

An Examination of How the FCC Uses “Voluntary Commitments” from Merging Telecommunications Companies to Advance Policy Goals

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Abstract

This study examines the FCC’s historical use of “voluntary commitments” when approving telecommunications company mergers. Because complex factors such as market conditions, corporate lobbying, political climate and technological change dictate regulations, it is grounded in a political economic framework. Using a focused synthesis, the authors examined key policy issues, such as the political climate and power structures in place during various telecommunications company transactions. The study contrasts the FCC’s ability to extract commitments from merging companies with previous unsuccessful attempts to achieve similar goals through the established rulemaking process, with particular focus on the 2011 Comcast/NBC-Universal merger. The newly formed company agreed to a slew of voluntary commitments that advanced policies—related to streaming video, digital inclusion and online journalism—strongly opposed by industry during previous FCC attempts to impose them industry-wide.

Keywords: information policy, qualitative data analysis, information services

The Federal Communications Commission (FCC) must justify significant policy decisions by explaining assumptions underlying the decision, the rationale for that particular policy tact, and how the new policy dovetails with agency precedent (Yoo, 2007). Critics contend, however, that when federal regulators impose conditions on companies seeking to complete a merger, the process lacks transparency and is too far-reaching. In fact, the FCC may negotiate with companies under review to extract conditions that have minimal connection to actual concerns surrounding the transaction, and that circumvent established policymaking processes (Weiser, 2009; Noah, 1997; Tramont, 2001; Koutsky & Spiwak, 2010). Critics also assert that by engaging in closed door negotiations and “arm-twisting” (Noah, 1997), the FCC is able to evade judicial scrutiny—partially because companies in regulated industries fear repercussions if they challenge agency demands. For these reasons, members of Congress have sponsored legislation aimed at severely limiting, and even stripping, the FCC of its power to review acquisitions (Borland, 1999; Telecommunications Merger Review Act of 2000).

Despite their controversial nature, merger negotiations often do result in a set of conditions that benefit the public. It may be argued that these outcomes would be impossible without the agency’s “sector-specific” (Baker, 2010) perspective. This outlook is shaped by the FCC’s industry expertise and ongoing relationship with telecommunications companies that offer broadband access, voice-over-IP and digital content—in contrast to the limited interaction between the Department of Justice (DOJ) and merging firms. While the DOJ tends to pore over documents and crunch numbers, the FCC review process entails meeting with the parties and hearing their concerns directly. In a converged environment, in particular, merger conditions offer an interim solution for the FCC to work outside an antiquated regulatory scheme (Blumensaadt, 2000) and to spark broader regulatory reform. Negotiated terms are a

quick route compared to the FCC's established rulemaking process and may serve as a useful pilot. Former FCC Chairman William Kennard (1999) lauded the practice as a means of meeting the public interest standard, while freeing the FCC from the need to predict how rules might impact every company in the sector.

Whether the commission's authority to condition mergers benefits or hinders regulation remains debatable. With this sentiment in mind, this study examines the FCC's historical use of "voluntary commitments" when approving telecommunications company mergers. Because complex factors such as market conditions, corporate lobbying, political climate and technological change dictate regulations, this study is grounded in a political economic framework. Using a focused synthesis, the authors examined key policy issues, such as the political climate and power structures in place during various telecommunications company transactions. The study contrasts the FCC's ability to extract commitments from merging companies with previous unsuccessful attempts to achieve similar goals through the established rulemaking process. While multiple acquisitions are analyzed, the Comcast/NBC-Universal merger serves as a key case study. The newly formed company agreed to a slew of voluntary commitments that advanced policies—related to streaming video, digital inclusion and online journalism—strongly opposed by industry during previous FCC attempts to impose them industry-wide.

Current Regulatory Review Process

When reviewing mergers and acquisitions of telecommunications companies, the DOJ's primary objective is ensuring communications markets perform competitively (Baker, 2010). By contrast, the Communication's Act charges the FCC with determining whether proposed transactions meet a "public interest" standard. This broad mandate may encompass protecting service quality for consumers, preserving American jobs, safeguarding localism, or providing opportunities for audiences to hear diverse points of view (FCC, 2004). When a disagreement arises during an acquisition and license transfer, the FCC may refer the matter to an administrative law judge. Far more commonly, however, the key stakeholders "voluntarily" agree to narrowly tailored conditions geared toward mitigating harm and ensuring the transaction under review does not violate FCC rules. Together, three general principles drive the FCC's information policy: civil liberties, economic efficiency, and social fairness and equity (Bushkin & Yurow, 1980). The following section briefly reviews key literature examining the political economy of telecommunications and the FCC's public interest mandate.

