 broadband customers in the same time period.[182]

The proposed merger would only increase Comcast's dominance of the broadband market. As detailed above, Comcast could take unfair actions that limit competition from MVPD service providers. Many of these MVPD competitors also offer broadband service,

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[177] *See* Broadband.gov, Connecting America: The National Broadband Plan 136, n.7 (Chapter 8), http://www.broadband.gov/download-plan/
[178] *Id*. at 136, n.8.
[179] *Id*. at 167, n.1 (Chapter 9).
[180] *Id.* at 167, Exhibit 9-A.
[181] The average monthly bill for broadband service nationwide in April 2009 was $39.00, an increase from $34.50 in May 2008. John Horrigan, *Home Broadband Adoption 2009*, PEW INTERNET & AMERICAN LIFE PROJECT 29 (2009), *available at* <http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx?r=1>.
[182] Press Release, Leitman Research Group, 1.4 Million Add Broadband in the First Quarter of 2010 (May 12, 2010), *available at* <http://www.leichtmanresearch.com/press/051210release.pdf>.

indeed, their ability to offer broadband service is dependent on their participation in the video market.[183] Thus, in eliminating competition from the MVPD market, Comcast would also be eliminating companies that compete in the broadband market. This would only exacerbate Comcast's already overwhelming dominance of the broadband market.

In addition, if anti-competitive activities eliminate broadband competitors, there will be fewer companies with the ability to compete for and reach underserved areas. The FCC has found that anti-competitive acts in the MVPD market have the potential to limit broadband services, particularly in underserved rural areas.[184] Thus, the proposed merger does not promise any progress towards the objectives of the National Broadband Plan, but rather it has the potential to impede the objective of universal access, especially as small cable companies that serve niche and rural communities are eliminated. Reduced competition in the broadband market also means that Comcast could raise prices on broadband service, exacerbating the already excessive price increases.

As the most dominant player in the broadband market, Comcast has the strongest influence on the goals of universal access and affordability of broadband. However, the proposed merger does not address these issues at all. Instead it heralds an attempt to corral the nascent online video marketplace.

iv. The proposed merger could throttle the burgeoning online video market, reducing competition and innovation.

Although the majority of viewers continue to utilize traditional television broadcast or MVPD technology, an increasingly important emerging market is the nation's online video marketplace. A number of companies such as YouTube, Netflix, Amazon Video, and others offer video programming content online. Numerous companies, such as Roku, Boxee and Apple TV, are developing innovative technologies and business models to facilitate the delivery of video over the Internet. A free and open Internet offers the opportunity for innovative, independent production and distribution of video content free of the controls of traditional media powers. However, this burgeoning market and forum for innovative media may be choked off at its inception by the proposed media giant.

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[183] *Terrestrial Loophole Order*, *supra* note 152, at ¶ 36
[184] *Id*. at ¶ 36, n. 140.

Viewers often complement traditional media with online content. For example, the internet is utilized to catch up on episodes that a viewer had missed watching on traditional television. However, increasingly, online video viewership is itself a competitive alternative to MVPD service. A recent industry report stated that 800,000 households (often referred to as "cord cutters") dropped their MVPD subscriptions in the years 2008-2009, preferring to view video content over the Internet.[185] The report forecast that the number of "cord cutting" households will reach 1.6 million by year-end 2011.[186]

Comcast has its own online video provider services and, in acquiring NBCU, the merged company would have 32% ownership in Hulu, the nation's second largest online video provider. Hulu currently delivers programming from the broadcast networks and cable channels of NBC, ABC and Fox, without charge to viewers.

The merged company would have the incentive to forestall the new online video market, in order to protect Comcast from losing customers that choose to eliminate their expensive MVPD service in favor of online viewing. The merged company could do so by denying its vast wealth of video content to online competitors, or by only offering the content at unfavorable terms. Additionally, the merged company could also place much of its content, including the content from NBC, behind a paywall, so that it would only be available to Comcast subscribers. In that way, Comcast could assure that viewers would be required to pay Comcast for content – either as Comcast MVPD subscribers or as Comcast broadband subscribers.

1. The Applicants have already restricted online viewing of their content – and would have unprecedented opportunity to restrict future viewing of such events as the Olympics.

NBC's programming assets have already been restricted from online viewing on a number of occasions. NBC restricted video of premiere competitions from the 2010 Winter Olympics to television viewing only, either on NBC or its affiliated cable networks. NBC only carried tape delayed video of premiere competitions, and live streams of less popular competitions on its Olympics website. However, for this online viewing, NBC instituted a web authentication system, restricting viewership to paid subscribers of cable, satellite or IPTV

[185] CONVERGENCE CONSULTING GROUP, INC., THE BATTLE FOR THE AMERICAN COUCH POTATO: BUNDLING, TELEVISION, INTERNET, TELEPHONE, WIRELESS 7 (April 2010), *summary available at* http://www.convergenceonline.com/downloads/USBundle2010.pdf

[186] *Id.*

services. The merged company will have a strong incentive and free reign to use a similar web authentication system to further restrict online viewership of some or all of the upcoming 2012 Olympics to only Comcast cable subscribers. This is the essence of anti-competitive bundling, requiring consumers to purchase one product (Comcast cable services) in order to receive another product (Olympics programming online).

NBCU's Hulu also has indicated its intent to restrict some content to a paid premium tier.[187] A merger with Comcast will only hasten the implementation of a paywall for content. This will be affected either by requiring a premium subscription to Hulu, or by restricting access to Comcast cable subscribers. Wealth should not be a barrier to viewing content online.

2. The proposed entity would have new opportunities to curb online competitors – hindering innovation in online video.

The anti-competitive activities discussed above would strangle the nascent online video marketplace, and establish the proposed media giant as a controlling market player. This will not only reduce competition, but it can also arrest the development and implementation of new video technologies. Hulu has already acted in an anti-competitive manner with respect to innovative technologies, preventing Hulu's "free" content from being viewed by viewers using Boxee's innovative online video technology.[188] Unless protections are in place, the proposed merger will reduce competition and stifle innovation in the burgeoning online video marketplace.

As the nation's largest broadband service provider, Comcast will have the power to act as a gatekeeper to the Internet and discriminate against online video companies that compete with its affiliated online video platforms. With the addition of a large interest in Hulu, the nation's second largest online video provider, Comcast will have new found incentives to do so. Comcast has a history of using its broadband services to discriminate against unaffiliated companies. For example, in 2007 Comcast subscribers began to notice that they had problems using BitTorrent and similar peer-to-peer file sharing technologies.[189] While, Comcast originally denied that it

[187] Dawn C. Chmielewski & Meg James, *Hulu pushes forward with $9.95 subscription service*, L.A. TIMES (April 21, 2010), *available at* <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/04/hulu-pushes-forward-with-995-subscription-service.html>.

[188] Mark Milian, *NBC tells Congress that Boxee was illegally taking Hulu content; Boxee disagrees*, L.A. TIMES (Feb. 4, 2010), *available at* <http://latimesblogs.latimes.com/technology/2010/02/boxee-hulu-comcast.html>.

[189] *In re Formal Complaint of Free Press & Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications,* Mem. Opin. and Order, 23 FCC Rcd. 13028 at ¶6 (2008).

was unilaterally throttling Internet traffic, these denials later proved to be false.[190] The FCC investigated the issue, found fault with Comcast, and in August 2008 issued a "cease and desist" order.[191]

Unfortunately, the legality of Comcast's targeted throttling of lawful Internet usage is currently still at issue before the FCC and the courts. Unless the FCC institutes robust rules requiring Net Neutrality, Comcast will be free to discriminate and degrade the use of competing online video companies on its broadband service, just as it degraded BitTorrent users. This would be a significant setback for the nascent online video market, because Comcast controls almost one-quarter of the nation's access to broadband.

By acquiring NBCU's extensive video content, Comcast obtains unprecedented power to significantly impact the broadband and online video markets. This impact will more than likely be negative, based on Comcast's history of anti-competitive practices. Unfortunately, the Applicants fail to address any of the goals of the National Broadband Plan. Rather, the proposed merger only presents ample opportunities for Comcast to corral the burgeoning online video market, reducing competition and innovation.

III. APPLICANTS' VOLUNTARY PUBLIC INTEREST COMMITMENTS ARE INSUFFICIENT TO MITIGATE OR REMEDY THE POTENTIAL HARMS.

Voluntary public interest commitments have not proven successful. Take for example, the voluntary commitment that broadcasters air 5 minutes per night (between 5 and 11:35 pm) of candidate centered discourse during the 30 nights prior to an election.[192] Among others, NBC made a public commitment to ensure that its owned and operated channels met this target.[193] Unfortunately however, a Lear Center study of the 2000 general election shows that only one of the 74 stations surveyed, which were located in 58 of the country's top 60 markets, met the five minute target.[194] NBC owned and operated stations averaged just over two and a half minutes of

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[190] *Id*. at ¶¶ 7-9.
[191] *Id*. at ¶¶ 53-56.
[192] This was suggested by the Presidential Advisory Committee on Public Interest Obligations, co-chaired by Leslie Moonves, President of CBS. CHARTING THE DIGITAL BROADCASTING FUTURE, FINAL REPORT OF THE ADVISORY COMMITTEE ON PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 59 (1998) *available at* <http://www.benton.org/sites/benton.org/files/recs.pdf>.
[193] Norman J. Ornstein, *Broadcasters Need to Do More to Give Candidates Air Time*, Research Roll Call, June 23, 2004, *available at* <http://www.aei.org/article/20783>.
[194] MARTIN KAPLAN & MATTHEW HALE, LEAR CENTER, LOCAL TV COVERAGE OF THE 2000 GENERAL ELECTION 3 *available at* <http://www.learcenter.org/pdf/campaignnews.PDF>.

candidate centered discourse per night.[195] Thus, it is doubtful whether voluntary public interest commitments can provide a meaningful check against the myriad public interest harms that will flow from the proposed transaction.

Even if the public interest commitments suggested by Applicant are made binding and enforceable by the FCC order, they still do not fully address nor do they mitigate the public interest harms. In order to approve the transaction, the FCC must find that it is in the public interest. Here, the transaction is not in the public interest and the so-called commitments are illusory.

A. The Applicants' commitments do not mitigate the diversity harms.

In today's society, television media not only provides entertainment but also is a source for news and information. Moreover, it is a resource that shapes the perceptions of America. It is a new "town forum" where people can engage in civic issues without limitations of transportation, cost and other logistics. Accordingly, as discussed above, it is of utmost importance that media reflect a diversity of viewpoints and provide equal access to information for all persons.

i. Applicants' additional diversity commitments are neither binding nor enforceable and should not be considered.

We note at the outset that in addition to the commitments that were part of the Applicants' filing with the FCC, they promulgated a "Summary of Diversity Commitments." In relation thereto, there are several points worth keeping in mind. First, these commitments only arose after a public outcry as to the dismal state of diversity within Comcast and NBCU necessitated a fifth congressional hearing on the matter.[196] A hearing at which Comcast did not testify nor make their presence known until the potential of a subpoena was raised.[197] Instead these 'Diversity Commitments' were attached to the Testimony of NBCU and GE executive

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[195] *Id*. at 15.

[196] *Field Hearing on The Proposed Combination of Comcast and NBC Universal Before the H. Comm. on the Judiciary* 111th Cong. 2 (2010) (Written Testimony of Paula Madison, Executive Vice President, Diversity NBCU and Vice President, GE), *available at* <http://judiciary.house.gov/hearings/pdf/Madison100607.pdf> (hereinafter "Diversity Commitments")

[197] While the transcript of the hearing has not yet been made available, Samuel Kang, Managing Attorney of Greenlining also testified at this hearing and can personally attest to this fact.

Paula Madison, and do not appear anywhere on Comcast's website dedicated to informing the investors and the public about the transaction.[198]

Second, to date Applicants have not amended their application with the FCC to make these expanded commitments binding. Third, even if these commitments are made technically binding, there is no mechanism to make them enforceable in any practicable manner. Finally, even if binding and enforceable, the substance of the commitments still falls far short of what would be required to mitigate the diversity harms arising from the proposed merger. Therefore, until Applicants move to make these commitments binding and enforceable, we decline to comment further on them herein.

ii. Applicants present no commitments to address the harm to diverse ownership that will result from the proposed transaction.

As discussed in relation to diversity and competition, the consolidation of media into the hands of a few conglomerates drastically reduces diverse ownership, in particular by minorities. While Commitment #13 claims that Applicants will add two new independent channels to their line-up every year for three years following the digital transition this is inadequate for the following reasons. First, there is no commitment that these channels would be minority owned. Second, even if all independent channels added were minority owned, a commitment to add six stations to a lineup that numbers in the hundreds is hardly meaningful. Finally, there is no commitment that these channels would be on the basic tier of service. If they are relegated to a high cost, low distribution tier, these channels will quickly go out of business due to lack of advertising dollars and minority ownership of media outlets will not be improved.

Moreover, Applicants may point to the divestiture of a single channel in the Los Angeles market as a commitment to diversity ownership.[199] Simply put, selling a broadcast channel to avoid regulatory scrutiny is not a commitment to diversity. Even if the channel is sold to a minority purchaser, this is nothing to laud. A one-off sale is not a meaningful commitment that demonstrates a long term goal of increasing minority ownership.

[198] Comcast.com, NBC Universal Transaction, http://www.comcast.com/nbcutransaction/homenojava.html (last visited June 17, 2010).
[199] *See, e.g.,* Diversity Commitments, *supra* note 196, at 4-5.

iii. Applicants' commitments do not address the harm to viewpoint diversity that will flow from the proposed merger.

The Application contends that the merger will increase the "amount, quality, variety and availability of content [specific to minority groups] more than either company could do on its own."[200] To address issues of diversity and minority interests, the Applicants offer a series of commitments. In Commitments #6, 7, and 8, Applicants state that they intend to utilize "library programming that has had limited exposure," expand the availability of over-the-air programming to the Hispanic community by utilizing a portion of the digital broadcast spectrum and add programming to its video-on-demand platform.[201] Unfortunately, these commitments fall extremely short and ignore the needs of its consumers.

Offering an existing library of programming does nothing to address the dearth of programming offered for minority communities. Further, these commitments are insignificant and inadequate to address the need to expand representation of diverse viewpoints. The fact that the Applicants limit their discussion to Telemundo and mun2, two assets that Comcast will acquire from this merger, indicates that they don't get it or just don't care. Applicants must also address the needs of Asian and African American communities. With an increasingly diverse population and the fact that today's mainstream media does not represent the true makeup of America. The Applicants should be proactive and look for solutions, rather than offer a few empty commitments that will get them past regulatory review.

iv. Applicant's commitments do not even address source diversity.

