

November 22, 2010

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 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 Licensees, MB Docket No. 10-56*

Dear Ms. Dortch:

On November 16, 2010, Bloomberg L.P. (“Bloomberg”) filed a letter asserting that Comcast Corporation (“Comcast”) failed to comply with the Media Bureau’s May 21, 2010 Information and Discovery Request (“First Information Request”)<sup>1</sup> and asked the Media Bureau to pause the transaction shot clock until such time as this alleged failure is remedied.<sup>2</sup> Of course, this is not the first time Bloomberg has advanced meritless procedural theories to delay the Commission’s timely consideration of the transaction,<sup>3</sup> and, as in the past, Bloomberg’s attempt to derail the transaction review process should be decisively rejected.

Bloomberg has mischaracterized Comcast’s responses to the First Information Request and failed to show any basis for delaying the proceedings. Over the past several months, Applicants have promptly complied with an extensive list of Commission requests for information, and have produced an unprecedented amount of information on an accelerated basis. Bloomberg’s contrived procedural

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<sup>1</sup> Letter from William T. Lake, Chief, Media Bureau, to Michael H Hammer, Willkie Farr & Gallagher LLP, MB Docket No. 10-56 (May 21, 2010) (enclosing the Information and Discovery Request).

<sup>2</sup> Letter from Stephen Diaz Gavin, Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Nov. 16, 2010) (“*Bloomberg Nov. 16 Letter*”).

<sup>3</sup> *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, Order, MB Docket No. 10-56 (MB rel. Jun 17, 2010) (denying Bloomberg’s request for extension of the deadline to file comments).*

accusations cannot change the fact that there is no basis in the record for Bloomberg's professed harms and proposed remedies, as Applicants have convincingly demonstrated.<sup>4</sup>

Bloomberg's claim that Comcast "refused to produce" carriage agreements in response to Request 44 of the First Information Request five months ago is simply wrong – as Bloomberg's own letter demonstrates.<sup>5</sup> Bloomberg undercuts its claims that Comcast "refused to supply the requested documents" when it acknowledges that production of these materials was deferred "[p]ursuant to discussions with Commission staff."<sup>6</sup> Despite this, Bloomberg illogically claims that Comcast has not complied with a Commission request and that it has done so "unilaterally."<sup>7</sup> Bloomberg's mischaracterization of Comcast's document production is yet another in a series of last-ditch efforts to unnecessarily prolong this transaction review process.<sup>8</sup> Simply put, Applicants have fully complied with all Commission requests.<sup>9</sup>

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<sup>4</sup> Bloomberg has failed to respond to Comcast's factual and economic evidence that demonstrates that neighborhooding is neither a transaction-related harm nor, as Bloomberg incorrectly claims, an "easy-to-implement" solution that "can be accomplished with minimum disruption to customers." Letter from Stephen Diaz Gavin, Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Sept. 30, 2010). Instead of responding on the merits, Bloomberg complains that Comcast relied on contractual provisions that it has refused to produce. In fact, the Comcast submission that Bloomberg cites refers to Comcast's contractual provisions with respect to PEG obligations – namely, the contracts that Comcast Cable has with local franchising authorities – and not video programming carriage agreements, as Bloomberg implies. See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 3 (Oct. 22, 2010) (pointing out that "broadcast networks' statutory and PEG channels' contractual rights to be located on particular channels" constitute another reason why Bloomberg's neighborhooding proposal would cause significant disruption for other programming networks). As Comcast explained more than three months ago, "specific channel placement is rarely the subject of program carriage . . . contracts." Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Aug. 13, 2010). While Bloomberg assumes, without any basis, that access to Comcast's carriage agreements will somehow help Bloomberg resuscitate its disproved theories of harm, it is notable that Bloomberg has not provided any evidence to challenge Applicants' un rebutted point that Comcast's carriage of Bloomberg is consistent with the decisions of many other major MVPDs.

<sup>5</sup> *Bloomberg Nov. 16 Letter* at 1.

<sup>6</sup> *Id.* at 2 (citing Responses of Comcast Corporation to the Commission's Information and Discovery Request, MB Docket No. 10-56, at 85 (June 11, 2010). Free Press and Media Access Project recently made similar allegations with respect to Comcast's compliance with the First Information Request, claiming that Comcast has "failed to submit" its carriage contracts with programmers. Letter from Corie Wright, Free Press, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 3-4 (Nov. 18, 2010). Like Bloomberg, Free Press and Media Access Project undercut their argument by acknowledging that Comcast's production of documents was "[p]ursuant to discussions with Commission staff." *Id.* at 4. This is simply another delay tactic that the Commission should reject.

