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August 27, 2010

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VIA HAND DELIVERY

FILED/ACCEPTED

AUG 27 2010

Federal Communications Commission
Office of the Secretary

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 and Second Protective Orders adopted in this proceeding, please find enclosed an original and two copies of Bloomberg, L.P.'s Erratum to Bloomberg Reply to Comcast-NBCU Opposition, redacted for public inspection. Highly Confidential and Confidential versions of Bloomberg, L.P.'s Erratum to Bloomberg Reply to Comcast-NBCU Opposition are being filed simultaneously with the Office of the Secretary under separate cover.

Two copies of each the Highly Confidential version and Confidential version of the Erratum to Bloomberg Reply to Comcast-NBCU Opposition are being simultaneously delivered to Vanessa Lemmé, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and a Highly Confidential version is being sent to the Submitting Parties through counsel.

Very truly yours,

Stephen Díaz Gavin

Stephen Díaz Gavin, Partner
Counsel for Bloomberg, L.P.

Enclosures

SDG:rea

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

ORIGINAL

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

FILED/ACCEPTED

AUG 27 2010

Federal Communications Commission
Office of the Secretary

To The Commission:

ERRATUM TO BLOOMBERG REPLY TO COMCAST-NBCU OPPOSITION

BLOOMBERG, L.P. ("Bloomberg"), hereby submits this Erratum to Bloomberg Reply to Comcast-NBCU Opposition to correct errors in its Reply to Comcast-NBCU Opposition submitted on August 19, 2010 in the above-referenced proceeding. The specific corrections are set forth below and in Attachment A, containing corrected replacement pages to the Reply to Comcast-NBCU Opposition:

1. On the third page of the Table of Contents, Bloomberg added heading IX. CONCLUSION.

2. Bloomberg revised footnote 49 on page 17 to read as follows:

> The correct results of the Israel-Katz analysis become clear after correcting an error in coding. Marx Rebuttal Report at 9-14. See also id. at 15-16 applying the Israel-Katz data and empirical framework to analyze foreclosure of unaffiliated networks.

3. Bloomberg revised footnote 50 on page 17 to read as follows:

> Marx Rebuttal Report at 5-7.

4. Bloomberg added a footnote at the end of the second sentence of the first full paragraph on page 18, which reads as follows:

> Austin Goolsbee, "Vertical Integration and the Market for Broadcast and Cable Television Programming," April 2007.

5. Bloomberg revised the last sentence of the first paragraph on page 19 to read as follows:

> When this mistake is corrected, the sample size increases from 5,335 observations to 43,870 observations (increasing the sample by 87%), and the two regression coefficients that are the basis for Drs. Israel and Katz's original conclusion remain statistically significant, but have the opposite signs.

6. Bloomberg revised the first sentence of the second full paragraph on page 19 to read as follows:

> Drs. Israel and Katz's uncorrected results yielded a positive and significant Comcast_dbtelco coefficient and a negative and significant Comcast coefficient.

7. Bloomberg revised the third sentence of the second full paragraph on page 19 to read as follows:

> As Drs. Israel and Katz show, when they correct the coding mistake, the Comcast_dbtelco coefficient is negative and significant and the Comcast coefficient is positive and significant, which Goolsbee's analysis would view as evidence of "the anti-competitive explanation of [Comcast's] propensity to carry their own networks."

8. Bloomberg revised footnote 56, renumbered as 57, on page 19 to read as follows:

> Goolsbee at 26 (2007); Marx Rebuttal Report at 4, 12-16.

9. Bloomberg deleted the last sentence of the first paragraph on page 20 and the accompanying footnote.

10. Bloomberg revised footnote 65 on page 22 to read as follows:

> Id. at 18-21.

11. Bloomberg revised footnote 67 on page 23 to read as follows:

> Id. at 18. In fact, Dr. Marx relies, in part, on figures from the Israel-Katz Report to demonstrate these relationships. See id. at 23.

12. Bloomberg removed unnecessary redactions in the fourth full sentence on page 24.

13. Bloomberg revised footnote 74 on page 24 to read as follows:

> Marx Rebuttal Report at 25-26.

14. Bloomberg revised the first sentence on page 25 to read as follows:

> The Rosston and Topper Report erred in stating that Dr. Marx included only three business news networks in her Report, and that Dr. Marx concluded television business news advertising is the relevant antitrust market.