As described above, ensuring that content from diverse sources is aired on broadcast and cable television is a long standing goal of telecommunications policy. However, nothing in the Application and none of the sixteen commitments even acknowledge this fact. Applicants have not committed to buy a certain percentage of programming from independent and diverse producers. Applicants have not committed to establishing a fund to subsidize independent or minority producers. There are a number of ways that Applicants could have demonstrated a commitment to ensuring source diversity, however they have failed. Unless and until these concerns are addressed the proposed merger should not be permitted.

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[200] Application, *supra* note 1, at 5.
[201] *Id.* at 48-50

B. The Applicants' commitments do not mitigate the localism harms.

As discussed above, there are a myriad of harms to localism that will flow from the proposed transaction. Specifically, the proposed transaction will result in less local television newscasts, which are integral to our democracy. Moreover, it will reduce community responsive programming, alter the network affiliate relationship, and hinder the dissemination of effective and timely disaster warnings. While Applicants have proposed several "voluntary public interest commitments" they are simply not enough. Based on Applicants' poor track record and stated intentions, if the proposed transaction is permitted, the harm to localism is certain. The commitments do not mitigate this harm for the following reasons.

i. Comcast has failed to show that local television newscasts and political coverage will not be harmed by the merger.

As discussed above, the proposed transaction will result in a reduction in the amount and quality of local newscasts, in particular, coverage of local political issues. However, none of the public interest commitments address this harm. While Comcast asserts that it "intends to preserve and enrich the output of local news" in Commitment # 2, the only way they have suggested doing this is by putting local programming on cable networks, video-on-demand and online.[202] Simply put, transitioning or replicating content on multiple platforms does not increase the quality of local news. Comcast has not, for example, committed to increase the number of local reporters stationed at NBC and Telemundo owned and operated news desks. Applicants state that the NBC owned and operated stations will "collectively produce an additional 1,000 hours per year of local news and information programming." However, this is not in the official Commitment # 2 and, even if it becomes binding, it is not clear how these hours will be allocated and whether this includes the fifteen Telemundo owned and operated stations or only the ten NBC owned and operated stations.[203] It is also unclear whether this commitment will continue year over year, or only during the first post-transaction year.

Further, Applicants have not committed to allocate or provide any air time to political programming. Of specific concern is the lack of any commitment dealing with air time for local

[202] Application, *supra* note 1, at 41-42.
[203] If it includes the Telemundo O&Os, this works out to 40hrs per station per year, or roughly 6.5 minutes per day. If it applies only to the NBC O&Os, it would be 100hrs per station per year, or roughly 16 minutes per day.

political issues, especially those affecting low income communities and communities of color. While speech may be free, communication is expensive.[204] However, there is no commitment to establish a fund to subsidize or a commitment to provide free airtime to those candidates who are disadvantaged by the ever increasing cost of communications: minority or low income candidates. Likewise, Applicants have made no mention of, much less a commitment, ensuring adequate political coverage on the basic tier of service; instead they intend to relegate this to higher cost and less accessible platforms.[205] Finally, there is no commitment to air political programming on local television *at a time when most people would watch it* instead of relegating it to times where the only viewers are insomniacs. Any commitment without specifics of this sort is vacuous.

Finally, Commitment #16 alleges that the combined entity will "continue the policy of journalistic independence" and will retain the position of the NBC News ombudsman.[206] While at first glance this appears to be a laudable claim, it is similarly toothless. It is unclear what authority the ombudsman would have, whether this authority can be increased or decreased at will by Comcast, and what the term of appointment is.[207] In general, "the media [doesn't] initiate investigations of corporations, particularly their advertisers, until after the demise of the company."[208] If this is true for advertisers, how much more true will it be for their owners? NBC news must not be hampered in reporting on the activities of GE or Comcast. As it currently stands, the harm to local news and political programming is grave and unmitigated by the stated commitments.

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[204] Common Cause, Public Interest Obligations, http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773669 (last visited May 25, 2010).
[205] Application, *supra* note 1, at 41-42 (Comcast will put local content online and on VOD). *See also*, Application, *supra* note 1at 50 (Comcast will put Telemundo and mun2 programming on VOD platform); *and* at 68-69 (Comcast will put PEG content on VOD platform).
[206] Application, *supra* note 1, at 133.
[207] For example, if the ombudsman can be removed by Comcast without cause, this offers very little independence or protection.
[208] Eric Chiappinelli, Adam Candeub, Jeffrey Chester, Lawrence Soley, *The Corporatization of Communication*, 30 SEATTLE U. L. REV. 959, 974-75 (2006-2007).

ii. Applicants have failed to show how they will be responsive to local communities.

As discussed above, "[b]roadcasters have an obligation to serve the public's interests, not just their own commercial interests."[209] In Commitment #1, Applicants claim to be committed to the provision of free over the air television.[210] However, in the text accompanying this commitment, Comcast indicates that they intend for the NBC, Telemundo, and local owned and operated stations to share "talent, facilities, and programming with the combined entity's other programming businesses, thereby achieving economies of scale and scope."[211] By placing efficiency concerns above their obligation to serve the public, Comcast has shown itself to be an enemy rather than a champion of the public interest.

Secondly, Comcast has not indicated how it will assess the public interest needs of the various communities it will serve. There is no commitment to create citizen advisory boards, no suggestion of any sort of ascertainment process, and not even an acknowledgement of the fact that communities in California have very different needs than those in Philadelphia and New York. Applicants will have a duty to serve local communities and without meeting with community leaders in the major DMAs it will serve, it is unclear how they can fulfill this duty.

A related harm that Applicants have failed to address is the impact that the increased market share will have on its network-affiliate relationships. Applicants have not made any commitments with respect to local NBC affiliates preempting or refusing to air national or regional content. Similarly, they have not made any mention of allowing the NBC and Telemundo owned and operated stations to preempt regional or national content in favor of local programming. In sum, Applicants have proposed no way of discovering local needs and have provided no mechanism to protect and ensure that local broadcast affiliates can serve those needs without fear of repercussions, increased retransmission fees, disaffiliation or non-carriage.

Moreover, Applicants have indicated that it intends that local must-have "NBC's sports programming to be distributed on Versus, Golf Channel, and Comcast's multiple RSNs."[212] In other words, sporting events such as the 2012 Olympic Summer Games, a significant number of NFL Sunday Night games, and the 2012 Super Bowl, could potentially no longer be aired on

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[209] The Benton Foundation, CITIZEN'S GUIDE TO THE PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 4 (2005), *available at* <http://www.benton.org/sites/benton.org/files/citizensguide.pdf>.
[210] Application, *supra* note 1, at 40.
[211] *Id.*
[212] *Id.* at 50.

broadcast television; instead consumers will have to pay for higher cost cable packages.[213] For example, Comcast will have the power to move national 2012 Super Bowl coverage to a cable channel, such as Versus. Similarly, if sports fans in the San Francisco/San Jose/Oakland markets want to watch the Sharks, the Giants, the A's, and the Warriors, they will need to pay for CSN Bay Area, CSN California and Versus.[214] Migrating local sports broadcasts to expensive cable pay stations is simply not responsive to local needs.

Finally, Comcast has failed to address the need for local broadcasters to be available to air emergency weather and disaster warnings. There are no commitments to ensure that a live person will staff NBC and Telemundo owned and operated stations twenty-four hours a day, seven days a week, in order to ensure that timely warnings are effectively broadcast. An automated and remote service cannot substitute for a live person. This is particularly crucial in California, where a truly effective warning must account for our multi-lingual population. Warnings need to be available in languages other than English. No community should be endangered because it chooses to watch Telemundo rather than NBC.

C. Applicants' commitments do not prevent anti-competitive harm in the video programming, video distribution, and online markets.

i. Applicants' commitments would not prevent anti-competitive acts in the video distribution market.

The "public interest commitments" proposed by the Applicants to address anti-competitive behavior in the video distribution market are wholly inadequate. Under Commitment #15, Comcast would voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBCU and Telemundo owned and operated stations for as long as the current program access rules remain in place.[215] This commitment is inadequate for a number of reasons. First, the program access rules are set to expire in 2012. In any case, the program access rules cannot protect against price-gouging because although they ostensibly prohibit discriminatory pricing between MVPDs,

[213] *See* Appendix III.
[214] *Id.*
[215] Applicants' Commitment #14 also called for voluntary application of program access rules to the high-definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission's current program access rules remain in place. However, earlier this year the FCC extended program access rules to apply independently to HD feeds of programming whose SD feeds are covered by program access rules, thus negating any effect of Commitment #14. *See Terrestrial Loophole Order,* supra note 152, at ¶9.

the rules would not prevent the proposed entity from raising prices for everyone, including its affiliated MVPD. The rules also place no restriction on quantity discounts.[216] Therefore, the merged company will have the freedom to charge competing MVPDs a much higher price for content than it charges itself – the largest MVPD and thus a recipient of a generous "quantity discount." Thus competitors will be forced to over-pay for NBCU content, especially the smaller niche cable companies that cannot take advantage of any quantity discount. Especially for smaller cable companies, the proposed mitigations provide absolutely no relief. Unless real protections are in place against such anti-competitive activities, the merger should not be approved.

ii. Applicants' commitments would not prevent the proposed company from imposing its will on competitors in the video programming market.

The Applicants claim that they will not have the incentive to discriminate against unaffiliated networks. They also propose Commitment #13, that Comcast will, once it has completed its digital migration company-wide ("anticipated" to be no later than 2011), add two new independently owned and operated channels to its digital line-up each year for three years on "customary terms and conditions." Despite this commitment, there is nothing to prevent Comcast from adding these channels to its most expensive tier of service, where it will be available only to a low-penetration market. Moreover, it is unclear what the customary terms and conditions are – they could be unduly onerous to small minority owned channels. This commitment will not prevent anti-competitive harms to the video programming market.

iii. Applicants' commitments would not prevent Comcast from impeding the nascent online video market.

Throughout its application, Comcast and NBCU profess support for the online video marketplace. Comcast touts its new initiatives to bring video content on-line and its adherence to the "TV Everywhere" principles.[217] Comcast states:

[216] 47 C.F.R. § 1002(b)(2).
[217] *See* Application, *supra* note 1, at 59-60.

> It bears emphasis that a fundamental element of the TV Everywhere principles mentioned above is that arrangements be open and non-exclusive. Thus, a programming vendor that agrees to make its content available on Fancast Xfinity TV is free to license its content to the online platforms of other MVPDs, and an MVPD that licenses content from one programming vendor is not precluded from licensing content from other programming vendors.[218]

While these stated open and non-exclusive "principles" are exemplary, in no way does Comcast actually proscribe the merged company from restricted programming content from competitors. Commitment #10 barely addresses the online video market, promising that "NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no-additional charge to the consumer will continue to be made available at no additional charge for the 3 year period after closing." There would be nothing to prevent the merged company from denying NBC content to online competitors, or from requiring a Comcast cable subscription for online viewing. Furthermore, after a mere three years, Comcast could begin charging for online NBC content.

[218] *Id.*at 61.

CONCLUSION

Over the last 20 years, media consolidation has squeezed out independent viewpoints and sources of information, particularly those reflecting diverse communities. As noted above, today only five companies own 90% of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70% of the prime time television market share. These same companies also own over 85% of the top 20 Internet news sites. The proposed merger would exacerbate this already dire situation.

Applicants propose to create the most powerful vertically and horizontally integrated media giant ever, combining the nation's most dominant video distribution company and one of the nation's main broadcast television networks. Such a powerful media entity will have unprecedented power and opportunity to raise prices, eliminate competition, and further grow its control over both traditional and non-traditional media. The public interest harms to competition would be enough justification to stop this merger – especially given previous anti-competitive actions taken by the Applicants. However, when we consider the considerable harms threatened to diversity and localism, the merger becomes completely untenable.

The proposed merger will also result in public interest harms to localism. The Applicants have already demonstrated past practices of reducing resources to local news and have evidenced future intent to do so. The proposed media giant will also be able to force their centralized programming onto local stations, further harming localism. Comcast has not evidenced a thorough understanding of its localism requirements much less mitigated the potential harms of the proposed transaction. The harms were not addressed by the commitments included in its Application. It is irresponsible and reprehensible to entrust the nation's oldest broadcasting company to a corporation that does not fully appreciate the magnitude of the public interest responsibility it must shoulder. While Comcast may be able to disregard the needs of local communities as a mere cable provider, it cannot do so as a broadcast entity, where the needs of the public reign supreme.

In the foregoing petition to deny, Greenlining demonstrated the great harms of the proposed merger to diverse ownership, viewpoints and content. Media consolidation will further limit opportunities for diverse viewpoints, relegating minorities to existing stereotypes.

Moreover, Comcast and NBCU have repeatedly shown they are not interested in protecting minority ownership and content. California provides a good example of how this country's minorities are becoming the new face of America. It is high time that the media reflect the reality in this country.

Greenlining respectfully requests the diverse communities that stand to be the most harmed by this merger be given an opportunity to provide express their viewpoint on this merger. Congress has demonstrated a willingness to hear from the public, already holding five public hearings, while the FCC has not had one public hearing and has only announced one public forum. Public hearings on this merger, where FCC decision makers receive the voice of the public, are a must. California, a state that will be greatly impacted by the proposed merger, should be a site of a public hearing.

For all of the reasons cited above, Greenlining respectfully requests that the proposed transaction be denied.

APPENDIX I

DECLARATION OF ORSON AGUILAR
EXECUTIVE DIRECTOR, THE GREENLINING INSTITUTE

DECLARATION OF JOEY QUINTO
PUBLISHER, CALIFORNIA JOURNAL FOR FILIPINO AMERICANS

Declaration of Orson Aguilar

My name is Orson Aguilar. I am the executive director of the Greenlining Institute.

The Greenlining Institute is a national policy, organizing, and leadership institute working for racial and economic justice. We ensure that grassroots leaders are participating in major policy debates by building diverse coalitions of grassroots leaders that work together to advance solutions to our nation's most pressing problems.

The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities.

Members of the communities served by the Greenlining Institute reside in areas presently served by Comcast cable systems, and many are subscribers to their services.

I am familiar with the contents of the foregoing *Petition to Deny*. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 17, 2010.

Orson Aguilar

DECLARATION OF JOEY QUINTO

My name is Joey Quinto. I am an advocate for Filipino-American communities and the Publisher of the California Journal for Filipino Americans, which is a member of the Greenlining Coalition.

The California Journal for Filipino Americans is the premier journal serving California's Filipino–American communities on issues related to economic development, civil rights, and other pertinent issues.

