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

Re: MB Docket No. 10-56
Notice of Ex Parte Meeting

Dear Ms. Dortch:

On Friday, June 18, 2010, Greg Babyak, Director of Government Affairs of Bloomberg L.P. ("Bloomberg"), and I met with Joshua Cinelli, Media Advisor to Commissioner Copps. Also in attendance was Ms. Danielle Andrews-Lovell, a legal intern in Commissioner Copps' office. The subject of the meeting was the above-captioned application.

During the meeting, Mr. Babyak and I discussed with Mr. Cinelli the need for the Commission to consider certain conditions to the proposed merger of Comcast and NBCU, in the event that the Commission were to grant the application. We noted the particular concerns that arise in the context of this merger because of the impact it would have on independent sources of news, particularly business news, such as Bloomberg's Bloomberg Television® ("BTV"). The conditions that we discussed that the Commission impose included neighborhooding of business news channels, mandatory carriage of existing channels and carriage on the same tier as CNBC. As a result of the transaction, Comcast will have a strong incentive to hinder neighborhooding and disadvantage networks like BTV that compete with Comcast's "owned" networks like CNBC. Comcast could also decrease viewership of BTV relative to CNBC by placing BTV on a more expensive tier, while keeping CNBC on the basic non-premium tier.

There was also an explanation of the harm that could come as a result of restrictions on distribution of content by the Internet. As a news provider that simultaneously distributes all of its content over the Internet, BTV is concerned that Comcast-NBCU could unreasonably inhibit users' access to BTV video on the Internet.

In addition, we discussed with Mr. Cinelli a remedy to deal with claims of discrimination that would involve establishment of an arbitration mechanism in lieu of the existing dispute resolution system, including an accelerated arbitration for disputes involving subscription fees.

At the conclusion of the meeting, we provided Mr. Cinelli a copy of the written testimony on this matter submitted by Mr. Babyak on behalf of Bloomberg to the Senate Commerce Committee. I have attached a copy of the testimony to this letter.

If there are any questions regarding this matter, please contact the undersigned at 202-457-6340 or by electronic mail at sgavin@pattonboggs.com.

Very truly yours,

Stephen Díaz Gavin

cc: Joshua Cinelli
Gregory Babyak

TESTIMONY OF GREGORY BABYAK
HEAD OF GOVERNMENT RELATIONS,
BLOOMBERG

BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE & TRANSPORTATION

CONSUMERS, COMPETITION, AND CONSOLIDATION IN THE VIDEO AND
BROADBAND MARKET

MARCH 25, 2010

Bloomberg TV ("BTV" or "Bloomberg") appreciates the opportunity to express its views and concerns about the proposed combination of Comcast and NBC-Universal ("NBCU") and respectfully requests that the testimony be entered into the written record. BTV, which is wholly owned by Bloomberg, L.P., an internationally recognized provider of financial news and information, is an independent news channel that provides 24 hour business news programming. BTV has been in existence for nearly 15 years. In the past two years, Bloomberg has invested substantially to revitalize BTV to be a stronger provider of news and information. These investments have included the hiring of Andrew Lack, the former chairman and CEO of Sony Music Entertainment and president and COO of NBC, and an entirely new management team. As a result, BTV is fast becoming a formidable competitor to CNBC, the dominant provider of televised business news, as well as Fox Business News. As BTV's new business strategy evolves, it will become even more competitive.

BTV is the principal news and information channel not affiliated with any national programming network or other national producer of video programming, including programming channels affiliated with multichannel video programming distributors ("MVPDs"). Congress, in particular the Senate Commerce Committee, has historically been very concerned about preserving and advancing independent sources of news and information. In an era of increased media consolidation, ensuring that the public maintains access to independent sources of news and information, such as Bloomberg, is critically important to the public interest. A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy.

The Comcast-NBCU merger will join together the country's largest cable operator with the country's oldest broadcast network. The combined company will be the largest cable operator, own outright 26 television stations in the largest markets, own the NBC network which reaches nearly every designated market area ("DMA") in the United States, own several of the highest rated cable television networks and the Universal film library, and be one of the largest broadband providers in the country. The NBCU networks include such "must-haves" as NBC, The Weather Channel, MSNBC, NBC Sports and, of course, CNBC. CNBC is far and away the dominant business news network in the United States with more than 75% of viewership and revenue in the business news programming market. Comcast also owns a number of "must-have" networks in these markets including principally its regional sports networks. In addition, Comcast is already the largest cable operator in the United States with market shares in excess of

50% in such important DMAs as Chicago, Philadelphia, San Francisco, Boston, Detroit, Seattle-Tacoma, Miami-Ft. Lauderdale, Denver, Pittsburgh, Baltimore, West Palm Beach, Harrisburg and Jacksonville and in excess of 45% in Washington, D.C., and other major markets.