<sup>7</sup> *Bloomberg Nov. 16 Letter* at 2.

<sup>8</sup> Further, Bloomberg non-sensically cites Applicants' submission of a content acquisition contract with Common Sense Media ("CSM") as a carriage contract and claims that Comcast is "selectively produc[ing] only those agreements that support its claims." *Bloomberg Nov. 16 Letter* at 2. To begin with, the agreement with CSM provides Comcast access to an expanded library of CSM content to integrate into Comcast's video and online offerings and further dedicates substantial resources to CSM to support digital literacy and media education programs. Secondly, Applicants negotiated and produced this agreement as a direct result of their voluntary Commitment # 5 – put forth on the day that the joint venture was announced – pledging to grow the partnership between Comcast and CSM. See Memorandum from David L. Cohen, Executive Vice President, Comcast Corporation, Dec. 3, 2010, *available at*

Applicants have provided the Commission and interested parties, including Bloomberg, with a massive amount of information in a timely fashion. Over five months ago, in response to the First Information Request, Applicants produced more than 500,000 pages of internal business documents. The Commission agreed to defer certain requests, such as the one that is the focus of Bloomberg's letter, recognizing the extraordinary commercial sensitivity of the documents involved and the complex third-party confidentiality issues raised by the terms of the agreements.<sup>10</sup> Subsequently, Commission staff orally requested that Comcast submit into the Commission record scores of additional documents, and Comcast did so in a matter of days.<sup>11</sup> In addition, on October 4, 2010, the Commission issued another Information and Document Request ("Second Information Request").<sup>12</sup> Within two short weeks, on October 18, Applicants again produced a substantial volume of internal materials – over 30,000 pages. In short, Comcast has responded to each and every request for information by Commission staff promptly and comprehensively. Bloomberg's suggestion that Applicants' production has been insufficient and that more information is necessary in order to "make an accurate public interest finding" strains credulity.<sup>13</sup>

Over the 299 days since the Applications and Public Interest Statement were submitted, the Commission's review of this transaction has been extremely thorough and has afforded all interested parties ample opportunity to review the record and present their arguments and evidence. In addition to the First and Second Information Requests, the Commission's review has included several economic reports requested by Commission staff, the longest pleading cycle ever established for a similar transaction review proceeding, a directive to answer dozens of questions submitted by Members of Congress, an economists' roundtable in which all parties were invited to participate (and Bloomberg's economist did participate), and a public field hearing in Chicago. It is irrational for Bloomberg to suggest that it has had anything less than a full opportunity to present its case in this proceeding. Accordingly, Bloomberg's request should be rejected, and its continuing efforts to inject further delay into this proceeding should be ignored.

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<http://www.comcast.com/nbcutransaction/pdfs/PublicInterestCommitments.pdf>. Bloomberg's suggestion that the CSM agreement somehow indicates that Comcast is selectively submitting documents is wholly off the mark.

<sup>9</sup> Bloomberg should be the last party to cast aspersions about dilatory behavior considering that its economic expert failed to submit any backup data to her June 21 report until October – nearly a four-month delay. *See* Comcast Corporation, General Electric Company, and NBC Universal, Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56, at n.552 (July 21, 2010). Bloomberg has continued to dribble in this backup data, with the final installment being submitted November 9, nearly five months after opponents of the transaction were supposed to have presented their full cases.

<sup>10</sup> Various programmers have met with Commission staff to discuss confidentiality issues in programming agreements related to the transaction proceeding. *See* Letter from Jared S. Sher, Skadden, Arps, Slate, Meagher & Flom LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (July 21, 2010).

<sup>11</sup> *See* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Oct. 8, 2010) (attaching the index of documents produced).

<sup>12</sup> Letter from William T. Lake, Chief, Media Bureau, to Michael H. Hammer, Willkie Farr & Gallagher LLP, MB Docket No. 10-56 (Oct. 4, 2010) (enclosing the Second Information and Document Request).

<sup>13</sup> *Bloomberg Nov. 16 Letter* at 2-3.

Should you have any questions about the foregoing, please do not hesitate to contact me.

Respectfully submitted,

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