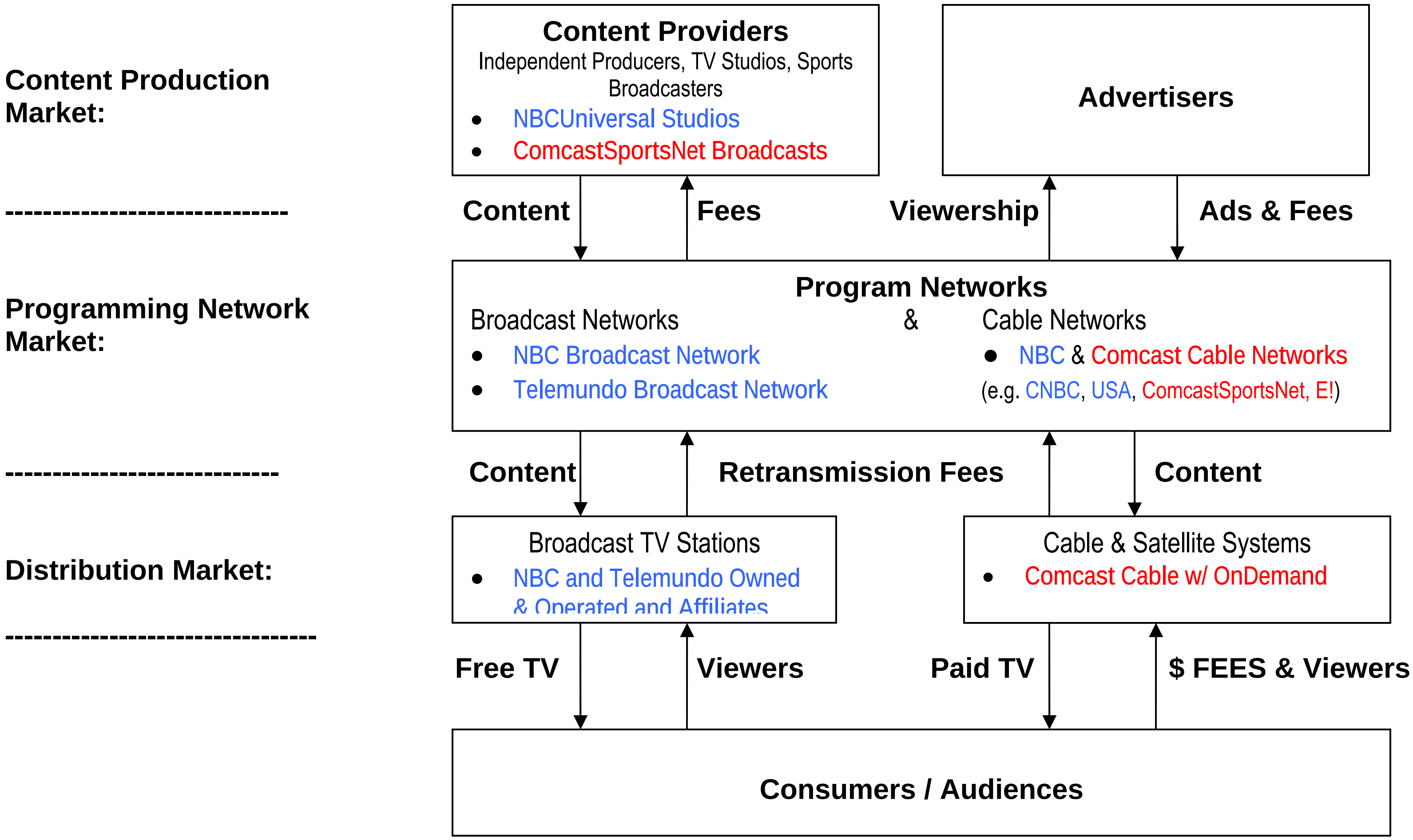
Members of the communities served by the California Journal for Filipino Americans, reside in areas presently served by Comcast cable systems, and many are subscribers to their services.

I am familiar with the contents of the foregoing *Petition to Deny*. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 14, 2010.

Joey Quinto

APPENDIX II
STRUCTURE OF THE TELEVISION MARKET



APPENDIX III
SPORTS BROADCASTING IN CALIFORNIA

Baseball – Major League

- National Content – shared between Fox / TBS / ESPN
- Local Content – local broadcasters negotiate with teams individually
    - SF Giants – **Comcast Sports Net Bay Area (CSNBA)** (118 games) / **NBC** (15 games) / Fox (5 games)
    - Oakland A's – **Comcast Sports Net California (CSNCA)** exclusive contract
    - LA Dodgers – KCAL (CBS) / PRIME (Fox) / Fox
    - LA Angels – Fox Sports West / ESPN / KCOP (Fox)
    - SD Padres – 4 San Diego (owned by Cox)
    - N.B. All games are available on MLB.TV which is a subscription service costing $99.95-119.95 per year OR $19.95-24.95 per month.

Basketball - NBA

- National Content – ABC / TNT / ESPN / NBA TV.
- Local Content – local broadcasters negotiate with teams individually
    - Warriors – **CSNBA** exclusive
    - LA Lakers – KCAL (CBS) / Fox Sports West
    - LA Clippers – PRIME (Fox)

Basketball - NCAA

- NCAA Mens Div. I Tournament (March Madness) – CBS / Turner / ESPN
- Regular Season Games – **Versus** / CBS / ESPN / Fox

Football

- All broadcast rights are negotiated by NFL, not individual teams, and shared between NBC, CBS, ESPN and NFLNetwork.
    - NBC = NFL Kickoff game; 16 Sunday Night Games; 2 wild-card playoff games; **Super Bowl XLVI (2012)**; 3 preseason games.
    - CBS: AFC Sunday afternoon games; 1 Thanksgiving Day game; 4 AFC playoff games; Super Bowl XLIV (2010); 3 preseason games.
    - Fox: NFC Sunday afternoon games; 1 Thanksgiving Day game; 4 NFC playoff games; Super Bowl XLV (2011); 3 preseason games.
    - ESPN: 17 Monday night games (Doubleheader Week 1, Singleheader Weeks 2–16); 4 preseason games
    - NFL Network: 8 late-season NFL games (starting early November) - six on Thursday nights, two on Saturday Nights. Also, all preseason games (aside from the above) are shown either live or on delay.

College Football

- Bowl Games – Fox / CBS / ABC / ESPN
- Pac-10 Conference – shared between **Versus** / ABC / Fox Sports Net
- Mountain West Conference – **Versus** / **Mountain West Sports Network**

Hockey - NHL

- National Coverage
    - **Versus** / NBC / **NHL Network** (part owned by Comcast)
    - All Stanley Cup PlayOffs**: Versus**
    - **Stanley Cup Finals:**
        - **Versus:** games 3 & 4 through 2011
        - **NBC:** games 1&2 and 5-7 through 2011

- Local Coverage
  - SJ Sharks – **CSNCA**
  - LA Kings – Fox Sports West
  - Anaheim Ducks – PRIME (Fox)

Soccer – Major League
- National Content – ESPN / Fox / Univision until the end of this season
  - **Versus and MLS in talks regarding future coverage**
- Local Content
  - SJ Earthquakes – **CSNCA / CSNBA**
  - LA Galaxy – Fox Soccer Channel, Fox en Espagnol, Fox Sports West, Prime (Fox), Telefutura, ESPN, ESPN Deportes, Galavision

Cycling
- Tour de France – **Versus**
- UCI ProTour – **Versus**
- Tour of California – **Versus**
- Tour of Missouri – **Universal Sports (NBC)**

Golf
- The Players Championship – **Golf Channel** (first 2 rounds) / **NBC** (last 2 rounds)
- US Open – ESPN / **NBC**
- Ryder Cup – ESPN / **NBC**
- The Masters – ESPN / CBS
- British Open – ESPN
- PGA Championship – TNT / CBS
- Other PGA Tour Coverage – CBS / **NBC** / **The Golf Channel**

Miscellaneous
- Olympic Games – **NBC** has broadcast rights through 2012 Summer Games.
- America's Cup – **NBC**
- US Figure Skating Championships – **NBC**
- World Swimming Championships – **NBC** / **Universal Sports**
- IAAF World Championships in Athletics – **NBC** / **Versus**
- World Equestrian Games – **NBC**

Motor Sports
- NASCAR **–** Fox / TNT / ESPN / ABC
- IRL IndyCar Series – ABC airs Indy 500 + 4 others / **Versus** airs 13 races
- Other races on various other non-Comcast/NBC channels.

Tennis
- French Open: ESPN / Tennis Channel / **NBC**
- Wimbledon: ESPN / Tennis Channel / **NBC**
- Other Opens, Cups & Matches on either ESPN or the Tennis Channel.

APPENDIX IV

SUPPLIER DIVERSITY REPORT

SUPPLIER DIVERSITY REPORT CARD

2010

WHO'S GETTING THE CONTRACTS?

SAMUEL KANG Managing Attorney | SAMAR SHAH Legal Associate

THE GREENLINING INSTITUTE

SUPPLIER DIVERSITY REPORT CARD 2010

WHO'S GETTING THE CONTRACTS?

SAMUEL KANG Managing Attorney
SAMAR SHAH Legal Associate

THE GREENLINING INSTITUTE

About the Greenlining Institute

The Greenlining Institute is a national policy, organizing, and leadership institute working for racial and economic justice. We ensure that grassroots leaders are participating in major policy debates by building diverse coalitions of grassroots leaders that work together to advance solutions to our nation's most pressing problems.

Our Leadership Academy has become the "farm system" for tomorrow's social justice leaders, training the best and brightest from our communities. Our policy experts conduct research and coordinate multi-pronged strategies on major policy issues, including but not limited to the environment, wealth creation (asset building), philanthropy, health, energy, communications, and higher education. Central to all of Greenlining's work is the "big picture" recognition of the interrelatedness of issues facing low-income and minority communities.

About Greenlining's Consumer Protection Program and Our Legal Team

Led by Managing Attorney Samuel Kang, Greenlining uses in-house legal experts to ensure that there is equity in the state's energy, telecom, and cable industries. Greenlining's legal team is one of the few active racial justice advocates at the California Public Utilities Commission, the Federal Communications Commission, and other regulatory bodies. They work closely with grassroots leaders to ensure that the needs and solutions of communities of color are represented in the halls of these commissions. Greenlining plays a critical role in ensuring that California's regulated companies remain leaders on issues of diversity and economic equity. In addition, our legal team builds bridges between grassroots leaders and corporate CEOs to ensure that positive dialogue leads to win-win solutions.

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Introduction: California's Diversity Culture

The California Public Utilities Commission's (CPUC) Supplier Diversity Program has developed into one of the most critical institutions for economic development and job creation in diverse communities across California. [1] The CPUC's leadership has transformed the way the state's largest utility and telecom companies contract with businesses owned by women, people of color, and disabled veterans. In turn, these diverse business enterprises (DBEs) are building wealth and employing people in their communities.

Despite some underperformers, utility and telecom companies under the purview of the CPUC are making positive strides in their commitment to supplier diversity. These companies have begun to develop robust supplier diversity programs that are changing the corporate culture of how DBEs are viewed and valued. Companies are realizing the increased productivity and innovation found in DBEs that in turn enhance the value of their companies.

> "Businesses acting as businesses, not as charitable givers, are arguably the most powerful force for addressing the issues facing our society."
> -Harvard Business School Professor Michael Porter

The success of the CPUC's supplier diversity program still only represents "planted seeds." Much work lies ahead in the form of cultivation and refinement if California is to fully realize the economic impact that robust supplier diversity programs can bring. While we are pleased with the upward results of this report, we are also wary of signs of stagnation. There is still a long way to go before spending with DBEs reaches parity with the state's diverse demographics. If the CPUC's goal remains at 15% when communities of color will make up 72% of the population by 2050, we will have lost an opportunity for inclusion. [2]

This report identifies spending categories that could be harnessed that are currently underutilized. In addition, we recommend an overall increase of diverse spending goals to ensure that an upward trend in supplier diversity continues.

The success of the CPUC's supplier diversity program depends on consistent reporting requirements, goal setting, hearings, and above all strong regulatory leadership. The CPUC framework for supplier diversity represents the gold standard and should be emulated across the country by other corporate regulators including the California Department of Insurance, the Federal Communications Commission, the Federal Reserve, and the Securities and Exchange Commission.

Supplier Diversity in the Economic Downturn

Communities of color and their businesses continue to suffer from the recent economic downturn. A recent report by Institute on Assets and Social Policy (IASP) at Brandeis University's Heller School for Social Policy and Management documents the increase of the racial wealth gap. [3] This study shows that the wealth gap between White and African American families increased more than

General Order 156: The CPUC's Supplier Diversity Program

For over twenty years, the California Public Utilities Commission (CPUC) has recognized the economic significance of supplier diversity in California's regulated utilities market, and promoted its expansion through the provisions of General Order 156 (GO 156). Enacted in 1988, and pursuant to Public Utilities Code sections 8281-8286, this Order requires the state's largest regulated utilities and telecommunications companies to annually report the percentage of contracts given to women-, disabled veteran-, and minority-owned business enterprises.

GO 156 has made it state policy to promote the interests of diverse businesses to "maintain and strengthen the overall economy of the state." [7] As the numbers of women, disabled veteran, and minority-owned businesses have steadily grown in the last two decades, these businesses have become an essential component in both the regulated utilities market and the wider state economy.

To further promote the development and growth of California's diverse businesses, the Greenlining Institute issues an annual report card that evaluates the GO 156 filings of California's major utilities and telecommunications companies. This report card examines the efforts that these companies make in encouraging diversity and safeguarding the state's economic future.

four times between 1984-2007, from $20,000 to $95,000. According to the report, "The growth of the racial wealth gap significantly affects the economic future of American families."

This racial wealth gap is evident in employment rates as well. The national unemployment rate has hovered at around 10%, yet Latino and African American unemployment has continued to rise to 12.6% and 16.5% respectively. [4] Similar unemployment rates are found among different Asian American and Pacific Islander subgroups.

Supplier Diversity Rankings

Industry Leaders	1. Sempra Energy Utilities
	2. Verizon
	3. AT&T
Needs Improvement	4. Southern California Edison
	5. PG&E
Failing	6. Cox Communications
	7. Sprint Corporation
Noncompliant	8. Comcast Corporation
	9. Time Warner Cable

Findings and Highlights

- Overall spending with minority-owned business enterprises (MBE) **increased** by **18.64%** (an increase of $341,091,177).
- Spending towards **African American** and **Latino**-owned businesses **increased**.
- Spending towards **Asian American/Pacific Islander** and **minority women**-owned businesses **decreased**.
- Spending towards MBEs was **disproportionally skewed** towards finished goods, raw materials, construction, transportation and repair rather than towards technical equipment and professional services.
- Greater effort must be undertaken to include MBEs in projects involving the developing **broadband industry** and the **green economy**.
- **PG&E** was the only company to see a proportional **decline** in spending towards MBEs.

California's economy cannot fully recover without the economic integration of communities of color. California is already a "majority-minority" state with communities of color expected to make up almost three quarters of the population in just 40 years [5].

The state's minority owned businesses are also growing at a much faster rate than US businesses in general. Between 1997 and 2002, the last years in which data are available, the number of Latino-owned businesses grew 31%, the number of African American-owned businesses at 45%, and the number of Asian American-owned businesses at 24%. [6] Taking these growth rates into account, we project that California is now home to between one million to 1.5 million minority owned businesses. Supporting the minority businesses that will drive the economy of the future will be essential to economic recovery.

