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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
TW-A325
Washington, DC 20554

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses*, MB Docket No. 10-56
Notice of Ex Parte Meeting

Dear Ms. Dortch,

On Friday, October 15, 2010, Andy Lack, Chief Executive Officer for Multimedia of Bloomberg, L.P. (Bloomberg), Gregory Babyak, Director of Government Affairs of Bloomberg, Janet Moran of Patton Boggs, LLP and the undersigned met with Commissioner Robert M. McDowell and Angela Giancarlo, Chief of Staff and Senior Legal Advisor to Commissioner McDowell. The subject of the meeting was the above-captioned application and the need to consider conditions to the proposed merger of Comcast and NBC-Universal (NBCU), in the event that the Commission grants the application. After a general overview of the Bloomberg TV® service ("BTV") and the competitive harms to BTV that Bloomberg has demonstrated will arise if the applications are granted without conditions, there was a discussion of remedies in the form of conditions Bloomberg has recommended be imposed on the merger.

The conditions discussed included the reasonableness of requiring Comcast to "neighborhood" business news channels, specifically the placement of business news channels on channels contiguous and adjacent to CNBC on each tier where CNBC is carried. As a result of the transaction, Comcast would have the ability and incentive to favor its own programming, particularly as it relates to NBCU's second most profitable channel, CNBC, and disadvantage rivals to its affiliated programming, such as BTV, the last independent television channel for news programming.

Neighborhooding is an appropriate remedy because it heightens viewer choice by making channels in the same genre easier to find. There was a discussion of the Transaction Team's concern about the technical feasibility of neighborhooding, which Bloomberg explained is easily implemented in light of the conversion of enhanced basic subscribers to digital, and does not impose burdens on Comcast. Other video distribution platforms already neighborhood channels according to genre.

There was also a discussion why the program carriage complaint process would not be an effective remedy for a party such as Bloomberg, specifically noting the problems of the process, as well as the lengthy period of time needed to take a case to a final decision.

Bloomberg submitted certain data demonstrating that its competitive position is significantly different in Europe and on U.S. satellite MVPD systems, where it is placed in neighborhoods. A copy of the data is attached hereto.

If there are any questions regarding this matter, please contact the undersigned at 202-457-6340 or Janet F. Moran at 202-457-5668.

Very truly yours,

Stephen Díaz Gavin
Partner

cc: Commissioner Robert M. McDowell
Angela Giancarlo

THE COMMISSION SHOULD REQUIRE COMCAST TO NEIGHBORHOOD NEWS CHANNELS TO PRESERVE DIVERSITY AND COMPETITION IN NEWS

Bloomberg's BTV is a worldwide leader in delivery of news and information

- BTV is a worldwide leader in the delivery of news and information, with a particular emphasis on business news, a well as other news events that impact the economy and the business world.
- BTV has more editorial staff and resources than the New York Times and the Wall Street Journal combined and more international bureaus than CNBC, CNN, and CBS combined.
- BTV is the last remaining independent source of news and information on television.

The Comcast/NBC Merger Threatens the Last Source of Independent News on Television

- Without specific conditions, the proposed merger of Comcast with NBC Universal (the "Merger") represents an existential threat to Bloomberg Television ("BTV"), the last source of independent news on television.
- The Merger, which will join together the country's largest cable operator with the country's oldest broadcast network, presents an unprecedented concentration of traditional broadcasting, cable, and Internet assets.
- CNBC is the second most profitable NBCU network being acquired by Comcast,[1] which will give Comcast a tremendous incentive to discriminate against a competitor like BTV.
- Comcast controls more than 50% market share of cable distribution in its top ten major markets, where sophisticated business news consumers are most densely concentrated, and will have every incentive to engage in anticompetitive behavior to protect its investment in CNBC.
    - BTV's target audience is comprised principally of residents of large metropolitan areas, including Chicago, Philadelphia, Boston, Washington, D.C., San Francisco and New York; in ten of the top fifteen DMAs, Comcast is the dominant MVPD with control of 40 to 65 percent of the total pay television subscribers (chart attached).
    - The loss to BTV of fair and non-discriminatory placement on systems serving 25 percent of the U.S. market would have a devastating impact on the network's ability to attract viewers and advertisers.

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[1] As of March 2008, its profits were an estimated $333 million.

- Channel placement is critical to effective competition.
- Comcast has a long and negative history of treating non-affiliated programmers in a discriminatory, anticompetitive manner.

The Merger Negatively Impacts Diversity of News and Information Programming

- In the area of programming and in particular news programming, the Merger creates the incentive and increases the ability for Comcast to harm rivals of its affiliated programming networks.
- The incentive and ability for harm is especially acute in the area of news and information programming, where the Merger will combine under the control of Comcast the oldest television news network, NBC News, MSNBC, the Weather Channel, the Spanish-language news assets of Telemundo and CNBC, the dominant provider of business-oriented news and second most profitable programming network of NBCU.
- The importance of all these news assets to Comcast – and the need to protect them from competition – is underscored by the public statements of Comcast's CEO, Brian Roberts, who has said that NBC News is the "single most awesome asset that comes from this deal," and that "NBC News will help define Comcast."[2]
- The Merger combines the dominant business news network – CNBC – with the nation's largest MVPD, which will have the incentive and ability to lessen competition in the market for televised business news to favor its profitable CNBC network.

