Exhibit 6

In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.; For Consent to Assign Licenses and Transfer Control of Licensees

MB Docket No. 10-56

RELEASE-NUMBER: FCC 11-4

FEDERAL COMMUNICATIONS COMMISSION

26 FCC Rcd 4238; 2011 FCC LEXIS 414; 2011-1 Trade Cas. (CCH) P77,312; 52 Comm. Reg. (P & F) 249

January 20, 2011, Released

January 18, 2011, Adopted

ACTION:
[**1] MEMORANDUM OPINION AND ORDER

SUBSEQUENT HISTORY:
As Amended March 9, 2011.Later proceeding at *In re Comcast Corp., 2011 FCC LEXIS 433 (F.C.C., Feb. 22, 2011)*

JUDGES: By the Commission: Chairman Genachowski and Commissioner Clyburn issuing separate statements, Commissioners McDowell and Baker concurring and issuing a joint statement, Commissioner Copps dissenting and issuing a statement.

OPINION BY: DORTCH

OPINION:

[*4239] **I. INTRODUCTION**

1. In this proceeding, Comcast Corporation ("Comcast"), General Electric Company ("GE"), and NBC Universal, Inc. ("NBCU")--collectively referred to as "the Applicants"--seek authorization to assign and transfer control of broadcast, satellite, and other radio licenses from GE to [*4240] Comcast. n1 The proposed transaction would combine, in a single joint venture ("Comcast-NBCU" or "the JV"), the broadcast, cable programming, online content, movie studio, and other businesses of NBCU with some of Comcast's cable programming and online content businesses. The JV's assets would include two broadcast television networks (NBC and Telemundo), 26 broadcast television stations, and NBCU's cable programming (such as CNBC, MSNBC, Bravo, and USA Network), all of which would be under the control of Comcast, the nation's largest cable operator and Internet service provider.

n1 Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast

Corporation, Transferee (Jan. 28, 2010), as amended on May 4, and November 3, 9, 17, 18 and 29, 2010 (together, the "Application"). The Media Bureau placed the Application on public notice on March 18, 2010, establishing a comment cycle for this proceeding. *See Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses, Public Notice, 25 FCC Rcd 2651 (MB 2010) ("Public Notice").*

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2. Under federal law, the Commission reviews such transactions to ensure that they are in the public interest, convenience, and necessity. n2 This review entails a thorough examination of the potential harms and benefits of the proposed transaction, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose remedial conditions to address potential harms likely to result from the transaction. If, on balance, the benefits associated with the proposed transaction outweigh the remaining harms, the Commission must approve the transfer if it serves the public interest.

n2 *47 U.S.C. § 310(d).*

3. This transaction would effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers offline and, increasingly, online as well. The harms that could result are substantial. For example, Comcast-NBCU would have both greater [**3] incentive and greater ability to raise prices for its popular video programming to disadvantage Comcast's rival multichannel distributors (such as telephone companies and direct broadcast satellite ("DBS") providers). It would also have the incentive and ability to hinder the development of rival online video offerings and inhibit potential competition from emerging online video distributors that could challenge Comcast's cable television business. Moreover, the transaction presents concerns with respect to our statutory mandate to promote diversity and localism in broadcast television and video programming distribution.

4. Because of these and other threats posed by the proposed transaction to competition, innovation, and consumer welfare, the Commission has developed a number of targeted, transaction-related conditions and Comcast has offered a number of voluntary commitments to mitigate the potential harms the proposed combination might otherwise cause. These conditions and voluntary commitments, as discussed in further detail below, fall into three main categories as they relate to competition issues:

. *Ensuring Reasonable Access to Comcast-NBCU Programming for Multichannel* [**4] *Distribution*. Building on successful requirements adopted in prior, similar transactions, n3 we make [*4241] available to rival multichannel video programming distributors ("MVPDs") an improved commercial arbitration process for resolving disputes about prices, terms, and conditions for licensing Comcast-NBCU's video programming. We believe that this remedy, designed to prevent harms from integrating content and distribution market power, will be even more effective and less costly than previous procedures. We apply the arbitration and standstill remedies to *all* Comcast-NBCU affiliated programming.

. *Protecting the Development of Online Competition*. Recognizing the danger this transaction could present to the development of innovative online video distribution, we adopt conditions designed to guarantee *bona fide* online distributors the ability to obtain Comcast-NBCU programming in appropriate circumstances. These conditions respond directly to the concerns voiced by commenters--including consumer advocates, online video distributors ("OVDs") and MVPDs--while respecting the legitimate business interests of the Applicants. Among other things, the Commission:

. Requires [**5] Comcast-NBCU to provide to all MVPDs, at fair market value and non-discriminatory prices, terms, and conditions, any affiliated content that Comcast makes available online to its own subscribers or to other MVPD subscribers.

. Requires Comcast-NBCU to offer its video programming to any requesting OVD on the same terms and conditions that would be available to an MVPD.

. Obligates Comcast-NBCU to make comparable programming available on economically comparable prices, terms, and conditions to an OVD that has entered into an arrangement to distribute programming from one or more of Comcast-NBCU's peers.

. Restricts Comcast-NBCU's ability to enter into agreements to hamper online distribution of its own video programming or programming of other providers.

. Requires the continued offering of standalone broadband Internet access services at reasonable prices and of sufficient bandwidth so that customers can access online video services without the need to purchase a cable television subscription from Comcast.

. Prevents Comcast from disadvantaging rival online video distribution through its broadband Internet access services and/or set-top boxes.

. Addresses threats to [**6] Hulu, an emerging OVD to which NBCU provides programming, that arise from the transaction.

. *Access to Comcast's Distribution Systems*. In light of the significant additional programming Comcast will control--programming that may compete with third-party programming Comcast carries on its MVPD service--we require that Comcast not discriminate in video programming distribution on the basis of affiliation or non-affiliation with Comcast-NBCU. Moreover, we require that, if Comcast "neighborhoods" its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood. We also adopt as a condition of the transaction Comcast's voluntary commitment to provide 10 new independent channels within eight years on its digital tier.

n3 *See, e.g., General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Memorandum Opinion and Order, 19 FCC Rcd 473 (2004) ("News Corp.-Hughes Order"); Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006) ("Adelphia Order").*

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5. We also impose conditions and accept voluntary commitments concerning a number of other public interest issues, including diversity, localism, and broadcasting, among others. For example, to protect the integrity of over-the-air broadcasting, network-affiliate relations, and fair and equitable retransmission consent negotiations with the JV, we adopt a series of conditions that were independently negotiated between the Applicants and various network affiliates.

[*4242] 6. In addition to these and other conditions, which are designed to remedy potential harms, we also look

to the affirmative benefits of the proposed transaction, both those inherent in the combination as well as additional voluntary commitments made by the Applicants, in order to ensure that this transaction serves the public interest. These commitments, which we make enforceable through this Order, include but are not limited to:

. *Broadband Adoption and Deployment*. Comcast will make available to approximately 2.5 million low income households: (i) high-speed Internet access service for less than $ 10 per month, (ii) personal computers, netbooks, or other computer equipment at a purchase price below $ 150, and [**8] (iii) an array of digital-literacy education opportunities. Comcast will also expand its existing broadband networks to reach approximately 400,000 additional homes, provide broadband Internet access service in six additional rural communities, and provide free video and high-speed Internet service to 600 new anchor institutions, such as schools and libraries, in underserved, low income areas.

. *Localism*. To further broadcast localism, Comcast-NBCU will maintain at least the current level of news and information programming on NBCU's owned-and-operated ("O&O") broadcast stations, and in some cases expand news and other local content. Comcast-NBCU's O&O NBC and Telemundo stations also will provide thousands of additional hours of local news and information programming to their viewers, and some of its NBC stations will enter into cooperative arrangements with locally focused nonprofit news organizations. Additional free, on-demand local programming will be made available as well.

. *Children's Programming*. Comcast-NBCU will increase the availability of children's programming on its NBC and Telemundo broadcast stations, and add at least 1,500 more choices to Comcast's on-demand [**9] offerings for children. It will provide additional on-screen ratings information for original entertainment programming on the Comcast-NBCU broadcast and cable television channels and improved parental controls. Comcast-NBCU also will restrict interactive advertising aimed at children 12 years old and younger and provide public service announcements addressing children's issues.

. *Programming Diversity*. Building on Comcast's voluntary commitments in this area, we require Comcast-NBCU to increase programming diversity by expanding its over-the-air programming to the Spanish language-speaking community, and by making NBCU's Spanish-language broadcast programming available via Comcast's on demand and online platforms. As noted above, Comcast also will add at least 10 new independent channels to its cable offerings.

. *Public, Educational, and Governmental ("PEG") Programming*. Comcast will safeguard the continued accessibility and signal quality of PEG channels on its cable television systems and introduce new on demand and online platforms for PEG content. n4

n4 Appendix A contains the conditions we place on our grant of the requested assignments and transfers of control.

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7. The combination of Comcast and NBCU has important implications for consumers, competitors, and the future development of online video distribution. As reflected in the extensive discussion that follows, the Commission has given the transaction the careful consideration it deserves, and approached with an open mind the arguments of the Applicants, their supporters, and those opposed to the transaction. Through the voluntary commitments and other conditions we impose on the [*4243] combination of Comcast and NBCU, we address the risks associated with it, while ensuring that the American public will realize significant benefits from it.

8. We therefore find that the grant of the proposed assignments and transfers of control of broadcast, satellite, and other radio licenses by the Commission will serve the public interest and, accordingly, the proposed transaction should be approved, as conditioned, pursuant to *Section 310(d)* of the Communications Act of 1934, as amended ("Act"). n5

n5 *47 U.S.C. § 310(d)*.