Political Economy and Public Interest Literature

It is impossible to view the telecommunications industry in isolation from regulators and lawmakers, or to view regulators and lawmakers as separate from the market. Each stakeholder is linked to another. Because these relationships have a profound impact on consumers, the Communications Act mandates regulators to consider another key concept—the public interest. Consequentially, political economy provides an explanatory framework for analyzing both policy and practices influencing telecommunications mergers.

Ideally, telecommunication regulations should promote economic, political and social processes—which then enable a democratized society (Lenert, 2006). Although the FCC accepts public comments before signing off on a merger, these comments may not present the type of information the commission relies on to justify its opinions (Blevins & Brown, 2010). Powerful companies and those with the highest financial stakes routinely usurp the debate over telecommunications policy in the United States (Chen, 1997). Certainly, gaining traction in the hegemonic U.S. telecommunications industry, where a handful of companies control wireline and wireless Internet access, is a challenge. Verizon, AT&T, Comcast, and Time Warner spent a combined \$53.3 million to lobby Washington policymakers in 2010 (Center for Responsive Politics, 2011). This large sum of money helps explain why legislators sometimes craft a regulatory framework that privileges the interests of corporations over the interests of broadband consumers.

When a small number of elite and politically connected ISPs establish the terms and conditions for access to the Internet and digital content, by default these firms also determine who can operate in the public sphere. The Supreme Court acknowledged the concepts of a free marketplace of ideas and media diversity as far back as 1945. In the landmark case *Associated Press v. United States* (1945), the justices

ruled that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public” (p. 17). Similarly, the Communications Act of 1934 recognizes the importance of fostering competition, on the grounds that it leads to innovation, lower prices and better quality service. Inversely, telecommunications industry consolidation has the potential to undermine quality of service, limit consumer choice, and lead to price spikes. Previous research has found that if the FCC over-emphasizes the free market when crafting policy, it could dampen deliberative discourse and citizen engagement (Blevins & Brown, 2010). However, “free enterprise” economists argue that government intervention itself is harming competitive markets (Koutsky & Spiwak, 2010; White, 2008). Certainly, when regulatory requirements are applied to select companies, a patchwork of inconsistent policies begins to comprise the political economy of telecommunications. The SBC-AT&T and Verizon-MCI mergers, which closed in 2005 and 2006 respectively, serve as examples. These companies agreed to comply with net neutrality principles for two years. Yet regional DSL providers and the national cable industry, which boasted more residential broadband subscribers than AT&T and Verizon combined, were not bound by these same restrictions.

Technology is enabling users to exercise more control over media platforms, from audio filesharing to video-on-demand. As a result, the political economy of telecommunications is becoming more user-driven, and telephone and cable companies are reconsidering their business models. It remains to be seen how these changes will impact conditions placed on mergers in the future, or on the FCC’s ability to enforce them. However, regulators and policy scholars continue to learn from voluntary commitments agreed to in the past. Three research questions emerged from this review of literature:

RQ1: Do merger conditions appear to be tailored to the material facts of the transaction under review by the FCC?

RQ2: Are merger conditions driven by regulators’ broad policy agenda? Specifically, do these “voluntary commitments” move the FCC closer to achieving policies overwhelmed by opposition during the traditional rulemaking process?

RQ3: When crafted appropriately, can merger conditions transform an anti-competitive merger into a transaction that achieves a net gain for the public?

The following section explains the methodology used to explore and, ultimately, answer these questions.

Methodology

This qualitative study uses empirical evidence to shed light on processes and outcomes surrounding telecommunications company mergers. The authors conducted a focused synthesis (Majchrzak, 1984) involving the review of regulatory policies, scholarly research findings, white papers, and other written materials. Given the vast amount of available information, the researchers selectively chose relevant documents by applying both external and internal criticism to each. External criticism questions whether the document is authentic, and internal criticism questions whether the data are accurate and relevant (Isaac, Stephen, & Michael, 1981). Similarly, we considered whether these original sources were reliable and valid (Cooper & Emory, 1995), and whether biases were evident.