Supplier Diversity Must Lead the Recovery

Supplier diversity, when fully adopted by all major corporations, can be a powerful force in ensuring economic prosperity for all Americans. Harvard Business School Professor Michael Porter recently wrote, "Businesses acting as businesses, not as charitable givers, are arguably the most powerful force for addressing the issues facing our society." [8] He added that major corporations can play a huge role in revitalizing inner cities by sourcing from the businesses found there. In short, supplier diversity is the vehicle for revitalizing communities of color. We recommend three broad methods for improving supplier diversity in California:

1. **Companies must increase their supplier diversity in accordance with the growing diversity of the state.** Many of the companies have already surpassed the original goals set 22 years ago. If the 15% goal is not updated, MBE spending may start to level off or even decline, as is the case with **PG&E** this year.

2. **Companies must adopt supplier diversity goals across all spending categories.** This year's report features a new focus on how minority spending differs across different industrial categories. The analysis shows areas of spending that represent opportunities for more supplier diversity. Companies should set goals for all relevant spending categories in order to avoid the possibility of building "racialized" spending practices.

> While Greenlining commends the efforts undertaken by companies to date, there has never been a more pressing and opportune time to expand and develop California's supplier diversity practices.

3. **Companies should incorporate minority spending into their lucrative capital projects.** These projects lead to high returns for the companies and often lead to higher rates for consumers. To justify these rate increases, companies should demonstrate that major economic opportunities are being allocated equitably and are representative of the consumer base that supports these companies. Equitable capital project procurement is essential to the development of the green economy and in broadband deployment. These two industries are heavily subsidized by the public and promise to lead the economy in the future.

Glossary of Commonly Used Terms

MBE	Minority Business Enterprise
DBE	Diverse Business Enterprise, which includes minority, women, or disabled veteran ownership
MWBE	Minority Women-owned Business Enterprise
SIC	Standard industrial categories used by the State of California
Procurement	Outside purchase of goods and services necessary for a company's operation
Supplier	A business that supplies goods and/or services to another company

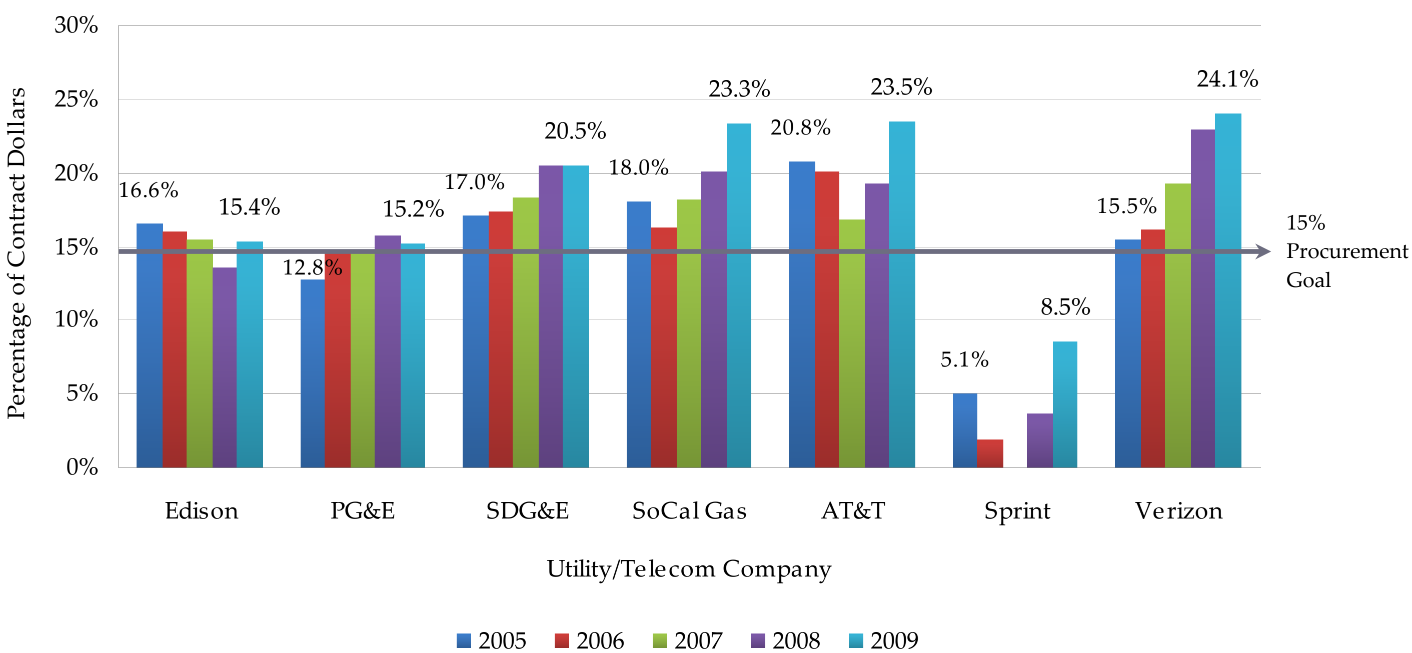
Supplier Diversity Data

Total Minority-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
Verizon	24.06%	A
Southern California Gas	23.29%	A
AT&T	22.24%	A-
San Diego Gas & Electric	20.45%	A-
Southern California Edison	15.34%	D
Pacific Gas & Electric	14.89%	D-
Cox Communications	8.79%	FF
Sprint Corporation	8.13%	FF
Comcast Corporation	Did not report MBE spending	N/A
Time Warner Cable	Did not report MBE spending	N/A

Overall MBE spending grew at a slower pace from 2008 to 2009. **Verizon** and the **Sempra Energy Utilities** (**SoCal Gas** and **SDG&E**) maintained their position as leaders with steady growth. Meanwhile, **AT&T's** large increase in MBE spending enabled it to join the industry leaders. After a disappointing decrease in proportional spending with MBEs, **PG&E** fell below the CPUC's 15% procurement goal. Sprint remained at the bottom of the pack despite a notable increase in MBE spending. Data on five year trends for the cable companies was not available, and both **Comcast** and **Time Warner Cable** failed to report on MBE spending.

Total Minority Spending 2005-2009*



**Five-Year Spending Trends include spending towards multiethnic/other categories, while Greenlining's grading methodology excludes these categories.*

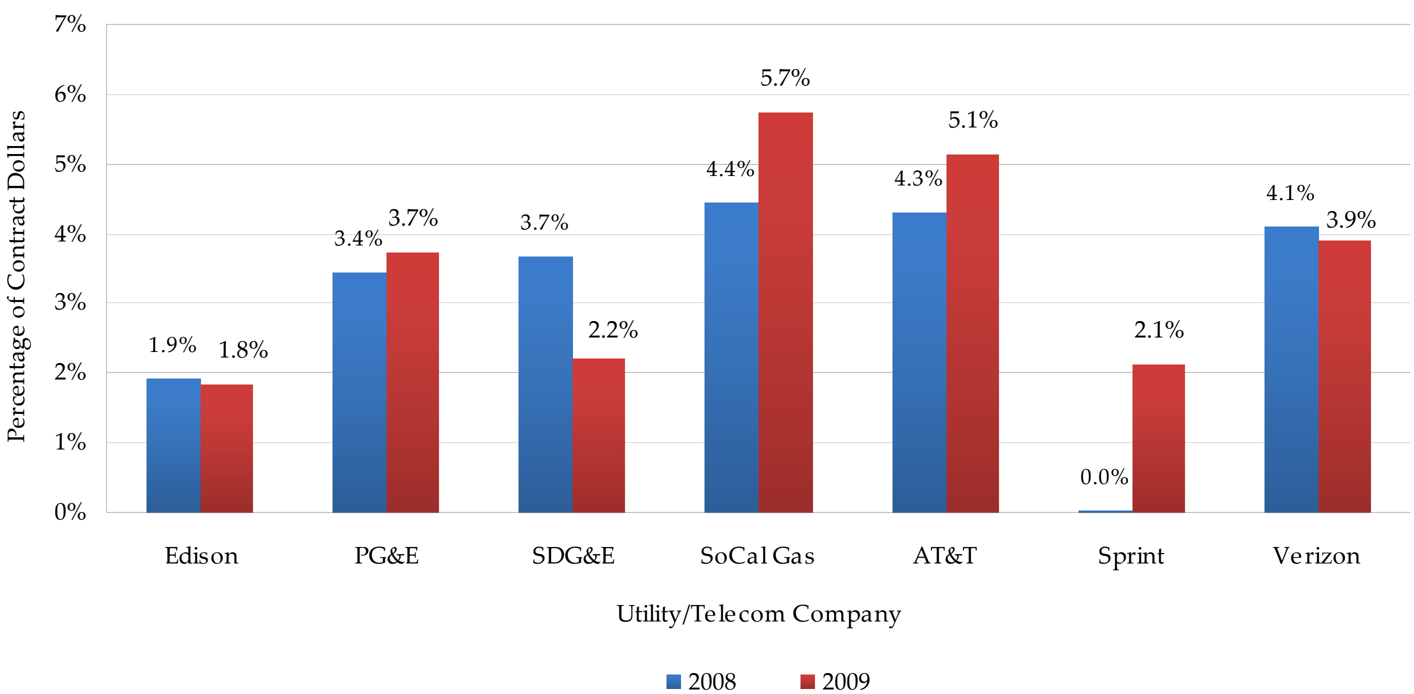
NOTE: GO 156 Data for Sprint in 2007 is unavailable due to an inadequate filing with the CPUC; 2005 data for AT&T uses pre-merger data from SBC.

African American-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
Southern California Gas	5.74%	A-
AT&T	5.14%	B+
Verizon	3.90%	C+
Pacific Gas & Electric	3.74%	C
San Diego Gas & Electric	2.21%	D-
Sprint Corporation	2.12%	D-
Southern California Edison	1.83%	F

After declining trends from 2007 to 2008, the utilities and telecoms rebounded and reported mostly encouraging growth in spending with African American-owned businesses from 2008 to 2009. After a commendable increase in spending, **SoCal Gas** reported spending in this category well above any of its peers. After a concerning decline in spending towards this category last year, **AT&T** reversed the trend with a strong increase in spending. **SDG&E's** spending with African American-owned businesses witnessed a sharp decline. Both **Southern California Edison** and **Sprint** remained at the bottom of their industries, allocating disturbingly low proportions of their spending to African American-owned businesses.

African American Spending

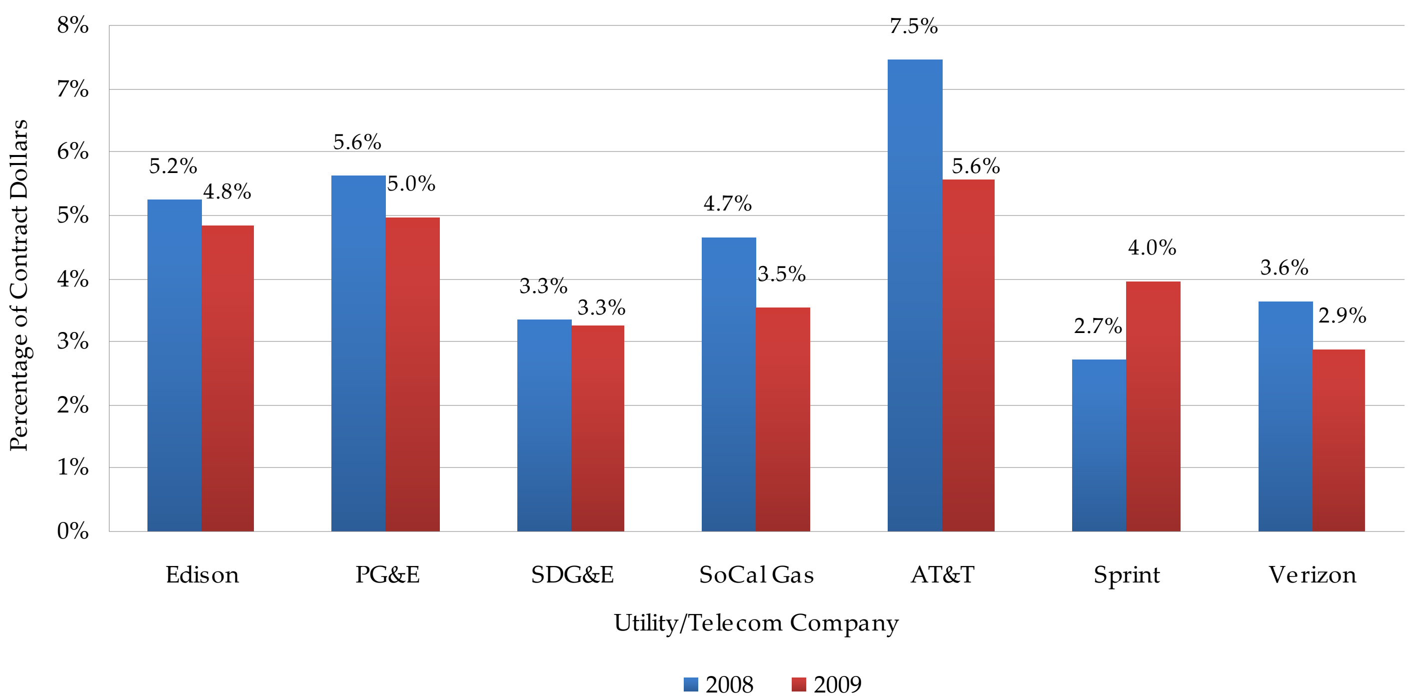


Asian American/Pacific Islander-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
AT&T	5.56%	B-
Pacific Gas & Electric	4.98%	C+
Southern California Edison	4.84%	C
Sprint	3.95%	C-
Southern California Gas	3.53%	D+
San Diego Gas & Electric	3.27%	D+
Verizon	2.87%	D

Almost without exception, utility and telecom spending with Asian American-owned businesses suffered a precipitous drop from 2008 to 2009. As a result, no "A's" were awarded in this section, with the leading company, **AT&T**, meriting only a "B-" after procuring a significantly smaller portion of its total goods and services from Asian American-owned businesses. Given sustained population growth within this demographic, such a decline is troubling. Clearly, supplier diversity programs must utilize greater outreach efforts to counter this negative trend in the coming year.