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II. DESCRIPTION OF THE PARTIES

A. Comcast Corporation

9. Comcast owns and operates cable systems serving nearly 24 million subscribers in 39 states and the District of Columbia. n6 Comcast's cable systems offer both traditional and advanced video services, including broadcast programming, national, regional and local cable channels, premium movie channels, programming for minority audiences, pay-per-view, and high definition programming. n7 Comcast offers broadband Internet access service over its cable plant and currently has nearly 16 million customers. n8 In addition, Comcast provides facilities-based voice services to over seven million customers. n9

n6 Application at 17.
n7 *Id*. at 18.
n8 *Id*. at 19.
n9 *Id*.

10. Comcast owns interests in 11 national programming networks, five of which are wholly-owned: E!, Golf Channel, Versus, Style, and G4. Comcast holds an attributable interest in PBS KIDS Sprout, TV One, NHL Network, Current Media, MLB Network, and Retirement [**12] Living Television. n10 Comcast also has interests in a variety of regional and local programming networks and in several regional sports networks ("RSNs"). n11 Comcast owns a minority stake in Metro-Goldwyn-Mayer Studios Inc. ("MGM"), which allows it to obtain licenses for MGM and Sony movies and television series. n12

n10 *Id*. at 19-20.
n11 *Id*. at 20-21.
n12 *Id*. at 21-22. MGM is currently undergoing restructuring under the supervision of the United States Bankruptcy Court. *See In re Metro-Goldwyn-Mayer Studios Inc*., Case No. 10-15774 (SMB) (S.D.N.Y. filed Nov. 3, 2010).

11. Additionally, Comcast holds online and wireless interests, including a 9.4 percent interest in Clearwire Communications LLC. n13 Comcast is developing and operating online and cross-platform entertainment and media businesses, including Fancast Xfinity. Xfinity is an online portal to broadcast and cable programming that Comcast carries on its MVPD service, as well as other programming. n14

Opinion and Order, 14 FCC Rcd 19140, 19147-48, P 15 (1999) ("AT&T Corp.-British Telecom Order"); *Comcast-AT&T Order, 17 FCC Rcd at 23256, P 28*.

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[*4249] 25. Our analysis recognizes that a proposed transaction may have both beneficial and harmful consequences. Our public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions targeted to ensure that the public interest is served by the transaction. n55 *Section 303(r)* of the Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with the law, which may be necessary to carry out the provisions of the Act. n56 Indeed, unlike the role of antitrust enforcement authorities, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that a transaction will yield overall public interest benefits. n57 In exercising this broad authority, the Commission generally has imposed conditions to confirm specific benefits or remedy specific harms likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes. n58

n55 *See Sirius-XM Order, 23 FCC Rcd at 12366, P 33*; *Liberty Media-DIRECTV Order, 23 FCC Rcd at 3279, P 26*; *Cingular-AT&T Wireless Order, 19 FCC Rcd at 21545-46, P 43*; *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, P 10 (1998) ("WorldCom-MCI Order")* (stating that the Commission may attach conditions to the transfers).

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n56 *47 U.S.C. § 303(r)*. *See Sirius-XM Order, 23 FCC Rcd at 12366, P 33*; *Liberty Media-DIRECTV Order, 23 FCC Rcd at 3279, P 26*; *Cingular-AT&T Wireless Order, 19 FCC Rcd at 21545, P 43*; *WorldCom-MCI Order, 13 FCC Rcd at 18032, P 10* (citing *FCC v. Nat'l Citizens Comm. for Broadcasting, 436 U.S. 775, 98 S. Ct. 2096, 56 L. Ed. 2d 697 (1978)* (upholding broadcast-newspaper cross-ownership rules adopted pursuant to *Section 303(r)*)); *U.S. v. Southwestern Cable Co., 392 U.S. 157, 178, 88 S. Ct. 1994, 20 L. Ed. 2d 1001 (1968)* (holding that *Section 303(r)* permits the Commission to order a cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC, 890 F.2d 1173, 1182-83, 281 U.S. App. D.C. 368 (D.C. Cir. 1989)* (affirming syndicated exclusivity rules adopted pursuant to *Section 303(r)* authority).

n57 *See, e.g., Sirius-XM Order, 23 FCC Rcd at 12366, P 33*; *Liberty Media-DIRECTV Order, 23 FCC Rcd at 3279, P 26*; *Cingular-AT&T Wireless Order, 19 FCC Rcd at 21545, P 43*; *News Corp.-Hughes Order, 19 FCC Rcd at 477, P 5*.

n58 *See, e.g., Sirius-XM Order, 23 FCC Rcd at 12366, P 33*.

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26. This Order examines the proposed transaction as follows. First, we assess the potential competitive harms from the vertical and horizontal aspects of the transaction, as well as the potential impact on a number of other public interest considerations, including the impact on diversity and localism. Second, we evaluate the public interest benefits that the Applicants claim will result from the transaction. At each stage, we consider and, where appropriate, impose conditions to ameliorate the harms or confirm the benefits. Third, we balance the public interest harms posed by, and the benefits to be gained from, the transaction. Finally, we examine whether the transaction complies with the Act, other applicable statutes and the Commission's Rules and policies.

[*4250] **V. ANALYSIS OF POTENTIAL HARMS**

programming and paid OVDs' offering of movies and cable networks. The Applicants have an incentive to withhold free access to their online content in order to prevent this type of cord-cutting. n243

n243 We conclude, however, that there is no transaction-related justification for Greenlining's request that the Commission ensure continued access, free of subscription or premium charges, to online content that Comcast currently makes available to all users for no additional charge on its associated websites, such as Fancast.com. *See* Greenlining Reply at 32.

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109. During a congressional hearing, the Applicants made assurances that programs available at that time over-the-air on NBC and then available on the nbc.com website would not be migrated into the TV Everywhere format. n244 They reaffirmed this intention to Commission staff on August 20, 2010. n245 We therefore will require as a condition for approval of the transaction that the Applicants continue to make available on nbc.com (or any successor website) video programming that is equivalent in type, [*4282] quantity and quality to that offered through nbc.com as of the date of release of this Order, so long as at least one of the other major broadcast networks provides a similar service. n246 We believe this requirement, as well as our conditions relating to Hulu, obviate the need for any further remedy.

n244 U.S. House Energy and Commerce Subcommittee on Communications, Technology and the Internet, Transcript at 33 (Feb. 4, 2010).
n245 Letter from James L. Casserly, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 2 (Aug. 20, 2010) (stating that "Comcast expects that the programs that are delivered over-the-air by NBC today and then are available at the nbc.com website for online viewing will continue to be made available in that fashion, and will not migrate into the TV Everywhere model").
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n246 For example, the restriction applies to future episodes of a program within that program's series (*e.g.*, all future episodes of the NBC program "The Office"). The restriction also applies to future programs developed by the combined company that are equivalent in type, quantity and quality to the free content now available through the nbc.com website.

3. Program Carriage Issues

110. Several parties contend that the proposed transaction would increase Comcast's ability and incentive to reduce competition from rival video programming networks/providers by withholding carriage of such programming or imposing unreasonable terms or conditions of carriage. We agree that the vertical integration of Comcast's distribution network with NBCU's programming assets will increase the ability and incentive for Comcast to discriminate against or foreclose unaffiliated programming. We conclude that the adoption of a non-discrimination requirement, a condition to make ten channels available to independent programmers over a period of time, and a narrowly tailored neighborhooding requirement will [**140] mitigate any potential public interest harms. n247

n247 When used with respect to program carriage, the term "foreclosure" refers to a vertically integrated MVPD's refusal to carry the programming of an unaffiliated network such that the programmer would exit the market or would be deterred from entering the market. *See Adelphia Order, 21 FCC Rcd at 8256*, P 115 n.408.

111. *Background*. In order to prevent MVPDs from taking undue advantage of programming vendors, Congress enacted Section 616 of the Act, which directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other [MVPD] and video programming vendors." n248 Accordingly, the Commission established rules governing program carriage and adopted procedures for the review of program carriage complaints as well as appropriate penalties and remedies. n249 As required under the statute, the Commission's program carriage rules specifically prohibit a cable operator [**141] or other MVPD from engaging in three types of conduct: (1) requiring "a financial interest in any program service as a condition for carriage" of such service; n250 (2) coercing a programmer to grant exclusive carriage rights or retaliating against a programmer for refusing to grant such rights; n251 and (3) engaging in conduct that unreasonably restrains "the ability of an unaffiliated programming vendor to compete fairly" by discriminating against such vendor "on the basis of affiliation or nonaffiliation." n252

n248 *47 U.S.C. § 536*. Section 616 was added to the Act by the 1992 Cable Act.

n249 *See Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, Second Report and Order, 9 FCC Rcd 2642 (1993)*; *see also Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, Memorandum Opinion and Order, 9 FCC Rcd 4415 (1994)*. The Commission's program carriage rules are set forth at *47 C.F.R. §§ 76.1300 - 76.1302*.

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n250 *47 C.F.R. § 76.1301(a)*; *see also 47 U.S.C. § 536(a)(1)*.

n251 *47 C.F.R. § 76.1301(b)*; *see also 47 U.S.C. § 536(a)(2)*.

n252 *47 C.F.R. § 76.1301(c)*; *see also 47 U.S.C. § 536(a)(3)*.