The Telecommunications Act of 1996 set the stage for the telecom consolidation trend that continues today. Therefore, the first step we took involved examining the dozens of telecommunications company mergers that have occurred since its passage. We then identified the research problem—broadly, what drives specific merger conditions and whether they compensate for a less competitive marketplace. Next, we focused on the policy environment, i.e. the political climate and power structures in place, during various transactions. This included an examination of overt stakeholder actions, such as lobbying efforts by corporations and grassroots advocacy. We then identified pending FCC rulemakings, regulatory proposals and legislation that addressed issues overlapping with merger conditions. Based on this information, we considered the goals of various merger conditions, how they evolved, and their effectiveness. We then analyzed whether they ultimately served the public interest. Finally, we synthesized these findings to answer our research questions.

The following section examines a handful of telecommunications company transactions, and draws connections between the political agenda, the market place and merger conditions.

Historic Use of Merger Conditions

Across all industries, firms are motivated to merge with or acquire other companies to gain a competitive advantage. By joining forces, telecommunications companies aim to strategically combine resources, to maximize efficiency, to obtain new customers, and to extend services into new markets. During the 1990s, America Online (AOL) grew into a preeminent Internet company. In addition to creating a software suite that allowed its 30 million members (Holahan, 2006) to access the world's largest walled garden of content and community forums, AOL operated two ISPs and various web services. In January 2000, AOL proposed buying Time Warner for \$165 billion. As the largest provider of content in the world (MacKie-Mason, 2000), Time Warner operated multiple cable television systems and popular networks including HBO, Cinemax and CNN; sports franchises; magazines; film production and distribution companies; and record labels. Time Warner cable also owned the nation's second largest Internet service, branded Road Runner. The proposed transaction exemplified the converging environment between "new" and "old" media. Time Warner recognized that the Internet was crucial to the future success of its music, publishing and video businesses. AOL, in turn, hoped to gain access to Time Warner's vast content collection, as well as to its Road Runner broadband service.

Despite the companies' claims that their businesses did not overlap enough to warrant intense scrutiny, the FCC spent nearly 10 months conducting a public interest analysis. Ultimately, both the FCC and the FTC approved the transaction with about a dozen conditions. Time Warner was required to provide at least three unaffiliated ISPs with access to its cable systems. The order also prohibited AOL Time Warner from discriminating against content delivered to subscribers of competing ISPs but traveling over its cable system. Finally, AOL Time Warner agreed to make future instant messaging (IM) services interoperable. In aggregate, these conditions advanced the FCC's long-held goal for cable broadband providers to offer "open access" to their infrastructure (FCC, 2000). At the time, the telephone system operated with full common carrier obligations. This meant that competitive ISPs could sell services within a community for minor investment, with the telephone company providing the last-mile connection to its customers. In the absence of common carriage obligations for cable operators, however, a handful of companies controlled broadband access. In response to RQ2, the FCC capitalized on the AOL-Time Warner merger as an opportunity to mandate that a cable company allow unaffiliated ISPs access to its broadband network. In response to RQ3, our analysis finds that the FCC (2002; 2003) ultimately negated potential benefits of the AOL-Time Warner merger by lifting this requirement, as well as the mandate to make IM services interoperable.

The AOL-Time Warner transaction was reminiscent of AT&T's \$43.5 billion acquisition of Telecommunications, Inc. (TCI), approved by the FCC just one year earlier. That 1999 deal allowed AT&T—the nation's largest telephone carrier—to combine its consumer long distance, wireless, and Internet services with TCI's cable, telecommunications, and high-speed Internet business. At the time, TCI was the nation's second-largest cable television operator. However, the FCC did not mandate that the newly formed entity provide competing broadband companies with access to TCI's cable lines. We argue that this contradiction is solely the result of political priorities, as opposed to the material facts surrounding the merger. Specifically, the FCC undertook this merger review before the open access debate gained traction. Instead, cable television and telephone competition; a V-chip order; broadcast ownership rules; universal service; and the transition from analogue to digital television dominated the commission's agenda (Kennard, 1998).