Neighborhooding Protects News and Places No Burdens on Comcast

- Neighborhooding is a reasonable and effective remedy to ensure competition in the provision of news and information programming, specifically including business news and is a consumer-friendly way of organizing channels.
- On European MVPD systems where neighborhooding has been implemented, BTV provides significant competition to CNBC (charts attached).
- Similarly, on U.S. satellite systems, which have organized their channels in neighborhoods, BTV provides a more competitive challenge to CNBC because BTV is located among other news channels (chart attached).
- Newer U.S. MVPDs that use satellite and telecommunications based facilities, including DirecTV, Dish, FiOS, and U-verse, place children's programming, shopping, cooking, business news, and 24-hour cable news channels in the same

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[2] Joe Flint, Comcast CEO Brian Roberts Says Cable Gets Bum Rap and he likes 'Californication', LA TIMES, May 11, 2010, available at http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/05/comcast-ceo-brian-roberts-says-cable-gets-bum-rap-and-he-likes-californication.html.

channel neighborhoods.[3]

- But for the merger, Comcast, too, would have had incentive to follow this trend and neighborhood BTV with CNBC and other business news channels because placement of the channels in the same neighborhood would have increased competition between the two channels, increasing Comcast's leverage in carriage negotiations with CNBC.
- Neighborhooding places no burden on Comcast
  - ➢ As systems convert to all digital for expanded basic service, changes in channel position to accommodate neighborhooding can be accomplished without any significant technical limitation.
  - ➢ Comcast itself has said that by the end of 2010, 80% of all systems will be upgraded to all digital.[4]
  - ➢ On a digital system, neighborhooding business news channels will be technically easy and costless.
  - ➢ Comcast regularly changes channel locations on its systems without significant disruption to customers, so that there would be no consumer problem caused by requiring business news channels to be in the same neighborhood with CNBC.
- Clustering programming choices in genre-based neighborhoods is beneficial to consumers.
  - ➢ For the consumer, neighborhooding makes searching for desired programming easier.
  - ➢ Satellite providers already promote neighborhooding as an easier way of locating programming for its customers.
  - ➢ It also allows consumers to benefit from competition from among easily found alternatives. For example, although both CNBC and BTV offer business news, they provide different opinions and viewpoints so as to create a choice for viewers.

Existing Program Carriage Complaint Remedies Are Not Adequate

- The history of the program carriage proceedings demonstrates that it would be years before any relief could be accorded BTV, if at all.

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[3] See DirecTV Channel Lineup, available at http://www.directv.com/DTVAPP/epg/theGuide.jsp; Dish Network Channel Lineup, available at http://www.dishnetwork.com/downloads/Channel-Lineup/StandardHDChannelGuide.pdf; Verizon FiOS Channel Lineup, available at http://www22.verizon.com/Residential/FiOSTV/ChannelLineup/ChannelLineup.htm?zipCode=22039; AT&T U-Verse Channel Lineup, available at http://www.att.com/u-verse/.

[4] Application, p. 18, n. 19.

- BTV would have to wait until after the closing of the Merger and endure anticompetitive conduct before acting under the carriage rules.
- Meanwhile, it would languish in an unfavorable channel position and on a remote tier.
- Upon the initiation of any complaint, BTV would face the threat of loss of carriage on Comcast systems.
- Such action is an existential threat because the loss of carriage during the two to three years that a complaint proceeding was pending in those top 15 DMAs controlled by Comcast – the largest markets for BTV's service – would likely result in the shutting down of BTV.

- The program carriage rules analyze conduct ***retrospectively*** – i.e., it is the conduct of Comcast in the past that determines whether there is a violation of the rules against discrimination by MVPDs affiliated with competing program networks.
- The Commission's merger analysis is ***prospective***, and requires that merger-specific harms be addressed in the evaluation of the merger so the Commission can make the appropriate the public interest finding.
  - The Merger specifically creates the existential threat to BTV.
  - The combination of Comcast – the nation's largest MVPD – with the currently overwhelmingly dominant provider of business news, CNBC, creates every incentive for Comcast to act anti-competitively against BTV, CNBC's increasingly aggressive rival, to protect the investment in CNBC.
- The program carriage rules did not contemplate vertical integration on this scale.

