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Federal Communications Commission
Office of the Secretary

September 14, 2010

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VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: **REDACTED – FOR PUBLIC INSPECTION**
In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10-56

Dear Ms. Dortch:

On behalf of Bloomberg, L.P., and in accordance with the First Protective Order adopted in this proceeding, I am forwarding for filing in the record of the Commission's Economist Workshop in the above-captioned matter, conducted on August 27, 2010[1] two copies of the written statement of Dr. Leslie Marx, Bloomberg's consulting economist, redacted for public inspection.

As the Commission has explained, "the transcript of the workshop will be placed in the record and made available to individuals with access to highly confidential and confidential information pursuant to the March 4, 2010 Protective Order and Second Protective Order in the proceeding."[2] Bloomberg respectfully requests that Dr. Marx's statement, which briefly expands on her opening remarks given during the panel on MPVD issues and provides citations to assertions made during that statement, be associated with the transcript that the Commission has reported will be put in the record.

[1] See "Ex Parte Letter, dated August 30, 2010, from William D. Freedman, Associate Chief of the Media Bureau, to Marlene H. Dortch, Secretary of the Commission."

[2] Id., p. 2.

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A Confidential version of Dr. Marx's testimony is being filed simultaneously with the Office of the Secretary under separate cover.

If there are any questions concerning this matter, please contact Stephen Díaz Gavin at 202-457-6340 (by electronic mail at sgavin@pattonboggs.com) or Janet F. Moran at 202-457-5668 (by electronic mail at jmoran@pattonboggs.com).

Very truly yours,

Stephen Diaz Gavin
Partner

Counsel for Bloomberg, L.P.

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Applications for Consent to the Transfer of Control of Licenses	)	
General Electric Company, Transferor,	)	MB Docket No. 10-56
To	)	
Comcast Corporation, Transferee	)	

OPENING STATEMENT OF DR. LESLIE MARX
PROFESSOR OF ECONOMICS, DUKE UNIVERSITY
Federal Communications Economist Panel Discussion
August 27, 2010

Thank you for the opportunity to speak as part of this panel today.

One of our topics is the risk that Comcast will foreclose rivals to its affiliated programming networks.

This Transaction creates the incentive and increases the ability for Comcast to do just that, particularly in business news, which has been the focus of my analysis.

The Transaction combines the dominant business news network – CNBC – with the nation's largest MVPD. It is my conclusion that the Transaction will lessen competition in the market for televised business news.

CNBC is one of NBCU's most profitable networks, with one of the highest cash-flow margins of any basic cable network and historically dominating the business news market, giving Comcast strong incentives to foreclose rivals of that network.

Comcast has the ability to harm rivals by preferring CNBC in channel position and excluding unaffiliated competitors from channel positions close to CNBC, including failing to move these competitors to theme-based channel neighborhoods. The failure to place competitor Bloomberg TV, which is one of the few remaining basic cable networks not owned by an MVPD or major multi-network owner, in a business news neighborhood with CNBC decreases Bloomberg TV's viewership by 66% and decreases the hours spent watching Bloomberg TV by 95%.[1] The importance of channel position to business news is highlighted by the fact that CNBC has actually paid to have a rival business news network kept far from it in channel position.

Comcast currently supplies approximately 24% of the MVPD households in the US and is the dominant provider in ten of the top 15 DMAs, which are critical areas of distribution for a business news network. [[[redacted]]][2]

Conclusion: An analysis of Comcast's incentives to foreclose Bloomberg TV shows that the benefit to Comcast in terms of increased viewership and hence increased advertising revenue for CNBC would be sufficient to outweigh any losses in subscriber revenue associated with refusing to carry Bloomberg TV. An important potential remedy discussed in my reports would be to require that Comcast carry rival business news networks on channels adjacent to CNBC on every channel and tier where CNBC is carried.

Comcast rebuttal: Comcast disputes that there is a business news market, states that there is no evidence that vertically integrated MVPDs harm unaffiliated rivals to their own programming, and that

[1] See Marx Report, Table 12. As described in Table 12, the regression analyses reported there define a channel neighborhood as plus or minus five channels. Data limitations prevent an analysis of the effects of channel adjacency, which would presumably be larger. This analysis does not imply that a requirement that Bloomberg TV be placed in a five-channel neighborhood, rather than in a business news neighborhood involving adjacent and contiguous channels, would be adequate to address potential harms associated with channel placement.

[2] [[[redacted]]]

even if Comcast would foreclose unaffiliated rivals, they would not have an incentive to do so to Bloomberg TV.