AT&T acquired additional regional telecommunications companies over the next few years. For instance, a 2006 horizontal merger allowed AT&T to purchase BellSouth for \$86 billion. In order to win approval from federal regulators, the new company signed off on 11 pages of merger commitments. AT&T agreed to adhere to net neutrality principles for two years and to divest BellSouth's holdings in the 2.5 GHz spectrum (FCC, 2006). These commitments directly address federal regulators' concerns about competitiveness—always the primary issue during a merger. Several stipulations, however, were wholly unrelated to the terms of the deal (RQ1) but address broader federal policy goals (RQ2). For instance, AT&T agreed to make disaster recovery capabilities available in BellSouth's territory and to donate \$1 million toward supporting public safety initiatives. Several months earlier, an independent panel established by the FCC in the wake of Hurricane Katrina recommended ways in which the telecommunications industry could more effectively respond to disasters (Wiley, Rein & Fielding, 2006). The merger agreement also required AT&T/BellSouth to report to the FCC on its efforts to serve

customers with disabilities. The commission had struggled to address a variety of disability-related matters—including access to telecommunications equipment, services and information—since passage of the Disabilities Rights Act in 1990. Additionally, in order to win approval for its merger with BellSouth, AT&T agreed to return outsourced jobs to the United States. This condition is in line with the federal government's general commitment to job creation and economic growth. Finally, the FCC required that AT&T/BellSouth slash rates charged to competitors wishing to lease high-speed data lines. This condition allowed the FCC to claim a victory in its effort to reform special access fees, which it could not implement industry-wide due to opposition.

AT&T's 2006 acquisition of BellSouth has much in common with the recent horizontal merger between CenturyLink and Qwest. The FCC spent a year reviewing the \$12.2 billion deal before approving it in April 2011, and creating the nation's third largest telecommunication provider (CenturyLink, 2011). The commission imposed conditions on Qwest and CenturyLink that reflect a series of goals laid out in the FCC's National Broadband Plan (2010). The plan stresses the need for affordable and reliable residential broadband access, with an emphasis on rural, low-income and minority communities. In order to win merger approval, CenturyLink and Qwest agreed to expand broadband access to low-income customers in their territory. They also promised to offer qualifying households broadband access for \$10/month for one year, and \$15/month for the subsequent year. Additionally, CenturyLink agreed to increase Qwest's network capacity so that faster broadband download speeds would be available to 4 million additional homes and businesses. Each of these merger conditions explicitly addresses proposals laid out in the National Broadband Plan, demonstrating that a broad regulatory agenda frequently drives merger conditions.

The following section, which focuses exclusively on Comcast's recent acquisition of NBC-Universal, further explores the answer to our research questions.

Comcast/NBC-Universal Merger Conditions

Motivations for the Merger

In January 2011—following six congressional hearings, multiple public forums, and one of the lengthiest comment periods in commission history—the FCC sanctioned Comcast's purchase of NBC/Universal. This \$30 billion transaction illustrates the relationship between merger conditions and the FCC's existing policy goals, including many the commission had failed to achieve through administrative rulemakings. In light of the role campaign finance contributions play in determining the political economy of telecommunications, this section also examines lobbying efforts undertaken by both supporters and opponents of the Comcast-NBC/Universal deal.

More than 24 million Americans subscribe to Comcast's cable TV service, making it the largest multichannel video programming distribution service in the United States. With 15 million broadband subscribers, Comcast is also the largest ISP in the country. However, like all cable companies, Comcast's traditional business model is threatened by online video and growing competition from satellite and phone companies that offer subscription video services (i.e. Verizon FiOS). Comcast recognized the necessity to transition from a subscription-based cable company to a media content provider. It stands to profit from NBC-Universal's holdings (Associated Press, 2009), which include the NBC and Telemundo broadcast networks; 26 local TV stations; cable channels including CNBC, Bravo and Oxygen; the Universal Pictures movie studio and theme parks; and a 30 percent stake in online video distributor Hulu.com (Associated Press, 2011).

The Political Economy of the Merger

After separately reviewing the Comcast/NBC-Universal merger for nearly a year, both the DOJ and the FCC approved it in January 2011. The final consent decree contains multiple voluntary commitments that, we argue, are meant to advance a policy agenda pushed by public interest groups and FCC leadership (RQ1 and RQ2).

While the FCC makes evidence-based decisions after reviewing public comments and considering the public interest, its decisions are also "politically informed" (Cowhey, Aronson, & Richards, 2009, p. 108). Policy outcomes are, often, the direct result of the clout exhibited by each stakeholder

attempting to influence the political process through contributions to political campaigns, mobilizing voters and swaying public opinion (Galperin, 2004). While working to gain approval of the merger, Comcast had more than 30 lobbying firms on its payroll and spent about \$100 million. Nearly 100 House of Representatives members signed onto a letter urging the commission to approve the Comcast/NBC-Universal merger in order to promote “jobs and investment” (U.S. Congress, 2011). According to the Center for Responsive Politics (2011), 84 of the letter’s 97 signatories accepted political contributions from Comcast, ranging from about \$1,000 to \$25,100. All told, the cable company made political contributions to 385 members of Congress—75 percent of the legislative body—serving at the time of the merger negotiations (Free Press, 2011; Nichols & McChesney, 2011). The large sums of money spent on lobbying help explain why legislators might craft a regulatory framework or sanction a transaction that privileges the interests of corporations over those of consumers (Birdsall, 1996).