Neighborhooding is a Necessary Remedy

- If the Commission decides to approve the Merger, it should impose appropriate conditions, specifically including Neighborhooding, to ensure, in the case of BTV, the ability to continue to provide a competitive source of news and information.[5]

[5] BTV is not the only channel that will suffer from the creation of strong incentives to engage in anticompetitive behavior upon the closing of the Merger. Accordingly, in addition to the neighborhooding condition with respect to existing business news networks like BTV and Fox Business, the FCC could require Comcast to neighborhood all networks that compete with dominant NBC networks being acquired by Comcast. This is clearly a valid remedy for potential harms to any competitive independent network that arise out of this Transaction

Comcast is a critical distributor for business news

DMA Rank	DMA	Comcast share of Pay TV subscribers
3	Chicago	**62%**
4	Philadelphia	**63%**
6	San Francisco	**58%**
7	Boston	**65%**
8	Atlanta	**43%**
9	Washington, DC	**45%**
10	Houston	**40%**
11	Detroit	**54%**
14	Seattle	**59%**
15	Minneapolis	**41%**

Source: Total MVPD Subs by DMA: SNL Kagan U.S. Multichannel Market Subscriber Summary;
Subs by MVPD by DMA: SNL Kagan U.S. Multichannel Operator Comparison By Market

Neighborhooding allows BTV to compete on the merits: International

	Bloomberg weekly viewers	CNBC weekly viewers
France	317,000	235,000
Germany	867,000	646,000
Italy	303,000	313,000
Spain	182,000	195,000
UK	418,000	479,000

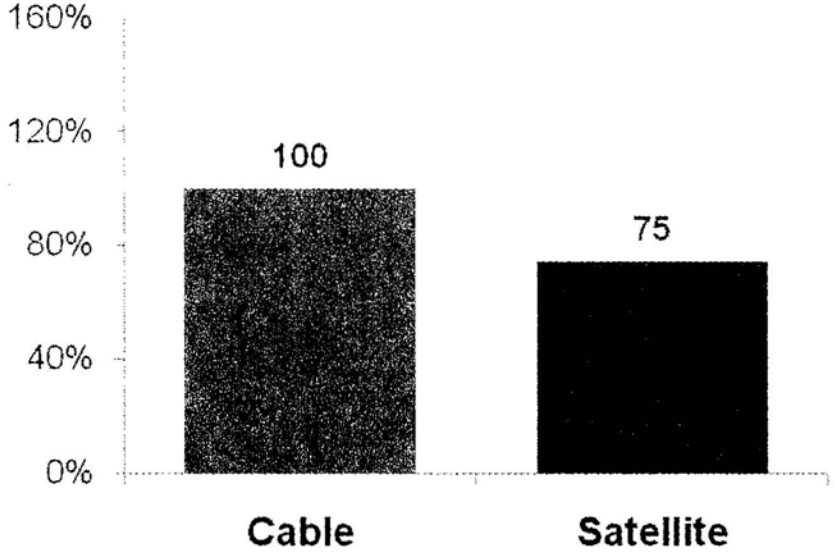
Source: EMS

Neighborhooding allows BTV to compete on the merits: UK

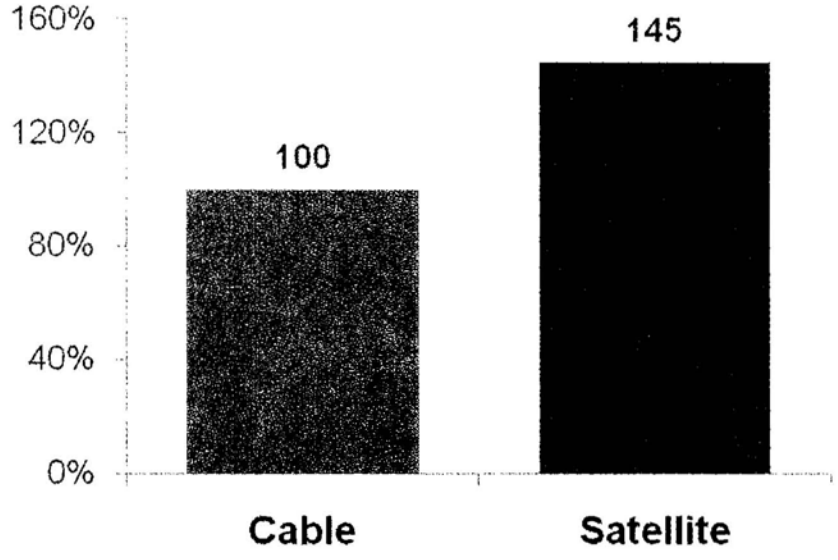
Sky TV	Channel	Virgin TV	Channel	FreeSat UK	Channel
Sky News	501	BBC News	601	BBC News	200
Bloomberg TV	502	Sky News	601	BBC Parliament	201
BBC News 24	503	CNN Int'l	607	S4C2	202
BBC Parliament	504	Bloomberg TV	609	Al-Jazeera English	203
CNBC Europe	505	BBC Parliament	612	Euro News	204
CNN Int'l	506	CNBC Europe	613	France 24	205
S4C 2	507	Euro News	620	Russia Today	206
Euro News	509			CNN	207
Fox News	510			Bloomberg TV	208
				CNBC	210

Neighborhooding allows BTV to compete on the merits: Satellite

CNBC



Bloomberg



*Statistically significant differences; the base of100 for CNBC cable represents 23.2% of surveyed cable households viewing CNBC; the base of 100 for BTV cable represents 2% of surveyed cable households viewing BTV.

Source: MRI survey data