[*4283] 112. *Positions of the Parties*. Notwithstanding our program carriage rules, commenters express concerns that Comcast will have an incentive and ability to disadvantage independent, competing programmers through measures ranging from refusing to carry an independent network to "relegating independent channels to programming tiers with a limited reach and/or neighborhoods far removed from related content." n253 Bloomberg contends that "neighborhooding," which is "the industry practice of placing channels of the same genre adjacent to one another in the system's channel line-up," is important because it enables consumers to find programming more easily and facilitates competition between programs. n254 Commenters express particular concern that Comcast will use strategic tier placement to disadvantage competitors, [**143] and that Comcast will place competing programming on service tiers that are less widely penetrated. n255 WealthTV claims that Comcast "often" refuses to place unaffiliated programming in basic channel neighborhoods, n256 and other commenters express similar concern that Comcast has engaged in discriminatory behavior in the past. n257

n253 WealthTV Reply at 8; *see also* Comments of The Tennis Channel, Inc. at 13 (filed Jun. 21, 2010) ("Tennis Channel Comments").

n254 Bloomberg Reply at 30, n.87 (citing Bloomberg Petition at 29); *see also* MASN Comments at 1.

n255 *See* Bloomberg Petition at 34; Allbritton Reply at 11 (citing Bloomberg Petition at 29-37); Greenlining Reply at 4.

n280 Comcast Investor Presentation at 20 (Dec. 3, 2009) *available at* http://www.comcast.com/nbcutransaction/pdfs/Investor_Presentation_Comcast-NBCU_FINAL%20-%20No%20Notes.pdf ("*Comcast Investor Presentation*").

n281 *Id*. at 14; Application at 28.

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n282 *Comcast Investor Presentation* at 4.

n283 *Id*. at 18.

119. While video programming is a differentiated product market, it is nevertheless evident that Comcast-NBCU's affiliated programming will include networks that could be considered close substitutes for a much larger set of unaffiliated programming than is currently the case for Comcast. For example, Bloomberg TV is likely a close substitute for Comcast-NBCU's CNBC and CNBC World networks, n284 and networks such as ESPN and Fox Sports Network may be close substitutes for Comcast-NBCU's Versus network, n285 which also offers a variety of sports programming. n286 Even within a densely packed product market with differentiated products, buyers may see some differentiated products as closer substitutes than others, so Comcast's ability to disadvantage or foreclose carriage of a rival [*4287] programming network can harm competition. n287 In other words, the loss of a substitute product by itself can harm competition by reducing a competitive constraint, with an adverse effect that increases with perceived substitutability. By foreclosing [**155] or disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content.

n284 While Comcast argues that there is no "business news" market, the CNBCU and CNBCU World networks describe themselves as business news programming. *See* Applicants' Opposition at 168-171 (no meaningful evidence of a distinct "TV business news programming" market); *but see* "About CNBC U.S." *available at* http://www.cnbc.com/id/15907487/ ("CNBC is the recognized world leader in business news"); "About CNBC World," *available at* http://www.cnbc.com/id/15837872/site/14081545/ ("CNBC World combines the resources of CNBC Asia and CNBC Europe into a 24-hour a day, global business news network"). It is unnecessary for us to define a discrete business news market in order to find that CNBCU and BloombergTV could be considered close substitutes by viewers.

n285 *See* "Comcast Cable Networks -- Versus," *available at* http://www.comcast.com/corporate/about/pressroom/comcastcablenetworks/comcastcablenetworks.html (VERSUS shows programming from the NHL, NBA, UFL, NASCAR, NCAA football and basketball).

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n286 We do not find it necessary to define submarkets for specific genres or clusters of programming. While it is likely that viewers will substitute networks with similar programming (such as substituting one national sports network for another), this is not necessarily the case (viewers might substitute general entertainment and sports). As we discuss in greater detail below, using programming focused on a female audience as an example, networks that appeal to both a male and female demographic may attract ratings shares for women that are even higher than networks directed at a female demographic. *See infra* P 140. Furthermore, programming lineups change over time, potentially changing which networks viewers might consider close substitutes.

n287 *See Horizontal Merger Guidelines* at 20, Sections 6 and 6.1 ("The elimination of competition between two firms that results from their merger may alone constitute a substantial lessening of competition. Such unilateral effects are most apparent in a merger to monopoly in a relevant market, but are by no means limited to that case. ... The extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects. Unilateral price effects are greater, the more the buyers of products sold by one merging firm consider products sold by the other merging firm to be their next best choice."). For purpose of the analysis in this section, it does not matter whether we view the buyer of programming as the MVPD (assembling a portfolio of channels to sell to subscribers), the household, or the viewer.

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120. In an effort to address commenters' concerns, the Applicants voluntarily commit to several carriage obligations. Among its voluntary commitments, Comcast commits to add at least ten new independently owned and operated programming services to the digital (D1) tier over the eight years following closing of the transaction. n288 Comcast has assured the Commission that this commitment creates "floors, not ceilings," and that it will add additional independent channels and/or add them faster if possible. n289 Further, for seven years after the closing of the transaction, Comcast commits that it will not discriminate "against local, in-market non-NBCU stations in favor of NBCU stations with respect to certain technical signal carriage matters." n290

n288 Letter from David L. Cohen, Comcast Executive Vice President, to Hon. Bobby Rush, at 2, 4-5 (Jul. 2, 2010); Applicants' Opposition at 44-45. This commitment supersedes Comcast's prior voluntary commitment that, once Comcast has completed its digital migration company-wide, it will add two new independently owned and operated channels to its digital line-up each year for three years on "customary terms and conditions." *See* Application at 112-13.

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n289 Letter from Kathy Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 16, 2011).

n290 Letter from Michael H. Hammer, Counsel for Comcast, and David H. Solomon, Counsel for NBCU, to Marlene H. Dortch, Secretary, FCC (Aug. 6, 2010) (attaching ABC, CBS and Fox Affiliates Agreement).

121. Although these commitments are helpful, they are not sufficient to allay our concerns. We believe it is in the public interest to adopt additional remedies regarding program carriage disputes. Specifically, we condition the approval of this transaction on the requirement that Comcast not discriminate in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection of, or terms or conditions for, carriage, including in decisions regarding tiering and channel placement. If program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation. [**159] A vendor proceeding under this condition will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules. This non-discrimination requirement will be binding on Comcast independent of the Commission's rules, and will extend to non-discriminatory treatment in placement within search menus as well as channel placement. We also prohibit retaliation for bringing a program carriage complaint.

122. In addition, although we decline to adopt a requirement that Comcast affirmatively undertake neighborhooding, in accordance with the special importance of news programming to the public interest, we adopt a narrowly tailored condition related to channel placement for independent news [*4288] channels. n291 Specifically, we require that if Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood. n292

n291 *See Associated Press v. United States, 326 U.S. 1, 20, 65 S. Ct. 1416, 89 L. Ed. 2013 (1945)*.
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n292 For purposes of this condition, an "independent news channel" is a video programming network that is (i) unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, (ii) unaffiliated with one of the top 15 programming networks, as measured by annual revenues, and (iii) whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone. *See* Letter from Stephen Diaz Gavin, Counsel for Bloomberg L.P., to Marlene H. Dortch, Secretary, FCC (filed Dec. 2, 2010).

123. We believe that our existing program carriage rules, together with the requirements we adopt herein, are sufficiently broad to encompass a wide range of allegations of discrimination, while allowing Comcast and programming vendors sufficient flexibility to enter into individualized contracts that suit their particularized needs and circumstances. n293 Allegations that Comcast has placed unaffiliated programming in a detrimental tier or channel neighborhood, based on considerations of affiliation, therefore, [**161] can be considered in any commercial arbitration proceeding or complaint process brought under the Commission's rules. At the same time, we note that channel and tier placement of the sort discussed by some of the commenters may not necessarily reflect discriminatory behavior. n294 MVPDs may choose to place their programming with unrelated programming for independent business reasons. n295

n293 Consistent with *Section 616(a)(3)*, the Commission's rules, as well as the non-discrimination condition adopted herein, proscribe an MVPD from discriminating in "video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage." *47 C.F.R. § 76.1301(c)*.

n294 The Commission recently recognized that decisions such as tier placement are not necessarily indicative of prohibited discrimination. *See TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc., Memorandum Opinion and Order, 25 FCC Rcd 18099, FCC 10-2002 P 13 2010 FCC LEXIS 7391, n.68 (released Dec. 22, 2010)* ("We find no basis in the record to conclude that TWC's carriage of its affiliated RSNs on basic or expanded basic tiers while refusing such carriage to MASN was motivated by considerations of affiliation rather than by the demand, cost, and bandwidth considerations presented by each network.").
[**162]

n295 Comcast-NBCU argues that evolving interactive guides and navigation features have the potential to make neighborhooding less important in the future, as viewers may find programming through a search function. *See* Letter from Michael Hammer, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, at 4-5 (filed Oct. 22, 2010). Our condition, however, would only take effect if Comcast-NBCU undertook to neighborhood its news or business news channels, which therefore would indicate that there was some value to neighborhooding despite additional search capabilities.

124. In light of these considerations, we do not believe it is in the public interest for the Commission to impose specific channel placement requirements on Comcast beyond the narrow condition we impose for news programming. As when the Commission initially adopted the program carriage rules implementing Section 616, we "must strike a balance that not only prescribes behavior prohibited by the specific language of the statute, but also preserves the ability of affected parties to engage in legitimate, aggressive negotiations. [**163] " n296 We intend to evaluate the parties'

behavior in the context of the specific facts [*4289] pertaining to each negotiation. n297 By our actions today, we take measures to prohibit program carriage discrimination while allowing parties the flexibility to engage in good faith, arm's-length transactions. n298 We believe that these measures are sufficient to address the program carriage concerns raised by the vertical integration of Comcast and NBCU. n299 Particularly in light of the protections afforded by the program carriage rules, we are not persuaded by Allbritton that it is necessary for Comcast-NBCU to take the costlier step of divesting its NBCU O&Os in DMAs in which Comcast may have market power in order to protect unaffiliated programmers. n300

n296 *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, Second Report and Order, 9 FCC Rcd 2642, 2648 (1993)*.
n297 *See id*.
n298 [TEXT REDACTED BY THE COURT]. *See, e.g.*, 60nbcu0000040-43, [TEXT REDACTED BY THE COURT]; 60nbcu0000159-61, [TEXT REDACTED BY THE COURT].
[**164]

n299 To the extent commenters raise concerns regarding the Commission's program carriage rules more generally, we note that the Commission has an open rulemaking proceeding regarding these issues. We defer discussion of the Commission's program carriage rules to the larger rulemaking proceeding. *See Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, Notice of Proposed Rulemaking, 22 FCC Rcd 11222 (2007)*.
n300 We also believe that requiring divestiture of the NBCU O&Os could be counterproductive to the concerns identified in Section V.C.1 of this Order. *See* Letter from Jennifer Johnson, Counsel for the NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC (Dec. 9, 2010); Comments of the NBC Television Affiliates at 15-16 (filed Jun. 21, 2010) ("NBC Affiliates Comments").

