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November 16, 2010

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
#TW-A325  
Washington, DC 20554  
Attn: William T. Lake, Chief, Media Bureau

**Re: Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer of Control of Licenses, MB Docket 10-56**

Dear Ms. Dortch:

Bloomberg L.P. (“Bloomberg”) submits this letter to call to the Commission’s attention the failure of Comcast Corporation (“Comcast”) to comply with a key aspect of the Media Bureau’s Information and Document Request, dated May 21, 2010, (“Information Request”).<sup>1</sup> Bloomberg requests that the Commission require Comcast to produce the important documents at issue immediately (and in any event in no less than ten (10) days) and asks the Media Bureau to pause the transaction time clock until Comcast has done so.

As explained further below, Comcast in effect claims that remedies such as “neighborhooding,” as requested by Bloomberg, are not feasible because of contractual requirements to other Video Programmers. Yet Comcast simply has refused to produce such contracts, notwithstanding that they were specifically sought in the Information Request. The Commission cannot continue to permit this illogical and inconsistent response by Comcast to specific directives by the Commission made to aid in its evaluation of the Comcast/NBC Universal transaction.

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<sup>1</sup> See Information and Discovery Request for Comcast Corporation, MB Docket No. 10-56 (released May 21, 2010).

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In its Information Request, the Media Bureau asked Comcast, among other things, to “[p]rovide all agreements currently in effect and all agreements executed since January 1, 2006 that the Company has entered into with any provider of Video Programming which discuss cable network carriage, retransmission consent, program carriage, and distribution rights for Video Programming.”<sup>2</sup> Instruction 10 to the Request provided that the “[t]he specific requests made herein are continuing in nature. The Company is required to produce in the future any and all documents and information that are responsive to the requests made herein but not initially produced at the time, date, and place specified herein.”<sup>3</sup> The Commission has never modified this Instruction. Nevertheless, in its June 11, 2010 response, Comcast refused to supply the requested documents. Rather, it stated that “[p]ursuant to discussions with Commission staff, the response to this request has been deferred pending further review and consultation.”<sup>4</sup>

Recently, on October 18, 2010, Comcast filed its responses to the Media Bureau’s Second Information and Document Request.<sup>5</sup> The Second Request did not modify either Request #44 or the “continuing nature” of the First Request. Bloomberg has thoroughly reviewed Comcast’s submission, and once again it does not contain the requested carriage agreements.

Therefore, more than four months have passed since Comcast unilaterally “deferred” its response to the Commission, yet Comcast still has not submitted the carriage agreements the Commission required it to produce. Comcast recently requested, and received, an order obtaining enhanced confidential treatment of its carriage agreement with Common Sense Media (“CSM”).<sup>6</sup> This selective submission raises more questions than it answers. Neither the Commission nor the parties to the proceeding can determine whether the agreement’s terms are similar to, or different from, other carriage agreements. Comcast’s October 22, 2010 request gives no reason that it singled out this document for production. However, if Comcast is permitted to selectively produce only those agreements that support its claims, the record in this matter will be incomplete, and the Commission will not be able to make an accurate public

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<sup>2</sup> Id. at Request #44.

<sup>3</sup> Id., Instruction #10.

<sup>4</sup> Responses of Comcast Corporation to the Commission’s Information and Document Request, MB Docket No. 10-56, at 85 (filed June 11, 2010).

<sup>5</sup> Responses of Comcast Corporation to the Commission’s Second Information and Document Request, MB Docket No. 10-56 (filed Oct. 18, 2010).

<sup>6</sup> Letter to Michael H. Hammer, et al, from William T. Lake, Chief, Media Bureau, MB Docket No. 10-56, DA 10-2063 (released Oct. 27, 2010).

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interest finding. Moreover, Comcast's request states that the Commission granted enhanced protection for "Comcast's video programming and carriage agreements...."<sup>7</sup> Therefore, Comcast cannot withhold documents on the basis that they contain sensitive business information, and the Commission's grant of enhanced confidential treatment to the CSM agreement should dispel any doubt on this point. Comcast's selective refusal to comply with the Commission's broader document request puts other parties and the Commission at a substantially unfair disadvantage in this proceeding and prevents the compilation of the full record that is required for the Commission to make the public interest determination required by Section 310(d) of the Communications Act.<sup>8</sup>

Comcast's failure to produce its carriage agreements with programmers is particularly harmful to Bloomberg. For example, Bloomberg has argued in this proceeding both that channel placement is particularly important to the success of a network and that Comcast has a strong incentive to harm those programmers that compete against its own affiliated networks.<sup>9</sup> A review of Comcast's carriage agreements with unaffiliated programmers would aid in assessing and potentially providing support for these contentions. Moreover, Comcast, in filings with the Commission, has relied on its contracts with programmers in opposing Bloomberg's requested condition for "neighborhooding" of existing business news channels and others competing with NBCU programming. For example, Comcast recently asserted that "contractual rights" of other programmers would make it difficult for Comcast to implement the "neighborhooding" condition sought by Bloomberg in this proceeding.<sup>10</sup> Surely, if Comcast is going to cite to contractual terms as support for its position, it should be required to produce those contracts to the Commission and other parties to the proceeding.<sup>11</sup>

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<sup>7</sup> Letter from Michael H. Hammer, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, Request for Enhanced Confidential Treatment, MB Docket No. 10-56, at 3 (filed Oct. 22, 2010).