Asian American/Pacific Islander Spending

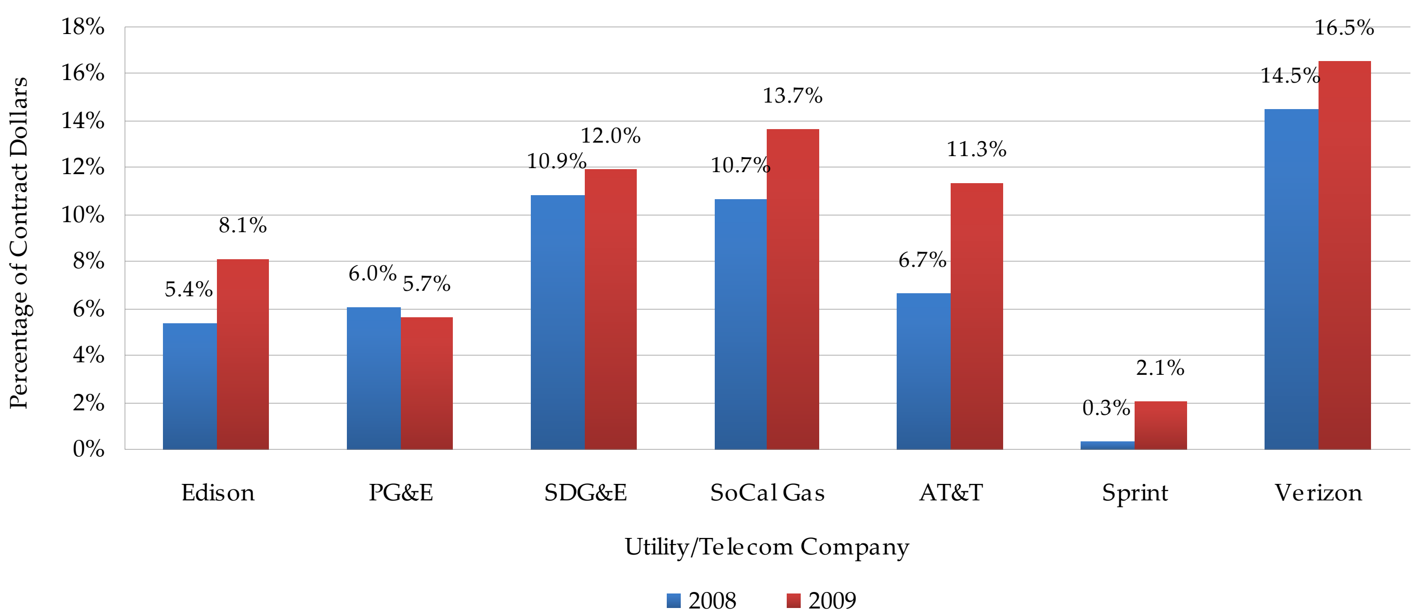


Latino-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
Verizon	16.53%	A
Southern California Gas	13.69%	A-
San Diego Gas & Electric	11.97%	B+
AT&T	11.31%	B+
Southern California Edison	8.11%	C+
Pacific Gas & Electric	5.66%	D-
Sprint Corporation	2.05%	F

Utilities and telecoms increased their spending with Latino-owned businesses from 2008 to 2009. Persistent growth in a category that already features the highest spending percentage of all MBE spending categories is encouraging. However, more work will be necessary because supplier diversity growth pales in comparison to overall growth in California's Latino population. **Verizon's** ability to sustain growth even while leading among its peers demonstrates the capability for all companies to better pursue opportunities with Latino-owned businesses. On the other hand, **PG&E** was the only company to see its spending to Latino-owned business decline, maintaining a position well below its industry peers.

Latino Spending



Native American-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
San Diego Gas & Electric	3.00%	A
Verizon	0.76%	C
Southern California Edison	0.56%	C-
Pacific Gas & Electric	0.51%	C-
Southern California Gas	0.34%	D+
AT&T	0.23%	D-
Sprint	0.00%	FF

Although Native American-owned business spending generally increased from 2008 to 2009, the utilities' and telecoms' spending remained miniscule, with one exception. **SDG&E** must be congratulated for increasing spending in this category despite already being far above any other peer. Given its past success in this category, **Southern California Edison** disappointed this year by decreasing its spending with Native American-owned businesses. **Sprint** received an 'FF' for reporting nearly zero spending with Native American-owned businesses.

Disabled Veteran-Owned Business Enterprise Spending

Company Name	Percentage of Contract Dollars	Grade
San Diego Gas & Electric	1.90%	B+
AT&T	1.67%	B
Pacific Gas & Electric	1.33%	C+
Southern California Gas	0.93%	D+
Sprint	0.55%	F+
Southern California Edison	0.19%	F-
Verizon	0.12%	FF

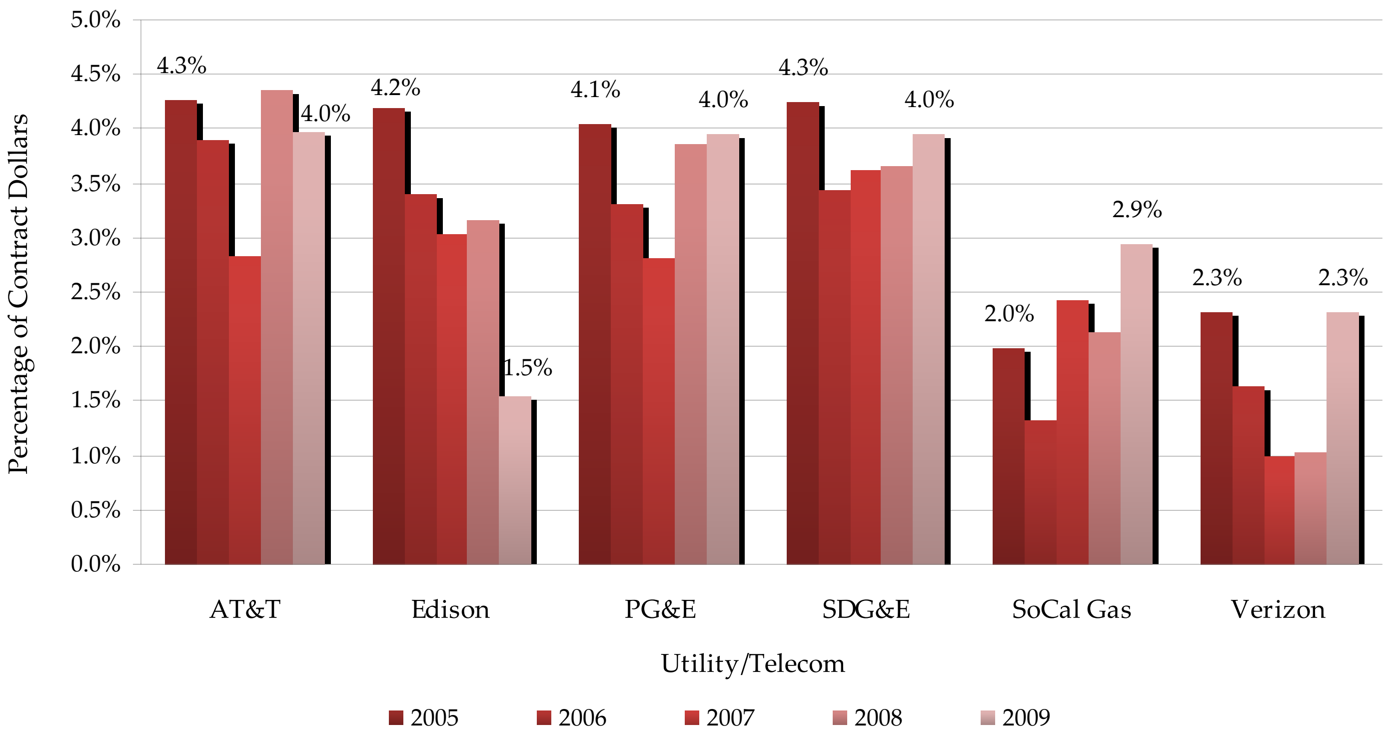
AT&T, **PG&E**, and the **Sempra Energy Utilities** all reported substantial increases in their spending with Disabled Veteran-owned Businesses. Both **AT&T** and **SDG&E** are now above the CPUC's goal of 1.5% spending to Disabled Veteran-owned Businesses. **Verizon's** poor performance in this category is uncharacteristic, given its status as an industry leader.

Minority Women-Owned Business Enterprise Spending

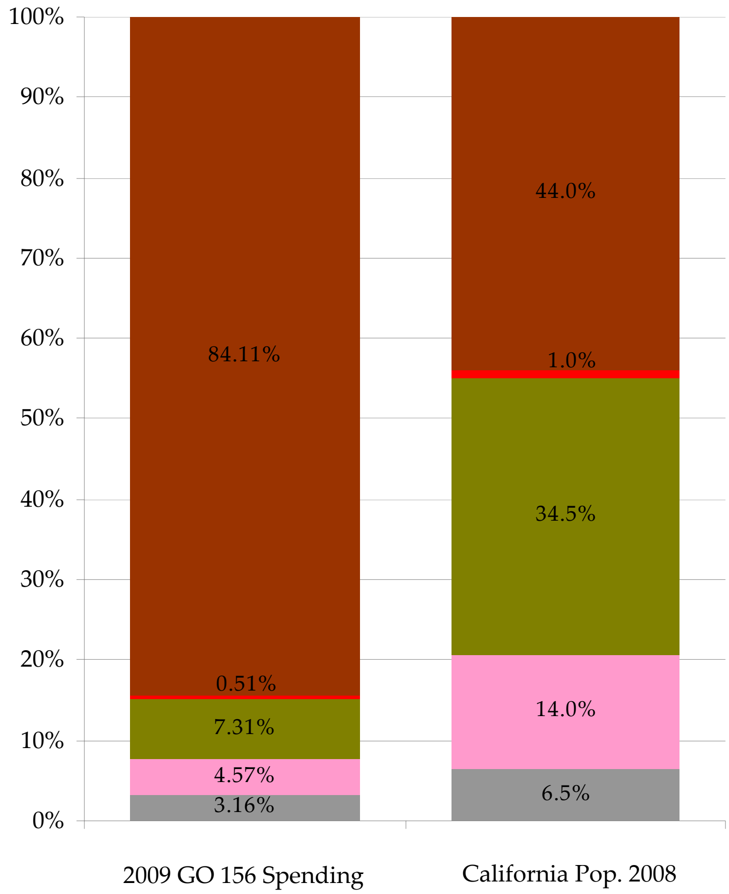
Company Name	Percentage of Contract Dollars	Grade
AT&T	3.97%	C+
Pacific Gas & Electric	3.96%	C+
San Diego Gas & Electric	3.96%	C+
Southern California Gas	2.94%	C-
Verizon	2.32%	D+
Southern California Edison	1.54%	F
Sprint Corporation	Did not report minority women data	N/A

Spending with minority women-owned enterprises remains very low. As a result no utility or telecom received a grade higher than a 'C+'. **Southern California Edison's** poor performance is underscored by an overwhelmingly negative five year trend. Analysis of five year trends showed that almost all of the utilities and telecoms were in worse positions in 2009 than in 2005. Additionally, spending in this category has been plagued by extreme inconsistency. Across racial categories, Asian American women received the largest share of spending. The data demonstrates the crippling effect of the racialized gender gap, which must be addressed with greater outreach efforts to minority women-owned businesses.

Five Year Minority Women Spending Trends



NOTE: 2005 data for AT&T uses pre-merger data from SBC.

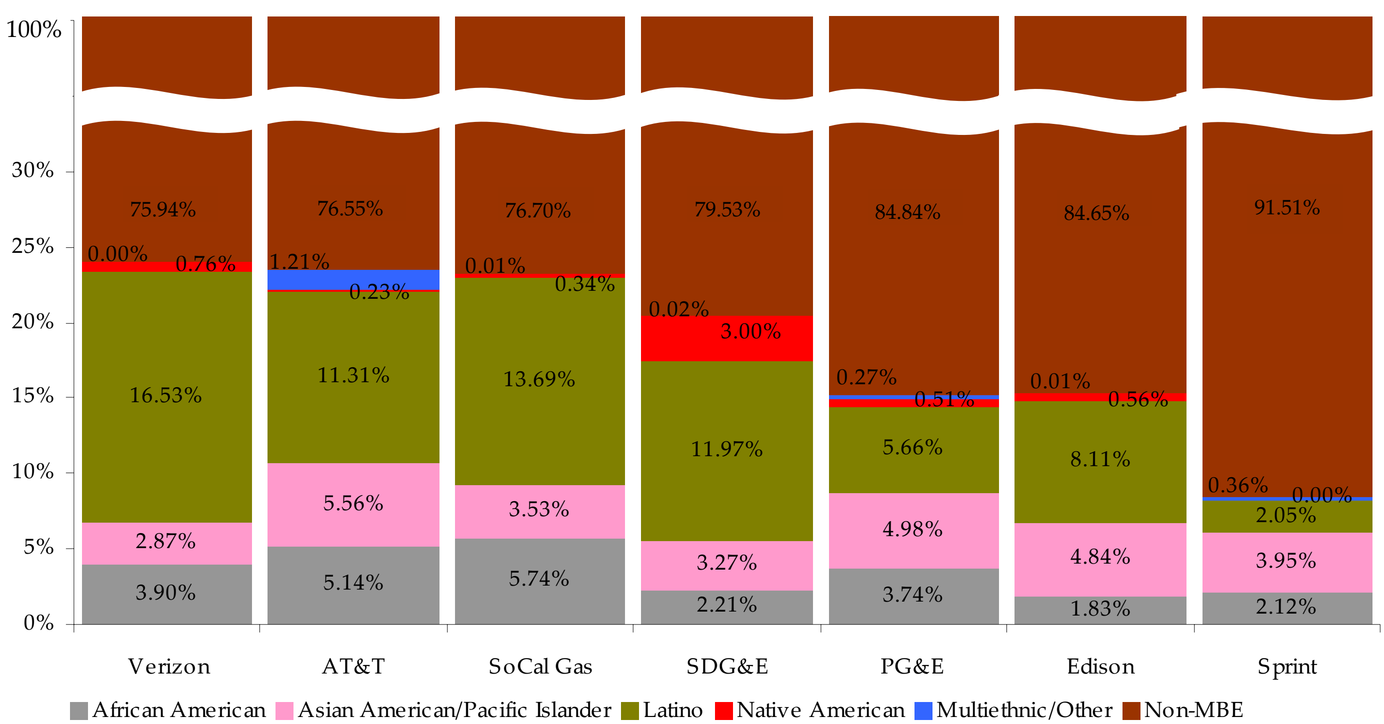


2009 GO 156 Spend vs. 2008 CA Population Demographics

The chart to the left compares aggregated MBE spending by utilities and telecoms in 2009 with California's racial demographics as measured in 2008. [9] This comparison illustrates that wide disparities remain between supplier diversity performance and the state's actual diversity. The biggest gap to bridge is the 27.2% disparity between Latino-owned businesses' share of spending and the proportion of Latinos in California's population. These disparities reflect the need for higher overall MBE spending goals from the companies to promote steady progress.