B. Potential Competitive Harms Arising from Horizontal Elements of the Transaction

125. In analyzing the horizontal elements of the proposed transaction, we examine the effects of the joint venture on competition in: [**165] (1) local distribution markets in which Comcast is the dominant cable provider and NBCU owns broadcast television stations; (2) the sale of video programming to MVPDs; (3) content production; and (4) online video content. We also examine the effects of the proposed transaction on advertising in video programming on both cable and broadcast television and on the Internet.

1. Linear Programming

a. Distribution

126. *Positions of the Parties*. Commenters allege that the proposed transaction will decrease competition by increasing concentration in local video distribution markets where Comcast is the dominant cable provider and an NBCU O&O broadcast station falls within the footprint of Comcast's cable operations. n301 These commenters state that Comcast and NBCU currently compete in the distribution of video within many large metropolitan areas throughout the United States, and that the joint venture will concentrate their shares of audiences in each of these overlap locations. n302

n301 *See, e.g.*, Free Press Petition -- Cooper/Lynn Declaration at 6-7, 19, 47-52 (discussing competition in local

X. CONCLUSION

284. We have reviewed the proposed transaction, the Application of Comcast, [**365] GE and NBCU and related pleadings and other submissions. We conclude that the Applicants are fully qualified and that the public interest benefits promised by the proposed transaction are sufficient to support the grant of the Application, pursuant to the public interest balancing test of *Section 310(d)* of the Act, subject to the [*4353] conditions specified in Appendix A. The specific license assignments and transfers granted by this Order are set forth in Appendix C.

XI. ORDERING CLAUSES

285. Accordingly, having reviewed the Application and the record in this matter, IT IS ORDERED, pursuant to Sections 4(i) and (j), 303(r), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, *47 U.S.C. §§ 154(i), 154(j), 303(r), 214(a), 214(c), 309, 310(d),* that the Consolidated Application for Consent to Transfer Control of various Commission licenses from General Electric Company to Comcast Corporation, as set forth in Appendix C, IS GRANTED subject to the conditions set forth in this Order, including Appendix A and the commitments in the Applicants' letter of January 17, 2011. n732

n732 Letter from Kathy A. Zachem, Vice President, Regulatory and State Legislative Affairs for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Jan. 17, 2011).

[**366]

286. IT IS FURTHER ORDERED, that the conditions and commitments incorporated herein shall continue to apply until the conditions expire by their own terms as expressly stated, or the Commission determines that the conditions or commitments should be modified or removed.

287. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, *47 U.S.C. § 154(i),* that the Consent Decree attached as Appendix H of this Order IS ADOPTED.

288. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, *47 U.S.C. §§ 154(i), 154(j), 309, 310(d),* that the Petitions to Deny filed by Bloomberg, L.P., Communications Workers of America, Consumer Federation of America, Consumers Union, Free Press, and Media Access Project, DISH Network L.L.C. and Echostar Corporation, EarthLink, Inc., Elan Feldman, The Greenlining Institute, Rita Guajardo Lepicier, Mabuhay Alliance, National Coalition of African American Owned Media, National Telecommunications Cooperative Association and the Western Telecommunications Alliance, Public Knowledge, and WealthTV, and all similar petitions [**367] ARE DENIED except to the extent otherwise indicated in the Order.

289. IT IS FURTHER ORDERED, that, pursuant to *Section 309(k)* of the Communications Act of 1934, as amended, the application (File No. BRCT-20060810ACB) of NBC Telemundo License, LLC, for renewal of license for station KWHY-TV, Los Angeles, California, IS GRANTED.

290. IT IS FURTHER ORDERED, that the application (File No. BALCDT-20100517ADJ) to assign the license for station KWHY-TV, Los Angeles, California, from NBC Telemundo License, LLC, to Bahia Honda LLC, as Trustee, IS GRANTED, conditioned on Bahia Honda LLC filing a complete application for approval of the assignment of station KWHY-TV's license to an independent third party that is qualified to hold the license within six months of consummation of Bahia Honda LLC's acquisition of the station and the parties' consummation of that sale within 90 days of the Commission's grant of that application.

[*4354] 291. IT IS FURTHER ORDERED that the above grants shall include authority for NBCU and Comcast consistent with the terms of this *Memorandum Opinion and Order* to acquire control of any license or authorization issued for any station during the Commission's consideration [**368] of the Application or the period required for consummation of the transaction.

Marlene H. Dortch

Secretary

CONCUR BY:

GENACHOWSKI; MCDOWELL; BAKER; CLYBURN

CONCUR:

[*4510contd]

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.]**STATEMENT OF CHAIRMAN JULIUS GENACHOWSKI**

Re: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees,* MB Docket No. 10-56

After a thorough review, we have adopted strong and fair merger conditions to ensure this transaction serves the public interest.

The conditions include carefully considered steps to ensure that competition drives innovation in the emerging online video marketplace.

Our approval is also structured to spur broadband adoption among underserved communities; to increase broadband access to schools and libraries; and to increase news coverage, children's television, and Spanish-language programming. I commend the excellent work of the FCC staff; this was an endeavor that involved almost every Bureau and Office. I also want to thank Assistant Attorney General Varney and her staff for their close collaboration throughout this review.

[*4513contd]

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

JOINT CONCURRING STATEMENT OF COMMISSIONERS ROBERT M. MCDOWELL AND [**369] **MEREDITH ATTWELL BAKER**

Re: *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56

Combining assets of Comcast Corporation (Comcast) and NBC-Universal, Inc. (NBCU) is a complex and significant transaction that has the potential to bring exciting benefits to consumers that outweigh potential harms.

However interesting and intricate the issues raised by the combination of Comcast and NBCU may be, as a matter of law, our role at the Commission is limited to ensuring that the transaction complies with all applicable statutory

The slight tip of the hat that the applicants have made toward some very limited support of local media projects does not even begin to address the core of the problem. Given that this merger will make the joint venture a steward of the public's airwaves as a broadcast licensee, I asked for a major commitment of its resources to beef up the news operation at NBC. That request was not taken seriously. Increasing the quantity [**384] of news by adding hours of programming is no substitute for improving the quality of news by devoting the necessary resources. Make no mistake: what is at stake here is the infrastructure for our national conversation-the very lifeblood of American democracy. We should be moving in precisely the opposite direction of what this Commission approves today.

There are many other facets of the joint venture that trouble me. I worry, for example, about the future of our public broadcast stations. Comcast-NBCU has committed to carry the signals of any of those stations that agree to relinquish the spectrum they are presently using. Will public television no longer be available to over-the-air viewers? And, what happens when the duration of this commitment has run its course? Might the public station be dropped to make room for yet more infotainment programming? In too many communities, the public television station is the last locally owned and operated media outlet left. Public television is miles ahead of everyone else in making productive, public interest use of the digital multi-cast spectrum licensed to it. Why in the world would we gamble with its future?

While the item before the [**385] Commission improves measurably on the program access, program carriage and online video provisions originally offered by the applicants, I believe loopholes remain that will allow Comcast-NBCU to unduly pressure both distributors, especially small cable companies, and content producers who sit across the table from the newly-consolidated company during high-stakes business negotiations for programming and carriage. Even when negotiations are successful between the companies, consumers can still expect to see high prices get passed along to them, as Comcast-NBCU remains free to bundle less popular programming with must-have marquee programming. Given the market power that Comcast-NBCU will have at the close of this deal over both programming content and the means of distribution, consumers should be rightfully worried.

In sum, this is simply too much, too big, too powerful, too lacking in benefits for American consumers and citizens. I have respect for the business acumen of the applicants, and have no doubts that they will strive to make Comcast-NBCU a financial success. But simply blessing business deals is not the FCC's statutorily-mandated job. Our job is to determine whether the [**386] record here demonstrates that this new media giant will serve the public interest. While I welcome the improvements made to the original terms, at the end of the day this transaction is a huge boost for media industry (and digital industry) consolidation. It puts new media on a road traditional media should never have taken. It further erodes diversity, localism and competition-the three essential pillars of the public interest standard mandated by law. I would be true to neither the statute nor to everything I have fought for here at the Commission over the past decade if I did not dissent from what I consider to be a damaging and potentially dangerous deal.

APPENDIX:

[*4355contd]

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

APPENDIX A

Conditions

I. DEFINITIONS

For purposes of the conditions set forth in Sections I-XX below ("Conditions"), capitalized terms shall have the meanings set forth below:

"AAA" means the American Arbitration Association.

"AAA Rules" means the rules of the AAA from time to time in effect.

"Affiliate" of any person means any person directly or indirectly controlling, controlled by, or under common control with, such person at the time at which the determination of affiliation is being [**387] made.

"Attributable Interest" means a cognizable interest in an entity as defined pursuant to *47 C.F.R. § 76.1000(b)*.

