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May 10, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication
MB Docket No. 10-56

Dear Ms. Dortch:

On May 8, 2012, the undersigned of this Firm, together with Anne Lucey of CBS Corporation, Maureen O'Connell of News Corporation, Alicia Smith on behalf of Sony Pictures Entertainment Inc., Susan Mort of Time Warner, Inc., and Keith Murphy of Viacom Inc., met with the following Commission staff in connection with the above-referenced proceeding: Jim Bird, Jessica Campbell, Neil Dellar, Hillary DeNigro, Martha Heller, Virginia Metallo and Sarah Whitesell. Also, on May 8 Susan Fox of The Walt Disney Company left a telephone message with Jim Bird to express support for the arguments described herein.

The six companies identified above (the "Content Companies") collectively filed comments as part of this proceeding on April 3, 2012.[1] During the meeting (and in Ms. Fox's telephone message), the Content Companies reiterated the points and arguments set forth in their joint comments and urged the Commission to

[1] *See In re Media Bureau Seeks Comment on Whether Comcast-NBCU Benchmark Condition Needs Clarification and Whether a Proposed Third Protective Order for Compliance Should be Adopted*, Comments of the Content Companies , MB Docket No. 10-56 (filed Apr. 3, 2012).

deny the relief requested by Comcast Corporation and NBCUniversal Media, LLC (together, "C-NBCU") in their February 17, 2012 letter.[2]

Specifically, the Content Companies explained that programming contracts contain extremely sensitive business data and information that warrant heightened confidentiality protection. These agreements include highly proprietary and carefully protected terms and conditions, including pricing information, which lie at the heart of how the Content Companies compete and conduct their businesses. The Content Companies also noted that they are innocent third parties who have been drawn unwillingly into this matter through no action of their own.

In addition, the Content Companies reiterated that C-NBCU's proposal would alter both the circumstances and the timing under which access to third parties' confidential information would be made available. Especially dangerous would be that C-NBCU in-house business personnel would obtain access to highly confidential information. Disclosure of the closely guarded terms and conditions contained in these agreements would inflict significant business harm, would place the Content Companies at a considerable competitive disadvantage and, at the same time, would undermine the very purposes of the order approving the C-NBCU merger – enhancing competition.

The Content Companies also pointed out that there is no need for the relief requested by C-NBCU. C-NBCU's own filings with the Commission confirm that it can, and already has, "negotiated and executed license agreements with several [online video distributors ("OVDs")] on mutually agreeable commercial terms" without need for the relief sought in the proposal.[3] Likewise, the Commission already contemplated that binding commercial arbitration should serve as the safety valve for a circumstance when C-NBCU and an OVD reach a bargaining impasse with respect to a program rights negotiation. Short of an impasse, the Content Companies said that the Commission should expect C-NBCU and OVDs to negotiate in good faith based on marketplace considerations. Providing C-NBCU with access to confidential programming agreements at the outset of discussions with an OVD effectively would render meaningless the concept of marketplace negotiations.

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[2] *See* Letter from David P. Murray, Counsel to C-NBCU, to William T. Lake, Chief, Media Bureau, *Request for Clarification Regarding Disclosure of Peer Deals and Third Protective Order to Govern Negotiations Under Benchmark Condition*, MB Docket No. 10-56 (filed Feb. 17, 2012).

[3] *In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc.*, Annual Report of Compliance with Transaction Conditions (filed Feb. 28, 2012), at 9 (the "*Annual Compliance Report*").

Finally, the Content Companies reminded the Commission that granting C-NBCU's request for broad disclosure would be inequitable, since the request implicates the rights of third parties that have not sought anything from the FCC and that have not placed their own business dealings at issue.

For all of these reasons, the Content Companies requested that the Commission deny the C-NBCU proposal in its entirety.

This letter is being submitted electronically in the above-referenced docket, which has been granted permit-but-disclose status, pursuant to Section 1.1206(b) of the Commission's Rules. Should you have any questions concerning this submission, kindly contact the undersigned.

Respectfully submitted,

/s/

Jared S. Sher

cc: Jim Bird
Jessica Campbell
Neil Dellar
Hillary DeNigro
Martha Heller
Virginia Metallo
Sarah Whitesell