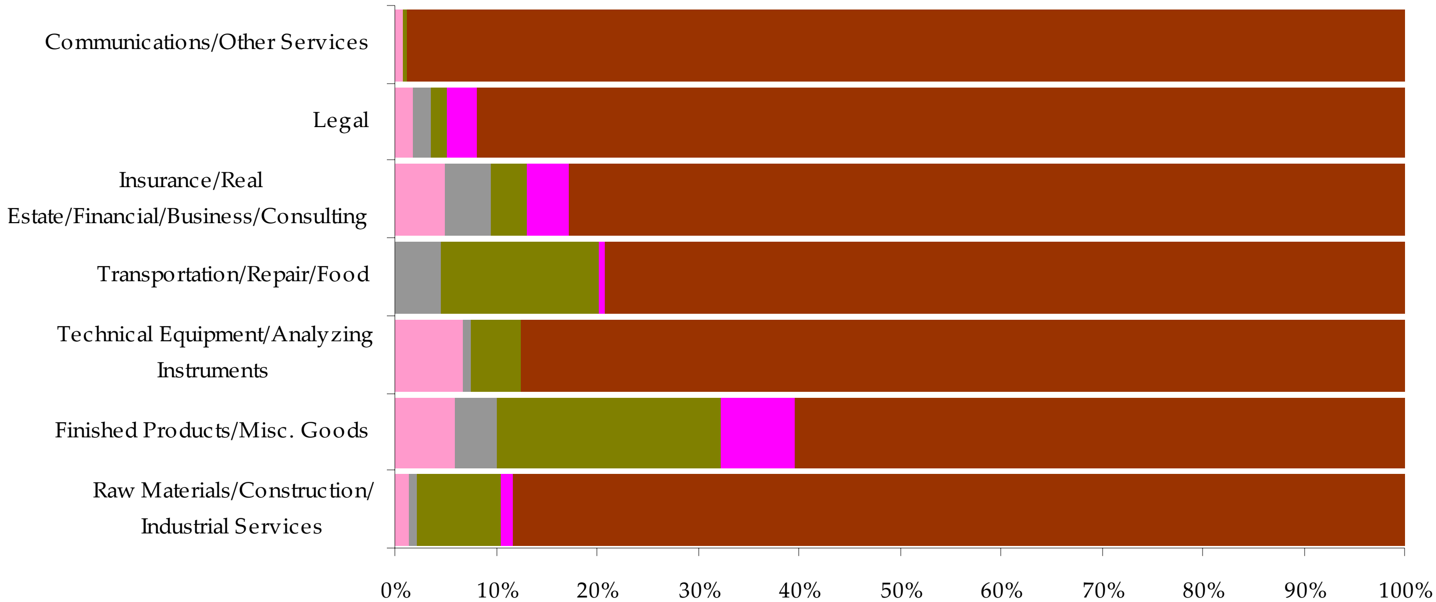
The chart below provides a visual comparison of the racial breakdown of spending across utilities and telecoms.

Summary of MBE Spending By Utility and Telecom Companies

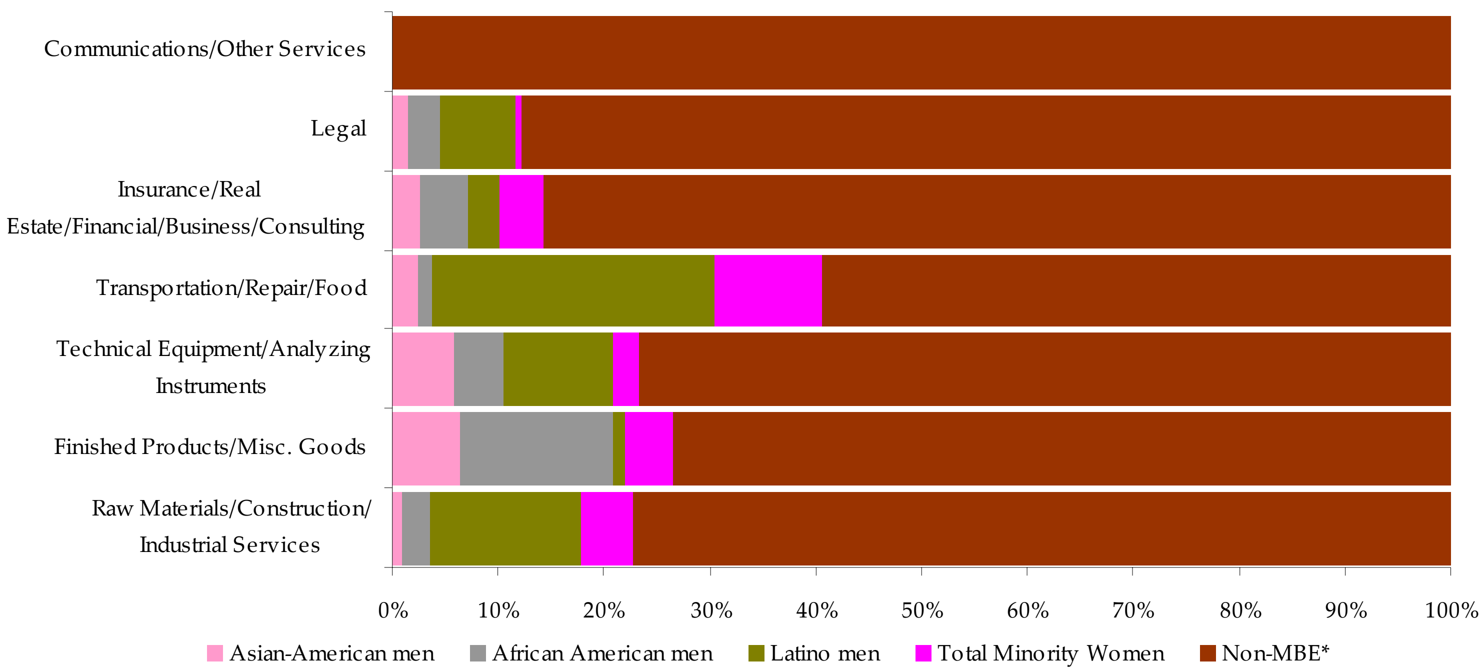


Aggregate Spending in Each Industrial Category by Race

Aggregated Utility Spending



Aggregated Telecom Spending



* Includes Native Americans, Other, and Disabled Veterans because categorical spending with these groups is negligible.

The charts on this page depict aggregated utility and telecom spending in each procurement category broken down by race. Spending in each of the seven procurement categories is divided into five demographic categories: African American men, Asian American men, Latino men, minority women, and non-MBE. The tables on the opposing page display the proportion of spending going towards minorities for each spending category. For simplicity, we aggregated the Standard Industrial Categories into the broader categories in the charts above. Unusual percentages are a result of reporting lags and other inaccuracies in the company's GO 156 filing. "Total Spend" refers to the total amount of spending by the company, including MBE and non-MBE procurement.

AT&T	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	1.40%	1.71%	3.17%	7.14%	$315
Finished Products/Misc. Goods	12.98%	26.86%	2.07%	0.05%	$19
Technical/Analysis Instruments	5.54%	4.75%	10.39%	2.40%	$1,407
Transportation/Repair/Food	2.66%	1.25%	28.49%	10.87%	$104
Business Services	3.83%	4.54%	4.17%	5.71%	$274
Legal Services	0.37%	3.55%	8.82%	0.00%	$38
Communications/Other Services	0.00%	0.00%	0.00%	0.00%	$0

Pacific Gas & Electric	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	0.13%	0.05%	0.73%	1.79%	$1,438
Finished Products/Misc. Goods	0.10%	23.50%	99.27%	56.94%	$53
Technical/Analysis Instruments	9.22%	0.00%	0.19%	0.17%	$428
Transportation/Repair/Food	0.00%	1.95%	14.21%	0.13%	$151
Business Services	5.52%	8.32%	5.03%	5.63%	$1,286
Legal Services	1.65%	3.98%	0.32%	0.30%	$40
Communications/Other Services	0.75%	0.17%	0.00%	0.02%	$590

Southern California Edison	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	3.14%	0.85%	15.58%	0.45%	$865
Finished Products/Misc. Goods	3.27%	3.07%	2.83%	0.05%	$233
Technical/Analysis Instruments	6.15%	1.74%	10.01%	0.08%	$535
Transportation/Repair/Food	0.24%	2.97%	0.47%	0.30%	$56
Business Services	4.99%	1.68%	3.09%	2.10%	$1,339
Legal Services	3.26%	0.29%	4.68%	6.00%	$32
Communications/Other Services	0.11%	0.00%	0.08%	0.06%	$30

San Diego Gas & Electric	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	0.04%	4.47%	12.35%	1.20%	$269
Finished Products/Misc. Goods	11.70%	0.04%	37.76%	1.01%	$126
Technical/Analysis Instruments	4.47%	0.00%	0.22%	0.00%	$95
Transportation/Repair/Food	0.00%	0.00%	12.01%	2.18%	$58
Business Services	2.47%	0.52%	1.77%	3.12%	$230
Legal Services	0.05%	0.00%	0.00%	0.19%	$22
Communications/Other Services	0.00%	0.00%	0.18%	0.00%	$3

Southern California Gas Company	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	3.33%	3.16%	23.18%	0.22%	$221
Finished Products/Misc. Goods	9.47%	0.30%	0.20%	4.61%	$68
Technical/Analysis Instruments	0.00%	0.00%	0.08%	0.00%	$70
Transportation/Repair/Food	0.03%	20.90%	44.38%	0.04%	$45
Business Services	2.25%	4.27%	1.54%	7.43%	$168
Legal Services	1.72%	2.07%	0.01%	12.71%	$6
Communications/Other Services	0.00%	0.04%	35.63%	0.56%	$6

Verizon	Asian American	African American	Latino	Minority Women	Total Spend (Millions)
Raw Materials/Construction/ Industrial Services	0.17%	4.04%	30.46%	1.40%	$220
Finished Products/Misc. Goods	0.00%	2.88%	0.24%	8.45%	$20
Technical/Analysis Instruments	16.85%	0.22%	11.10%	0.00%	$48
Transportation/Repair/Food	0.00%	0.79%	5.14%	0.21%	$8
Business Services	0.39%	4.84%	0.73%	1.46%	$160
Legal Services	6.76%	0.23%	0.20%	2.21%	$8
Communications/Other Services	0.00%	0.00%	0.00%	0.00%	$0

Examining Supplier Diversity Trends

Growth in utility and telecom procurement from MBEs has been positive. In total, the seven companies increased their share of spending to MBEs by 14%; from 13.65% in 2008 to 15.55% in 2009. The fact that this growth in the share of spending occurred during the economic downturn can be attributed in part to GO 156's continued effectiveness.

Within the general increase in MBE spending, different groups faced distinct trends, with some seeing increased opportunity and others witnessing a decrease in procurement. By far, Latinos experienced the largest growth in proportional spending, increasing 32% to reach 7.31% in 2009.

While this is a positive development, it also highlights less successful results in other areas. The African American share of spending only increased marginally to 3.16%. Furthermore, Asian American procurement actually *decreased* by 9% to 4.57%. Meanwhile, the Native American and minority women categories, plagued by continued inattention, experienced marginally positive or negative trends. The Native American share inched up to 0.51% in 2009; minority women spend accounted for only 2.42% of total procurement (a decline of 15%).

The wide disparity in 2009 performances amongst utilities and telecoms indicates the existence of clear leaders and underperformers.

Disparate Trends: Leaders and Underperformers

There are clear leaders and underperformers in MBE spending. **Verizon** increased its MBE share by 5% to remain the leader in percentage spend allocated to minorities, at 24.06%. **AT&T** took the largest positive stride in MBE spending, increasing its MBE share of spending by 20%. **Southern California Gas Co.** also experienced encouraging growth in MBE spending to maintain its position as an industry leader in supplier diversity. While **San Diego Gas & Electric's** historical supplier diversity success leaves its position as a leader intact, its MBE share of spending actually dipped this year in a departure from years of positive growth.

Among the underperformers, **Southern California Edison** saw its portion of spending allocated to MBEs increase considerably, yet its absolute numbers remain well below the standards set by its peers. The energy utility with the largest service territory, **Pacific Gas & Electric**, actually decreased the share of its spending with MBEs by 4%. Finally, while **Sprint's** substantial minority spending increase is encouraging, their numbers continue to remain far below the rest of the industry, indicating that this company must revolutionize its supplier diversity efforts.

The Need for Increased Goals

A majority of companies surpassed the CPUC's 15% MBE spending goal, highlighting the need for higher minority procurement goals. At the time of its establishment, the 15% goal appeared extraordinarily high compared to the companies' spending practices. While this goal has proved effective in encouraging strong positive growth in minority share of spending, MBE spending may plateau if goals are not increased.

The need for increased goals becomes even more apparent when California's rapidly changing demographics are considered. The 15% MBE goal remains low in comparison to the state's current ethnic makeup (56% minorities in 2008) [10] and its projected future demographics (72% minorities in 2050). [11]

Although Latino spending experienced a substantial increase to reach 7.31% across the reporting companies, this number is still not representative of the current 34.5% share of Latinos in the population of California. [12] Latinos are projected to comprise 52% of the state in 2050, indicating that even if companies maintain diverse spending at current percentages, their practices will become increasingly inequitable because the disparity between representation in the population and in the pool of suppliers will increase. [13] [14]

Leaders such as the **Sempra Energy Utilities**, **AT&T**, and **Verizon** have resoundingly proven that the 15% MBE goal no longer poses a challenge of any kind to companies willing to put the necessary effort into their supplier diversity programs.

Even if companies maintain diverse spending at current percentages, their practices will become increasingly inequitable because the disparity between representation in the population and in the pool of suppliers will increase.

For underperformers such as **Sprint**, **PG&E**, and **Edison**, the 15% MBE goal has not been high enough to encourage the companies to catch up with their peers. These companies should embrace higher goals to demonstrate their commitments to the industry standard. With GO 156 and supplier diversity already well-established in California, increased commitments from reporting companies would merely represent an acknowledgement that diversity remains a top corporate priority.

Large companies both benefit from their stronger ties to an increasingly diverse population through robust supplier diversity programs, and are a major catalyst for the growth of opportunity in communities of color through encouraging growth in the MBE sector. Growth of minority business enterprises, in turn, provides more diverse supplier choices for large companies.

Minority Women: The Racialized Gender Gap

There has been little progress over the last 5 years in spending with minority women-owned businesses. The only company to exhibit a significant increase in MWBE spending percentages, **Verizon**, had previously been far below the industry standard, reaching only 2.32%. Furthermore, companies like **Edison** saw its MWBE spending percentage decrease by 51%. It has become clear that minority women are suffering from not only racial disparities in spending, but also a gender gap in supplier diversity. These compounding factors as well as the growing minority women population demographic make minority women the most overlooked group of suppliers. However, this underperformance represents an exciting opportunity going forward for the companies to tap into a new range of diverse suppliers.