"Benchmark Condition" means that an OVD has entered into at least one agreement for Video Programming with a Broadcast Network, Cable Programmer, Production Studio or Film Studio that is not an Affiliate of the OVD.

"Broadband Internet Access Service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the Conditions.

"Broadcast Network" means The Walt Disney Company (ABC), CBS, Inc. (CBS), News Corporation (FOX), and their managed or controlled subsidiaries, and their successors and assigns, and any other Person that is one of the top three providers (other than a C-NBCU Programmer) of live or recorded Video Programming [**388] over a group of local television stations by U.S. broadcast revenue in the latest declared financial year.

"Business Day" means any day that is not a Saturday or Sunday or a federal holiday.

"Cable Programmer" means Time Warner, Inc., The Walt Disney Company, News Corporation, Viacom, Inc., and their managed or controlled subsidiaries, successors and assigns, and any other Person other than a Broadcast Network or local television station that is one of the four top providers (other than a C-NBCU Programmer) of Video Programming for distribution through MVPDs by U.S. cable revenue in the latest declared financial year.

"Carriage Agreement" means any retransmission consent agreement for broadcast programming or any other agreement for carriage of Video Programming by an MVPD or OVD.

"Claimant" means an MVPD, Qualified OVD or Bargaining Agent.

"Closing" or "Closing the Transaction" means the consummation of the transaction by and among General Electric, NBCU, and Comcast more fully described in paragraphs 1-19 of this Order.

"C-NBCU" means the joint venture created as a result of the transaction approved with conditions by this Order together with its subsidiaries, Affiliates, [**389] successors, and assigns.

[*4356] "C-NBCU Programmer" means Comcast, C-NBCU, their Affiliates and any entity for which Comcast or C-NBCU manages or controls the licensing of Video Programming and/or any local broadcast television station on whose behalf Comcast or NBCU negotiates retransmission consent. n1

n1 Comcast and NBCU are prohibited from acquiring an Attributable Interest in any provider of Video Programming unless that provider is obliged to abide by the conditions set forth in this Appendix.

"Comcast" means Comcast Corporation together with its Affiliates, successors and assigns.

"Comparable Programming" means Video Programming that is reasonably similar in kind and amount. For purposes of determining whether Video Programming constitutes Comparable Programming, the parties or an arbitrator, as applicable, shall consider the following factors, among others:

(i) the number of channels and/or shows; and

(ii) the similarity of the value of the Video Programming, as evidenced by ratings, affiliate [**390] fees and/or advertising revenues and the time elapsed since the programming was first distributed. n2

n2 If an agreement triggering the Benchmark Condition involves substantially all of a Person's linear channel(s), then the C-NBC Programmer may require the OVD to license a bundle of substantially all of C-NBCU's linear channels (plus other rights if included in the triggering agreement) as the Comparable Programming. If the C-NBCU Programmer opts to license less than the bundle described above, then the parties or arbitrator (as applicable) shall take into account any pricing adjustments from the bundled price necessary to reflect fair market value.

The following categories of Video Programming are not Comparable Programming (among others): n3

(i) programming made available for presentation a day or more after it is first presented to viewers is not comparable to programming made available for presentation the first day;

(ii) sports programming is not comparable to non-sports programming; [**391]

(iii) local news programming is not comparable to programming that is not local news programming;

(iv) prior season programming is not comparable to original, first-run programming;

(v) broadcast programming is not comparable to cable programming;

(vi) Children's Programming is not comparable to programming that is not Children's Programming (defined, only with regard to Section XIII, as programming originally produced and aired primarily for an audience of children 12 years old or younger);

(vii) Films are not comparable to non-Film programming; and

[*4357] (viii) Films in the following categories are not comparable to each other: (x) Films less than five years from initial theatrical distribution, and (y) Films over five years from initial theatrical distribution.

n3 Programming shall not cease to be comparable solely because packages of programming contain some programming that is not comparable. For example, a channel, a bundle of channels or a bundle of programs may contain both sports and non-sports programming and still be eligible to trigger the Benchmark Condition or serve as Comparable Programming provided by a C-NBCU Programmer. If a bundle contains a mix of programming, some of which is comparable and some of which is not comparable, the C-NBCU Programmer shall satisfy a demand under the Benchmark Condition to the extent possible by providing programming that is similar in amount to the programming triggering the Benchmark Condition to the extent that programming is comparable to programming of C-NBCU Programmers (*e.g.*, if an OVD obtains 10 shows triggering the Benchmark Condition, 5 of which are comparable to C-NBCU programming, C-NBCU Programmers would have to provide 5 shows).

[**392]

"Economic Model" means the primary method by which the Video Programming is monetized (*e.g.*, ad-supported, subscription without ads, subscription with ads, electronic sell through ("EST") or PPV/TVOD) reflected in the terms of the agreement(s) for the Comparable Programming.

"Experimental Deal" means an agreement between an OVD and another Person for a term of six months or less. n4

n4 The fact that an agreement includes termination provisions, including termination for convenience, shall not be deemed to reduce the term of the agreement for purposes of this definition. Agreements shall also be deemed to have a term of more than six months if they have no termination, renew automatically unless cancelled for an aggregate term of more than six months, are renewed so they last more than six months in the aggregate, or are successive agreements containing substantially similar conditions and cover substantially similar programming.

"Film" means a feature-length motion picture that has been theatrically [**393] released.

"Film Studio" means Warner Bros. Entertainment, Fox Filmed Entertainment, Paramount Motion Pictures, Sony Pictures Entertainment, Walt Disney Motion Pictures Group, and their managed or controlled subsidiaries, successors and assigns, and any other Person that is one of the top five distributors (other than a C-NBCU Programmer) of Films by U.S. box office gross revenue in the latest declared financial year.

"MVPD" means a multichannel video programming distributor as that term is defined in *47 C.F.R. § 76.1200(b)*.

"MVPD Price Condition" means that an OVD is willing to pay the economic equivalent of the price, terms and conditions on which C-NBCU Programmers provide Video Programming to MVPDs.

"NBCU" means NBC Universal, Inc. and its Affiliates.

"Online Video Programming" means Video Programming that any C-NBCU Programmer has the right to enable others (including but not limited to other MVPDs and OVDs, but not including solely Comcast or C-NBCU) to display by means of the (i) Internet or (ii) other IP-based transmission path provided by a Person other than the OVD.

"Order Date" or "date of this Order" means the date on which the Commission releases its [**394] Order in MB Docket No. 10-56 resolving the Application, as defined therein.

"OVD" means any entity that provides Video Programming by means of the (i) the Internet or other IP-based transmission path provided by a Person other than the OVD. An OVD does not include an MVPD inside its MVPD footprint or an MVPD to the extent it is offering Online Video Programming as a component of an MVPD subscription to customers whose homes are inside its MVPD footprint.

"Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, officer, or other business or legal entity, whether private or governmental.

"Production Studio" means Warner Bros. Television, 20th Century Fox Television, Paramount/CBS Television Studios, Sony Pictures Television, Disney-ABC Studios, and their managed or controlled subsidiaries, successors and assigns, and any other Person that is one of the top five producers (other than a C-NBCU Programmer) of Video Programming for distribution through Broadcast Networks or Cable Programmers by U.S. production revenue in the latest declared financial year.

[*4358] "Qualified OVD" means [**395] any OVD that meets either or both of (i) the MVPD Price Condition and (ii) the Benchmark Condition.

"Regional Sports Network" and "RSN" mean any non-broadcast video programming service that (i) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball and (ii) in any year, carries a minimum of either 100 hours of programming that meets the criteria set forth in (i) above, or 10% of the regular season games of at least one sports team that meets the criteria set forth in (i) above.

"Similarly Situated MVPD" means an MVPD that is comparable to the OVD seeking a license for Online Video Programming.

"Specialized Service" means any service provided over the same last-mile facilities used to deliver Broadband Internet Access Service other than (i) Broadband Internet Access Services, (ii) services regulated either as telecommunications services under Title II of the Communications Act or as MVPD services under Title VI of the Communications [**396] Act, or (iii) Comcast's existing VoIP telephony service.

"Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable network, regardless of the medium or method used for distribution, and includes but is not limited to: programming prescheduled by the programming provider (also known as scheduled programming or a linear feed); programming offered to viewers on an on-demand, point-to-point basis (also known as video on demand ("VOD"), pay per view ("PPV") or transactional video on demand ("TVOD")); short programming segments (also known as clips); programming that includes multiple video sources (also known as feeds, including camera angles); programming that includes video in different qualities or formats (including high-definition and 3D); and Films for which a year or more has elapsed since their theatrical release.

"Video Programming Vendor" has the meaning given that term under *47 C.F.R. § 76.1300(e)*.

II. CONDITION CONCERNING ACCESS TO C-NBCU PROGRAMMING

If negotiations fail to produce a mutually acceptable set of price, terms and conditions for a Carriage Agreement [**397] with one or more C-NBCU Programmers, an MVPD or Bargaining Agent may choose to submit a dispute to commercial arbitration in accordance with the procedures in Section VII below.

III. CONDITIONS CONCERNING CARRIAGE OF UNAFFILIATED VIDEO PROGRAMMING

1. Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).

2. If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that

neighborhood.

3. Comcast shall add ten new independently owned-and-operated channels to its digital (D1) tier on customary terms and conditions as follows: (i) one channel within 18 months of the Order Date; (ii) two additional channels within two years of the Order Date; (iii) one additional channel within three years of [**398] the Order Date; (iv) two additional channels within six years of the Order Date; and (v) four additional channels within eight years of the Order Date. For purposes of this Condition, independent [*4359] entities deemed to be eligible for such channels are those networks that are not carried by Comcast and not an Affiliate of Comcast or a top 15 programming network, as measured by annual revenues.