My rebuttal: The qualitative and quantitative evidence provided in my reports confirms that TV business news programming is a stand-alone antitrust market as well as part of the larger general television news market. From a viewer's perspective, it does not take much time watching business news networks to see that these networks are direct head-to-head competitors. From a distribution point of view, the formal SSNIP test that I have done, under assumptions of both price setting and bargaining, suggests business news networks are a relevant antitrust market. On the advertising side of the market, the available evidence suggests that there is a significant subset of advertisers with limited alternatives to business news television who are willing to pay premium CPMs for time on business news networks. All of this strongly supports the fact that CNBC is a close competitor with other business news networks.

As I have described in my reports, the economics literature is replete with evidence that vertically integrated MVPDs discriminate against unaffiliated programming. This Transaction will create the largest vertically integrated MVPD ever, so it is reasonable to conclude that it would also result in the most substantial discrimination effects ever.

As evidence that Comcast does not engage in discriminatory behavior, Comcast's economists provided empirical evidence that Comcast does not favor its own affiliated networks (based on Goolsbee's 2007 Media Ownership Study). However, that analysis contained a mistake that when corrected, completely reversed the results, and now Comcast claims the line of analysis is irrelevant. At best, they have no evidence Comcast does not engage in discriminatory behavior, although the natural interpretation of their corrected results is that they have provided affirmative evidence that Comcast not only favors its own affiliated programming, but also that the favoritism has an anti-competitive motivation because that favoritism is reduced in locations where there is greater competition.

In addition, Comcast's own evidence also shows that Comcast restricts carriage of unaffiliated rival networks, as I am sure we will be discussing in detail later on.[3]

Finally, I show that threshold switching rates are such that *downstream* foreclosure through Comcast's refusal to carry Bloomberg TV in a fair and non-discriminatory manner clearly is a risk to competition posed by the Transaction. As I show in my reports, the benefits to CNBC from the diminishment of Bloomberg TV would be expected to outweigh any subscriber losses to Comcast.

In summary: Vertically integrated MVPDs have been shown to use strategic foreclosure to disadvantage rival networks. Further, Comcast itself forecloses existing rivals. Bloomberg TV is a rival network to CNBC, and strategic foreclosure by Comcast has the potential to significantly diminish the effectiveness of Bloomberg TV and other CNBC rivals as competitors in the business news programming market. In diminishing the competitiveness of CNBC's business news competitors, Comcast would be harming not merely those news organizations, but also the public interest through the reduction in diversity of news and information sources.

Two additional matters arose during the course of the panel discussion that I wish to note.

First, Dr. Michael Katz, as part of his prepared remarks, stated that I had misquoted him in my Rebuttal Report, which was filed August 19, 2010, pointing to my statement that "Comcast's economists, Drs. Israel and Katz, claim that an integrated MVPD can profitably engage in foreclosure to help its own networks only if (a) it is a sufficient bottleneck and can drive the network out of business, (b) the integrated company lacks sufficient bargaining power to negotiate affiliate fees with the independent

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[3] As additional evidence that Comcast does not engage in discriminatory behaviour, Comcast's economists provided empirical evidence that Comcast does not disfavour rivals to its affiliated networks. However, as pointed out by Hal Singer, Comcast includes networks in their set of unaffiliated networks that actually are affiliated with Comcast, and as pointed out in my report, if instead of grouping all sports and women's networks together one applies Comcast's data and empirical framework specifically to rival sports network Fuel and rival women's network Lifetime Real Women, the evidences shows that Comcast limits distribution of these rivals, with the evidence again supporting the anti-competitive explanation for Comcast's limited distribution of these networks (Comcast limits the distribution less in locations where there is greater competition.) Furthermore, Hal Singer in his report shows that affiliation with Comcast essentially completely explains the tiering of sports networks, with Comcast-affiliated networks placed on the more widely distributed tiers and non-Comcast networks relegated to less widely distributed tiers.

networks, and (c) gains to foreclosing outweigh losses." (Marx Rebuttal at paragraph 12, citing Israel and Katz at ¶ 131).

However, Drs. Israel and Katz statements in their Reply at paragraph 131 lay out exactly the three-part argument that I claim they do: "The most basic theory of why an integrated MVPD might have incentives to disadvantage unintegrated networks is that by driving rival networks out of business it would reduce competition facing its own networks. ... The logic of this argument depends on the following conditions: (a) the integrated company must be a sufficient distribution bottleneck that it can drive independent networks out of business; (b) the integrated company must not have an effective way to utilize whatever market power it possesses as a distributor to negotiate affiliate fees with the independent networks; and (c) it must be the case that disadvantaging independent networks will result in significant gains that more than offset the losses suffered by the integrated company's MVPD operations."