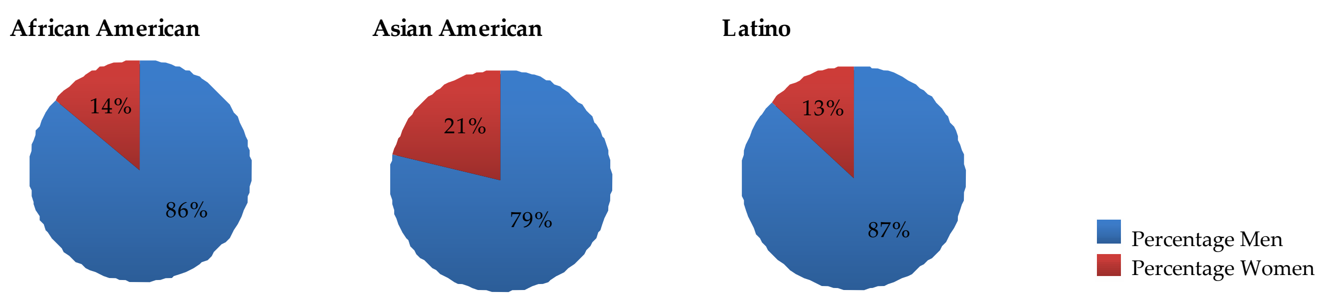
More than consistency, minority women require innovation in supplier diversity outreach. Utilities and telecoms must recognize MWBEs as a category that requires a specific focus.

Asian American women were allocated the most equitable portion of spending, receiving 21% of total spending with Asian American suppliers, while African American and Latina women only received 14% and 13%, respectively.

Similar disparities in success occurred at the individual company level. For example, Latina women received only 5% of **Southern California Edison's** total spending with Latino-owned enterprises in 2009. **PG&E** reported only 0.27% spending with African American women out of its total procurement, while the company's spending towards Latina and Asian American women was much higher, at 1.54% and 1.75%, respectively.

More than consistency, minority women require innovation in supplier diversity outreach. Utilities and telecoms must recognize MWBEs as a category that requires a specific focus. **Sprint** exemplifies the need for improvement in this regard in its refusal to report specific minority women data in their 2009 GO 156 filing despite having done so in previous filings. As companies look to broaden their procurement to reach new levels of MBE spending, it is critical that they increase contracting with the most underutilized group of suppliers, minority women.

Gender Breakdown of Utility and Telecom Spending By Race



A Deeper Analysis of Minority Procurement

Greenlining recommends that greater attention be paid to all spending categories. By taking a more nuanced look at exactly what utilities and telecoms are procuring from MBEs, we hope to deepen the reach of supplier diversity. This categorical analysis shows that in many instances a majority of spending with one racial group becomes pigeonholed into one or two spending categories. Moreover, certain spending categories are often underrepresented by minority suppliers. Overall supplier diversity success is compromised if the spending itself is racialized across different categories.

A dollar spent in one procurement category cannot simply be considered equal to a dollar spent in another. Because some categories provide greater economic opportunity than others, distortions in categorical spending translate into greater inequity. For example, technical equipment and analyzing instruments can garner larger profit margins than raw materials. In addition, certain categories such as professional services may prove more economically stable than others like construction. Finally, some spending categories, such as those involving the green economy and digital broadband deployment, are better primed for future growth than others.

A dollar spent in one procurement category cannot simply be considered equal to a dollar spent in another. Because some categories provide greater economic opportunity than others, distortions in categorical spending translate into greater inequity.

Categorical spending analysis provides companies with the opportunity to increase diverse spending by identifying areas that traditionally underutilize MBEs. If companies fail to expand the areas in which they consistently procure from different minority groups, they may soon be unable to increase their MBE spending any further, prematurely stunting supplier diversity growth. Moreover, broader diversity will provide companies with substantial benefits in the form of innovation and productivity.

Some companies have undertaken efforts to improve equity within spending categories, yet attention to the issue from the industries or regulatory bodies has not yet translated into results. With this report, Greenlining aims to present the merits of focusing on spending categories in order to take supplier diversity in California to the next level.

Categorical Spending Trends

AT&T, **Verizon**, **Pacific Gas & Electric**, **San Diego Gas & Electric**, **Southern California Gas**, and **Southern California Edison** reported comprehensive data on MBE spending by Standard Industrial Category (SIC). [15] Greenlining applauds these companies for their transparency and believes that the findings of the categorical spending analysis will strongly aid them in improving their supplier diversity practices. However, **Sprint** and the cable companies do not supply such comprehensive categorical spending data, and so their businesses are not as transparent as those of their competitors.

Notable Examples of Skewed Spending Across Procurement Categories

PG&E

- Zero spending with African-American or Latina women for Legal Services.
- Almost no contracts for Technical/Analyzing Instruments went to African Americans and Latinos.
- Latino men accounted for 76% of Transportation Equipment spending.
- Only 4% of Legal Services and 8% of Business Services procurement was from African American men.

San Diego Gas & Electric

- Only marginal Product procurement from minority women, with zero MWBE contracts for Industrial or Technical/ Analyzing products.
- Only 0.24% of spending with MBEs was for Legal Services, with no Legal Service procurement from African American men and Latino/a men and women.
- 4.6% of Business Services contract dollars went to Asian American women.

Southern California Gas

- 40% of African American Service procurement came from Freight Transportation and Warehousing.
- Almost 100% of Latino male Product spending came from Automotive/Gasoline/Transportation categories.
- With the exception of Latino males, all other minority categories received no contracts for technical/analyzing instruments.
- Zero MBE spending in Real Estate and Credit Institutions.
- 10.5% of Business Services contracts dollars went to African American women.

Southern California Edison

- Zero spending towards MBEs in the Insurance category.
- Almost 0% MBE spending in the Communications category.
- Nearly 0% of contract dollars for Technical/Analyzing Instruments went to African Americans and Latinos.
- 14% MBE spending in Legal Services, but only 0.4% to African Americans.

AT&T

- Zero Legal Services procurement with Minority women.
- MBEs accounted for more than 40% of spending in the Transportation/Repair/Food category versus less than 18% of the spending in the Technical/Analyzing Instruments, Legal, and Business Categories.
- Latino men accounted for 16% of Electronic Equipment spending and 8.8% of Legal Services spending.
- Zero MBE procurement in Engineering, Accounting, Research, and Management Services.

Verizon

- Zero spending with Latino women for Business or Legal Services.
- Zero spending with minority women for Electronic Equipment.
- Asian American males accounted for only 0.02% of Business services procurement.
- 90% of Latino male and 99% of Latino female spending came from Raw Materials/Construction/Industrial Services.
- Asian American males accounted for 22.8% of spending on Electronic Equipment and 6.8% of Legal Services spending.

Sprint

- Sprint failed to include categorical spending information by race and Standard Industrial Category.

Cable Companies

- None of the cable companies included any information on categorical spending.

With companies reporting spending in up to 40 different SICs, this report simplifies the analysis by aggregating SICs into 7 broad categories. (See table on page 22 for breakdown.) Whereas previous analyses focused on spending in select categories, these results allow for a fair assessment of each company's total procurement 'pie.' Spending in each of the seven categories is divided into five categories: African American men, Asian American men, Latino men, minority women, and non-MBE. Because absolute spending with Native Americans remains marginal, categorical analysis of their procurement is statistically insignificant. As a result, the 'Native American' and 'other' categories are grouped with the non-MBE category. Furthermore, because spending with minority women remains low across the board, they are analyzed as a group as opposed to being disaggregated by race.

Raw Materials, Construction and Industrial Services

This category accounted for 26% of utility MBE procurement and 21% of telecom MBE procurement. **Verizon** and **SDG&E** both depended substantially on this category for their MBE spending, with 73% of **Verizon's** MBE spending coming from this category even though the category made up only 47% of the company's total spending. In contrast, only 2.7% of **PG&E's** spending in this category was with MBEs. While African American and Asian American men accounted for only small portions of spending in this category, utilities procured 8.2% of raw materials, construction and industrial services from Latino men and telecoms procured 14.4% from Latino men.

Finished Products/Miscellaneous Goods

Utility MBE spending was highest proportionally in this category, with almost 40% of procurement dollars going to minorities. Telecoms had less success procuring finished products and goods from minorities, with only 26% of contract dollars going towards MBEs. Minority women accounted for the largest percentage of procurement by utilities in this category over any other, obtaining 7.2% of total procurement. Meanwhile, utilities procured 22% of their products and goods from Latino men while telecoms only spent 1% with Latino men-owned enterprises.

Technical/Analyzing Equipment and Instruments

Telecoms have had greater success in procuring from MBEs in this category (almost 23% of total spending in the category) than the utilities. Despite rising budgets in a category that includes instruments and equipment that will be crucial for the budding green economy, only 13% of utility procurement in this category went to MBEs. Although Asian American men obtained a substantial 6.8% of this spending, utilities only procured 0.8% and 0.1%, respectively, from African American men and minority women. **Southern California Gas** had the lowest proportional spending to MBEs in this category at 0.04%. In contrast, both **AT&T** and **Verizon** procured about one fourth of their technical equipment and instruments from MBEs.

General success in supplier diversity can mask possible areas for future improvement, making categorical analysis crucial.

Transportation, Repair and Food

Utilities and telecoms incorporated minority suppliers at a substantial level in this category. The telecoms' proportional spending with MBEs in this category, at nearly 41%, was the highest of any category. Latino men received 26.8% and 15.6% of total spending in this category from utilities and telecoms, respectively. **Southern California Gas** spent the most proportionally towards MBEs in this category, including 44% with Latino men, 21% with African American men, but less than 0.1% with Asian American men and minority women combined.

Business Services

Utilities and telecoms spent only 17% and 14%, respectively, of their procurement dollars with MBEs in this category, which includes general business and management services as well as consulting, insurance, and financial services. The relatively even distribution of MBE spending between African American, Asian American and Latino men and minority women shows that the companies appear to have established some success at instilling diversity in the category, but must amplify their efforts to obtain higher proportions for each group. For best practices in this spending category, Greenlining recognizes **PG&E's** and **SDG&E's** successes in working with minority-owned banks in each of their $250 million bond offerings this year. [16] [17] However, a majority of MBE spending in this category came from general business services as opposed to real estate, insurance, and finance. Thus, the companies should also look closely within the category for areas that need improvement.

Legal Services

Diverse procurement in this category remains in need of attention. Utilities and telecoms, respectively, allocated 8% and 12% of their legal services spending towards MBEs. In a sharp contrast from its absolute MBE spending numbers, **SDG&E** procured only 0.24% of their legal services from MBEs, the lowest proportion out of any company. General success in supplier diversity can mask possible areas for future improvement, making categorical analysis crucial. Given the influence and economic opportunity wielded by the legal field, a greater commitment from the companies to supplier diversity in the category of legal services will foster greater equality in the profession in general.

Communications, Social, Personal and Other Miscellaneous Services

Utilities procured only 1.2% of their supplies from MBEs in this category, while the telecoms procured none. The only company with substantial spending in this category was **Southern California Gas**, led by its social services procurement with Latino men. The utilities and telecoms clearly need to work towards improvement in what is by far the least diverse spending category.

Turning Underutilization into Opportunity

The categorical analysis shows wide disparities within each category between spending with each racial group and by each company. Greenlining hopes that the utilities and telecoms will attempt to transpose the methods from instances of success to cultivate greater diversity in underemphasized areas.

Furthermore, adoption of a more simplified set of spending categories similar to the one formulated in this report will help the companies as well as the CPUC in analyzing deeper trends related to supplier diversity. Greenlining urges the utilities and telecoms to add categorical spending goals to the absolute spending goals already in place. **Verizon** already provides a potential template in its 2009 Annual Report and Plan, outlining short-term, mid-term, and long-term goals for MBE spending in each of the spending categories it utilizes. With a sharper focus that scrutinizes the make-up of MBE procurement, companies will be able to address deficient areas and simultaneously identify opportunities to increase supplier diversity.

Spending Category Designations

Categories Used in this Report	Corresponding Standard Industrial Categories
Raw Materials/Construction/ Industrial Services	7, 13, 14, 15, 16, 17, 24, 26, 28, 29, 30, 32,33, 46, 49, 52
Finished Products/Misc. Goods	23, 25, 39, 50, 51, 56, 57,59
Technical/Analysis Instruments	34, 35, 36, 38
Transportation/Repair/Food	37, 42, 45, 47, 55, 58, 75, 76
Business Services	60, 61, 62, 63,64,65, 73, 87, 89
Legal Services	81
Communications/Other Services	27, 48, 72, 78, 79, 80, 83, 86

Public Benefits from Public Money

The increasing role of the green economy will expand the role of utilities, telecoms and cable companies, which will call for greatly increased spending on capital projects. Including traditionally underserved communities in these economic opportunities will be crucial to the future social equity of the state.

Because these expensive capital projects will be largely shouldered by all of California's ratepayers and taxpayers, the utilities, telecoms, and cable companies must work to share the economic opportunity equitably among California's businesses. While capital projects promise to increase productivity and quality of service, they will also greatly increase the total amount of revenue that companies will reap to implement these projects. Increasing costs for greater welfare in the long-term is a worthy tradeoff. However, the sacrifice will be borne by consumers who will face higher rates, not the companies who will likely remain protected by guaranteed rates of return.

> Because these expensive capital projects will be largely shouldered by all of California's ratepayers and taxpayers, the utilities, telecoms, and cable companies must work to share the economic opportunity equitably among California's businesses.

In part because of infrastructure investment and capital outlays on renewable energy projects, Californians may see consistent 5-7% annual utility rate increases in the coming years. [18] The California Independent Service Operator and the California Energy Commission predict that California utilities will require up to $7.6 billion in order to update the grid's capacity and another $250 billion to modernize the grid. [19] Thus, even though electricity costs continue to drop, utilities are increasing rates because of this heavy investment.

Utilities apply to the CPUC for these rate increases, which allows them to maintain their rate of return largely regardless of the success of these projects. Uncertainty due to the current economic climate and the burden of the cost increases are passed onto the consumers. While Greenlining agrees that there is a pressing need for revitalizing and expanding the utility, telecom and cable sectors of the economy, these companies must share the economic benefits in an equitable manner by making commitments to supplier diversity.

An example of such a commitment came in 2009 in the form of a leadership agreement between the **Sempra Energy Utilities (SEU)** and the Greenlining Institute regarding the utility's solar photovoltaic application. In this agreement, **SEU** pledged their dedication to corporate social responsibility practices of philanthropy, supplier diversity, and workforce diversity. [20] With this agreement, **SEU** progressed to a more socially equitable use of their revenues accrued from California's ratepayers.

