

# **NO NEWS IS BAD NEWS:**

## **AN ANALYSIS OF COMCAST-NBCU COMPLIANCE WITH FCC LOCALISM CONDITIONS**

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## EXECUTIVE SUMMARY

Earlier this year, Comcast Corp., the nation's largest cable and broadband provider, acquired a majority stake in NBC-Universal. The \$30 billion acquisition gives the cable giant control over NBCU's motion picture studios and broadcast and cable networks, as well as 25 broadcast television stations serving 21 local communities across the country. Despite industry and public interest group concerns that giving a single company significant market power over both the production and distribution of popular news and entertainment programming could adversely affect competition and consumers, the Federal Communications Commission approved the merger – subject to a number of conditions.

One such condition requires the combined company, “C-NBCU,” to increase local news and public affairs programming produced and distributed by NBC and Telemundo owned-and-operated stations (O&Os) for a period of five years. Specifically, C-NBCU must produce an additional 1000 hours per year of original, locally produced news and information programming on all 10 NBC O&Os, as well as an additional 1000 hours per year on six of C-NBCU's 15 Telemundo O&Os. The FCC also requires C-NBCU-owned stations to report on compliance with this condition through quarterly “Localism Reports.”

The following analysis examines the first Localism Reports filed since consummation of the Comcast-NBCU merger. It also marks the first of a series of Free Press reviews evaluating C-NBCU's overall compliance with its localism commitment.

Free Press recognizes that the stations' current performance might not yet reflect the impact of C-NBCU's localism commitment. Rather, we assume that these initial localism filings set the base level of local programming that C-NBCU must increase per the terms of the FCC's Merger Order. Accordingly, we anticipate that increases in local news and public affairs programming will be reflected in C-NBCU stations' subsequent quarterly reports. Future Free Press reports will appraise which stations and markets carry increased local programming, highlight underserved communities, and scrutinize enforcement of the merger commitment.

Nevertheless, in reviewing the data, we find that C-NBCU failed to comply with a number of aspects of the FCC reporting requirement:

- C-NBCU failed to include the required program descriptions in its reports. Without these descriptions, the public and the FCC cannot accurately determine whether the programming listed actually constitutes local news and information programming.
- C-NBCU erroneously counted advertising content in its local news tallies. As a result, more than 1000 hours claimed as local news programming was not actually local news programming, but instead comprised interstitial commercials.

Despite these omissions, the data reveal the dearth of local news and public affairs programming that Telemundo O&Os provide to their communities of license, and expose a huge disparity between the amount of local news on English-language NBC O&O stations and on Spanish-language Telemundo O&O stations:

- Local news and information constitutes about 20 percent of weekly programming time for NBC O&Os. For most Telemundo O&Os, local news represents less than 3 percent of weekly programming time.
- NBC O&Os report an average of four hours and 42 minutes per day of local programming. Telemundo O&Os average only 48 minutes per day of local programming and, in a number of markets, they air significantly less than that amount.
- Telemundo stations in Boston and Denver aired **no** local news and information programming between January and April 2011.
- In Los Angeles, the NBC station reported airing nearly four hours per day of local programming. The local Telemundo station serving Los Angeles reported less than a quarter of that amount.

- In the New York DMA, the NBC station reported close to six hours per day of local programming. The Telemundo station serving New York only provided an average of 30 minutes of local programming per day – less than one-tenth the amount of news provided to English-speaking audiences.
- Neither C-NBCU nor the FCC has explained why only six of the 15 communities served by Telemundo O&Os deserve to receive more local news and information programming under the merger condition.

Based on these findings, Free Press makes the following recommendations in its report:

- To comply with the requirements of the merger condition, C-NBCU must promptly correct the filing errors in current reports, and ensure that these errors are not perpetuated in future Localism Reports.
- Low levels of local programming suggest that the FCC’s merger condition is woefully insufficient to remedy the severe shortage of local Spanish-language news and information programming offered by C-NBCU-owned Telemundo stations.
- Given the current paucity of local news programming that Telemundo offers to the Spanish-language community, Free Press calls upon C-NBCU to voluntarily increase local Telemundo news programming above that required by the FCC, and to commit to significantly improving local news production and distribution across all Telemundo stations that it controls.