This horizontal and vertical combination will create a powerhouse, which could have the incentive and ability to eliminate consumer and advertiser choice and to deprive competing independent programmers, such as Bloomberg, from access to a level playing field in the market for viewers and advertisers.

Bloomberg does not oppose the merger per se. In fact, Bloomberg looks forward to Comcast continuing to be an important distributor of BTV, right alongside CNBC, MSNBC, and any other Comcast-owned or -controlled news programming. Indeed, our goal is to ensure that Comcast-NBCU plays a critical role as an unbiased and nondiscriminatory distributor.

Bloomberg is seeking, however, to ensure that the merger will not impede Bloomberg's mission as an independent source of news. Bloomberg is seeking voluntary commitments by Comcast or, in the alternative, conditions required by the Federal Communications Commission ("FCC") and the Department of Justice on the merger that will protect the ability of it and other independent providers, and particularly independent news providers, to continue to serve the public interest by being an important source of news and information for the entire country.

Let me outline some of the more significant steps that the merged entity could take that would significantly harm BTV's competitiveness.

1. <u>Discriminatory Channel Placement</u> – As an independent news channel, it is important for Bloomberg's programming to be placed in the channel line-up near other news channels. "Neighborhooding" refers to an industry practice of putting all program channels in the same genre adjacent to one another in the channel line-up. Thus, for example, on modern distribution systems such as DirectTV, Dish, Fios and U-Verse, children's programs, shopping, cooking and, most important, business news and 24 hour cable news channels are clustered together. Neighborhooding is especially preferred by viewers because it allows them to easily scroll between programs within the genre that interests them.

   BTV's concern is that Comcast will place CNBC and MSNBC in more favorable positions. This is already the case, for example, on Comcast's Washington, D.C. area systems, where CNN, CNN Headline News, Fox News, MSNBC and CNBC are clustered together, but BTV is located on a much higher channel number.

   Although other MVPDs are expected to transition to neighborhooding as they transition to fully digital technology, as a result of the transaction, Comcast will have a strong incentive to hinder this pro-consumer development on its systems and disadvantage networks like Bloomberg that compete with its "owned" networks like CNBC. This issue will be presented immediately upon consummation of the merger, as Comcast has stated in a public earnings call on Feb. 3, 2010 that "by the end of 2010" it expects to have "80% of its systems to have made the conversion to All-Digital."

Comcast could also decrease viewership of BTV relative to CNBC by placing BTV on a higher, more expensive tier, while keeping CNBC on the basic non-premium tier.

2. Discriminatory Payment Terms – As BTV increases viewership, any license fees it gets paid by Comcast should be raised accordingly. Following the merger, Comcast would have an incentive to pay BTV less than marketplace rates relative to CNBC.

3. Disadvantaging BTV's Ability to Obtain Advertisers – Comcast's carriage agreements frequently require programmers like BTV to provide Comcast with free advertising time on the BTV network. As a result, after the merger Comcast will be able to bundle ads on BTV with slots on its own news networks in a way that would deprive BTV of a fair opportunity to sell advertising to advertisers who prefer the BTV network.

4. Limiting or Degrading Internet Access – As a news provider who simultaneously distributes all its content over the Internet, BTV is concerned that Comcast-NBCU could unreasonably inhibit users' access to Bloomberg TV video on the Internet. Comcast could pressure alternative content providers into removing or limiting content availability on the Internet by offering them discriminatory or unfavorable terms if the provider used other platforms such as the Internet to distribute their content.

To address these potential harms we hope that Congress will work with the Department of Justice and the Federal Communications Commission to find ways to protect important independent sources of news and information. For example, the FCC and the Department of Justice could insist on a judicial decree or conditions that require Comcast to provide Bloomberg and other similarly situated independent programmers with at least the following protections, which correspond by number to the potential harms outlined above:

1. Neighborhooding of independent business news programming with Comcast-owned business news programming by channel position and programming tier.

2. Most favored and non-discriminatory terms and conditions of carriage for independent business programming networks on all Comcast platforms so that they obtain the same terms as CNBC.

3. Prohibition against the offering by Comcast of advertising time on competing business networks combined with the purchase of advertising time on Comcast-owned networks.

4. Prohibition of any restriction, limitation or disincentive on the ability of alternative business news networks to offer their content on other platforms, including the Internet.

We look forward to any assistance that the Committee can provide in ensuring Comcast-NBC does not engage in the foregoing activities or any others that will harm the public by unfairly diminishing the ability of independent programmers, including BTV, to compete on the merits with CNBC.