Dr. Katz focused in his remarks on part (a) of his argument. His report states "(a) the integrated company must be a sufficient distribution bottleneck that it can drive independent networks out of business," which I rephrase as "it is a sufficient bottleneck and can drive the network out of business." Obviously it is difficult to see the basis for Dr. Katz's complaint here, but the more important point is that whatever his complaints, I directly address the underlying issue in my Rebuttal Report.

As discussed in my Rebuttal Report, condition (a) is not necessary for foreclosure.[4] For example, the analysis of Owen and Wildman (1992) shows that widespread distribution is critical for any network,[5] with the implication that losing a significant distributor like Comcast would necessarily reduce Bloomberg TV's incentives to invest in programming and could possibly force them to exit the market over time. The arguments I provide in my Rebuttal Report establish that an MVPD with a large (e.g. 24%) market share can, at least in principle, either partially or completely foreclose a content provider

[4] See Marx Rebuttal Report at paragraphs 14-15 discussing partial foreclosure and its effects in media markets with references to Rey and Tirole (2007), Chen and Waterman (2007), and Owen and Wildman (1992).

[5] Bruce M. Owen and Steven S. Wildman (1992), *Video Economics*, Chapter 2 (esp. at pp.41-44).

that competes with an upstream rival. In the case of the business news market, however, Comcast's 24% market share of MVPD subscribers understates its ability to foreclose Bloomberg TV. As shown in Table 2 of my original Report, Comcast's subscriber share is between 40% and 65% in the top-fifteen DMAs of Chicago, Philadelphia, San Francisco, Boston, Atlanta, Washington, DC, Houston, Detroit, Seattle, and Minneapolis (and approximately 10% in New York City). These are widely recognized as some of the most influential business center in the United States. Of the 16 cities designated "Major national business centers" or higher in the Ranally city ratings, Comcast is the dominant MSO in 11.[6] This is consistent with a business news network needing Comcast distribution to attract advertisers targeting residents of the major business centers. Indeed, the potential audience for business news programming networks is disproportionately composed of Comcast subscribers. 29.4% of the readers of the business news publications *Wall Street Journal, Forbes, Fortune, The Economist*, or *Bloomberg Businessweek* are Comcast cable subscribers, which is 44.2% of these readers who are cable subscribers.[7] Thus, Comcast is a necessary distributor for a network needing access to this key business news audience.

For a discussion of actual misquotes and gross mischaracterizations of my reports committed by Comcast's team of economists, see my Rebuttal Report, especially Section D.1.3.

Second, Dr. Mark Israel in his comments discussed my analysis showing Comcast's incentive to deny carriage to Bloomberg TV. Dr Israel characterized my analysis as assuming that CNBC would capture 100% of Bloomberg TV viewers if Comcast denied carriage to Bloomberg TV. What he did not mention is that Drs. Israel and Katz propose instead that the assumption of 92% be used, based on

[6]The Ranally city rating system classifies U.S. cities based on their economic function. (http://en.wikipedia.org/wiki/Ranally_city_rating_system, accessed August 12, 2010). The cities where Comcast is the dominant MSO include the cities listed above (except Seattle which is given the next lower classification of "Other national business center") plus Miami and Pittsburgh.

[7] MRI Data show the number of cable subscribers in the top 200 DMAs that read one or more of these five titles, weighted by Comcast's share of cable subscribers in the DMA (Source: SNL Kagan, 4th Quarter 2009), divided by the number of people who read these titles in the US is 29.4%. Also, 66.4% of these readers are cable subscribers. The calculation assumes that Comcast subs in a given DMA are not systematically different from non-Comcast subs in that DMA. Note: MRI Data exclude DMAs 71, 142, and 150. (MRI Data analysis provided by Bloomberg, August 12, 2010.)

CNBC's share of business news advertising revenue. He also neglected to say that I consider this change in my Rebuttal Report, and as one would expect, the threshold switching rates are not substantially affected and, as a result, my conclusion that Comcast is likely to find it profitable to deny carriage to Bloomberg TV is unchanged.

CERTIFICATE OF SERVICE

I, Jillian Gibson, hereby certify that on this 14th day of September, 2010, I caused true and correct copies of the foregoing Letter and Attachment to be served by postage pre-paid first-class U.S. Mail on the following individuals:

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