4. For purposes of enforcing the Conditions of this Section III, any Video Programming Vendor may submit a dispute to the Commission in accordance with the Commission's program carriage complaint procedures, *47 C.F.R. § 76.1302*.

IV. ONLINE CONDITIONS

A. ONLINE PROGRAM ACCESS

1. **MVPDs**: For any Online Video Programming that any C-NBCU Programmer licenses to any Affiliated or non-Affiliated MVPD for online display, the C-NBCU Programmer shall provide that Online Video Programming at fair market value and on non-discriminatory prices, terms and conditions to any other MVPD for online display.

2. **Qualified OVDs**:

a. MVPD Price Condition:

(i) For any Qualified OVD that satisfies the MVPD Price Condition, CNBCU Programmers shall provide Online Video [**399] Programming sought by the OVD to the extent that the Video Programming sought is materially the same as Video Programming that C-NBCU Programmers offer to any Similarly Situated MVPD.

(ii) The price, terms and conditions shall be the economic equivalent of the price, terms and conditions that a Similarly Situated MVPD would pay for the Online Video Programming. If any obligation is imposed on the Similarly Situated MVPD to make the programming available through a linear channel, the economic equivalent shall include a materially similar obligation. n5 The economic equivalent should take account of (among other things) (w) any difference in advertising revenues caused by OVD distribution compared with MVPD distribution, (x) the impact on fair market value if Comcast or C-NBCU does not have the rights to enable the OVD to provide all programming as a linear stream over the Internet or other IP-based transmission path, (y) any generally applicable, market-based requirements regarding minimum subscriber and penetration requirements, and (z) any other evidence relevant to whether a C-NBCU Programmer will receive substantially equal Video Programming revenues in connection with the provisioning [**400] of Video Programming to the OVD as it would earn from the provisioning of the same Video Programming to an MVPD.

(iii) The failure of a Qualified OVD to identify a specific Similarly Situated MVPD does not relieve Comcast or C-NBCU of the requirement to provide Online Video Programming to the Qualified OVD at fair market [*4360] value based on agreements of MVPDs that are most similarly situated to the Qualified OVD.

b. Benchmark Condition:

Exhibit 7

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

June 21, 2010

Stephen Díaz Gavin
Direct 202-457-6340
Direct Fax 202-457-6482
sgavin@pattonboggs.com

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
#TW-A325
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 Rick Kaplan, Chief of Staff to Commissioner Clyburn. The subject of the meeting was the above-captioned application.

During the meeting, Mr. Babyak and I discussed with Mr. Kaplan 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. These conditions include 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 Bloomberg's Bloomberg Television® ("BTV") that compete with its "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. Kaplan 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 disputes involving subscription fees.

PATTON BOGGS LLP
ATTORNEYS AT LAW

At the conclusion of the meeting, we provided Mr. Kaplan 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: Rick Kaplan
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.

Exhibit 8

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

DOCKET FILE COPY ORIGINAL

June 21, 2010

Stephen Díaz Gavin
202-457-6340
sgavin@pattonboggs.com

VIA HAND DELIVERY

FILED/ACCEPTED

JUN 21 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 two copies of the Bloomberg, L.P.'s Petition to Deny and accompanying economic report prepared by Leslie Marx, redacted for public inspection. Highly Confidential and Confidential versions of Bloomberg, L.P.'s Petition to Deny and accompanying economic report prepared by Leslie Marx 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 Bloomberg Petition to Deny and accompanying economic report are being simultaneously delivered to Vanessa Lemmé, Industry Analysis Division, Media Bureau, Federal

No. of Copies rec'd 0+1
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PATTON BOGGS LLP
ATTORNEYS AT LAW

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
Partner

Counsel for Bloomberg, L.P.

Enclosures

SDG:rea

REDACTED FOR PUBLIC INSPECTION

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

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

To the Commission:

PETITION TO DENY

Stephen Díaz Gavin
Kevin J. Martin
Janet Fitzpatrick Moran
Patton Boggs LLP
2550 M St., NW
Washington, DC 20037
(202) 457-6000

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

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

To the Commission:

PETITION TO DENY

I. INTRODUCTION

Bloomberg L.P. ("Bloomberg"), pursuant to Section 309(d) of the Communications Act of 1934, as amended (the "Communications Act"),[1] and Section 73.3584[2] of the Commission's Rules,[3] hereby petitions to deny the above-captioned application for transfer of control of NBC Universal, Inc. ("NBCU") from General Electric Company ("GE") to Comcast Corporation ("Comcast").[4]

[1] 47 U.S.C. § 309(d) (2006 & Supp. III).

[2] This Petition extends to all of the licenses and authorizations included in the Application.

[3] 47 C.F.R. § 73.3584 (2009).

[4] See Applications for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation, Transferee, Public Notice, MB Docket No. 10-

There are substantial and material questions of fact as to whether grant of the Comcast-NBCU Transaction will serve the public interest, in particular by permitting one company to own the single largest video distribution platform in the U.S. and also control the editorial content of a substantial portion of the news programming available in the United States. The proposed combination will create a fully vertically and horizontally integrated communications behemoth that for the first time in the history of the regulation of the communications industry, will combine under the control of one entity – Comcast –the Nation's largest multichannel video programming distributor ("MVPD") with 24 million subscribers, two national television broadcast networks (NBC and the Telemundo Spanish-language network), the largest broadband service provider, 25 local broadcast stations, numerous cable television programming networks owned by Comcast (*e.g.*, E! and the Golf Channel) with those of NBC Universal (e.g., CNBC and the Weather Channel), Universal movie studios and numerous on-line properties.

Specifically, the proposed merger would harm the public interest by granting Comcast-NBCU the ability and incentive to cause harm to, and discriminate against, independent programmers in order to restrain competition. This discrimination threatens imminent injury to independent programmers -- particularly independent news programmers -- and this will negatively affect the viewing public.

The Commission must deny the Application as currently proposed. In the alternative, if the Commission were to grant the Application, it must insist upon strict and enforceable conditions on the Merger – in addition to and independent of present mechanisms such as the

56, DA 10-457 (Mar 18, 2010) (hereinafter, the applications referred to therein, "Application" and the transaction referred to therein, the "Transaction" or the "Merger").

program carriage rules – to prevent Comcast from acting in an anti-competitive manner to protect its substantial interest in NBC Universal's programming. If the Commission does not adopt such conditions, the Commission should require divestiture of CNBC.

Of particular concern is the area of news and information programming. Following consummation of the Merger, one entity will control several major news outlets including NBC News, MSNBC, CNBC, the Spanish-language Telemundo news programming and the Weather Channel, as well as regional news channels such as New England Cable News. The news programming networks are critical to the Merger. Of these programming networks, CNBC is the second most profitable property in the Transaction.[5] Indeed, Comcast CEO Brian Roberts has been recently quoted as saying that "NBC News is the "single most awesome asset that comes from this deal."[6]

Bloomberg's television news service, Bloomberg Television® ("BTV"), the only worldwide 24-hour business and financial television network, is a party "likely to be financially injured" by the proposed combination.[7] Grant of the Application will provide Comcast the ability to, and create substantial incentives for, Comcast to acutely harm and discriminate against

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[5] Andrew Edgecliffe Johnson, CNBC Profits From A Crisis, http://cachef.ft.com/cms/s/0/58992544-0b77-11df-8232-00144feabdc0,s01=1.html?SID=google (last visited June 4, 2010) ("NBC Universal does not disclose such numbers, but CNBC is reputed to have become its second-most lucrative channel after USA Networks, with an operating profit of between $300m and $400m. As such, it serves as a microcosm of what Comcast sees in NBC Universal").

[6] Joe Flint, Comcast CEO Brian Roberts Says Cable Gets Bum Rap and he likes 'Californication', LA TIMES, May 11, 2010, available at http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/05/comcast-ceo-brian-roberts-says-cable-gets-bum-rap-and-he-likes-californication.html.

[7] See FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 477 (1940).

BTV. Specifically, Comcast will be able to maximize its subscriber and advertising revenue for CNBC at the expense of BTV without the threat of losing MVPD customers.

The creation of such a combination runs directly contrary to decades of communications law policy founded on the principle that the public interest is served by "the widest possible dissemination of information from diverse and antagonistic sources."[8] The Transaction not only merges two currently independent news voices, but also creates an entity that will have every incentive and ability to foreclose other independent sources of news and information. The Commission can only grant the Application with the imposition of substantial conditions to prevent anti-competitive practices and conduct by the entity controlled by Comcast. If the Commission does not adopt such conditions, it should require divestiture of CNBC. In the alternative to such a condition, it must designate specific operational conditions, as well as remedies to ensure the enforcement of the conditions, as set forth in Exhibit 2.

The proposed Merger will result in an unprecedented vertically integrated media venture, which will control a significant amount of programming content. The merged venture will also have the capacity to substantially harm competitors' programming, particularly in the area of news. The vertical integration, complete with the incentive for Comcast to cause substantial harm to BTV, CNBC's principal competitor, would threaten the elimination of the last independent news voice. The Merger, therefore, requires a concomitant, unprecedented level of

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[8] Associated Press v. United States, 326 U.S. 1, 20 (1945). The Commission has long held that the public interest standard obliges it to review the impact of mergers on competition, even those nominally complying with the various media ownership rules. See generally Applications of Great Scott Broadcasting, Assignor and Nassau Broadcasting II, L.L.C., Assignee, Memorandum Opinion and Order, 17 FCC Rcd 5397, 5398 ¶ 2 (2002).

scrutiny by the Commission. The Commission cannot approve the Merger in the form presently proposed by GE and Comcast.