## BACKGROUND

In approving the C-NBCU merger, the FCC affirmed that “[l]ocalism, along with competition and diversity, is a longstanding core Commission broadcast policy objective.”<sup>1</sup> However, the FCC determined that the merger “does not ensure that localism obligations will be honored by the O&Os.”<sup>2</sup> In an effort to preserve and enhance the service of stations to their local communities, the FCC adopted a condition requiring increased production and distribution of local news and information programming by NBC and Telemundo O&Os.

Specifically, the FCC’s *Merger Order* directs C-NBCU to collectively produce an additional 1000 hours per year of original, locally produced news and information programming on all 10 NBC O&Os, and an additional 1000 hours per year on at least six Telemundo O&Os.<sup>3</sup> These increases must continue for a period of five years.<sup>4</sup> The FCC further required that “this additional 1,000 hours of programming be original news and information, locally produced . . . and that it air on the primary or multicast channel of each station that produces it.”<sup>5</sup>

To allow the Commission to monitor C-NBCU’s compliance with the condition, the FCC adopted a reporting requirement directing each O&O to provide the following information for programming satisfying the localism commitment: (1) the title of the program; (2) the date(s) and time(s) aired; (3) the length of the program; (4) whether the program aired on a primary or multicast channel; and (5) a short description of the program.<sup>6</sup> These reports must be filed quarterly with the FCC and be made available to the public on the website of every O&O that maintains a website.<sup>7</sup>

## FINDINGS

On April 12, 2011, C-NBCU filed the first in a series of reports covering a 73-day period from January 18, 2011 (when the transaction secured agency approval) to March 31, 2011.<sup>8</sup> The reports provide information for all 25 O&O stations, 10 of which are NBC affiliates, and 15 of which carry Telemundo Spanish-language programming. The following analysis breaks down, both by station and by market, the Q1 Localism Reports for all 25 of the C-NBCU owned stations.

As a threshold matter, Free Press presumes that the stations’ current localism performance does not yet reflect their new owner or the impact of C-NBCU’s localism commitment. Accordingly, we assume that the information provided in C-NBCU’s 2011 Q1 Localism Reports establishes the baseline provision of local news and information to which the additional 1000-hour increase detailed in the merger condition will apply. Without the establishment of a baseline amount of programming, there is no way to determine if C-NBCU is following through on its promise to increase local programming production. To Free Press’ knowledge, C-NBCU has provided no pre-merger tally of local news offered by NBC and Telemundo O&Os on a per-station basis.<sup>9</sup>

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<sup>1</sup> *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Memorandum Opinion and Order, MB Dkt 10-56, FCC 11-4 (rel. Jan. 20, 2011) at ¶197 (“Merger Order”).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at Appendix A, §XI(2)(a)(b).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶199.

<sup>6</sup> *Id.* at 201, Appendix A, §XI(4).

<sup>7</sup> *Id.*

<sup>8</sup> The Q1 Reports for 25 stations can be found online at [www.comcast.com/newsprogramming](http://www.comcast.com/newsprogramming) and through the website of each NBC and Telemundo O&O station that maintains a website.

<sup>9</sup> In their merger application, Comcast and NBCU reported that the average NBC O&O aired more than 30 hours per week of local news and public affairs programming. See *Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast Corporation, Transferee*, Comcast/NBCU Joint Opposition, filed MB Dkt 10-56 (July 21, 2010) at 19. However, they did not offer station-

Additionally, and as Free Press and others have pointed out on multiple occasions, the FCC itself has no mechanism in place to require broadcasters to list the amount and types of programming aired.<sup>10</sup> Thus, the data provided in these initial Localism Reports must establish the starting point. Free Press expects increases in local news and public affairs programming to be reflected in subsequent quarterly Localism Reports and will monitor such increases accordingly.

***C-NBCU Failed to Comply with Key Aspects of the Reporting Requirements and Did Not Disclose the True Nature and Amount of Local Programming Listed in the Reports***

There are significant limitations to the data provided by C-NBCU. This stems in part from the fact that the FCC adopted minimal requirements for the reporting of program information in the first place. Yet C-NBCU has nonetheless failed to comply with several aspects of the reporting requirement.

