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VIA INTERNET COMMENT FORM

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-9303

File No. S7-03-06
Proposed Amendments to Requirements for
Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

On behalf of CBS Corporation, The Walt Disney Company, NBC Universal (a majority-owned subsidiary of General Electric Company), News Corporation, and Viacom Inc., we are writing to recommend that the Commission not adopt proposed new Item 402(f)(2) to Regulation S-K. Proposed Item 402(f)(2) would require disclosure of the total compensation of up to three additional employees who were not executive officers during the registrant's last completed fiscal year and whose total compensation for that year was greater than that of any of the named executive officers.

The Commission's stated purpose for the proposed new requirement is to provide "shareholders [with] information about the use of corporate assets to compensate extremely highly paid employees in a company." We respectfully suggest that this rationale does not provide a convincing justification for the proposed new requirement. We believe that the rationale applies with equal force to the use of a commensurate amount of corporate assets for any purpose; there is no reason to single out, and impose special disclosure obligations on, the use of assets for employee compensation where the employees in question are not managerial officers who have a significant policy making function at the company. Compensation of employees who are not executive officers does not implicate potential conflicts of interest and related corporate governance concerns that underlie most of the Commission's compensation disclosure rules, whether proposed or currently in place. Moreover, to the extent that the compensation arrangements for a non-executive officer are material and not in the ordinary course of business, companies are already required to file them pursuant to Item 601(b)(10) of Regulation S-K. Proposed new Item 402(f)(2), by definition, would result in disclosure exclusively of compensation amounts that are either already publicly available, or, as is more likely the case, not material to shareholders and paid in the ordinary course of business.

As other commenters on the proposals have pointed out,[1] proposed Item 402(f)(2) would impose significant compliance burdens on many companies, as they will need to centrally track the total compensation of many employees to ensure that they correctly identify the three (or fewer) employees whose total compensation exceeds that of a named executive officer. This process of identification will be made more difficult if other elements of the Commission's proposals are adopted, since companies will need to take account of items such as pension accruals, equity award values and earnings on deferred compensation. If implemented, proposed Item 402(f)(2) would likely impose significant additional costs and administrative burdens in order to achieve disclosure which, as noted above, we believe to be of limited value to shareholders.

Identifying those non-executive officers whose total compensation would need to be disclosed under proposed Item 402(f)(2) would prove especially challenging to companies in the entertainment industry. It is not uncommon for "talent" (as this term is commonly used in the media and entertainment industries, including professional athletes) to have various employment relationships with a company covering a range of projects. These relationships may extend to production companies or other business entities that may be partly or wholly owned by the employee in question. Further, many of the arrangements involve contingent compensation or profit-sharing arrangements. (This is often the case, for example, for producers, writers and directors of films and television shows.) Application of disclosure principles that are directed to compensation strategies in common use for executives of public companies will raise a host of uncertainties when applied to the very different compensation arrangements that prevail with highly paid "talent" employees. For example, we believe that additional guidance will be required concerning principles that entertainment companies should apply to distinguish employment compensation from other types of revenue or gain that a producer, director, performer or other "talent" employee might realize. We are similarly uncertain as to how entertainment companies should value contingent compensation related, for example, to a film or

[1] Letter of Richard L. Alpern, Frederic W. Cook & Co. Inc. (March 9, 2006); Letter of Jim Markey, Vice President Chief Counsel – Securities and International, Kellogg Corporation (March 16, 2006).

recording that has not yet been produced, or to one that has been released but continues to have a substantial revenue-producing life. Frequently, a motion picture or television distributor enters into (or assumes) a contingent payment arrangement or a profit sharing arrangement with an independent producer, writer or other individual who subsequently becomes an employee. How should a company disclose a payment made under a contingent compensation arrangement entered into before an employment relationship has begun? We are doubtful that guidance and rules that have evolved in the context of executive compensation will be adequate to enable entertainment companies to calculate a total compensation amount for their most valuable "talent" employees in a consistent and meaningful way.[2] These examples also illustrate the compliance burden that will be added by the proposal, as many entertainment companies do not currently have procedures in place to gather reliable information concerning the myriad types of arrangements and transactions that are common in the industry and that could impact the proposed disclosure analysis.

Even if entertainment companies could with confidence apply Item 402 principles to identify the three (or fewer) non-executive officers whose total compensation would be disclosable under proposed Item 402(f)(2), there is a meaningful risk that disclosure would result in competitive harm or otherwise prejudice their interests. Existing pay packages with non-executive officers were not structured with an eye to public disclosure (except in those relatively rare situations where disclosure would be required under Item 601(b)(10)), and both the interested employees and the company receiving the services have settled, and legitimate, expectations in the confidentiality of the pay packages. As these arrangements will often concern projects whose development and revenue-producing life can extend over several years, the introduction of a new disclosure requirement at this juncture would unfairly penalize these individuals and companies. (We note as well that while proposed Item 402(f)(2) does not require a company to identify the three or fewer additional individuals by name, the requirement that the company include a description of the individual's job position will likely make it relatively easy for the informed public – and competition - to infer the identity of the employees in question.[3])

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2 These difficulties are perhaps not surprising. The best disclosure treatment of even fairly standard elements of executive compensation (for example, stock options and deferred compensation) has taken years to evolve, as the Commission has experimented with different approaches in its effort to identify meaningful and useful disclosure principles. There is no similar history for valuing the non-standard arrangements regularly encountered in the entertainment industry. Were the Commission to adopt proposed Item 402(f)(2), detailed guidance for the application of the rule to these non-standard arrangements would be essential and would be likely to require considerable time and effort to fashion.

3 This concern depends, of course, on the level of detail about the job position that the Commission will require. However, even if a description such as "TV personality" is adequate, it is not unlikely that readers will be able to determine, or at least speculate, as to which TV personality earned the compensation.

In addition, the requirements of proposed Item 402(f)(2) could affect the competition for talent in the entertainment industry. A company that could assure a potential recruit that his or her compensation would not be subject to disclosure (because, for example, the company already has identified three other non-executive officer employees whose total compensation will exceed that of the individual being recruited, or because the company is privately held) would have a competitive advantage over a rival that could not provide a similar assurance. Indeed, the disclosure requirement could have the effect that producers, talent and other individuals would prefer not to be employed by publicly-held motion picture companies at all. The proposed new requirement will also likely result in the disclosure of sensitive and confidential information concerning compensation levels that could affect industry-wide negotiations. Since the application of the rule will not result in all companies disclosing information concerning comparable positions, the new requirements could place the disclosing company at a competitive disadvantage. Moreover, these consequences would likely have a more significant effect on smaller companies in the entertainment industry, inasmuch as the costs of talent may well outstrip compensation paid to executives of companies of lesser scale.

Lastly, given the fact that the identification of the additional three (or fewer) employees will be based on compensation rather than position or function, comparisons among companies with respect to their pay practices will not be possible and an understanding of the market for "talent" employees will not be conveyed. Since the information provided will not put the disclosure in context, we believe that proposed Item 402(f)(2) will be unlikely to promote the objective of comparability underlying the rule and will be of limited utility to investors.

For the foregoing reasons, we respectfully suggest that the Commission eliminate proposed new Item 402(f)(2) from the rules that it adopts.

We thank you for the opportunity to comment on the Commission's proposals and would be pleased to discuss any questions about our comments at your convenience. Please call the undersigned at the telephone numbers indicated on page 1 if you have any questions or if we can supply any further information or documentation.

Very truly yours,

Linda E. Rappaport

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