A. Bloomberg History, Recent Investments and Hires

Bloomberg TV ("BTV") is wholly owned by Bloomberg L.P., an internationally recognized provider of financial news and information. BTV provides 24-hour business news programming delivered over MVPDs, but also available online. Although Bloomberg TV was launched in 1994, it was initially targeted to serve the narrow market of professional investors who were already clients of Bloomberg's terminal services. However, beginning about 18 months ago, Bloomberg TV was redesigned to appeal to a much wider audience. Under its new management, Bloomberg is taking steps to take full advantage of the company's extensive resources as one of the world's largest and most respected business news organizations. Bloomberg employs more than 2300 reporters and editors worldwide, making it among the largest newsgathering organizations in the world. BTV hired Andy Lack, former chairman and CEO of Sony Music Entertainment, President and COO of NBC, and President of NBC News to head its radio, television, and interactive divisions. BTV also hired Norman Pearlstein, former top editor of Time and The Wall Street Journal, to be its chief content officer. BTV also hired an entirely new management team. As a result, BTV is fast becoming a formidable competitor to CNBC, currently the dominant provider of televised business news, as well as Fox Business News. Where it has been able to compete on a level playing field with CNBC, Bloomberg TV has already shown the ability to threaten and in some cases in Europe surpass its longer-established rival. Indeed, abroad, BTV is already one of the world's largest and most trusted information sources.

B. BTV is the Last Independent Source of News and Information

BTV is the principal U.S. news and information channel that is not affiliated with a multichannel network owner, multichannel video programming distributor ("MVPD") or other national producer of video programming. BTV is the last source of independent news, analysis and information, unencumbered by editorial and content pressures from affiliated MVPDs or national programming networks. As discussed in greater detail below, the Commission 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 BTV, is critically important to the public interest. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. As an independent news source, BTV contributes to a robust marketplace of ideas reflecting varied perspectives and viewpoints on business news and information. The recent financial crisis and its impact on the nation as a whole only underscores the need for objective business news and analysis.

C. BTV Success On Satellite and Abroad

Whenever BTV is placed near CNBC, and allowed to compete for viewers fairly, BTV's viewership significantly increases. For example, in the U.S., BTV has significantly more viewers when carried on satellite systems, which have channel "neighborhoods" with BTV placed near CNBC than on cable systems, where BTV is not. Such placement of BTV on channels near to CNBC increases viewership by [[[redacted]]].[9] When neighborhooded with CNBC, hours BTV is watched per week increases [[[redacted]]], relative to average hours watched.[10] In fact, when BTV was simulcast in the morning by the USA Network from 2001-2003, which was prior to NBC's acquisition of USA Network, at which time carriage of BTV was dropped, BTV occasionally outdrew CNBC during the critical early morning "prime time" hours.[11]

Similarly, BTV has significantly higher viewership when it is carried on cable systems in non-U.S. markets where its channel is neighborhooded with CNBC and similar news programming. [[[redacted]]][12] To support its wide international viewership, Bloomberg TV broadcasts through Bloomberg Asia, Bloomberg Europe, and Bloomberg USA.[13] News bureaus in London, Hong Kong, and Beijing – to name only a few – broadcast internationally at varying times throughout the day. These international programs enjoy widespread success. Bloomberg has received numerous awards for BTVs. [14]

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[9] See Exhibit 3, Dr. Leslie M. Marx, Professor of Economics, Duke University and former Chief Economist, Federal Communications Commission, Economic Report on the Proposed Comcast-NBC Universal Transaction at Appendix at 23 ("Marx Report").

[10] Marx Report Appendix at 23.

[11] USA Weekly Report Spreadsheet.

[12] [[[redacted]]]

[13] Bloomberg Television, http://www.bloomberg.com/media/tv/ (last visited June 4, 2010).

[14] Bloomberg Television, About Bloomberg, News Awards, http://about.bloomberg.com/news_awards.html (last visited June 4, 2010).

likely to contravene Commission policy goals by analyzing the potential effects the transactions may have on MVPD competition and on the flow of video programming to consumers."[61]

B. Promoting a Diversity of Viewpoints in Programming, Particularly in News Programming, is a Critical Element of Public Interest Analysis.

1. There is a long history of federal Policy favoring diverse sources of news and information

Public interest analysis includes "ensuring that a diversity of voices is made available to the public."[62] The Commission must preserve viewpoint diversity in news programming to ensure that the public interest is well served. To preserve that diversity in news programming, the Commission should be mindful of a transaction's impact on independence in news programming. The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society."[63]

To promote competition and improve viewpoint diversity, the Commission's media ownership rules limit the number and types of same-market media outlets in which a company may hold an interest.[64] In adopting its ownership rules, the Commission concluded "that the proposed [cross-ownership] regulations would serve 'the purpose of promoting competition among the mass media involved, and maximizing diversification of service sources and

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[61] Id. at 8234 ¶ 60 & n.220 (noting that "these goals are embodied in various statutory provisions, including § 613(f)… of the 1992 Act").

[62] News Corp at 483-84 ¶ 16.

[63] Associated Press v. United States, 326 U.S. 1, 20 (1945).

[64] 47 C.F.R. §73.3555(c), (d).

viewpoints.'"[65] Although the FCC eliminated the cross-ownership rules, it has retained its ability to review these public interest harms.[66] Thus, the Commission recognizes the significance of these harms and the need to address them in reviewing a merger.[67]

Here, Comcast will control two national news networks (NBC News and Telemundo), MSNBC and CNBC, the dominant business news channel, as well as news and information programs like the Weather Channel and regional news channels. Business news has become even more important during the recent U.S. and European financial crises. The adverse effect of the Merger is even more pronounced because only CNBC, Fox, and BTV provide such focused programming. If the Commission approves the Transaction, BTV will be the only such independently owned news outlet remaining.

2. Diversity of news sources requires a competitive playing field.

The migration of advertising revenue from traditional models to new distribution platforms has already strained independent news sources. The Commission must take steps to ensure that a diversity of voices will remain after the Transaction. It must address any potential harm to news programmers that might occur as a result of the Merger.

Financial difficulties are forcing independent news outlets of all types to reduce costs, resulting in less news being available to consumers. These financial difficulties impact

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[65] Nat'l Citizens, 436 U.S. at 784; 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 ¶ 84 ("cross-ownership rules aim to maintain a vibrant marketplace of ideas to ensure a diversity of editorial content") ("Media Cross Ownership Order").

[66] Adelphia at 8234 ¶ 60.

[67] Id.

BTV submits that, absent an order to divest CNBC or adoption of stringent conditions, the Merger will result in discrimination against independent programmers in the following areas: channel placement discrimination, discrimination in payment terms, degradation or restriction of consumers' Internet access to independent programmers' content foreclosure in advertising, and foreclosure of carriage by other MVPDs. The Marx Report supports BTV's concerns by detailing significant economic harms that may result from the merger in all of these areas. An in-depth discussion of the harmful effects this transaction will have on the public interest and on BTV is set forth below.

A. Discriminatory Channel Placement

1. Neighborhooding

Channel placement on MVPD systems contributes significantly to maintaining and increasing viewership. "Neighborhooding," is the industry practice of placing channels of the same genre adjacent to one another in the system's channel line-up. Modern distribution systems such as DirecTV, Dish, FiOS, and U-Verse cluster together children's programs, shopping, cooking, and, most importantly, business news and 24-hour cable news channels in the same channel "neighborhood." Other MVPDs are expected to adopt neighborhooding as they transition to digital technology.[97] If the Transaction had not been proposed, BTV would have expected to be neighborhooded with other business news channels as Comcast neighborhooded

[97] For example, Time Warner has begun such transitions. For example, Time Warner has announced that in North and South Carolina it is rearranging its digital channels into categories by programming type, placing the general news and business news together. Time Warner Cable Press Release: "TV Made Easy: Time Warner Cable Launches New Theme-Based Channel Lineup," March 26, 2010. Time Warner is also doing so in various Wisconsin systems.

all of its systems. Absent this merger, it would have been in Comcast's financial interest to neighborhood BTV. Indeed, with Bloomberg's recent efforts to improve and differentiate BTV's business news product, it would have been in Comcast's own financial interest to offer its customers BTV on a channel position near CNBC. As a result of the Transaction, however, Comcast will have a new incentive not to implement this pro-consumer development on its systems in order to disadvantage networks like BTV that compete with Comcast-owned networks like CNBC.

The importance of channel position has been recognized not only by industry, but also by Congress. "A cable system has a direct financial interest in promoting those channels on which it sells advertising or owns programming... there is an economic incentive for cable systems to deny carriage to [competing] local broadcast signals, or to reposition broadcast signals to disadvantageous channel positions, or both."[98] This incentive is exacerbated by "[i]nterlocking ownership of cable operation and programming interests[.]"[99] "Other factors being neutral, cable operators prefer to carry the programming of affiliated programmers in whose advertising revenue they share . . ."[100]

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http://www.timewarnercable.com/wisconsin/lcarn/new_digital_lineup.html, accessed June 20, 2010.

[98] Cable Television Consumer Protection and Competition Act of 1992 , H.R. Rep. No. 102-628, LEXSEE 102 H RPT 628 at *93 (1992).

[99] Turner Broad., supra, 910 F. Supp. at 753.

[100] Id.

The 1992 Cable Act specifically recognized the importance of channel placement in a number of contexts.[101] For example, MVPDs are required to carry certain local broadcast stations at particular channel positions.[102]

As noted above, BTV's significant success on international cable systems is related to neighborhooding. The Marx Report also documents BTV's success when neighborhooded on U.S. satellite MVPDs. Absent the merger, BTV would have expected Comcast to neighborhood its channel line-up quickly to compete with other MVPDs, and that such a transition would be fostered by Comcast's conversion to digital cable. Now, however, Comcast will have a significant competitive reason to leave BTV in less favorable channel positions. Absent conditions to the Merger, Comcast will have the ability and incentive to permanently strand BTV at a competitively disadvantageous location in the channel line-up.