The FCC's *Merger Order* requires C-NBCU to provide a "short description of [each] program."<sup>11</sup> The Q1 Localism Reports fail to provide this information. Free Press attempted to locate program descriptions through online television guide services. Yet Free Press was not able to locate descriptions for every program, and the descriptions available were extremely limited and possibly inaccurate for some of those programs with published listings. For example, the online television guide description for *The Rundown*, a show that is listed in the Localism Report for WMAQ-NBC in Chicago, is described thus: "Stories in the news spotlight what's happening and what matters in *New York* region."<sup>12</sup> (emphasis added) It is not clear whether this was an error in the listing or whether some of the "local" programming reported by C-NBCU was not in fact "local."

Additionally, it is possible that C-NBCU has over-counted the amount of local programming currently offered. It is not clear whether any of the programming tallies in the Localism Reports include the airing of duplicative segments, or re-run programming that was re-purposed and aired at another time, or that was aired originally on a primary channel and then re-run on a multicast channel. Also, C-NBCU has included time occupied by advertisements as part of its claimed local programming hours. For example, for a program scheduled to run in the 6 p.m. to 6:30 p.m. slot, C-NBCU reports an entire 30 minutes toward its local programming tally. But it is inconceivable that no interstitial commercials or advertisements ran during any local programming slots. Indeed, the typical viewing hour contains between 15 and 20 minutes of interstitial commercials – some 25 to 33 percent of the time slot.<sup>13</sup>

**Even by conservative estimates, it is likely that over 1000 hours of the time that C-NBCU claimed as local news programming were in fact commercials**

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level data to support this contention, did not specify whether such programming is locally produced, and did not provide information reflecting the amount of local news programming provided by Telemundo O&Os.

<sup>10</sup> *Free Press et al. Petition to Deny*, filed MB Dkt 10-56 (June 21, 2010) at 55.

<sup>11</sup> *Merger Order* at Appendix A, §XI(4).

<sup>12</sup> Listing available at <http://tvlistings.zap2it.com/tv/the-rundown/EP01246382>.

<sup>13</sup> For example, Kantar Media reported that in Q4 2010, primetime shows consisted of 14:50 of network aired ads, excluding local commercial time. See also "TV Everywhere: A stepping stone to online video consolidation?" SNL Kagan, June 29 (2009) (reporting a range of seven to nine commercial minutes per half-hour commercial program).

C-NBCU reports that between January 18, 2011 and March 31, 2011, C-NBCU-owned stations aired 4,338 hours of local news and information programming. Even conservatively estimating that C-NBCU-owned stations aired only seven minutes of commercials during 30-minute shows and 14 minutes per hour-long shows, more than 1000 hours that C-NBCU claimed as local news would have been commercials.

As a consequence of these errors, Free Press cannot evaluate whether the programming claimed as local news and information legitimately qualifies under the terms of the merger condition. Additionally, it is likely that C-NBCU has substantially over-estimated the amount of local news and information programming. Accordingly, Free Press cannot determine the actual amount of local programming provided by C-NBCU-controlled stations during the reporting period.

### ***C-NBCU's Localism Reports Reveal a Severe Lack of Local Programming on Telemundo O&Os***

C-NBCU's Q1 Localism Reports reveal an extreme disparity between English-language NBC O&Os and Spanish-language Telemundo O&Os in the provision of local news.

For example, while local news programming represents close to 20 percent of the weekly programming time for NBC O&Os, for most Telemundo O&Os, local news and public affairs represents *less than 3 percent of weekly programming time*. In other words, while NBC stations average about four hours and 42 minutes per day of local news (including local news aired on multicast channels), Telemundo stations on average air only 48 minutes of local news per day and, in a number of markets, air significantly less.

**Table 1:**  
**Local Programming by NBC O&O Stations**

Market Rank	Market	Station	Network	News & Information Programming		
				Total Hours Reported (Jan. 18 - Mar. 31)	Daily Average per Channel	Daily Average Per O&O
1	New York, NY	WNBC	NBC (primary)	280	3.8	5.3
			NBC (multicast)	110	1.5	
2	Los Angeles, CA	KNBC	NBC	287	3.9	3.9
3	Chicago, IL	WMAQ	NBC (primary)	294	4.0	5.7
			NBC (multicast)	123	1.7	
4	Philadelphia, PA	WCAU	NBC (primary)	335	4.6	5.7
			NBC (multicast)	79	1.1	
5	Dallas-Ft. Worth, TX	KXAS	NBC	297	4.1	4.1
6	SF-Oak-SJ, CA	KNTV	NBC	286	3.9	3.9
9	Washington, DC	WRC	NBC (primary)	438.5	6.0	6.4
			NBC (multicast)	26	0.4	
17	Miami-Ft. Laud., FL	WTVJ	NBC	251	3.4	3.4
28	San Diego, CA	KNSD	NBC	256	3.5	3.5
30	Hartford, CT	WVIT	NBC	360	4.9	4.9
All Comcast Owned and Operated NBC Stations				3422.5	3.3	4.7