<sup>8</sup> 47 U.S.C. § 310(d).

<sup>9</sup> See, e.g., Bloomberg L.P. Petition to Deny, MB Docket No. 10-56, at 29-41 (filed June 21, 2010).

<sup>10</sup> Letter from Michael H. Hammer, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56, at 3 (filed Oct. 22, 2010).

<sup>11</sup> Comcast has similarly ignored Request 51, which requested similar information regarding Marquee Sports programming. "Provide all agreements currently in effect and all agreements

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Bloomberg previously requested an extension of time to file its Petition to Deny so that it would have sufficient time to fully review the material that was going to be submitted by Comcast in response to the Information Request.<sup>12</sup> Bloomberg specifically told Commission staff that it was especially interested in examining Comcast's carriage agreements with unaffiliated programmers. The Media Bureau denied Bloomberg's request. In doing so, however, it noted that "should the review of the materials submitted by the Applicants on June 11th . . . provide additional support for an issue that the filer has timely raised in its June 21st submission, it will have the full opportunity to discuss that information in its reply or, consistent with Commission practice, if that is not possible, by filing a supplement to its petition, comments or reply."<sup>13</sup> It is now more than four months later and Bloomberg has still not been provided with a "full opportunity to discuss" the information that Comcast was required to submit on June 11 because Comcast has yet to produce its carriage agreements with programmers.

For these reasons, it is critically important that the Commission take immediate action to require Comcast to comply fully with the Media Bureau's information request by providing "all agreements currently in effect and all agreements executed since January 1, 2006 that the Company has entered into with any provider of Video Programming which discuss cable network carriage, retransmission consent, program carriage, and distribution rights for Video Programming."<sup>14</sup>

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executed since December 31, 2003 between the Company and any Marquee Sports League which convey the right to distribute the League's games or other content in the United States, including distribution as part of any Non-Broadcast Programming Network or as Video Programming on the Internet, in which the Company has an ownership, controlling or Attributable interest, whether distributed via MVPD or by and Online Video Programming Distributor." Insofar as the Request seeks contracts for carriage of program, for the reasons outlined above, Comcast should also be required to produce these documents as probative of the terms and conditions, specifically including neighborhooding or grouping in genres, as well as any restrictions that the programmer might have placed on channel movement, which are directly relevant to the issues raised by Bloomberg.

<sup>12</sup> See Request for Extension of Time to File Petitions to Deny and Comments, MB Docket No. 10-56, at 1-3 (filed June 14, 2010).

<sup>13</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 Licenses, Order, MB Docket No. 10-56, DA 10-1087, at 4 (released June 17, 2010) (emphasis added).

<sup>14</sup> See supra note 2.

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Additionally, just as the Media Bureau stopped the transaction time clock earlier in this proceeding because it found that Comcast had “not fully complied with the instructions supplied with the Information Request,”<sup>15</sup> Bloomberg asks the Bureau similarly to stop the clock until the Comcast provides the documents that the Commission has requested.

Although Bloomberg appreciates the Commission’s desire to complete its review of transactions in a reasonable timeframe, the Commission’s review must be based on a full record and give all parties to the proceeding a fair chance to have access to the information necessary to evaluate the applicants’ claims that the proposed transaction would serve the public interest.<sup>16</sup> Comcast’s selective production ensures that there is not such a full record. To date, Comcast has failed to produce important information requested by the Commission, and Bloomberg asks the Commission to take appropriate and immediate action to ensure that these documents are made available, as well as put the transaction time clock on hold pending Comcast’s compliance with the requirements of Request 44.

Very truly yours,



Stephen Díaz Gavin  
Counsel for Bloomberg L.P.

Enclosure

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<sup>15</sup> Letter from William T. Lake, Chief, Media Bureau, to Michael H. Hammer, Esquire, Wilkie Farr & Gallagher LLP, MB Docket 10-56, at 1 (released June 24, 2010).

<sup>16</sup> The Commission has taken a similar position with respect to any proprietary data that parties might have employed in their petitions and comments. The Commission’s March 4, 2010 protective orders should allay any concern about Comcast having to produce these documents. Bloomberg would support their being treated as Highly Confidential documents under the terms of the Second Protective Order.