15. Bloomberg revised the third sentence of the second paragraph on page 25 by replacing {{ }} with {{ }}.

16. Bloomberg revised footnote 78 on page 26 by adding at the end of the footnote the following:

See also Marx Rebuttal Report at n.66.

Respectfully submitted,

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August 27, 2010

ATTACHMENT A

IV. THE TRANSACTION PRESENTS ANTICOMPETITIVE THREATS AND EFFECTS IN THE ONLINE VIDEO DISTRIBUTION BUSINESS. 47

V. THE TRANSACTION THREATENS BTV AND OTHER INDEPENDENT NETWORKS' ABILITY TO OBTAIN ADVERTISERS 55

VI. THE TRANSACTION WILL HARM BLOOMBERG AND OTHER INDEPENDENT PROGRAMMERS BY FORECLOSING THEM FROM CARRIAGE ON OTHER MVPDs 57

VII. THE COMMISSION MUST DENY THE MERGER BECAUSE THE APPLICANTS HAVE NOT DEMONSTRATED THAT THE PROPOSED TRANSACTION SERVES THE PUBLIC INTEREST AND THE HARMS OUTWEIGH THE BENEFITS 59
- A. The Transaction Would Reduce the Number of Independent News Sources, Thereby Reducing Viewpoint Diversity, and May Impede the Free Flow of Video Programming. 61
- B. The Transaction Would Reduce Diversity in Ownership and Comcast's Commitment to Independence Does Not Mitigate That Concern. 62
- C. The Transaction Results in Significant Competitive Harms and Would Impair, Rather than Promote, Competition. 63

VIII. IF THE COMMISSION GRANTS THE APPLICATION, IT MUST IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST 64
- A. Neighborhooding of Independent Business News Programming. 65
- B. The Commission Should Require Mandatory Carriage and Non-Discriminatory Terms and Conditions of Carriage for Independent News Networks on Comcast Digital Platforms. 70
- C. The Commission Must Prohibit Any Restriction, Limitation or Disincentive on the Ability of Alternative Business News Networks to Offer Their Content on Other Platforms, Including the Internet. 71
  - 1. Ban Limitations on Internet Distribution of Video Programming 71
  - 2. Protect Internet Access. 71
- D. The Commission Should Prohibit Comcast From Bundling Advertising Time On Competing Business News Networks With Advertising Time on Comcast-Owned Networks 72
- E. The Commission Should Prohibit Bundling for Carriage of Programming by Comcast. 73

IX. CONCLUSION 74

II. COMCAST-NBCU HAS THE ABILITY AND INCENTIVE TO PURSUE ANTICOMPETITIVE FORECLOSURE STRATEGIES AGAINST BLOOMBERG

The Opposition incorrectly states that Comcast-NBCU would not have the ability or incentive to foreclose BTV because (1) television business news is not the relevant antitrust market; (2) the Report prepared by Dr. Leslie Marx, former Chief Economist of the Commission (hereinafter, the "Marx Report") used incorrect values to calculate certain revenues and profits; and, (3) the economic literature does not support the conclusion that vertically integrated MVPDs discriminate against unaffiliated programming. The Opposition and its supporting documentation are incorrect on all of these points. BTV's Petition contained substantial evidence of a television business news market, and its conclusion is bolstered by further studies set forth in the Marx Rebuttal Report.[48] Dr. Marx demonstrates that her calculations are sound. Finally, Dr. Marx demonstrates that economic literature, and, indeed, the Israel-Katz Report itself,[49] support the conclusion that MVPDs discriminate against independent programming.[50]

A. Vertically Integrated MVPDs, Including Comcast, Discriminate Against Unaffiliated Programming.

Comcast's opposition incorrectly states "[t]here is no Evidence that Vertically Integrated MVPDs Discriminate Against Genre Programming."[51] It further claims, "the evidence does not support the hypothesis that vertically integrated MVPDs tend to deny carriage to, or otherwise disadvantage, networks with which they are not affiliated, particularly those that are 'similar' to

[48] Rebuttal Report by Leslie M. Marx (hereinafter "Marx Rebuttal Report") Exhibit 2 at 17-35, § D.1.

[49] The correct results of the Israel-Katz analysis become clear after correcting an error in coding. Marx Rebuttal Report at 9-14. See also id. at 15-16 applying the Israel-Katz data and empirical framework to analyze foreclosure of unaffiliated networks.