Only in two markets, Miami and Puerto Rico,<sup>14</sup> did local news and public affairs programming on Telemundo O&Os exceed an hour per day. Even then, the amount of such programming fell far below that of any NBC O&O in any market. Telemundo O&Os in Denver and Boston aired no local programming during the reporting period.

In markets where C-NBCU operates both an NBC and a Telemundo O&O, the disparity in the provision of local news is especially stark. In Los Angeles, the NBC station provided nearly four hours per day of local news, while the local Comcast-owned Telemundo station provided less than a quarter of that amount. In the New York DMA, the NBC station provided close to six hours per day. The Telemundo station only provided an average of 30 minutes per day – less than one-tenth the amount of news provided to English-speaking audiences.

**Local news and public affairs programming accounted for just 3% of the time on Comcast-owned Telemundo stations, versus 20% on the NBC O&Os. Boston and Denver Telemundo stations aired no local news or information programming.**

**Table 2:**  
**Local Programming by Telemundo O&O Stations**

Market Rank	Market	Station	Network	News & Information Programming		
				Total Hours Reported (Jan. 18 - Mar. 31)	Daily Average per Channel	Daily Average Per O&O
1	New York, NY	WNJU	Telemundo	36.5	0.5	0.5
2	Los Angeles, CA	KVEA	Telemundo	66.0	0.9	0.9
3	Chicago, IL	WSNS	Telemundo	48.0	0.7	0.7
5	Dallas-Ft. Worth, TX	KXTX	Telemundo	53.5	0.7	0.7
6	SF-Oak-SJ, CA	KSTS	Telemundo	55.0	0.8	0.8
7	Boston, MA	WNEU	Telemundo	0.0	0.0	0.0
10	Houston, TX	KTMD	Telemundo	69.5	1.0	1.0
12	Phoenix, AZ	KTAZ	Telemundo	52.5	0.7	0.7
16	Denver, CO	KDEN	Telemundo	0.0	0.0	0.0
17	Miami-Ft. Lauderdale, FL	WSCV	Telemundo	214.0	2.9	2.9
37	San Antonio, TX	KVDA	Telemundo	52.5	0.7	0.7
42	Las Vegas, NV	KBLR	Telemundo	52.5	0.7	0.7
55	Fresno-Visalia, CA	KNSO	Telemundo	52.5	0.7	0.7
66	Tuscon, AZ	KHRR	Telemundo	52.5	0.7	0.7
N/A	Puerto Rico	WKAQ	Telemundo (Primary)	79.0	1.1	1.5
			Telemundo (Multicast)	31.5	0.4	
<b>All Comcast Owned and Operated Telemundo Stations</b>				<b>915.5</b>	<b>0.8</b>	<b>0.8</b>

<sup>14</sup> WKAQ in Puerto Rico was the only Telemundo O&O that reported airing local programming on a multicast stream. However, under the terms of the *Merger Order*, only programming that airs on a Telemundo O&O's primary channel counts toward the local news condition. *Merger Order* at Appendix A, §XI(2)(b). Thus, the 31.5 hours reported on WKAQ's multicast channel do not contribute to its localism tally. Conversely, an NBC O&O may count local programming aired on a multicast stream if that "channel shall achieve actual distribution to at least 50 percent of the television households within the station's DMA." *Id.* at Appendix A, §XI(2)(a).