In striking contrast, when applying to increase rates in order to fund a costly photovoltaic project, **PG&E** refused to solidify their commitment to supplier diversity for the project. All Californians bear the burden of rate increases in tough economic times. Without industry-wide commitments to supplier

Best Practices in Capital Projects

SDG&E and the Kumeyaay Wind Farm

Already the clear leader in procurement with Native American suppliers, **San Diego Gas & Electric's** partnership with the Campo Kumeyaay Nation (CKN) of San Diego demonstrates a commitment to including traditionally underserved communities in the growing green economy. CKN is working with SDG&E to expand its reservation's 50 MW wind farm to provide an additional 160 MW of renewable energy to the surrounding communities. [21] The project will utilize local contracting and crews to produce enough energy to power 54,000 homes every year. The project epitomizes corporate social responsibility, with SDG&E joining with the tribe in order to reach the 20% renewable energy procurement goal set for utilities by California's Renewable Portfolio Standards. [22]

diversity in capital projects, the resulting benefits are maximized for the utility while the risk and burden are socialized among ratepayers.

Signposts for California's Economic Future

In the green and broadband economies, expansionary capital projects will provide additional and expanded opportunities for procurement. Even as some companies face stagnant or even reduced revenues in the economic downturn, budgets for these capital projects will continue to increase, representing an area that is ripe for increased MBE spending. Government stimulus also promises to boost spending in certain sectors such as renewable energy, grid retrofits, and broadband deployment.

As companies plan expansion into these markets, associated capital projects represent more than just increased spending. These projects serve as signposts for the future composition of California's economy. As utilities develop projects such as solar plants and wind farms, they signal a permanent shift towards renewable energy generation. The incorporation of broadband into the grid and increased cable capacity will likewise define the future of cable and telecom companies. Diverse procurement in these projects today will build equity directly into the markets that will lead the economy of the future. Greenlining includes a focus on the broadband and green economies due to their critical importance to utilities, telecoms and cable companies.

The Green Economy

As California organizes to lead the way on climate consciousness, utilities have become crucial actors in the adoption of renewable energy alternatives. SB 107 introduced California's Renewable Portfolio Standards, requiring utilities to procure 20% of their electricity from renewable sources by 2010. [23] The Governor's Renewable Electricity Standards further require 33% procurement from renewable sources by 2020. [24] In response, a greater share of utility procurement will go towards updating the energy grid and building renewable energy sources.

At the moment, MBE spending in categories critical to the green economy remains disappointingly low. With the exception of **Southern California Edison**, none of the utilities reported any significant spending in the metering and technical devices standard industrial category, which is crucial to the green economy due to the importance of smart meters and other grid retrofits.

Proportional Spending for Metering and Technical Devices

	Asian American	African American	Latino	Minority Women	Total Spending in Category*
PG&E	0.10%	0.00%	0.00%	0.00%	$26M
SCE	0.90%	3.30%	6.30%	0.00%	$61M
SoCal Gas	0.00%	0.00%	0.10%	0.00%	$19M
SDG&E	0.00%	0.00%	0.00%	0.00%	$22M

** Total Spend refers to the total amount of spending by the company, including MBE and non-MBE procurement. NOTE: Data calculated from SIC 38*

It is imperative that traditionally underserved communities become economic stakeholders in the green economy. As renewable energy leads the nation and the state to economic recovery, it can also serve as a force for greater social equity. Utilities can play a crucial role by using their close relationships with renewable industries to foster robust supplier diversity practices.

The large scale solar industry, for example, has an abundance of innovation and profits, yet lack a strong commitment to social responsibility. Greenlining's report, "The State of Solar: California's New Landscape of Opportunity" finds that the top solar companies working in California lack commitments to diversity in leadership, workforce, and procurement. [25] As the industry's largest consumers, utilities are well positioned to motivate these companies to adopt diversity practices.

Broadband Deployment

With only 27% of Americans subscribing to broadband services, the US ranks 15th in the world in per capita broadband adoption. [26] Such gaps in implementation represent the enormous economic opportunity of untapped markets. As the Obama administration introduces Federal stimulus measures aimed at increasing American broadband adoption, companies can expect rapid industry growth driven by the broadband sector.

Reflecting President Obama's desire to revitalize the information 'super-highway,' the Federal Communications Commission released recommendations for universal broadband implementation in the form of the National Broadband Plan (NBP) in March 2010. Funded by the American Recovery and Reinvestment Act [27], the NBP aims to stimulate broadband adoption, with the broad goal of extending 100 Mbit/s connections to 100 million American households.

The greatest success can be achieved by reaching out to the millions of minorities and low-income communities that have been left behind by the broadband revolution. As large companies reap the direct benefits of public stimulus, they must pass along the economic opportunity to MBEs and diverse consumer bases.

The GO 156 Modernization Bill (AB 2758)

In recognition of the growing importance of renewable energy, wireless, broadband, smart grid and hi-tech public transit systems, California Assemblyman Steve Bradford is authoring legislation supported by the CPUC to improve GO 156's ability to examine supplier diversity in these green technology sectors.

Specifically, AB 2758 amends Sections 8281-8286 of the Public Utilities Code to:

- Specify and enumerate the sectors that are most crucial for economic and job recovery.
- Require reporting of procurement of diverse business enterprises in California for each of these enumerated sectors.

Encouraged by both the NBP and the growing demand for broadband connection, **AT&T, Verizon,** and the cable companies will increasingly lead capital projects in the broadband sector. The industry will be deeply involved in infrastructure projects, ranging from laying fiber optic cable to building routers. By contracting with MBEs and passing along supplier diversity best practices to larger infrastructure development companies, many of which are based in Silicon Valley, the companies can significantly influence minority inclusion in this promising economic sector.

Increasing supplier diversity in the broadband economy will also improve efforts to reduce digital inequality and the problem of dissipating content diversity. Greenlining's 2009 report, "Digital Inequality: Information Poverty in the Information Age," defined digital inequality as a trend in which the level of technology expertise mirrors racial and socioeconomic inequities. [28] For example, 86% of White Californians benefit from computers at home compared to only 48% of Latinos. Through expanded supplier diversity efforts, companies can increase the share of economic and technological benefits that minorities receive. By drawing on underserved communities to drive broadband adoption, the companies can create awareness of diverse needs.

Evaluating the Cable Industry

As the cable industry's role in the economy expands due to broadband expansion, its companies must demonstrate a stronger commitment to supplier diversity and corporate social responsibility. Cable companies in California have always shown reluctance to collaborate with entities such as the CPUC to improve their procurement diversity. Consequently, a stark divide exists between the performance of cable companies and that of the utilities and telecoms. Despite the lack of regulation in the industry, Greenlining recognizes the potential for cable companies to voluntarily raise their supplier diversity standards to the level of the other industries.

> The cable companies must fully embrace not just the components, but also the culture of supplier diversity that GO 156 has instilled into California's business practices.

At present, the cable companies' MBE spending numbers are well below the bar set by the utilities and telecoms. As the only company to report separate minority procurement, **Cox's** 8.79% spend with MBEs remains well below any utility and telecom except **Sprint**. Although **Comcast** abstained from reporting minority spending data, the company's contracting to minority, women, and disabled veteran-owned businesses totaled only 15.4%. Meanwhile, **Time Warner Cable** declined to file any information regarding supplier diversity at the CPUC.

The cable companies' failure to comprehensively report supplier diversity data impedes efforts to identify potential methods for improvement. None of the companies filed any information on the breakdown of spending across minority groups or industrial categories. Without such information, the cable industry remains in the dark, and its chances of improving may be bleak without regulatory or legislative intervention.

Furthermore, **Comcast's** proposed merger with **NBC Universal** has the potential to jeopardize the industry's prospects for improvement in diversity practices. If the merger is approved, the vertically-integrated Comcast-NBCU conglomerate will wield a dominating share of several markets. Comcast's history of poor customer service and lack of diversity commitments coupled with NBCU's lack of content diversity negatively influence the rest of the industry.

The cable companies continue to believe that they should be allowed to operate with little state regulation even as they compete for customers with regulated companies. Absent greater commitments to diversity, competition from the cable companies takes customers away from regulated companies with better social practices, detracting from GO 156's success. However, the increased cooperation exhibited by **Cox** gives hope that the industry can change. The cable companies must fully embrace not just the components, but also the culture of supplier diversity that GO 156 has instilled into California's business practices. Otherwise, regulatory and/or legislative intervention may be necessary to prevent the cable industry from further diluting GO 156.

Recommendations

Overall Recommendations

1. **Utilities, telecoms, and cable companies should increase their absolute diverse procurement goals to reflect growing diversity in California.** Current supplier diversity commitments remain well below population parity, even as California's communities of color continue to grow. Higher goals will be necessary so that supplier diversity will continue to keep up with an increasingly diverse California.

2. **Utilities, telecoms, and cable companies must identify new methods of incorporating minority women-owned businesses into their procurement.** Almost no progress has been made for minority women in the past five years. 2009 witnessed significant declines in spending with this group by some companies. As minority women clearly suffer a racialized gender gap, they deserve greater attention from supplier diversity programs.

3. **Supplier diversity programs must undertake a more critical evaluation of spending practices by examining the racial distribution of spending across procurement categories.** By adopting a simplified system of spending categories, similar to the one presented in this report, and attaching goals to these categories, companies can identify areas of underutilization. Broadly allocated diverse procurement will be necessary to achieve greater overall supplier diversity successes in the future.

4. **Minority business enterprises must be included in expansionary capital projects in sectors such as the broadband and green economies.** California's diverse businesses must be afforded a fair shot at these publicly-funded projects. Incorporation of MBEs directly into the projects that will define the new economy will be critical to California's overall recovery.

5. **GO 156 and supplier diversity programs must take steps to improve reporting and transparency.** While some companies have begun to consistently release comprehensive reports, others continue to file incomplete, inaccurate, and inconsistent reports that hinder progress and evaluation. Greenlining echoes the suggestion of several utilities, telecoms, and minority businesses in recommending the institution of an external auditing mechanism as a possible remedy.

Diverse procurement in renewable energy and broadband capital projects today will build equity directly into the markets that will lead the economy of the future.

Company Specific Recommendations

1. **Sempra-owned San Diego Gas and Electric and Southern California Gas Company should build upon their current leadership in supplier diversity.** These companies continue to serve as the model utilities due to their visionary commitment to supplier diversity and good corporate social responsibility practices, leading Greenlining to declare 2010 the 'Year of Sempra.' The Sempra utilities lead the way in immeasurable intangibles, exemplified by their commitment to incorporate diversity practices with their major suppliers. While SoCal Gas' proportional MBE spending increased laudably, SDG&E's numbers actually dipped slightly. Given SDG&E's steady performance and its strategic long-term planning on supplier diversity, Greenlining trusts that this does not represent a plateau for the company.

2. **Verizon must continue to set higher standards to encourage other companies to learn from their best practices.** The company has been successful in achieving the highest proportional supplier diversity spending of all companies analyzed. Verizon will potentially see significant increases in spending as the company tries to meet increasing demand for spectrum; such projects represent the ideal opportunity to include MBEs. Verizon must also improve spending practices with African American and Asian American/Pacific Islander businesses, which were both areas of notable decline in 2009.

3. **AT&T should dedicate more of their outreach efforts towards increasing minority women suppliers.** After several years of inconsistency, AT&T achieved one of the strongest improvements in proportional spending with MBEs. Greenlining commends the centralized organization of AT&T's procurement process which instills accountability and leads to clear results. However, 2009 witnessed a decline in proportional spending on minority women-owned businesses, which is especially concerning because of the success of AT&T's outreach programs.

4. **Southern California Edison needs to work up to the standards set by industry leaders.** The company has reversed its steady negative trend by increasing their supplier diversity above the CPUC's 15% goal. Edison's recent success can be attributed partially to an improvement from its poor reporting practices of the past. Furthermore, Edison has had the most success in incorporating MBEs into its smart grid retrofitting projects and should share its practices with the other utilities. Minority women and Asian American/Pacific Islander-owned businesses are critical areas in need of vast improvement.

5. **Pacific Gas and Electric's regression indicates the need for stronger commitment and organization from its supplier diversity program.** As the only utility to take a significant step backwards, PG&E is now the industry's worst supplier diversity performer. Greenlining specifically urges PG&E to improve its MBE spending for Technical and Analytical Instruments and reverse a negative trend in Asian American/Pacific Islander procurement.

6. **Cox must improve its reporting and overall spending substantially before it can be considered on the same level as the utilities and telecoms.** The company is ahead of its cable industry peers in supplier diversity, and is the only cable company to report specific data on MBE spending, placing it in the best position to improve its supplier diversity. Cox's enthusiasm for diversity practices gives it the opportunity to lead the way in revamping the image of a cable industry that has long shirked corporate social responsibility. The company appears on the verge of including more comprehensive racial and categorical spending data. Greenlining urges and encourages Cox's continued progress.

7. **Sprint would be better served by expending more effort to learn from the leaders in supplier diversity rather than criticizing them. Otherwise, it could be further incapacitated by its own "financial duress."** Despite some improvements in its supplier diversity program, Sprint remains far behind the curve in MBE spending as well as quality of reporting. Greenlining hopes that 2010 marks the end of the inconsistent reporting and poor supplier diversity outreach that led to its dismal results. Having spent 2009 fixing reporting problems, the company must now focus on making enormous strides to catch up with its peers. It should begin by reporting more comprehensively on minority women and categorical spending. Furthermore, Sprint must exhibit an improved attitude towards supplier diversity. Rather than focusing on improving its own poor performance, the company seems to spend an inordinate amount of effort criticizing the success of its competitors.

8. **Comcast needs to improve both its supplier diversity practices and its GO 156 filing.** Both leave much to be desired for a company with such expansive operations in California. Although Comcast appears willing to improve its diversity problem, it must also improve its reporting in order to better identify areas of underutilization and bolster its supplier diversity program. Even then, Comcast's pending merger with NBC Universal would require an even stronger commitment to supplier diversity.

9. **Time Warner Cable should follow the lead of its peers in the cable industry by filing GO 156 numbers next year.** The company's refusal to participate in GO 156 demonstrates a lack of commitment to diversity that is unacceptable for companies operating in California.

All Californians suffer from rate increases in tough economic times. Without industry-wide commitments to supplier diversity in capital projects, the resulting benefits are minimized to the utility while the risk and burden are socialized among ratepayers.

Methodology

Greenlining obtains the data in its annual report card from the yearly GO 156 filings of the seven largest utilities and telecom companies in California: **Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, Southern California Gas, AT&T, Verizon,** and **Sprint Corporation.** This year's report also includes a limited analysis of three cable companies operating in California: **Comcast, Cox,** and **Time Warner**. Greenlining issues a grade to each of these companies based on the following guidelines:

- Progress from previous years;
- Performance in relation to industry peers; and
- Progress toward the CPUC's overall goals of procuring **15%** contracts to minority-owned businesses, **5%** contracts to women-owned businesses, and **1.5%** contracts to disabled veteran-owned businesses.

Through these annual report cards, Greenlining attempts to achieve two key objectives:

- To highlight the successes and failures of California's utilities and telecoms in upholding their commitments to California's diversity and economic security; and
- To present ideas and recommendations on how diversity can continue to strengthen California's utilities and telecom companies.

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