Control over the channel line-up is a powerful tool to unfairly favor affiliated channels and disadvantage competitors. Comcast-NBCU will be able to discriminate with respect to channel placement, thereby placing BTV at a significant competitive disadvantage. As demonstrated in the Marx Report, the effect of neighborhoods, and the exclusion from neighborhoods, is significant. The Marx Report finds proximity to CNBC increases the

[101] Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 102-628, LEXSEE 102 H RPT 628 at *47 (1992) ("systems will carry a reasonable complement of local stations on secure and predictable channel positions"); see also id. at *71.

[102] The Cable Act requires that "[e]ach signal carried in fulfillment of the carriage obligations… under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air" or on, inter alia, a mutually agreed upon channel. 47 U.S.C. § 534(b)(6).

probability that a viewer will watch BTV by [[redacted]]. Neighborhoods also increase the number of BTV hours watched by [[redacted]] relative to average hours watched.[103]

Moreover, CNBC's location in a neighborhood with BTV decreases the probability it will be watched by [[redacted]] and decreases its hours watched by [[redacted]].[104] With CNBC's viewership decreasing when placed near BTV, a combined Comcast-NBCU would have every incentive to place CNBC in more favorable channel position than BTV or retain favorable channel placement in lieu of moving toward the neighborhood channel placement model that is the industry trend.[105]

Comcast has recognized the importance of neighborhooding and used it against its competition, in other areas, such as sports programming. First it ensured that its own regional sports channel, Comcast Sports Channel, was placed beside ESPN. When Comcast added Versus, its own national sports programming channel, to the Washington, D.C. system, it located it at Channel 7, immediately adjacent to sports channels ESPN-2 (channel 8), ESPN (channel 9), and Comcast Sports (channel 10), while the main channel of its unaffiliated sports channel competitor, MASN, remained located at channel 42.

The Marx Report sets forth in detail the specific potential harms that a failure to neighborhood BTV will cause.[106] The Marx Report demonstrates that Comcast-NBCU would have the incentive and ability to perpetuate CNBC's channel placement advantages and implement neighborhooding (if at all) only in a manner that will continue to place BTV in a

[103] Marx Report Appendix 23.

[104] Id.

[105] Id.

[106] Marx Report at 29-31.

position removed from CNBC and other general news and business news channels. Given the incentive to place BTV outside the "news neighborhood," away from CNBC, the Commission should deny the Merger or condition the merger to require neighborhooding. At the very least, the FCC should prevent Comcast from leaving BTV and other independent competing programmers in disadvantageous channel positions when Comcast's cable systems create genre-related neighborhoods.[107] Specifically, if the Commission does not deny the Application, the FCC should require that, as soon as possible and in no case later than six months after a decision, Comcast reorganize its channel placement alignment so that business news channels are adjacent and contiguous to CNBC and any similar Comcast business news channels at each position where such channel is carried.

2. <u>Tier Placement</u>

For many of the same reasons that neighborhooding is critical to maintaining robust competition in business news programming, so, too, is tier placement. Tier placement refers to offering a particular channel in a cable system's basic line up or in a special line-up which subscribers can add to a basic subscription. The Commission has previously addressed the issue of tier placement in several contexts. For example, in the context of commercial leased access, the Commission has acknowledged the importance of a channel's placement on tiers with broad subscriber bases. It required, therefore, that "[c]able operators shall place leased access programmers that request access to a tier actually used by most subscribers on any tier that has a

[107] <u>Leased Commercial Access, Report and Order</u> and <u>Further Notice of Proposed Rulemaking</u>, 23 FCC Rcd 2909, 2917 ¶¶ 16-18 (2007).

EXHIBIT 3

REDACTED – FOR PUBLIC INSPECTION

ECONOMIC REPORT
ON THE PROPOSED
COMCAST-NBC UNIVERSAL TRANSACTION

BY
LESLIE M. MARX
Professor of Economics, Duke University
and former Chief Economist, Federal Communications Commission

June 21, 2010

90) Because the parties proposed an inappropriately broad market for programming in their public interest statement ("national cable programming networks" and "regional cable networks," with the exception of regional sports networks constituting a separate market), they argue that they would have to foreclose a large number of competing networks to have an effect and that this would significantly reduce the number of networks carried on Comcast, with the effect of putting Comcast at a serious competitive disadvantage vis-à-vis other MVPDs. In addition, Comcast points out that the current regulatory regime protects independent programmers from discrimination.[82]

91) As shown in Section B, the market for MVPD distribution of TV business news programming is an antitrust market characterized by high barriers to entry, implying that Comcast need only foreclose one or two networks, namely Bloomberg TV and/or Fox Business Network, in order to achieve the benefits of foreclosure. Furthermore, evidence presented above on the importance of Comcast distribution to Bloomberg TV's continuing operation speaks to the ability of Comcast to eliminate Bloomberg TV as a competitor to CNBC on any system by denying Bloomberg TV access to Comcast's systems.

92) The concerns described in the overview above are borne out in the data for business news. As I discuss below, competitive harms in business news as a result of the Transaction are possible through channel placement (Section C.2), refusal to carry (Section C.3), restrictions on on-line distribution (Section C.4), carriage bundling (Section C.5), and advertising bundling (Section C.6).

93) The incentive for Comcast to engage in activities that result in these competitive harms follows from the ownership interest in CNBC and CNBC World that Comcast would obtain through the Transaction and the resulting incentive to increase advertising revenues and license fees for those networks, increasing or maintaining CNBC's 85% market share in TV business news.[83]

C.2. Potential harms relating to neighborhood effects

94) I conclude that the Transaction creates a significant incentive for Comcast to reduce Bloomberg TV's competitive impact by locating Bloomberg TV in a less desirable channel location, far from CNBC. This is particularly significant because in the absence of the Transaction, it would be likely that Bloomberg TV would be positioned in the same "neighborhood" as CNBC when Comcast realigns its channel locations as it transitions its headends from analog to digital transmission – adoption of a viewer-friendly, genre-based channel lineup is valuable to viewers when an MVPD offers a large number of channels.[84] This conclusion is buttressed by the fact that the DirecTV and DISH channel

[82] See GE and Comcast's "Applications and Public Interest Statement," p.107f.

[83] See footnote 2.

[84] Time Warner Cable promotes its "NEW theme-based digital lineup" for various Wisconsin systems as making "finding what you want faster and easier than ever." (http://www.timewarnercable.com/wisconsin/learn/new_digital_lineup.html, accessed June 14, 2010)

line-ups as well as FIOS and U-Verse are genre-based and cluster the business news programming of Bloomberg TV, CNBC, and Fox Business Network close to one-another. Similarly, throughout Europe and Asia, where headends offer hundreds of digital channels, business news is "neighborhooded."

C.2.1. Channel position on cable versus satellite

95) I begin by using the difference between Bloomberg TV's channel placement on satellite and average channel placement on cable to analyze the effects of channel position on viewership.

96) The Dish channel lineup includes: 203-Bloomberg TV, 204-truTV, 205-Fox News Channel, 206-Fox Business Network, 207-CNBC World, 208-CNBC.[85] On DirecTV, the channel lineup includes 353-Bloomberg TV, 354-G4, 355-CNBC, 356-MSNBC, 357-CNBC World, 358-Current TV, 359-Fox Business Network. Thus, on both Dish and DirecTV, Bloomberg TV is positioned within five channels of CNBC.[86]

97) In contrast, on cable, Bloomberg TV and CNBC are rarely within five channel positions of one another at present on Cablevision, Charter, Comcast, Cox, or Time Warner (less than 0.21% of households, conditional on both networks being carried),[87] although this is expected to change as cable systems become digital and can more easily mimic the channel organization by genre that is used by DirecTV, Dish, AT&T, and Verizon (distributors not constrained by legacy analog systems).[88] See Table 10 for Comcast's channel positions in major DMAs.

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[85] Dish channel guide available at http://www.dishnetwork.com/downloads/Channel-Lineup/StandardHDChannelGuide.pdf, accessed March 29, 2010. On Dish, Bloomberg TV is also available at channel 893, with CNBC also available at channel 892, as part of Dish's Latin group of programming services, which are carried on channels in the 800s. Bloomberg TV is part of the DishLatino Max package. [[[redacted]]]

[86] Data constraints prevent me from analyzing the effects of adjacency, which would presumably be stronger than the effects of being within a five-channel neighborhood.

[87] 2007 TMS Data. For other MSOs, 2007 TMS Data show that they are within five channels for 5.97% of households carrying both and for non-MSOs, they are within five channels for 14.94% of households carrying both. In addition, 2007 TMS Data show that Bloomberg TV and CNBC World are typically placed at channel locations above 100, while CNBC is typically placed in a channel position below 50, which is also typical for CNN.

[88] As evidence that cable MSOs are beginning to move towards channel organization by genre, in a recent press release, Time Warner Cable announced that in North and South Carolina it is rearranging its digital channels into categories by programming type, placing the general news and business news together. (Time Warner Cable Press Release, "TV Made Easy: Time Warner Cable Launches New Theme-Based Channel Lineup," March 26, 2010: "The new digital lineup rearranges digital channels above 100 into easy-to-find categories based on programming type, such as sports, music, and kids & family. The lineup will launch in the Charlotte area beginning March 30th. All Time Warner Cable digital customers across North and South Carolina will enjoy the new lineup by June. 'Research has shown that our customers tend to watch particular types of programming rather than a particular channel,' said Brian Kelly, president, residential services, Time Warner Cable Carolinas. 'Grouping channels that offer the same type of programming together will make it easier for our customers to find the shows they enjoy.' " (Available at http://www.timewarnercable.com/carolinas/about/inthenewsdetails.ashx?PRID=2844&MarketID=144, accessed April 14,