**Table 3:**  
**Comparison of Programming Hours in NBC and Telemundo Overlap Cities**

Market Rank	Market	News & Information Programming	
		Daily Average Per NBC O&O	Daily Average Per Telemundo O&O
1	New York, NY	5.3	0.5
2	Los Angeles, CA	3.9	0.9
3	Chicago, IL	5.7	0.7
17	Miami-Ft. Laud., FL	3.4	2.9

**ANALYSIS AND RECOMMENDATIONS**

***C-NBCU’s Local Programming Commitment Does Not Adequately Address the Dearth of Local Programming Provided by Telemundo O&Os***

C-NBCU’s first Localism Reports highlight a stark disparity in local programming between NBC and Telemundo O&O stations. This imbalance is troubling for a number of reasons.

First, in adopting the localism condition, the FCC noted:

... all broadcast stations, including the Telemundo O&Os, have an obligation to honor the localism obligation and provide their communities with locally oriented news, public affairs, and other informational programming. We are particularly mindful of the distinct news, information and emergency alert needs of the Spanish language audience.<sup>15</sup>

Thus, it is curious that the FCC did not require C-NBCU to extend the local programming increase to all 15 Telemundo O&Os. While all 10 NBC O&O stations are required to increase their local news production and distribution, only six Telemundo stations are covered by the merger condition.

Neither the FCC nor C-NBCU has ever explained why the remaining nine Telemundo O&Os and their audiences do not also merit increased local news production and distribution. Nor has C-NBCU or the FCC identified which six Telemundo communities have been chosen as the beneficiaries of the condition.

Most of the Telemundo stations reported airing 48 minutes or less of local programming per day. Additionally, because we can safely assume that C-NBCU has incorrectly counted advertising spots as part of its local programming tallies, the amount of actual local programming is probably significantly lower.

**Comcast’s Los Angeles NBC station aired four hours per day of local news versus just one hour at its LA Telemundo station. In New York, Comcast’s Telemundo station aired one-tenth the amount of local news aired on the NBC O&O.**

<sup>15</sup> *Id.* at ¶200.



Under the FCC's localism condition, C-NBCU must increase by 1000 hours per year the local programming produced by at least six Telemundo O&Os. Assuming that this increase is equitably distributed across the six O&Os, the condition would only yield an increase of 27 minutes per station, per day. That an additional 27 minutes per day represents a 50 percent increase in local news programming for most Telemundo stations is a reflection of how pitifully little local programming these stations currently provide. In any event, increasing the amount of local programming aired on six Telemundo O&Os by fewer than 30 minutes per day is woefully inadequate to remedy the acute deficiency of local programming reported across virtually all Telemundo O&Os.

**Neither C-NBCU or the FCC has explained why only six out the 15 communities served by Telemundo O&Os deserve to receive more local news programming under the merger condition.**

This lack of local news and information programming on C-NBCU stations is particularly troubling, as Spanish-language speakers are disproportionately more likely than English-language speakers to rely on over-the-air broadcasting for their news. A 2008 survey reported that, nationally, more than 40 percent of Spanish-speaking households watch over-the-air television.<sup>16</sup> Additionally, studies suggest that Spanish-language news programming can have a positive effect on political engagement. For example, a 2006 study found that when television stations aired Spanish-language news programs, Hispanic voter turnout increased by 5 to 10 percentage points.<sup>17</sup> Given Spanish speakers' reliance on broadcasting and the fact that Telemundo is one of two national Spanish-language television networks, the glaring deficiency in local news on Telemundo O&Os means that Spanish speakers have fewer options and less diversity in local programming, as well as far less of the local news programming on which they depend for information.

This paucity of local programming on Telemundo stations should also be considered in the context of those stations' merger history – namely, NBC-Universal's 2002 acquisition of Telemundo. When NBCU acquired Telemundo in 2002, it promised to improve the quality of Spanish-language news.<sup>18</sup> Yet not only did NBCU fail to follow through on its commitments to Telemundo audiences, it actually cut local news production and distribution among Telemundo O&Os. Rather than funnel resources into serving the Spanish-language community through the Telemundo O&O stations, NBCU laid off 700 employees, many of them Telemundo staff, and eliminated local newscasts at five Telemundo stations in Houston, Dallas, Denver, San Jose and Phoenix, replacing them with a single "hubbed" newscast out of Fort Worth, Texas.<sup>19</sup>

Telemundo stations and their audiences have already suffered from broken merger commitments. Indeed, previous merger activity has diminished – not improved – service to Telemundo's local communities of license.