At the same time, multiple aspects of the Comcast/NBC-Universal merger suggest the political economy is shifting. Public interest groups opposed to the deal floated petitions, released fact sheets, posted to blogs, testified on Capitol Hill, and placed full-page ads in Beltway publications. They cautioned the merger would enable Comcast to slow down or block streaming content from competitors such as Netflix and iTunes; allow Comcast to raise programming and service rates; and shrink an already scarce supply of independent and diverse voices on television. Yet when federal regulators approved the Comcast/NBC-Universal merger on January 18, 2011, even some of the deal’s staunchest critics applauded conditions placed on the newly formed company (Crawford, 2011; Feld, 2011; Consumer Federation of America, 2011). In fact, Comcast/NBC-Universal ultimately agreed to a slew of voluntary commitments that advance a policy agenda advocated by public interest groups—from expanding the marketplace for online films and television shows and supporting digital journalism, to requiring the company to offer ethnic programming and lower-cost broadband.

A Vehicle for Achieving a Broad Policy Agenda

In its analysis of the Comcast/NBC-Universal transaction, the FCC expressed concerns that the joint venture could boost the prices that competing video distributors pay for the right to distribute NBC-Universal programming, or make it possible for the new company to sell only unpopular shows and movies to competitors (Stoltz, 2011). These scenarios would result in customers switching to Comcast in order to gain access to the shows they value, and then getting locked into costly contracts. Therefore, one of the merger conditions allows an online video distributor to pursue a commercial arbitration procedure, should it become entangled in a licensing dispute with Comcast (DOJ, 2011).

We speculate that clashes between cable operators and programmers inspired this particular merger condition. In October 2010, News Corp. doubled the annual rate it charged to carry the Fox network on several New York and Philadelphia channels to \$150 million. Cablevision refused to pay up and, as a result, 3 million Cablevision customers temporarily lost access to Fox programming. News Corp. also blocked Cablevision Internet customers from watching Fox content on both the network’s website and on Hulu. A similar feud over retransmit fees caused DirecTV customers in a handful of markets to lose Fox programming in January 2011. Around that same time, Time Warner Cable and Sinclair Broadcasting resolved a lingering fight over retransmission fees affecting 28 stations. Even in blackout situations, the FCC can do little beyond reminding the parties of their obligation to negotiate retransmission agreements “in good faith.” The arbitration clause in the Comcast/NBC-Universal merger consent decree opens the door for the FCC to implement a more sweeping policy, which commissioners were crafting at the time of the merger approval (FCC, 2011).

The FCC imposed another merger condition requiring Comcast to offer standalone broadband service for less than \$50 per month for three years. This condition may be an outgrowth of “lessons learned” during previous mergers. In approving both the SBC-AT&T and Verizon-MCI mergers in 2005, the FCC mandated these carriers sell stand-alone DSL service for two years. But, allegedly, the companies priced naked DSL service so high that few customers purchased it without also buying phone service (Consumers Union, 2006). By capping the fee Comcast may charge, the FCC is attempting to ensure customers are not forced to subscribe to unwanted video and phone services. Because the commission has pushed for such assurances previously, this merger condition speaks to RQ2. Because this condition clearly serves the public interest, it also helps answer RQ3.

The “Internet Essentials” program incorporated into the merger agreement ensures that every household in Comcast’s footprint with children eligible for the federal free lunch program qualifies to receive broadband service for \$10 per month. Internet Essentials also provides PCs for \$150 and access to digital literacy training. This condition does not address antitrust concerns that typically dominate merger reviews, but it does directly advance the FCC’s digital inclusion goals—answering our first two research questions. Specifically, the FCC’s National Broadband Plan (2010) recommends “free or very low-cost wireless broadband” as a means to spur broadband adoption. The plan also cites the need to teach digital literacy skills and make non-adopters more comfortable with computers. By tacking on these conditions, the FCC also created a public good (RQ3).