[50] Marx Rebuttal Report at 5-7.

[51] Opposition at 172.

integrated networks."[52] This conclusion is not only unsupported by the academic literature, but is not even supported by Comcast's economists. In their rebuttal report, Drs. Israel and Katz conclude:

> [M]any existing studies of carriage seek to answer the question: Is a vertically integrated MVPD more likely to carry the networks with which it is integrated than are other MVPDs? There is broad consensus in the literature that ... the answer to this question is generally "yes"....[53]

In an attempt to show that Comcast does not behave like other vertically integrated cable operators, which tend to exclude rival program services, Drs. Israel and Katz perform a version of the analysis proposed by Austan Goolsbee in a 2007 media ownership study for the FCC. Goolsbee argues that in more competitive markets (i.e., those with a high DBS share), it is less likely to see distributors favor their own networks and discriminate against rival content.[54] Drs. Israel and Katz purport to show that Comcast does the opposite, i.e., that it actually carries more of its networks in markets with a high DBS share (and less in those with a low DBS share), and argue that this implies Comcast is not behaving in a discriminatory manner. However, as Dr. Marx brought to the attention of the Department of Justice on July 29, 2010, in performing their empirical analysis, Drs. Israel and Katz make the error of defining the telephone company entry into the MVPD market ("telco") share to be "missing" rather than zero in locations where there is no telco presence, and then used a statistical package that automatically omitted any

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[52] Id.

[53] Comcast Opposition, Exhibit 2, Israel and Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction, at 110-112 (July 21, 2010) (hereinafter, "Israel-Katz Rebuttal").

[54] Austan Goolsbee, "Vertical Integration and the Market for Broadcast and Cable Television Programming," April 2007.

observations that are missing. As a result, the regression they originally reported (Table VI.1) was based only on markets with no telco entry, which one would expect to be systematically different from markets with telco entry. When this mistake is corrected, the sample size increases from 5,335 observations to 43,870 observations (increasing the sample by 87%), and the two regression coefficients that are the basis for Drs. Israel and Katz's original conclusion remain statistically significant, but have the opposite signs.

After Dr. Marx noted the coding error and the significantly different results derived from corrected coding, Comcast filed an amended regression with the Commission on August 13, 2010. As Dr. Marx had discovered, correctly coding the regression analysis to include the telco_ share variable yields opposite results.[55]

Drs. Israel and Katz's uncorrected results yielded a positive and significant Comcast_dbtelco coefficient and a negative and significant Comcast coefficient.[56] They argued that these coefficients demonstrated that there was no evidence of anticompetitive carriage decisions by Comcast. As Drs. Israel and Katz show, when they correct the coding mistake, the Comcast_dbtelco coefficient is negative and significant and the Comcast coefficient is positive and significant, which Goolsbee's analysis would view as evidence of "the anti-competitive explanation of [Comcast's] propensity to carry their own networks."[57]

Drs. Israel and Katz's August 13, 2010 supplemental analysis, correcting the coding error, thoroughly undermines their original opinion and supports fully Dr. Marx's report. Drs. Israel and Katz now transparently attempt to obfuscate. Their own corrected analysis

[55] Marx Rebuttal Report at 12-14.

[56] Israel-Katz Rebuttal, ¶ 146.

[57] Goolsbee at 26 (2007); Marx Rebuttal Report at 4, 12-16.

demonstrates "that Comcast engages in strategic foreclosure, with data pointing to the anticompetitive explanation for their propensity to carry their own networks."[58] Rather than acknowledge the opposite results that a correct analysis yields, Drs. Israel and Katz claim that they show "there is not a robust, stable relationship between rival MVPD's share in a DMA and Comcast's carriage rate of its own networks."[59] It is difficult to comprehend how correcting an incorrect calculation leads to a result that is not "robust."

B. Bloomberg's Economic Report Provided Substantial Evidence of a Business News Market.

In the Economic Report prepared in support of the Petition,[60] Bloomberg's economist, Dr. Marx, presented significant evidence supporting the finding of a business news market as the relevant market for antitrust analysis. Specifically, the Marx Report provides an extensive review of qualitative evidence showing business news networks are viewed as substitutes by consumers, advertisers, distributors, and industry insiders. The Marx Report included two empirical studies – a demand-side substitutability analysis and a critical loss analysis – that support a business news market definition.[61] The Marx Report demonstrates that business news networks have no close substitutes with respect to content, appearance, or audience.