<sup>16</sup> "Hispanics unprepared for DTV transition due to language barrier," Broadcast Engineering, July 28, 2008 (citing a survey by Knowledge Networks/SRI), available at <http://broadcastengineering.com/news/hispanics-unprepared-dtv-transition-due-language-barrier-0728/>.

<sup>17</sup> Felix Oberholzer-Gee & Joel Waldfogel, *Media Markets and Localism: Does Local News en Español Boost Hispanic Voter Turnout?* 4 (Harvard Business School, 2006), available at <http://www.hbs.edu/research/pdf/07-062.pdf>.

<sup>18</sup> See *Applications of Telemundo Inc. and TN Acquisition Corp. for Transfer of Control of Telemundo Communications Group, Inc. and Certain Subsidiaries, Licensees of KSTS (TV), San Jose, CA, et al.*, File Nos. BTCCT-20011101ABK, et al.

<sup>19</sup> See Letter from the National Association of Hispanic Journalists to Bob Wright, Chairman and CEO, NBC Universal (Oct. 20, 2006) available at <http://www.nahj.org/nahjnews/articles/2006/october/nbcuniversalletter.pdf>; see also Press Release, National Association of Hispanic Journalists, NAHJ Board's Statement on NBC's Plans for Telemundo (Oct. 23, 2006), available at <http://www.nahj.org/nahjnews/articles/2006/october/telemundo.shtml>.

This unfortunate history highlights the need for the FCC to assert exacting enforcement of the localism condition to ensure that C-NBCU “makes good” on its local news promise and to be particularly vigilant with regard to Telemundo O&Os.

This historical context also suggests that to compensate Spanish-language audiences for years of diminished service resulting from NBCU’s acquisition of Telemundo, C-NBCU should go above and beyond meeting the existing merger condition and increase its local news commitment to all Telemundo O&O stations. C-NBCU claimed in its application that it is committed to “significantly increas[ing] the amount of Spanish language programming available to the public.”<sup>20</sup> Even given the dearth of local Telemundo programming revealed in the Localism Reports, it is doubtful that the FCC would revisit the merger condition to increase the amount of local news required of Telemundo O&Os. However, there is nothing preventing C-NBCU itself from remedying the paucity of local Telemundo programming. Accordingly, Free Press both encourages and challenges C-NBCU to increase local programming for all Telemundo O&Os.

Should C-NBCU decline to increase the amount of local news produced and to extend the increase in production to all Telemundo stations, it must identify the six Telemundo O&Os that will produce and distribute additional local programming so that the public and the FCC can track the progress of those stations’ service to their communities under the terms of the merger condition.

***C-NBCU Must Promptly Correct Its Reporting Errors  
To Enable the FCC and the Public to Better Assess  
Whether and How C-NBCU Is Complying with Its Merger Promise***

The information submitted by C-NBCU provides a critical look into the provision of local news and public affairs programming, a core function of broadcasters’ service to their communities of license. However, while the information provided is helpful, certain omissions have lessened its utility. The FCC should direct C-NBCU to promptly correct these omissions and to re-file complete and accurate versions of the Q1 Localism Reports.

As noted above, C-NBCU failed to provide descriptions of qualifying programming as required by the FCC’s *Merger Order*.<sup>21</sup> Without these descriptions, it is difficult for the public and the FCC to determine with any accuracy whether the programming listed actually qualifies toward the 1000-hour increase in local news. Those descriptions, once included, should enable the public and the FCC to better determine the nature of the programming being claimed.

Additionally, C-NBCU seems to have overestimated the amount of programming provided in its tallies by counting interstitial commercials aired during programming slots as contributing to the “length of the program” itself.<sup>22</sup> The inclusion of commercial time not only obscures the true amount of local news programming provided by C-NBCU O&Os, it also contravenes both the language and the purpose of the localism condition as adopted in the FCC *Merger Order*.

The Commission directed C-NBCU O&Os to locally produce an additional 1000 hours per year of original, local news and information programming.”<sup>23</sup> Commercials are not usually produced by NBC or Telemundo O&Os, but more importantly, they do not constitute local news or information programming.

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<sup>20</sup> See *Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast Corporation, Transferee*, filed MB Dkt 10-56 (Jan. 28, 2010) (“Application”) at 48.

<sup>21</sup> *Merger Order* at Appendix A, §XI(4).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at Appendix A, §XI(2)(a)(b).