As political economists McChesney and Schiller (2003) assert, communication systems are crucial for democracy because they provide a space for citizens to clarify and mobilize around social priorities. In its agreement with the FCC, Comcast/NBC-Universal pledged to establish partnerships between non-profit news organizations and at least five NBC-owned television affiliates. Similar online publications with a focus on “hyperlocal” news have popped up all over the country, typically in response to downsizing at mainstream newspapers. For instance, the *Seattle PostGlobe* features blog posts and articles written by citizen journalists. The joint ventures mandated by the Comcast/NBC-Universal consent decree are meant to be modeled after the *Voice of San Diego*—an online news organization that partners with the local NBC-owned TV station.

While a dearth of local news coverage is an emerging problem (Waldman, 2011; Hindman, 2011; Purcell, Rainie, Mitchell, Rosenstiel & Olmstead, 2010), it is only tangentially relevant to the marriage between Comcast and NBC-Universal. This commitment does, however, reflect a key priority for the FCC and some federal lawmakers. In 2009, the Senate held hearings focused on “the future of journalism” and introduced legislation that would allow newspapers to become tax-exempt non-profits. In 2010, the FTC hosted two workshops examining journalism in the Internet age. The Federal Trade Commission (2010) also proposed policies intended to support the “reinvention of journalism.” In 2010, the FCC’s charged its “Future of Media” task force with examining how news organizations serve local information needs of citizens. Clearly, the commitment made by Comcast/NBC-Universal to support non-profit news is meant to advance a broader policy goal articulated by federal policymakers (RQ2) and to sustain outlets for deliberative discourse (RQ3).

At least one other aspect of the consent decree illustrates that some merger conditions are driven by broad policy goals, rather than based on concerns related to a particular transaction. As part of its agreement with the FCC, Comcast/NBC-Universal promised that 10 NBC owned and operated stations would produce an additional 1,000 hours of original, local news programming, and that Telemundo stations would air a new Spanish-language multicast channel. In fact, the FCC began increasing its focus on Spanish language programming years earlier. In 2007 and 2008, the FCC adopted a number of measures and hosted a public hearing geared toward promoting diversity in the ownership of broadcast outlets. In September 2008, then-FCC Chairman Kevin Martin (2008) said the commission had “a special responsibility” to ensure Spanish speaking viewers benefitted from the digital TV transition. So while the merger condition is appropriate for Telemundo, it also supports the FCC’s ongoing interest in fostering television content relevant to Latino audiences (RQ1 and RQ2).

In accordance with the Comcast/NBC-Universal merger agreement, NBC and Telemundo broadcast stations, as well as Comcast’s on-demand service, must offer additional children’s programming. Federal regulators also mandated that the stations improve both on-screen ratings information and parental controls. Finally, Comcast/NBC-Universal agreed to restrict interactive advertising aimed at children and to air public service announcements addressing youth issues. Protecting children from inappropriate or “harmful” television content is a long-time federal policy focus, suggesting that these merger conditions serve a broad agenda. Specifically, in 2006, the FCC implemented new rules for children’s television programming. In 2007, U.S. Rep. Edward Markey, who headed the House subcommittee on Telecommunications and the Internet, urged the FCC to halve the amount of permissible advertising in children’s programming (Oxenford, 2007). In 2008, Congress passed the Child Safe Viewing Act, requiring the FCC to support the development of advanced content blocking technologies.

Conclusion

Through the use of focused synthesis, combined with a political economic analysis, we were able to definitively answer our first two research questions. Multiple examples demonstrate that voluntary commitments frequently advance regulators' broad policy agenda, and that they are not tailored to the transaction under review. Our analysis also identified numerous instances in which the FCC attempted to achieve a policy goal that faced overwhelming opposition when pursued through the traditional rulemaking process. Finally, RQ3 asks if thoughtfully crafted merger conditions can transform an anti-competitive transaction into a net gain for the public. Definitively answering this question is more difficult. We find that the potential for public good exists, but the ability to transform a troubling acquisition depends on the FCC's willingness to enforce conditions, as well as on market forces. For instance, Comcast/NBC-Universal agreed to significant conditions meant to facilitate competition with online video distributors. The FCC is banking on that fact that services like Netflix, iTunes, Hulu and Google TV will be on a level playing field with cable companies by the time the condition expires in 2018. If the market for streaming video shifts before then, consumers win and the FCC's public interest goals are met. If the status quo remains unchanged, however, one of the merger's most negative impacts will simply be delayed for seven years.

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