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[58] Id. at 14.

[59] Letter from Michael H. Hammer, Counsel for Comcast Corp to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 13, 2010).

[60] Petition, Exhibit 3 (hereinafter "Marx Report").

[61] Marx Report at 22-23.

hypothetical monopolist's product can be direct or indirect.[62] In the case of indirect substitution, an MVPD would raise its price in response to an increase in the cost of a business news network, with subscribers potentially substituting away from the MVPD's more expensive service.[63] In the case of direct substitution, the MVPD would potentially decide not to carry a business news network in response to a price increase.[64]

Dr. Marx's analysis of MVPD carriage decisions directly addresses direct substitution effects and, contrary to Comcast's assertion, is relevant to the market definition. The probit analysis Dr. Marx performed shows that business news networks are substitutes for one another from the perspective of distributors. This is indicated in Dr. Marx's probit analysis by a significant negative coefficient on carriage of BTV as an explanatory variable for the carriage of CNBC and a significant negative coefficient on carriage of CNBC as an explanatory variable for the carriage of BTV.[65] The analysis focuses on single-system cable operators to control for system size. Thus, the data show that small MVPDs are less likely to carry one business news channel if they carry the other.[66] The probit analysis shows a positive relation between CNBC and general news networks and between BTV and general news networks. This reflects the fact that general news networks are at least weaker substitutes for business news networks than

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62 Marx Rebuttal Report at 17.

63 Id.

64 Marx Rebuttal Report 17-18.

65 Id. at 18-21.

66 Marx Rebuttal Report at 19. ("[F]or capacity-constrained cable operators, the strong substitutability of the two networks is stronger than the incentive to provide more networks and more variety for business news.").

business news networks are for each other.[67] As Dr. Marx shows,[68] performing a similar analysis, including children's networks, as suggested by Comcast's economists, does not change the result that CNBC and BTV are the most significant substitutes for each other.[69] Indeed, even adding all expanded basic networks does not change the result that CNBC and BTV are the most significant substitutes for each other.[70] The analysis clearly demonstrates the substitutability of CNBC and BTV.

Significantly, the analyses by Comcast's economists Drs. Israel and Katz on this point do not include BTV, which undermines their ability to opine on the substitutability between BTV and CNBC. First, they merely provide irrelevant regressions (CNBC regressed on Teen Nick,[71] and Disney regressed on Nickelodeon), which generate irrelevant results.

Second, Comcast's economists, Drs. Israel and Katz criticize Dr. Marx's use of the SSNIP test, despite the fact that Comcast's other economists conceded that "it is critical to show that a hypothetical monopolist of the candidate relevant market would pass the SSNIP test."[72] Comcast argues that Dr. Marx should have implemented the hypothetical monopolist analysis

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[67] Id. at 18. In fact, Dr. Marx relies, in part, on figures from the Israel-Katz Report to demonstrate these relationships. See id. at 23.

[68] Marx Rebuttal Report at 19-20.

[69] "[T]he relation between CNBC and Bloomberg TV remains negative and significant. Furthermore, all other relations with basic/expanded basic networks are positive or insignificant except those with Toon Disney and Cartoon Network, but even in these cases, the coefficient on CNBC is more than twice as large." Id. at 20.

[70] Id. at 21.

[71] Formerly "Nick Games & Sport" (or Nick GAS or just GAS) in early 2007, replaced in December, 2007, by "The N," replaced in September, 2009, by "Teen Nick".

[72] Opposition, Exhibit 1, Rosston and Topper, The Proposed Comcast-NBCU Transaction: Response to Comments and Petitions Regarding Competitive Benefits and Advertising Competition at 31¶58 (citing Draft Revised Horizontal Merger Guidelines at 9-10.