As such, commercial time does not qualify toward the local news programming condition and C-NBCU should not include commercial time when reporting the length of qualifying programs. Nor is the error *de minimis*. Given that the typical 30-minute show contains seven to nine minutes of commercials, it is likely that a significant portion of the time C-NBCU claims as “local news programming” is in fact commercial material.

Similarly, only original, first-run programming should count toward localism tallies contained in C-NBCU’s reports. Under the terms of the *Merger Order*, the FCC requires the additional 1000 hours of programming to “be *original* news and information” that is also locally produced and distributed by each O&O.<sup>24</sup> The airing of duplicative segments, or re-run programming that was re-purposed and aired at another time, or that aired originally on a primary channel and was then re-run on a multicast channel does not constitute “original” programming. It is not clear from the Q1 Localism Reports whether C-NBCU has claimed any program re-runs as part of its local news totals. Nevertheless, it is worth noting that such re-runs would not count under the terms of the localism condition.

### ***The FCC Must Implement Form 355 and Collect Local Programming Information***

While C-NBCU is responsible for its non-compliance with the reporting requirements, the FCC bears some blame for failing to require information that would have enabled the public to better assess whether C-NBCU stations are airing programming that is responsive to the needs of local communities.

With the exception of the program description, the FCC requires no qualitative information regarding such programming to be filed in the Localism Reports. But even assuming that C-NBCU corrects its omission of program descriptions, it is not certain that such descriptions will enable reviewing parties or the FCC to distinguish between types of local programming.

Chiefly, it is unclear how much of the programming above represents *bona fide* news programming, electoral affairs or cultural programming, and how much time is dedicated to other types of coverage, such as traffic and weather.<sup>25</sup> *Bona fide* local news coverage comprising in-depth investigative reporting and electoral affairs programming is critical to inform people about important issues facing their communities. Of course, traffic and weather reports do provide useful information. But they are also readily available from a multitude of sources, whereas the decline in “hard” local journalism is a problem that has prompted reviews by the FCC and other agencies.

During the course of the merger review proceeding, Free Press and other public interest groups urged the FCC to require C-NBCU to submit local programming information via a reporting mechanism such as FCC Form 355.<sup>26</sup> Form 355 was adopted by the Commission in 2007, but has never been implemented on an industry-wide basis.<sup>27</sup> Form 355 would have required more and better defined categories of program information, including what portions of programming address electoral affairs, arts and cultural programming, and programming directed at under-served communities. These types of data would have clarified the true amount and nature of the programming being claimed by C-NBCU in compliance with the condition.

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<sup>24</sup> *Id.* at ¶199.

<sup>25</sup> See *FCC Future of Media Proceeding*, GN Dkt 10-125.

<sup>26</sup> See *Reply to Opposition of Free Press et al*, filed MB Dkt. 10-56 (August 19, 2010) at 68; see also, *Ex Parte Presentation of Free Press et al*, filed Mb Dkt 10-56 (Oct. 7, 2010) at 4.

<sup>27</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensees Public Interest Obligations; Extension of the Filing Requirement for Children’s Television Programming Report* (Form 398), Report and Order, 15 FCC Rcd 19816 (Adopted Nov. 2007, rel. Jan. 2008).

## CONCLUSION

In sum, C-NBCU's initial quarterly Localism Reports leave much to be desired and are rife with reporting errors. Nevertheless, they are useful in illuminating grave disparities between local news and information provided on English-language NBC stations and on Spanish-language Telemundo stations.

To ensure compliance with the terms of the FCC *Merger Order*, C-NBCU must:

- Include program descriptions for all local news and information programming claimed in the Localism Reports.
- Count only qualifying original news and information programming toward the Localism Report tallies. Non-original (a.k.a., "re-run") programming and advertising or commercial material should not be counted toward fulfillment of the condition.
- Identify precisely which Telemundo O&Os are responsible for producing and airing an increased amount of local news and information programming.

To remedy the dearth of Telemundo's local news programming and to ensure better service for Spanish-language communities, C-NBCU should:

- Commit to increasing the Telemundo O&Os' production and distribution of local news and information programming significantly above the level required by the FCC *Merger Order*.
- Extend increased levels of local news production and distribution to all 15 Telemundo O&Os, not merely six stations, as required in the FCC *Merger Order*.