using a bargaining model.[73] However, the analysis using a price-setting model and a bargaining model turn on essentially the same point: whether an MVPD will lose a sufficient number of subscribers if it does not carry any business news. For a price-setting model, the analysis asks whether an MVPD will lose a sufficient number of customers if it drops all business news that it is willing to pay at least a 10% higher price for business news. For a bargaining model, the analysis asks whether an MVPD's "disagreement payoff" if it drops all business news would be sufficiently reduced (from losing a sufficient number of customers) that the associated bargaining outcome would give the hypothetical monopolist at least a 10% higher price. The analysis provides an answer for the threshold on how many subscribers an MVPD must lose, which is 1.67% of the **price-setting model** (provided in the Marx Report) and 2.00% for the **bargaining model** (provided in the Marx's Rebuttal Report).[74] The threshold is achieved if business news viewers spending more than 18-20% of their total viewing time watching business news choose to cancel their subscriptions when their MVPD drops all business news. Meeting the threshold does not require that viewers with trivial business news viewership switch video providers, but rather it requires only that business news viewers who spend approximately one-fifth or more of their total viewing time watching business news react to the loss of that programming by switching or dropping MVPD service.[75] Therefore, under either a price-setting or a bargaining model, Comcast would not be constrained by potential loss of subscribers to discriminate against BTV in the provision of business news.

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[73] Opposition at 170.

[74] Marx Rebuttal Report at 25-26.

[75] Id. at 26.

The Rosston and Topper Report erred in stating that Dr. Marx included only three business news networks in her Report, and that Dr. Marx concluded television business news advertising is the relevant antitrust market. The Rosston and Topper Report criticizes Dr. Marx for failing to conduct a SSNIP test on the business news advertising market. In fact, Dr. Marx states that she did not conduct a study on the television business news advertising market because the data is not available. Moreover, Rosston and Topper's report criticizes Dr. Marx's analysis as too narrow, when the DOJ Guidelines expressly recognize that a relevant market may only consist of a few companies. Rosston and Topper's own Exhibit 12 supports the finding of a business news market when it found that only four channels — three sports and one military — has a higher median income and greater percentage of male viewers. The Israel/Katz study also supports the finding of a distinct business news audience when they found that CNBC had the greatest percentage of older viewers and male viewers. {{

}}

In the Marx Rebuttal Report, Dr. Marx refutes Rosston and Topper's incorrect statements and further demonstrates that many advertisers agree that there are no close substitutes for advertising on business news networks. To demonstrate this point, Dr. Marx has included data showing that advertisers pay a premium to advertise on "prime time," which on business news stations corresponds with the opening bell of the U.S. stock market.[77] {{

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[76] {{ }}

[77] Marx Rebuttal Report at 31-32.

}} Finally, Rosston and Topper incorrectly state Dr. Marx's premise with respect to bundled advertising, when Dr. Marx made the point that only a small discount would draw high-value advertisers to Comcast's networks. Since Comcast already uses bundling, its anticompetitive strategy is feasible. Once Comcast owns CNBC, it will have the incentive to protect it through bundling advertising.[78]

C. Comcast Has An Incentive to Foreclose BTV.

With respect to the analysis of Comcast's incentives to deny carriage to BTV, the key question is whether Comcast would lose sufficiently few BTV viewers if it dropped BTV that the gains from increased CNBC viewership would outweigh the lost subscriber fees. Drs. Israel and Katz correctly note that different parameter values result in different thresholds for the number of BTV viewers who would switch or drop MVPD service. The Marx Report used parameter

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[78] Comcast alleges that FCC precedent does not support a business news market. Opposition at 168. That the Commission has not yet specifically defined a business news market does not preclude its doing so in the context of what is the largest media merger it has ever considered, especially when antitrust precedent accepts such more narrowly tailored programming markets. There is, however, ample antitrust precedent for the proposition that a media outlet serving a particular content niche can constitute a relevant antitrust market. DOJ's 2003 Univision consent order, which alleged a relevant market for Spanish-language radio, is a recent example, while the Supreme Court's NCAA decision similarly upheld a market definition focused on the distinct demand for college football telecasts. Department of Justice, Justice Department Requires Univision to Make Divestitures to Complete Acquisition of Hispanic Broadcasting Corporation, available at http://www.justice.gov/atr/public/press_releases/2003/200871.htm (last viewed 8/18/2010); National Collegiate Athletic Ass'n v. Board of Regents, 468 U.S 85, 90-91 (1984). Comcast's argument misses the point that product market definition is a fact-specific exercise. Where, as here, viewers, distributors and advertisers have no comparable substitutes for a programming category like business news networks, that category comprises a relevant economic market. See also Marx Rebuttal Report at n.66.

CERTIFICATE OF SERVICE

I, Rory E. Adams, hereby certify that on this 27th day of August, 2010, I caused true and correct copies of the foregoing Erratum to Reply to Comcast-NBCU Opposition to be served by postage pre-paid first-class U.S. Mail on the following individuals:

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